

**BOROONDARA PLANNING SCHEME
AMENDMENT C69**

PANEL REPORT

MAY 2010

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A handwritten signature in black ink, appearing to read 'Peter McEwan', written in a cursive style.

Peter McEwan, Chair

A handwritten signature in black ink, appearing to read 'Ann Keddie', written in a cursive style.

Ann Keddie, Member

MAY 2010

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1. Summary

This is the report of the Panel appointed by the Minister for Planning (under delegation) to advise Boroondara City Council on the further processing of Boroondara Planning Scheme Amendment C69 in light of the submissions received in response to public exhibition of the Amendment.

Amendment C69 seeks to implement the vision, strategies and objectives of the West Hawthorn Urban Design Framework (WHUDF). In particular, it proposes to introduce a number of new planning provisions to land in and around Burwood Road, West Hawthorn.

When the Amendment was publicly exhibited, eighteen submissions were received. The submissions were referred to this Panel. It conducted public hearings over two days in April 2010. Expert town planning and urban design evidence was called. The Panel inspected the subject area on two occasions.

The West Hawthorn Urban Design Framework (July 2006) was developed over a very long period. The process commenced in December 2002. Some 36 development opportunities were identified in an early technical report. Some of these have already been developed or have current permits for substantial buildings. There is clear evidence of the beginnings of the substantial change that is referred to in the WHUDF. Indeed large sections of the subject area are very well served by public transport and well suited to significant mixed use development, with few constraints provided by adjacent land uses or heritage.

The key issues are fairly narrow in scope. Essentially they relate to the requirements over future built form in relation to height and setbacks; the interface with residential areas and solar access to the southern side of Burwood Road.

The Panel finds that Amendment C69 is strategically justified and recommends that the Amendment should proceed. However this strategic justification does not extend to the exhibited mandatory controls over building heights and setbacks. Nor is there sufficient reason to justify the inclusion of adjacent residential areas in Amendment C69. The Panel finds that they are adequately protected by local policy and existing provisions in the Boroondara Planning Scheme.

Following consideration of submissions on the wording of the provisions by the Council and submitters, the Panel recommends a number of changes.

2. Background

2.1 The Amendment

Amendment C69 to the Boroondara Planning Scheme, as exhibited, proposes to:

- introduce the West Hawthorn Area Local Policy into the Local Planning Policy Framework;
- introduce and apply the Design and Development Overlay Schedule 13 to land on Burwood Road between St James Park and Glenferrie Road;
- make related changes to the Municipal Strategic Statement sections: Urban Design (Clause 21.05) and Commercial Sector (Clause 21.08); to the Office Use & Development Local Policy (Clause 22.08) and to the Retail Centres Local Policy (Clause 22.05); and
- include the West Hawthorn Urban Design Framework (2006) as a reference document to the Boroondara Planning Scheme.

The planning authority and proponent is Boroondara City Council.

2.2 The Panel

This Panel was appointed under delegation on 1 February 2010 pursuant to Sections 153 and 155 of the *Planning and Environment Act 1987* to hear and consider submissions in respect of the Amendment.

The Panel consisted of:

- Chairperson: Peter McEwan; and
Member: Ann Keddie.

Hearings and inspections

A Directions Hearing was held on 24 February 2010 at Boroondara Council Chambers, Camberwell. The Panel Hearings were held on 12 and 13 April at Boroondara Council Chambers, Camberwell.

The Panel inspected the site and surrounding areas, making unaccompanied visits to the area affected by the Amendment on 9 April 2010 and on 13 April 2010.

Exhibition

The Amendment was exhibited between and 11 June 2009 and 17 July 2009. Notices were placed in the Victorian Government Gazette and Progress Leader local newspaper, and letters were sent to affected properties and other stakeholders on 5 June 2009.

Copies of Amendment C69 were available for inspection during office hours at Council's offices.

Submissions

A total of 18 submissions were received in response to exhibition of Amendment C69.

The Council summarised the following concerns expressed in the submissions:

- opposition to the mandatory controls;
- heights and setbacks are unreasonably restrictive (generally in precincts 1, 4A, 4B and 6);
- opposition to the 5 metre mandatory landscaped setback in precinct 4B;
- concerns in relation to references to ResCode and its relevance to development on larger commercial sites; and
- submissions both for and against introducing a requirement to include public space at the Hawthorn Square site.

The Panel have considered all written and oral submissions and all material presented to it in connection with this matter.

The Panel heard the parties listed below.

Submittor	Represented By
Boroondara City Council	Mr John Rantino of Maddocks
Caydon Property Group Pty Ltd	Mr Ian Pitt SC of Best Hooper, who called the following witnesses: <ul style="list-style-type: none">• Mr Mark Sheppard, Urban Designer, of David Lock & Associates• Mr Andrew Biacsi, Town Planner, of Contour Consultants Aust Pty Ltd.
Hacer Group Pty Ltd	Mr C Townsend SC , Hoey's Lawyers
[REDACTED]	in person
[REDACTED]	[REDACTED]
Bunnings Group Ltd	Mr Richard Umbers of Peninsula Planning Consultants Pty Ltd
S.A.B.A Properties Pty Ltd	Mr Damian Loughnan of Gattini & Partners

Submittor	Represented By
[REDACTED]	in person

All written submissions to the Amendment are listed in Appendix A.

Further directions

At the conclusion of the hearing the Panel requested a copy of the exhibited amendment with the tracked changes to DDO13 and Local Policy proposed by Mr Biacsi in expert evidence. This material was received by email on 20 April 2010.

The Panel requested that the Council confirm in writing its position in relation to:

- the continuing existence of DDO7;
- R1Z land located in Precinct 4B which creates an apparent conflict with the proposed objectives of clause 22.15;
- whether Precincts 2 & 7 are still needed since their provisions appear to have little impact on built form; and
- the apparent anomaly with regard to the property at 3 Manningtree Road where the precinct boundary appears to cut through the site.

The Council's response was received by email on 22 April 2010.

The Panel also requested copy of the shadow analysis prepared in respect of Planning Application No PP10/00042. Contour Consultants provided this to Panel on 20 April 2010.

3. What is proposed?

3.1 The nature of the area

The area subject to the Amendment includes the commercial and residential properties on either side of Burwood Road between Glenferrie Road and St James Park, Hawthorn. It includes West Hawthorn Village, a small neighbourhood centre orientated around Hawthorn railway station and Power Street.

To the north and south are the established residential areas of Hawthorn. Residential properties in Manningtree Road, Lennox Street and Morang Road sharing a boundary with commercial properties in the Burwood Road area are also included in the Amendment.

The subject area has excellent access to public transport with Hawthorn and Glenferrie train stations at either end of the precinct, as well as nearby tram and bus services.

This section of Burwood Road features a diverse building mix of large format buildings accommodating retail, light industrial and warehouse uses interspersed with smaller format retail, commercial and community uses. New residential developments and/or approvals of four storey buildings and higher have consolidated the subject area as a mixed use precinct in recent years.

3.2 Background to the Amendment

The Council commenced preparing the WHUDF in December 2002, to guide future development of the subject area. Significant opportunities for development were identified as part of the preparation of the UDF. The Council outlined an extensive process for community engagement and feedback.

3.3 The adopted West Hawthorn Urban Design Framework

The WHUDF (2006) addresses land from along Burwood Road from Grace Park east to Glenferrie Road. The framework establishes general design guidelines for the entire study area and specific directions for eight precincts within the study area, generally on use and built form. These are:

- Precinct 1 – Offices and Housing;
- Precinct 2: - Hawthorn Station Village;

- Precinct 3: - The West Hawthorn Village;
- Precinct 4A: - Mixed Use North;
- Precinct 4B: - Mixed use South;
- Precinct 5: - Transit Oriented Development;
- Precinct 6: - Glenferrie Road Quarter; and
- Precinct 7: - Established Housing.

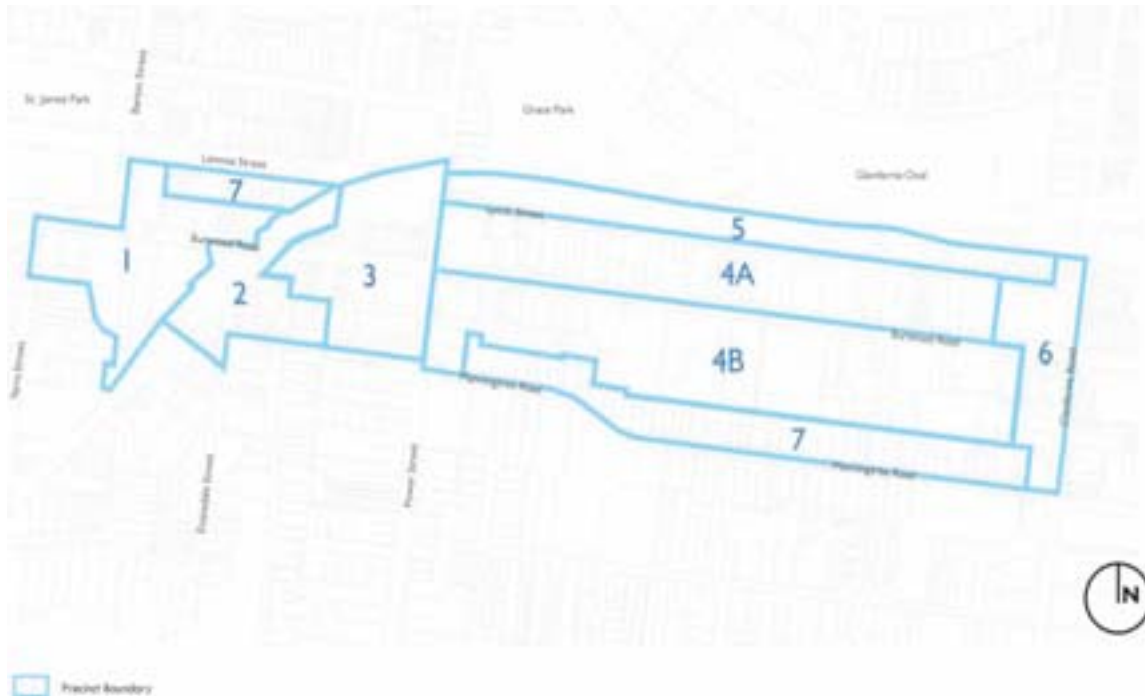


Figure 1 West Hawthorn Urban Design Framework – Precinct Plans

3.4 Details of the Amendment

Amendment C69 translates the directions within the WHUDF into policy and design measures of the Municipal Strategic Framework and a new Design and Development Overlay (Schedule 13).

The Amendment introduces the West Hawthorn Area Local Policy into the Local Planning Policy Framework. It seeks to provide land use and urban design guidelines which will give a clear direction for the Council and to other decision makers, land owners, tenants and prospective investors. The West Hawthorn Area Policy also seeks to provide guidelines for all precincts along the Burwood Road corridor, based on their current and anticipated future role, function and on urban design issues.

The Objectives of the exhibited Policy are:

- *To implement the West Hawthorn Urban Design Framework (July 2006).*

- *To encourage the provision of bulky goods, homewares and office uses and a mix of compatible employment opportunities in retail, commercial and community based uses in appropriate locations.*
- *To recognise West Hawthorn's potential to provide for a diversity of higher density housing opportunities and urban consolidation, particularly in areas that are not encumbered by or proximate to heritage places or have direct abuttal to residential areas.*
- *To ensure active ground level frontages and vibrant street level activity.*
- *To provide community services / facilities that accommodate the current and future needs of the West Hawthorn Community.*

Amendment C69 introduces and applies the Design and Development Overlay - Schedule 13 to the subject area. It creates the requirement to consider specific urban design and built form issues on sites within the Burwood Road corridor. It seeks to ensure that public spaces and residential interfaces are protected from adverse impacts of higher built form.

The Design Objectives of the exhibited Schedule are:

- *To implement the West Hawthorn Urban Design Framework (July 2006).*
- *To ensure new development does not compromise significant view corridors, particularly views of the Hawthorn Town Hall and the Church of the Immaculate Conception.*
- *To encourage built form that does not compromise the amenity of adjacent residential areas and minimises the negative impacts of overlooking, overshadowing, noise and visual bulk.*
- *To ensure landscaped areas at residential interfaces to soften built form.*
- *To encourage buildings built to the street to activate street frontages in business zones.*
- *To maximise water and energy conservation in new development and increase use of renewable energy resources.*
- *To achieve a reduction in waste generated by building occupants that is collected, hauled to and disposed of in landfills.*
- *To ensure that the views of the relevant Road, Water and Sewerage Authorities are considered.*

The requirements for the eight Precincts include either general requirements (that can be varied with a permit) and/or mandatory requirements (that cannot be varied with a permit).

The Amendment makes related changes to the Municipal Strategic Statement sections Urban Design (Clause 21.05) and Commercial Sector (Clause 21.08), to the Office Use & Development Local Policy (Clause 22.08) and to the Retail Centres Local Policy (Clause 22.05).

The Amendment will make the West Hawthorn Urban Design Framework (2006) a Reference Document to the Planning Scheme.

3.5 Post Exhibition Changes

After considering submissions from land holders, the Council, at the Panel hearing, proposed the following changes be made to the Amendment:

- clarify all references in the DDO to clause 55 (ResCode) to specifically refer to clause 55.04 of the Scheme;
- include an additional design objective reading: "To create and reinforce local spaces for passive activity" within 'Precinct 3 – The West Hawthorn Village';
- in Schedule 13 to the DDO under the heading 'Precinct 3 – The West Hawthorn Village' include the following additional general requirements:
 - *At the car park to the rear of Hawthorn Square (124-128 Power Street), new development should not be located within 5.0m of the site's boundary with residential property and this setback should be used as a significant landscape buffer. Limit Building Height adjacent to the 5.0m buffer to 7 metres, with additional height to be out-of-sight when viewed at ground level from neighbouring residential properties.*
 - *Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88 – 114 Burwood Road) as an important local space for passive activity.*
- include the words "Burwood Road" in the second mandatory requirement so that it reads "At the Burwood Road street frontage, the Building Height must not exceed 10 metres..." in Schedule 13 to the DDO under the heading 'Precinct 4A – Mixed Use North'.

4. Planning context

This section of the Report considers the policy context for the Amendment and focuses on the strategic and policy issues. It assesses how the Amendment meets the objectives of the Planning Scheme. The following sections of this Report include a brief appraisal of the State Planning Policy Framework (SPPF), the Municipal Strategic Statement (MSS) and Local Planning Policy Framework (LPPF), and the appropriate zone and overlay controls.

There are a many planning policies that are in some way applicable to the consideration the Amendment. The submissions from the Council and Mr Biacsi's witness statement set out the details of the relevant policies and the Panel notes that other submitters did not take issue with what was put forward in this regard. . Accordingly, the Panel does not propose to set out the details of all the policies that may be relevant; rather, the Panel will refer to them as appropriate.

4.1 Policy framework

4.1.1 State Planning Policy Framework (SPPF)

The following clauses of the SPPF are relevant considerations to Amendment C69:

- Metropolitan development (Clause 12)
- Settlement (Clause 14)
- Energy efficiency (Clause 15.12)
- Medium density housing (Clause 16.02)
- Economic Development (Clause 17)
- Activity centres (Clause 17.01)
- Business (Clause 17.02)
- Infrastructure (Clause 18.01)
- Car parking and public transport access to development (Clause 18.02)
- Design and built form (Clause 19.03)

The Panel agrees with Council's assessment that Amendment C69:

..supports these State policies by encouraging mixed use development including retail, commercial and residential land use within close proximity to principal tram and train routes (and thereby maximizing the advantages and development opportunities of the subject area). The Amendment seeks

to ensure improved urban design of development in the Burwood Road corridor while protecting sensitive interfaces having regard to the variances from precinct to precinct.

4.1.2 Local Planning Policy Framework

Municipal Strategic Statement (MSS)

The following local planning policies are relevant considerations:

Clause 21.02 - Snapshot

Clause 21.04 – Vision

Clause 21.05 – Heritage, Landscape and Urban Character

Clause 21.06 – Environment

Clause 21.07 – Residential Land Use

The policy objectives are:

- *To provide a mix and range of housing types and forms.*
- *To maintain and enhance the City's present degree of residential amenity and high standard of residential development.*

The policy includes strategies to

- *Increase residential development opportunities (including higher density development) in and around commercial centres and other strategic locations.*
- *Minimise the impact of commercial/industrial uses in areas adjoining residential and other sensitive uses.*

The policy seeks to encourage higher density residential development to locate in appropriate locations within and around commercial centres and to encourage a variety of dwelling types and non-traditional housing forms to locate in targeted areas such as above ground floor in mixed use corridors such as Camberwell/ Burwood Road.

The Residential Framework Plan includes the Burwood Road corridor as a mixed use corridor where office, commercial manufacturing and high density residential is encouraged.

Clause 21.08 – Commercial Sector

The policy identifies that with the exception of the Tooronga office development, much of the larger scale office developments are located

either within the Burwood Road/Camberwell Road Corridor or the fringe areas of the large shopping centres.

Relevant strategies include:

- *Accommodate new commercial development in designated commercial areas throughout the City.*
- *Integrate residential uses with commercial activities in select centres.*
- *Comprehensively develop key sites within the City.*

The policy facilitates the creation of mixed use corridors comprising office, industry, and other uses, particularly along Burwood Road and Camberwell Road and encourages appropriate office development in defined areas and precincts (particularly the Burwood/Camberwell Road Corridor, and on the fringes of existing shopping centres).

The Commercial Framework Plan identifies the Burwood Road corridor as *Primary Mixed Activity Corridor (Industry, Office, and Residential)*.

Clause 22.10 – Retail Centres

Clause 21.11 – Infrastructure

Local Planning Policy

The implementation of the MSS is aided by Clause 22.08 – Office Use and Development Policy. Burwood Road, Hawthorn - is identified as a preferred location for new office development.

In relation to building setbacks and design bulk and height relevant policy (22.08.3) includes:

- *Building setbacks*

Be setback in accordance with the recommended setbacks under Clause 55, where site adjoins residential land use to minimise overlooking and overshadowing. (In certain circumstances greater setbacks may be warranted).

- *Design bulk and height*

Encourages building heights to generally reflect the scale of the surrounding commercial uses whilst recognising that new office developments will increase building heights in certain areas.

Promotes a building form which complements the scale, form and appearance of adjoining development.

Generally not exceed four storeys.

In Clause 22.09 – Retail Centres, the West Hawthorn (Village) Neighbourhood Centre is identified as a Medium Convenience Retail Centre.

The future role is to:

consolidate as specialist business support centre in addition to current convenience and specialist retail role.

4.2 Planning Scheme Provisions

4.2.1 Zones

The land along the majority of the Burwood Road frontage is contained within the Business 2 Zone with adjacent Residential 1 Zone interfaces. There are some Public Use Zones interspersed throughout the subject area.

4.2.2 Overlays

There are two Design and Development Overlays (DDO 7 and DDO 12) affecting parts of the subject area.

DDO7 applies to 5-9 Burwood Road

DDO12 applies over most of Precinct 3 of the WHUDF. It seeks to ensure that the height of new development is compatible with the character of the West Hawthorn Village centre. . Generally the maximum building height must not exceed 11 metres. . The requirements of this overlay cease to have effect after 30 September 2010.

In October 2004, the Minister for Planning introduced interim planning controls to limit height in Neighbourhood Activity Centres identified by *Melbourne 2030*. The interim controls were introduced while structure planning or other strategic reviews occurred to establish the strategic basis for permanent arrangements. The DDO was extended, pending the processing of Amendment 69 to introduce permanent planning controls.

Three other Overlays affect various parts of the subject area:

Heritage Overlay

Amendment C99 proposes to extend the Heritage Overlay over almost all the remainder of properties in Precinct 7 and most properties in Precincts 3 and 6.

Environmental Audit Overlay

Extensive parts of Precincts 4A & 4B are covered by this Overlay, reflecting former industrial uses.

Special Building Overlay

Small areas of Precincts 1, 2 4A & 4B are identified in the Boroondara Planning Scheme as being liable for inundation by overland stormwater flows.

5. Identification of issues

5.1 Ministerial Directions

The Amendments are affected by the following Ministerial Directions:

- Direction No 9 – Metropolitan Strategy;
- Direction No 11 – Strategic Assessments of Amendments;
- Form and Content of Planning Schemes.

Ministerial Direction No 9 – Metropolitan Strategy

The Direction requires that when preparing a planning scheme amendment, a planning authority must have regard to the Metropolitan Strategy (*Melbourne 2030*).

The Strategy encourages a concentration of development around Principal and Major Activity Centres and at strategic development sites.

The Burwood Road, West Hawthorn corridor is not identified as an Activity centre nor a strategic redevelopment site under *Melbourne 2030*. The corridor is located between the West Hawthorn Neighbourhood Centre and the Glenferrie Major Activity centre. The Council notes in the Explanatory Report for Amendment C69 that the Burwood Road corridor is however *an advantageous location for mixed use development due to the presence of large lots and good access to the Principal Public Transport Network*.

The Amendment will assist in the implementation of *Melbourne 2030* through the identification of areas where more intensive development would be appropriate.

Ministerial Direction No 11 – Strategic Assessments of Amendments

The purpose of the Strategic Assessment Guidelines is to provide a consistent framework for the evaluation of a proposed planning scheme amendment and the outcomes it produces.

The Panel has considered the response to the Strategic Assessment Guidelines included in the exhibited Explanatory Report for the Amendment, together with submissions on the guidelines from the Council. The Panel endorses the Council's response and considers that no issues are raised by an assessment against the Strategic Assessment Guidelines.

Ministerial Direction: Form and Content of Planning Schemes

This Ministerial Direction applies to all planning scheme amendments. The form and content of Amendment C69 is consistent with this direction.

5.2 Summary of issues

Issues raised in submissions

From the submissions to the Amendment, the Panel identified a number of key issues that need to be addressed. . These can be summarised as follows:

- Should there be mandatory controls in the amendment?
- What should be the controls?
- How should the interface with existing residential interfaces be managed?
- Should there be a requirement to include public space at the Hawthorn Square site?
- Should Lynch Street be subject to the same street wall heights as Burwood Road?

Conditions imposed as part of the authorisation of the Amendment

On 5 December 2007, the Minister provided authorisation subject to the following conditions:

The Design and Development Overlay must not refer to building heights of less than 9 metres (as outlined in the Advisory Note – Interim height limits for neighbourhood centres – November 2004).

All reference to mandatory building heights contained in the tables of Design and Development Overlay 11 must be included under the heading, General Requirements, other than the reference to building heights, must not exceed 16 metres, which should remain under the heading Mandatory Requirements.

In Clause 1.0 of Schedule 11 to the Design and Development Overlay, delete the last Design Objective and replace with: To ensure that the views of the relevant Road, Water and Sewerage Authority are considered.

In Clause 2.01 of Schedule 11 to the Design and Development Overlay, delete the first dot point under ‘A permit application must be accompanied by the following as appropriate’.

The Council asked the Minister to reconsider the removal of the mandatory setback controls and some mandatory height controls. . Council also requested

amendments to the WHUDF by changing the preferred outcome of 3 sites – the Hawthorn Square site, the Car Park site and the Power Street site.

In relation to an area of open space at the front of the Hawthorn Square Site, Council noted that a typographical error existed in the WHUDF. Council emphasised "*it is very much intended that the area in front of Hawthorn Square remains a space for passive activity*".

On 13 January 2009, the Minister provided a second conditional authorisation agreeing to Council's request to keep the mandatory setback and height controls. Accordingly, conditions 1, 3 and 4 remained the same and revised condition 2 as follows:

All reference to mandatory building heights contained in the tables of Design and Development Overlay 11 must be included under the heading, General Requirements, other than the requirements which apply to precincts 1, 4A, 4B and 6. These requirements may remain under the heading Mandatory Requirements.

The Minister did not agree to the requested Amendment concerning the outcome of the Hawthorn Square site, the Car Park site (124-128 Power Street) and the former Elgin Bottle Shop site (108 Power Street).

Other issues identified in the Hearing

Having considered the submissions and reviewed the documentation the Panel has identified the following issues in addition to those raised in submissions:

- Is it necessary to retain the existing DDO7 in the planning scheme should Amendment C69 be approved?;
- inconsistency between the proposed clause 22.15 (purporting to encourage bulky goods retailing in the Precincts) and the fact that the bulky goods retailing is prohibited in the Residential 1 Zone; and
- Is it legitimate to apply more restrictive height and setback controls on commercial development in a long-standing Business 2 Zone at the interface with a Residential 1 Zone than those provided in ResCode for residential development?

5.3 Issues dealt with in this Report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. . In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites and surrounding areas.

This Report deals with the issues under the following headings:

- Strategic justification;
- Should the height and set-back provisions be mandatory?
- What height and set-back provisions should apply?
- Solar access to Burwood Road;
- Requirement to include open space at Hawthorn Square; and
- The form of the Amendment and the drafting of the proposed planning scheme provisions.

6. Issue chapter

6.1 Is the Amendment strategically justified?

6.1.1 What is the issue?

There was general and broad support for Amendment C69. The issues relate to specific Precincts and to specific provisions.

6.1.2 Policy context of the issue

The subject area is identified as forming part of the *Camberwell/Burwood Road Mixed Activity Corridor* in the Boroondara Planning Scheme.

The Local Planning Policy Framework identifies this area as one of three key precincts within the municipality where office development is preferred. It is also a precinct where higher density residential development is promoted.

6.1.3 Evidence and submissions

At the hearing Mr Rantino submitted that:

..Council considers Amendment C69 is a key step in implementing the West Hawthorn UDF, which was the culmination of a long and comprehensive open process guided by a representative community Working Group and underpinned by comprehensive technical reports.

Mr Rantino indicated that there have been four substantial developments either constructed or approved within the subject area since the UDF process commenced in 2004. These are the Bunnings site, the Caydon/Mirvac site, 109-133 Burwood Road and 108 Power Street. He submitted that this was evidence of the attractiveness of the subject area for mixed use development. The Council's concern is *the appropriate protection of private amenity and enhancement of the public realm.*

Mr Townsend SC, for Hacer Group Pty Ltd, contended that there was no strategic basis for specific controls. He considered that there was too great a leap from the WHUDF to mandatory controls over built form. Similarly Mr Pitt SC, for Caydon Property Pty Ltd, submitted that the prescriptive provisions sought by Amendment C69 and the proposed constraints on development in Precinct 4A do not have a strategic basis founded in the WHUDF or in urban design principles.

6.1.4 Discussion

Amendment C69 reinforces both the Residential Framework Plan at clause 21.07 and the Commercial Framework Plan at clause 21.08 by identifying the subject area as a key location for mixed use development.

The part of West Hawthorn which is the subject of Amendment C69 is undergoing significant change in both land-use and built form. There are a number of large sites along Burwood Road suitable for office, retail and residential development.

None of the submitters queried the need or desire for a planning framework for the area. The Panel agrees with the Council that this is indeed an area which is, and will continue to be, the subject of substantial change. A strategic framework is appropriate to guide land use and development in this area as the built form is transformed.

The Panel finds that the subject area, particularly Precincts 4A and 4B along Burwood Road, between Glenferrie Road and Power Street, is well suited for redevelopment of higher built form. We find it unusual in this respect. Similar areas in other inner municipalities have a much finer grain, with problematic interfaces with adjoining residential areas. Large parts of Precincts 4A & 4B have few of these impediments. The subdivision pattern includes a number of large allotments. Few of these have a direct interface with existing residential development. The precincts are located on the edge of the Glenferrie Major Activity Centre with excellent access to a range of public transport services.

In the exhibited Amendment the development potential for key sites in Precincts 4A & 4B is constrained by a number of mandatory requirements which seek to manage perceived constraints such as amenity, heritage, image and the relationship of the interface with existing residential areas. The major issue of contention at the Panel Hearing was in relation to the constraints which some of the proposed local policy provisions and some of the requirements in DDO13 were seen by some submitters as imposing an unwarranted restriction on the development potential of the area.

The issues in relation to specific and mandatory provisions in DDO13 are considered in subsequent sections.

The West Hawthorn Urban Design Framework

The WHUDF refers to opportunities for significant change in Precincts 4A & 4B and in parts of Precincts 1, 3 and 6. It identifies *preferred* built form outcomes for each of the precincts.

The planning provisions proposed under Amendment C69 do not appear to fully translate this vision; instead they propose a number of mandatory requirements that would constrain design responses, particularly in Precinct 4A, that may otherwise achieve the vision the WHUDF. The Council contended that a key rationale for these mandatory requirements was the need to protect solar access to the southern footpath of Burwood Road. The Panel considers that this objective is itself ambiguously worded in DDO13 and should be more explicitly expressed in its own right.

Precincts 1, 4A & 4B

Precinct 1 – Offices and Housing

- Predominantly office development; buildings are generally four storeys. Abuts residential areas to north and west.

Precinct 4A: - Mixed Use North

- Predominantly office, bulky goods and some light industrial uses.
- Identified as an area for significant change.

Precinct 4A includes the property owned by Caydon Property Pty Ltd.

Precinct 4B: - Mixed use South

- Large sites with office development and bulky goods uses.
- Interface with Manningtree Road residential area on south.
- Identified as an area for significant change.

The Panel noted that a number of properties zoned Residential 1 are located in this Precinct.

Precinct 4B includes the two properties owned by Hacer Group Pty Ltd.

Precincts 2 & 7

Precinct 2: - Hawthorn Station Village

- Residential area of Victorian character and heritage significance.

Precinct 7: - Established Housing

At the Hearing the Panel sought clarification about whether Precincts 2 & 7 are still needed since their provisions appear to have little impact on built form. In his letter of 22 April 2010 Mr Rantino confirmed that the Council considers that the content of DDO13 is relevant to Precincts 2 and 7:

...Having said that, Council recognises that the relevant content of the DDO13 is modest when compared to its application to the other precincts in the West Hawthorn area.

Mr Rantino drew attention to the 'General Requirements' in the 'All Precincts' section at page 2 of 10 of the DDO13. This section is relevant to assessing future applications in Precincts 2 and 7. The Council considers that they are relevant as they set out requirements for the treatment of facades, setbacks and vegetation and promote environmentally sustainable design.

..On this basis, Council considers there is good reason for Precincts 2 and 7 to be covered by the DDO13.

However, overwhelmingly these requirements relate to commercial and mixed use development. Even the requirements in relation to facades and setbacks referred to in the Council's response relate more to impacts of commercial or mixed use development. The Panel also notes that a significant number of the properties are presently under a Heritage Overlay and that the majority of the remainder are proposed to be placed under a Heritage Overlay (as identified in the Hawthorn Heritage Precinct Study 2009) by Amendment C99 to the Boroondara Planning Scheme. In the meantime, residential amenity within the precincts is covered adequately by the existing provisions of Boroondara Planning Scheme, particularly clause 55 and in local policy.

It was understandable that these two precincts should have been included in the West Hawthorn Urban Design Framework study, since they are adjacent to commercial areas identified for significant change. However, the Panel considers that the proposed provisions in DDO13-2 and DDO13-7 do not appear to assist either in formulating a design or facilitating decision-making for dwellings in these two precincts.

The Panel does not consider that there is a strategic basis for the inclusion of Precincts 2 & 7 and recommends that these two precincts be deleted from Amendment C69.

Precinct 3: - The West Hawthorn Village

- Core retail neighbourhood centre.
- DDO12 applies over most of Precinct 3.
- Large number of properties proposed for Heritage Overlay (Amendment C99)
- 2 potential development sites:
 - 'Hawthorn Square' at 88-114 Burwood Road
 - Car park site at rear of Hawthorn Square, 124-128 Power St.

The amendment makes reference to a third development site, the former Elgin Inn Bottle Shop site, 108 Power Street. However a major mixed use development has recently been completed on this site. The Panel

concludes that the specific reference to this site should be deleted from Amendment C69.

The Panel agrees with the vision in the WHUDF for this precinct. Development should be done in such a way that it respects the built form character and heritage of the area. However, the two specified potential development sites are appropriate for development of up to five storeys as envisaged by the WHUDF

Precinct 5: - Transit Oriented Development

- Thin strip of land between Lynch Street and railway embankment.
- Mostly office and light industrial uses.
- Few constraints on development

The Panel concluded that Precinct 5 has the capacity to accommodate substantial change. Although there are limited areas available for development, they provide opportunities for innovative design responses on these north facing sites. There are few likely amenity impacts on surrounding land uses.

Precinct 6: - Glenferrie Road Quarter

- Part of Glenferrie Activity Centre, core retail area.
- Includes a number of buildings proposed for Heritage Overlay (Amendment C99).

The Panel notes that a draft Structure Plan has been completed for the Glenferrie Road Major Activity Centre. Precinct 6 is an integral part of the Glenferrie Activity Centre; however, this area was excluded from consideration because it forms part of the WHUDF, which preceded it. We note that the draft Glenferrie Structure Plan has yet to be adopted by the Council and therefore carries little weight in decision making. It is interesting to note, however, that it takes a different position to the WHUDF on matters such as street wall height and setbacks; on setbacks to residential interfaces and on floor to floor heights.

Nevertheless, the Panel considers that there is not sufficient reason to defer consideration of Precinct 6 as part of Amendment C69.

The Panel agrees with the vision for built form in the WHUDF and the exhibited Amendment for this precinct.

6.1.5 Conclusions and recommendations

The Panel concludes that:

The concept of an urban design framework for the subject area to provide guidance on how substantial change should be facilitated and managed was generally supported by all parties and is endorsed by this Panel.

Amendment C69 represent a sound and orderly approach to planning for the West Hawthorn area. This area is identified in the MSS and LPPF as an area of significant change. The Amendment is underpinned by a significant strategic study, the West Hawthorn Urban Design Framework, which has been adopted by the Council.

The Council indicated that it stands ready willing and able to listen to ways that the Amendment can be improved. In subsequent sections the Panel will be recommending a number of ways that the Amendment could be improved.

The Panel recommends:

Precincts 2 and 7 should be deleted from Amendment C69.

6.2 Should the height and set-back provisions be mandatory?

6.2.1 What is the issue?

The amendment proposes mandatory height and setback requirements for Precincts 1, 4A, 4B and 6 in DDO13. A number of submitters were strongly opposed to any mandatory provisions in the amendment.

6.2.2 Evidence and submissions

There were a number of submissions about this issue, and two expert witnesses addressed the Panel. Their concerns related to Precincts 4A and 4B.

A submission by Saunders Architecture objected that the mandatory setback requirement in these precincts is unjustifiable and unduly restrictive, and that a mandatory building height of 16 metres in Precinct 4A is inappropriate. Other submissions agreed, arguing that because Precinct 4A is located adjacent to the train line and well served by both trams and trains to both east and west, heights should not be mandated.

Mr Townshend SC, appearing for Hacer Pty Ltd, the owners of 6 – 8 Elizabeth Street (Precinct 4B) said that the ‘experience’ of the bulky goods retail area of Burwood Road does not warrant a mandatory prescriptive envelope such as the one proposed. He contended that there was no evidence of a detailed analytical basis underpinning the mandatory controls, nor had the Council demonstrated that no departure would be warranted. Any departure from the basic notion of the performance based and policy driven VPPs requires a solid strategic basis which this amendment, in his view, lacked.

He put to the Panel that its role is not the consideration of general principles relating to mandatory controls, but rather, of the particular cases of the precincts where Council seeks to impose mandatory requirements. In his submission, Burwood Road is a clear example of where mandatory controls would unnecessarily erode development potential.

Mr Pitt SC, appearing on behalf of Caydon Property Pty Ltd, the new owner of 291-311 Burwood Road, called expert planning and urban design evidence.

In his expert planning evidence, Mr Biacsi noted that a current permit (Permit No: PP08/00412) was issued at the direction of the VCAT on 20 March 2009 for the use and development of a 5 storey building comprising offices and restricted retail premises. The approved building does not meet the mandatory requirements of the proposed DDO13. It exceeds the proposed street frontage height and the proposed overall maximum height. Neither does it comply with the proposed setbacks. Caydon Developments Pty Ltd has recently lodged a new application for a 7 storey building on this site.

Mr Biacsi called for a more flexible and less prescriptive approach to height and set-back provisions. In particular, he considered that Precinct 4A is:

..one of a limited number of areas within Boroondara that is free from constraints and nominated as preferred location for more intensive Development.

His view was that:

Overall, I consider all mandatory controls should be removed from the proposed DDO13; that if there is to be a height specified for Precinct 4A, it should be more akin to that already supported by the Tribunal; that the overall height should be discretionary; that the street wall should have a discretionary height in the order of 12-14 metres; and that there should be no mandatory setback specified for levels stepping back above the street wall subject to certain performance parameters referencing the streetscape impact and sunlight penetration along Burwood Road.

Mr Sheppard supported this position. In his expert evidence for Caydon Properties, he contended that:

In general terms, the position stated by Panels is that mandatory height controls are only appropriate in exceptional circumstances. The Panel for Melbourne Planning Scheme Amendment C20 identified these circumstances as:

- A strategic assessment or study has identified that in the vast majority of cases buildings not in accordance with the building height or other requirements would detract from the essential character of the area or other built form outcome the design objectives are seeking to achieve; and*
- In the vast majority of cases such buildings would not be supported by Council after application of its design objectives and any relevant guidelines.*

Mr Sheppard did not consider that these circumstances exist in the DDO13 area.

The UDF does not seek to preserve the existing character of this precinct. On the contrary, it identifies the potential for “consolidation and intensification”. The only objective for this precinct with a direct implication for building height is “To protect and enhance public realm amenities”. However, this can be achieved by a range of different height and setback combinations.

Mr Sheppard noted that a number of permits in the area have already been granted that exceed the exhibited height controls.

In relation to street wall height controls Mr Sheppard quoted the Panel report for Amendment C58 to the Stonnington Planning Scheme (pg 50) which stated: *The Panel believes that a street wall height should be maintained as a discretionary provision to provide more scope for innovation.* He argued that the same principle should apply here.

6.2.3 Council Response

In summary, the Council considers that the mandatory requirements specified in the amendment:

- are critical to provide the level of protection and certainty necessary to deliver the objectives of the WHUDF;
- provide certainty for the development industry and abutting residential landowners; and

- assist in delivering buildings of a human scale at street level, are of a height appropriate to their context and are appropriately setback where adjoining sensitive residential interfaces.

The Council further considers that mandatory height controls, when decoupled from setback requirements, will result in dark, canyon-like spaces with limited access to sunlight on the main pedestrian thoroughfare, a location where the Council is seeking to create a high quality pedestrian environment.

Mr Rantino, for the Council, submitted that the proposed mandatory heights and setbacks will:

- *Ensure appropriate solar access along the length of Burwood Road;*
- *Ensure consistency of form along the Burwood Road corridor;*
- *Manage visual bulk when viewed from nearby streets;*
- *Ensure the townscape profile of Burwood Road responds to context;*
and
- *Ensure the interfaces with residential edges are suitably handled.*

He drew the Panel's attention to a number of Panel reports, in particular to Bayside C46 and Queenscliffe C7 where the Panel could see no circumstances which would warrant an application above the specified maximum height.

Indeed, by introducing flexibility, it would inevitably lead to this matter being tested time and time again at Council and at VCAT. Land is so scarce and expensive at Queenscliffe and views so sought after, that the Panel believes that a relaxed height regime would give rise to many attempts to "push the envelope".

In relation to the pursuit of mandatory height controls, the Bayside Panel commented that:

Provided planning has been undertaken in sufficient detail to take account of all the strategic objectives at both the local and metropolitan levels and develop an urban form that most satisfactorily meets these objectives ...at a level of detail that can justifiably specify building heights and setbacks, then mandatory controls would be appropriate.

Mr Rantino noted that Boroondara does not propose blanket mandatory controls. Rather, the amendment carefully combines mandatory and discretionary controls to take account of variations between precincts. Council considers that there is a clear nexus between key statements in the WHUDF relating to urban form and the street wall and setback requirements sought.

██████████, members of the working group which undertook preparation of the WHUDF, appeared before the Panel and submitted that mandatory height and setback provisions are needed to provide certainty and consistency in the planning process.

6.2.4 Discussion

The Panel was referred to a number of panel reports where mandatory versus discretionary controls were discussed including:

- Amendment C20 to the Melbourne Planning Scheme;
- Amendment C7 to the Queenscliffe Planning Scheme;
- Amendment C46 to the Bayside Planning Scheme;
- Amendment C2 to the Bayside Planning Scheme;
- Amendment C73 to the Kingston Planning Scheme;
- Amendment C33 to the Manningham Planning Scheme;
- Amendments C81 & C92 to the Darebin Planning Scheme;
- Amendment C75 to the Stonnington Planning Scheme; and
- Amendment C99 to the Yarra Planning Scheme.

Whereas Council considers mandating heights and setbacks in some precincts an essential tool in achieving its urban design aims, the submitters, particularly in relation to Precincts 4A & 4B, think that Council's concerns are better addressed as part of the consideration of individual permit applications.

The Panel accepts that height and setback controls are contemplated in the VPPs and that DDOs are an appropriate mechanism for their implementation. We also accept that mandatory controls can be justified and supported in certain situations. To apply the principles set out by the Bayside C2 Panel, we should consider whether:

- the controls are soundly based and the outcome of thorough strategic research;
- the controls have been framed in the context of built form outcomes;
- the mandatory controls are the exception and will achieve a clear built form outcome, as discretionary controls are the preferred way to deliver a performance based outcome.

The proposed controls are based on the WHUDF. In Precinct 4A, an area identified for substantial change, the design objective specifies "medium scale", where the potential would seem to exist in some locations for buildings of higher scale to be built without adverse amenity impacts. The general "preferred outcomes" for street wall height are derived from the maintenance

of a street width to wall height of 1:0.5, the setbacks above the street wall so that they are “out of sight” when viewed from an eye height of 1.7m directly opposite.

The other generator of mandatory height controls along Burwood Road was the maintenance of sunlight to the footpath on the south side of Burwood Road. Council demonstrated at the hearing that the mandated heights specified would meet its sunlight objective at the winter solstice. Solar access is further discussed in section 6.4 below.

Submissions and our own inspections of the area have convinced us of the uniqueness in Boroondara of Precinct 4A. It has no direct residential abuttal, the railway reserve and parkland to the north and commercial development to the south in Precinct 4B. In this, the area is most unusual and we agree with the Tribunal’s observation in [2005] VCAT 1611 that *“I suspect that the debate in 10 to 15 years will not be about 4, 5 or 6 storeys but about 14, 15 and 16 storeys along this strip”*. Indeed we see that the intensification of this area, earmarked for substantial change, will play an important role in relieving pressure for development within the surrounding highly valued residential areas of Boroondara. The WHUDF identified the premium views to the north as reinforcing the precinct’s value as a good location for higher density residential development. It identifies Precincts 4’s potential for consolidation and intensification. Part of the opportunity to achieve this potential lies in the large landholdings along Burwood Road, and we consider that this potential should not be unduly constrained.

The recently constructed buildings on either side of Power Street both demonstrate innovative and appropriate built form. We are not convinced that Burwood Road is an area where prescribing built form by applying mandatory height controls will allow the vision as expressed in the WHUDF to be more realised.

We also consider that a requirement aimed at ensuring that a building is ‘out of sight’ from directly opposite in an area characterized by passing traffic and oblique views will not achieve the ‘urban design outcome’ sought.

6.2.5 Conclusions and recommendations

The Panel concludes that in all the instances discussed above, so long as Council’s requirements are clearly spelt out in design objectives, and the decision guidelines relating to the outcomes being sought, then there is little convincing rationale for denying the architects of buildings the opportunity for innovation.

The analysis provided in WHUDF does not provide a sufficient justification for requiring that there should never be a departure from the nominated heights or setbacks. Each site needs to be assessed on a site by site basis.

There is a leap from the aspirations of the WHUDF direct to specific mandatory controls that is not sufficiently justified. The Council has not demonstrated a benefit that cannot be met by a discretionary control. As a general proposition we consider that there should be discretion unless there are good reasons for removing it.

The Panel recommends:

All of the controls in DDO 13 should be expressed as discretionary controls.

6.3 What height and set-back provisions should apply?

6.3.1 Evidence, submissions and discussion

Street Wall Heights

Mr Biacsi contended that the heights are derived from theoretical floor to floor heights which fail to acknowledge varied ceiling requirements for different uses.

With regard to the assumptions made in the WHUDF about floor to ceiling heights, Mr Sheppard stated that:

a typical bulky goods outlet requires a ceiling height of approximately 4.5–5m, and offices require ceiling heights of approximately 3-3.5m. Therefore, a five storey bulky goods and office building, as envisaged by the UDF, would equate to a building over 20m in height, allowing for structure and services. This far exceeds the mandatory 16m height limit proposed for this precinct. It also calls into question the appropriateness of the 10m height limit for development on the front boundary.

In addition, Mr Sheppard considered that an additional 0.5 metre should be allowed per floor for building services.

This issue becomes significant because the exhibited provisions in the exhibited DDO13 are expressed in metres. However, in the WHUDF the preferred outcomes for built form were generally expressed in storeys - 5 storeys for areas identified for substantial change and 3 storeys for street wall heights. This was translated in the exhibited amendment as a 16 metre height limit in Precincts 1, 4A, 4B and 6 and the street wall height in Burwood Road as 10 metres.

The Panel notes that the WHUDF expresses maximum building heights as “*indicative only*” (page 15). We do not go as far as Mr Sheppard in his belief that this implies the appropriateness of discretionary height controls. Clearly mandatory height controls are intended by the Council. However, they are based on assumptions about the number of stories.

In the *Preferred Outcomes* section for each of the Precincts, the WHUDF uses the following categories:

- *Low built from up to 2 storeys*
- *Medium built form up to 5 storeys*

These building heights are indicative only. They have been defined assuming a 4.0 metre floor to ceiling height at the ground level and 3.0 metre floor to ceiling height at upper levels (page 15).

We agree with the expert evidence provided by Mr Sheppard that these floor to ceiling heights appear inadequate. It is not necessary for the Panel to be definitive about floor to floor heights, since we have previously rejected the notion of mandatory height limits. However, it is not unreasonable to provide some clarity about preferred built form outcomes in the provisions of DDO13.

The current permit (Permit No: PP08/00412) issued at the direction of the VCAT on 20 March 2009 for the Caydon property at 287-311 Burwood Road is instructive. It authorises a 5 storey building comprising offices and restricted retail premises. This five storey building has a height of 22 metres. The street wall has a height of 13.4 metres providing for three storeys.

Some flexibility is required to ensure that the intended uses and unforeseen circumstances can be accommodated in future development.

A ceiling height in the order of 4 metres is appropriate for bulky goods retailing and a ceiling height in the order of 3.5 metres is appropriate for offices to allow for good quality design responses. We accept Mr Sheppard’s proposition that some provision should also be allowed per floor for building services in the calculation of floor to floor heights. In this case the Panel is of the view that a preferred 12 metre street wall height along Burwood Road would adequately reflect the vision of the WHUDF, subject to a more specific provision to protect solar access along the southern footpath of Burwood Road.

The proposed height limit at street frontages in the exhibited DDO13 implies application to all street frontages, whereas the WHUDF only seeks such a limit at the *front boundary line*. Mr Rantino did clarify this matter at the Panel hearing and confirmed that this provision is intended to apply only to the Burwood Road street frontage.

The Panel recommends that the provisions of DDO13 should be amended accordingly.

Preferred Maximum Heights in Precinct 4A.

This was the subject of submissions by Mr Pitt for Caydon Property and expert evidence from Mr Biacsi and Mr Sheppard.

Precinct 4A is the area with the fewest constraints on potential development and most suited to significant change.

The WHUDF expresses a preferred built form outcome of 5 storeys for this precinct. The Panel notes that Council officers did recommend development of 7 storeys for this precinct, but this recommendation was not accepted by the Council.

The Design Objectives for this precinct in the exhibited amendment acknowledge that this precinct *should promote a high degree of design flexibility and can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.*

Having said that, it is not unreasonable to provide an expectation of a preferred height for the precinct having regard to the vision of the WHUDF.

The Panel considers that 7 storey built form would be a reasonable preferred outcome for this precinct subject to the achievement of solar access objectives for the southern footpath of Burwood Road and protection of the amenity of adjacent residential land uses. This could translate into a discretionary standard in the order of 22 metres for mixed use development.

Preferred Maximum Heights in Precincts 1, 4B, 5 & 6

The exhibited Amendment specifies a 16 metre height limit for all or part of these precincts. This was intended to translate a preferred built form outcome in the WHUDF of 5 storeys.

These four precincts are more constrained than is Precinct 4A, by adjoining residential uses, heritage and potential overshadowing. At the same time and for the same reasons outlined above, the Panel considers that some flexibility is required to ensure that the intended uses and unforeseen circumstances can be accommodated. This could translate into a discretionary standard in the order of 18 metres for mixed use development.

Upper Level Set-backs

Mr Biacsi opposed the requirement for a 1 metre building setback for every 0.5 metres of height above the street wall maximum of 10 metres. He considered that it appeared to have been derived from a desire to not see upper levels from the opposite side of the road and to maintain sunlight to the southern footpath of Burwood Road.

Mr Sheppard considered that the street wall should maintain its visual pre-eminence. Upper levels could be visible, but should not dominate. He considered that the principle of a visually pre-eminent street wall height was not so sensitive as to require upper levels to be “out of sight” when viewed from the street. He proposed that the DDO should simply require upper levels to be set back sufficiently from the ‘street wall’ so as to maintain its visual dominance when viewed from within the street, whilst also meeting the solar access objective.

The Panel agrees that upper level setbacks appear to have been determined by the need for buildings to be ‘out of sight’. We do not agree that this is a reasonable or necessary outcome for development in a Business 2 Zone. We agree with the expert evidence of Mr Sheppard that the street wall should be dominant. Beyond that there is no compelling argument for requiring buildings to be ‘out of sight’.

The Panel concludes that there should be no mandatory setback specified for levels stepping back from the street wall subject to certain performance parameters referencing the streetscape impact, the maintenance of the visual dominance of the street wall when viewed from within Burwood Road and sunlight penetration along Burwood Road.

We consider that it is not unreasonable to provide an expectation of a preferred setback for built form at the Burwood Road frontage having regard to the vision of the WHUDF. This could be expressed as a discretionary standard of a 6 metre setback from the discretionary street wall height of 12 metres in Precinct 4A where higher built form is likely and where there is an objective to ensure solar access to the south side of Burwood Road.

In all other precincts, where built form is likely to be of a lesser scale, a discretionary setback of 5 metres from the street wall would be appropriate.

Issue of Residential interfaces

The Council seeks some restraint to the rear of sites on the southern side of Burwood Road to manage the *threat of visual bulk, mass and related overshadowing impacts*.

The Amendment proposes particular setback controls in Precincts 1, 3 and 4 B which are more stringent than ResCode, but Mr Rantino argued that they are warranted due to the special residential qualities of the residential properties. Amendment C69 proposes a mandatory 5 metre setback from the interface boundary. The wall height at that point and the upper level setbacks are capable of being varied *where a sound case can be advanced*.

Mr Loughnan, appearing for Gattini & Partners, queried the more onerous setback provisions in the Amendment compared to those in clause 55 for residential development.

██████████, a resident of Manningtree Road, appeared before the Panel and expressed concern about potential loss of solar access to the rear gardens of Manningtree Road properties, should the exhibited provisions of Amendment C69 be varied to allow greater height or lesser setbacks.

Mr Umbers for Bunnings submitted that the Bunnings development has achieved a built form outcome consistent with the objectives of DDO13 in Precinct 4B, without applying a mandatory 5 metre landscaped setback to the abuttal with the residential zone. *Bunnings is concerned that the amendment in its current form will limit potential expansion on the subject site and perhaps onto adjoining land sometime in the future.*

Mr Rantino made reference to the *Guidelines for Higher Density Residential Development*. Objective 2.7 is *To ensure visual impacts to dwellings at the rear are appropriate to the context*. The Design Suggestion 2.7.1 is *Consider visual impacts to dwellings at the rear are appropriate to the context*. The intent is to respect the character at the rear of buildings.

Specifically, in relation to one of the sites identified for redevelopment in Precinct 3, Mr Rantino for the Council proposed the following changes be made to the Amendment:

At the car park to the rear of Hawthorn Square (124-128 Power Street), new development should not be located within 5.0m of the site's boundary with residential property and this setback should be used as a significant landscape buffer. Limit Building Height adjacent to the 5.0m buffer to 7

metres, with additional height to be out-of-sight when viewed at ground level from neighbouring residential properties.

This response is the same as proposed in Amendment C69 for other residential interface areas.

Mr Townsend SC, made reference to the 'Edge Condition Principle', in reference to reasonable expectations for controls on the other side of the fence where the land is in a different zone. He argued that there is nothing new in having a zone boundary between the R1Z and the B2Z. He contended that there is no justification for introducing requirements in a B2 zone that are more onerous than ResCode requirements in a R1 zone.

Discussion

The Panel accepts that the interface between a Business 2 Zone and a Residential 1 Zone does need to address residential amenity, but also needs to acknowledge the purpose of the Business 2 zone, which is to accommodate commercial and office development. The zone provisions that apply to the land to be affected by DDO13 direct that the interface to residential areas needs to be addressed in any application.

In clause 22.08-3 (Office Use and development Policy) it is policy that new office development maintains existing residential amenity of adjacent and abutting residential areas. Development should be of a high quality, particularly those sites which have a residential interface.

In general, buildings should be setback in accordance with the recommended setbacks under Clause 55, where a site adjoins residential land use to minimise overlooking and overshadowing. ResCode does not require new buildings to "reduce visibility of upper levels" only that visual bulk be assessed according to objectives and standards of Clauses 54 and 55.

Again, the setback requirements for residential interfaces in DDO13 appear to have been determined by the need for buildings to be 'out of sight'. The Panel does not agree with this principle. The exhibited provisions apply to land in a Business 2 Zone and areas designated for significant change.

The Panel concludes that the major element restricting development in these locations is the need to ensure that the amenity impacts of higher built form on the abutting residential areas to the north are not unreasonable.

We accept that assessing visual bulk using ResCode standards is acceptable for development up to 3 storeys in height. Above this, transcribing ResCode standards does not necessarily result in reduced visual bulk. To guide

development over three storeys the DDO can specify that consideration should be given to Clause 52.35 where the development is not residential. This ensures that an urban context report considers inter alia:

- *The location of private open space of surrounding properties and the location of trees, fences and other landscape elements.*
- *Solar access to the site and to surrounding properties.*

Further, clause 19.03 of the Boroondara Planning Scheme already specifies that

Development should achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.

We see no reason to duplicate this requirement.

The Amendment makes reference to the interface at the 'rear' of properties on precinct 4 B. Mr Rantino clarified that it was the Council's intention that the provision dealing with this interface issue was intended to apply to all residential properties abutting Precinct 4 B, not just those at the rear. The Panel accepts this clarification and recommends that the provisions of DDO13 be amended accordingly.

6.3.2 Recommendations

The Panel recommends:

The discretionary street wall height at street frontages should apply only to the Burwood Road street frontage of any site.

The discretionary maximum height for buildings in Precinct 4A should be 22 metres.

The discretionary maximum heights for buildings in Precincts 4B & 5 should be 18 metres.

The discretionary upper level setback should a minimum of 6 metres from the discretionary street wall height of 12 metres at the Burwood Road frontage in Precinct 4A.

The discretionary upper level setback should a minimum of 5 metres from the discretionary street wall heights in all other precincts.

In DDO13, the following Design Objectives should be added for Precincts 1, 3, 4B and 6.

Design Objectives

- **To protect existing residential areas from unreasonable loss of amenity.**
- **To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.**

Requirements

- **New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.**
- **Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.**

6.4 Solar access to Burwood Road

6.4.1 What is the issue?

A 'General requirement' identified in the Table to Schedule 13 to the DDO states that:

Development on the north side of Burwood Road should ensure solar access to the south side of Burwood Road.

Development in Precinct 4A is required to:

ensure adequate sunlight penetration to the south side of Burwood Road.

6.4.2 Evidence and submissions

Appropriate solar access to the south side of Burwood Road was cited by Council as a key reason why the Panel should support mandatory controls. Modelling demonstrates that a 10 metre high street wall plus upper level setbacks achieves full sun to the ground plane at the winter solstice. Council considers that the Burwood Road corridor is of considerable importance to a broad community, and that there is no justification to limit the potential of the south side of the street to enjoy good solar access throughout the year.

In support of Council's position, Mr Rantino quoted Objective 2.3 of the Guidelines for Higher Residential Development:

The appropriate measure for private open space is typically accepted as the equinox, but local policy can identify public spaces that should be protected at the winter solstice. These spaces will typically include local open spaces and plazas. Where a shopping street currently enjoys sun at mid winter there will usually be a reasonable presumption that sun access will be preserved.

Mr Sheppard in expert evidence considered that the proposed provision was too vague and open to interpretation, leaving the matter open to debate.

It does not provide an indication as to what is considered an appropriate amount of solar access, nor how it should be measured.

He recommended that development should provide solar access to the southern footpath of Burwood Road at the equinox. This would be consistent with a range of other similar policies across the metropolitan area with similar levels of desired pedestrian activity. Mr Sheppard considered that the winter solstice was usually only nominated for key public sites, for instance in the capital city Zone, on key streets in Doncaster Hill and on the Port Phillip Bay foreshore.

Mr Sheppard referred to Panel Report for Moreland C97. In that report (Pg 73) the Panel states that *The winter solstice overshadowing test is typically reserved for public spaces of strategic significance, particularly where intensive public use is promoted.*

Mr Biacsi went further. His view was that rather than “ensuring” solar access, “enabling reasonable” access provided sufficient control on built form.

██████████, members of the working group that prepared the WHUDF, appeared before the Panel and explained that the UDF used the winter solstice because the existing office buildings on the north side of Burwood Road to the west of Power Street, already overshadow the southern footpath of Burwood Road in winter creating a cold and uninviting effect.

6.4.3 Discussion

The basis for this requirement appears to stem from the Key Objective for Precinct 4A in the WHUDF:

- *To protect and enhance public realm amenity,*

This was translated into a Preferred Outcome for Amenity:

- *Design for adequate sunlight on the south side of Burwood Road.*

This cascaded into a general requirement in DDO13:

- *Development should ensure adequate sunlight penetration for the south side of Burwood Road.*

The Panel agrees that this provision needs to be more specific about how much and where solar access is required, but the threshold issue for the Panel is whether the equinox or the winter solstice is taken as the standard of measurement.

The Panel has not been persuaded that this section of Burwood Road qualifies as "a shopping street" of the manner envisaged by the Higher Residential Guidelines quoted above, despite Council's hopes for the future. It seems to us that there is no basis to depart from provision of solar access at the equinox in line with policies in other municipalities for pedestrian areas. Burwood Road is not and never will be a core retail area in the same way as nearby Glenferrie Road.

We note that in response to a request by the Working Group in the preparation of the WHUDF the Council confirmed that:

The City of Boroondara does not use the winter solstice to determine shadow cast by new development.

We further note that the draft Structure Plan for Glenferrie Road Major Activity Centre proposes use of the equinox as the basis for solar access criteria.

6.4.4 Conclusions and recommendations

The Panel concludes that when balanced against the constraint on the development potential of Precinct 4A, the southern footpath of Burwood Road does not warrant the use of the winter solstice to determine solar access to it.

The Panel recommends:

The General Requirement for Precinct 4A in the table to Schedule 13 of the DDO should be amended to read as follows:

Development on the north side of Burwood Road should ensure the potential for solar penetration to the southern footpath of Burwood Road at the equinox.

6.5 Requirement to include open space at the Hawthorn Square

6.5.1 What is the issue?

The WHUDF improvements strategy (Pg 53) includes a reference which states:

Establish an area in front of West Hawthorn shops as an important local space for passive activity.

The corner of Burwood Road and Power Street at Hawthorn Square is shown as the preferred location.

No such reference appeared in the final WHUDF or the exhibited Amendment, although the location is shown as an *indicative location for public art*.

In response to a number of submissions, the Council requested the Panel to consider the addition to Amendment C69 of an objective and a supporting General Requirement.

6.5.2 Evidence and submissions

The owner of the land at the corner of Burwood Road and Power Street (Hawthorn Square) made a written submission expressing concern that there is a proposal that would require him to provide for public amenities and public open space on land that is exclusively private property. This could be seen *as a quasi acquisition for which no reasonable compensation is provided*.

██████████ appearing on behalf of ██████████ expressed concern that the reference to communal open space at West Hawthorn Village in the WHUDF had not been translated into the DDO13 provisions. ██████████, members of the working group for the WHUDF, also expressed the same concern.

Council Response

Following discussions with the owner of the land, the Council through Mr Rantino, requested that the following changes be made to the Amendment:

In Schedule 13 to the DDO under the heading 'Precinct 3 – The West Hawthorn Village' include the following Design Objective:

To create and reinforce local spaces for passive activity

And an additional general requirement:

Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88-114 Burwood Road) as an important local space for passive recreation.

6.5.3 Discussion

The Panel agrees with the Council's response to the owner of the land. A requirement for space for passive recreation at Hawthorn Square is in no way an acquisition by the Council. It merely would set a design objective for this large centrally located commercial site, should it be redeveloped in the future.

The addition of an appropriate design objective and a general requirement is an appropriate response to the Vision of the WHUDF for the core retail neighbourhood centre.

6.5.4 Recommendation

The Panel recommends:

In Schedule 13 to the DDO under the heading 'Precinct 3 – The West Hawthorn Village' include the following Design Objective:

- *To create and reinforce local spaces for passive activity*

A general requirement should be included to:

- *Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88-114 Burwood Road) as an important local space for passive recreation.*

6.6 The form and the drafting of the amendment

6.6.1 What is the issue?

There are a number of Design Objectives which do not relate to the purpose of the control; provisions that are dealt with already in other parts of the Boroondara Planning Scheme and provisions which are not appropriate in a DDO control.

6.6.2 Evidence and submissions

Mr Biacsi suggested changes to the proposed Clause 22.15 and the proposed Schedule 13 to the DDO. His changes were limited to Precinct 4A, where his client's land is located. He also suggested a number of additional changes to the Schedule 13 of the DDO in order to simplify the document and remove repetition.

Mr Sheppard in expert planning and urban design evidence suggested that references to *overlooking* and *noise* be deleted from one of Design Objectives. He submitted that overlooking can be handled through a range of responses such as setbacks, window placement, orientation, glazing type etc., not just built form and that noise was primarily generated by the land-use not the built form.

Mr Biacsi provided tracked changes versions of clause 22.15 and Schedule 13 to the DDO. These were supplemented by additional tracked changes from Mr Townsend SC.

Mr Townsend SC opposed the policy in the exhibited clause 22.15 requiring that impacts of development on adjoining residential amenity should be 'minimised', contending that this begs the questions as to what is 'minimal'. He suggested that it would be more appropriate to have an objective expressing the need to prevent 'unreasonable' impacts.

6.6.3 Council Responses

After considering submissions from land holders, the Council, at the Panel hearing, proposed the following changes be made to the Amendment:

DDO7

The Panel sought clarification from the Council in relation to DDO7 which applies to the property at 5-9 Burwood Road, Hawthorn. DDO7 provides detailed requirements, including two Building Envelope Plans. A large four storey office building, approximately 15 metres in height, has been developed on the site in accordance with the provisions of DDO7. In his letter of 22 April 2010 Mr Rantino confirmed that the Council considers that DDO7 should continue to apply to the land and that this site should be removed from the ambit of Amendment C69.

The Panel considers that it would be undesirable and unnecessary to have two DDO's applying to the same site. There is little prospect in the foreseeable future for redevelopment of this site, which has recently been developed in accordance with the requirements of DDO7 and in a form consistent with that proposed by Amendment C69. Accordingly the Panel recommends that this site should be deleted from Amendment C69.

Residential 1 zoned land in Precinct 4B

The Panel also sought clarification about R1Z land located in Precinct 4B. There is a disconnect between the policy proposed in clause 22.15 encouraging bulky good retailing in the Precincts and the fact that some land in the West Hawthorn area affected by the R1Z prohibits bulky goods retailing. This would

affect a number of residentially zoned parcels of land on Drill, Thomas, Lavidge and Power Streets. In his letter of 22 April 2010 Mr Rantino stated that:

Given the proposed policy positively encourages bulky goods retailing on nominated sites and areas Council considers it would likely support a rezoning request if one were made in the future.

The Panel accepts this response from the Council.

Other minor changes

On the second day of the hearing Mr Rantino tabled an amended tracked changes version of clause 22.15 and Schedule 13 to the DDO. Essentially these amendments clarify the document and remove provisions which are repeated elsewhere in the Boroondara planning Scheme.

The changes include:

- clarification of all references in the DDO to clause 55 (ResCode) to specifically refer to clause 55.04 of the Scheme;
- deletion of Design Objectives that were worded as requirements and vice versa;
- deletion of wording that duplicates other provisions in the planning scheme; and
- re wording for consistency and/or clarity.

6.6.4 Discussion

The Panel agrees with Mr Biacsi's expert evidence that there are a number of Design Objectives which do not relate to the purpose of the control; provisions that are dealt with already in other parts of the Boroondara Planning Scheme and provisions which are not appropriate in a DDO control.

A number of provisions in DDO13 relate to use; they are more properly addressed in local policy. Specifically clause 22.15 is the appropriate mechanism for guidance in relation to land uses. The purpose of the DDO is specifically to deal with requirements in relation to design and built form of new development.

The Panel accepts most of these minor changes to DDO13 proposed by the Council. It is also appropriate to make minor changes to the exhibited clause 22.15 to acknowledge the capacity of West Hawthorn area to accommodate land use intensification and substantial built form change.

3 Manningtree Road

In his letter of 22 April 2010 Mr Rantino did not respond to the apparent anomaly with regard to the property at 3 Manningtree Road.

The northern portion of this property appears to have been included in Precinct 4B in Map 1 which forms part of the Schedule 13 to the Design and Development Overlay. The great majority of the site is located in Precinct 7. The Panel queried this at the Panel Hearing. We inspected this site following the Panel Hearing and could not determine a rationale for this apparent anomaly. We further note that the whole of this property is proposed to be included in a Heritage Overlay in Amendment C99. We therefore recommend that the whole site be included in Precinct 7, in the event that the Panel's recommendation that all of Precinct 7 be deleted from Amendment C69 is not accepted by the Council.

Design Objectives – Precinct 4A

The Panel agrees with the expert evidence of Mr Sheppard who considered that:

That the Design Objective for Precinct 4A "To encourage medium scale built form outcomes that are consistent with the precinct's ability to accommodate change" be reworded to read "To encourage ~~medium scale~~ built form outcomes that are consistent with the precinct's ability to accommodate substantial change".

We agree that the suggested wording better expresses the finding of the WHUDF and local policy in the Boroondara Planning Scheme.

Mr Pitt contended that provisions for active frontage along Tweed Street and Golding Street in Precinct 4A fail to consider issues of side streets and access requirements. Mr Rantino responded with amended wording to this Design Objective which the Panel considers appropriate. Mr Sheppard suggested the following useful modification to better achieve the Design Objective:

"Development should provide casual surveillance of Tweed Street and Golding Street where this does not compromise the amenity of adjacent residential land uses".

The Panel agrees with this revised wording.

6.6.5 Conclusions and Recommendations

The Panel has noted the detailed changes proposed by Mr Biacsi and Mr Townsend SC, along with specific changes sought by other submitters. We have also noted the detailed changes tabled by Mr Rantino for the Council. The recommended version of clause 22.125 and Schedule 13 to the DDO have responded to all these suggestions.

The Panel recommends:

Include the words "*Burwood Road*" in the third Requirement so that it reads "*At the Burwood Road street frontage, the Building Height should not exceed 12 metres.*" in Schedule 13 to the DDO under the heading 'Precinct 4A – Mixed Use North'.

Delete the property at 5-9 Burwood Road, Hawthorn from the ambit of Amendment C69.

Delete the entire site at 3 Manningtree Road from Precinct 4B in Schedule 13 to the Design and Development Overlay.

Replace the last Design Objective in DDO13-4A with:

Development should provide casual surveillance of Tweed Street and Golding Street where this does not compromise the amenity of adjacent residential land uses.

7. Recommendations

Based on the reasons set out in this Report, the Panel recommends:

Amendment C69 to the Boroondara Planning Scheme should be adopted subject to the following recommendations:

- 1. Precincts 2 and 7 should be deleted from Amendment C69.**
- 2. All of the controls in DDO 13 should be expressed as discretionary controls.**
- 3. The discretionary street wall height at street frontages should apply only to the Burwood Road street frontage of any site.**
- 4. The discretionary maximum height for buildings in Precinct 4A should be 22 metres.**
- 5. The discretionary maximum heights for buildings in Precincts 4B & 5 should be 18 metres.**
- 6. The discretionary upper level setback should a minimum of 6 metres from the discretionary street wall height of 12 metres at the Burwood Road frontage in Precinct 4A.**
- 7. The discretionary upper level setback should a minimum of 5 metres from the discretionary street wall heights in all other precincts.**
- 8. In DDO13, the following Design Objectives should be added for Precincts 1, 3, 4B and 6.**

Design Objectives

- To protect existing residential areas from unreasonable loss of amenity.*
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.*

Requirements

- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.*

- *Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.*
9. **The General Requirement for Precinct 4A in the table to Schedule 13 of the DDO should be amended to read as follows:**
- Development on the north side of Burwood Road should ensure the potential for solar penetration to the southern footpath of Burwood Road at the equinox.*
10. **In Schedule 13 to the DDO under the heading 'Precinct 3 – The West Hawthorn Village' include the following Design Objective:**
- *To create and reinforce local spaces for passive activity*
- A general requirement should be included to:
- *Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88-114 Burwood Road) as an important local space for passive recreation.*
11. **Include the words "Burwood Road" in the third Requirement so that it reads "At the Burwood Road street frontage, the Building Height should not exceed 12 metres..." in Schedule 13 to the DDO under the heading 'Precinct 4A – Mixed Use North'.**
12. **Delete the property at 5-9 Burwood Road, Hawthorn from the ambit of Amendment C69.**
13. **Delete the entire site at 3 Manningtree Road from Precinct 4B in Schedule 13 to the Design and Development Overlay.**
14. **Replace the last Design Objective in DDO13-4A with:**
- Development should provide casual surveillance of Tweed Street and Golding Street where this does not compromise the amenity of adjacent residential land uses.*

Appendix A Submitter List

Submitter	Organisation (if applicable)
Mr Adam Dalrymple	Melbourne Fire Brigade
Mr James Bolger	VicRoads
Mr Nich Saunders	Saunders Architecture Planning Design P/L
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
Mr Trevor Pearson	Yarra Valley Water
Ms Elana Radovic	Dept. of Sustainability & Environment
Mr Robert Pitts	C/- Hacer Group
[REDACTED]	
Mr Richard Umbers	Peninsula Planning Consultants
Mr Brett Howlett	Mirvac (Victoria) P/L
Mr Damian Loughnan	Gattini & Partners
Ms Kellie Burns	SJB Planning P/L
[REDACTED]	
Mr Joe Russo	Caydon Property
[REDACTED]	

Appendix B Recommended changes to Schedule 13 to the Design and Development Overlay

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SCHEDULE 13 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO 13**

WEST HAWTHORN AREA

1.0 Design Objectives

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To implement the West Hawthorn Urban Design Framework (~~July~~ 2006).

To ensure new development does not compromise significant view corridors, particularly views of the Hawthorn Town Hall and the Church of the Immaculate Conception.

To encourage built form that does not ~~cause unreasonable amenity impacts on~~ ~~compromise the amenity of~~ adjacent residential areas and minimises the negative impacts of overlooking, overshadowing, noise and visual bulk.

To ~~ensure~~ encourage landscaped areas at residential interfaces to soften built form.

To encourage buildings built to the street to activate street frontages in business zones.

To ensure development on the north side of Burwood Road allows the potential for adequate solar access to the south side of Burwood Road at the equinox.

To encourage development which incorporates ecologically sustainable energy, water and construction principles in its design.

~~To maximise water and energy conservation in new development and increase use of renewable energy resources.~~

~~To achieve a reduction in waste generated by building occupants that is collected, hauled to and disposed of in landfills.~~

~~To ensure that the views of the relevant Road, Water and Sewerage Authorities are considered.~~

2.0 Buildings and works

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The requirements in the Table should be met.

~~A permit cannot be granted to vary any *Mandatory Requirements* in the Table to this Schedule.~~

~~The Design Objectives must be met. A permit cannot be granted to vary any of the Design Objectives.~~

~~The *General requirements* in the Table should be met.~~

An application to develop land in a business zone must be accompanied by an urban context report and design response which includes the matters set out in ~~comply with~~ clause 52.35 of the scheme. The ~~site analysis and~~ urban context report and design response must show how the development achieves the:-

- The Design Objectives of this Schedule and for the relevant precinct;
- ~~▪ The Mandatory Requirements for the relevant precinct;~~
- The General Requirements of the relevant precinct.

The responsible authority may waive or reduce a requirement for information if it considers it to be not relevant to an application.

An application which does not meet the building height or setbacks specified in the Table must demonstrate that the proposed development will continue to meet the relevant design objectives specified in the Table.

Architectural features, building services, plant and infrastructure including but not limited to air conditioning units, masts, stairwells and liftwells may exceed the specified building height provided they are integrated with the design of the building.

~~Ecologically sustainable energy, water and construction considerations should be incorporated early in the design process in order to reduce the costs of later design modifications.~~

~~A permit application must be accompanied by the following as appropriate:~~

- ~~▪ Information to demonstrate how the proposed new development assists in creating a safe pedestrian environment through design and increased surveillance by applying the provisions of the document "Safer Design Guidelines for Victoria, 2005"~~
- ~~▪ A waste management plan which includes measures to maximise recycling, composting and the reduction of waste.~~
- ~~▪ A reduced rate of on site parking provision will be considered where an integrated transport plan is prepared to the satisfaction of the responsible authority.~~

Height

~~Building services, plant and infrastructure including but not limited to air conditioning units, masts, stairwells and liftwells may exceed the specified building height by up to 3 metres provided that:~~

- ~~▪ requirements in the Table to Schedule 13 relating to the design and siting of building services, plant and infrastructure are met; and~~
- ~~▪ requirements for setbacks in the Table to Schedule 13 are met.~~

Table to Schedule 13

The precincts referred to in this table are the precincts identified on Map 1 forming part of this schedule.

DDO13 West Hawthorn Area – All Precincts

Requirements

General Requirements

- Buildings should minimise the impact on the amenity of residentially zoned land having regard to matters such as overlooking, overshadowing ~~noise and~~ or visual bulk.
- All development on land abutting residentially zoned land or separated from residential land by a laneway, should comply with the relevant objectives and standards of Clause 55.04 and the Guidelines for Higher Density Residential Development (DSE 2004) as appropriate.
- Facades, side and rear walls that are visible from the public realm or from residential areas should be articulated to a high standard and consideration should be given to the proposed fenestration.

- ~~Commercial~~ Development along Burwood Road should have a zero setback and extend across the full width of the lot at least at ground floor level except where access requirements do not allow this.
- Where it is necessary to set back a building from the zero setback point, the treatment of the setback should not create a barrier between the street and the building. Within a residential area, the setback should be landscaped.
- ~~New developments should provide long term staff and resident parking demands on site.~~
- Existing mature vegetation should be retained and buildings designed to protect the vegetation.
- Development on the north side of Burwood Road should ensure [reasonable](#) solar access to the south side of Burwood Road [at the equinox](#).
- Streets, lanes and walkways should be well lit to enhance public safety and useability.
- Loading bays, site storage and waste collection areas should be appropriately screened from public view.
- Building services, plant and infrastructure structures ~~should not be readily visible or~~ should [seamlessly](#) integrate with the architecture of the host building.
- ~~Developments should apply current best practice and emerging technology in energy and water conservation.~~
- ~~Developments should incorporate Water Sensitive Urban Design where appropriate to improve the quality of storm water leaving the area.~~
- ~~Rainwater retention for reuse should be incorporated into the design of all new buildings.~~
- ~~Stormwater detention should be evaluated and employed as a solution to infrastructure limitations.~~
- ~~Developments should use permeable surface coverings wherever practicable.~~
- ~~New development should provide bicycle facilities in accordance with Clause 52.34. Medium density residential development of more than three dwellings, and office development of more than 200sqm should provide bicycle facilities at the same rates for other dwelling and office uses listed in Clause 52.34.~~
- Vehicular access should not be from Burwood Road where there are other options for vehicular access.
- Car parking and garage doors should not dominate the streetscape. Basement car parks should be located fully below street level when fronting Burwood Road and Glenferrie Road.
- [New development should incorporate environmentally sustainable design features as appropriate.](#)

Mandatory Requirements

- ~~Nil~~

DDO13-1 Precinct 1 - Office and Housing

Design Objectives

- To encourage ~~medium scale~~ built form outcomes that are consistent with the precinct's ability to accommodate [substantial](#) change.
- To promote a precinct that has a high degree of design flexibility and can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- To encourage built form and landscape design that ~~identify~~^{ies} the commencement of the western end of the West Hawthorn neighbourhood activity centre.

- ~~▪ To ensure that the built form and landscape outcomes of new developments minimise amenity impacts on residentially zoned land.~~
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

General Requirements

- ~~Ensure~~ The hard edges of buildings to the street frontage **should** maintain a human scale. Higher built form elements should be setback **so that buildings do not unreasonably dominate the streetscape** ~~to be out of sight at pedestrian level~~ when viewed from the opposite side of the street.
- ~~▪ Encourage the establishment of a landscape buffer at the interface with the abutting residentially zoned properties, and limit the height of the built form to 7 metres with additional height designed to be out of sight when viewed at ground level from neighbouring residential properties. Generally, at the 5.0m setback new buildings should have a maximum building height of 7.0m, and thereafter should be setback 1.0m for every 0.3m in building height.~~

Mandatory Requirements

- Building height ~~must~~ **should** not exceed 16 metres.
- At the street frontage buildings ~~must~~ **should** have a maximum building height of 10.0 metres. Thereafter buildings ~~must~~ **should** be setback a minimum of 5 metres ~~1.0m for every 0.5m in height.~~
- ~~If a rear boundary abuts residentially zoned property, new development must be setback 5.0m from this property boundary. The setback must be landscaped.~~ New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.
- If a rear boundary abuts residentially zoned property the setback should be landscaped.

~~DDO13-2 Precinct 2 Hawthorn Station Village~~

Design Objectives

- ~~▪ To encourage low scale built form outcomes which conform with the existing character and are consistent with the precinct's ability to accommodate minimal change.~~
- ~~▪ To ensure built form and landscape outcomes respect and enhance the character of the precinct.~~

Requirements

General Requirements

- ~~▪ Buildings should not exceed 9 metres in height.~~

DDO13-3 Precinct 3 - The West Hawthorn Village

Design Objectives

- To encourage ~~low to medium scale~~ built form outcomes that are consistent with the precinct's ability to accommodate incremental change.
- ~~To encourage the intensification of retail and commercial floor space.~~
- To ensure built form and landscape outcomes respect and enhance the character of the precinct.
- To maintain streetscape rhythm.
- ~~Development should~~ To provide for active frontages along Burwood Road and Power Street.
- To maintain the current human / pedestrian friendly scale of development.
- To create and reinforce local spaces for passive recreation.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

General Requirements

- ~~Traditionally n~~Narrow buildings should not be consolidated into a single wider building.
- Building Height should not exceed 9 metres at the street frontage. Any ~~3rd~~ 3rd storey ~~beyond the street frontage must should~~ be setback a minimum of 5 metres so that ~~buildings do not unreasonably dominated the streetscape it cannot be seen above the apparent street wall height~~ when viewed from the opposite side of the street ~~at 1.7m above ground level~~. Overall Building Height should not exceed 11 metres. This does not apply to ~~the former Elgin Inn Bottle Shop site (108 Power Street), Hawthorn Square (88-114 Burwood Road) or the car park to the rear of Hawthorn Square (124-128 Power Street)~~
- At ~~the former Elgin Inn Bottle Shop site (108 Power Street), Hawthorn Square (88-114 Burwood Road) and the car park to the rear of Hawthorn Square (124-128 Power Street)~~ Building Height should not exceed 16m. At the street frontage the Building Height should not exceed 10 metres. Above that height, buildings should be setback a minimum of 5 metres ~~1.0m for every 0.5m in height~~.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.
- Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88-114 Burwood Road) as an important local space for passive recreation.

DDO13-4A Precinct 4A - Mixed Use North

Design Objectives

- To encourage ~~medium scale~~ built form outcomes that are consistent with the precinct's ability to accommodate substantial change.

- To promote a precinct that has a high degree of design flexibility and can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- ~~To encourage the consolidation and intensification of large format / bulky goods retail and other commercial floor space at ground level with residential or office floor space above.~~
- To ensure the southern edge of the precinct abutting Burwood Road promotes active street frontages and complements the high quality pedestrian environment in this location.
- To encourage utilisation of Lynch Street for vehicular access.
- ~~Development should~~ To provide for active frontages along Burwood Road and Power Street.
- Development should provide ~~for active frontages along~~ casual surveillance of Tweed Street and Golding Street where this does not compromise the amenity of adjacent residential land uses ~~with respect to noise, loss of privacy and poor visual amenity.~~

Requirements

General Requirements

- Development should ensure the potential for adequate sunlight penetration to the ~~south side~~ southern footpath of Burwood Road at the equinox.

Mandatory Requirements

- Buildings Height should ~~must~~ not exceed 22.46 metres.
- ~~At the street frontage the Building Height must not exceed 10 metres. Above that height, a building must be setback 1.0m for every 0.5m in height.~~
- At the Burwood Road street frontage, the Building Height should not exceed 12 metres.
- Any additional height above 12 metres should be set back a minimum of 6 metres from the Burwood Road frontage, so that buildings do not unreasonably dominate the streetscape and maintain adequate sunlight penetration to the south side of Burwood Road at the equinox.

DDO13-4B Precinct 4B - Mixed Use South

Design Objectives

- To encourage ~~medium scale~~ built form outcomes that are consistent with the precinct's ability to accommodate substantial change.
- To promote a precinct that has a high degree of design flexibility and that can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- ~~To encourage the consolidation and intensification of large format / bulky goods retail and other commercial floor space at ground level, with residential or office floor space above.~~
- To ensure the northern edge of the precinct abutting Burwood Road promotes active street frontages and complements the high quality pedestrian environment in this location.
- ~~To ensure that the built form and landscape outcomes of new developments minimise impacts on residentially zoned land.~~
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.
- To ensure new buildings respect and complement heritage buildings.

- To ensure vehicular access arrangements have minimal impact on residential amenity in Manningtree Road.
- To promote active frontages along Lavidge Street, Thomas Street, Drill Street, Elizabeth Street, Guest Street, Cook Street and Luton Lane where this does not compromise the amenity of adjacent residential land uses with respect to noise, loss of privacy and poor visual amenity.

Requirements

General Requirements

- ~~Ensure~~ The hard edges of buildings to the street frontage should maintain a human scale, with additional height thereafter being out of sight at pedestrian level.
- ~~Encourage the incremental establishment of a landscape buffer at the interface with abutting residentially zoned properties, and thereafter limit the height of the built form to two storeys with additional height being out of sight when viewed at ground level from neighbouring residential properties. Generally, at the 5.0m setback new buildings should have a maximum height of 7.0m, and thereafter should be setback 1.0m for every 0.3m in height.~~
- Development should provide for active frontages along Burwood Road and Power Street.
- ~~Development should provide for active frontages along Lavidge Street, Thomas Street, Drill Street, Elizabeth Street, Guest Street, Cook Street and Luton Lane where this does not compromise the amenity of adjacent residential land uses with respect to noise, loss of privacy and poor visual amenity.~~
- ~~Development of land for larger showrooms / bulky goods premises should seek to provide on site parking for staff and customers at basement level.~~
- New development should provide a landscaped buffer that when fully matured will substantially screen buildings adjoining the Manningtree Road properties.

Mandatory Requirements

- Building Height should not exceed 18 metres.
- At the Burwood Road street frontage, the Building Height should not exceed 12 metres.
- Any additional height above 12 metres should be set back a minimum of 5 metres from the Burwood Road frontage, so that buildings do not unreasonably dominate the streetscape.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.
- ~~Building Height must not exceed 16 metres.~~
- ~~At the street frontage buildings must have a maximum building height of 10 metres. Thereafter buildings must be setback 1.0m for every 0.5m in height.~~
- ~~If a rear boundary abuts residentially zoned property, new development must not be located within 5.0m of this property boundary, and the setback must be used as a significant landscape buffer.~~

DDO13-5 Precinct 5 - Transit Oriented Development

Design Objectives

- To encourage ~~low-scale~~ built form outcomes that are consistent with the precinct's ability to accommodate significant incremental change.
- To maintain the service role of Lynch Street and promote residential ~~townhouse~~ development at the eastern and western ends of the precinct.

Requirements

General Requirements

- Buildings should be well articulated, minimise overlooking, overshadowing and noise impacts and respond positively to the public realm.
- Building Height should not exceed 18~~9~~ metres.

DDO13-6 Precinct 6 - Glenferrie Road Quarter

Design Objectives

- To encourage medium-scale built form outcomes that are consistent with the precinct's ability to accommodate incremental change.
- To reinforce the existing retail and commercial character of the area, including community and professional services.
- To ensure built form and landscape outcomes respect and enhance the character of the precinct.
- To ensure that the built form and landscape outcomes of new developments minimise impacts on residentially zoned land.
- ~~In-order t~~To maintain streetscape rhythm, traditional narrow buildings should not be consolidated into single wider buildings.
- ~~Development should~~ To provide for active frontages along Burwood Road and Glenferrie Road.
- ~~Development should~~ To provide for active frontages along Luton Lane where this does not compromise the amenity of adjacent residential land uses with respect to noise, loss of privacy and poor visual amenity.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

General Requirements

- New development along Burwood Road should extend across the lot at ground floor level to prevent the creation of concealed spaces and to continue the consistent character along Burwood Road.

Mandatory Requirements

- Building Height should ~~must~~ not exceed 16 metres.
- At the street frontages of Burwood Road and Glenferrie Road the Building Height should ~~must~~ not exceed 10 metres. Thereafter buildings should ~~must~~ be setback a minimum of 5 metres ~~1.0m for every 0.5m in height.~~

- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.

DDO13-7 — Precinct 7 — Established Housing

Design Objectives

- ~~To encourage low scale built form outcomes that conform with the existing character and are consistent with the precinct's ability to accommodate minimal change.~~
- ~~To ensure built form and landscape outcomes respect and enhance the valued residential character of the precinct.~~
- ~~Maintain adequate parking for local residents.~~

Requirements

General Requirements

- ~~Setbacks should be in accordance with clause 55.~~
- ~~Residential developments should meet the resident and visitor parking rates of Clause 55.03-11 of the Boroondara Planning Scheme.~~
- ~~Bicycle parking and end of trip facilities should be included in accordance with Clause 52.34 of the Boroondara Planning Scheme.~~
- ~~Building Height should not exceed 9 metres.~~

3.0 — Subdivision

~~--/20--~~

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

~~In considering an application for the subdivision of land in precincts 1, 4A and 4B, the responsible authority must consider the preferred land uses for the precinct identified in Clause 22.15 and whether the proposed subdivision will prejudice the outcomes sought in that local policy.~~

4.0 — Decision Guidelines

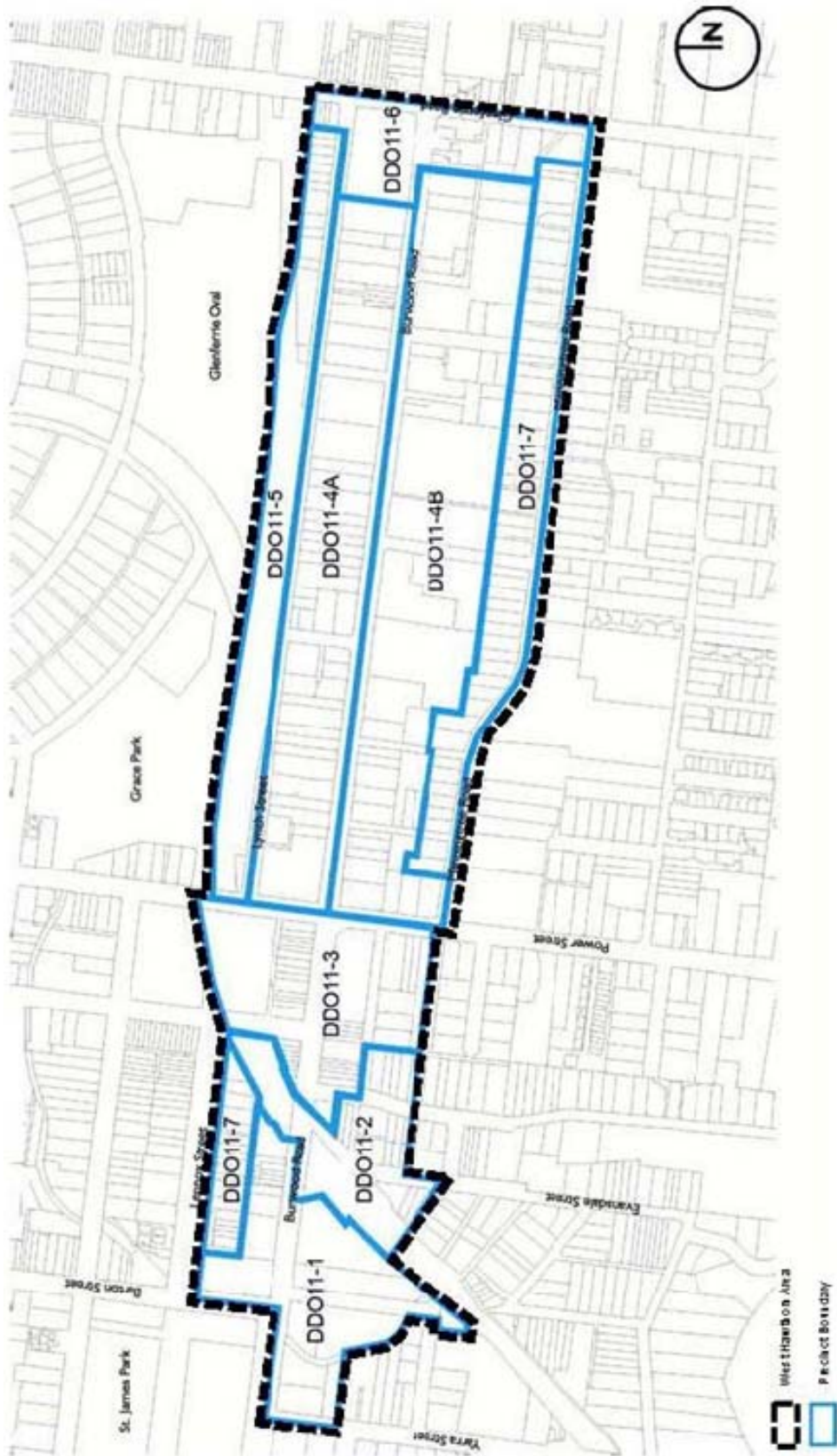
~~--/20--~~

~~Before deciding on an application, the Responsible Authority must consider, as appropriate:~~

- ~~The West Hawthorn Area Policy at Clause 22.15.~~
- ~~The design objectives and requirements for the area and relevant precinct.~~
- ~~The impact of traffic generated by the proposal and whether it is likely to require special traffic management control works in the neighbourhood.~~
- ~~Points of access to and from the land and whether they are suitably located.~~
- ~~The views of Vic Roads, Melbourne Water and / or Yarra Valley Water with respect to the impact of a proposal on existing infrastructure capacity.~~

MAP 1: WEST HAWTHORN AREA AND PRECINCTS

Delete Precincts 2 & 7



Appendix C Recommended changes to Clause 22.15: West Hawthorn Local Policy

22.15 WEST HAWTHORN AREA POLICY

--/20--

This policy applies to all applications for use and development of land in the West Hawthorn area shown on Map 1 of this policy.

22.15-1 Policy Basis

The policy is derived from the *West Hawthorn Urban Design Framework (2006)* (UDF).

Burwood Road, West Hawthorn is unique to the City of Boroondara for its large lot sizes, and range of bulky goods and large format retail uses. It is an area which has significant capacity to accommodate land use intensification and substantial built form change. A local policy ~~is~~ ~~was~~ required to appropriately manage the impacts of such change ~~increased demand for intensification and changes in land use in Burwood Road West Hawthorn.~~

The ~~UDF West Hawthorn Area Policy seeks to~~ encourages Burwood Road West Hawthorn as a mixed use precinct, to facilitate ~~including~~ bulky goods, large format retailing, homewares, and office ~~and higher density residential development~~ ~~uses~~ while providing for a range of other employment opportunities in retail, commercial and community based uses ~~and new housing opportunities.~~ While encouraging the further development of this corridor, this policy also seeks to ensure that new development is appropriately located and designed, fosters sustainable transport and building outcomes, improves pedestrian access and connectivity, and does not cause unreasonable amenity ~~respects and minimises adverse~~ impacts on adjoining residential areas and public spaces.

~~The West Hawthorn Area and the eight precincts identified within it are shown in the West Hawthorn UDF and in the map which follows this policy.~~

This local policy is intended to give effect to provisions and recommendations contained in the West Hawthorn Urban Design Framework (~~July~~ 2006). It should also be read in conjunction with the Design and Development Overlay Schedule 13 (West Hawthorn Area).

22.15-2 Objectives

- To implement the West Hawthorn Urban Design Framework (~~July~~ 2006).
- To encourage the provision of bulky goods, ~~homewares~~ large format retailing and office uses and a mix of compatible employment opportunities in retail, commercial and community based uses in appropriate locations.
- To recognise West Hawthorn's potential to provide for a diversity of higher density housing opportunities and urban consolidation, particularly in areas that are not encumbered by or proximate to heritage places or have direct abuttal to residential areas.
- To ensure active ground level frontages and vibrant street level activity.
- To provide community services / facilities that accommodate the current and future needs of the West Hawthorn Community.

22.15-3 Policy

It is policy to:

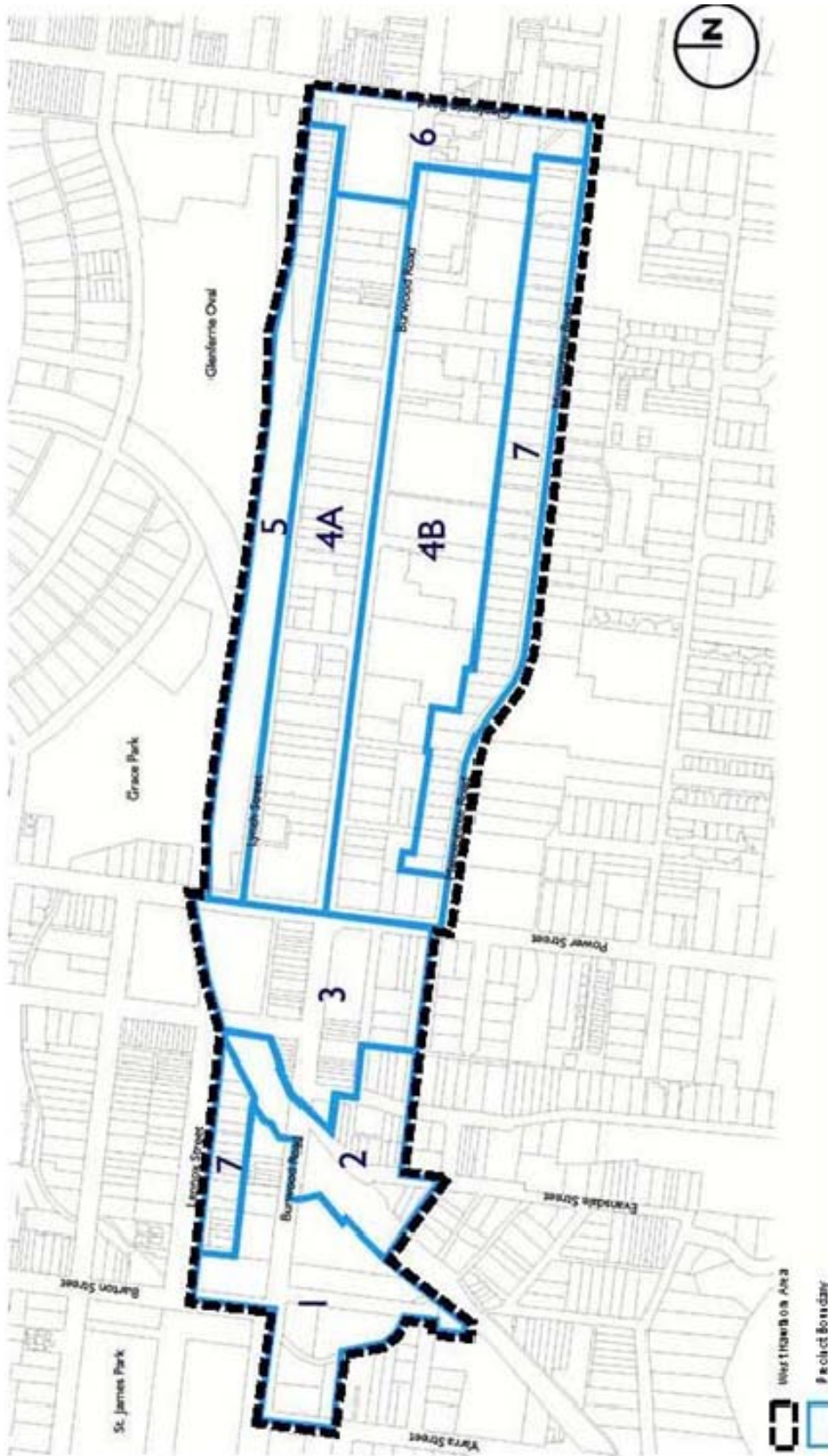
- Encourage uses with active frontages in commercial areas to promote pedestrian activity and vibrancy at ground floor level on sites with street or laneway frontages.
- Encourage higher density office & residential development on upper floor levels in commercial areas.
- Discourage residential land use at ground ~~and first floor~~ level facing Burwood Road.
- Encourage ~~predominately~~ office and residential uses in Precinct 1.
- ~~Retain and protect residential land use in Precincts 2 and 7.~~
- Encourage convenience retail and services ~~at on~~ ground levels, with office and residential land use above ground level in Precinct 3.
- Encourage ~~predominately office and~~ bulky goods, large format retailing and compatible retail and commercial uses ~~/home wares shops~~ at ground ~~and first~~ floor levels and residential and office uses at upper levels in Precincts 4A and 4B.
- Encourage ~~Consider~~ cafés, bars or restaurants in Precincts 4A and 4B to service employment and residential land uses in and around the study area.
- Encourage ~~predominately~~ office and residential land use in Precinct 5.
- Encourage ~~Promote~~ uses that reinforce existing retail and commercial uses including community and professional services in Precinct 6.

22.15-4 Policy References

West Hawthorn Urban Design Framework (~~July~~ 2006)

MAP 1: WEST HAWTHORN AREA AND PRECINCTS

Delete Precincts 2 & 7



Appendix D Recommended Schedule 13 to the Design and Development Overlay

SCHEDULE 13 TO THE DESIGN AND DEVELOPMENT OVERLAY

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Shown on the planning scheme map as **DDO 13**

WEST HAWTHORN AREA

2.0 Design Objectives

--/20--

To implement the West Hawthorn Urban Design Framework (2006).

To ensure new development does not compromise significant view corridors, particularly views of the Hawthorn Town Hall and the Church of the Immaculate Conception.

To encourage built form that does not cause unreasonable amenity impacts on adjacent residential areas and minimises the negative impacts of overlooking, overshadowing, noise and visual bulk.

To encourage landscaped areas at residential interfaces to soften built form.

To encourage buildings built to the street to activate street frontages in business zones.

To ensure development on the north side of Burwood Road allows the potential for adequate solar access to the south side of Burwood Road at the equinox.

To encourage development which incorporates ecologically sustainable energy, water and construction principles in its design.

3.0 Buildings and works

--/20--

The requirements in the Table should be met.

An application to develop land in a business zone must be accompanied by an urban context report and design response which includes the matters set out in clause 52.35 of the scheme. The urban context report and design response must show how the development achieves the:

- The Design Objectives of this Schedule and for the relevant precinct;
- The General Requirements of the relevant precinct.

The responsible authority may waive or reduce a requirement for information if it considers it to be not relevant to an application.

An application which does not meet the building height or setbacks specified in the Table must demonstrate that the proposed development will continue to meet the relevant design objectives specified in the Table.

Architectural features, building services, plant and infrastructure including but not limited to air conditioning units, masts, stairwells and liftwells may exceed the specified building height provided they are integrated with the design of the building.

Table to Schedule 13

The precincts referred to in this table are the precincts identified on Map 1 forming part of this schedule.



DDO13 West Hawthorn Area – All Precincts

Requirements

General Requirements

- Buildings should minimise the impact on the amenity of residentially zoned land having regard to matters such as overlooking, overshadowing or visual bulk.
- All development on land abutting residentially zoned land or separated from residential land by a laneway, should comply with the relevant objectives and standards of Clause 55.04 and the Guidelines for Higher Density Residential Development (DSE 2004) as appropriate.
- Facades, side and rear walls that are visible from the public realm or from residential areas should be articulated to a high standard and consideration should be given to the proposed fenestration.
- Development along Burwood Road should have a zero setback and extend across the full width of the lot at least at ground floor level except where access requirements do not allow this.
- Where it is necessary to set back a building from the zero setback point, the treatment of the setback should not create a barrier between the street and the building. Within a residential area, the setback should be landscaped.
- Existing mature vegetation should be retained and buildings designed to protect the vegetation.
- Development on the north side of Burwood Road should ensure reasonable solar access to the south side of Burwood Road at the equinox.
- Streets, lanes and walkways should be well lit to enhance public safety and useability.
- Loading bays, site storage and waste collection areas should be appropriately screened from public view.
- Building services, plant and infrastructure structures should integrate with the architecture of the host building.
- Vehicular access should not be from Burwood Road where there are other options for vehicular access.
- Car parking and garage doors should not dominate the streetscape. Basement car parks should be located fully below street level when fronting Burwood Road and Glenferrie Road.
- New development should incorporate environmentally sustainable design features as appropriate.

DDO13-1 Precinct 1 - Office and Housing

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate substantial change.
- To promote a precinct that has a high degree of design flexibility and can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- To encourage built form and landscape design that identify the commencement of the western end of the West Hawthorn neighbourhood activity centre.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

- The hard edges of buildings to the street frontage should maintain a human scale. Higher built form elements should be setback so that buildings do not unreasonably dominate the streetscape when viewed from the opposite side of the street.
- Building height should not exceed 16 metres.
- At the street frontage buildings should have a maximum building height of 10 metres. Thereafter buildings should be setback a minimum of 5 metres.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.
- If a rear boundary abuts residentially zoned property the setback should be landscaped.

DDO13-3 Precinct 3 - The West Hawthorn Village

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate incremental change.
- To ensure built form and landscape outcomes respect and enhance the character of the precinct.
- To maintain streetscape rhythm.
- To provide for active frontages along Burwood Road and Power Street.
- To maintain the current human / pedestrian friendly scale of development.
- To create and reinforce local spaces for passive recreation.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

- Narrow buildings should not be consolidated into a single wider building.
- Building Height should not exceed 9 metres at the street frontage. Any storey beyond the street frontage should be setback a minimum of 5 metres so that buildings do not unreasonably dominated the streetscape when viewed from the opposite side of the street... Overall Building Height should not exceed 11 metres. This does not apply to Hawthorn Square (88-114 Burwood Road) or the car park to the rear of Hawthorn Square (124-128 Power Street)
- At Hawthorn Square (88-114 Burwood Road) and the car park to the rear of Hawthorn Square (124-128 Power Street) Building Height should not exceed 16m. At the street frontage the Building Height should not exceed 10 metres. Above that height, buildings should be setback a minimum of 5 metres.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.

- Reinforce the area at the Power Street and Burwood Road corner of Hawthorn Square (88-114 Burwood Road) as an important local space for passive recreation.

DDO13-4A Precinct 4A - Mixed Use North

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate substantial change.
- To promote a precinct that has a high degree of design flexibility and can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- To ensure the southern edge of the precinct abutting Burwood Road promotes active street frontages and complements the high quality pedestrian environment in this location.
- To encourage utilisation of Lynch Street for vehicular access.
- To provide for active frontages along Burwood Road and Power Street.
- Development should provide casual surveillance of Tweed Street and Golding Street where this does not compromise the amenity of adjacent residential land uses.

Requirements

- Development should ensure the potential for adequate sunlight penetration to the southern footpath of Burwood Road at the equinox.
- Buildings Height should not exceed 22 metres.
- At the Burwood Road street frontage, the Building Height should not exceed 12 metres.
- Any additional height above 12 metres should be set back a minimum of 6 metres from the Burwood Road frontage, so that buildings do not unreasonably dominate the streetscape and maintain adequate sunlight penetration to the south side of Burwood Road at the equinox.

DDO13-4B Precinct 4B - Mixed Use South

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate substantial change.
- To promote a precinct that has a high degree of design flexibility and that can absorb and pioneer a variety of architectural styles, high quality contemporary architecture and innovative design solutions.
- To ensure the northern edge of the precinct abutting Burwood Road promotes active street frontages and complements the high quality pedestrian environment in this location.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.
- To ensure new buildings respect and complement heritage buildings.
- To ensure vehicular access arrangements have minimal impact on residential amenity in Manningtree Road.
- To promote active frontages along Lavidge Street, Thomas Street, Drill Street, Elizabeth Street, Guest Street, Cook Street and Luton Lane where this does not compromise the amenity of adjacent residential land uses with respect to noise, loss of privacy and poor visual amenity.

Requirements

General Requirements

- The hard edges of buildings to the street frontage should maintain a human scale.
- Development should provide for active frontages along Burwood Road and Power Street.
- New development should provide a landscaped buffer that when fully matured will substantially screen buildings adjoining the Manningtree Road properties.
- Building Height should not exceed 18 metres.
- At the Burwood Road street frontage, the Building Height should not exceed 12 metres.
- Any additional height above 12 metres should be set back a minimum of 5 metres from the Burwood Road frontage, so that buildings do not unreasonably dominate the streetscape.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.

DDO13-5 Precinct 5 - Transit Oriented Development

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate significant change.
- To maintain the service role of Lynch Street and promote residential development at the eastern and western ends of the precinct.

Requirements

- Buildings should be well articulated, minimise overlooking, overshadowing and noise impacts and respond positively to the public realm.
- Building Height should not exceed 18 metres.

DDO13-6 Precinct 6 - Glenferrie Road Quarter

Design Objectives

- To encourage built form outcomes that are consistent with the precinct's ability to accommodate incremental change.
- To reinforce the existing retail and commercial character of the area, including community and professional services.
- To ensure built form and landscape outcomes respect and enhance the character of the precinct.
- To ensure that the built form and landscape outcomes of new developments minimise impacts on residentially zoned land.
- To maintain streetscape rhythm, traditional narrow buildings should not be consolidated into single wider buildings.
- To provide for active frontages along Burwood Road and Glenferrie Road.

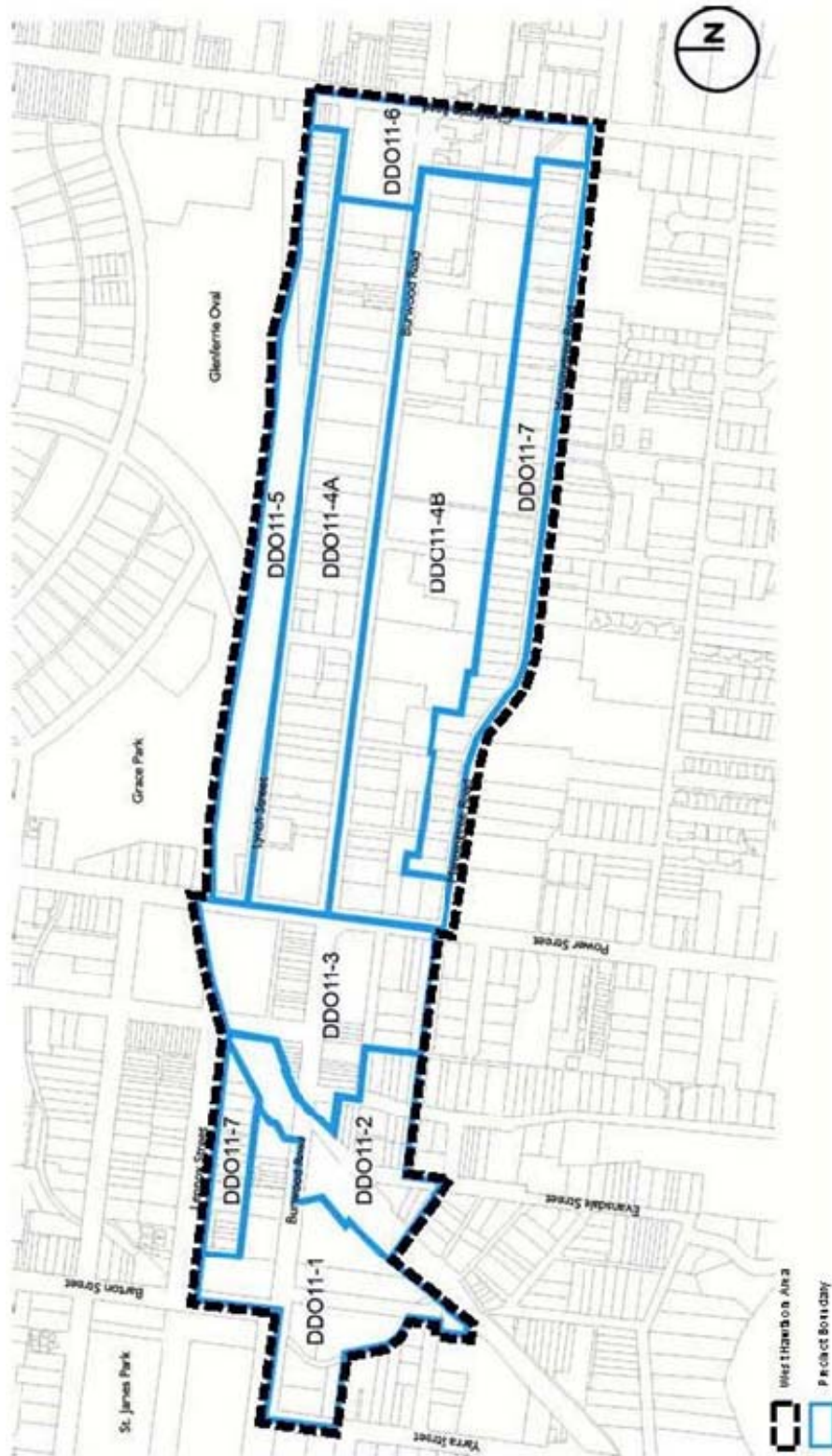
- To provide for active frontages along Luton Lane where this does not compromise the amenity of adjacent residential land uses with respect to noise, loss of privacy and poor visual amenity.
- To protect existing residential areas from unreasonable loss of amenity.
- To ensure building heights and setbacks maintain reasonable amenity to existing residential properties.

Requirements

- New development along Burwood Road should extend across the lot at ground floor level to prevent the creation of concealed spaces and to continue the consistent character along Burwood Road.
- Building Height should not exceed 16 metres.
- At the street frontages of Burwood Road and Glenferrie Road the Building Height should not exceed 10 metres. Thereafter buildings should be setback a minimum of 5 metres.
- New buildings adjoining residential properties should provide transitional height and setbacks to limit the impact of overshadowing and overlooking, and reduce the visual bulk of upper levels.
- Building heights and setbacks of all non residential and residential buildings in relation to the adjoining a residential boundary should be in accordance with the provisions of Clause 55.04 for development up to 9 metres. Where development exceeds 9 metres, regard should be given to the directions of Clause 52.35.

MAP 1: WEST HAWTHORN AREA AND PRECINCTS

Delete Precincts 2 & 7



Appendix E Recommended Clause 22.15: West Hawthorn Local Policy

22.15 WEST HAWTHORN AREA POLICY

~~22.15~~ This policy applies to all applications for use and development of land in the West Hawthorn area shown on Map 1 of this policy.

22.15-1 Policy Basis

The policy is derived from the *West Hawthorn Urban Design Framework (2006)* (UDF).

Burwood Road, West Hawthorn is unique to the City of Boroondara for its large lot sizes, and range of bulky goods and large format retail uses. It is an area which has significant capacity to accommodate land use intensification and substantial built form change. A local policy is required to appropriately manage the impacts of such change.

The UDF encourages Burwood Road West Hawthorn as a mixed use precinct, to facilitate bulky goods, large format retailing, office and higher density residential development while providing for a range of other employment opportunities in retail, commercial and community based uses. While encouraging the further development of this corridor, this policy also seeks to ensure that new development is appropriately located and designed, fosters sustainable transport and building outcomes, improves pedestrian access and connectivity, and does not cause unreasonable amenity impacts on adjoining residential areas and public spaces.

This local policy is intended to give effect to provisions and recommendations contained in the *West Hawthorn Urban Design Framework (2006)*. It should also be read in conjunction with the Design and Development Overlay Schedule 13 (West Hawthorn Area).

22.15-2 Objectives

- To implement the *West Hawthorn Urban Design Framework (2006)*.
- To encourage the provision of bulky goods, large format retailing and office uses and a mix of compatible employment opportunities in retail, commercial and community based uses in appropriate locations.
- To recognise West Hawthorn's potential to provide for a diversity of higher density housing opportunities and urban consolidation, particularly in areas that are not encumbered by or proximate to heritage places or have direct abuttal to residential areas.
- To ensure active ground level frontages and vibrant street level activity.
- To provide community services / facilities that accommodate the current and future needs of the West Hawthorn Community.

22.15-3 Policy

It is policy to:

- Encourage uses with active frontages in commercial areas to promote pedestrian activity and vibrancy at ground floor level on sites with street or laneway frontages.
- Encourage higher density office & residential development on upper floor levels in commercial areas.
- Discourage residential land use at ground level facing Burwood Road.
- Encourage office and residential uses in Precinct 1.
- Encourage convenience retail and services at ground level, with office and residential land use above ground level in Precinct 3.
- Encourage bulky goods, large format retailing and compatible retail and commercial uses at ground floor level and residential and office uses at upper levels in Precincts 4A and 4B.
- Encourage cafés, bars or restaurants in Precincts 4A and 4B to service employment and residential land uses in and around the study area.
- Encourage office and residential land use in Precinct 5.
- Encourage uses that reinforce existing retail and commercial uses including community and professional services in Precinct 6.

22.15-4 Policy References

West Hawthorn Urban Design Framework (2006)

MAP 1: WEST HAWTHORN AREA AND PRECINCTS

[Delete Precincts 2 & 7](#)

