

Planning and Environment Act 1987

Panel Report

Knox Planning Scheme Amendment C141

Upper Gully Strategic Plan

21 December 2016

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

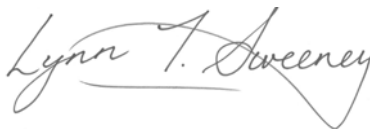
Knox Planning Scheme Amendment C141

Upper Gully Strategic Plan

21 December 2016



Con Tsotsoros, Chair



Lynn Sweeney, Member



Peter Edwards, Member

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List of Abbreviations

Activity Centre	Upper Ferntree Gully Activity Centre
ARI	Average Recurrence Interval
Background Report	Upper Gully Plan Volume 2 Consolidated Background Report
DDO12	Design and Development Overlay Schedule 12
SLO3	Significant Landscape Overlay Schedule 3
Strategic Plan	Upper Gully Strategic Plan
VPP	Victoria Planning Provisions

Overview

Amendment Summary	
The Amendment	Knox Planning Scheme Amendment C141
Common name	Upper Gully Strategic Plan
Brief description	The Amendment seeks to implement the Upper Gully Strategic Plan, December 2015 (Strategic Plan) by, among other changes, apply Design and Development Overlay Schedule 12
Subject site	Upper Ferntree Gully Activity Centre
Planning Authority	Knox City Council
Authorisation	23 December 2015, Department of Environment, Land, Water and Planning under delegation from the Minister for Planning
Exhibition	8 February to 29 March 2016
Post-exhibition notice	July to 12 September 2016
Submissions	<p>A combined total of 460 submissions were received, as shown in Appendix A, comprising:</p> <ul style="list-style-type: none"> - 344 submissions in response to exhibition - 116 submissions in response to post-exhibition changes

Panel Process

The Panel	Con Tsotsoros (Chair), Lynn Sweeney and Peter Edwards
Directions Hearing	Knox City Council, 14 October 2016
Panel Hearing	Knox City Council, 15, 17 and 18 November 2016
Site Inspections	Unaccompanied, 17 October 2016
Appearances	<ul style="list-style-type: none">- Knox City Council represented by Mr Darren Wong of Maddocks Lawyers and calling, Mr Craig Czarny of Hansen Partnership as an expert witness on urban design- Ms Karin Orpen- Mr Ciaran Doherty- Ms Anne Boyd- National Trust Dandenong Ranges Branch represented by Ms Carolyn Ebdon- Mr Peter Smith- Mr John Winnett- Ms Zoe Glen-Norman- Ms Jasmin Wilson- Mr Michael Martin- Ms Karen Coulson- Knox Appropriate Development Alliance represented by Ms Catherine Kruse- The 1812 Theatre Limited represented by Mr Chris Procter- Ms Kirrily Whatman- Mr Steve Whatman- Mr Hugh Aldersey- Dr Ray Brindle- Mr David Fagan
Date of this Report	21 December 2016

Executive Summary

(i) Summary

The Upper Ferntree Gully Activity Centre is located in the Dandenong foothills, approximately 30 kilometres from Melbourne's Central Activities Area. The Activity Centre includes the Upper Ferntree Gully Railway Station and is considered the 'gateway to the Dandenong Ranges' tourist attractions, including the 1,000 Steps which is within walking distance.

The regional significance of the Dandenong Ranges foothills is demonstrated throughout local planning policy which directs that urban consolidation objectives must not outweigh the environmental and landscape objectives for the foothills. Such objectives include protecting and enhancing the foothills' metropolitan landscape significance, maintaining uninterrupted view lines and ensuring that buildings sit below the dominant tree canopy.

Within this planning policy framework, Council prepared the Upper Gully Strategic Plan, October 2015 (revised in November 2015). The original Strategic Plan and its background report had significant engagement with the community, State Government agencies and local business operators during its preparation. It comprehensively assessed the impacts of two and three-storey scenarios and recommended that a mandatory 8.5 metre maximum building height be applied to the entire Activity Centre. The Upper Gully Strategic Plan (Strategic Plan) provides a solid basis for future built form outcomes.

Knox Planning Scheme Amendment C141 (the Amendment) proposes to implement the Upper Gully Strategic Plan by, among other changes, introducing Design and Development Overlay Schedule 12 which includes a mandatory 8.5 metre (two storey) maximum building height for part of the Activity Centre and 12 metres (three storeys) in other parts. The misalignment between the heights in the Strategic Plan and the exhibited Amendment resulted from Council deciding to not exhibit the Amendment in the recommended form supported by the Strategic Plan. Instead, it increased the maximum building height to 12 metres (3 storeys) on land in the Activity Centre's 'flanks'.

The Amendment was exhibited between 8 February to 29 March 2016 and received 344 submissions. Key issues raised in submissions included building height, flooding, traffic, parking, bushfires, heritage, planning regulation on railway land and flora and fauna. At its May 2016 meeting Council resolved to conduct further research and analysis of the height and consult with relevant stakeholders. This resolution was not actioned. At its 28 June meeting, Council resolved to reverse building heights in the flank areas back to 8.5 metres and increase heights in the Activity Centre core to 12 metres. Council received 116 further submissions in response to the post-exhibition changes.

The Panel has considered all submissions, post-exhibition comments and evidence. The Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified where it aligns with the Strategic Plan, and it should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

Victoria has a performance-based planning system founded on primarily flexible planning provisions that respond to future changing circumstances. However, there is a role for mandatory provisions in exceptional circumstances and where appropriate and justified. The Panel finds the unique nature of the Activity Centre, comprehensive analysis underpinning the Amendment and existing State and local planning policy strategically justify a mandatory maximum building height provision. The building height for this provision should be 8.5 metres (two storeys) to align with the Dandenong Foothills policy and protect foothills views from key vantage points.

Applying a site-specific mandatory maximum building height of 12 metres (three storeys) to the 1812 Theatre site would allow it to construct a fly tower without adversely impacting the foothill views. While the Panel understands the basis behind expert evidence to support a 12-metre height in other parts of the Activity Centre, it considers that this height would not effectively achieve the Dandenong foothills policy.

The Amendment and Strategic Plan satisfactorily respond to issues related to flooding, traffic and parking, bushfire, heritage, the railway precinct land and flora and fauna.

The Amendment is unlikely to materially affect future flood conditions and each site subject to flooding can be considered on its own merit. Council's proactive response to add a new action in Clause 21.08 to develop comprehensive flood modelling would better inform future planning provisions, including overlays, and subsequently inform future planning permit applications.

The existing road network and parking supply can support the Activity Centre's modest future development. The proposed street treatments will enhance safety, walkability and amenity.

Council is commended for its comprehensive bushfire assessment when preparing the Strategic Plan and for including the Country Fire Authority as part of that process. While the broader region has its challenges, the Amendment appropriately and sufficiently addresses bushfire risk. A mandatory maximum 8.5 metre building height would effectively limit future population growth in the Activity Centre.

Design and Development Overlay Schedule 12 and the Heritage Overlay are appropriate and justified to be applied to the Railway Station, Visitors Information Centre and railway precinct land. There is no evidence to support claims that additional floorspace above the existing Activity Centre footprint would adversely affect local flora and fauna.

The Panel thanks all parties and submitters for their assistance during the Hearing and for the manner in which submissions and evidence was presented.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Knox Planning Scheme Amendment C141 be adopted as exhibited subject to the following:

- 1. Amend Clause 22.01, as shown in Appendix C, to:
 - a) make changes which improve its clarity and operation.****

2. Amend Design and Development Overlay Schedule 12, as shown in Appendix C, to:
- a) make changes which improve its clarity and operation.
 - b) Change the mandatory maximum building height to 8.5 metres (two storeys) for the entire Upper Ferntree Gully Activity Centre, except for the 1812 Theatre site at 1-3 Rose Street.
 - c) Change the mandatory maximum building height to 12 metres (three storeys) for the 1812 Theatre site at 1-3 Rose Street.
 - d) Add a new design objective under Clause 1.0:
To facilitate the fly tower for the 1812 Theatre Company and strengthen its role in developing arts and culture in the municipality and enhance it as an attraction for visitors to the Activity Centre.

1 Introduction

1.1 The Amendment

The Amendment proposes to implement the Upper Gully Strategic Plan, December 2015 (Strategic Plan) by:

- amending Clauses 21.04 (Urban Design), 21.05 (Housing), 21.07 (Economic Development), and 21.08 (Infrastructure) of the Municipal Strategic Statement to support implementation and application of the Strategic Plan
- amend the map at Clause 21.07-3 to clearly delineate the centres of Upper Ferntree Gully and The Basin as 'Tourist Gateway to the Dandenong Ranges' (updated wording in the legend)
- including the Strategic Plan as a reference document Clauses 21.09 and 22.10
- amending Clause 22.01 (Dandenong Foothills) so that it does not apply to the Activity Centre
- introducing a Clause 22.12 (Upper Ferntree Gully Activity Centre) to guide the future direction of the Activity Centre
- deleting Design and Development Overlay Schedules 1, 2 and 10 from the Activity Centre
- removing the Significant Landscape Overlay Schedule 2 from Burwood Highway and a section (part of) William Street in the Activity Centre
- introducing a new Design and Development Overlay Schedule 12 (DDO12) to guide the growth and development of sites in the Activity Centre
- applying the Heritage Overlay to:
 - Visitors Information Centre, 1211 Burwood Highway
 - Upper Ferntree Gully Railway Station, 1183 Burwood Highway (Railway Station).

The Amendment applies to land in the shaded area shown in Figure 1. Figure 1 shows design and development plan for the Upper Ferntree Gully Activity Centre, as exhibited (DDO12 Map 1).

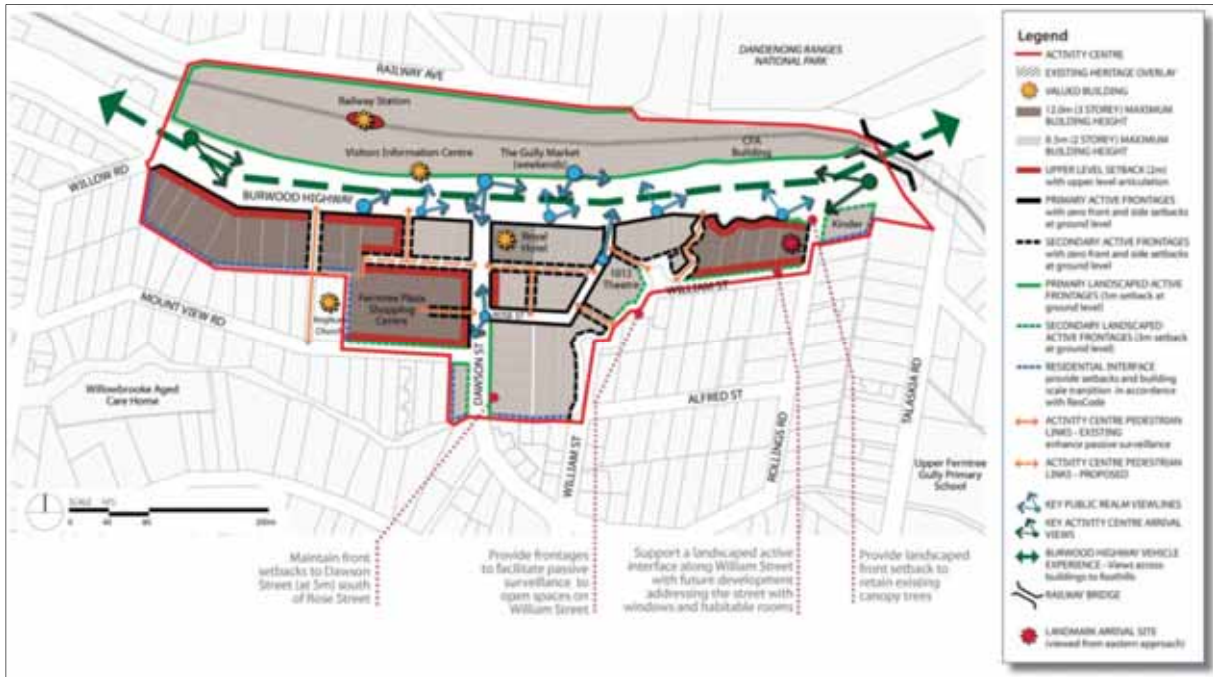


Figure 1 Exhibited DDO12 Upper Ferntree Gully Activity Centre

1.2 Post-exhibition changes

Following its meeting on 28 June 2016, Council decided to change the exhibited heights, as shown in Figure 2.

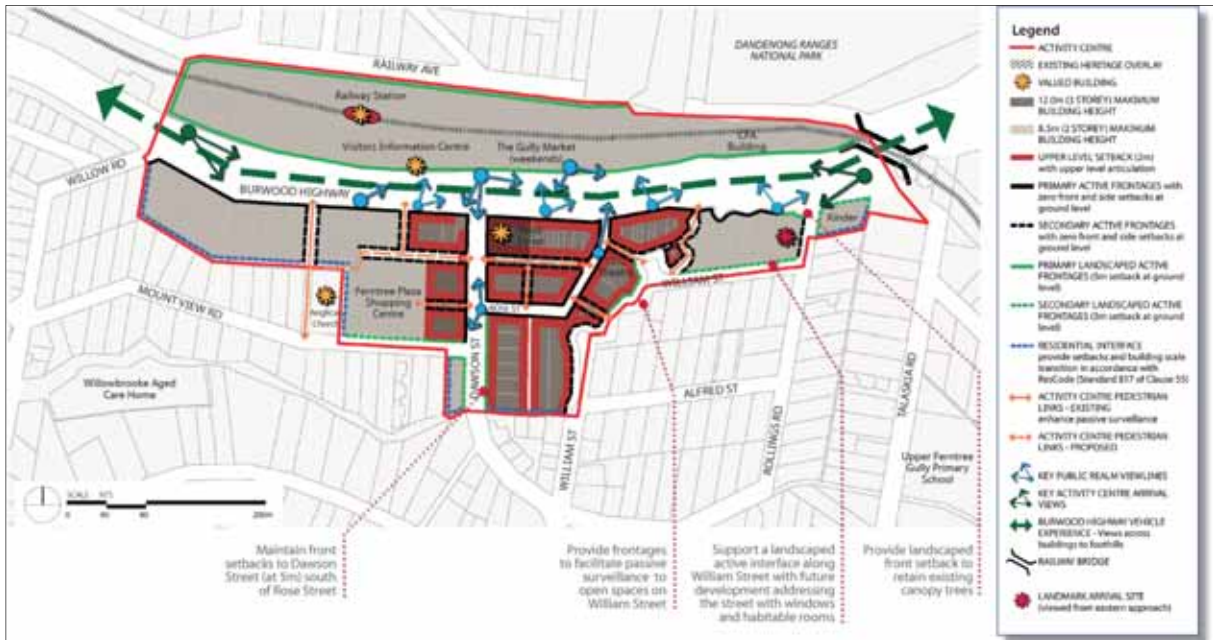


Figure 2 Post-exhibition changes to DDO12

(i) Discussion and conclusion

Council presented changes to Planning Scheme provisions since exhibiting the Amendment.

Council called an urban design expert, Mr Czarny of Hansen Partnership, who suggested drafting related changes:

- *Review Building Design parameters in DDO12-Section 3 for duplication with State Policy (Clause 15) and related Activity Centre Guidelines.*
- *Clarify the definition of mandatory or discretionary status of DDO12-Section 3 elements, other than Building Height.*

There was a 'without prejudice' discussion on drafting related matters during the Hearing. Council presented a tracked version of clause changes that it considered would improve their clarity and operation. Parties were provided with the opportunity to respond during the Hearing.

The Panel accepts post-exhibition changes to Clause 22.01 and DDO12, as shown in Appendix C, that improve their clarity and operation and discusses other changes in the following chapters.

Mr Czarny has identified an inherent drafting issue with the parent Design and Development Overlay which refers to the ability for a permit to be granted to vary a requirement in the schedule. Many Design and Development Overlay schedules in planning schemes use the word 'must' to make a provisions appear as a requirement. The words "*A permit cannot be granted to vary this requirement*" immediately after the provision makes it mandatory. While the Panel agrees with Mr Czarny's observation, the parent Overlay would need to be amended to enable the clarity that he seeks. The *Planning and Environment Act 1987* does not enable a Panel to recommend such a change.

The Panel notes Council submission that Clause 22.10, which is affected by the Amendment, was deleted through Amendment C131.

(ii) Recommendation

The Panel recommends:

- 1. Amend Clause 22.01, as shown in Appendix C, to:**
 - a) make changes which improve its clarity and operation.**
- 2. Amend Design and Development Overlay Schedule 12, as shown in Appendix C, to:**
 - a) make changes which improve its clarity and operation.**

1.3 Background to the proposal

2014	
20 November	An interim mandatory maximum 7.5-metre building height was applied to the Upper Ferntree Gully, The Basin and Alchester Village Activity Centres with an expiry date of 30 April 2016 [Amendment C130]
2015	
24 November	Council resolved to endorse the Amendment for public exhibition with 12m building heights in selected areas instead of heights recommended in its Strategic Plan and by its officers
23 December	Amendment C141 was authorised
2016	
17 March	The new residential zones, which implement the findings of the Knox Housing strategy, were introduced into the Planning Scheme [Amendment C131]
24 May	At its meeting, Council: <ul style="list-style-type: none"> - did not consider 344 submissions received from exhibition - resolved to undertake further research and analysis of the height and consult with relevant stakeholders - requested a report on this research and consultation be presented at the next meeting
28 June	Council resolved to reduce building height from 12m to 8.5m in previously endorsed areas and increase building height from 8.5m to 12m in other areas – This decision occurred without conducting further research and consultation resolved at the 24 May meeting
30 June	Interim height provisions were extended for the three Activity Centres by 18 months to 30 October 2017 [Amendment C146]
26 July	Council unsuccessfully sought to rescind its decision to change the Amendment's building heights resolved at its 28 June meeting
July to 12 September	In response to Council post-exhibition changes, Council officers extended the opportunity to make a submission or revise original submissions
17 November	Permanent built form provisions applied to The Basin and Alchester Village Activity Centres [Amendment C137]

1.4 Consultation and exhibition

At the November 2015 Council meeting, it was reported that Council conducted a comprehensive consultation process including:

- ten community workshops held August 2014 and May 2015
- two letter mail-outs to all land owners and occupiers in Upper Ferntree Gully including Yarra Ranges Council residents
- additional letters to landowners and business operators in the Activity Centre
- face-to-face contact with business operators in the Activity Centre
- school project with year 5 and 6 students at Upper Ferntree Gully Primary School

- six internal Council workshops and ongoing engagement with key service areas of Council
- dedicated online webpage and online community survey
- liaison with government agencies and providers
- independent urban design review
- regular and ongoing engagement with the Ward Councillor
- presentations at an advisory committee and Council Issues Briefings.

This consultation preceded Council's exhibition and post-exhibition notice periods which attracted 460 submissions.

(i) Submissions

Council submitted that the Amendment was formally exhibited between 8 February and 29 March 2016. Notice was given through:

- the Government Gazette on 11 February 2016
- direct notice to 2,486 property owners and occupiers of land including Yarra Ranges Council residents
- direct notice to government agencies, prescribed Ministers and the Shire of Yarra Ranges
- notice in *Knox Leader* on 9 February 2016.

Many submitters criticised the Amendment for not aligning with the Strategic Plan that was based on a comprehensive strategic process involving stakeholders including the community. They criticised Council for not consulting before deciding to exhibit the Amendment with increased building heights and for not consulting before reversing these heights and increasing heights elsewhere after the Amendment was exhibited. Submitters concluded that Council's decisions were 'arbitrary' and were insufficiently justified after these changes were not formally explained.

A petition comprising 684 signatures and presented by Cr Karin Orpen stated:

Amendment C141 consultation process has not been conducted in a manner that is fair, reasonable or transparent and has denied the general community the ability to have informed consultation and input into the decision prior to Council adopting this amendment.

(ii) Discussion

The Panel has considered whether Council has satisfactorily met its statutory obligations for giving notice of the Amendment, as specified in the *Planning and Environment Act 1987*. The Act states that the planning authority, Council, must give notice of the Amendment to, among other parties, to every Minister, public authority and council that it believes may be materially affected. Notice must be published in the Government Gazette and set a date for submissions no less than one month after the gazette notice date.

The Panel is satisfied that Council has met all of these requirements.

It is common for a planning authority, Council, to make changes to an Amendment after it has been exhibited. Generally, these changes are in response to issues raised in submissions

and need to be within the scope of the Amendment. A Panel must consider the exhibited version of the Amendment and any further changes suggested through submissions, including those from Council.

The Panel understands submitter concern with how Council conducted its non-statutory consultation process, however this is beyond the Amendment process and the Panel makes no further comment.

1.5 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions, evidence and other material presented to it during the Hearing, and observations from site visits.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

This report deals with the issues under the following headings:

- Planning context
- Building height
- Other issues
 - Flooding
 - Traffic and parking
 - Bushfire
 - Heritage
 - Railway station precinct
 - Flora and fauna.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

State Planning Policy Framework

Clauses

11 Settlement

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

12 Environmental and landscape values

Planning should protect sites and features of nature conservation, biodiversity, geological or landscape value.

13 Environmental risks

Planning should adopt a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards.

15 Built Environment and Heritage

Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.

16 Housing

Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure. New housing should have access to services and be planned for long term sustainability, including walkability to activity centres, public transport, schools and open space. Planning for housing should include providing land for affordable housing.

17 Economic development

Planning is to provide for a strong and innovative economy, where all sectors of the economy are critical to economic prosperity. Planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential.

18 Transport

Planning should ensure an integrated and sustainable transport system that provides access to social and economic opportunities, facilitates economic prosperity, contributes to environmental sustainability, coordinates reliable movements of people and goods, and is safe.

19 Infrastructure

Planning should ensure an integrated and sustainable transport system that provides access to social and economic opportunities, facilitates economic prosperity, contributes to environmental sustainability, coordinates reliable movements of people and goods, and is safe.

Local Planning Policy Framework

Clauses

21 Municipal Strategic Statement

21.01 Municipal profile

Pressure for residential development in the foothills areas and beyond the urban growth boundary will need to be carefully managed to protect the environmental, landscape and visual amenity qualities of these areas. Urban consolidation objectives must not outweigh the environmental and landscape objectives for the foothills.

21.02 Key influences

Clause 21.02 applies the themes of Urban Design, Housing, Environment, Economic Development and Infrastructure and outlines key influences which form the basis for the subsequent objectives, strategies and means of implementing Clauses 21.04 – 21.08.

21.03 Vision and strategic land use framework

To assist in achieving Knox Vision 2025, the Knox 2009–2013 Council Plan identifies six strategic objectives for a sustainable community which evolved from the seven themes of Vision 2025: Community Wellbeing; Quality Services & Infrastructure; Accessible Transport Choices; Sustainable Natural Environment; Quality Urban Environment; Prosperous modern economy.

21.04 Urban design

The Urban Design theme relates to the design of the built environment and supports the land use themes described under Housing, Environment, Economic Development and Infrastructure.

21.05 Housing

The Housing theme implements the Knox Housing Strategy 2015.

21.06 Environment

The Environment theme relates to the natural environment and cultural heritage.

21.07 Economic development

The Economic Development theme relates to industrial, commercial and retailing activity.

21.08 Infrastructure

The Infrastructure theme relates to the provision of physical and social services.

22 Local Planning Policy

22.01 Dandenong Foothills

Protect and enhance the metropolitan landscape significance of the Dandenong Foothills and maintain uninterrupted view lines from within the municipality and vantage points in metropolitan Melbourne by ensuring that all buildings and works are sensitively designed and sited to sit below the dominant tree canopy height.

22.12 Residential land use and development within the Commercial 1 Zone

- To encourage residential land use and development within commercial centres that is complementary to the role and scale of the centre.
- To ensure that new residential development within commercial centres is designed and constructed to a high standard of visual appearance and makes a positive contribution to the public realm.
- To ensure that new development is appropriate to the scale of nearby buildings, streets and public spaces.
- To ensure that new residential development provides adequate car parking for residents and visitors.
- To protect the amenity of surrounding residential areas from unreasonable impacts.
- To ensure that the landscape character of the Foothills area is protected.

2.2 Relevant strategies and plans

(i) Upper Gully Strategic Plan, December 2015

The exhibited Strategic Plan, December 2015 sets the framework for the future development and improvements, including recommendations for built form provisions for the Activity Centre. It comprises Part A *Strategic Plan* and Part B *Implementation Plan* and a vision:

A vibrant and friendly centre with a distinct 'village' feel that is serviced by a range of community, employment and recreational opportunities connected by safe walking and cycling paths, and public transport. Its character and identity is strongly defined by the foothills setting and its relationship with the Dandenong Ranges.

The public spaces are valued by all residents. The streets are people oriented, thriving places for business and inspiring places to enjoy, due to the quality of landscaping, public art and architecture.

There is a strong sense of community and local residents are proud to call it home, and visitors are welcomed to engage in a range of public events and cultural experiences offered in the centre.

The Strategic Plan applies five city plan themes:

- Democratic and engaged communities
- Healthy connected communities
- Prosperous, advancing economy
- Vibrant and sustainable built and natural environments
- Culturally rich and active communities.

These themes are aligned with 10 strategic objectives:

1. To provide a safe and integrated access and movement network for walking, cycling and vehicles that prioritises the most popular routes linking key destinations (e.g. shops, services, public spaces, parks).
2. To facilitate the effective use of spaces (e.g. streets, open space, plazas, parks) for the networking and building of the community.
3. To strengthen the identity and connection with the surrounding foothills landscape through excellence in built form and landscape quality and design in the Activity Centre and along Burwood Highway.
4. To enhance its role as an Activity Centre, support the growth of business, including health, tourism, retail and commercial land uses that meet the needs of the community.
5. To enable people to age in place and meet the needs of changing household structures, increase the range of intergenerational and sustainable housing opportunities available in the Activity Centre.
6. To meet the changing needs of the community over time, provide high quality, localised social and community infrastructure that delivers a range of services.

7. To strengthen Upper Gully's tourism brand as a gateway to the Dandenong Ranges and capture a greater share of the passing tourism market.
8. To strengthen the community's valued local legacy, promoting Upper Gully's distinctive history, arts and culture.
9. To manage the risk to people, property and the environment from adverse impacts of natural hazards, including bushfire from the surrounding area, flood from overland flow and mainstream flooding and landslip in designated landslip areas.
10. To strengthen custodianship and leadership and partner with the community in the planning and management of Upper Gully.

The exhibited Strategic Plan mirrors the Gully recommended pre-exhibition version except for the preferred setbacks and design outcomes for built form. The original Strategic Plan, October 2015 included preferred setbacks and design outcomes for built form, as shown in Figure 3. It proposed a mandatory maximum 8.5 metre building height to the entire Activity Centre.

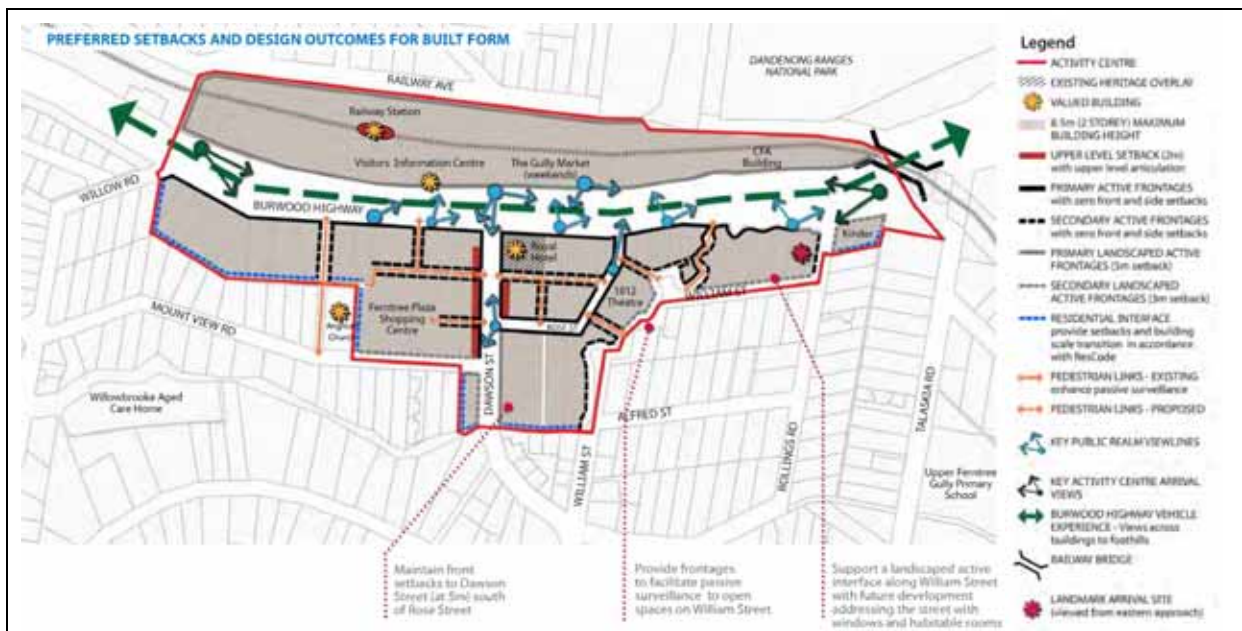


Figure 3 Upper Gully Strategic Plan – Preferred setbacks and design outcomes for built form

At its meeting on 24 November 2015, Council resolved not to endorse the Strategic Plan in its recommended form for exhibition. It revised the heights shown in Figure 3 to those shown in Figure 1 and changed the date of the Strategic Plan to December 2015.

(ii) Upper Gully Plan Volume 2 Consolidated Background Report

The Upper Gully Plan Volume 2 Consolidated Background Report, December 2015 (Background Report) provides comprehensive strategic information across 207 pages and includes:

- consultation and engagement with the community, internal stakeholders and external agencies including the Country Fire Authority, Department of Environment, Land, Water and Planning, VicRoads and Public Transport Victoria
- key strategic influence including State and local planning policies

- comprehensive perspectives of the visual impact resulting from two and three storey built form from different vantage point
- traffic and parking survey findings
- bushfire, flooding and landslip assessments.

The following reports are attached to the Background Report:

- Upper Gully Plan Engagement Report, Effective Conversations (2015)
- Technical Report – Land use and Economics, Urban Enterprises (2014)
- Technical Report – Transport and Parking, Movendo (2015)
- Upper Ferntree Gully Activity Centre Heritage Assessments Report, Context Pty Ltd (2015).

(iii) Plan Melbourne

The Explanatory Report states that the following Plan Melbourne directions are relevant to the Amendment:

- Direction 2.2 – Reduce the cost of living by increasing housing supply near services and public transport.
- Direction 4.1 – Create a city of 20 minute neighbourhoods.
- Direction 4.2 – Protect Melbourne and its suburbs from inappropriate development.
- Direction 4.3 – Create neighbourhoods that are safe for communities and healthy lifestyles.
- Direction 4.4 – Plan for future social infrastructure.
- Direction 4.5 – Make our city greener.
- Direction 4.8 – Achieve and promote design excellence.
- Direction 5.1 – Use the city structure to drive sustainable outcomes in managing growth.
- Direction 5.2 – Protect and restore natural habitats in urban and non-urban areas.

These directions align with those referred to in the Background Report.

2.3 Planning scheme provisions

The Activity Centre is zoned Commercial 1 Zone and the Amendment proposes to:

- replace existing Design and Development Overlay schedules with Schedule 12
- apply the Heritage Overlay to two sites.

The purposes of the zone and overlays are shown in Table 1.

Table 1 Zone and overlays purposes

Zone	Overlays	
Commercial 1	Design and Development	Heritage
Common purpose		
To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.		
Other purposes		

Zone	Overlays	
Commercial 1	Design and Development	Heritage
<ul style="list-style-type: none"> - To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. - To provide for residential uses at densities complementary to the role and scale of the commercial centre. 	<ul style="list-style-type: none"> - To identify areas which are affected by specific requirements relating to the design and built form of new development. 	<ul style="list-style-type: none"> - To conserve and enhance heritage places of natural or cultural significance. - To conserve and enhance those elements which contribute to the significance of heritage places. - To ensure that development does not adversely affect the significance of heritage places. - To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

2.4 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

- Ministerial Direction No 11 – Strategic Assessment of Amendments
- The Form and Content of Planning Schemes (s7(5)).

(ii) Planning Practice Notes

Council submitted that the Amendment is consistent with:

- Planning Practice Note 8 – Writing a Local Planning Policy
- Planning Practice Note 46 – Strategic Assessment Guidelines
- Planning Practice Note 58 – Structure Planning for Activity Centres
- Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes
- Planning Practice Note 60 – Height and Setback Controls for Activity Centres.

Planning Practice Note 59 states:

Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements.

Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.

2.5 Submissions

Council's submission outlined how the Amendment is supported by the State and local planning policies referenced in the Explanatory Report. Specifically, it stated that the Amendment supports Clause 21.01 by providing strategic direction and built form provisions that consider urban and economic growth while preserving the environmental and landscape objectives for the Dandenong foothills and added:

The Amendment will contribute to the key objective of Clause 21.04 of protecting and enhancing the aesthetic, environmental and landscape values and vistas of the Dandenong Foothills, Dandenong Creek Valley and local and national parklands.

During the Hearing, Council presented information from its draft Knox Structure Plan, which demonstrates that it is not reliant on the Activity Centre to contribute towards its overall future housing growth.

2.6 Discussion

The Panel accepts Council's submission that the Amendment is supported by State and local planning policy. At the broad level, there may appear to be a policy tension between urban consolidation in activity centres with a train station, and protecting Melbourne's valued environments such as the Dandenong Ranges foothills.

At a more detailed level, the regional significance of the Dandenong Ranges foothills is demonstrated throughout local planning policy, including Clause 21.01-3, which directs that urban consolidation objectives must not outweigh the environmental and landscape objectives for the foothills. Such objectives include protecting and enhancing the foothills' metropolitan landscape significance, maintaining uninterrupted view lines and ensuring that buildings sit below the dominant tree canopy.

The Strategic Plan, its comprehensive Background Report and supporting technical reports provides the Amendment with sound strategic basis. The Panel notes that submitters did not question the Amendment's strategic basis and were more concerned about the details associated with the planning response. These are discussed in the following chapters of this report.

2.7 Conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified where it aligns with the Strategic Plan, and it should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Building height

3.1 The issues

The issues are:

- whether mandating the proposed building heights is justified
- whether the proposed building heights are appropriate.

3.2 Background

The Background Report includes a 26 page visual impact assessment of two and three-storey built form when viewed from key vantage points. Examples are shown in Figure 4.



Figure 4 Visual impact of two and three-storey built form

Council’s building height changes throughout the process are summarised in Table 2.

Table 2 Council's building height changes

	Version			
	Strategic Plan	Exhibited DDO12	Post-exhibited DDO12	Further changes
Mandatory height:	8.5 metres (2 storeys)	12 metres (3 storeys) on flanks and 8.5 metres (2 storeys elsewhere	12 metres (3 storeys) in the core and 8.5 metres (2 storeys elsewhere	Revised the 1812 Theatre site building height to 12 metres (3 storeys)
Supported by:	Background Report	Unknown	Unknown	Submissions
Shown in:	Figure 3	Figure 1	Figure 2	

3.3 Evidence and submissions

Council submitted that the unique location and situation of the Activity Centre and the Dandenong Foothills policy at Clause 22.06 provides a powerful basis for mandatory height provisions. Specifically, it states:

...the environment and landscape significance of the Dandenong Foothills outweighs the need for urban consolidation in the Foothills.

Council added that Plan Melbourne defines the Activity Centre as a neighbourhood centre; the lowest level of the Activity Centre hierarchy. It said that the potential for growth is adequately catered for in higher order centres in the municipality such as Knox Central. Council submitted that the proposed mandatory building height aligned with the criteria in Planning Practice Note 59.

Council called urban design evidence from Mr Czarny of Hansen Partnership to support its position on the Amendment. Mr Czarny considered the Strategic Plan to be a *"sound body of work that reinforces the need to carefully manage the evolution of the Neighbourhood Activity Centre ..."*

Mr Czarny observed:

A key feature of the Centre are views to surrounding hills and ridges to 3 sides, including local hilltops in proximity to the north and south and the Dandenong Ranges rising ridgeline to the east. The nature of local topography and the location of the village nestled at the base of the relatively steep valley, to either side of the winding alignment of the Burwood Highway, communicates a sense of enclosure, intimacy and a closeness to nature that is special to this area.

...

What is therefore distinctive about Upper Ferntree Gully is the prominent topographical condition of the vegetated surrounds to the north, south and east (defining the Dandenong Ranges ridgeline) and the composition of retail frontages to the south side of the Highway, which contrast with elevated railway land and Ferntree Gully Station to the north. The highway's junction with Dawson Street and positioning of the impressive Royal Hotel (Heritage

site) on the south-east corner is important in this framework. The combination of these elements in Upper Gully are in my opinion distinctive in metropolitan Melbourne and deserve respect, without hampering the opportunity for urban regeneration and subtle growth.

When considering whether building height should be increased to 12 metres in the core of the Centre (Council's post-exhibition change), Mr Czarny stated:

The concentration (and confinement) of increased development scale ... is acceptable at the perceived heart of the Centre. The location of the higher form in this position will not in my view substantially compromise view to the southern vegetated ridge line from the key viewing location directly to the north at the Station entry.

Mr Czarny added that, while the key view diagrams produced to assess the impact of building height were comprehensive, they were not conclusive in terms of the visual assessment outcomes. His evidence was that the visual assessment of the key views indicated, that any development beyond three storeys would result in the ridgeline being obscured and therefore failed the foothills policy. While three storeys did break the view of the ridgeline, he believed there was enough of it visible to allow the eye to compensate and mentally connect the view.

In summary, Mr Czarny considered that the *"overall proposition for modest change and mandatory development controls within the Activity Centre are broadly supportable."*

In order to assess the relevant economic and property considerations of the proposal, Council engaged Urban Enterprise to provide a capacity assessment to inform the Strategic Plan. The report highlighted the extremely modest growth projected for the Activity Centre and noted that there was little evidence that there would be a substantial demand for apartments. The report noted that townhouse, villa and dual occupancy was seen as a more attractive product for the market. Further, the Report noted that tourism visitation was an important part of the centre's future.

Mr Proctor of the 1812 Theatre submitted that the Activity Centre had *'lost its soul'* and that the current lack of activity had led to night safety and security issues in proximity to the 1812 Theatre. He supported a 12-metre building height for the 1812 Theatre site so that a *'fly tower'* could be constructed. Mr Proctor sought the same height for 5 Rose Street (which is adjacent to, and owned by, the theatre) so that the theatre could develop apartments to help fund the theatre improvements. He considered the 12-metre building height should be extended to land within 50 metres of the theatre to help reinvigorate the Activity Centre.

Many submitters questioned Council's rationale for applying a 12 metre building height, originally to the flank areas, and later to the commercial core. They submitted that this height was not justified when Council's analysis showed that 8.5 metres satisfies all design and strategic requirements for the Activity Centre. Several submitters agreed that if the 1812 Theatre requires additional height for a *'fly tower'* then it should be specific to that site rather than applying it elsewhere and potentially compromising ridgeline views and the *'feel'* of the Activity Centre. Ms Whatman submitted that the three-storey proposal was largely

based on the desire of the 1812 Theatre to develop its properties and that this was not an appropriate basis for Council changing its position.

Mr Whatman submitted that strong community input over 10 workshops had underpinned the original Structure Plan and resulted in a balanced plan. Other submissions questioned why the Council would ignore the professional analysis underpinning the original two-storey maximum building height for the Activity Centre. Mr Aldersey and Mr Doherty strongly rejected the basis for changing the 8.5 metre maximum building height in the Strategic Plan.

Dr Brindle questioned the chain of logic from the objectives of the Structure Plan to the Council's current position and submitted that this had not been adequately tested.

3.4 Discussion

Should the height provision be mandatory?

Planning Practice Note 59 states that planning schemes are predominantly performance-based and that mandatory provisions are only applied in exceptional circumstances. Planning Practice Note 60 provides circumstances that could be considered as exceptional circumstances. These include:

- *significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature*
- *significant heritage places where other controls are demonstrated to be inadequate to protect unique heritage values*

Planning Practice Note 60 states:

Even where exceptional circumstances are identified, mandatory height and setback controls should only be applied where they are absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. Where mandatory controls are proposed, it will need to be demonstrated that discretionary controls could result in an unacceptable built form outcome.

When taking into account the Activity Centre's sensitive location and existing foothills policy in the Planning Scheme, the Panel considers the proposal to apply a mandatory maximum building height aligns with the first circumstance and, to some extent, aligns with the second.

Plan Melbourne initiative 4.2.2 states that councils can seek to apply mandatory provisions in neighbourhood centres. While the Strategic Plan refers to the Centre as an Activity Centre, Plan Melbourne defines it as a neighbourhood centre. It should not be expected that every neighbourhood centre in Melbourne will qualify for mandatory provisions. Mandatory provisions still have to be justified in line with circumstances outlined in Planning Practice Notes 59 and 60.

The Activity Centre exhibits circumstances and criteria outlined in the Practice Note 59. There is broad State planning policy and specific local planning policy to justify the need for a mandatory measure to implement the Dandenong foothills policy. The Panel accepts Mr Czarny's evidence that any development over three storeys would be unable to meet the foothills policy. The Background Report clearly demonstrates that buildings over three

storeys would not be able to meet this policy because built form at this height would restrict an unacceptable proportion of the surrounding ridgeline from key vantage points.

This 'tipping point' justifies the need for a mandatory maximum building height.

The Panel agrees with Council's submission that the mandatory height provision aligns with the criteria in Planning Practice Note 59. The mandatory height provision is appropriate and required because:

- it is strategically justified
- it is appropriate to the majority of proposals
- it provides for the preferred outcome to address resolving divergent opinions within the community
- there would be an unacceptable outcome if a majority of proposals were not in accordance with the provision
- it would result in reduced administrative costs for Council and the community that far outweighs the benefit of a performance-based provision.

What height is appropriate?

Having determined that a mandatory maximum building height provision is appropriate and justified, the Panel then considered what building height to apply. The Panel acknowledges that there was a considerable proportion of submitters that sought to apply the mandatory building height at 8.5 metres (two storeys) as recommended by the original Strategic Plan. There was also a considerable proportion that supported increasing the building height for the 1812 Theatre site to 12 metres (three storeys). While many submitters seeking a centre-wide 8.5 metre height also supported a 12-metre building height for the 1812 Theatre site, others did not.

The Panel agrees with Mr Czarny's evidence that the Background Report was comprehensive but not conclusive. This is the most complicated issue because the two and three-storey perspectives in the Background Report each demonstrate different view extents of the ridgeline. The question is whether the lesser ridgeline view resulting from the three-storey built form can achieve the foothills policy. From the other perspective, it would be inappropriate to remove all opportunities for development above two storeys if a three-storey form can achieve this policy. The Background Report and Mr Czarny's evidence clearly show the technical nature behind determining the point where both of these meet.

Based on comprehensive technical information in the Background Report, the Strategic Plan applied a mandatory 8.5 metre (two storeys) maximum building height to the Activity Centre. While there is comprehensive information to support an 8.5 metre building height, a conclusive explanation about why two storeys is more appropriate than three would have been helpful. There is insufficient information to explain why Council decided to change the building heights beyond what was recommended in the Strategic Plan before the Amendment was exhibited and insufficient information to explain why it sought to reverse the building heights and increase them elsewhere after it was exhibited.

While it is understood that the post-exhibition changes were in response to concern about potential capacity and viability impacts, there was insufficient information to support these claims or to understand the visual impact resulting from these changes. The land use and

economics technical report prepared by Urban Enterprise does not provide information that supports this position. Council's submission confirmed that there is sufficient capacity in other larger centres throughout the municipality.

The Panel agrees with Mr Czarny that someone could mentally connect the extent of the ridgeline. However, the Panel is not convinced that the very partial views shown for the three-storey form in Viewpoints 2, 4 and 6 (Figure 4) would achieve the intent of the foothills policy. In contrast, the two-storey modelling protected a more legible view of the ridgeline from the strategic viewpoints on the north side of Burwood Highway.

When considering the most appropriate building height, the Panel took into account DDO12 Clause 3.0 which enables a building to exceed 8.5 metres if the floor level needs to be increased to address potential flooding issues. The Background Report factored in the midpoint of the water depth shown in Map 68 of that report (Figure 5 of his report). Based on a default 8.5 metre building height for the Activity Centre, the Panel considers that this modest increase for some sites would not affect the ability to achieve the foothills policy.

Consistent with many submissions, the Strategic Plan acknowledges the 1812 Theatre's cultural importance to the community. Specifically it states:

The 1812 Theatre was identified as a valued asset of Upper Gully, with opportunities to expand its offering and engagement with the community.

The 1812 Theatre would be unable to construct a fly tower to support its future operation with an 8.5 metre building height. After considering the urban design evidence, Strategic Plan and Background Report, the Panel considers it appropriate to increase the building height for this site to 12 metres (three storeys). It does not support the 1812 Theatre's request to apply this height to 5 Rose Street or to land within 50 metres of the theatre. Increasing the 1812 Theatre site itself would not adversely impact views to the surrounding foothills. The Panel would have concluded differently if this was not the case.

The Panel agrees with Council's revised wording for DDO12 to introduce an objective which associates greater height for the 1812 Theatre with its cultural activities. The Panel does not support increasing building height for this site for any other reason.

3.5 Conclusions

The Panel concludes:

- The unique nature of the Activity Centre and comprehensive analysis underpinning the Amendment strategically justifies mandatory maximum building height provisions.
- The maximum building height needs to be applied at 8.5 metres (two storeys) to align with the Dandenong foothills policy and protect ridgeline views from key vantage points.
- Applying a site-specific mandatory maximum building height of 12 metres (three storeys) would enable the 1812 Theatre to construct a fly tower and would not adversely impact ridgeline views.

3.6 Recommendations

The Panel makes the following recommendations:

3. Amend Design and Development Overlay Schedule 12, as shown in Appendix C, to:
 - a) Change the mandatory maximum building height to 8.5 metres (two storeys) for the entire Upper Ferntree Gully Activity Centre, except for the 1812 Theatre site at 1-3 Rose Street.
 - b) Change the mandatory maximum building height to 12 metres (three storeys) for the 1812 Theatre site at 1-3 Rose Street.
 - c) Add a new design objective under Clause 1.0:

To facilitate the fly tower for the 1812 Theatre Company and strengthen its role in developing arts and culture in the municipality and enhance it as an attraction for visitors to the Activity Centre.

4 Other issues

4.1 Flooding

(i) The issue

The issue is whether the Amendment sufficiently considers the potential issues associated with flooding.

The Background Report identifies areas affected by 100 Year Average Recurrence Interval (ARI) Flood Depths sourced from Melbourne Water data.

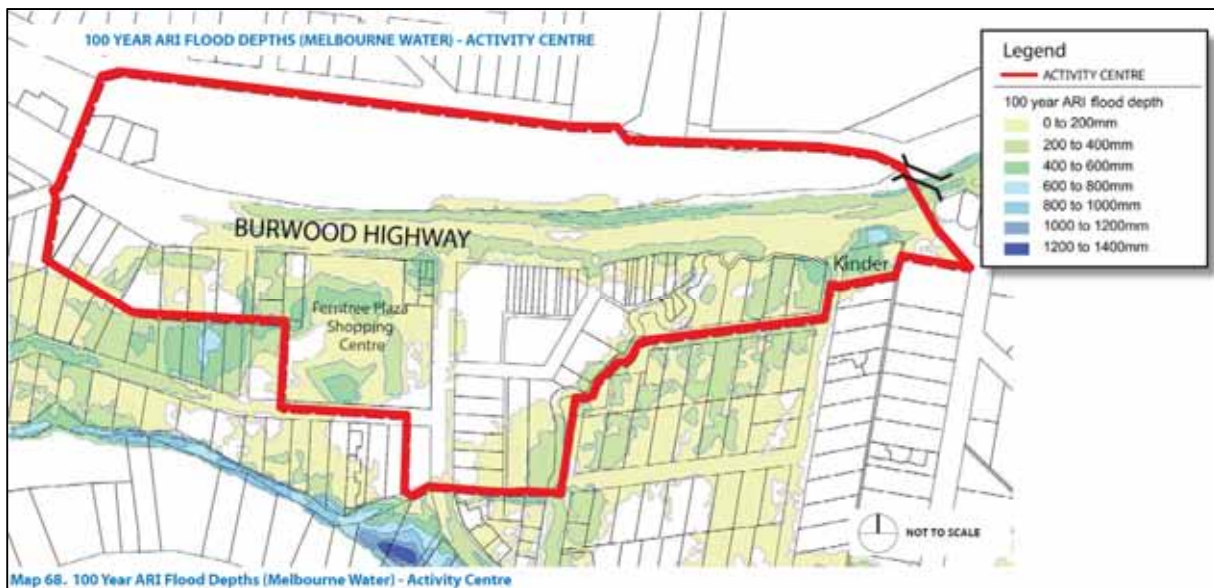


Figure 5 100 Year ARI flood depths

In response to issues raised in submissions, the Panel directed that Council address in its submission how vehicular access to basements in areas subject to inundation in the 1-in-100 flood event is likely to align with Melbourne Water requirements '*Guidelines for Developments in Flood Prone Areas*'.

(ii) Submissions

The Background Report identified that much of the Activity Centre is subject to flooding during the 1-in-100 year flood event. Flood levels generally range from 0 to 400 millimetres, and can reach up to 800 millimetres above ground level in the lower lying areas.

There are no planning scheme overlays in place such as Land Subject to Inundation, Special Building Overlay or Flood Overlay which would requirement the permit application to be referred to Melbourne Water. However, building regulations 'capture' all applications, even if a planning permit is not required, to ensure building floor levels are above the flood level.

Council identified that the capacity of the local drainage system is unknown with drainage knowledge limited to Melbourne Water data. In response to a Panel direction, Council sought advice from Melbourne Water.¹

Melbourne Water advised that basements in flood prone areas are acceptable, provided they incorporate a flood proof apex at the driveway entrance with an appropriate freeboard and that all other openings such as windows and vents are also set above the flood level. Melbourne Water sets out further details in its '*Guidelines for Development in Flood – Prone Areas*'.

Several submitters were concerned about localised flooding and included photographs of submerged local streets, and presented their accounts of flooding. They questioned whether further development was appropriate under these circumstances. Council noted that the Amendment proposes to change Clause 21.08 to add a new action:

Integrated Water Management

Work with Melbourne Water to develop comprehensive local and regional flood modelling and mapping with the aim to identify appropriate flood overlay and supporting planning controls for flood affected areas.

(iii) Discussion

The Activity Centre is generally located along Ferny Creek (which is piped), at the foothills to the Dandenong Ranges, and is subject to flooding during intense storm events. Much of the flanks and perimeter of the Activity Centre would be inundated during the 1-in-100 year flood event with flood levels generally ranging from 200 to 400 millimetres.

Road and footpath levels are already set, and it appears problematic to provide a new development's driveway access with appropriate freeboard to ensure its basement does not flood. Potentially, the driveway apex may be up to 700 millimetres above the existing roadway level.

In its submission, Council acknowledged this issue and proposed that it be best dealt with on an individual site basis. This would involve consultation between council officers, and the applicant's architect, drainage and traffic specialists to ensure a safe and functional design is realised. This may lead to innovative design solutions such as under-croft parking with internal overland flow paths which may be appropriate for some sites as flagged by council's drainage engineers. The Panel considers this to be a reasonable process.

Due to its location and topography, the Activity Centre will always be subject to potential inundation. Much of the new development would not significantly increase stormwater flow rates over and above existing conditions. For example, decking the Ferntree Plaza car park to provide a new development site would not increase stormwater runoff compared to what is currently generated by the existing car park. Council may require stormwater runoff from new developments to not exceed existing conditions.

The Panel acknowledges resident concern about existing flood issues and notes that the Amendment is unlikely to materially affect future flood conditions. Council is commended

¹ Document 7

for its proactive response to add a new action in Clause 21.08 to develop comprehensive flood modelling which would better inform future planning provisions, including overlays, and subsequently inform future planning permit applications.

(iv) Conclusions

The Panel concludes:

- The Amendment is unlikely to materially affect future flood conditions.
- Each site subject to flooding will be considered on its own merit.
- A new action in Clause 21.08 to develop comprehensive flood modelling would better inform future planning provisions, including overlays, and subsequently inform future planning permit applications.

4.2 Traffic and parking

(i) The issue

The issues are:

- whether the existing road network can accommodate future development
- whether there is sufficient car parking.

(ii) Submissions

Council engaged Movendo to prepare a traffic and parking study (Technical Report – Transport & Parking Upper Gully Strategic Plan – January 2015) as well as an addendum report to identify the future traffic and parking demands of the Activity Centre, dated 7 November 2016.

The initial study focused on ‘existing conditions’ and found that:

- the majority of on-street spaces with parking restrictions exhibited modest parking occupancies
- off-street car parks generally had spare capacity, except for railway station car park which was full from early morning
- traffic flows were consistent with a small activity centre.

The report identified a series of improvements to the road network and intersections to enhance pedestrian and bicycle safety and connectivity, and general road safety initiatives. Several submitters were concerned that some treatments may result in the loss of on-street parking spaces.

The Addendum report focused on future growth in traffic and parking. The report identified modest increases in traffic and parking demand, based on an additional 376 dwellings and 4,500 square metres of commercial floor space in the Activity Centre without the need for major road network upgrades. New developments would be required to provide their parking needs on-site, thereby reducing on-street parking demand.

VicRoads did not object to the Amendment.

Many submitters were concerned with traffic congestion and potential adverse impacts on parking associated with additional development in the Activity Centre. Captain Smith from

the local Fire Brigade outlined a number of local parking and narrow road issues which, on occasions, caused difficulty for fire trucks to travel on these roads.

In his submission, Dr Brindle extensively critiqued the Background Report and questioned the adequacy of the traffic and parking assessment. However, his fundamental premise was based on the Activity Centre retaining a two-storey building height.

(iii) Discussion

The Panel considers the Movendo's initial report to be thorough and detailed. Its proposed recommendations in and around the Activity Centre are well considered and should enhance safety and improve walkability.

In response to submitter concern about loss of parking, Council may wish to explore a painted median treatment in Dawson Street with discrete kerbed islands (similar to the treatment in Auburn Road, Auburn Village, Hawthorn East) to facilitate pedestrians staging their crossing. This treatment would not result in a loss of on-street parking and would allow pedestrians to 'filter' across the road.

The Addendum report shows modest increases in traffic and parking based on reasonable traffic modelling and distribution assumptions. While the SIDRA modelling of key intersections and traffic distribution across the network sought by Dr Brindle would provide a more in-depth understanding, its benefit should be balanced against the additional time and cost to undertake further work. When taking into account the Activity Centre's anticipated low growth rate and proposed mandatory building height, the Panel accepts that traffic and parking have been sufficiently investigated to support the Amendment.

Mr Smith's concerns relate to Council operational issues which may require enforcement or parking restriction changes subject to a separate process.

(iv) Conclusions

The Panel concludes:

- Council has appropriately and comprehensively investigated traffic and parking matters.
- The existing road network and parking supply can support the Activity Centre's future development.
- The proposed treatments will enhance safety, walkability and amenity.

4.3 Bushfire

(i) Issue

This issue is whether the Amendment appropriately and sufficiently considers bushfire risk.

(ii) Submissions

Council submitted that bushfire risk and issues were well considered in the comprehensive background work underpinning the Amendment and that it is:

keenly aware of the threat that bushfire plays within the foothills and more broadly within the Dandenong Ranges. The Amendment has been prepared having consideration of the threat posed by bushfire.

It highlighted that the area south of the Burwood Highway is not subject to the Bushfire Management Overlay. In its submission², the Country Fire Authority considered land north of Burwood highway to be of an “*extreme risk*” to bushfire and grass fire. It noted that it is currently working with the Department of Environment, Land, Water and Planning to update Bushfire Management Overlay mapping which may increase the coverage of the Overlay in some areas of the Knox municipality.

The Country Fire Authority recommended that any development in the Activity Centre consider location, siting and design in regards to bushfire risk. It also recommended that Council consider strategies to ensure road layout, development and construction standards within the Activity Centre allow access for emergency management vehicles. It added that improvements to, and maintenance of, the current reticulated water supply in the Activity Centre needs to be considered when planning multi-storey buildings. The Country Fire Authority requested that Council consider the potential impact increase development in the Activity Centre may have on the access and egress of emergency vehicles at its fire station location within the Centre.

Mr Smith, Captain of the Upper Ferntree Gully Country Fire Authority outlined the importance of local knowledge in managing bushfire risk, noting the large numbers of tourists and other traffic in the area for large periods of the day. His concern regarding the length of time needed to evacuate the area in the case of an emergency was shared by a number of submitters. For example, one submitter told of how it took hours to evacuate the area because of traffic congestion.

In response, Council invited Senior Sergeant Hess from Knox Police Station to present as part of Council’s submission. He informed the Panel about new evacuation protocols for the Dandenong Ranges since Black Saturday and noted that they have ‘set the benchmark’ for emergency preparation. He said that residents in the Upper Ferntree Gully township, close to the Burwood Highway, are well placed to evacuate safely to suburban centres to the west. When questioned by the Panel, Senior Sergeant Hess said that the evacuation protocols would apply regardless of the number of people living or visiting the area.

(iii) Discussion

The Panel commends Council for comprehensively considering bushfire issues in the Background Report which supports the Amendment. The Report, and subsequent Strategic Plan addressed bushfire matters in response to community feedback, the State Planning Policy Framework (including Clause 13), the existing Bushfire Management Overlay, the Country Fire Authority’s input and other relevant assessments and information.

The area in the Activity Centre north of Burwood Highway is mostly public owned and unlikely to attract future development unless circumstances change. The Bushfire Management Overlay does not apply south of Burwood Highway where virtually all future

² Document 23

development in the Activity Centre is envisaged. From a strategic perspective, bushfire related matters do not affect the ability to implement the Strategic Plan or proceed with the Amendment. Should the Bushfire Management Overlay apply to the Activity Centre in the future, this would affect how new development is designed and how a permit application is assessed. The Panel considers that DDO12 and the Bushfire Management Overlay could operate harmoniously together.

The Panel has already determined that the proposed mandatory maximum 8.5 metre building height should be supported. This would effectively restrict the Activity Centre's capacity, thereby limiting the extent of future population growth. While bushfire and evacuation concerns are important local issues, they have not determined the basis for mandatory maximum building heights.

Submitters clearly articulated genuine concern regarding bushfire evacuation, however bushfire related issues outside of the Activity Centre are beyond the scope of this Amendment. However, the Panel considers that submissions have overstated the extent of development likely to occur in the Activity Centre over the next 20 years – especially with a mandatory 8.5 metre maximum building height. Even if the Panel had supported three storeys in the Activity Centre, such a modest growth would not have resulted in the scenario presented by submitters.

It is noted that Activity Centre residents would be better placed to evacuate the area than those living in the Dandenong Ranges due to the proximity of Burwood Highway and the safety of suburban areas immediately to the west.

(iv) Conclusions

The Panel concludes:

- The Amendment appropriately and sufficiently considers bushfire risk.
- A mandatory 8.5 metre maximum building height would effectively restrict capacity and limit the extent of future population growth in the Activity Centre.

4.4 Heritage

(i) The issue

The issue is whether applying the Heritage Overlay is being appropriately applied.

The Amendment proposes to apply Heritage Overlay (HO56) to the Visitors Information Centre, 1211 Burwood Highway and Heritage Overlay (HO57) to the Railway Station. Both sites are located on railway station precinct land. The Upper Ferntree Gully Activity Centre Heritage Assessments prepared by Context in June 2015 include citation reports with statements of significance for each place, as shown below.

Table 3 Visitor Information Centre (HO56) Statement of Significance


Statement of significance	
	
What is significant?	
The Visitors Information Centre, built in the 1930s and operated until 1957 as the Pinnacle Café is significant.	
How is it significant?	
The modernist Centre is of aesthetic (architectural) and historical significance to the City of Knox.	
Why is it significant?	
<p>1211 Burwood Highway is a fine example of the development of Upper Ferntree Gully as a gateway to the popular tourist regions in the Dandenong Ranges. Its construction in the 1930s corresponds to a period of growth and development following electrification of the Ringwood to Upper Ferntree Gully railway line in 1925.</p> <p>1211 Burwood Highway is of aesthetic (architectural) significance as an excellent example of Art Deco architecture in Upper Ferntree Gully, an architectural style also represented by the Moderne façade of the Royal Hotel. The bold rectangular and curved styling on the two principal facades contributes to the building's significance. It is a landmark building as a result of its location on the highway and the ingenious manner in which it has been designed to address the substantial difference in grade between the highway and the elevated road to the Upper Ferntree Gully Railway Station. The original wrought iron fence at the upper Burwood Highway entrance contributes to the significance of the place.</p> <p>The rendered two storey commercial building was built c1930s and complements the 1935 remodelled Moderne façade opposite the Visitors Information Centre on Burwood Highway.</p>	
Recommendation	
Local significance	

Table 4 Railway Station (HO57) Statement of Significance

Statement of significance	
	
What is significant?	
The Railway Station complex built as the terminus for the Ringwood line between 1884 and 1889, and as the beginning of the narrow gauge line to Gembrook in the early 1900s, is significant.	
How is it significant?	
The Railway Station is of local architectural, historic and social significance to the City of Knox.	
Why is it significant?	
<p>The Railway Station is historically significant for its ability to demonstrate the development of the Ringwood line through to its terminus at the foot of the Dandenong Ranges. It is the only surviving railway station in the City of Knox to have retained much of its pre-World War I character, despite alterations to its building fabric and setting. The Railway Station illustrates the changes in the Ringwood railway line as a result, firstly of the addition of the Gembrook narrow gauge line, later to become the popular “Puffing Billy” tourist railway; and secondly of the electrification of the line in the 1925. It is a tangible demonstration of public transport developments before the dominance of motorised transport in the 1950s. It has served as an important place in the early life of the Upper Ferntree Gully community as the water supply from the railway reservoir until 1939. The station is a reminder of the important role played by the stationmaster in facilitating communication, not only by rail but also acting as the postmaster and telegraph operator.</p> <p>The Railway Station is of aesthetic significance for its retention of structures from both the 1880s, 1910 and the 1930s additions and alterations that reflect changes in the lines at Upper Ferntree Gully. The two gable roofed timber pavilions with their shiplap cladding, the chimney and the station canopies on curved metal brackets are significant features.</p> <p>The station site is enhanced by the planted embankment to the east of the station buildings and extending to the carpark with stone faced public toilet block and retaining wall. This area forms a significant landscape feature of the upper Ferntree Gully commercial area and contains extensive plantings of a type that were once common around railway stations in the early twentieth century.</p> <p>The Railway Station is highly likely to have social value to the community of Upper Ferntree Gully and other communities who use the line in its extension to Belgrave, however this has not been able to be investigated.</p>	
Recommendation	
Local significance	

(ii) Submissions

Council submitted that the Context Report provides overwhelming strategic basis for applying the Heritage Overlay to both places.

In its submission, Public Transport Victoria accepted that an initial portion of the larger collection of buildings located on the platform area and the arched shelters are of heritage significance. However, it stated that applying Heritage Overlay (HO57) to the Railway

Station could potentially restrict future operations, reconfiguration of infrastructure and train stabling requirements. Public Transport Victoria considered the timber buildings to be of fair condition. It added that applying Heritage Overlay (HO56) to the Visitor Information Centre could potentially restrict future public transport operation changes at this place.

In response, Council submitted:

The essential question arising from the PTV submission for the Panel to consider is whether the impact on redevelopment opportunities and the possible future needs of PTV ought to outweigh the identification of these places in the HO.

Council concedes that the HO introduces another layer of control for PTV and that a planning control which imports additional permit triggers and relevant considerations add to the planning controls for the railway land.

However, in Council's submission, the additional controls are necessary to ensure that those places with the requisite level of heritage value are recognised and appropriately managed.

Council noted that Public Transport Victoria did not present any evidence or submission to contradict the Context Heritage Assessments which form the strategic basis for applying the Heritage Overlay. It concluded that Public Transport Victoria's concerns were not relevant to assessing whether there is sufficient justification to apply the Heritage Overlay to railway station precinct land.

(iii) Discussion

The Panel accepts the Context Heritage Assessments and Council's submission on this matter and notes that Public Transport Victoria would still be able to undertake future works through a planning permit. While this process may be regarded as new regulation, it would ensure that future works respond appropriately to the heritage places. The Panel considers the net community benefit resulting from the Heritage Overlay being applied outweighs the potential regulatory impact to Public Transport Victoria.

The Heritage Overlay applies to many railway stations throughout Melbourne and Victoria.

(iv) Conclusion

The Panel concludes:

- The Heritage Overlay is appropriate and justified to be applied to the Railway Station and Visitors Information Centre.

4.5 Railway station precinct

Public Transport Victoria raised issues concerning existing strategies that are not sought to be changed by the Amendment, including rezoning station reserve land and the Rowville railway line extension. The Panel does not discuss these further.

(i) The issues

The issues are:

- whether applying DDO12 to railway land is appropriate and justified
- whether the Significant Landscape Overlay Schedule 3 proposed to be removed from an area along Burwood Highway should be removed from railway land.

(ii) Submissions

Public Transport Victoria's submission was primarily based on its ability to operate and reconfigure its land without potential hindrance resulting from new regulations. It considered the proposal to apply DDO12 to railway land would contribute to such a potential hindrance.

In response, Council submitted that Public Transport Victoria's concerns are not relevant to whether DDO12 should be applied to railway land. It noted that DDO12 provides some specific planning permit exemptions for certain buildings and works associated with the railway line and concluded:

The proposed controls for the PTV land are both strategically justified and appropriate.

Public Transport Victoria sought to remove Significant Landscape Overlay Schedule 3 removed for railway land, as proposed by the Amendment for Burwood Highway, for the same reason.

The purpose of the SLO3 is to protect the environmental and visual sensitivity of areas at the foothills to the Dandenong Ranges. While the SLO3 was not amended as part of Amendment C141, the prominent location of the Upper Ferntree Gully Railway Station site on the north side of the Burwood Highway makes it particularly important in defining the image and character of Upper Gully and for maintaining significant views to the Dandenong Ranges.

(iii) Discussion

At the broad level, the Panel found it odd that DDO12 was proposed to be applied to railway land which, as acknowledged in the Background Report, is separated from most of the Activity Centre by the railway line and Burwood Highway. However, the Background Report also states how the station and surrounding land are used by the local community and are a gateway for visitors. The railway land surrounding the station are described as 'unattractive' which presents opportunities for improvements.

The Panel considers it important to include this land as part of the same design and development framework as the rest of the Activity Centre. Arguably, the railway land is located in a more sensitive location than the rest of the Centre. When taking into account the permit exemptions in DDO12 for day-to-day activities, the Panel does not consider the new regulation to be unreasonable. The net community benefit of including this land in DDO12 would outweigh any impact on Public Transport Victoria.

The Panel accepts Council's response for retaining the Significant Landscape Overlay Schedule 3 on the railway land.

(iv) Conclusion

The Panel concludes:

- The Amendment appropriately applies DDO12 to railway station precinct land.

4.6 Flora and fauna

Some submissions were concerned with the impact the Amendment would have on flora and fauna. One submitter considered wildlife such as echidnas, koalas, lizards and birds would be endangered if low density living did not exist between the urban area and the National Park. Ms Boyd sought to limit population increase in this *“sensitive environment that is home to animal and plant species – protect them, not increase the effects of human predation.”*

The Panel was not presented with any evidence to support claims that additional floorspace above the existing Activity Centre footprint would adversely affect local flora and fauna.

Appendix A Submitters to the Amendment

Sub No	Name of Submitter	Sub No	Name of Submitter
001	Michelle and Stephen Cahil	028	Frank Schrever
002	Jacqueline Catlin	029	Annette Scales
003	Ross and Diana Brown	030	Maggie and Herman Rust
004	Sandra Jacks	031	Jayne Ruddick
005	Iola Tilley	032	Lola Robins-Salib
006	The 1812 Theatre Limited	033	Carola Richter
007	Hugh Aldersey	034	Danielle Remaili
008	Environment Protection Authority	035	Pam Reitenbach
009	South East Water	036	Antonia Radle
010	Becky Foster	037	Melinda Pritchard
011	Ian Johnson	038	Lyn Peters
012	Phylis Jaensch	039	Kerry Parkinson
013	M Brewer	040	Clive and Sue Ogilvie
014	Noreen Adam	041	Barbara McLean
015	Kevin and Lin Doyle	042	Chris Lind
016	Maurice Joyce	043	Hilton Leibowitz
017	Christine Grant	044	Alison Knight
018	James McRae	045	Tony Johnson
019	Max Fonovic	046	Margaret Jarvie
020	Augustin Zeilinger	047	Dawn Hughes
021	Ramon Willis	048	Dirk Goudberg
022	Michael and Patricia Walden	049	Alison Gaylard
023	I Stenhouse	050	B Garbett
024	Colin Spargo	051	Robert Frencham
025	Arol and Eric Shade	052	Peter Flaherty
026	Marysia Seneque	053	Tilly Esse
027	B and M Selvey	054	Christine England

Sub No	Name of Submitter	Sub No	Name of Submitter
055	Peter Stone	085	M Doddrell
056	Richard Foster	086	D Dowdy
057	Andre Cook	087	Garry Fevreau
058	Peter and Diane Collyer	088	Mavis Ford
059	Joan Carroll	089	Heather Fraser
060	Denis Canavan	090	Peter Frid
061	Margaret Brak	091	Dale Garbett
062	Frederick Barker	092	Christine Hanby
063	Darren Amor	093	VK Henderson
064	Chris Aitken	094	David and Coral Huckel
065	Louis Hebrard	095	Alyce Hughes
066	Peter Adams	096	Bill Ireland
067	Graeme Brockhouse	097	Ian James
068	Nettie Aminde	098	Robbyn Johnson
069	B and R Andrighetto	099	Mareea Kaali
070	Rachal Aza	100	Jenny Keating
071	G Balthasar	101	Pamela King
072	Patricia Barber	102	M Kjer-Nielsen
073	Kathleen Bates	103	Leon Lambden
074	Barry Battiscombe	104	Jan Langford
075	K J Bevan	105	Sylvia Latta
076	Peter Breen	106	Jemma Lind
077	Stuart Burns	107	Jenny Lutz
078	Derrick & Marion Butt	108	Jenny Mathews
079	Gillian Carkeek	109	Gordan & Ruth Menzies
080	Alan & Vicki Collier	110	R & W Neville
081	Alison Compton	111	John O'Meara
082	Janice Cross	112	Derek Osborne
083	Jenny Cutts	113	Ute Otto
084	R & M Dawson	114	Keith Pannett

Sub No	Name of Submitter	Sub No	Name of Submitter
115	Tom Plunkett	144	David Casey
116	Graham and Helen Pole	145	Sandra Caulfield
117	Alarna Power	146	Kati Cochrane
118	Ian Probert	147	Elizabeth Connop
119	Valwyn & Colin Richardson	148	Stan and Joy Dobby
120	Stewart Robinson	149	Rae Dunstan
121	Nanda and Harry Roelofs	150	Patricia Eklom
122	Duncan Russell	151	Cecilia Ford
123	Carmen Saarelaht	152	Jenny Good
124	Justine Sharman	153	Thelma Halse
125	C Sheldon	154	Ron Hefferman
126	Roy Smith	155	Neil McColl
127	Simon and Cheryl Snoxell	156	Ros Mercieca
128	Fabrizio Spada	157	Valerie Mitchelmore
129	Fred Steiner	158	Chris Newport
130	Glenda Stewart	159	B Talbot
131	C Strange	160	Rose Williams
132	Allan Sullivan	161	JR Williams
133	Garry Teychenne	162	R and JM Emmett
134	Jeanne Turner	163	Leanne Smith
135	Carole Tynan	164	Kate Ballam
136	Frank Unsworth	165	Heather Croker
137	Colin T Ward	166	Andy Fry
138	Marie Whitmore	167	Jimmy Dunne
139	Robyn Wilson	168	Neil Davie
140	Trev and Adele Withers	169	Kaye Sharman
141	Beth Bell	170	Daphne Walker
142	Gwenda Blackman	171	Fiona Dobrzynski
143	John Busija	172	L Braniska

Sub No	Name of Submitter	Sub No	Name of Submitter
173	Lily Francis	203	Patrina Metcalf
174	Nel Barnett	204	Amber Zebian
175	Rhoda Leigh	205	Barry and Helen Treadwell
176	Geoff Arnold	206	Carolyn Graham
177	Jill Haim	207	Matt Ducza
178	Marianne Moore	208	EM George
179	Margret and Douglas Parrott	209	Sandra Hume
180	Lynette Lynch	210	Jim Woolcock
181	Ronald Woodrow	211	Anne McGregor
182	Lisa Douglass	212	Patricia McCracken
183	Joan and Leonard Nash	213	Keith Hutton
184	Jack and Lyn Henwood	214	Kevin Bridle
185	John and Anna Tilbrook	215	John Worchester
186	Trevor Hall	216	Rosalinda and Graham Eden
187	Barb McAuley	217	Ian and Annette Simpson
188	Mandy Murray	218	Artemis Strangaric
189	Greg and Ellen Hardy	219	Bronwyn Leggate
190	Glenn and Michelle Hunt	220	Kate van der Pol
191	Kirrily Whatman	221	Sara Thomas
192	Judy Lake	222	Georgina and James Swainger
193	Dagmar Meyer	223	Simon Skinner
194	Edna and Gordon Bartlett	224	Ann Woolfe
195	Richard and Patricia Wood	225	Ann Gorringe
196	Jenna Deans	226	Trevor Gorringe
197	Inge Geissler	227	Joan Dodson
198	Barbara Crisp	228	Susan Pollerd
199	Nick Martin	229	Jennifer Owen
200	Jacqui Telford	230	Leanne and Glenn Fitzgerald
201	Jock Riseley	231	David Fagan
202	David Yeaman	232	Carolyn Ebdon

Sub No	Name of Submitter	Sub No	Name of Submitter
233	WE and DA Coombes	263	Kaylee Miller
234	Les Phillips	264	Dean and Sue Miller
235	Geoff and Cathie Squires	265	Gwen Herbert
236	Joanne and Michael Furness	266	Kirrily Whatman
237	Joshua Smith	267	George Morrow
238	Meredith Smith	268	Erika Wager
239	Peter Smith	269	Gail Ainsworth
240	Kasey Smith	270	Greg Miles
241	Shailesh Nikam	271	Kathryn Forster
242	Judie Morrow-Emmett	272	Lesley and Will Deumer
243	S Crawford	273	Ken and Margaret Whatman
244	Steve Whatman	274	Iola Tilley
245	Ann Roberts	275	Beatrice Tilley
246	Garry Lee	276	Michael Hill
247	Peter Smith	277	Rosie and Graham Eden
248	Upper Ferntree Gully Fire Brigade	278	Max Fonovic
249	Richard Pearson	279	Stephen & Michelle Cahill
250	David Pace	280	Robyn, Graeme and Trevor Key
251	Rebecca Swainger	281	Cathy Laukens
252	Jarrold McConkey	282	Paul Mocnay
253	Georgina Swainger	283	Patricia Bruce
254	Dior Deumer and Rebecca McGuinness	284	Rhoda and Barrie Hobill
255	Phillipa Maloney-Walsh	285	Derrim Porter
256	James Swainger	286	Debbie Jackson
257	Elaine and Kevin Walsh	287	Michelle Cahill
258	Andrew Whelan	288	Madeline Cleave
259	Brenden James	289	Timothy Cahill
260	David Jeffs	290	Samuel Cahill
261	Sally Bush	291	Susan Jarvis
262	Rachael Miller and Chris Thomson	292	Anne Bruce

Sub No	Name of Submitter	Sub No	Name of Submitter
293	Ken Bruce	323	Gwenyth Evelyn Brideson
294	Adrian Cahill	324	Phyllis Jaensch and Sandra Jacks
295	David, Jo and Kelly Ann Coyle	325	Christian Rowlett
296	Cherie and Richard Giurini	326	Patricia Cahill
297	Wayne Albisser-Bennett	327	Greg and Ellen Hardy
298	Leanne Fitzgerald	328	Graeme and Johanna Renwick
299	Tracy Verburgt	329	Sorina Grasso
300	Mrs B Scriven	330	Catherine Sullivan and Alan Humphries
301	Jessica Taylor	331	Sue Lucas
302	Joseph Kerkbridge	332	Brigitte Goldiger
303	Karen and Darren Foster	333	Robyn Martin
304	Sharon and Melanie Baker	334	S Crawford
305	Ann and Andrew Woolfe	335	Hahndorfs Fine Chocolates
306	Ann Roberts	336	Brenda Levay
307	Mark Roberts	337	VicRoads
308	Chris Catlin	338	Public Transport Victoria
309	Jacqui Catlin	339	Roslyn Fagan
310	Susan Collinson and Mark Bailey	340	Jill Stephenson
311	Amber Zebian	341	Horrie Leek
312	Garry Lee	342	Lynette Kirby
313	Shirley Morris	343	Jeff Burman
314	Stephen Cahill	344	Sheila McAllister
315	Trevor Gorringe	345	Rosie and Graham Eden
316	Ann Gorringe	346	Gwen Haritonidis
317	J Dodson	347	Lynette ML Moloney
318	Karen George	348	Lynn Brewster
319	Pamela Forest	349	Paul Moloney
320	Skye Hewatt	350	Cathy Harland
321	Rachel Bremner	351	Chris Hamilton
322	Barbara Kirkbridge	352	Karen Coulson

Sub No	Name of Submitter	Sub No	Name of Submitter
353	Greg and Ellen Hardy	383	Vicki and Christopher Toes
354	Greg and Ellen Hardy	384	Ian Quinton
355	Gary McKenzie	385	Maria Maclennan
356	Cory Quinton	386	Gail Pan
357	Lara and Graeme Dunning	387	Adam Williams
358	Robin and Judie Morrow-Emmett	388	Denise and Stephen Royal
359	Kathleen Edwards	389	Gwen E Bowen
360	Sally Scott	390	Ted Wroblewski
361	Pam Ledger	391	Luke Selleck
362	Diane Meile	392	Andrew White
363	Lisa Yeoman	393	Lindsay Rickard
364	Richard Pearson	394	Mary Glen-Norman
365	Anthea Mafriaci	395	Stewart and Fiona Dobrzynski
366	Mark Bailey	396	Valerie Smith
367	Llannah Atherton	397	Justin Lowe
368	Alan Field	398	Irene Beatson
369	Marie Grujic	399	Hugh Aldersey
370	Laura Leavy	400	W R Neale
371	Kerryn Lee	401	Anne Fane
372	Meaghan Machin	402	Margaret Lancefield
373	Jacques Poldermans	403	Keryn Fisher
374	Anne Boyd	404	Eveline Schumann
375	Phillip and Eleanor Wills	405	Ray Brindle MPIA
376	David Bull	406	Matthew Sweeney
377	Jessica Brown	407	Kim Pauline
378	Irene Beatson	408	Jo Conway
379	Peter Yeoman	409	Michael & Helen Canny
380	Leigh Glen-Norman	410	Kirrily and Steve Whatman
381	James Lenihan	411	Michael Murphy
382	Cherie, Richard, Marcello, Alexander and Liliana Giurini	412	Steven and Trudy Alexander

Sub No	Name of Submitter	Sub No	Name of Submitter
413	John Winnett	437	Janet K McCarthy
414	Dana Daly	438	Ciaran Doherty
415	Knox Appropriate Development Alliance Inc	439	Allissa Gibson
416	Gino Rossi	440	Celia Ujvavri
417	Graham Crichton	441	Peta Freeman
418	Cosette Murphy	442	Rachel Biddle
419	Sue Crawford OAM	443	Catherine Kruse
420	Stephen and Michelle Cahill	444	Denes Ujvavri
421	Anne Woolfe	445	Jane Baker
422	David J Wood	446	Paula Ewington
423	Klaus Drevermann	447	Dean Thomas
424	Max Fonovic	448	Jasmin Wilson
425	Sue Pollerd	449	David and Roslyn Fagan
426	Zoe Glen-Norman	450	Karin Orpen
427	Gaye and Derek Thornhill	451	Kirrily Whatman
428	Kim and Robyn Pluim	452	Peter Smith
429	Chris Upton	453	Leigh Lawson
430	Robert Jungwirth	454	Michael Martin
431	Ann Roberts	455	Andrew and Monica Myszka
432	Pam and Ian Hutchinson	456	Thurza and Leslie Allen
433	Jan Lancaster	457	John Lee
434	Garry Richards	458	Brenda Levay
435	Mark Roberts	459	Lee Harris
436	James and Kaye Goodsell	460	Country Fire Authority

Appendix B Document list

No.	Description	Tabled by
7 November 2016		
1	Submission – Part A	Council
15 November 2016		
2	Submission – Part B	Council
3	Panel Report – Knox Planning Scheme Amendment C129	Council
4	Information Guide – Upper Ferntree Gully and Ferntree Gully Bushfire Community Information Guide	Council
5	VCAT decision – University of Melbourne v Minister for Planning P3374/2010	Council
6	email – Melbourne Water to Council: basements in a flood prone area	Council
7	List – Permit applications in the Activity Centre since late 2013	Council
8	Plans and elevations – 1168 Burwood Highway, Upper Ferntree Gully	Council
9	Plans and elevations – 1172 Burwood Highway, Upper Ferntree Gully	Council
10	Submission	Ms Orpen
11	Photos – Boronia Development	Ms Kruse
17 November 2016		
12	Letter – To owners and occupiers: Council’s decision on the Amendment and next steps, 12 August 2016	Council
13	Knox Planning Scheme – Design and Development Overlay Map No DDO7	Council
14	Letter – Knox City Council to Country Fire Authority: Notice of preparation of Amendment C141, 4 February 2016	Council
15	Supplementary Submission	Council
16a	Letter – Department of Environment, Land, Water and Planning to Knox City Council: Approval of Amendment C137, 11 November 2016	Council
16b	Knox Planning Scheme – Design and Development Overlay Schedule 11	Council
17	Planning Practice Note 59 – The role of mandatory provisions in planning schemes, June 2015	Council
18	Planning Practice Note 60 – Height and setback controls for activity centres, June 2015	Council
19a	Draft Knox Central Structure Plan – Built form framework, p45	Council
19b	Knox webpage – Knox Central Structure Plan	Council
20	Submission	Ms Boyd
21	Submission – National Trust Dandenong Ranges Branch	Ms Ebdon

No.	Description	Tabled by
22	Submission	Ms Coulson
18 November 2016		
23	Late Submission – Country Fire Authority	Council
24	Submission – The 1812 Theatre Ltd	Mr Procter
25	Submission	Ms Whatman
26	Submission	Mr Whatman
27	Submission	Ms Aldersey
28	Submission	Dr Brindle
29	Knox Planning Scheme – Draft Clause 22.14 for discussion purposes	Council
30	Knox Planning Scheme – Draft Clause 22.01 for discussion purposes	Council
31	Knox Planning Scheme – Draft DDO12 for discussion purposes	Council

Appendix C Panel recommended changes

SCHEDULE 12 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO12**.

UPPER FERNTREE GULLY ACTIVITY CENTRE

1.0 Design objectives

Proposed

To protect and enhance key views to the Dandenong Ranges and connection with the Foothills' landscape from within the Upper Ferntree Gully Activity Centre.

To require the scale of development within the Activity Centre to maintain the sense of containment the Activity Centre has within the Dandenong Foothills, and retain the Dandenong Ranges as a visually dominant backdrop.

To support development that maximises the opportunity for commercial activity.

To require development to be of a high architectural design standard.

To provide for the adaptive re-use of buildings.

To provide high levels of internal amenity within developments ~~in order to maintain and enhance the commercial vitality of the Activity Centre.~~

To require development to provide a high standard of universally accessible design to and within buildings in order to support people of all abilities.

To minimise the visual impact of car parking on and limit vehicle access over Active Frontage Areas in order to enhance streetscape character.

To require development in flood risk areas to effectively manage risks to life, property and the environment.

~~To provide a safe pedestrian movement within and to the Activity Centre.~~

To provide a high quality and safe pedestrian environment and public realm. ~~Within the Activity Centre, including~~

To provide providing for the potential future public open space along William Street and the development of Rose Street as a shared pedestrian/vehicular zone and focal point for community activity and events.

~~To support the development of Rose Street as a shared pedestrian/vehicular zone and focal point for community activity and events.~~

To require that development complements heritage and locally valued buildings.

To avoid unreasonable detriment to the amenity of existing residential areas outside the Activity Centre.

To require advertising signs to complement and maintain the visual dominance of the Dandenong Ranges and Foothills, and to contribute to a high quality public realm.

To facilitate the fly tower for the 1812 Theatre Company and strengthen its role in developing arts and culture in the municipality and enhance it as an attraction for visitors to the Activity Centre.

2.0 Permit exemptions

Proposed

A permit is not required for:

- An alteration to an existing building façade, provided that:
 - The alteration does not include the installation of an external roller shutter.
 - At least 80 percent of the building façade at ground level is maintained as an entry or window with clear glazing.
- An awning that projects over a footpath if it is authorised by the relevant public land owner.
- Building and works for ~~railway purposes including~~ signals (and related controls buildings), new tracks, track-work and realignment, train stabling, overhead powerlines,

gantries, ~~buildings and works related to~~ railway power requirements, ~~and any other work required under compliance with~~ the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002 or the like.

- To extend an existing dwelling or construct buildings and works ancillary to a dwelling if the height of the building or works is less than 8.5 metres.

3.0 Buildings and works

Proposed C141

The following requirements apply to buildings and works:

Building height

1. A building must not exceed the maximum number of storeys as shown on Map 1.
A permit cannot be granted to construct a building which is not in accordance with this requirement.
2. A building must not exceed the maximum building height as shown on Map 1, except for:
 - a) Increases to minimum finished floor levels to accommodate requirements of the relevant floodplain manager.
 - b) that part of a building that is an architectural feature that serves a decorative purpose; or
 - c) building services located on the roof provided ~~the impact on~~ views to the Dandenong Ranges and the Foothills from the public realm are maintained; or
 - d) a pitched roof form, provided views to the Dandenong Ranges and the Foothills from Key Public Realm Viewlines, as shown on Map 1, are maintained.

A permit cannot be granted to construct a building which is not in accordance with this requirement.

Siting and setbacks

1. Setbacks must be in accordance with the requirements set out in Table 1 and Map 1 of this Schedule. Buildings on a corner site must be designed to emphasise the corner location and address both street frontages.

Building design

1. Buildings which front onto a Primary or Secondary Active Frontages Areas, must have:
 - a) minimum ground level internal ceiling heights of 3.6 metres, from finished floor level (FFL) to finished ceiling level (FCL); and
 - b) minimum internal ceiling heights of 2.7 metres, from FFL to FCL in levels above ground level.
2. Buildings must be of a high architectural standard incorporating responses such as:
 - a) articulating the building form and façades by using different colours and materials, avoiding sheer walls, and through the use of window openings and setbacks; and
 - b) using of high quality materials.
3. Buildings must provide for significant articulation and variation to upper levels in order to avoid dominating Key Public Realm Viewlines to the Dandenong Ranges, to the north, east and south of the Activity Centre.
4. Require development to capitalise on upper level views to the Dandenong Ranges.
5. Buildings must provide for a high level of internal amenity, by incorporating measures such as providing:
 - a) a high level of natural light to habitable rooms and providing appropriate forms of shading;

- b) balconies or habitable room windows to capture the Key Public Realm Viewlines to the Dandenong Ranges; and
 - c) largely transparent upper level balconies and balustrades to facilitate sunlight penetration into the development and maintain the openness of the Key Public Realm Viewlines; and
 - d) noise attenuation measures for dwelling uses and where development fronts onto Burwood Highway.
6. Building facades on wider lots must be broken up to reinforce the existing pattern of fine-grain shop fronts by incorporating measures such as:
 - a) providing vertical articulation which reflects the existing fine grain pattern of existing shop fronts which are 5 to 7 metres wide; and
 - b) dividing roof forms on larger buildings into distinct sections reflective of the roof proportions of existing buildings.
 7. The design of roofs must protect the Key Public Realm Viewlines and Key Activity Centre Arrival Views.
 8. Service, [plant, service areas](#) and loading areas must be located away from the Residential Interfaces ~~and~~ ~~9. Services and roof top plant must~~ be incorporated into the design of ~~a~~-buildings and ~~be~~-screened from public view.
- ~~9.10.~~New buildings must maintain the visual prominence of, and sightlines to, the Royal Hotel and Visitors Information Centre when these buildings are viewed from the public realm.
- ~~10.11.~~ A building at a Residential Interface must comply with Standards B21 and B22 of clause 55 ([refer Map 1](#)).

Colours and Materials

1. Buildings must incorporate a mix of contemporary and traditional materials, textures and finishes including timber, render, glazing, stone, brick, and iron roofing.
2. External building walls must be finished in muted tones, finishes and colours that reflect the landscape setting of the Foothills, and must avoid the excessive use of colours that contrast strongly with the dominant colours of the Dandenong Ranges and Foothills.
3. Roofs must be coloured in dark, muted tones and be of low reflectivity.
4. External walls, vulnerable to graffiti, must incorporate vertical landscaping or other integrated deterrent measures.

Active Frontages

1. Buildings adjoining a Primary or Secondary Active Frontage must:
 - a) have a continuous and active building edge to the frontage;
 - b) use clear glazing and avoid reflective, tinted or obscured window coverings;
 - c) avoid blank walls and provide visual interest and interaction at street level;
 - d) if on a corner site, emphasise the corner through facade articulation and roof form;
 - e) avoid views of car parking, waste, storage, loading or service areas from the frontage;
 - f) use landscaping as a visual separation between the public realm and private areas instead of obscured fencing;
 - g) avoid fencing which is more than 50% obscured; and
 - h) avoid landscaping which obscures active surveillance of the public realm from private areas.
2. Any residential frontage at ground floor level adjoining a Primary Active Frontage must not exceed 2 metres.

Walkability

1. Development must prioritise and enhance the pedestrian experience and connectivity to Activity Centre Pedestrian Links as shown on Map 1 to this clause.
2. Buildings must incorporate verandahs and other forms of continuous weather protection along Primary Active Frontages (as shown at Map 1 to this Schedule).
3. Development must provide universally accessible pedestrian access points which are clearly visible and identifiable from the street, integrated into the main entrance of the building, and are provided within the property boundary.
4. Residential entries must be distinguished from retail and commercial entries.

Car parking

1. Car parking areas must:
 - a) incorporate paving treatments to indicate pedestrian priority;
 - b) provide contiguous pedestrian routes which are suitable for all levels of mobility;
 - c) minimise number of driveway crossovers and provide clear pedestrian access routes to reduce pedestrian/vehicle conflicts;
 - d) incorporate a high level of tree planting to soften the visual impact of large areas of parking and to enhance pedestrian comfort; and
 - e) be screened from view of the street and integrated into the design of the development.

Stormwater and flood management

1. Development must be sited, set back, and designed to comply with the freeboard requirements of the floodplain authority to avoid the risk of flood inundation.
2. Where appropriate, development must have regard to the requirements of the Guidelines for Development in Flood Prone Areas (Melbourne Water 2008), or other relevant provisions by the floodplain authority.
3. Stormwater must be managed on-site so that off-site impacts are minimised.

Heritage and built form character

1. New development adjoining or opposite a heritage overlay or a Valued Building must be designed to respect the appearance and significance of that building.

Landscaping

1. The setback to a Landscape Active Frontage Area or a Secondary Landscape Active Frontage Area must:
 - a) comprise landscaping which complements the vegetation of the Foothills landscape and any adjoining vegetation in the public realm.
 - b) retain significant vegetation on or adjoining the property.
 - c) comprise only of landscaping and permeable areas, with the exception of any retaining walls, driveways and pathways.
 - d) not contain utility and service structures such as rainwater tanks or electrical meters.
 - e) ~~set aside side and rear setbacks of land adjoining a Secondary Landscape Active Frontage Area for landscaping.~~

4.0**Advertising Signs**

Proposed
C141

In addition to the requirements at Clause 52.05 and any applicable local policy, advertising signs must:

- a) be of a scale, design and location that complements the Dandenong Ranges and Foothills landscape setting;

- b) be kept to a minimum by consolidating information;
- c) not incorporate digital images, animation, flashing, bright or reflective surfaces;
- d) be limited to one under verandah sign per frontage, located perpendicular to the façade, and one sign on the awning facing the road; and
- e) must not interrupt Key Activity Centre Arrival Views or Key Public Realm Viewlines.

5.0 Decision guidelines

Proposed
C444

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

- objectives and policies of Clause 22.14~~2~~; and
- Upper Gully Strategic Plan (~~December 2015~~ [MM YYYY](#))

6.0 Reference

Proposed
C444

Upper Gully Strategic Plan (~~December 2015~~ [MM YYYY](#))

Guidelines for Development in Flood Prone Areas (Melbourne Water 2008)

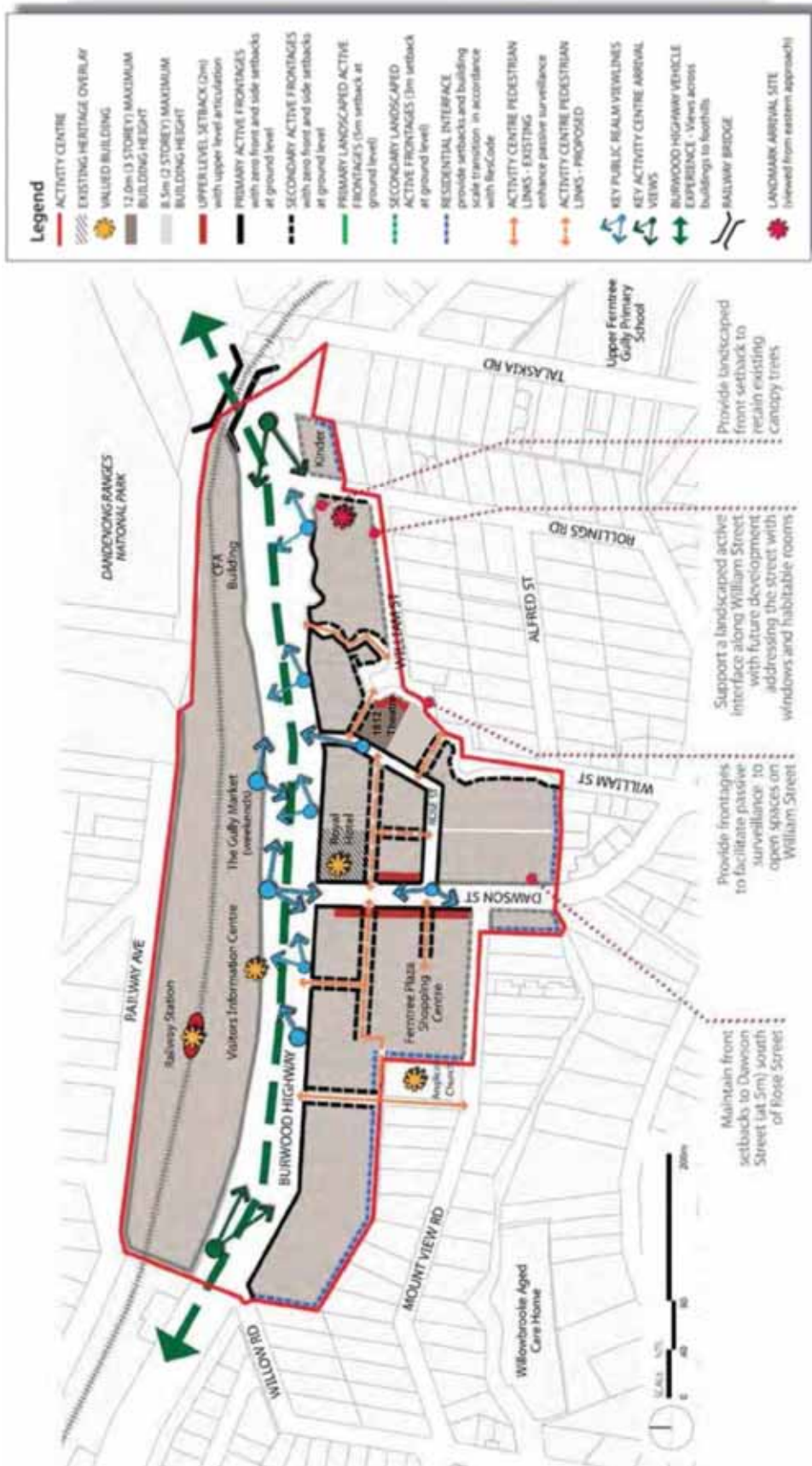
Table 1 – Height and setback requirements

To be read in conjunction with Map 1.

Setback or Interface	Requirement
Primary Active Frontages and Secondary Active Frontages Setback	A building adjoining a Primary Active Frontage area or Secondary Active Frontage area must be located on the street boundary at ground level.
Primary Landscaped Active Frontages Setback	A building adjoining a Landscape Active Frontage area must have a minimum setback of 5 metres at ground level to accommodate the retention and/or planting of canopy trees.
Secondary Landscaped Active Frontages Setback	A building adjoining a Secondary Landscape Active Frontage area must have a minimum setback of 3 metres at ground level to accommodate the retention and/or planting of trees and vegetation.
Upper Level Setback	Upper level setbacks for two storey buildings to Dawson Street must be a minimum of 2 metres. Upper level setbacks for two storey buildings to other streets – none specified. Second level setback for a three storey building – none specified. Upper level setback for three storey buildings must be a minimum of 2 metres.
Residential Interface	A building at a Residential Interface must provide side and rear setbacks in accordance with Standard B17 of clause 55.

Map 1 – Building Heights & Setbacks

To be read in conjunction with Table 1.



22.01 Dandenong Foothills

03/12/2015

Proposed C141

This policy applies to the area shown on the plan forming part of this clause.

22.01-1 Policy basis

13/11/2014
C129

The Dandenong Foothills includes the treed slopes and rural areas of Lysterfield Valley, the rural landscapes of The Basin, and parts of the suburbs of Boronia, Sassafra, Ferntree Gully (excluding the Ferntree Gully Village Neighbourhood Activity Centre), Upper Ferntree Gully (excluding the Upper Ferntree Gully Activity Centre), Rowville and Lysterfield.

This policy:

- Applies the *Melbourne 2030* objectives of Policy 2.4 to local circumstances.
- Applies the MSS objectives in Clauses 21.01 “Municipal Profile”, 21.03 “Vision and Strategic Land Use Framework”, 21.04 “Urban Design”, 21.05 “Housing”, 21.06 “Environment” and 21.07 “Economic Development”.
- Applies the findings of the Dandenong Foothills Urban and Landscape Review 2006, Knox Urban Design Framework 2020 (2003) and City of Knox Neighbourhood Character Study 1999 to ensure that new buildings, works and landscaping protect and enhance the metropolitan landscape significance of the Dandenong Foothills and Lysterfield Valley.
- Provides design guidance to implement the Knox Urban Design Framework 2020 (2003), Dandenong Foothills Urban and Landscape Review 2006 and City of Knox Neighbourhood Character Study 1999.

Melbourne 2030 recognises the environmental and landscape qualities of land in the vicinity of the Dandenong Ranges as having high environmental and social values of metropolitan significance.

The *Knox Urban Design Framework 2020* identified the Dandenong Ranges and its foothills as forming a backdrop to views across the eastern suburbs of Melbourne, including long range views from central city office buildings and other high points throughout the metropolitan area such as Northcote Hill and the Calder Highway. The important characteristics of the hills from these views are their heavily vegetated, apparently natural environment. These views are at risk from intensive residential redevelopment, poorly sited, designed and finished buildings and works, and removal of vegetation.

The interface between urban development and the Dandenong Ranges and national parks in Lysterfield are particularly susceptible to bushfire events. Within these areas, protection of human life and vegetation that has high significance to the landscape, may limit development potential.

Lysterfield Valley is classified by the National Trust as an “attractive pastoral landscape” and has been identified in *Melbourne 2030* as forming part of the Southern Ranges green wedge. Lysterfield Valley forms a key gateway to the Dandenongs and provides an important buffer between urban and rural areas.

This policy addresses five key landscape areas that make up the Dandenong Foothills area. These are the:

- Lysterfield Valley and Lysterfield Hills Rural Landscape
- Dandenong Foothills: Lower Slope and Valley Area
- Dandenong Foothills: Foothills Backdrop and Ridgeline Area
- The Basin Rural Landscape
- Lysterfield Urban/Rural Transition and Lysterfield Valley Contributory Area

22.01-2 Objectives

28/03/2013

C110

The objectives of this policy are to:

- Protect and enhance the metropolitan landscape significance of the Dandenong Foothills and maintain uninterrupted view lines from within the municipality and vantage points in metropolitan Melbourne by ensuring that all buildings and works are sensitively designed and sited to sit below the dominant tree canopy height.
- Promote the maintenance and improvement of the continuous closed tree canopy by allowing enough open space within new development for the retention of existing canopy vegetation and growth of new canopy vegetation.
- Maintain the low density residential character of the landscape areas by ensuring that preferred subdivision patterns and lot sizes are retained.
- Protect the rural environments of The Basin and the Lysterfield Valley and Lysterfield Hills.
- Ensure that new buildings, works and landscaping in The Basin and the Lysterfield Valley and Lysterfield Hills protect the physical and visual amenity of the open pastoral setting.
- Limit further subdivision and rezoning of land for urban purposes where there is a high risk of bushfire.

22.01-3 Policy

03/12/2015

Proposed
C141

It is policy that:

Site analysis and design response

- Applications for buildings and works be accompanied by:
 - A site analysis.
 - A design response.

Site analysis

The site analysis may include a detailed site plan, photographs or other techniques and should accurately describe, as appropriate:

- The built form, scale, design and use of surrounding development.
- Solar access to the site and surrounding properties.
- Identified areas of environmental significance.
- Open space.
- Views to and from the site.
- Location of significant trees and vegetation.
- Drainage.
- Street frontage features such as poles, street trees and kerb crossovers.
- Any contaminated soils and filled areas, where known.
- Any other notable features or characteristics of the site

Design response

The design response should explain how the proposed design:

- Derives from and responds to the site analysis.
- Meets the objectives and requirements of this policy.
- Responds to any neighbourhood character features for the area identified in the Neighbourhood Character policy at Clause 22.07.

The design response should include correctly proportioned street elevations or photographs showing the development in the context of surrounding buildings and landscape.

Lysterfield Valley and Lysterfield Hills Rural Landscape

- Buildings and works be designed and sited to ensure that the rural landscape character is maintained and enhanced.
- Rural uses be maintained and encouraged.
- Indigenous trees and understorey vegetation be retained and protected.
- A minimum of 80% of all new vegetation (both canopy trees and understorey) be indigenous.

Dandenong Foothills: Lower Slope and Valley Area

- The design and siting of buildings, works and landscaping minimises the threat associated with bushfire.
- The design and siting of buildings, works and landscaping protects and enhances the visual dominance of vegetation, including canopy trees and native understorey plants to ensure that:
 - There is a continuous vegetation canopy across residential lots and roads.
 - Development blends with vegetation on the hillsides to maintain and enhance the appearance of the area as an extension of the Dandenong Ranges National Park.
 - Development does not rise above the tree canopy height to maintain the significant landscape character of the area and near and distant view lines.
- Indigenous trees and understorey vegetation be retained and protected.
- A minimum of 80% of all new vegetation (both canopy trees and understorey) be indigenous.
- Building height does not exceed 7.5 metres ~~(with the exception of land within The Basin, Alcester Village, and Upper Ferntree Gully Neighbourhood Activity Centres).~~

Dandenong Foothills: Foothills Backdrop and Ridgeline Area

- The design and siting of buildings, works and landscaping minimises the threat associated with bushfire.
- The design and siting of buildings, works and landscaping protects and enhances the visual dominance of vegetation, including canopy trees and native understorey plants, to ensure that:
 - There is a continuous vegetation canopy across residential lots and roads.
 - Development blends with vegetation on the hillsides to maintain and enhance the appearance of the area as an extension of the Dandenong Ranges National Park.
 - There is effective screening of development and use of suitable colours and materials to maintain distant views and the appearance of a heavily vegetated natural hillside.
 - Development does not rise above the tree canopy height to maintain the significant landscape character of the area and near and distant view lines.
 - The significant landscape character of the area is protected and enhanced by retaining existing vegetation and planting indigenous canopy and understorey vegetation.
 - Buildings and works located on sites at high points and along ridges are designed, finished and sited so that they are not highly visible from the valley area below.
- Indigenous trees and understorey vegetation be retained and protected.
- A minimum of 80% of all new vegetation (both canopy trees and understorey) be indigenous.
- Building height does not exceed 7.5 metres ~~(with the exception of land within The Basin, Alcester Village, and Upper Ferntree Gully Neighbourhood Activity Centres).~~

The Basin Rural Landscape

- Land to the east and south of the Urban Growth Boundary be maintained for rural uses.
- Development and subdivision be limited to maintain land for rural uses and protect identified rural landscape qualities.
- Buildings and works be designed and sited to ensure that the rural landscape qualities are maintained and enhanced.
- The subdivision of land and the construction of buildings and works minimise the threat associated with bushfire.
- Indigenous trees and understorey vegetation be retained and protected.

Lysterfield Urban/Rural Transition and Lysterfield Valley Contributory Area

- Roads be aligned to provide an edge to the urban area and provide public access to reserves, parkland and views.
- Streets connect with adjoining development and provide informal street treatments incorporating indigenous vegetation and rollover kerbing.
- Building height does not exceed 7.5 metres
- The subdivision of land and the construction of buildings and works minimise the threat associated with bushfire.
- Indigenous trees and understorey vegetation be retained and protected.

Reference documents

National Trust Register No. 355 - Lysterfield Valley and Yarra Ranges Landscape

Melbourne 2030 - Planning for Sustainable Growth, State Government of Victoria, 2002

Knox Urban Design Framework 2020, Planisphere for Knox City Council, 2003

Dandenong Foothills Urban and Landscape Review, Hansen Partnership Pty. Ltd. for Knox City Council, March 2006

City of Knox Neighbourhood Character Study, Mike Scott and Associates for Knox City Council, 1999

PLAN TO CLAUSE 22.01

