

# Referral 1: Draft Built Form Overlay and draft Walkable Catchment Zone

Activity Centres Standing Advisory Committee Report

6 November 2024

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

*Planning and Environment Act 1987*

Activity Centres Standing Advisory Committee Report

Referral 1: Draft Built Form Overlay and draft Walkable Catchment Zone

**6 November 2024**

A handwritten signature in blue ink, appearing to read 'Sarah Carlisle'.

Sarah Carlisle, Chair

A handwritten signature in blue ink, appearing to read 'M. Gibbs'.

Dr Meredith Gibbs, Deputy Chair

A handwritten signature in black ink, appearing to read 'Dianne King'.

Dianne King, Member

## Contents

|  | Page      |
|--|-----------|
| <b>1 Introduction .....</b>  | <b>6</b>  |
| 1.1 Terms of Reference and referral letter .....                     | 6         |
| 1.2 The Committee's approach.....                                    | 6         |
| 1.3 Limitations.....   | 6         |
| <b>2 Summary.....</b>  | <b>9</b>  |
| <b>3 Analysis .....</b>  | <b>11</b> |
| 3.1 Key policy drivers .....   | 12        |
| 3.2 Draft Built Form Overlay.....                                    | 12        |
| 3.3 Draft Walkable Catchment Zone .....                              | 23        |
| 3.4 Other matters .....  | 28        |
| <b>Appendix A Referral letter .....</b>                              | <b>32</b> |
| <b>Appendix B Terms of Reference .....</b>                           | <b>35</b> |
| <b>Appendix C Referred material .....</b>                            | <b>36</b> |
| <b>Appendix D Committee recommended versions of BFO and WCZ.....</b> | <b>37</b> |
| D:1 Built Form Overlay (clean and tracked versions).....             | 37        |
| D:2 Walkable Catchment Zone (tracked version only) .....             | 70        |

## Glossary and abbreviations

|                  |   |
|------------------|---|
| ACZ              | Activity Centre Zone  |
| BFO              | draft Built Form Overlay  |
| CBF              | community benefit framework   |
| Committee        | Activity Centres Standing Advisory Committee  |
| DTP              | Department of Transport and Planning  |
| DTP Report       | Report responding to key matters to be considered by Standing Advisory Committee (Document 3) |
| GRZ              | General Residential Zone  |
| Minister         | Minister for Planning   |
| MUZ              | Mixed Use Zone  |
| NRZ              | Neighbourhood Residential Zone  |
| Referred Matters | the matters specified in the table in the referral letter                                     |
| RGZ              | Residential Growth Zone   |
| SAC              | Standing Advisory Committee   |
| VPA              | Victorian Planning Authority  |
| WCZ              | draft Walkable Catchment Zone   |

## Overview

### Referral summary

|                    |  |
|--------------------|--|
| Referral           | Referral 1<br>Draft Built Form Overlay (BFO) and draft Walkable Catchment Zone (WCZ)   |
| Brief description  | Advice sought on specified key issues relating to the BFO and WCZ head clauses   |
| Planning Authority | Department of Transport and Planning (DTP) on behalf of the Minister for Planning  |
| Referred material  | Received on 22 October 2024: <ul style="list-style-type: none"> <li>- Report responding to key matters to be considered by the Committee (DTP Report)</li> <li>- Draft BFO head clause (targeted engagement version)</li> <li>- Draft BFO head clause ((Standard Advisory Committee (SAC) version tracked against consultation version)</li> <li>- Draft WCZ head clause (targeted engagement version)</li> <li>- Draft WCZ head clause (SAC version tracked against consultation version)</li> <li>- Video presentation explaining the BFO</li> </ul>   |
| Referred Matters   | <b>Draft Built Form Overlay:</b> <ul style="list-style-type: none"> <li>- Purposes</li> <li>- Development Framework</li> <li>- Master planned sites</li> <li>- Community benefit framework</li> <li>- Application of outcomes and standards</li> <li>- Open space provisions</li> <li>- Locally responsive design</li> </ul> <b>Draft Walkable Catchment Zone:</b> <ul style="list-style-type: none"> <li>- Purposes</li> <li>- Building heights</li> <li>- Locally responsive design</li> </ul> <b>Advice not to be provided on:</b> <ul style="list-style-type: none"> <li>- Any other matter</li> </ul> |

### Committee

|                     |  |
|---------------------|--|
| The Committee       | Sarah Carlisle (Chair), Meredith Gibbs and Dianne King |
| Supported by        | Georgia Brodrick                                       |
| Hearings            | Not required   |
| Site inspection     | Not required   |
| Date of this report | 6 November 2024  |

# 1 Introduction

## 1.1 Terms of Reference and referral letter

The Minister for Planning appointed the Activity Centres Standing Advisory Committee (the Committee) on 22 August 2024. The purpose of the Committee is set out in its Terms of Reference dated 22 August 2024:

... provide timely advice to the Minister for Planning on specific matters referred to it relating to strategic and built form work undertaken in relation to the [Activity Centres Program] ACP to inform the preparation of clear new planning controls in and around the 10 activity centres identified in *Victoria's Housing Statement, The decade ahead, 2024-2034* to deliver 60,000 more homes.

This is Referral 1. The Minister for Planning's referral letter was dated 22 October 2024. The referral letter is included in 3.4.

The Minister for Planning seeks the Committee's advice on specific issues as outlined in the table in the referral letter (the Referred Matters). The referral letter indicated the Committee should not provide advice on matters outside these specific matters.

## 1.2 The Committee's approach

The Committee has conducted its assessment process in accordance with the procedural requirements of the Terms of Reference, in particular Clauses 9, 10, 12 and 18. It has reported on Referred Matters in accordance with its Terms of Reference, particularly Clause 16.

Clause 12 of its Terms of Reference require the Committee to:

... conduct its work with a view to maximising efficiency and timeliness. This may include conducting reviews 'on the papers' without oral hearings where the Committee considers it appropriate depending on the nature of the matter referred.

Clause 18 requires the Committee to submit its report to the Minister for Planning and DTP no later than 10 business days from receipt of the referral. This timeframe did not allow for a Hearing to consider oral submissions or evidence on the Referred Matters.

Given the targeted nature of the Committee's scope, issues to be considered and advice required, and reporting timeframes, the Committee considered an on the papers process to be appropriate.

## 1.3 Limitations

The Committee has confined its consideration to the Referred Matters, as directed in the referral letter (see Appendix A).

The DTP Report set out the matters on which advice is sought in:

- Section 1 (Referral matters), in a table that is similar to (but not the same as) the table in the referral letter
- Section 4 (Issues with specific BFO clauses) and Section 5 (the WCZ).

There are inconsistencies between the Referred Matters as described in the referral letter, and the matters on which advice is sought as set out in the DTP Report. Further, the DTP Report includes commentary on matters that do not directly relate to the Referred Matters.

This Report responds to the Referred Matters as recorded in the referral letter.

The referred material for Referral 1 did not include a template schedule for the BFO. The head clause was difficult to understand without a template schedule. While the Committee was provided with 'sample schedules' (for Moorabbin and Preston) as 'pre-reading', these schedules did not include all of the information contemplated by the head clause. For example, neither contained any machinery or other text about a community benefit framework.

The Committee requested and was provided with a template schedule, but the headings and terminology used did not match the head clause and it was not of great assistance in understanding how the head clause will operate in tandem with the schedules.

The Committee has done its best to respond to the matters on which advice is sought based on the materials referred to it, but notes it would have aided the Committee's understanding of the BFO head clause had it been accompanied by an up to date and accurate template schedule.

The 'pre-reading' material included the City of Centres report by Sheppard and Cull, a draft Urban Design Background Summary Report prepared by the Victorian Planning Authority (VPA), and a consultation draft of proposed changes to Clause 58 (Apartment developments). This material was not included in the referred material for Referral 1. In the time available, the Committee has not been able to review this material in preparing this Report.

No submissions were referred to the Committee. The Committee has only considered the summary of key matters (including analysis) in the DTP Report (and only insofar as it relates to the Referred Matters). The Committee has not been able to independently verify the accuracy or comprehensiveness of the summary of issues raised in submissions in the DTP Report.

The Committee did not have the benefit of a public Hearing or any discussions or evidence (in support or contradictory) that may have assisted it to better understand the strategic basis of the draft BFO or WCZ, or their intended operation. While the video presentation on the draft BFO was helpful, the Committee would have been aided by being able to ask questions in relation to the intended operation of the controls.

Clause 13 of the Committee's Terms of Reference states:

13. The Committee may invite the Department of Transport and Planning (DTP), the Victorian Planning Authority (VPA), a relevant Council and/or any other party to identify or address any matters through further written comments (noting that this does not extend the time for provision of a Report as required by Clause 19).

Given the 10 business day reporting timeframe, the Committee chose not to request face to face discussions with any DTP officers pursuant to Clause 13, as it would not have been practical and may have compromised the process from a procedural fairness perspective.

Given the limitations outlined above, the Committee has largely had to accept the material at face value. The advice contained in this Report should not be taken as a comprehensive merits review of the draft BFO or WCZ or their strategic basis. It is targeted advice confined to the Referred Matters.

Finally and perhaps most importantly, this Committee did not have the benefit of the final Referral 2 Report on common issues when it prepared this Report. There is overlap between some of the matters on which advice is sought in Referrals 1 and 2. This Committee's advice on the following Referral 1 matters needs to be read in conjunction with the forthcoming advice of the Referral 2 Committee:

- master planning (which potentially overlaps with the advice sought from the Referral 2 Committee on large opportunity sites)

- application of Outcomes and Standards (which potentially overlaps with the advice sought from the Referral 2 Committee on deemed to comply, mandatory and discretionary controls)
- the purposes of the WCZ (which potentially overlaps with the advice sought from the Referral 2 Committee on the catchment boundary issue)
- locally responsive design (which potentially overlaps with the advice sought from the Referral 2 Committee on the tree canopy issue).

This Committee's recommended drafting in relevant provisions of the BFO head clause (in Appendix D:1) needs to be read in conjunction with the Referral 2 Committee's forthcoming advice on the following issues:

- sun access
- wind
- active frontages.



## 2 Summary

The identification of issues and the advice sought on each issue are translated directly into Table 1 from the referral letter.

**Table 1** Summary of referred issues, advice sought and key findings

| Issue                              | Advice sought  | Key findings  |
|------------------------------------|--|---|
| <b>Built Form Overlay</b>          |  |   |
| The purposes listed in the overlay | <p>The overlay is proposed to only be applied in areas designated for built form intensification, please advise whether:</p> <ul style="list-style-type: none"> <li>- the purposes should be amended to include a specific purpose enabling diverse and affordable housing, noting the potential broadscale application of the overlay across metropolitan Melbourne</li> <li>- the draft purposes sufficiently guide a responsible authority's discretion.</li> </ul> | <p>Affordable housing is a land use issue, not a built form issue. It would not be appropriate to include a purpose in the BFO relating to affordable housing.</p> <p>With some amendments, the purposes of the BFO will sufficiently guide discretion.</p> |
| The Development Framework          | The proposed provision seeks a map or maps to be prepared which express the strategic considerations of an activity centre. Please advise whether the proposed instrument will be beneficial in guiding a responsible authority's discretion.  | Changes are needed to the BFO to ensure Development Frameworks will be beneficial in guiding discretion.  |
| Master planned sites               | The proposed provision seeks to guide development outcomes on identified sites. Please advise whether the provision will be beneficial in guiding a responsible authority's discretion for such sites.   | Changes are needed to the BFO to ensure master plans will be beneficial in guiding discretion.  |

| Issue                                 | Advice sought   | Key findings  |
|---------------------------------------|---|---|
| Community benefit framework (CBF)     | <p>The proposed provision provides a mechanism for planning authorities to prepare and incorporate a community benefit framework into the scheme. Please advise whether:</p> <ul style="list-style-type: none"> <li>- the provision is suitably drafted to achieve the provision's intended purpose</li> <li>- the provision is suitably drafted to facilitate affordable housing</li> <li>- it would be reasonable to amend the provision to: <ul style="list-style-type: none"> <li>- only apply in circumstances that a deemed to comply standard (compared to a mandatory standard) is not met, and</li> <li>- only facilitate affordable housing, commensurate to how much it exceeds the standard drafting sufficiently reflects the intended purpose.</li> </ul> </li> </ul> | <p>The proposed CBF provision requires drafting changes if it is to achieve its intended purpose.</p> <p>The provision is suitably drafted to facilitate affordable housing.</p> <p>It is not reasonable to amend the provision to only apply in circumstances where a deemed to comply standard is not met.</p> <p>It is not reasonable to amend the provision to only facilitate affordable housing (and no other community benefits).</p> <p>The 'uplift' gained in return for providing the community benefit (or the amount of the exceedance) should be proportionate to the community benefit provided by a developer.</p> |
| Application of outcomes and standards | <p>The proposed overlay seeks to apply outcomes and standards. Please advise whether the proposed application of outcomes and standards will be beneficial in guiding a responsible authority's decision making.</p>  | <p>Changes are needed to the BFO operational provision and to the outcomes and standards themselves to ensure they will be effective in guiding decision making.</p> <p>There is a risk that the overuse of deemed to comply standards will result in poor outcomes.</p>  |
| Open space provisions                 | <p>The public open space contribution mechanism integrated within the provision intends to override the provisions of Clause 53.01. Please advise whether the integration of the open space provision within the overlay simplifies the interpretation of open space requirements for permit applicants and responsible authorities.</p>  | <p>The integration of the open space provision within the BFO simplifies the interpretation of open space requirements for permit applicants and responsible authorities.</p>   |
| Locally responsive design             | <p>Please advise whether the proposed controls, in combination with the other, existing elements of the planning scheme are capable of facilitating landscaping/tree canopy and locally responsive design outcomes and are suitably drafted.</p>  | <p>The BFO should facilitate landscaping, but minor changes are needed to facilitate canopy trees.</p> <p>The BFO should, in principle, facilitate locally responsive design, provided standards and outcomes in schedules are appropriately tailored to the local context.</p>   |

| Issue                           | Advice sought   | Key findings  |
|---------------------------------|---|---|
| <b>Walkable Catchment Zone*</b> |   |   |
| The purpose of the zone         | The zone is proposed to be applied in areas designated for built form intensification. Please advise whether the draft purposes sufficiently guide a responsible authority's discretion.  | The purposes of the WCZ will not sufficiently guide discretion.   |
| Building heights                | Please advise whether: <ul style="list-style-type: none"> <li>- the building height thresholds for above and below 1000sqm are appropriate</li> <li>- the provision is suitably drafted to achieve the intended purpose of facilitating more intense development in the catchment.</li> </ul> | <p>It is not possible to advise whether the metrics of the proposed building heights are appropriate. They will apply in a wide range of contexts, and their appropriateness will depend on local factors.</p> <p>In the absence of strategic justification for a mandatory three storey height limit for smaller sites, the limit should be discretionary.</p> <p>With changes, the building height provision should facilitate more intense development in the catchments, but the Committee is concerned it may not result in locally responsive design and good planning outcomes in all cases.</p> |
| Locally responsive design       | Please advise whether the proposed controls, in combination with the other, existing elements of the planning scheme are capable of facilitating landscaping/tree canopy and locally responsive design outcomes and are suitably drafted.   | <p>The WCZ will not facilitate landscaping or tree canopy outcomes.</p> <p>The WCZ will only facilitate locally responsive design outcomes to a limited extent. Other planning tools that apply within the catchments may facilitate locally responsive design, provided they are retained.</p> <p>The WCZ should not be applied to areas that are within a Heritage Overlay or a Neighbourhood Character Overlay (NCO).</p>  |

- \* The Committee's primary position is that the WCZ should not be applied at this time. Its responses to the specific questions on the WCZ have informed this view. The key findings on the WCZ should be read in that context.

## 3 Analysis

### 3.1 Key policy drivers

The Terms of Reference (in Clause 16) require the Committee to address the Referred Matters and its recommendations in the context of:

- Victoria's Housing Statement, The Decade Ahead 2024-2034
- Plan Melbourne 2017-2050 or any equivalent replacement planning strategy.

Key policy drivers in the Housing Statement relevant to planning for activity centres include, to:

- introduce clear planning controls to deliver an additional 60,000 homes around the 10 'pilot' activity centres<sup>1</sup>
- introduce activity centre plans to guide investment in the things a growing suburb needs like community facilities, public spaces and parks
- incentivise affordable housing.

Key policy drivers in Plan Melbourne relevant to planning for activity centres include, to:

- encourage increased housing diversity and density in activity centres
- create inclusive, vibrant and healthy neighbourhoods
- provide a diverse range of jobs, activities and housing in centres that are well served by public transport
- provide certainty about the scale of growth in the suburbs
- support a network of vibrant neighbourhood activity centres
- support new housing in activity centres and other places that offer good access to jobs, services and public transport
- facilitate housing that offers choice and meets changing household needs.

### 3.2 Draft Built Form Overlay

The Committee has undertaken a detailed drafting review of the BFO head clause, as this was required to properly address the Referred Matters. The Committee recommended version is in Appendix D:1. It is based on the SAC version included in the referred materials (with changes in that version accepted) and applies the drafting principles in *A Practitioner's Guide to Victorian Planning Schemes*.

#### 3.2.1 Purposes

Subject to the Committee's recommended changes in Appendix D:1, the Committee considers the draft purposes will sufficiently guide discretion to achieve the intended purpose of the BFO, namely, to achieve built form intensification and specific development outcomes in areas nominated for growth.

The key recommended drafting improvements are to:

- simplify language to use plain English and minimise ambiguity

---

Broadmeadows, Camberwell Junction, Chadstone, Epping, Frankston, Moorabbin, Niddrie (Keilor Road), North Essendon, Preston (High Street) and Ringwood.

- remove language that is not consistent with the outcomes and standards within the BFO head clause
- consolidate and streamline the purposes.

While the Committee acknowledges the language of the second purpose has been taken from the Design and Development Overlay, the drafting of the BFO is an opportunity to improve drafting to simplify the language used.

Regarding the third purpose, the Committee considers reference to 'sustainable development' does not directly align with the outcomes and standards within the BFO head clause and is better addressed in other planning scheme policies and provisions.

There is repetition between the third and fifth purposes that can be avoided through consolidation.

The last purpose reads:

To encourage land consolidation in identified locations to facilitate higher density development.

Clause 43.06-1 states that the Development Framework or a schedule should identify:

- Areas where consolidation of sites will be encouraged to facilitate the preferred scale of development.

The Committee recommended version of the BFO head clause retains this purpose, but the Committee notes it may restrict flexibility by implying that consolidation is encouraged only in those areas identified. DTP should further consider whether this is consistent with the intent.

DTP sought the Committee's advice (in the DTP Report) on whether the BFO purposes should be amended to include a specific purpose enabling diverse and affordable housing. No context or explanation is provided for this request in the DTP Report. Affordable housing is a land use issue, not a built form issue. It would not be appropriate to include a purpose in the BFO relating to affordable housing.

### **Recommendation**

The Committee recommends:

- 1. Amend the purposes in the Built Form Overlay head clause as shown in Appendix D:1.**

### **3.2.2 Development Framework**

The Development Framework is the overarching guide to the future development of an activity centre. If the Development Framework is to effectively achieve its purpose and help guide a responsible authority's discretion, it is critical that:

- it contains the right information
- the information is clear, legible and free from internal inconsistencies
- it works together with the built form outcomes and standards specified in the BFO head clause and in schedules.

Changes are required to the BFO head clause to ensure Development Frameworks effectively guide discretion. These include clarification as to what forms part of the Development Framework, and what is a requirement specified in a schedule.

## What the Development Framework should show

Clause 43.06-1 sets out what a Development Framework ‘should’ contain. The first item listed in Clause 43.06-1 is the planned urban structure. This is fundamental to the Development Framework, and critical in guiding discretion. This should be a ‘must’ inclusion in a Development Framework rather than a ‘should’.

Clause 43.06-1 states the Development Framework should include “*topic based plans*” that identify “*the preferred built form character or typology of each part of the land, if relevant*”. Plans or maps are not the best way to present preferred typologies and built form character. They need to be described in text. The table of preferred building typologies and built form character should therefore form part of the Development Framework. The maps or plans can cross reference the relevant typology types in the table.

Like the future urban structure, the preferred building typologies and built form character are critical in guiding discretion and should be a ‘must’ inclusion in a Development Framework.

The Committee supports the other items listed in Clause 43.06-1 as inclusions in a Development Framework. However, additional items (all of which are easily mapped) should be included to ensure the Development Framework works effectively with the built form outcomes and standards to guide discretion. This includes:

- sites where a floor area ratio is intended to apply
- sensitive interfaces and areas where built form needs to transition to the built form in the surrounding area
- locations where landscaped setbacks capable of accommodating canopy trees are to be provided
- streets where active frontages are required
- specific or indicative pedestrian links
- street and lanes along which continuous weather protection should be provided
- streets and lanes identified where loading access or vehicle access to carparks are discouraged
- new streets, lanes, arcades or through building connections (assuming these are different to specific or indicative pedestrian links)
- open space, public realm or streets for which sun protections apply.

The DTP Report indicated that submitters suggested the following items should not be included in a Development Framework, which DTP does not support (pages 11 and 12):

- a map using Victoria’s Movement and Place Framework
- a public open space framework
- areas where consolidation of sites will be encouraged to facilitate the preferred scale of development.

The DTP Report did not explain why submitters considered these matters should not be included in a Development Framework.

Clause 43.06-1 states that these are all items that ‘should’ be included in a Development Framework (not ‘must’). If they are not required in the context of any particular centre, they need not be included. However, the Committee anticipates they will be relevant in a majority of cases for the reasons set out in the DTP Report. They should therefore be retained.

Regarding the requirement for ‘a map using Victoria’s Movement and Place Framework’, *Movement and Place in Victoria* is adopted government policy referenced in Clause 18.01-1S of the

Victoria Planning Provisions. It is appropriate for Development Frameworks to be consistent with that policy. That said, the requirement needs to be reworded to *“provide a movement and place framework that is consistent with Movement and Place in Victoria”*. This drafting is included in Appendix D:1.

### **Development yield**

The Committee notes the advice in the DTP Report (page 12) that the intent is for schedules to set out the intended dwelling and floorspace yields, although this has not been documented (and was presumably not part of the consultation) for the 10 pilot centres.

The Committee supports including anticipated dwelling numbers and floorspace yields in a Development Framework where appropriate (which may only be for larger centres). This information would be useful in guiding discretion. That said, the dwelling numbers and floorspace yields for each centre would need to be strategically justified and supported by appropriate background information, including capacity and demand analysis, an assessment of impacts on other neighbouring activity centres and the like.

Guidance (such as a planning practice note) should be provided on how dwelling numbers and floor space yields should be derived, to ensure a consistent approach.

### **Other drafting changes**

The Committee also recommends the following key drafting improvements to the BFO head clause, which are included in Appendix O:

- define the term ‘Development Framework’
- clearly state the purpose of the Development Framework
- ensure the content of a Development Framework is clearly described
- explicitly reference the Development Framework in relevant outcomes and standards, to ensure it appropriately guides decision making.

The Committee recommends:

- 2. Amend the development outcomes provision in the Built Form Overlay head clause as shown in Appendix D:1.**

### **3.2.3 Master planned sites**

The Committee considers that, subject to its recommended drafting changes in Appendix D:1 and subject to the advice below, the master planning provision in Clause 43.06-1 should produce master plans that will be beneficial in guiding a responsibly authority’s discretion for such sites.

The Committee’s key recommended drafting improvements are:

- accurately recording where master planned sites are identified (they should be identified in the Development Framework)
- adding a requirement that the scale of development shown in a master plan is to be consistent with the Development Framework
- removing unnecessary repetition in the drafting of the provision.

### **Additional specifications for a master plan**

In terms of the content of a master plan, the Committee notes the advice in the DTP Report (page 13) that the master planning requirements are based on the Development Plan Overlay, and that master plans are conceived as a *“development plan lite”*. While the Committee acknowledges this,

and supports the items listed in Clause 43.06-1 that should be included in a master plan, in many cases more content will be required if the master plan is to be beneficial in guiding discretion.

An example is a traffic and transport management plan. While the Development Framework may identify broad network considerations (consistent with *Movement and Place in Victoria*) at a high level, more detailed traffic management measures (such as new or upgraded streets, lanes or intersections) will often need to be identified where large or strategic sites are redeveloped.

The BFO head clause allows additional master plan requirements to be specified in a schedule. Guidance should be provided to ensure master planning requirements in schedules are appropriately drafted, to ensure:

- master plans contain all of the information needed to effectively guide discretion
- a consistent approach across similar centres.

### Standard exemptions

The Committee notes DTP's position outlined in the DTP Report (page 14). While it may be difficult to identify a standard set of exemptions, the Committee considers that one standard exemption where a permit should be able to be granted is for minor works to existing buildings before a master plan is approved. Master planning is intended to guide the future redevelopment of a site, not existing uses and development. That said, major works in connection with existing uses could compromise the future intended role of the site and should not be exempt.

The Committee has included an appropriately worded exemption in Appendix D:1.

### 'Prepared' or 'approved'

The BFO head clause provides that a master plan must be 'prepared to the satisfaction of the responsible authority', consistent with the text used in the Development Plan Overlay. The DTP Report indicated (at pages 13 and 14) that some submitters thought master plans should be 'approved by' the responsible authority. The Committee prefers 'prepared to the satisfaction of...', noting that it will trigger rights of review under section 149 of the *Planning and Environment Act 1987*.

The Committee recommends:

- 3. Amend the master planned sites provision in the Built Form Overlay head clause as shown in Appendix D:1.**

### 3.2.4 Community benefit framework

In considering the proposed CBF provision, the Committee has assumed:

- at a general level, a CBF is legally valid
- the proposed provision is intended to provide a framework for the actual CBF which would appear in a schedule (and could include reference to other document(s))
- a CBF must be robust and strategically justified before being included in a schedule.

On the basis of the above assumptions, the Committee's responses to the specific matters on which advice is sought are:

- the proposed CBF provision requires drafting changes if it is to achieve its intended purpose
- the provision is suitably drafted to facilitate affordable housing
- it is not reasonable to amend the provision to only apply in circumstances where a deemed to comply standard is not met



- it is not reasonable to amend the provision to only facilitate affordable housing (and no other community benefits)
- the ‘uplift’ gained in return for providing the community benefit (or the amount of the exceedance) should be proportionate to the community benefit provided by a developer.

The Committee’s key recommended drafting improvements are to:

- define the term ‘community benefit framework’
- clarify what must be included in a schedule if a CBF is to apply
- require inclusion (in the schedule) of a table that links the relevant standard that can be exceeded, and the degree (including the maximum) to which the relevant standard can be exceeded, with the relevant community benefit(s) to be provided.

Guidance will be needed to ensure CBFs are robustly prepared and strategically justified, and that a consistent and proportional approach is taken to preparing and implementing CBFs.

### Intended purpose

The referral letter states *“the proposed [CBF] provision provides a mechanism for planning authorities to prepare and incorporate a community benefit framework into the scheme”*. The DTP Report elaborates on the purpose of the CBF provision:

The issue is whether the provisions relating to the community benefit framework are clear and enable planning authorities to secure appropriate benefits through its utilisation. [page 14]

...

The community benefit framework mechanism has been included primarily for future users of the BFO, who may have ambitions to implement an uplift scheme tied to a community benefit framework. The purpose of including this text in the BFO is to ensure there is an appropriate mechanism to operationalise an uplift framework should it be found to be appropriate on its merits. [page 15]

While the Committee’s advice has not been sought on whether a CBF is legally valid, it notes the comments in the DTP Report (page 15) regarding the need for a CBF to:

- include specific text about how the scheme would work
- apply the principles of equality, consistency, accountability and transparency in the securing of benefits
- ensure clear implementation
- ensure consistent outcomes.

The Committee considers the SAC version of the proposed CBF provision does not fully achieve these requirements.

As currently drafted, it is not clear what constitutes the ‘community benefit framework’. Is it the CBF document to be specified in a schedule (which could be a separate document), the mechanism contained in the schedule, or both? The Committee’s proposed definition of ‘community benefit framework’ clarifies that it includes the mechanism, the eligible community benefits and how they are calculated, regardless of whether these matters sit within a schedule or in a separate document. The Committee’s drafting also ensures that:

- a CBF is ‘anchored’ in the relevant schedule
- the schedule includes the key matters that most users of an uplift scheme will be interested in, with the detail provided, as needed, in a separate (specified) document.

This approach improves readability and transparency.

The proposed CBF provision (SAC version) not explicitly require the allowable community benefit(s) and the calculation method to be ‘tied’ to the specific standard that can be exceeded. This is essential to provide clarity and consistency in application of the CBF. To overcome this, the Committee considers that where a CBF applies, the schedule must clearly:

- set out the relevant standard that can be exceeded
- set out the degree (including the maximum) to which the relevant standard can be exceeded
- ‘tie’ the relevant community benefit(s) to the relevant standard that can be exceeded.

The Committee considers a table would be the clearest and simplest way to achieve this. This should be included in the template BFO schedule that will need to accompany the BFO head clause. For complex CBFs, the contents of the table could refer to specific provisions of a separate CBF document. When this would be appropriate should be further explained in guidance material.

The Committee considers that any ‘uplift’ provided by the framework should be proportionate to the value of the community benefit delivered. This is required for consistency and transparency. It is likely that those considering ‘opting in’ to the CBF would expect to see a clear link between the value of the uplift and the community benefit(s) being delivered. It would also be necessary to enable users of the mechanism to assess the financial viability of participation.

The Committee’s drafting requires the following to be included in a schedule (in the required table):

The degree (including the maximum) to which the relevant standard can be exceeded, based on the extent of the community benefit provided.

The degree of permitted exceedance should be proportionate to the value of the community benefit delivered, which is a matter that a planning authority would need to address in its strategic justification of the CBF and should be further explained in guidance material.

Due to the many variations in community benefit uplift mechanisms, the Committee does not consider that the BFO head clause should seek to specify matters further.

With these modifications, the Committee considers that the CBF provision should successfully operationalise an uplift framework (subject to its legal validity).

### **Facilitating affordable housing**

The CBF provision is drafted in a neutral manner and can facilitate any type of community benefit the planning authority considers appropriate, including affordable housing, provided that the CBF properly specifies affordable housing as a relevant ‘community benefit’ and provides sufficient clarity on how the uplift would operate.

The note at the end of the CBF provision (in the SAC version of the BFO) indicates that community benefits in this context “*are intended to relate to site specific or local area benefits such as new pedestrian links or improvements to the public realm*”. This note suggests that affordable housing is not the type of community benefit contemplated by the proposed provision, despite there being nothing in the drafting of the provision itself which so limits it.

The DTP Report (page 15) indicates that the exhibited version of this note included reference to affordable housing. No specific explanation is provided for its removal.

The DTP Report states (page 15) that legal advice “*has confirmed that requiring a contribution (works, services or facilities) outside the DCP/ICP framework would need to directly and physically relate to the development for it to be lawful*”. From the information provided, it is unclear whether

the legal advice was referring to the benefit needing to be directly and physically related to the development (site) or the 'works, services or facilities' needing to be directly and physically related to the development. The Committee is therefore unclear as to whether the reference in the note to affordable housing was removed because it was not considered to be a site specific benefit.

At a general level, if greater support for the use of the CBF mechanism to deliver affordable housing is required, the note could be amended to include reference to affordable housing. Plan Melbourne and the Housing Strategy clearly support efforts to increase affordable housing in the mix of housing to be supplied. However, the Committee does not consider it appropriate to provide any specific drafting suggestions given it has not been provided with the legal advice.

DTP also seeks advice on whether it would be reasonable to amend the CBF provision to *"only facilitate affordable housing, commensurate with how much it exceeds the standard"*. This request for advice can be interpreted a couple of ways.

If the Committee's advice is being sought on whether the CBF provision should only facilitate affordable housing in situations where the uplift is proportionate to the number of affordable housing units provided, then the Committee has already stated its view that the uplift should always be proportionate to the benefit provided.

If the Committee's advice is being sought on whether the CBF provision should only apply to affordable housing and no other type of community benefit, the Committee sees no reason why the mechanism should be so limited. Although Plan Melbourne and the Housing Strategy clearly support the provision of affordable housing, they do not do so at the cost of other public benefits.

#### **Application to 'deemed to comply' standards**

DTP seeks advice on whether it would be reasonable to amend the CBF provision to only apply in circumstances where a deemed to comply standard (as compared to a mandatory standard) is not met. This matter is not addressed or further explained in the DTP Report.

The SAC version of the CBF provision can apply to any type of standard. This means that it can apply to a:

- discretionary standard
- mandatory standard
- discretionary standard that is also deemed to comply
- mandatory standard that is also deemed to comply.

The reference to a deemed to comply standard *"as compared to a mandatory standard"* suggests a misunderstanding about the type of standards included in the BFO, because a deemed to comply standard can be either discretionary or mandatory.

It is unclear to the Committee what the intended benefits are of limiting a CBF to only deemed to comply standards.

An 'uplift' mechanism most often operates in relation to a mandatory standard or requirement, allowing that mandatory limit to be exceeded where that would otherwise not be possible, in return for providing a specified benefit(s). The value that the exceedance of the mandatory limit provides to a developer needs to exceed the value of the benefit provided by the developer in order to make it worthwhile to opt in.

Such a mechanism could also apply to a discretionary standard, as a means to exceed a 'preferred' standard and ensure that a permit could not be refused on this ground. This achieves a similar

result to a deemed to comply standard (where a permit cannot be refused on the ground that the relevant outcome is not met). But they are not the same:

- in the first case the relevant standard is not met (in return for the benefit provided)
- in the latter the standard is met (regardless of the benefit provided).

It is unclear how attractive to a developer a CBF that applies to a 'preferred' or discretionary standard (deemed to comply or not) would be. A developer may prefer to design around a discretionary standard and argue that the relevant outcome has been achieved, rather than provide a community benefit.

The Committee also raises the question of whether the factors a planning authority would consider when deciding whether a standard should be deemed to comply or not are the same (or similar) to those relevant when deciding which standards can be exceeded under a CBF. When considering whether a standard should be deemed to comply or not, one factor a planning authority would likely consider is whether the outcome(s) should be assumed to be delivered if the relevant standard is met. That is a different consideration to the outcome(s) a planning authority may decide to forgo (because the standard is not met) in return for a specified community benefit.

As a result, the Committee considers that only having the CBF provision apply to deemed to comply standards is not reasonable and may have unintended results. It doubts a CBF that applies to discretionary standards would be effective. Hence the Committee's drafting in Appendix D:1 refers to mandatory standards only.

The Committee recommends:

- 4. Amend the community benefit framework provision in the Built Form Overlay head clause as shown in Appendix D:1.**

### **3.2.5 Application of outcomes and standards**

The Committee supports the use of discretionary, mandatory and deemed to comply measures within the control, and considers they will be beneficial in guiding a responsible authority's decision making, but with some reservations.

#### **Classifying standards as mandatory, discretionary and deemed to comply**

The operational provision (Clause 43.06-2) needs to be amended to clarify that all standards are either discretionary or mandatory, and that both may be 'deemed to comply'. With these clarifications, the outcomes and standards, combined with the Development Framework within the schedules, should be beneficial in guiding a responsible authority's decision making and will simplify the preparation of schedules for councils.

#### **Drafting of the outcomes and standards**

It is essential that the drafting of the outcomes and standards relate directly to the BFO purposes and the title for each outcome and standard. For the most part the SAC version achieves this, but the Committee has recommended some changes in Appendix D:1.

Outcomes should generalise what the standards intend to achieve, but provide the responsible authority with the discretion on how it may be achieved. This is important as standards may not necessarily be deemed to comply.

The operational provision (Clause 43.06-2) states that development must meet the outcomes and should meet the discretionary standards. Several of the outcomes refer to built form requirements identified in a schedule. By including this in the outcome (which must be met), the

BFO head clause could inadvertently convert discretionary standards specified in a schedule to mandatory. The Committee assumes this is not the intent and has removed references to standards from the descriptions of the outcomes sought to be achieved.

The operational provision states that development must meet the outcomes unless specified otherwise in the relevant standard. The BFO head clause only contemplates one outcome where the standard may specify that the outcome does not apply (the outcome in Clause 43.06-6.1 relating to building layout and adaptability). The Committee queries whether this is the intent.

The division of standards across the BFO head clause and the schedules increases the complexity in drafting and applying standards. Some parts of the BFO head clause do not contain standards, but rather contain carveouts from standards that may or may not be specified in a schedule, or describe circumstances where the standard in a schedule (if specified) would not apply (see Standards BF02, BF03, BF05 and BF06). This makes the BFO head clause hard to understand.

Where the BFO head clause does not include any standard, that section of the BFO head clause should include a reference to the Development Framework and/or any standards that may be specified in a schedule as a matter of clarity.

### **The risk of deemed to comply standards being overused**

The BFO head clause provides that if a deemed to comply standard is met, the corresponding outcome for that standard is deemed to be met. If all standards were deemed to comply, and a particular development proposal meets all the standards, the outcomes in the BFO would also be met and there would be no exercise of discretion in relation to the permit application. The grant of a permit would appear to be an automatic result in such a case.

Deemed to comply standards would streamline the planning process by providing greater certainty and faster approvals for development that meets these standards. However, the overuse of deemed to comply standards may compromise outcomes, by effectively removing the opportunity for any professional evaluation of a proposed development through the permit application process. This is not a desirable outcome.

Standards should only be able to be identified as deemed to comply when:

- the standard is one where it will be clear in all cases whether or not it is met
- there is a high level of certainty that development that meets the standard will result in good outcomes (such as good urban design outcomes).

In terms of it being clear when a standard is met, metric based standards are more appropriate as deemed to comply than qualitative standards that require the exercise of professional judgement. The first part of Standard BF17 provides examples of both:

- the second dot point has clear metrics and may be appropriate as a deemed to comply standard
- the first dot point requires judgement as to whether depth and a balance of light and shadow are achieved and appropriate and may not be appropriate as a deemed to comply standard.

Guidance is needed to accompany the controls to ensure the deemed to comply mechanism is used appropriately.

### **Specific standards**

Standard BF02 relates to building heights. It is not clear from the BFO head clause whether heights will be expressed in the schedules in storeys or metres or both. The Committee considers they

should be expressed in both (as they are in the WCZ). This should be explained in guidance material accompanying the new controls.

For Standard BF03, the section 173 condition should be redrafted as a requirement, rather than being included within the Standard.

Standard BF07 includes:

- Avoid tinted, opaque or high reflectivity glass which obscures views between the public realm and building interior.

DTP should further consider whether this should only apply to non-residential development. The Committee has included a note to this effect in Appendix D:1.

Regarding Clause 43.06-6.2 (Wind effects on the public realm), it is unclear why a schedule would vary a requirement to avoid unsafe wind conditions or deliver comfortable wind conditions in accordance with Standard BF08. The Committee has included a note to this effect in Appendix D:1. The Committee also recommends that a building height be applied within Standard BF08, to make the provision clearer. The Committee has recommended five stories based on the sample schedule for Moorabbin, although a metric in metres might also be appropriate.

Regarding Standard BF10, not all Activity Centre Plans appear to identify active frontages. It is not clear whether the active frontage requirements are intended to apply only on streets identified as such in Activity Centre Plans (which the Committee assumes will be translated into the schedules via the Development Frameworks), or on all streets. The same query applies to pedestrian connections (Standard BF11).

In both cases, the Committee recommends the standards (at least those in the head clause) only require active frontages or pedestrian connections to be delivered in the locations identified in the Development Framework. That said, guidance could encourage other standards to be included in schedules to ensure all streets will be pedestrian friendly and activated where appropriate.

Standard BF16 requires loading bays not to be located on relevant streets and lanes identified in a schedule (the Committee thinks this should be identified in the Development Framework, rather than the schedule). Further consideration should be given to whether this should be extended to cover access to waste collection areas and carparks. The Committee has included a note to this effect in Appendix D:1.

The Committee has made other general redrafting recommendations to simplify the outcomes and standards and improve clarity and readability.

## Recommendation

The Committee recommends:

- 5. Amend the operational provision and the outcomes and standards in the Built Form Overlay head clause as shown in Appendix D:1.**

### 3.2.6 Open space provision

The Committee understands the intent of the public open space provision is to override Clause 53.01 where specified and to provide greater transparency around the location of open space. Subject to the recommended drafting changes in Appendix D:1, the inclusion of the open space provision in the BFO simplifies the interpretation of open space requirements for permit applicants and responsible authorities. The key drafting changes are:

- to remove duplication that a permit granted must include any condition specified in a schedule (as this appears in the first part of Clause 43.06-9 and applies to all subdivision permits)
- minor amendments for consistency.

### Recommendation

The Committee recommends:

- 6. Amend the open space provision in the Built Form Overlay head clause as shown in Appendix D:1.**

### 3.2.7 Locally responsive design

#### Facilitating landscaping/tree canopy

The BFO head clause:

- includes landscaping outcomes and standards in Clause 43.06-7.4 that summer shade be provided (among other things)
- empowers a schedule to specify tree canopy requirements, landscape themes and vegetation (location and species)
- empowers a schedule to identify landscaped setbacks (and requires setback standards specified in a schedule to support landscaped setbacks where they are specified)
- includes an outcome of side and rear setbacks that provide for landscaping
- includes standard BF11 that pedestrian links be landscaped.

These provisions should facilitate landscaping, but to ensure canopy trees will be facilitated schedules should specify:

- sufficiently large setbacks to accommodate canopy trees
- deep soil planting requirements to support canopy trees.

The Committee has included appropriate drafting in Appendix D:1.

### Recommendation

The Committee recommends:

- 7. Amend the provisions in the Built Form Overlay head clause dealing with landscaping as shown in Appendix D:1.**

#### Facilitating locally responsive design

The BFO head clause (SAC version) states that a schedule may include standards relating to (among other things) urban scale and character, building layout and 'any other matter'. These are matters that can contribute to locally responsive design. Provided outcomes and standards are appropriately tailored to the local context, the BFO should, in principle, facilitate locally responsive design.

## 3.3 Draft Walkable Catchment Zone

For the reasons set out in this Chapter, the Committee's primary position is that the need for the WCZ has not been demonstrated, and it should not be applied at this time. The Committee considers the objective of intensified development around activity centre cores can be achieved under existing planning tools. Further, existing planning tools can better achieve locally responsive

design than the WCZ. The Committee therefore considers that using existing planning tools is a better approach.

That said, the Committee has recommended changes to the WCZ in response to the Referred Matters, in case DTP does not accept the Committee's primary position. It has not undertaken a detailed drafting review of the WCZ head clause.

The Committee's recommended changes are contained in Appendix O, which is based on the SAC version included in the referred materials (with changes in that version accepted).

### 3.3.1 Purposes

The DTP Report states (page 44) that *"it is important that the purpose of the zone effectively states the planning outcomes that the zone seeks to achieve."* It states (page 43):

The WCZ is a residential zone supporting development between an activity centre where more intensive development will occur and acts as a transition zone to other residential zoned land where lower scale residential development will occur. The density and intensity of residential development outcomes in the WCZ is expected to be greater than a Residential Growth Zone on consolidated lots.

The referred material also indicates the WCZ has been drafted *"to facilitate a step-change in residential development density in the walkable catchments"*.

The Committee assumes DTP's question about whether the draft purposes sufficiently guide a responsible authority's discretion is aimed at whether the purposes achieve these outcomes summarised in the DTP Report.

DTP has not requested advice on whether a new control is needed. However, the Committee considers the intent of increased residential densification in walkable catchments can be achieved under existing planning tools – namely the Residential Growth Zone (RGZ) or the Mixed Use Zone (MUZ), because:

- These are the current preferred zones to achieve increased housing density in areas with access to services and public transport.
- While the purposes of the RGZ refer to residential development *"up to and including four storeys"*, and the default maximum building height for residential buildings in the head clause is 13.5 metres (which is consistent with four storeys), the head clause enables RGZ schedules to specify higher height limits. Some RGZ schedules specify heights of six storeys or more.
- While the purposes of the MUZ may emphasise non-residential uses more than is intended for walkable catchments, the purposes include *"To provide for housing at higher densities"*.
- Neither the RGZ nor the MUZ have an upper limit on heights that can be specified in schedules (unlike the WCZ, which has a discretionary upper limit of six storeys).

The WCZ seems therefore to be adding another residential zone that is not sufficiently distinguishable from existing tools.

Turning to DTP's question about whether the WCZ purposes sufficiently guide discretion, the DTP Report indicates that submissions considered the WCZ purposes duplicate the purposes in the RGZ and the MUZ. The Committee agrees. The purposes in all three zones refer to housing at increased or higher densities. The WCZ purposes are not sufficiently distinct from the purposes of the RGZ and the MUZ to indicate an expectation of a 'step change' or what that might mean, or what sort of densities are expected under the WCZ as compared to the RGZ or the MUZ.



If DTP intends to proceed with the WCZ:

- The Committee recommends the WCZ purposes be more tailored to the activity centre context, and the objectives outlined in the referred material. The Committee has included recommended changes in Appendix O.
- The Committee has not included changes that better differentiate the WCZ purposes from those of the RGZ, or clarify what ‘increased densities’ means in the WCZ context, because it does not have sufficient information to do so, or to understand what this means in comparison to what can be achieved under the RGZ or the MUZ.
- The Committee supports the addition of a specific reference to diverse housing in Purpose 4 (in the SAC version) but considers the new purpose should also include an express reference to affordable housing. This is consistent with policy outcomes sought under Plan Melbourne and the Housing Statement.

### Recommendation

The Committee recommends:

- 8. If the Walkable Catchment Zone is applied, amend the purposes in the head clause as shown in Appendix O.**

### 3.3.2 Building heights

The WCZ proposes to apply a mandatory three storey height control for residential development except on larger sites which achieve both:

- a 20 metre street frontage
- a minimum lot size of 1000 square metres.

On these larger sites, a discretionary height limit of six storeys will apply, with the ability to exceed six storeys where appropriate.

The height limits do not apply to non-residential development.

The Activity Centre Plans refer to “*small apartment buildings ... up to three to six storeys*” in the catchments, and larger blocks being able to build “*up to five to six storeys*”. This language suggests the intent may be a mandatory six storey cap on larger sites, rather than a discretionary one. But this is not how the WCZ is drafted.

### Are the metrics appropriate?

DTP seeks advice on the metrics of the proposed building heights under the WCZ for both smaller and larger sites. It is not possible to advise whether the metrics are appropriate. They will apply in a wide range of contexts, and their appropriateness will depend on local factors. Further, there is no capacity to vary the building heights in schedules to reflect the local context.

### Will the building height provision achieve the intended purpose?

The building height provision could facilitate more intense development in the catchments, but not in all instances. Further, the Committee is concerned it may not result in locally responsive design and good planning outcomes in all cases (see Chapter 3.3.3 for more detail).

The proposed mandatory three storey limit in the WCZ for smaller sites is:

- consistent with the default maximum height limit in the General Residential Zone (GRZ)
- one storey higher than the default maximum height limit in the Neighbourhood Residential Zone (NRZ)

- one storey lower than the default maximum height limit in the RGZ.

Specifying a higher height limit than the default limit under the NRZ is consistent with the intended purpose of the WCZ of seeing built form intensification in the catchments. A height limit that matches the default height limit in the GRZ is not consistent with a 'step change' in built form intensity. A mandatory height limit that is less than the default limit in the RGZ seems directly at odds with the intended purpose of the WCZ.

Further, the default heights can be varied under the GRZ, NRZ and RGZ. While it would be rare for a height limit of more than two storeys to be specified for the NRZ, GRZ and RGZ schedules often specify height limits that are higher than the default limits of three and four storeys (and are often discretionary rather than mandatory).

### **The mandatory three storey height limit should be discretionary**

Planning Practice Note 59 provides guidance on the application of mandatory provisions. The advice states:

Mandatory provisions may be considered if it can be demonstrated, through a detailed assessment and evidence-base, that discretionary provisions are insufficient to achieve desired outcomes.

The Committee has not been provided with material that includes a detailed assessment and evidence base demonstrating that a mandatory three storey height control is needed in activity centre catchments, as required under Planning Practice Note 59. In the absence of material strategically justifying a mandatory limit, the Committee considers it should be discretionary. This is particularly the case given that a mandatory three storey limit will potentially be lower than existing height limits that apply in the catchments under the GRZ, the RGZ or their schedules, as discussed above.

The Committee acknowledges that a mandatory height limit provides greater certainty for developers and for the community, and reduces the potential for disputes in VCAT over whether the proposed height of a particular development is appropriate.

However, a discretionary height control:

- allows development in the catchments (on both smaller and larger lots) to respond to the site context
- better facilitates transitional heights between the higher built form in activity centre cores and the generally lower scale development in the surrounding residential hinterlands, consistent with the WCZ purposes
- allows for heights in the catchments to be graduated depending on the level of access to transport and services (for example, depending on the site and local context, higher built form may be considered acceptable closer to the core, with lower built form at the outer edges of the catchment)
- may assist in avoiding a 'canyon' effect around some activity centres.

Camberwell Junction is a good example of where the 'canyon' effect might arise. The activity centre core is generally surrounded by smaller lots in a fine grained subdivision pattern, many of which are within the Heritage Overlay. Larger sites are located around the southern periphery of the catchment. Without widespread lot consolidation in the inner parts of the catchment, the application of a mandatory three storey limit close to the core, and a discretionary six storey limit on the periphery, may result in an abrupt transition from the more intense built form in the core

down to the inner parts of the catchment, with a resumption of taller built form around the periphery. This is unlikely to deliver good urban design outcomes.

Discretionary maximum heights may not be appropriate for all sites within all walkable catchments. However, in the absence of a detailed assessment and evidence base supporting a mandatory three storey height control for residential development, the Committee considers the better approach is to allow discretion and rely on the decision guidelines assisting responsible authorities to appropriately exercise their discretion.

The decision guidelines for 'Dwellings, small second dwellings and residential buildings' in the WCZ includes consideration of Clauses 54, 55 and 58 as well as lot size and site context. These include consideration of urban context, neighbourhood character and integration with the street, which will assist in guiding discretion as to when it might be appropriate to exceed the maximum building height requirements. The Committee recommends additional decision guidelines be provided that require the decision maker to have regard to the preferred heights of adjoining and nearby sites, and the need for a transition in scale to adjacent areas with less or more intensive built form expectations.

The first decision guideline for 'Dwellings, small second dwellings and residential buildings' relates to whether the lot size and site context enable the maximum building height requirement to be exceeded. This should equally be considered for non-residential development and should be moved to the general decision guidelines (which apply to both residential and non-residential development).

The general decision guidelines require consideration of overlooking and overshadowing impacts to adjoining land in a conventional residential zone, but not to residential land within the catchment. The relevant decision guideline should be redrafted to provide for the consideration of amenity impacts within the WCZ as well as adjacent land in a conventional residential zone.

The Committee has included suitable drafting in Appendix C:2.

### **Recommendation**

The Committee recommends:

- 9. If the Walkable Catchment Zone is applied, amend the decision guidelines as shown in Appendix 0.**

### **3.3.3 Locally responsive design**

#### **Facilitating landscaping/tree canopy**

The Committee does not consider the WCZ will facilitate landscaping/tree canopy outcomes. It contains no requirements relating to landscaping or tree canopy other than a decision guideline for non-residential development that requires consideration of the proposed landscaping. This alone will not facilitate landscaping or tree canopy outcomes across the catchments.

#### **Facilitating locally responsive design**

The decision guidelines for 'Dwellings, small second dwellings and residential buildings' in the WCZ include consideration of Clauses 54, 55 and 58 as well as lot size and site context. Clauses 54 and 55 include objectives and standards regarding neighbourhood character and integration with the street. Clause 58 includes objectives and standards regarding urban context and integration with the street, as well as Objective 58.02-2 (to support higher density residential development). These objectives and standards will go some way to delivering locally responsive design.

However, unlike the BFO, the WCZ will not have schedules, so there is no capacity for local variations to Clauses 54, 55 and 58 to be specified, or for the preferred character of the catchments to be defined. This will limit the extent to which the WCZ can facilitate locally responsive design. Further, the purposes of the WCZ do not require consideration of matters that might result in locally responsive design.

The Committee has assumed existing overlay controls such as the Heritage Overlay and NCOs will be retained in the catchments. These, rather than the WCZ, will be the main tools guiding locally responsive design.

DTP has sought advice on whether the WCZ should be applied to areas within a Heritage Overlay or NCO. Including areas within these overlays in walkable catchment boundaries is inconsistent with the VPA's methodology for defining the boundaries, which includes excluding areas with *"limiting planning controls or environmental constraints that make these areas inappropriate for the proposed residential change"*.<sup>2</sup>

While not necessarily the case in all circumstances, the Committee anticipates that in the vast majority of cases, residential development between three and six storeys will be inconsistent with the objectives and purposes of the Heritage Overlay and NCOs. This creates an inherent conflict between planning controls, which is undesirable. The WCZ should not be applied to these areas.

### Recommendation

The Committee recommends:

10. If the Walkable Catchment Zone is applied, do not apply it to areas where:
  - a) the Heritage Overlay or the Neighbourhood Character Overlay applies
  - b) other planning controls or constraints on development apply such that the scale of development envisaged under the Walkable Catchment Zone would not be appropriate.

## 3.4 Other matters

This section of the Report addresses:

- matters that the Committee considers important to bring to the attention of DTP
- matters raised in the DTP Report that (while not strictly related to the Referred Matters) require some commentary from the Committee.

### 3.4.1 Conflicts with underlying planning controls

The Committee has not been provided with information as to whether existing controls in either activity centre cores or the walkable catchments will be retained or modified once the BFO and WCZ are applied.

The referred material indicates that the BFO is intended to apply to activity centre cores in tandem with 'standard' zones. Some activity centres are in the Activity Centre Zone. Some have built form controls in a Design and Development Overlay. If the underlying zoning of these centres is not changed, or the existing overlays are retained, there is the potential for conflict between the built

<sup>2</sup> The methodology for defining the walkable catchment boundaries is explained in the VPA's *Universal Submissions Key Matters Report* which is part of the referred material in Referral 2.

form controls in the existing controls and those that will be applied under the BFO. Any potential for conflict will need to be explicitly addressed.

The Committee has assumed existing overlays in the catchments will be retained, but this is not confirmed in the referred material. As noted in Chapter 3.3.3, if they are retained there is likely to be an inherent conflict between the built form expectations under the WCZ and those under existing overlay controls (particularly the Heritage Overlay). Hence the Committee has recommended the WCZ not be applied in these areas.

See also item 3.4.2 below.

### **3.4.2 Inadvertently supressing existing development rights**

Further to the previous point, there is a potential that the application of the new controls may inadvertently supress development rights under existing controls. One example is the situation identified in Chapter 3.3.2, where the WCZ replaces a RGZ with a height limit of more than three storeys.

The Committee is aware of another site specific example in the Preston walkable catchment. The site is in a Mixed Use Zone and currently has a mandatory six storey height control applied under Design and Development Overlay Schedule 3. The site is under 1000 square metres, so the application of the WCZ will result in a three storey mandatory height control – resulting in a reduction in density.

The Committee has included some drafting in the WCZ that seeks to address this issue in the catchments. There may be cases within the activity centre cores where proposed built form standards in the BFO schedules inadvertently supress existing development rights. This would need to be carefully checked as each BFO schedule is prepared.

### **3.4.3 Ensuring consistent and replicable controls**

There is an inherent tension between the BFO objectives of ensuring consistent and replicable controls, and facilitating locally responsive design. The BFO head clause gives schedules the ability to specify additional standards, vary, delete, or replace any standards or provide outcomes and standards in relation to ‘any other matter’. This will aid in ensuring locally responsive design, but will reduce consistency.

### **3.4.4 Using appropriate empowering language**

There should be no doubt about what a BFO schedule is empowered to do. The BFO head clause should specifically empower a schedule to do certain things (by using “*A schedule may specify...*”), rather than implicitly empowering the schedule (by using language such as “*Where a schedule specifies...*”).

In the absence of a fit for purpose template schedule, the Committee has had to make some assumptions about the intent with regard to what the BFO schedules are empowered to do, based on references to ‘schedule’ in the BFO head clause and on the two sample schedules provided by way of ‘pre-reading’. For example, the sample schedules contain Section 6.0 (Application requirements) and Section 8.0 (Decision guidelines), so presumably the intent is that the head clause will empower the schedules to include additional application requirements and decision guidelines. The Committee has included drafting changes in Appendix D:1 to this effect, but it cannot be sure it has captured all of the things the BFO head clause is intended to empower schedules to do.

### **3.4.5 Template BFO schedule**

A comprehensive and accurate template BFO schedule will be critical going forward to ensure BFO schedules are valid, properly and consistently drafted, and can be understood in conjunction with the head clause.

### **3.4.6 Where should the scope of the BFO be presented**

This issue was raised in the DTP Report.

The BFO (SAC version includes text in Clause 43.06-1 under the heading 'Standards'. The Committee understand this text seeks to define the scope of a schedule, and make clear the inter-relationship between the outcomes in the head clause, the general standards in the head clause and the metric based standards in the schedules.

In response to submissions, DTP proposed moving the text up to be the first matter presented under development outcomes (in Clause 43.06-1). While the Committee notes the explanation in section 4.6.1 of the DTP Report, it considers the text is in the wrong place. This is operational text, and should be located in Clause 43.06-2.

The Committee also recommends drafting changes to avoid unnecessary and confusing repetition. These are contained in Appendix D:1.

### **3.4.7 Introducing density controls**

Density controls and the way they interact with built form controls can be complex. It will be important that adequate guidance is published along with the introduction of the new controls explaining what floor area ratios are, and how they should be calculated to ensure the desired built form outcomes can also be achieved.

### **3.4.8 Whether the BFO should prevail over other provisions**

This issue was raised in the DTP Report.

The DTP Report states (page 22) that some submitters considered the BFO should prevail over any inconsistent provisions in the planning scheme. DTP's position is that it would be inappropriate for the BFO to prevail over all other provisions in all circumstances without the ability for this to be turned on or off in a schedule.

Any 'switching off' of other provisions would need to be strategically justified on a case by case basis. It requires a detailed consideration of the other provisions that apply, and a careful balancing of the relevant policy objectives and outcomes sought to be achieved under the existing controls and under the BFO. The Committee agrees with DTP the BFO head clause should not prevail over other provisions as a default position, and this should only be allowed when specified in a schedule (and after a strategic assessment). Guidance should be provided to this effect.

### **3.4.9 Exemptions from notice and review**

The default position under the BFO head clause is that third party notice and review rights do not apply, unless they are 'switched on' by the schedule. Given the built form intensification and transformational change proposed under the Activity Centres Program, the Committee considers the default position should be that third party notice and review rights apply unless they are switched off by a schedule. Guidance should be provided on when it is appropriate to switch off

third party rights (for example where a schedule has been prepared following a robust community consultation process involving independent review by a planning panel).

### **3.4.10 Providing for and funding infrastructure**

The BFO and WCZ have the potential to dramatically increase the population in and around activity centres. It is critical that appropriate infrastructure is provided to support the level of development that could potentially occur. At present, it is unclear to the Committee how infrastructure upgrades or new infrastructure would be funded. This is an important piece in the puzzle and the Committee has concerns about introducing the new controls without accompanying infrastructure funding solutions.

### **3.4.11 Car parking rates**

The BFO head clause includes car parking design standards, but not car parking rates. Not all parts of the cores (or catchments) are well served by high quality public transport within easy walking distance. Given the built form intensification and transformational change proposed under the Activity Centres Program, it will be important to ensure that locally responsive car parking rates are determined and applied when the new controls are introduced, both for the activity centre cores and for the catchments. The default rates in Clause 52.06-5 may not always be appropriate.

## Appendix A Referral letter

22 October 2024

Sarah Raso  
Lead Chair  
Activity Centres Standing Advisory Committee  
Planning Panels Victoria  
[planning.panels@transport.vic.gov.au](mailto:planning.panels@transport.vic.gov.au)

Dear Sarah,

### **REFERRAL TO THE ACTIVITY CENTRES STANDING ADVISORY COMMITTEE: REFERRAL NO. 1: DRAFT BUILT FORM OVERLAY AND DRAFT WALKABLE CATCHMENT ZONE**

I refer to planning matters that form part of the Activity Centres Program (ACP), an initiative from *Victoria's Housing Statement, The decade ahead, 2024-2034*.

This referral relates to two proposed new planning mechanisms, the Built Form Overlay and the Walkable Catchment Zone.

#### **Background**

The ACP seeks to deliver an additional 60,000 homes around an initial 10 activity centres across Melbourne. The Department of Transport and Planning (DTP) is leading the program in partnership with the Victorian Planning Authority (VPA).

DTP has prepared the draft Built Form Overlay and draft Walkable Catchment Zone as complementary elements of the ACP amendment package. The draft overlay and draft zone are designed to be tailored to place and to create clearer rules, provide for increased certainty and shorter amendment pathways, and enable a replicable process.

On 22 August 2024 the Minister for Planning appointed the Activity Centres Standing Advisory Committee to provide consistent advice on activity centre planning and outcomes in relation to the ACP in a transparent, timely and cost efficient process on any matter referred to it.

Between 20 September and 4 October 2024, DTP undertook targeted engagement with councils and industry on the draft Built Form Overlay and draft Walkable Catchment Zone. A summary of the targeted engagement undertaken, analysis of the issues raised through engagement and changes proposed in response to engagement is included in the referred documentation.

#### **Referral**

In accordance with Clause 14 of your Terms of Reference (August 2024), I am writing to refer the following specific matters on which the Committee is to provide advice. The Committee's advice is to be confined to the matters outlined in the table below.



| MATTER                                 | ADVICE TO BE PROVIDED   |
|--|---|
| <b>Built Form Overlay</b>              |   |
| The purposes listed in the overlay     | <p>The overlay is proposed to only be applied in areas designated for built form intensification, please advise whether:</p> <ul style="list-style-type: none"> <li>the purposes should be amended to include a specific purpose enabling diverse and affordable housing, noting the potential broadscale application of the overlay across metropolitan Melbourne.</li> <li>the draft purposes sufficiently guide a responsible authority's discretion.</li> </ul>   |
| The Development Framework Plan         | <p>The proposed provision seeks a map or maps to be prepared which express the strategic considerations of an activity centre. Please advise whether the proposed instrument will be beneficial in guiding a responsible authority's discretion.</p>  |
| Master planned sites                   | <p>The proposed provision seeks to guide development outcomes on identified sites. Please advise whether the provision will be beneficial in guiding a responsible authority's discretion for such sites.</p>   |
| Community benefit framework            | <p>The proposed provision provides a mechanism for planning authorities to prepare and incorporate a community benefit framework into the scheme. Please advise whether:</p> <ul style="list-style-type: none"> <li>the provision is suitably drafted to achieve the provision's intended purpose.</li> <li>the provision is suitably drafted to facilitate affordable housing.</li> <li>it would be reasonable to amend the provision to: <ul style="list-style-type: none"> <li>only apply in circumstances that a deemed to comply standard (compared to a mandatory standard) is not met, and</li> <li>only facilitate affordable housing, commensurate to how much it exceeds the standard.</li> </ul> </li> </ul> |
| Application of outcomes and standards. | <p>The proposed overlay seeks to apply outcomes and standards. Please advise whether the proposed application of outcomes and standards will be beneficial in guiding a responsible authority's decision making.</p>  |
| Open space provisions                  | <p>The public open space contribution mechanism within the provision intends to override the provisions of Clause 53.01. Please advise whether the integration of the open space provision within the overlay simplifies the interpretation of open space requirements for permit applicants and responsible authorities.</p>   |

|                                |  |
|--------------------------------|--|
| Locally responsive design      | Please advise whether the proposed controls, in combination with the other, existing elements of the planning scheme are capable of facilitating landscaping/tree canopy and locally responsive design outcomes and are suitably drafted.  |
| <b>Walkable Catchment Zone</b> |  |
| The purpose of the zone        | The zone is proposed to be applied in areas designated for built form intensification. Please advise whether the draft purposes sufficiently guide a responsible authority's discretion.   |
| Building heights               | Please advise whether: <ul style="list-style-type: none"> <li>the building height thresholds for above and below 1000sqm are appropriate.</li> <li>the provision is suitably drafted to achieve the intended purpose of facilitating more intense development in the catchment.</li> </ul> |
| Locally responsive design      | Please advise whether the proposed controls, in combination with the other, existing elements of the planning scheme are capable of facilitating landscaping/tree canopy and locally responsive design outcomes and are suitably drafted.  |

In accordance with Clause 12 of your Terms of Reference, the Committee must conduct its work with a view to maximising efficiency and timeliness. As such, I look forward to the Committee providing its report to the Minister for Planning no later than 10 business days from receipt of this referral, in accordance with clause 18 of the Terms of Reference.

Please find enclosed the supporting documents required by Clause 15 of the Terms of Reference.

If you have any questions about this matter, please contact Emily Mottram, Executive Director Activity Centres at DTP via [Emily.Mottram@transport.vic.gov.au](mailto:Emily.Mottram@transport.vic.gov.au).

Yours sincerely,



**Natalie Reiter**  
**Deputy Secretary Strategy and Precincts**  
**Department of Transport and Planning**

**22 October 2024**

Encl. Report responding to key matters being considered by SAC  
 App A: Built Form Overlay (targeted engagement version)  
 App B: Built Form Overlay (SAC version, tracked)  
 App C: Walkable Catchment Zone (targeted engagement version)  
 App D: Walkable Catchment Zone (SAC version, tracked)  
 App E: Video presentation explaining the BFO (link to be provided separately).

cc. Stuart Moseley, CEO, Victorian Planning Authority  
 Emily Mottram, Executive Director Activity Centres, Department of Transport and Planning

OFFICIAL

## Appendix B Terms of Reference

Relevant clauses are extracted below.

### Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on specific matters referred to it relating to strategic and built form work undertaken in relation to the ACP to inform the preparation of clear new planning controls in and around the 10 activity centres identified in *Victoria's Housing Statement, The decade ahead, 2024-2034* to deliver 60,000 more homes.
5. The objective of the Committee is to provide consistent advice for activity centre planning and outcomes in relation to the Activity Centres Program in a transparent, timely and cost-efficient process on any matter referred to it.

### Referral

14. A referral may be provided by the Minister or delegate. A referral letter will set out the specific matters on which the Committee is to provide advice, as well as any specific matters on which advice is not to be provided. The referral letter to the Committee will be a public document.
15. Any referral must be accompanied by relevant information to assist the Committee's review provided by DTP and/or the VPA. This may include (but will not necessarily be limited to):
  - a. Relevant strategic work undertaken by Council, DTP or VPA for the relevant activity centre
  - b. Referred submissions
  - c. A summary of key issues raised in submissions
  - d. Proposed changes in response to issues raised in submissions
  - e. An index listing each document referred to the Committee.

### Advisory committee report and recommendations

16. For each matter referred, the Committee must produce a written report that provides a succinct summary of the key issues and its recommendations. The report must address the referred matters and its recommendations in the context of:
  - a. *Victoria's Housing Statement, The Decade Ahead 2024-2034*;
  - b. Plan Melbourne 2017-2050 or any equivalent replacement planning strategy;
17. The Committee may address more than one referred matter and combine its assessment of these in a single report.
18. The Committee is required to submit each report to the Minister and DTP no later than 10 business days from receipt of the referral and all accompanying information required by clause 15. DTP must give at least five business days' notice of each likely referral to ensure the Committee is able to source appropriately skilled Members.

## Appendix C    Referred material

| No. | Date      | Description  | Provided by                                |
|-----|-----------|--|--|
| 1   | 22 Aug 24 | Terms of Reference                                       | Department of Transport and Planning (DTP) |
| 2   | 22 Oct 24 | Letter of Referral                                       | DTP  |
| 3   | 22 Oct 24 | Report responding to key matters being considered by SAC | DTP  |
| 4   | 22 Oct 24 | Built Form Overlay (targeted engagement version)         | DTP  |
| 5   | 22 Oct 24 | Built Form Overlay (tracked version)                     | DTP  |
| 6   | 22 Oct 24 | Walking Catchment Zone (targeted engagement version)     | DTP  |
| 7   | 22 Oct 24 | Walking Catchment Zone (tracked version)                 | DTP  |
| 8   | 22 Oct 24 | Built Form Overlay explainer video                       | DTP  |

## Appendix D Committee recommended versions of BFO and WCZ

Tracked against SAC versions

[Committee recommended addition](#)

~~Committee recommended deletion~~

Shifted text

If there are any inconsistencies between the clean and tracked version of the BFO, the clean version represents the Committee's recommended drafting.

### D:1 Built Form Overlay (clean and tracked versions)

#### Clean version

#### 43.06 **ACTIVITY CENTRE BUILT FORM OVERLAY**

Shown on the planning scheme map as BFO with a number.

**Committee note:** The Committee has assumed the BFO will only be used for activity centres (as identified in Plan Melbourne). If this is not the intention, the additions of highlighted references in the title and purposes may not be appropriate

#### Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas where specific design and built form requirements apply.

To facilitate higher density buildings **in activity centres** which provide for high amenity living and working environments close to infrastructure and public transport.

To facilitate development that reflects the particular significance and role of the **activity centre** as identified in a schedule.

**Committee note:** It is not clear how the BFO will deliver public infrastructure. Consider deleting, and see the commentary in Chapter 3.4.10.

To deliver **public infrastructure**, public realm improvements and (where appropriate) additional community benefits at the same time as new development.

**Committee note:** The following purpose may restrict flexibility by implying that consolidation is encouraged only in those area identified. DTP should further consider this purpose.

**To encourage land consolidation in identified locations to facilitate higher density development.**

#### 43.06-1 **DEVELOPMENT OUTCOMES**

#### Development objectives

A schedule may contain development objectives.

## Development Framework

A schedule must contain a Development Framework that identifies the preferred built form character of the land.

The Development Framework must:

- Be consistent with any adopted Activity Centre Plan.

**Committee note:** The meaning of the highlighted words in the next dot point needs to be clarified. It may not be required given the Committee's addition of a reference below to "Sensitive interfaces and areas where built form needs to transition to the built form in the surrounding area."

- Identify the planned urban structure of the land including the distribution of building heights and any **transitional locations**.
- Contain a table setting out the preferred building typologies and built form character for the land or each part of the land.

The Development Framework should identify the following where appropriate:

- Sensitive interfaces and areas where built form needs to transition to the built form in the surrounding area.
- A movement and place framework that is consistent with *Movement and Place in Victoria*.
- A public open space framework.
- Areas where consolidation of sites will be encouraged to facilitate the preferred scale of development.
- Sites that require master planning before the issue of a permit.
- Sites where a Floor Area Ratio applies.
- Locations where landscaped setbacks that can accommodate deep soil planting and canopy trees are to be provided.
- New streets, lanes, arcades or through building connections.
- Specific or indicative pedestrian links.
- Streets where active frontages are required.
- Street and lanes along which continuous weather protection should be provided.

**Committee note:** See the note in Clause 43.06-8.2 in relation to the highlighted text below

- Streets and lanes where **[access to waste collection areas, ]**loading access or vehicle access to car parks is discouraged.
- Open space, public realm or streets for which sun protections apply.
- Views to significant landmarks or features that should be maintained.
- Sites with significant terminating vistas in the public realm that require distinctive development.
- The anticipated dwelling number and floorspace yields for the land or each part of the land.

## Master planned sites

Where a Development Framework identifies a site that requires master planning, a master plan must be prepared to the satisfaction of the responsible authority.

The master plan must address the following:

- The land to which the plan applies.
- The proposed use and development of each part of the land.
- Any staging or sequencing of development needed.
- The scale of development on the site, which must be consistent with the Development Framework.
- The siting and orientation of buildings.

- Any open space or pedestrian links required.
- Key interfaces.

A schedule may specify additional requirements for a master plan.

The master plan may be amended to the satisfaction of the responsible authority.

Unless specified otherwise in a schedule, a permit must not be granted to use or subdivide land, construct a building or construct or carry out works on a site that requires master planning unless a master plan has been prepared to the satisfaction of the responsible authority.

This does not apply to minor works to existing buildings or structures on the land. A schedule may specify additional circumstances in which a permit may be granted before a master plan has been prepared to the satisfaction of the responsible authority.

A schedule may specify conditions that must be included in a permit for a site that requires master planning.

A permit granted must be generally in accordance with the master plan for the site and must include any conditions that are specified in a schedule.

### Community Benefit Framework

A schedule may specify that a mandatory standard may be exceeded if a community benefit specified in a Community Benefit Framework is provided.

Where this is specified, the schedule must include the following in **Section XX**:

- The Community Benefit Framework that applies.
- A table that specifies:
  - The standard(s) that may be exceeded.
  - The degree (including the maximum) to which the relevant standard can be exceeded, based on the extent of the community benefit provided.
  - The community benefit(s) to be provided for exceeding the relevant standard.

*Note: Community benefits under this provision are calculated over and above any requirements set out in Clause 45.01 (Public Acquisition Overlay), Clause 45.06 (Development Contributions Plan), Clause 45.09 (Parking Overlay), Clause 45.10 (Infrastructure Contributions Plan Overlay), Clause 45.11 (Infrastructure Contributions Plan) or Clause 53.01 (Public Open Space Contribution and Subdivision) in this scheme and any open space requirement specified in a schedule.*

A permit to construct a building or construct or carry out works that exceeds a standard on the basis that a community benefit is provided can only be granted or amended (unless the amendment does not increase the extent of non-compliance) if the permit includes a condition that requires the provision of the community benefit to be secured via an agreement made under section 173 of the *Planning and Environment Act 1987* or another appropriate mechanism.

*Note: In activity centres community benefits are intended to relate to site specific or local area benefits such as new pedestrian links or improvements to the public realm.*

## 43.06-2 OPERATION

A schedule may specify that if there is any inconsistency between the built form requirements of this clause and any another provision of this planning scheme, this clause prevails.

### Application of outcomes and standards

This overlay includes:

- **Outcomes.** An outcome sets out the expectations of what will be achieved in a development.
- **Standards.** A standard contains the requirements to meet the corresponding outcomes identified in this overlay.

Each standard must be identified as:

- A **discretionary** standard expressed using 'should' or labelled as 'discretionary'.
- A **mandatory** standard expressed using 'must' or labelled as 'mandatory'.

A standard (whether mandatory or discretionary) may also be nominated as a **deemed to comply** standard, using 'complies if' or labelled as 'deemed to comply'.

If a development meets a deemed to comply standard, it is deemed to meet the corresponding outcome for that standard.

Quantitative standards (where a specified metric is to be achieved) must be expressed using the terms **minimum**, **maximum**, or **preferred**.

A schedule may:

- Specify additional standards for any outcome.
- Vary, delete, replace or make mandatory any of the standards for any outcome.
- Provide outcomes and standards in relation to any other matter.

*Note: The relevant metrics for standards will typically be presented in a schedule to this overlay as maps or tables. The maps and tables in a schedule are to be read in conjunction with the applicable standard in the overlay.*

### Requirements

Except where a community benefit is provided in accordance with a Community Benefit Framework to the satisfaction of the responsible authority, development:

**Committee note:** In relation to the highlighted text below, the only outcome where it is contemplated the standard may specify the outcome does not apply is the outcome relating to building layout and adaptability. The Committee queries whether this is the intent.

- Must meet the outcomes specified in this overlay or a schedule **unless specified otherwise in a corresponding standard**.
- Must meet any mandatory standard specified in this overlay or a schedule.
- Should meet any discretionary standard specified in this overlay or a schedule. However, if the responsible authority is satisfied that an application for an alternative design solution meets the outcome, the alternative design solution may be considered.

## 43.06-3 Buildings and works

### Permit requirement

A permit is required to:

- Construct a building or construct or carry out works.
- Construct a fence if a schedule includes a standard for a fence.

A schedule may specify that this permit requirement does not apply.

The requirement for a permit does not apply:

- If a schedule specifically states that a permit is not required.
- To the installation of an automatic teller machine.
- To an alteration to an existing building facade if:
  - The alteration does not include the installation of an external roller shutter.
  - Standard BF10 is met.
- To an awning that projects over a road if it is authorised by the relevant public land manager.
- To buildings and works which rearrange, alter or renew plant if the area or height of the plant is not increased.
- To external works to provide access for persons with disabilities that comply with all legislative requirements.

A schedule may specify any conditions that must be included in a permit granted under this clause.

A permit must include any conditions specified in a schedule.



## VicSmart applications

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application   | Information requirements and decision guidelines |
|--|--|
| Construct a fence.   | Clause 59.05                                     |
| Construct a building or construct or carry out works for:<br>A carport, garage, pergola, verandah, deck, shed or similar structure.<br>An outdoor swimming pool.<br>The buildings and works must be associated with a dwelling.  | Clause 59.05                                     |
| Construct a building or construct or carry out works with an estimated cost of up to \$500,000 where the land is in a commercial zone or a Special Use, Comprehensive Development, Capital City, Docklands, [Proposed New Precincts Zone], Priority Development, Activity Centre Zone or Urban Development Zone. | Clause 59.05                                     |

### 43.06-4 URBAN SCALE AND CHARACTER

#### 43.06-4.1 Building typology and future character

##### Outcome

Building types and character that:

- Respond to the planned urban structure for the land outlined in the Development Framework.
- Respond appropriately to sites with heritage significance and any transition areas identified in the Development Framework.
- Deliver walkable neighbourhoods with a high-quality, permeable pedestrian network through the creation of new streets, lanes, arcades or connections through buildings.
- Protect views to significant landmarks or features identified in the Development Framework.
- Encourage the consolidation of sites in locations identified in the Development Framework to support the preferred scale and character of development.

##### Standard BF01

Development must be consistent with the preferred building typologies and built form character and urban structure specified in the Development Framework.

### 43.06-5 BUILDING FORM

#### 43.06-5.1 Building height and floor to ceiling heights

##### Outcomes

Building heights that:

- Are consistent with the preferred building heights for the area.
- Maintain an inviting and comfortable environment within the public realm in terms of its sense of sunlight, daylight and wind conditions.
- Provide a transition in scale to adjacent areas with less intensive built form expectations.

- Protect views to significant landmarks or features identified in the Development Framework.

Floor to ceiling heights that:

- Allow retail and commercial uses that support a high level of internal amenity and adaptation over time.
- Have ground floor heights that allow both retail and commercial uses.

#### **Standard BF02**

Buildings should align with the building heights identified in the Development Framework.

Buildings must align with any mandatory building height standard specified in a schedule.

Maximum building heights do not apply to:

- Non habitable architectural features.
- Service equipment and structures including plant rooms, lift overruns, structures associated with green roof areas, including access stairs and lifts, unenclosed pergolas for communal areas, shading devices, and other such equipment.

Floor to ceiling heights should be consistent with any standard specified in a schedule, and must be consistent with any mandatory standard specified in a schedule.

### **43.06-5.2 Floor Area Ratio**

#### **Outcome**

Floor Area Ratios that provide a scale and density to support population and employment growth, consistent with the preferred building typologies and built form character specified in the Development Framework.

#### **Standard BF03**

Development should deliver densities consistent with:

- The building typologies and built form character as specified in the Development Framework.
- Any Floor Area Ratio specified in a schedule.

Development must be consistent with any mandatory Floor Area Ratio specified in a schedule.

#### **Requirements**

Where a schedule specifies a Floor Area Ratio for a site, a permit for the development of part of that site must include a condition that an agreement be entered into pursuant to s 173 of the *Planning and Environment Act 1987* specifying the floor area ratio applicable to the balance of the site.

### **43.06-5.3 Overshadowing of open space or public realm**

#### **Outcome**

Development that:

- Maintains solar access to key pedestrian and open space areas identified in the Development Framework.
- Achieves a balance between supporting growth and delivering high levels of amenity in the context of the outcomes that apply to the land.

#### **Standard BF04**

Buildings should not cast any additional shadow beyond that cast by the applicable preferred or maximum street wall height and existing buildings over:

- The existing or proposed public open spaces identified in the Development Framework for the hours specified in a schedule.
- The existing or proposed key pedestrian streets identified in the Development Framework for the hours specified in a schedule.

This does not apply to shadow cast by:

- Incidental elements such as canopies, kiosks, artworks, screens or trees.
- Buildings and works constructed within the open space or street.

#### **43.06-5.4 Front setback, street wall height and setback above the street wall and landscaped setbacks**

##### **Outcomes**

Front setbacks, street wall heights and setbacks above the street wall that:

- Provide strong spatial definition to the public realm while maintaining good daylight access to open spaces, streets and lower levels of buildings and clear views to the sky, where possible.
- Avoid visually overwhelming the public realm.
- Are sympathetic to heritage values and preferred built form character.
- Contribute to the privacy of any ground floor dwellings.
- Visually define key intersections identified in the Development Framework.
- Distinguish upper levels from the street wall.

Landscaped setbacks, including landscaped setbacks that can accommodate deep soil planting and canopy trees in locations identified in the Development Framework.

##### **Standard BF05**

Development should deliver front setbacks, street wall heights, setbacks above the street wall and landscaped setbacks consistent with:

- The preferred building typologies and built form character specified in the Development Framework.
- Any standards specified in a schedule.

Development must be consistent with any mandatory standard specified in a schedule.

Any standard for maximum street wall heights may be exceeded by non-habitable architectural features not more than 3.0 metres high.

Where a new building is on a corner with two different street wall heights specified, the taller maximum street wall height applies to the frontage with the lower maximum street wall height for a distance of 20 metres along the street frontage.

#### **43.06-5.5 Side and rear setbacks and separation within a site**

##### **Outcomes**

Side and rear setbacks that:

- Respond to sensitive interfaces.
- Provide for landscaping.
- Maintain access to daylight and sunlight in streets, laneways and pedestrian connections.
- Deliver high levels of amenity within buildings having regard to outlook, daylight, and overlooking.
- Achieve privacy through setbacks rather than screening.

Separation between buildings within the same site that:

- Delivers high levels of amenity within buildings having regard to outlook, daylight, and overlooking.
- Offsets direct views between buildings.
- Achieves privacy by building separation rather than screening.

##### **Standard BF06**

Development should deliver side and rear setbacks and building separation within a site consistent with any standards specified in a schedule. Development must be consistent with any mandatory standard specified in a schedule.

Any standard for the maximum length for a new wall constructed on a side or rear boundary of a lot does not apply where slope and retaining walls or fences would result in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.

Sunblinds, verandahs, porches, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic fuel or water tanks, and heating or cooling equipment or other services may encroach not more than 0.5 metres into side and rear setbacks.

Landings with an area of not more than 2 square metres and a height of less than 1 metre, stairways, ramps, pergolas, shade sails and carports may encroach into side and rear setbacks provided they do not overshadow neighbouring open space.

## 43.06-6 BUILDING LAYOUT

### 43.06-6.1 Building layout and adaptability

#### Outcome

Buildings that:

- Can accommodate a range of tenancy sizes, including smaller tenancies in the lower levels of the building.
- Maximise passive surveillance and interaction with the public realm.
- Provide an appropriate interface with the public realm.

A schedule may include a standard that specifies locations or building typologies where this outcome does not apply.

#### Standard BF07

**Committee note:** Further consideration should be given to whether the highlighted requirement below should only apply to non-residential development

Development should:

- Include upper level balconies and windows with a direct visual connection to the public realm.
- Avoid tinted, opaque or high reflectivity glass which obscures views between the public realm and building interior.
- Sleeve large floorplate tenancies, carpark or service areas where they interface with the public realm.
- Avoid narrow publicly accessible alcoves and recesses that lack a clear public purpose.
- Avoid entrapment areas and areas with limited passive surveillance.

**Committee note:** There is no empowering provision for a schedule to specify adaptability opportunities. Consider whether 'opportunities' below should be replaced with 'standards', or include appropriate empowering language.

Building elements should incorporate any adaptability opportunities identified in a schedule.

### 43.06-6.2 Wind effects on the public realm

**Committee note:** The Committee queries whether this outcome and standard should be able to be varied by a schedule. The 5 storeys was taken from the sample BFO schedule for Moorabbin.

#### Outcome

Development that minimises wind impacts to create and maintain a safe and pleasant environment in the public realm for pedestrians to walk, sit or stand.

**Standard BF08**

Development of five or more storeys or **X** or more metres, excluding a basement:

- must not cause new or exacerbate existing unsafe wind conditions (as specified in Table 1) in public land, publicly accessible areas on private land, private open space and communal open space; and
- should achieve comfortable wind conditions (as specified in Table 1) in public land and publicly accessible areas on private land

within the assessment distance as shown in Figure 1.

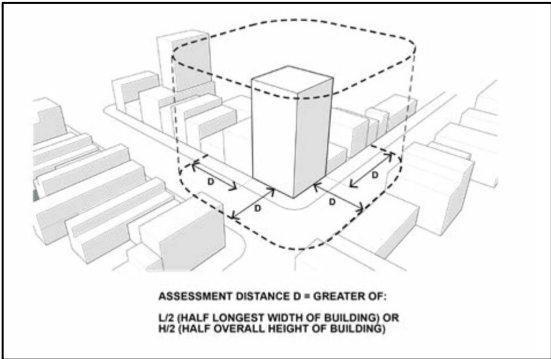
Trees and landscaping should not be used to mitigate wind impacts. This does not apply to sitting areas, where trees and landscaping may be used to supplement fixed wind mitigation elements.

Wind mitigation elements such as awnings and screens should be located within the site boundary, unless consistent with the existing urban context or preferred future development of the area.

**Table 1 Wind conditions**

| Unsafe   | Comfortable  |
|--|--|
| Annual maximum 3 second gust wind speed exceeding 20 metres per second with a probability of exceedance of 0.1% considering at least 16 wind directions. | Hourly mean wind speed or gust equivalent mean speed (3 second gust wind speed divided by 1.85), from all wind directions combined with probability of exceedance less than 20% of the time, equal to or less than:<br>3 metres per second for sitting areas,<br>4 metres per second for standing areas,<br>5 metres per second for walking areas. |

**Figure 1: Assessment distance for wind effects**



**43.06-7 PUBLIC INTERFACES**

**43.06-7.1 Active frontages**

**Committee note:** Some Activity Centre Plans identify active frontages, some do not. It is not clear whether the active frontage requirements are intended to apply only on streets identified as such in Activity Centre Plans, or on all streets (or other streets identified in a schedule). The Committee assumes the former. If this is not correct, the highlighted words will need to be removed.

**Outcome**

Active frontages that:

- Contribute to the use, activity, safety and interest of the public realm.
- Provide continuity of ground floor activity along streets and laneways.
- Allow for clear identification of building entries and unobstructed views through openings into the ground floor of buildings.

**Standard BF10**

On streets identified in the Development Framework as 'active frontage' streets, an entry or window should be provided for at least the percentage of the combined length of the ground level interfaces of a building. The entry or window measurement includes:

- Stall-risers to a height of 700mm.
- Pilasters.
- Window and door frames.
- Windows that have clear glazing without stickers or paint that obscures views.

For corner sites, active frontages on the main street should extend along the side street to create a sense of address with clear glazing and allow for side entry where appropriate.

Security grills or mesh should:

- Be transparent.
- Not block views into tenancies at night.
- Be mounted internally to the shop windows.

The ground level frontage requirements do not apply to the development of a contributory or significant building in a Heritage Overlay. Development of a contributory or significant building in a Heritage Overlay should not reduce existing compliance with this standard.

**43.06-7.2 Pedestrian connections****Outcome**

Pedestrian connections that are:

- Safe and attractive.
- Accessible by people of all abilities.
- Easily identified and legible.
- Designed to enable extended stays within a space such as sitting and eating.

**Standard BF11**

**Committee note:** It is not clear whether the intent is that pedestrian connections will only be required where identified in the Development Framework. If they can be required in other locations, the highlighted words will need to be removed. The Committee is unclear on what is intended by 'interim and ultimate forms'.

Development should deliver pedestrian connections in the locations identified in the Development Framework.

Where the Development Framework identifies a pedestrian connection as:

- 'Specific', development should provide the connection along the alignment indicated.
- 'Indicative', development should provide the connection along the alignment indicated or a different alignment that provides the same connectivity.

Pedestrian connections should be:

- Direct, attractive, well-lit and provide a line of sight from one end to the other.
- Safe and free of entrapment spaces and areas with limited passive surveillance.
- Publicly accessible at ground level and appropriately secured by an appropriate mechanism where relevant.
- Overlooked by windows, balconies or both on both sides, including at ground floor level.
- Designed to consider the function and design of the full length and width of the link in both its interim and ultimate forms, including the functional layout, levels and landscaping where it spans multiple lots.

### 43.06-7.3 Weather protection

#### Outcome

Weather protection that:

- Delivers pedestrian comfort in the public realm via protection from rain, wind and summer sun.
- Uses canopies that are functional, of high quality design, and contribute to the human scale of the street.

#### Standard BF12

Development should deliver continuous weather protection along the streets and lanes identified in the Development Framework except where a heritage place warrants an alternative approach.

Weather protection canopies should be:

- Between 3.5 metres and 5 metres above ground measured to the underside of the soffit.
- Designed to minimise impact on existing or proposed street trees.
- Broken in design to reflect the prevailing grain and width of building frontages.

### 43.06-7.4 Landscaping and fencing

#### Outcome

Landscaping and fencing that:

- Delivers a safe and attractive public and private realm.
- Balances occupant privacy with activation and surveillance of the public realm.
- Reinforces underlying natural landscape character including biodiversity values.
- Provides shade in summer, including from canopy trees.
- Does not create long expanses of blank wall facing the public realm.
- Provides appropriate delineation between the public and private realm.

This outcome only applies to fences if a schedule includes a standard for a fence.

#### Standard BF13

Landscaping should:

- Provide shade to outdoor areas exposed to summer sun by canopy trees or shade structures
- Provide space for sufficient soil depth to support the proposed vegetation including canopy trees.
- Use paving and surface materials that lower surface temperatures and reduce heat absorption.
- Include climbing plants or smaller plants in planters and in outdoor areas, including communal outdoor open space.
- Respond to the soil type and drainage patterns of the site.
- Be supported by irrigation systems which utilise alternative water sources such as rainwater, stormwater and recycled water.

**Committee note:** The empowering provision that previously appeared at the end of Clause 4306-7.4 has been deleted because the empowering provision is contained in Clause 43.06-2. If a specific empowering provision is included in some standards but not others it will create confusion.

### 43.06-8 DESIGN DETAIL

#### 43.06-8.1 Carparking design

#### Outcome

Car parking that:

- Minimises the impact of car parking on the public realm.
- Minimises adverse impact on pedestrian and movement networks.
- Uses land efficiently.
- May be adapted for alternative uses in future.

#### **Standard BF15**

Vehicle access to car parks should not be located on the streets and lanes identified in the Development Framework where vehicle access to car parks is discouraged.

Gates or doors to car parks should be fitted close to the building alignment to avoid the creation of unsafe entrapment space, and designed as integrated elements of the building facade.

The location and width of car park entries should:

- Minimise the impacts on the pedestrian network.
- Avoid car parking entries on sites, where they impact on the activation and safety of the public realm.

Car parks should be designed to enable future adaptation without the need for demolition or significant rebuilding. This may include:

- Minimising load bearing walls.
- Minimising ramped areas.

Above ground level car parking should:

- Be sleeved to streets and open spaces with active frontages if possible.
- Have a floor to ceiling height of:
  - 3.6 metres for the ground floor.
  - At least 3.2 metres for other floors.

Mechanical systems may be used to reduce floor area for car parking.

### **43.06-8.2 Building services**

#### **Outcome**

#### **Outcome**

Building services that:

- Are integrated in the building design and minimise impacts on the public realm.
- Maximise the quality and activation of the public realm.
- Do not dominate the pedestrian experience and are designed as an integrated design element.

#### **Standard BF16**

The location and width of loading bays should minimise the impacts on the pedestrian network.

**Committee note:** Further consideration should be given to whether the highlighted words should be replaced with 'waste, loading and parking access' (in which case the same change should be made to the corresponding dot point in Clause 43.06-1). The mandatory 'percentage of ground floor area' standard has been deleted as (where applicable) this will be specified in a schedule.

Ground floor building services including waste, loading and parking access should be minimised and located away from streets and public spaces, or within basements or upper levels. **Loading bays** should not be located on the streets and lanes identified in the Development Framework as streets and lanes where loading access is discouraged.

Spaces for waste or loading should not adversely impact safety and continuity of the public realm. Access doors to any waste, parking or loading area should:

- Be positioned no more than 500 millimetres from the street edge.
- Be designed as an integrated element of the building.

Service cabinets should:



- Be located internally with loading, waste or parking areas where possible.
- Not visually dominate street frontages and should use high quality materials.

Rooftop plant, services and antennae should be integrated into the overall building form.

### 43.06-8.3 Exterior design

#### Outcome

Exterior design that:

- Responds to the preferred built form character of its context.
- Is visually interesting when viewed up close and from a distance.
- Incorporates sufficient design detail in the lower levels of a building to deliver a visually rich and engaging pedestrian experience.
- Delivers high quality design on all visible sides of a building and on rooftops visible from the public realm.
- Provides visual connection between the public realm and interior spaces at the ground level interface.
- Provides adequate clearance heights that do not obstruct the service functions of a street or laneway.

#### Standard BF17

Facades should:

- Provide for depth and a balance of light and shadow on the street wall and upper levels through the use of balconies, integrated shading, rebates or expression of structural elements.
- Avoid finishes with a perpendicular reflectivity of more than 15 per cent, measured at 90 degrees to the facade surface or as specified in a schedule.

**Committee note:** The first dot point below is unclear and should be rephrased.

Blank walls that are visible from the public realm should:

- Be designed as an integrated component of the building composition.
- Be articulated by textured materials, patterning or artwork.

Facade projections and balconies should:

- Be at least 5 metres above any public space measured from ground level.
- Allow for growth of existing and planned street trees in upper level projections and canopies.
- Limit upper level projections such as adjustable screens or windows, cornices or other architectural features into streets or laneways to up to 300 mm.
- Not include enclosed balconies or habitable floor space projecting over the public realm.

Materials should be:

- Natural, tactile and visually interesting at the lower levels near the public interface to reinforce a human scale.
- Durable, robust and low maintenance in the higher parts of a building.

Materials and finishes such as painted concrete or ventilation louvres should be avoided at the lower levels where they undermine the visually rich, tactile quality of streets and laneways.

### 43.06-9 SUBDIVISION

A schedule may specify:

- Lot size standards or other standards related to subdivision.
- A public open space contribution amount for when land is subdivided.
- Conditions that must be included on any permit granted for subdivision, including in relation to open space.

## Permit requirements

A permit is required to subdivide land.

**Committee note:** The use of 'must' below will effectively make all standards in relation to subdivision mandatory. Is this the intent?

Subdivision **must** occur in accordance with any lot size standard or other standard specified in a schedule.

A permit must not be granted which would allow a separate lot to be created for land containing a small second dwelling.

A permit granted must include any condition specified in a schedule.

## Open space contribution

A schedule may specify an open space contribution. If the contribution is specified as a percentage, this is a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both.

If an open space contribution is specified in a schedule:

- A person who proposes to subdivide land must make a contribution to the council for public open space in the amount specified.
- No contribution is required under Clause 53.01.
- The exemptions at Clause 53.01-1 (Exemption from public open space requirement specified in the scheme) and Clause 53.01-2 (Exemption from public open space requirement under section 18(8)(a) of the Subdivision Act 1988) apply.

If no contribution is specified in a schedule the requirements of Clause 53.01 apply.

## VicSmart applications

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application  | Information requirements and decision guidelines |
|---|--|
| Subdivide land to realign the common boundary between 2 lots where:<br>The area of either lot is reduced by less than 15 percent.<br>The general direction of the common boundary does not change.  | Clause 59.01                                     |
| Subdivide land into lots each containing an existing building or car parking space where:<br>The buildings or car parking spaces have been constructed in accordance with the provisions of this scheme or a permit issued under this scheme.<br>An occupancy permit or a certificate of final inspection has been issued under the Building Regulations in relation to the buildings within 5 years prior to the application for a permit for subdivision. | Clause 59.02                                     |
| Subdivide land into 2 lots if:<br>The construction of a building or the construction or   | Clause 59.02                                     |

carrying out of works on the land:  
 Has been approved under this scheme or by a permit issued under this scheme and the permit has not expired.  
 Has started lawfully.  
 The subdivision does not create a vacant lot.

#### **43.06-10 APPLICATION REQUIREMENTS**

An application must be accompanied by:

- A design response that explains how the proposed design responds to the Development Framework and any development objectives specified in the schedule.
- Correctly proportioned street elevations or photographs showing the development in the context of adjacent buildings.

A schedule may specify additional application requirements for permits under this Clause.

If in the opinion of the responsible authority any of the above application requirements, or any application requirements specified in a schedule, are not relevant to the evaluation of an application, it may waive or reduce the requirement.

#### **43.06-11 EXEMPTION FROM NOTICE AND REVIEW**

A schedule may specify that an application under this overlay or any other provision of this scheme is exempt from any of the following:

- The notice requirements of section 52(1)(a), (b) and (d).
- The decision requirements of section 64(1), (2) and (3).
- The review rights of section 82(1) of the Act.

#### **43.06-12 DECISION GUIDELINES**

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

- The Municipal Planning Strategy and the Planning Policy Framework.
- The Development Framework.
- Any applicable Community Benefit Framework.
- *Movement and Place in Victoria* (Department of Transport, February 2019)
- The level of amenity for building occupants.
- The objectives, standards and decision guidelines of Clause 54 and Clause 55. This does not apply to an apartment development.
- For an apartment development, the objectives, standards and decision guidelines of Clause 58.
- Movement systems through and around the site including the movement of pedestrians and cyclists, vehicles providing for supplies, waste removal, emergency services and public transport and carparking.

A schedule may specify additional decision guidelines for permits under this Clause.

#### **43.06-13 SIGNS**

Sign requirements are at Clause 52.05 unless otherwise specified in a schedule.

#### **43.06-14 MEANING OF TERMS**

In this overlay the following terms have the meaning set out below:

- **Building services:** Areas used for the purposes of loading, waste management and electrical, communications, gas, water and fire prevention infrastructure.
- **Community Benefit Framework:** A framework included or explicitly referenced in **Section XX** of a schedule that sets out allowable community benefits and the way community benefit will be calculated.
- **Development Framework:** The framework for preferred development in **Section 1.0** of a schedule which may be presented as maps, plans, character statements and/or tables.
- **Floor Area Ratio:** The gross floor area of all buildings on a site plus the area of voids associated with lifts, car stackers and similar service elements considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor, divided by the area of the site.
- **Laneway:** A road reserve of a public highway 9 metres wide or less.
- **Pedestrian connection:** A publicly accessible street with a defined footpath, a shared zone, a pedestrian only laneway (covered or open), an arcade, a through building connections and an atrium.
- **Sleeve:** To position active uses between large floorplate tenancies, carpark or service areas and the public realm.
- **Street wall:** Any part of a building constructed within 0.3 metres of an existing or proposed street, laneway or public open space.

## Tracked version

### 43.06 **ACTIVITY CENTRE BUILT FORM OVERLAY**

Shown on the planning scheme map as BFO with a number.

**Committee note:** The Committee has assumed the BFO will only be used for activity centres (as identified in Plan Melbourne). If this is not the intention, the additions of highlighted references in the title and purposes may not be appropriate

#### Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas ~~where specific~~ ~~which are affected by specific requirements relating to the~~ design and built form ~~requirements apply~~ ~~of new development~~.

To facilitate ~~sustainable development through~~ higher density buildings ~~in activity centres~~ which ~~provide for high amenity living and working environments close to~~ ~~maximise the use of~~ infrastructure and public transport.

To facilitate development that reflects the particular significance and role of the ~~area-activity centre~~ ~~as identified in a schedule~~ ~~by this overlay~~.

~~To facilitate the development of higher density buildings that are well designed and provide for living and working environments with high levels of amenity.~~

**Committee note:** It is not clear how the BFO will deliver public infrastructure. Consider deleting, and see the commentary in Chapter 3.4.10.

To deliver ~~additional community benefits,~~ ~~public infrastructure,~~ ~~and~~ public realm improvements ~~and (where appropriate) additional community benefits;~~ at the same time as new development.

**Committee note:** The following purpose may restrict flexibility by implying that consolidation is encouraged only in those area identified. DTP should further consider.

~~To encourage land consolidation of sites which could~~ ~~in identified locations to facilitate higher density development.~~

### 43.06-1 **DEVELOPMENT OUTCOMES**

#### Development objectives

A schedule may contain development objectives.

#### Development ~~F~~ramework ~~and typologies~~

A schedule must contain a Development Framework ~~that identifies the preferred built form character of~~ ~~(which may be presented as a set of topic based plans) for~~ the land.

The Development Framework ~~A schedule~~ must:

- Be consistent with any adopted Activity Centre Plan.

**Committee note:** The meaning of the highlighted words in the next dot point needs to be clarified. It may not be required given the Committee's addition of a reference below to "Sensitive interfaces and areas where built form needs to transition to the built form in the surrounding area."

- Identify ~~t~~he planned urban structure of the land including the distribution of building heights and any ~~transitional locations~~.

- ~~C~~ontain a table setting out the preferred building typologies and built form character for the land or each part of the land ~~if this detail is not provided on the Development Framework.~~  
The Development Framework ~~to which a schedule applies and~~ should identify the following where appropriate:

- ~~— The preferred built form character or typology of each part of the land, if relevant.~~
- Sensitive interfaces and areas where built form needs to transition to the built form in the surrounding area.
- A movement and place framework that is consistent with ~~map using Victoria's Movement and Place in Victoria. Framework.~~
- A public open space framework.
- Areas where consolidation of sites will be encouraged to facilitate the preferred scale of development.
- Sites that require master planning before the issue of a permit.
- Sites where a Floor Area Ratio applies.
- Locations where landscaped setbacks that can accommodate deep soil planting and canopy trees are to be provided.
- New streets, lanes, arcades or through building connections.
- Specific or indicative pedestrian links.
- Streets where active frontages are required.
- Street and lanes along which continuous weather protection should be provided.

**Committee note:** See the note in Clause 43.06-8.2 in relation to the highlighted text below

- Streets and lanes where access to waste collection areas, loading access or vehicle access to car parks is discouraged.
- Open space, public realm or streets for which sun protections apply.
- Views to significant landmarks or features that should be maintained.
- Sites with significant terminating vistas in the public realm that require distinctive development.
- ~~T~~A schedule should contain the anticipated dwelling number and floorspace yields for the land or each part of the land ~~or precinct.~~

## Standards

~~A schedule may include standards related to:~~

- ~~— Urban scale and character.~~
- ~~— Building form.~~
- ~~— Building layout.~~
- ~~— Public interfaces.~~
- ~~— Detailed design.~~

~~A schedule may:~~

- ~~— Express standards in a singular summary table or map if the standard is expressed as a measure.~~
- ~~— Specify additional standards for any outcome.~~
- ~~— Vary, delete, replace or make mandatory any of the standards for any outcome in the overlay.~~
- ~~— Provide outcomes and standards in relation to any other matter.~~

~~A schedule may specify that if there is any inconsistency between the built form requirements of this clause and any another provision of this planning scheme, this clause prevails.~~

## Master planned sites

Where a Development Framework identifies a site that requires master planning, a ~~A schedule may identify sites that require a~~ master plan must be prepared to the satisfaction of the responsible authority ~~before the issue of a permit for the site.~~

The master plan must address the following ~~to the satisfaction of the responsible authority:~~

- The land to which the plan applies.
- The proposed use and development of each part of the land.
- Any staging or sequencing of development needed.
- The sScale of development on the site, which must be consistent with the Development Framework.
- The sSiting and orientation of buildings.
- Any open space or pedestrian links required.
- Key interfaces.

~~Any other requirements specified for the plan in a schedule.~~

A schedule may specify additional requirements for a master plan.

The master plan may be amended to the satisfaction of the responsible authority.

Unless specified otherwise in a schedule, a~~A~~ permit must not be granted to use or subdivide land, construct a building or construct or carry out works on a site that requires s-subject to master planning unless a master plan has been prepared to the satisfaction of the responsible authority.

This does not apply to minor works to existing buildings or structures on the land. A schedule may specify additional circumstances in which a permit may be granted before a master plan has been prepared to the satisfaction of the responsible authority.

A schedule may specify conditions that must be included in a permit for a site that requires master planning.

~~This does not apply if a schedule specifically states that a permit may be granted before a master plan has been prepared to the satisfaction of the responsible authority.~~

A permit granted must be generally in accordance with the master plan for the site and must include any conditions that are specified in a schedule.

### Community Benefit Framework

A schedule may specify that a ~~standard (including a mandatory standard) does not have to be met~~may be exceeded if a community benefit specified in a Community Benefit Framework is provided. ~~and, i~~

Where this is specified, the~~f this is included, a~~ schedule must include the following in Section XX:

- ~~Specify the maximum value to which a standard can be exceeded.~~
- ~~Include, or explicitly reference, a community benefit framework that sets out allowable community benefits and the way community benefit will be calculated.~~
- The Community Benefit Framework that applies.
- A table that specifies:
  - The standard(s) that may be exceeded.
  - The degree (including the maximum) to which the relevant standard can be exceeded, based on the extent of the community benefit provided.
  - The community benefit(s) to be provided for exceeding the relevant standard.

~~A schedule may reference other provisions in the planning scheme that have a relationship with the community benefit framework.~~

*Note: Community benefits under this provision are calculated over and above any requirements set out in Clause 45.01 (Public Acquisition Overlay), Clause 45.06 (Development Contributions Plan), Clause 45.09 (Parking Overlay), Clause 45.10 (Infrastructure Contributions Plan Overlay), Clause 45.11 (Infrastructure Contributions Plan) or Clause 53.01 (Public Open Space Contribution and Subdivision) in this scheme and any open space requirement specified in a schedule.*

A permit to construct a building or construct or carry out works that exceeds a standard ~~must not be granted or amended (unless the amendment does not increase the extent of non-compliance) to construct a building or construct or carry out works~~ on the basis that ~~a standard is not met because a community benefit is provided can only be granted or amended (unless the amendment does not increase the extent of non-compliance) if the permit includes a condition that in accordance with the relevant community benefit framework is agreed to unless, both:~~

~~The community benefit is calculated and specified in a manner set out in a Community Benefit Framework in a schedule.~~

The permit requires the provision of ~~the a~~ community benefit to be secured via an agreement made under section 173 of the *Planning and Environment Act 1987* or another appropriate mechanism.

*Note: In activity centres community benefits are intended to relate to site specific or local area benefits such as new pedestrian links or improvements to the public realm.*

## 43.06-2 OPERATION

A schedule may specify that if there is any inconsistency between the built form requirements of this clause and any another provision of this planning scheme, this clause prevails.

### Application of outcomes and standards

This overlay includes:

- **Outcomes.** An outcome sets out the expectations of what will be achieved in a development.
- **Standards.** A standard contains the requirements to meet the corresponding outcomes identified in this overlay.

Each standard ~~may~~ must be identified as:

- ~~A deemed to comply standard expressed using ‘complies if’ or labelled as ‘deemed to comply’.~~
- A **discretionary** standard expressed using ‘should’ or labelled as ‘discretionary’.
- A **mandatory** standard expressed using ‘must’ or labelled as ‘mandatory’.

A standard (whether mandatory or discretionary) may also be nominated as a deemed to comply standard, using ‘complies if’ or labelled as ‘deemed to comply’.

If a development meets a deemed to comply standard, it is deemed to meet the corresponding outcome for that standard.

Quantitative standards ~~must be expressed using the terms minimum, maximum, or preferred (where a specified metric is to be achieved).~~ must be expressed using the terms minimum, maximum, or preferred.

~~Where a standard is labelled in table as ‘deemed to comply’, ‘discretionary’ or ‘mandatory’:~~

- ~~A cell label takes precedence over a row or column label.~~
- ~~A row label takes precedence over a column label.~~

A schedule may:

- ~~Express standards in a singular summary table or map if the standard is expressed as a measure.~~
- Specify additional standards for any outcome.
- Vary, delete, replace or make mandatory any of the standards for any outcome.
- Provide outcomes and standards in relation to any other matter.

*Note: The relevant metrics for standards will typically be presented in a schedule to this overlay as maps or tables. The maps and tables in a schedule are to be read in conjunction with the applicable standard in the overlay.*

### Requirements

Except, where a community benefit is provided in accordance with a ~~C~~community ~~B~~benefit ~~F~~framework to the satisfaction of the responsible authority, ~~A~~ development:

**Committee note:** In relation to the highlighted text below, the only outcome where it is contemplated the standard may specify the outcome does not apply is the outcome relating to building layout and adaptability. The Committee queries whether this is the

- Must meet the outcomes specified in this overlay or a schedule unless specified otherwise in a corresponding standard.
- Must meet any mandatory standard specified in this overlay or a schedule.



- Should meet any discretionary standard specified in this overlay or [a](#) schedule. However, if the responsible authority is satisfied that an application for an alternative design solution meets the outcome, the alternative design solution may be considered. ~~Should meet any deemed to comply standard specified in a schedule.~~
- ~~A discretionary or deemed to comply standard should normally be met.~~
- ~~Must meet any mandatory standard specified in this overlay or a schedule. A permit cannot be granted to construct a building or construct or carry out works which do not meet a mandatory standard.~~

### 43.06-3 BUILDINGS AND WORKS

#### Permit requirements

A permit is required to:

- Construct a building or construct or carry out works.
- Construct a fence if a schedule includes a standard for a fence.

[A schedule may specify that this permit requirement does not apply.](#)

The requirement for a permit does not apply:

- If a schedule specifically states that a permit is not required.
- To the installation of an automatic teller machine.
- To an alteration to an existing building facade if:
  - The alteration does not include the installation of an external roller shutter.
  - Standard BF10 is met.
- To an awning that projects over a road if it is authorised by the relevant public land manager.
- To buildings and works which rearrange, alter or renew plant if the area or height of the plant is not increased.
- To external works to provide access for persons with disabilities that comply with all legislative requirements.

[A schedule may specify any conditions that must be included in a permit granted under this clause.](#)

A permit ~~granted~~ must include any conditions ~~or requirements~~ specified in a schedule.

#### VicSmart applications

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application   | Information requirements and decision guidelines |
|--|--|
| Construct a fence.   | Clause 59.05                                     |
| Construct a building or construct or carry out works for: <ul style="list-style-type: none"> <li>▪ A carport, garage, pergola, verandah, deck, shed or similar structure.</li> <li>▪ An outdoor swimming pool.</li> </ul> The buildings and works must be associated with a dwelling.                            | Clause 59.05                                     |
| Construct a building or construct or carry out works with an estimated cost of up to \$500,000 where the land is in a commercial zone or a Special Use, Comprehensive Development, Capital City, Docklands, [Proposed New Precincts Zone], Priority Development, Activity Centre Zone or Urban Development Zone. | Clause 59.05                                     |

## 43.06-4 URBAN SCALE AND CHARACTER

### 43.06-4.1 Building typology and future character

#### Outcome

Building types and character that:

- ~~Align with the building scale and distribution of building heights, identified in a schedule.~~
- Respond to the planned urban structure for the land outlined in the Development Framework.
- Respond appropriately to their intended future urban context, including sites with heritage significance and any transition areas identified in the Development Frameworks to adjacent areas.
- Deliver walkable neighbourhoods with a high-quality, permeable pedestrian network through the creation of new streets, lanes, arcades or connections through buildings ~~connections.~~
- Protect views to significant landmarks or features identified ~~shown on~~ in the Development Framework.
- Encourage the consolidation of sites in locations identified in the Development Framework to support the preferred scale and character of development.

#### Standard BF01

Development ~~should~~ must be consistent with the preferred building typologies and built form character and urban structure ~~as~~ specified in ~~:~~

~~t~~ The Development Framework in a schedule.

~~Any table setting out the preferred building typologies and built form character in a schedule.~~

## 43.06-5 BUILDING FORM

### 43.06-5.1 Building height and floor to ceiling heights

#### Outcomes

Building ~~height and floor to ceiling~~ heights that:

- ~~Align with the building scale identified in a schedule.~~
- Are consistent with the preferred building heights for the area.
- Maintain an inviting and comfortable ~~microclimate environment~~ within the public realm in terms of its sense of sunlight, daylight and wind conditions.
- Provide a transition in scale to adjacent areas with less intensive built form expectations ~~neighbourhoods located in a different zone or which have a different building height requirement.~~
- Protect views to significant landmarks or features identified in ~~shown on~~ the Development Framework.

- ~~Have ground floor heights that allow retail and commercial uses.~~

Floor to ceiling heights that:

- Allow retail and commercial uses that support a high level of internal amenity and adaptation over time.
- Have ground floor heights that allow both retail and commercial uses.

#### Standard BF02

Buildings should align with the building heights identified in the Development Framework.

Buildings must align with any mandatory building height standard specified in a schedule.

Maximum building heights do not apply to ~~The following may exceed a specified maximum building height:~~

- Non habitable architectural features.
- Service equipment and structures including plant rooms, lift overruns, structures associated with green roof areas, including access stairs and lifts, unenclosed pergolas for communal areas, shading devices, and other such equipment.

Floor to ceiling heights should be consistent with any standard specified in a schedule, and must be consistent with any mandatory standard specified in a schedule.

#### 43.06-5.2 Floor ~~A~~area ~~R~~ratio and density

##### Outcome

Floor ~~A~~area ~~R~~ratios and densities that:

~~Align with the building scale and density identified in a schedule.~~

~~P~~provide a scale and density to support population and employment growth, consistent with the preferred building typologies and built form character specified in the Development Framework.

##### Standard BF03

Development should deliver densities consistent with:

- The building typologies and built form character as specified in the Development Framework.
- Any Floor Area Ratio specified in a schedule.

Development must be consistent with any mandatory Floor Area Ratio specified in a schedule.

##### Requirements

Where a schedule specifies a ~~F~~floor ~~A~~area ~~R~~ratio for a site, a permit for the development of part of that site ~~should~~ must include a condition that an agreement be entered into pursuant to s 173 of the *Planning and Environment Act 1987* ~~into~~ specifying the floor area ratio applicable to the balance of the site.

#### 43.06-5.3 Overshadowing of open space or public realm

##### Outcome

Development that:

- Maintains solar access to key pedestrian and open space areas ~~as~~ identified in the Development Framework ~~a schedule~~.
- Achieves a balance between supporting growth and delivering high levels of amenity in the context of the outcomes ~~objectives~~ that apply to the land.

##### Standard BF04

Buildings should not cast any additional shadow beyond that cast by the applicable preferred or maximum street wall height and existing buildings over:

- The existing or proposed public open spaces identified in the Development Framework ~~a schedule~~ for the hours specified in a schedule.
- The existing or proposed key pedestrian streets identified in the Development Framework ~~a schedule~~ for the hours specified in a schedule.

This ~~Any requirement on overshadowing~~ does not apply to shadow cast by:

- Incidental elements such as canopies, kiosks, artworks, screens or trees.
- Buildings and works constructed within the open space or street.

#### 43.06-5.4 Front setback, street wall height and setback above the street wall and landscaped setbacks

##### Outcomes

Front setbacks, street wall heights and setbacks above the street wall that:

- ~~Align with the front setbacks, street wall heights and upper level setbacks identified a schedule.~~
- Provide strong spatial definition to the public realm while maintaining good daylight access to open spaces, streets and lower levels of buildings and clear views to the sky, where possible.
- Avoid visually overwhelming the public realm.

- Are sympathetic to heritage values and preferred built form character.
- Contribute to the privacy of any ground floor dwellings.
- Visually define key intersections identified in the Development Framework.
- ~~Support the inclusion of landscaped setbacks where they are identified in a schedule.~~
- Distinguish upper levels from the street wall.

Landscaped setbacks, including landscaped setbacks that can accommodate deep soil planting and canopy trees in locations identified in the Development Framework.

#### Standard BF05

Development should deliver front setbacks, street wall heights, setbacks above the street wall and landscaped setbacks consistent with:

- The preferred building typologies and built form character specified in the Development Framework.
- Any standards specified in a schedule.

Development must be consistent with any mandatory standard specified in a schedule.

Any standard for maximum street wall heights may be exceeded by nNon-habitable architectural features not more than 3.0 metres high~~high may exceed a maximum street wall height.~~

Where a new building is on a corner with two different street wall heights specified, ~~any the~~ taller maximum street wall height applies to the a-frontage with ~~a the~~ lower maximum street wall height for a distance of 20 metres along the street frontage ~~or as specified in a schedule.~~

### 43.06-5.5 Side and rear setbacks and separation within a site

#### Outcomes

Side and rear setbacks that:

- Respond to sensitive interfaces ~~identified in a schedule.~~
- Provide for landscaping.
- Maintain access to daylight and sunlight in streets, laneways and pedestrian connections.
- Delivers high levels of amenity within buildings having regard to outlook, daylight, and overlooking.
- Achieve privacy through setbacks rather than screening.

Separation between bBuildings ~~separation~~ within ~~a the same site~~ site that:

- Delivers high levels of amenity within buildings having regard to outlook, daylight, and overlooking.
- Offsets direct views between buildings ~~within the same site.~~
- Achieves privacy by building separation rather than screening.

#### Standard BF06

Development should deliver side and rear setbacks and building separation within a site consistent with any standards specified in a schedule. Development must be consistent with any mandatory standard specified in a schedule.

Any standard for the maximum length for a new wall constructed on a side or rear boundary of a lot does not apply where slope and retaining walls or fences would result in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.

~~A side or rear setback does not apply to:~~

Sunblinds, verandahs, porches, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic fuel or water tanks, and heating or cooling equipment or other services ~~that may~~ encroach not more than 0.5 metres into side and rear ~~the setbacks of any standard specified in a schedule.~~

Landings ~~having with~~ an area of not more than 2 square metres and a height of less than 1 metre ~~high~~, stairways, ramps, pergolas, shade sails and carports may encroach into ~~the side and rear~~ setbacks ~~of any standard specified in a schedule~~ provided they do not overshadow neighbouring open space.

## 43.06-6 BUILDING LAYOUT

### 43.06-6.1 Building layout and adaptability

#### Outcome

~~A position and configuration of internal spaces of a building~~ Buildings that:

- Can accommodate a range of tenancy sizes, including smaller tenancies in the lower levels of the building.
- Maximises passive surveillance and interaction with the public realm.
- Provide an appropriate interface with the public realm.

A schedule may include a standard that specifies locations or building typologies where this outcome does not apply.

#### Standard BF07

**Committee note:** Further consideration should be given to whether the highlighted requirement below should only apply to non-residential development

Development should:

- Include upper level balconies and windows with a direct visual connection to the public realm.
- Avoid tinted, opaque or high reflectivity glass which obscures views between the public realm and building interior.
- Sleeve large floorplate tenancies, carpark or service areas where they interface with the public realm.
- Avoid narrow publicly accessible alcoves and recesses that lack a clear public purpose.
- Avoid entrapment areas and areas with limited passive surveillance.

**Committee note:** There is no empowering provision for a schedule to specify adaptability opportunities. Consider whether 'opportunities' below should be replaced with 'standards', or include appropriate empowering language.

Building elements should incorporate any adaptability opportunities identified in a schedule.

~~Development should:~~

▪ \_\_\_\_\_

### 43.06-6.2 Wind effects on the public realm

**Committee note:** The Committee queries whether this outcome and standard should be able to be varied by a schedule. The 5 storeys was taken from the sample BFO schedule for Moorabbin.

#### Outcome

Development that minimises wind impacts to create and m:

~~Maintains~~ a safe and pleasant environment in the public realm for pedestrians to walk, sit or stand ~~on footpaths and other public spaces:~~

~~Creates pleasant environments where the impact of wind effects on the comfort and amenity of public spaces for pedestrians is minimised.~~

#### Standard BF08

Development of five or more storeys or X or more metres, excluding a basement ~~the height or more than the height specified in the schedule:~~

- must not cause new or exacerbate existing unsafe wind conditions (as specified in Table 1) in public land, publicly accessible areas on private land, private open space and communal open space; and

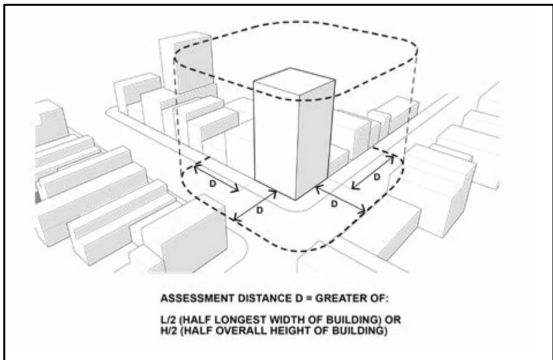
- should achieve comfortable wind conditions (as specified in Table 1) in public land and publicly accessible areas on private land within the assessment a distance ~~half the greatest length of the building, or half the total height of the building measured outwards on the horizontal plane from the ground floor building facade, whichever is greater~~ as shown in Figure 1.

Trees and landscaping should not be used to mitigate wind impacts. This does not apply to sitting areas, where trees and landscaping may be used to supplement fixed wind mitigation elements. Wind mitigation elements, such as awnings and screens should be located within the site boundary, unless consistent with the existing urban context or preferred future development of the area.

Table 1 Wind conditions

| Unsafe   | Comfortable   |
|--|---|
| Annual maximum 3 second gust wind speed exceeding 20 metres per second with a probability of exceedance of 0.1% considering at least 16 wind directions. | Hourly mean wind speed or gust equivalent mean speed (3 second gust wind speed divided by 1.85), from all wind directions combined with probability of exceedance less than 20% of the time, equal to or less than: <ul style="list-style-type: none"><li>▪ 3 metres per second for sitting areas,</li><li>▪ 4 metres per second for standing areas,</li><li>▪ 5 metres per second for walking areas.</li></ul> |

Figure 1: Assessment distance for ~~Calculation of~~ wind effects



43.06-7 PUBLIC INTERFACES

43.06-7.1 Active frontages

**Committee note:** Some Activity Centre Plans identify active frontages, some do not. It is not clear whether the active frontage requirements are intended to apply only on streets identified as such in Activity Centre Plans, or on all streets (or other streets identified in a schedule). The Committee assumes the former. If this is not correct, the highlighted words will need to be removed.

Outcome

Active frontages that:

- Contribute to the use, activity, safety and interest of the public realm.
- Provide continuity of ground floor activity along streets and laneways.
- Allows for clear identification of building entries and unobstructed views through openings into the ground floor of buildings.

Standard BF10

On streets identified in the Development Framework as ‘active frontage’ streets, ~~a~~ An entry or window should be provided for at least the ~~specified~~ percentage of the combined length of the

ground level interfaces of a building ~~on frontages specified in a schedule~~. The entry or window measurement includes:

- Stall-risers to a height of 700mm.
- Pilasters.
- Window and door frames.
- Windows that have clear glazing without stickers or paint that obscures views.

For corner sites, active frontages on the main street should extend along the side street to create a sense of address with clear glazing and allow for side entry where appropriate.

Security grills or mesh should:

- Be transparent.
- Not block views into tenancies at night.
- Be mounted internally to the shop windows.

The ground level frontage requirements do not apply to the development of a contributory or significant building in a Heritage Overlay. Development of a contributory or significant building in a Heritage Overlay should not reduce existing compliance with [this standard](#) ~~the public interface design outcomes~~.

### 43.06-7.2 Pedestrian connections

#### Outcome

Pedestrian connections that are:

- Safe and attractive.
- Accessible by people of all abilities.
- Easily identified and legible.
- Designed to enable extended stays within a space such as sitting and eating.

#### Standard BF11

**Committee note:** It is not clear whether the intent is that pedestrian connections will only be required where identified in the Development Framework. If they can be required in other locations, the highlighted words will need to be removed. The Committee is unclear on what is intended by 'interim and ultimate forms'.

[Development should deliver pedestrian connections in the locations identified in the Development Framework.](#)

[Where the Development Framework identifies a pedestrian connection as:](#)

- [‘Specific’, development should provide the connection along the alignment indicated.](#)
- [‘Indicative’, development should provide the connection along the alignment indicated or a different alignment that provides the same connectivity.](#)

Pedestrian connections should be:

- Direct, attractive, well-lit and provide a line of sight from one end to the other.
- Safe and free of entrapment spaces and areas with limited passive surveillance.
- Publicly accessible at ground level and appropriately secured by an appropriate mechanism where relevant.
- Overlooked by windows, ~~or~~ balconies or both on both sides, including at ground floor level.
- Designed to consider the function and design of the full length and width of the link in both its [interim and ultimate forms](#), including the functional layout, levels and landscaping where it spans multiple lots.

~~Development should provide a new, or retain and improve an existing, through block pedestrian connection where a link is identified as in a schedule as:~~

~~‘Specific’ along the alignment indicated.~~

- ~~‘Indicative’ along the alignment indicated or a different alignment that provides the same connectivity.~~



### 43.06-7.3 Weather protection

#### Outcome

Weather protection that:

- Delivers pedestrian comfort in the public realm via protection from rain, wind and summer sun.
- Uses canopies that are functional, of high quality design, and contribute to the human scale of the street.

#### Standard BF12

Development should ~~deliver~~ ~~include~~ continuous weather protection along the streets and lanes identified in [the Development Framework](#) ~~a schedule~~ except where a heritage place warrants an alternative approach.

Weather protection canopies should ~~be~~:

- ~~Be b~~Between 3.5 metres and 5 metres above ground measured to the underside of the soffit.
- ~~Be d~~Designed to minimise impact on existing or proposed street trees.
- ~~Be b~~Broken in design to reflect the prevailing grain and width of building frontages.

### 43.06-7.4 Landscaping and fencing

#### Outcome

Landscaping and fencing that:

- Delivers a safe and attractive public and private realm.
- Balances occupant privacy with activation and surveillance of the public realm.
- Reinforces underlying natural landscape character including biodiversity values.
- Provides shade in summer, [including from canopy trees](#).
- Does not create long expanses of blank wall facing the public realm.
- Provides appropriate delineation between the public and private realm.

~~This~~ ~~An~~ outcome only applies to fences if a schedule includes a standard for a fence.

#### Standard BF13

Landscaping should:

- Provide shade to outdoor areas exposed to summer sun by canopy trees or shade structures
- Provide space for sufficient soil depth to support the proposed vegetation [including canopy trees](#).
- Use paving and surface materials that lower surface temperatures and reduce heat absorption.
- Include climbing plants or smaller plants in planters and in outdoor areas, including communal outdoor open space.
- Respond to the soil type and drainage patterns of the site.
- Be supported by irrigation systems which utilise alternative water sources such as rainwater, stormwater and recycled water.

**Committee note:** The empowering provision below has been deleted because the empowering provision is contained in Clause 43.06-2. If a specific empowering provision is included in some standards but not others it will create confusion.

~~A schedule may specify (among other things):~~

- ~~Tree canopy requirements, landscape themes, vegetation (location and species), paving and lighting.~~
- ~~The height and style of fences.~~

### 43.06-8 DESIGN DETAIL



### 43.06-8.1 Carparking design

#### Outcome

Car parking that:

- Minimises the impact of car parking on the public realm.
- Minimises adverse impact on pedestrian and movement networks.
- Uses land efficiently.
- May be adapted for alternative uses in future.

#### Standard BF15

Vehicle access to car parks should not be located on the streets and lanes identified [in the Development Framework where vehicle access to car parks is discouraged](#) ~~as 'limit car park entries' in a schedule.~~

Gates or doors to car parks should be fitted close to the building alignment to avoid the creation of unsafe entrapment space, and designed as integrated elements of the building facade.

The location and width of car park entries should:

- Minimise the impacts on the pedestrian network.
- Avoid car parking entries on sites, where they impact on the activation and safety of the public realm.

Car parks should be designed to enable future adaptation without the need for demolition or significant rebuilding. This may include:

- Minimising load bearing walls.
- Minimising ramped areas.

Above ground level car parking should:

- Be sleeved to streets and open spaces with active frontages if possible.
- Have a floor to ceiling height of:
  - 3.6 metres for the ground floor.
  - At least 3.2 metres for other floors.

Mechanical systems may be used to reduce floor area for car parking.

### 43.06-8.2 Building services

#### Outcome

Building services that:

- [Are integrated in the building design and m](#)Minimise impacts on the public realm.
- Maximise the quality and activation of the public realm.
- Do not dominate the pedestrian experience and are designed as an integrated design element.
- ~~Provide waste collection facilities as an integrated part of the building design.~~

#### Standard BF16

~~Loading bays should not be located on the streets and lanes identified as 'limit loading access' in a schedule.~~

The location and width of loading bays should minimise the impacts on the pedestrian network.

**Committee note:** Further consideration should be given to whether the highlighted words should be replaced with 'waste, loading and parking access' (in which case the same change should be made to the corresponding dot point in Clause 43.06-1). The mandatory 'percentage of ground floor area' standard has been deleted as (where applicable) this will be specified in a schedule.

Ground floor building services; including waste, loading and parking access [s](#);

~~Should be minimised~~ [and](#) .

~~Must not occupy more than the percentage of the ground floor area of the site area specified in a schedule.~~

~~Services, loading and waste areas should be~~ located away from streets and public spaces, or within basements or upper levels. Loading bays should not be located on the streets and lanes identified in the Development Framework as streets and lanes where loading access is discouraged ~~'limited loading access' in a schedule.~~

Spaces for waste or loading should not adversely impact safety and continuity of the public realm. Access doors to any waste, parking or loading area should:

- Be positioned no more than 500 millimetres from the street edge.
- Be designed as an integrated element of the building.

Service cabinets should:

- Be located internally with loading, waste or parking areas where possible.
- Not visually dominate street frontages and should use high quality materials.

Rooftop plant, services and antennae should be integrated into the overall building form.

### 43.06-8.3 Exterior design

#### Outcome

Exterior design that:

- Responds to the preferred built form character of its context.
- Is visually interesting when viewed up close and from a distance.
- Incorporates sufficient design detail in the lower levels of a building to deliver a visually rich and engaging pedestrian experience.
- Delivers high quality design on all visible sides of a building and on rooftops visible from the public realm.
- ~~P~~At the ground level interface, provides visual connection between the public realm and interior spaces at the ground level interface.
- Provides adequate clearance heights that do ~~Do not~~ obstruct the service functions of a street or laneway ~~through adequate clearance heights.~~

#### Standard BF17

Facades should:

- Provide for depth and a balance of light and shadow on the street wall and upper levels through the use of balconies, integrated shading, rebates or expression of structural elements.
- Avoid finishes with a perpendicular reflectivity of more than 15 per cent, measured at 90 degrees to the facade surface or as specified in a schedule.

**Committee note:** The first dot point below is unclear and should be rephrased.

Blank walls that are visible from the public realm should:

- Be designed as an integrated component of the building composition.
- Be articulated by textured materials, patterning or artwork.

Facade projections and balconies should:

- Be at least 5 metres above any public space measured from ground level.
- Allow for growth of existing and planned street trees in upper level projections and canopies.
- Limit upper level projections such as adjustable screens or windows, cornices or other architectural features into streets or laneways to up to 300 mm.
- Not include enclosed balconies or habitable floor space projecting over the public realm.

Materials should be:

- Natural, tactile and visually interesting at the lower levels near the public interface to reinforce a human scale.

- Durable, robust and low maintenance in the higher parts of a building.
- Materials and finishes such as painted concrete or ventilation louvres should be avoided at the lower levels where they undermine the visually rich, tactile quality of streets and laneways.

**43.06-9 SUBDIVISION**

A schedule may specify:

- Lot size standards or other standards related to subdivision.
- A public open space contribution amount for when land is subdivided.
- Conditions that must be included on any permit granted for subdivision, including in relation to open space.

**Permit requirements**

A permit is required to subdivide land.

**Committee note:** The use of ‘must’ below will effectively make all standards in relation to subdivision mandatory. Is this the intent?

Subdivision **must** occur in accordance with any lot size standard or other standard specified in a schedule.

A permit must not be granted which would allow a separate lot to be created for land containing a small second dwelling.

A permit granted must include any condition specified in a schedule.

**Open space contribution**

A schedule may specify an open space contribution. If the contribution is specified as a percentage, this is a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both.

If an open space contribution is specified in a schedule ~~in a schedule~~:

A person who proposes to subdivide land must make a contribution to the council for public open space in the amount specified ~~in a schedule~~.

- No contribution is required under Clause 53.01.
- The exemptions at Clause 53.01-1 (Exemption from public open space requirement specified in the scheme) and Clause 53.01-2 (Exemption from public open space requirement under section 18(8)(a) of the Subdivision Act 1988) apply.

~~A permit granted must include any condition specified in a schedule.~~

If no contribution ~~amount~~ is specified in a schedule ~~to this overlay~~ the requirements of Clause 53.01 apply.

**VicSmart applications**

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application   | Information requirements and decision guidelines |
|--|--|
| Subdivide land to realign the common boundary between 2 lots where: <ul style="list-style-type: none"><li>▪ The area of either lot is reduced by less than 15 percent.</li><li>▪ The general direction of the common boundary does not change.</li></ul> | Clause 59.01                                     |

|  |              |
|--|--------------|
| Subdivide land into lots each containing an existing building or car parking space where: <ul style="list-style-type: none"> <li>▪ The buildings or car parking spaces have been constructed in accordance with the provisions of this scheme or a permit issued under this scheme.</li> <li>▪ An occupancy permit or a certificate of final inspection has been issued under the Building Regulations in relation to the buildings within 5 years prior to the application for a permit for subdivision.</li> </ul> | Clause 59.02 |
| Subdivide land into 2 lots if: <ul style="list-style-type: none"> <li>▪ The construction of a building or the construction or carrying out of works on the land:</li> <li>▪ Has been approved under this scheme or by a permit issued under this scheme and the permit has not expired.</li> <li>▪ Has started lawfully.</li> <li>▪ The subdivision does not create a vacant lot.</li> </ul>   | Clause 59.02 |

#### 43.06-10 APPLICATION REQUIREMENTS

An application must be accompanied by:

- A design response that explains how the proposed design responds to the Development Framework and :
- ~~Responds to any specified~~ development objectives specified in the schedule.
- ~~Responds to the Development Framework.~~
  - ~~Responds to any specified preferred building typologies and built form character.~~
- ~~A design response must contain:~~
  - Correctly proportioned street elevations or photographs showing the development in the context of adjacent buildings.
    - ~~If specified in a schedule, a 3D digital model of the proposed buildings and works in a format to the satisfaction of the responsible authority.~~
- ~~Any application requirements specified in a schedule.~~

A schedule may specify additional application requirements for permits under this Clause.

If in the opinion of the responsible authority any of the above application requirements, or any application requirements specified in a schedule ~~of this overlay~~, are not relevant to the evaluation of an application, it may waive or reduce the requirement.

#### 43.06-11 EXEMPTION FROM NOTICE AND REVIEW

~~Unless a~~ A schedule may specify that ~~specifies otherwise~~, an application under this overlay or any other provision of this scheme is exempt from any of the following:

- The notice requirements of section 52(1)(a), (b) and (d).
- The decision requirements of section 64(1), (2) and (3).
- The review rights of section 82(1) of the Act.

### 43.06-12 DECISION GUIDELINES

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

- The Municipal Planning Strategy and the Planning Policy Framework.
- The Development Framework ~~specified in a schedule.~~
- Any applicable ~~C~~community ~~B~~benefit ~~F~~framework ~~specified in a schedule.~~
- *Movement and Place in Victoria* (Department of Transport, February 2019)
- The level of amenity for building occupants.
- The objectives, standards and decision guidelines of Clause 54 and Clause 55. This does not apply to an apartment development.
- For an apartment development, the objectives, standards and decision guidelines of Clause 58.
- Movement~~s~~ systems through and around the site including the movement of pedestrians and cyclists, vehicles providing for supplies, waste removal, emergency services and public transport and carparking.

A schedule may specify additional decision guidelines for permits under this Clause.

### 43.06-13 SIGNS

Sign requirements are at Clause 52.05 unless otherwise specified in a schedule.

### 43.06-14 MEANING OF TERMS

In this overlay the following terms have the meaning set out ~~beside them~~below:

- **Building services:** Areas used for the purposes of loading, waste management and electrical, communications, gas, water and fire prevention infrastructure.
- **Community Benefit Framework:** A framework included or explicitly referenced in Section XX of a schedule that sets out allowable community benefits and the way community benefit will be calculated.
- **Development Framework:** The framework for preferred development in Section 1.0 of a schedule which may be presented as maps, plans, character statements and/or tables.
- **Floor Area Ratio:** The gross floor area of all buildings on a site plus the area of voids associated with lifts, car stackers and similar service elements considered as multiple floors of the same height as adjacent floors or 3.0 metres if there is no adjacent floor, divided by the area of the site.
- **Laneway:** A road reserve of a public highway 9 metres wide or less.
- **Pedestrian connection:** A publicly accessible street with a defined footpath, a shared zone, a pedestrian only laneway (covered or open), an arcade, a through building connections and an atrium~~a~~.
- **Sleeve:** To position active uses between large floorplate tenancies, carpark or service areas and the public realm.
- ~~Stationary activity: Activities by pedestrians that involve extended stays within a space, such as sitting and eating, rather than walking through.~~
- **Street wall:** Any part of a building constructed within 0.3 metres of an existing or proposed street, laneway or public open space.

D:2 Walkable Catchment Zone (tracked version only)

2.0XX **ACTIVITY CENTRE WALKABLE CATCHMENT ZONE**

Shown on the planning scheme map as WCZ with a number.

Purpose

**Committee note:** The Committee has assumed the WCZ will only be used for catchments around activity centres (as identified in Plan Melbourne). If this is not the intention, the additions of the highlighted references in the title and purposes may not be appropriate

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide housing at increased densities **around activity centres**, in locations within walking distance to employment, services and public transport **within the activity centre**.
- To encourage a scale of development that provides a transition between ~~areas of~~ more intense development **in an activity centre core** and **surrounding lower scale** residential areas.
- To encourage a diversity of housing types **including affordable housing** ~~particularly~~ in locations **around activity centres** ~~offering good access to services and transport~~.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations **around activity centres**.

32.XX **Table of uses**

Section 1 - Permit not required

| Use   | Condition   |
|---|---|
| Automated collection point                                      | Must meet the requirements of Clause 52.13-3 and 52.13-5.<br>The gross floor area of all buildings must not exceed 50 square metres.  |
| Bed and breakfast   | No more than 10 persons may be accommodated away from their normal place of residence.<br>At least 1 car parking space must be provided for each 2 persons able to be accommodated away from their normal place of residence. |
| Community care accommodation                                    | Must meet the requirements of Clause 52.22-2.   |
| Domestic animal husbandry (other than Domestic animal boarding) | Must be no more than 2 animals.   |
| Dwelling (other than Bed and breakfast)                         |   |
| Home based business Informal outdoor recreation                 |   |
| Medical centre  | The gross floor area of all buildings must not exceed 250 square metres.  |
| Place of worship  | The gross floor area of all buildings must not exceed 250 square metres.<br>The site must adjoin, or have access to, a road in a Transport Zone 2 or a Transport Zone 3.  |

|                                       |  |
|---------------------------------------|--|
| <b>Racing dog husbandry</b>           | Must be no more than 2 animals.  |
| <b>Railway</b>                        |  |
| <b>Residential aged care facility</b> |  |
| <b>Rooming house</b>                  | Must meet the requirements of Clause 52.23-2.  |
| <b>Small second dwelling</b>          | Must be no more than one dwelling existing on the lot.<br>Must be the only small second dwelling on the lot.<br>Reticulated natural gas must not be supplied to the <a href="#">building</a> <del>buildings</del> , or part of a building, used for the small second dwelling. |
| <b>Tramway</b>                        |  |
| <b>Any use listed in Clause 62.01</b> | Must meet the requirements of Clause 62.01.  |

## Section 2 – Permit required

| Use  | Condition   |
|--|---|
| Accommodation (other than Community care accommodation, Dwelling, Residential aged care facility, Rooming house and Small second dwelling)<br>Agriculture (other than Animal production, Animal training, Apiculture, Domestic animal husbandry, Horse husbandry and Racing dog husbandry) |   |
| <b>Car park</b>  | Must be used in conjunction with another use in Section 1 or 2.   |
| <b>Car wash</b>  | The site must adjoin, or have access to, a road in a Transport Zone 2 or a Transport Zone 3.  |
| <b>Convenience restaurant</b>  | The site must adjoin, or have access to, a road in a Transport Zone 2 or a Transport Zone 3.  |
| <b>Convenience shop</b>  |   |
| <b>Domestic animal husbandry (other than Domestic animal boarding) – if the Section 1 condition is not met</b>   | Must be no more than 5 animals.   |
| <b>Food and drink premises (other than Convenience restaurant and Take away food premises)</b><br><b>Grazing animal production</b><br><b>Leisure and recreation (other than Informal outdoor recreation and Motor racing track)</b><br><b>Market</b>                                       |   |
| <b>Office (other than Medical centre)</b>  | The land must be located within 100 metres of a commercial zone.<br>The land must have the same street frontage as the land in the commercial zone.<br>The leasable floor area must not exceed 250 square metres. |

**Place of assembly (other than Amusement parlour, Carnival, Cinema based entertainment facility, Circus, Nightclub and Place of worship)**  
**Plant nursery**

**Retail premises (other than Food and drink premises, Market, Plant nursery and Shop)** The use must be associated with a use or development to which clause 53.23 (Significant residential development with affordable housing) applies.

**Service station** The site must either:  
 Adjoin a commercial zone or industrial zone.  
 Adjoin, or have access to, a road in a Transport Zone 2 or a Transport Zone 3.  
 The site must not exceed either:  
 3000 square metres.  
 3600 square metres if it adjoins on two boundaries a road in a Transport Zone 2 or a Transport Zone 3.

**Shop (other than Adult sex product shop, Bottle shop and Convenience shop)** The land must be located within 100 metres of a [Commercial Zone](#) or Mixed Use Zone.  
 The land must have the same street frontage as the land in the [Commercial Zone](#) or Mixed Use Zone.

**Store** Must be in a building, not a dwelling, and used to store equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of a dwelling on the lot.

**Take away food premises** The site must adjoin, or have access to, a road in a Transport Zone 2 or a Transport Zone 3.

**Utility installation (other than Minor utility installation and Telecommunications facility)**

**Any other use not in Section 1 or 3**

### Section 3 – Prohibited

#### Use

Adult sex product shop  
 Amusement parlour  
 Animal production (other than Grazing animal production)  
 Animal training  
 Bottle shop  
 Cinema based entertainment facility  
 Domestic animal boarding  
 Extractive industry  
 Horse husbandry  
 Industry (other than Automated collection point and Car wash)  
 Motor racing track  
 Nightclub  
 Saleyard  
 Small second dwelling – if the Section 1 condition is not met  
 Transport terminal



---

**Warehouse (other than Store)**


---

**32.XX Subdivision****Permit requirement**

A permit is required to subdivide land.

An application to subdivide land, other than an application to subdivide land into lots each containing an existing dwelling or car parking space, must meet the requirements of Clause 56 and:

- Must meet all of the objectives included in the clauses specified in the following table.
- Should meet all of the standards included in the clauses specified in the following table.

| <b>Class of subdivision</b> | <b>Objectives and standards to be met</b>  |
|-----------------------------|--|
| 60 or more lots             | All except Clause 56.03-5.   |
| 16 – 59 lots                | All except Clauses 56.03-1 to 56.03-3, 56.03-5, 56.06-1 and 56.06-3.                   |
| 3 – 15 lots                 | All except Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6. |
| 2 lots                      | Clauses 56.03-5, 56.04-2, 56.04-3, 56.04-5, 56.06-8 to 56.09-2.                        |

A permit must not be granted which would allow a separate lot to be created for land containing a small second dwelling.

**VicSmart applications**

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| <b>Class of application</b>  | <b>Information requirements and decision guidelines</b> |
|--|---|
| Subdivide land to realign the common boundary between 2 lots where:  | Clause 59.01  |
| <ul style="list-style-type: none"> <li>▪ The area of either lot is reduced by less than 15 percent.</li> <li>▪ The general direction of the common boundary does not change.</li> </ul>  |   |
| Subdivide land into lots each containing an existing building or car parking space where:  | Clause 59.02  |
| <ul style="list-style-type: none"> <li>▪ The buildings or car parking spaces have been constructed in accordance with the provisions of this scheme or a permit issued under this scheme.</li> <li>▪ An occupancy permit or a certificate of final inspection has been issued under the Building Regulations in relation to the buildings within 5 years prior to the application for a permit for subdivision.</li> </ul> |   |

---

Subdivide land into 2 lots if:

Clause 59.02

- The construction of a building or the construction or carrying out of works on the land:
    - Has been approved under this scheme or by a permit issued under this scheme and the permit has not expired.
    - Has started lawfully.
  - The subdivision does not create a vacant lot.
-

**32.XX Construction and extension of one dwelling on a lot**

**Permit requirement**

A permit is required to construct or extend one dwelling on a lot less than 300 square metres. A development must meet the requirements of Clause 54.

**No permit required**

No permit is required to:

- Construct or carry out works normal to a dwelling.
- Construct or extend an out-building (other than a garage or carport) on a lot provided the gross floor area of the out-building does not exceed 10 square metres and the maximum building height is not more than 3 metres above ground level.
- Make structural changes to a dwelling provided the size of the dwelling is not increased or the number of dwellings is not increased.

**VicSmart applications**

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application   | Information requirements and decision guidelines |
|--|--|
| Construct or extend a dwelling on a lot less than 300 square metres if the development meets the requirements in the following standards of Clause 54: <ul style="list-style-type: none"><li>▪ A3 Street setback.</li><li>▪ A10 Side and rear setbacks.</li><li>▪ A11 Walls on boundaries.</li><li>▪ A12 Daylight to existing windows.</li><li>▪ A13 North-facing windows.</li><li>▪ A14 Overshadowing open space.</li><li>▪ A15 Overlooking.</li></ul> For the purposes of this class of VicSmart application, the Clause 54 standards specified above are mandatory. | Clause 59.14                                     |

**32.XX Construction and extension of a small second dwelling on a lot**

**Permit requirement**

A permit is required to construct or extend a small second dwelling on a lot of less than 300 square metres.

A development must meet the requirements of Clause 54.

**VicSmart applications**

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application | Information requirements and decision guidelines |
|----------------------|--|
|----------------------|--|

---

Construct or extend a small second dwelling on a lot less than 300 square metres if the development meets the requirements in the following standards of Clause 54:

- A3 Street setback.
- A9 Building setback.
- A9.1 Safety and accessibility.
- A10 Side and rear setbacks.
- A11 Walls on boundaries.
- A12 Daylight to existing windows.
- A13 North-facing windows.
- A14 Overshadowing open space.
- A15 Overlooking.

For the purposes of this class of VicSmart application, the Clause 54 standards specified above are mandatory.

---

## **32.XX Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings**

### **Permit requirement**

A permit is required to:

- Construct a dwelling if there is at least one dwelling existing on the lot.
- Construct two or more dwellings on a lot.
- Extend a dwelling if there are two or more dwellings on the lot.
- Construct or extend a dwelling if it is on common property.
- Construct or extend a residential building.

A permit is required to construct or extend a front fence within 3 metres of a street if:

- The fence is associated with 2 or more dwellings on a lot or a residential building, and
- The fence exceeds the maximum height specified in Clause 55.06-2.

A development must meet the requirements of Clause 55. This does not apply to a development of five or more storeys, excluding a basement.

An apartment development of five or more storeys, excluding a basement, must meet the requirements of Clause 58.

### **VicSmart applications**

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application | Information requirements and decision guidelines |
|----------------------|--|
|----------------------|--|

Construct or extend a front fence within 3 metres of a street if the fence is associated with 2 or more dwellings on a lot or a residential building. Clause 59.03

## 32.XX Residential aged care facility

### Permit requirements

A permit is required to construct a building or construct or carry out works for a residential aged care facility.

A development must meet the requirements of Clause 53.17 - Residential aged care facility.

## 32.XX Buildings and works associated with a Section 2 use

A permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.XX-X.

### VicSmart applications

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

| Class of application | Information requirements and decision guidelines |
|----------------------|--|
|----------------------|--|

Construct a building or construct or carry out works where: Clause 59.04

- The building or works are not associated with a dwelling, primary school or secondary school and have an estimated cost of up to \$100,000; or
- The building or works are associated with a primary school or secondary school and have an estimated cost of up to \$500,000; and
- The requirements in the following standards of Clause 54 are met, where the land adjoins land in a residential zone used for residential purposes:
  - A10 Side and rear setbacks.
  - A11 Walls on boundaries.
  - A12 Daylight to existing windows.
  - A13 North-facing windows.
  - A14 Overshadowing open space.
  - A15 Overlooking.

For the purposes of this class of VicSmart application, the Clause 54 standards specified above are mandatory.

## 32.XX Maximum building height requirement for a dwelling, small second dwelling or residential building

For the purposes of this zone, a large site is defined as land with:

- A frontage of at least 20 metres; and
- An area of at least 1,000 square metres.

For small sites, ~~The building height of a building constructed for use as a dwelling, small second dwelling or a residential building~~ should ~~must~~ not exceed 11 metres and should ~~must~~ not contain more than 3 storeys at any point.

For large sites, ~~unless all of the following are met, in which case~~ the building height should not exceed 21.5 metres and should not contain more than 6 storeys at any point.:

~~• The frontage must be at least 20 metres.~~

~~• The land area must be at least 1,000 square metres.~~

~~This~~ These building height requirements ~~replaces~~ the maximum building height specified in Standard A4 in Clause 54 and Standard B7 in Clause 55.

A building may exceed the applicable maximum building height or contain more than the applicable maximum number of storeys if any of the following apply:

- It replaces an immediately pre-existing building and the new building does not exceed the building height or contain a greater number of storeys than the pre-existing building.
- There are existing buildings on both abutting allotments that face the same street and the new building does not exceed the building height or contain a greater number of storeys than the lower of the existing buildings on the abutting allotments.
- It is on a corner lot abutted by lots with existing buildings and the new building does not exceed the building height or contain a greater number of storeys than the lower of the existing buildings on the abutting allotments.
- It is constructed pursuant to a valid building permit that was in effect prior to the introduction of this provision.
- The site is affected by a height control within an Overlay which exceeds the maximum height specified in the Walkable Catchment Zone.
- Immediately before the introduction of the Walkable Catchment Zone, the site was affected by a height control within another Zone which exceeded the maximum height specified in the Walkable Catchment Zone.

An extension to an existing building may exceed the applicable maximum building height or contain more than the applicable maximum number of storeys if it does not exceed the building height of the existing building or contain a greater number of storeys than the existing building.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

A basement is not a storey for the purposes of calculating the number of storeys contained in a building.

The maximum building height and maximum number of storeys requirements in this zone apply whether or not a planning permit is required for the construction of a building.

### Building height if land is subject to inundation

If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.

## 32.XX Application requirements

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

- For a residential development of four storeys or less, the neighbourhood and site description and design response as required in Clause 54 and Clause 55.
- For an apartment development of five or more storeys, an urban context report and design response as required in Clause 58.01.
- For an application for subdivision, a site and context description and design response as required in Clause 56.
- Plans drawn to scale and dimensioned which show:
  - Site shape, size, dimensions and orientation.
  - The siting and use of existing and proposed buildings.
  - Adjacent buildings and uses.
  - The building form and scale.
  - Setbacks to property boundaries.
- The likely effects, if any, on adjoining land, including noise levels, traffic, the hours of delivery and despatch of good and materials, hours of operation and light spill, solar access and glare.

If in the opinion of the responsible authority an application requirement is not relevant to the evaluation of an application, the responsible authority may waive or reduce the requirement.

## **32.XX Exemption from notice and review**

### **Subdivision**

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

## **32.XX Decision guidelines**

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

### **General**

- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of this zone.
- [Whether the proposed height is appropriate having regard to the lot size and site context.](#)
- ~~Consideration of the o~~Overlooking and overshadowing ~~impacts to as a result of building or works affecting~~ adjoining land in [the Walkable Catchment Zone or](#) a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.
- The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in [the Walkable Catchment Zone or](#) a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.

### **Subdivision**

- The pattern of subdivision and its effect on the spacing of buildings.
- For subdivision of land for residential development, the objectives and standards of Clause 56.

### **Dwellings, small second dwellings and residential buildings**

- [The preferred building heights of adjoining and nearby sites.](#)
- Whether the [proposed](#) building height provides for a transition in scale to adjacent areas with less or more intensive built form expectations.

- ~~Having regard to the lot size and site context, T~~he extent to which the proposed development makes ~~appropriately~~ efficient use of land having regard to the lot size and site context.
- For the construction and extension of one dwelling on a lot and a small second dwelling, the applicable objectives, standards and decision guidelines of Clause 54.
- For the construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55. This does not apply to an apartment development of five or more storeys, excluding a basement.
- For the construction and extension of an apartment development of five or more storeys, excluding a basement, the objectives, standards and decisions guidelines of Clause 58.
- ~~Whether the lot size and site context enable the maximum building height requirement to be exceeded.~~

#### **Non-residential use and development**

- Whether the use or development is compatible with residential use.
- Whether the use generally serves local community needs.
- The scale and intensity of the use and development.
- The design, height, setback and appearance of the proposed buildings and works.
- The proposed landscaping.
- The provision of car and bicycle parking and associated accessways.
- Any proposed loading and refuse collection facilities.
- The safety, efficiency and amenity effects of traffic to be generated by the proposal.

#### **32.XX Signs**

Sign requirements are at Clause 52.05. This zone is in Category 3.