

**Mansfield Planning Scheme Amendment C48mans
Mansfield Township Approaches**

Panel Report

Planning and Environment Act 1987

21 April 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Mansfield Planning Scheme Amendment C48mans

Mansfield Township Approaches

21 April 2022



Lisa Kendal, Chair

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Glossary and abbreviations

140 High Street Pty Ltd	140 High Street Mansfield Pty Ltd
Background Summary Report	<i>Township Approaches Planning Controls and Guidelines Study, Mansfield Background Summary Report, September 2017</i>
Council	Mansfield Shire Council
Council final versions	Council final versions of the Amendment documents showing post exhibition proposed changes
C1Z	Commercial 1 Zone
C2Z	Commercial 2 Zone
DDO	Clause 43.02 Design and Development Overlay
DDO1	Clause 43.02 Design and Development Overlay – Schedule 1
DDO2	Clause 43.02 Design and Development Overlay - Schedule 2
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
FZ	Farming Zone
GRZ1	General Residential Zone – Schedule 1
INZ1	Industrial Use Zone – Schedule 1

LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
Mansfield Design Guidelines	<i>Township Approaches Planning Controls and Guidelines Study, Mansfield Design Guidelines, June 2018</i>
MCHAC	Mansfield Cultural Heritage & Arts Centre
MMG	Mansfield Matters Group
MPS	Municipal Planning Strategy
MUZ	Mixed Use Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Mansfield Planning Scheme
PPF	Planning Policy Framework
PPN59	Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes
PPN91	Planning Practice Note 91 – Using the Residential Zones
Practitioner’s Guide	A Practitioner's Guide to Victorian Planning Schemes
RLZ	Rural Living Zone
SLO1	Significant Landscape Overlay – Schedule 1
TRZ	Transport Zone
TRZ2	Transport Zone – Schedule 2
UFZ	Urban Floodway Zone
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Mansfield Planning Scheme Amendment C48mans
Common name	Mansfield Township Approaches
Brief description	<p>The Amendment proposes to implement the <i>Township Approaches Planning Controls and Guidelines Study, Mansfield, June 2018</i> (Mansfield Design Guidelines) by making the following changes to the Mansfield Planning Scheme:</p> <ul style="list-style-type: none"> - amending Clause 21.09 (Mansfield Township) - amending Design and Development Overlay Schedule 1 - introducing the new Design and Development Overlay Schedule 2 - associated mapping changes
Subject land	<p>The Amendment applies to land zoned for residential, commercial, industrial, farming and for special purposes along the four highway approaches to the Mansfield Township as shown in the <i>Township Approaches Planning Controls and Guidelines Study, Mansfield, June 2018</i>:</p> <ul style="list-style-type: none"> - Approach 1: Maroondah Highway approach on the western side of Mansfield - Approach 2: Mount Buller Road approach on the eastern side of Mansfield - Approach 3: Midland Highway approach on the northern side of Mansfield - Approach 4: Mansfield-Whitfield Road approach on the northern side of Mansfield
The Proponent	Mansfield Shire Council
Planning Authority	Mansfield Shire Council
Authorisation	11 August 2021, with conditions
Exhibition	23 September to 24 October 2021
Submissions	Number of Submissions: 15 Opposing or seeking changes: 11 (see Appendix A)

Panel process

The Panel	Lisa Kendal, Chair
Directions Hearing	Video conference, 19 January 2022
Panel Hearing	Video conference, 21 and 22 February 2022
Site inspections	Unaccompanied, 16 February 2022

Parties to the Hearing	<p>Mansfield Shire Council, represented by Grant Scale, Oscar Yencken and Cristen Sullivan (Tract)</p> <p>140 High Street Mansfield Pty Ltd represented by Lewis Moore and Robbie McKenzie of Ratio Consultants</p> <p>Mansfield Matters Group Inc. represented by Kym Lynch</p> <p>Sarah Stegley</p> <p>Mansfield Cultural Heritage & Arts Centre Inc. represented by Dr William Twycross</p>
Citation	Mansfield PSA C48mans [2022] PPV
Date of this report	21 April 2022

Executive summary

The township of Mansfield is set in the foothills of the Victorian High Country and is surrounded by picturesque countryside. The views to the surrounding area are highly valued by residents of Mansfield and visitors to the area.

Mansfield Planning Scheme Amendment C48mans (the Amendment) seeks to implement the recommendations of the *Township Approaches Planning Controls and Guidelines Study, Mansfield*, June 2018 (Mansfield Design Guidelines). The Mansfield Design Guidelines include objectives to identify the preferred character of the four Township Approaches and to ensure that future development makes a positive impact on the amenity and environment.

The Amendment introduces local policy and two Schedules to the Design and Development Overlay (DDO) to guide built form of residential, commercial, industrial and farming areas within the four Mansfield Township Approaches, including:

- Approach 1: Maroondah Highway (west)
- Approach 2: Mount Buller Road (east)
- Approach 3: Midland Highway (north)
- Approach 4: Mansfield-Whitfield Road (north).

Key issues raised in submissions included:

- not all gateways are equal and should not be treated the same in the Schedules to the DDO
- requirements should be mandatory
- the name of the DDO Schedules should be changed to include 'Alpine approaches and township gateways'
- specific requirements relating to:
 - regulation of land use
 - building heights
 - access and circulation of vehicles
 - building setbacks
 - building siting and frontages
 - roof forms
 - signs
 - protection of heritage places
 - accessibility
- specific sites including 9 Oaksford Drive, Mansfield
- drafting of the Amendment documents.

The Panel considers the Amendment is strategically justified and aligned with planning policy. It responds to many issues in the Municipal Planning Statement and provides clear direction for built form along the Township Approaches. It will encourage development which complements and enhances the role and function of designated gateways, protects scenic landscape values and views, and complements and improves infrastructure and landscaping in the public and private realm.

The Panel considers the proposed Amendment will assist with decision making that achieves net community benefit and sustainable development for current and future community and visitors to

Mansfield. The Panel commends Council for preparing the Amendment which builds on a significant history of planning for the Mansfield Township gateways and Alpine approaches.

The Panel concludes:

- The Amendment is well founded and strategically justified, and should proceed subject to addressing the more specific issues raised in submissions as discussed in this Report.
- The significance of the approaches is appropriately recognised in policy.
- Mandatory planning controls have not been strategically justified and should not be included in the Schedules to the DDO.
- The Schedules to the DDO should be renamed to Alpine Approaches and Township Gateways so as to be short, descriptive, more user friendly and better reflect the purpose of the planning control.
- The Schedules to the DDO should be redrafted to remove requirements that are intended to regulate land use.
- A number of requirements should be amended or removed, consistent with recommendations in this Report.
- The Mansfield Design Guidelines should not be referenced in local policy in the Planning Scheme and should not be included as a Background Document in the Schedule to Clause 72.08.
- It is not appropriate to include the additional content erroneously omitted from exhibited Amendment documents, on the basis that it is not clear that it adds value, it may duplicate existing content, it is not required to implement the objectives of the Amendment and may not be appropriate in the new Planning Policy Framework format.
- It is appropriate to change application of the Schedule to the DDO as a result of mapping anomalies identified by Council following exhibition of the Amendment, subject to Council satisfying itself that adequate notice has been given to affected land owners and occupiers.
- Unless otherwise stated in this Report, the Panel does not support the post exhibition changes proposed in Council final versions of the Amendment documents.

The Amendment documentation will need to be carefully translated into the new format Planning Policy Framework before adoption to ensure that it is consistent with the changes introduced by Amendments VC148 and C47mans. This provides an opportunity to refine and improve drafting of the Amendment.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Mansfield Planning Scheme Amendment C48mans be adopted as exhibited subject to the following:

- 1. Amend Clause 21.09 (Mansfield Township) to remove:**
 - ***Strategy 5.1 Ensure development is consistent with the Township Approaches Planning Controls and Guidelines Study, Mansfield, June 2018.***
- 2. Amend the Schedules to the Design and Development Overlay to:**
 - a) Revise the names as follows:**
 - ***Design and Development Overlay 1 - Alpine Approaches and Township Gateways – Residential Zones***
 - ***Design and Development Overlay 2 - Alpine Approaches and Township Gateways – Industrial, Commercial and Farming Zones.***

- b) Remove references to regulation of land use.
 - c) Revise the wording relating to a permit to construct or extend a fence under the heading 'Buildings and works' as follows:
 - *A permit is required to construct or extend a fence within 6 metres of the common boundary of a lot with frontage to a township approach, unless it meets all of the following requirements: ...*
 - d) Include a new 'Buildings and works' requirement under the heading 'Access and circulation':
 - *Vehicle access points to sites located on arterial roads should be minimised and be provided by side streets or via shared access ways, wherever possible.*
 - e) Retain the 'Signs' requirement of 'None specified'.
 - f) Remove the maps.
3. Amend the Design and Development Overlay Schedule 1 to:
 - a) Revise the second dot point under the heading 'Access and circulation' as follows:
 - *Undercroft car parking should be screened from a township approach with the car park entrance incorporated into the building's design.*
 - b) Update or add requirements under the heading 'Building address' as follows:
 - *Buildings should be oriented so that the building frontage and entrance is parallel with and facing the township approach.*
 - *When a building is located on land with two street frontages, buildings should be designed with dual frontages.*
 - *Buildings should engage with the township approach through ground level occupation and the presence of habitable rooms and balconies at all levels. Service areas such as laundries, garages, and bathrooms, should be located away from the township approach where practicable.*
 - c) Add a requirement under the heading 'Building heights':
 - *Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for a development in the Mixed Use Zone and it will have a minimal visual impact on views from the township approach and views to and from significant landscapes.*
 - d) Revise the first dot point under the heading 'Roof forms' as follows:
 - *Use varied roof forms to provide visual interest along the township approach while providing forms that are compatible with the character of the approach.*
4. Amend the Design and Development Schedule 2 to:
 - a) Remove the following 'Buildings and Works' requirements:
 - *Drive thru sales facilities should not be visible from a township approach.*
 - *A reduction in car park provision may be considered where a development is being purpose built for a known end user and it can be demonstrated that lower car park numbers are required on the basis of employee numbers, alternative transport options and likely client / customer numbers. An area on the site will need to be set aside so that the full car parking requirements can be met to the Responsible Authorities satisfaction in the future if necessary. This area will need to be landscaped and maintained in the interim.*

- *Uses requiring the parking and the regular movement of trucks should provide designated truck parking areas. This does not include truck movements within loading areas.*
 - b) Revise the first dot point under the heading 'Building address' as follows:
 - *Buildings should be oriented so that the building frontage and entrance is parallel with and facing the township approach.*
 - c) Revise the first and second dot points under the heading 'Roof forms' as follows:
 - *Use varied roof forms to provide visual interest along the township approach while providing forms that are compatible with the character and function of industrial and commercial buildings, and streetscape character.*
 - *Roof forms should have a low pitch unless necessitated by the particular industrial function. Steeper pitched roof elements may be used to reduce the bulk of a large roof area or to respond to the prevailing character.*
 - d) Revise the fourth and sixth dot points under the heading 'Car parking' as follows:
 - *Car parking and accessways should be setback at least 3m from the common property boundary with a township approach.*
 - *Undercroft car parking should be screened from a township approach with the car park entrance incorporated into the building's design.*
 - e) Revise the last sentence of the first dot point under the heading 'Landscaping' as follows:
 - *Semi-mature trees should be planted where appropriate.*
 - f) Revise the fourth dot point under the heading 'Subdivision' as follows:
 - *Where direct access or a service road is not appropriate, industrial and commercial developments may side onto the approach provided: ...*
 - g) Revise the final dot point under the heading 'Application requirements' as follows:
 - *The location and size of future signs.*
5. Amend the Planning Scheme maps to show the following changes in accordance with Council's post exhibition changes, subject to Council satisfying itself that notice requirements have been met:
- a) Apply the Design and Development Overlay Schedule 1 to the area of land zoned rural living zone on the south side of the Maroondah Highway at the eastern most end of the township approach.
 - b) Apply the Design and Development Overlay Schedule 2 to the large area of land zoned farming zone on the west of the Midland Highway and north of Dead Horse Lane.
6. Prior to adoption:
- a) Translate the Amendment into the new Planning Policy Framework to be consistent with Amendments VC148 and Mansfield C47mans.
 - b) Refine and improve drafting of Amendment documents during translation to the new Planning Policy Framework format.
 - c) Review the form and content of the Schedules to the Design and Development Overlay with consideration of the recommendations in this Report and drafting guidance.

1 Introduction

1.1 The Amendment

(i) Amendment description

Mansfield Planning Scheme Amendment C48mans (the Amendment) seeks to implement the recommendations of the *Township Approaches Planning Controls and Guidelines Study, Mansfield*, June 2018 (Mansfield Design Guidelines).

The Amendment introduces new local planning policy and two Schedules to the Design and Development Overlay (DDO) to the Mansfield Planning Scheme (Planning Scheme) to guide built form of residential, commercial, industrial and farming areas along the Mansfield Township Approaches.

Specifically, the Amendment proposes to:

- amend Clause 21.09 (Mansfield Township) to add new Objective 5 *Mansfield Township Approaches* and associated strategies
- amend Schedule 1 to Clause 43.02 Design and Development Overlay (DDO1) (Mansfield Township Approach Guidelines - Mixed Use, General Residential 1, Low Density Residential and Rural Living Zones)
- introduce new Schedule 2 to Clause 43.02 Design and Development Overlay (DDO2) (Mansfield Township Approach Guidelines - Farming, Urban Floodway, Industrial 1, Commercial 1 and Commercial 2 Zones)
- amend Planning Scheme maps 11DDO and 12DDO and insert new map 9DDO.

Design objectives for proposed DDO1 and DDO2 include:

- Ensure future development along the four township approaches has regard to local context and reinforces the valued character of the township.
- Ensure the preferred future character of the township approaches is achieved through built form and landscaping treatments within the private realm.
- Protect key view lines to natural landscape features surrounding the Mansfield Township from within the identified township approaches.
- Ensure the appearance of new development reflects the colours and finishes of the surrounding natural landscape.

Mansfield Shire Council (Council) is the proponent for the Amendment.

(ii) The subject land

The Amendment proposes to apply the revised DDO1 and new DDO2 to land designated along the four highway approaches around the Mansfield Township as shown in Figure 1, including:

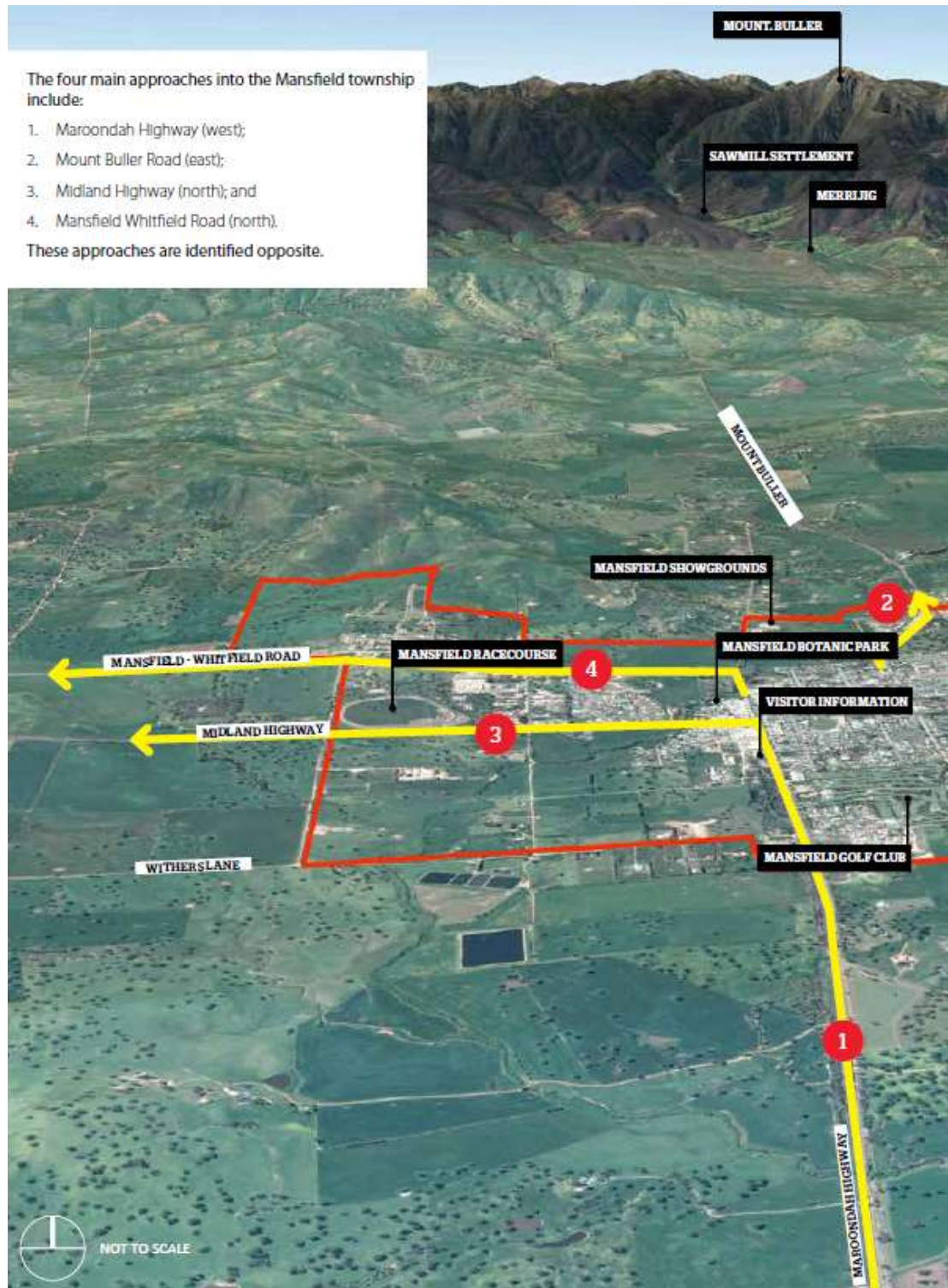
- Approach 1: Maroondah Highway (west)
- Approach 2: Mount Buller Road (east)
- Approach 3: Midland Highway (north)
- Approach 4: Mansfield-Whitfield Road (north).

The Amendment proposes to remove the current DDO1 which applies to land along Approach 1 and Approach 2 (see Figures 2 and 3).

The revised DDO1 applies to residential land (Mixed Use Zone (MUZ), General Residential Zone – Schedule 1 (GRZ1), Low Density Residential Zone (LDRZ) and Rural Living Zone (RLZ)).

The new DDO2 applies to industrial, commercial and farming land (Farming Zone (FZ), Urban Floodway Zone (UFZ), Industrial 1 Zone (INZ1), Commercial 1 Zone (C1Z) and Commercial 2 Zone (C2Z)).

Figure 1 Map of Mansfield Township Approaches



Source: Mansfield Design Guidelines

Figure 2 Current DDO1 proposed for removal – Approach 1



Source: Exhibited maps

Figure 3 Current DDO1 proposed for removal – Approach 2



Source: Exhibited maps

1.2 Background

(i) Mansfield Design Guidelines

The Mansfield Design Guidelines provides the strategic basis for the Amendment. It aims to identify and protect the preferred character of the four main Mansfield Township Approaches and ensure that future development makes a positive impact on the amenity and environment within the approaches.

The objectives of the Mansfield Design Guidelines are to:

- identify the preferred future character of the four Township Approaches
- ensure future development makes a positive impact on the amenity and environment within the Township Approaches
- ensure future development within the four Township Approaches have regard to their local context and reinforces the valued character of the township
- clearly define Township Approaches through built form and landscaping treatments within the private realm
- provide clear, logical and useful guidelines for all – including, but not limited to developers, residents, Council officers and Councillors.

The Mansfield Design Guidelines was prepared following background research and consultation undertaken from 2016 to 2018 including:

- initial community and stakeholder consultation
- preparation of the *Township Approaches Planning Controls and Guidelines Study, Mansfield, Background Summary Report*, June 2018 (Background Summary Report)
- preparation of preliminary design guidelines
- public exhibition of draft documents
- preparation of draft planning controls.

The Mansfield Design Guidelines comprises three parts:

- Part A – overall objectives for the guidelines and instructions on how they apply and should be used, including preferred character descriptions for each township approach and planning permit application requirements
- Part B - guidelines for buildings and works and signage permit applications for residential zones
- Part C - guidelines for buildings and works and signage permit applications for industrial, commercial and farming zones within the Township Approaches boundary.

(ii) Authorisation

Council sought authorisation for the Amendment on the basis of the draft planning controls prepared with the Mansfield Design Guidelines, including draft Clause 21.11 (Mansfield Township Approaches) and a single Schedule 1 to the DDO (Mansfield Township Approach Guidelines).

The Department of Environment, Land, Water and Planning (DELWP) authorised the Amendment on 11 August 2021 with the following conditions:

- The ordinance must be revised to meet the requirements of the Practitioners Guide and Ministerial Direction on the Form and Content of Planning Schemes and be authored in Keystone.
- An Instruction Sheet must be prepared and submitted.

- The Explanatory Report must be revised to correctly identify the planning authority, describe what the amendment does and how the views of the Department of Transport will be considered.
- Municipal Strategic Statement changes must be drafted to take into consideration the Local Planning Policy Framework (LPPF) translation.

Council explained in its Part A submission that it had agreed with DELWP to make a number of changes to the Amendment documents prior to exhibition, specifically:

- some of the content of proposed Clause 21.11 was translated into new Objective 5, Mansfield Township Approaches of existing Clause 21.09 (Mansfield Township).
- the remaining content of the proposed Clause 21.11 and Schedule 1 to the DDO were translated into two separate DDO schedules.

1.3 Procedural issues

(i) Comments on Council final versions of Amendment documents

On the final day of the Hearing Council circulated to all parties final versions of the Amendment documents showing proposed changes (Council final versions).¹

The Panel provided parties with an opportunity to provide written comment on the Council final versions by 12 noon on Tuesday 1 March 2022. Written comments were submitted by Mansfield Matters Group (MMG), Mansfield Cultural Heritage & Arts Centre (MCHAC), Sarah Stegley and 140 High Street Mansfield Pty. Ltd. (140 High Street Pty Ltd).²

Community submitters who were party to the Hearing provided a coordinated response to the Council final versions. The Panel appreciates the efforts of community submitters to coordinate this submission.

(ii) Ordinance clarification

Following the Hearing Council circulated to all parties a letter clarifying that the Council final version of Clause 21.09 (Mansfield Township) erroneously omitted content that was included in the original Amendment documents and Council's original Part A submission to the Panel.³

Council explained that several community groups had raised the issue following the Hearing, and requested the Panel include the omitted ordinance.

The Panel wrote to Council on 17 March 2022 *"seeking further clarification of whether the ordinance omitted from the final version of the Amendment documents was exhibited (with reference to the DELWP 'browse amendments' website) or whether it is being proposed as a post exhibition change"*.⁴

Council clarified that the omitted content is proposed as a post exhibition change, as the content was erroneously excluded from the DELWP 'browse amendments' website during exhibition. The content was included in the original Amendment documents and in the documents exhibited on Council's website.⁵

¹ Document 15

² Documents 17, 18, 19 and 20

³ Document 21

⁴ Document 22

⁵ Document 23

This is discussed further in Chapter 6.3.

1.4 Summary of issues raised in submissions

(i) Relevant agencies

The following agencies made submissions supporting the Amendment:

- DELWP
- Goulburn Valley Water.

Ausnet made a submission requesting consideration of rezoning its land at 3540 Maroondah Highway, Mansfield from GRZ1 to Special Use Zone as part of the Amendment.

The Department of Transport (DoT) submitted suggested changes to the drafting of DDO1 and DDO2, and suggested further guidance should be included in:

- DDO1 relating to signage to address visual impact and safety considerations
- DDO1 and DDO2 relating to access and circulation of vehicles, to align with the requirements of Clause 52.29 (Land adjacent to the Principal Road Network).⁶

(ii) Individual submitters or community group submitters

Key issues raised by submitters include:

- not all gateways are equal and should not be treated the same in the Schedules to the DDO
- requirements should be mandatory
- the name of the DDO schedules should be changed to include 'Alpine approaches and township gateways'
- specific requirements relating to:
 - regulation of land use
 - building heights
 - access and circulation of vehicles
 - building setbacks
 - building siting and frontages
 - roof forms
 - signs
 - protection of heritage places
 - accessibility
- specific sites including:
 - 9 Oaksford Drive, Mansfield
 - Mansfield Saleyards
- concern about property rates rising.

⁶ Clause 52.29 was renamed and updated through Amendment VC205, which was gazetted on 20 January 2022. The submission from DoT predated Amendment VC205 and referred to the old name.

1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions and other material presented to it during the Hearing. It has reviewed a large volume of material, and 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 and strategic justification
- Key issues
- Schedules to the Design and Development Overlay
- Specific sites
- Form and content of the Amendment.

1.6 Limitations

Council submitted that a number of issues are outside the scope of this Amendment, including the:

- Amendment does not include any rezoning of land and the request from Ausnet to rezone land at 3540 Maroondah Highway should be progressed through a separate process
- Amendment will not have any effect on the rating of a property, and rates are not a valid planning consideration
- Mansfield Emergency Precinct is in the planning and design phase, with the old Saleyards as the preferred location. This will take into consideration requirements for Township Approaches.

The Panel accepts Council's position and these issues have not been addressed further in this Report.

2 Planning context and strategic justification

2.1 Planning Policy Framework

(i) Amendments VC148 and Mansfield C47mans

In 2018, Amendment VC148 introduced widespread changes to the Victoria Planning Provisions (VPP) as part of Stage 2 of the Smart Planning Program. Amendment VC148:

- introduced a new Planning Policy Framework (PPF)
- enabled the future introduction of a Municipal Planning Strategy (MPS)
- introduced a new state, regional and local integrated policy structure
- modified the schedules to some existing zones, overlays and provisions to accommodate additional local content
- created new operational provisions.

Mansfield Planning Scheme Amendment C47mans introduced the new PPF to the Planning Scheme in accordance with the requirements of VC148.

The Explanatory Report for Amendment C47mans states that:

- Local policy content has been translated in a generally policy neutral manner, in accordance with the principles set out in A Practitioner's Guide to Victorian Planning Schemes to ensure policy content is:
 - Within the scope of the Planning and Environment Act 1987 (the Act) and is strategically justified.
 - Clear in its application, proportional to the intended planning outcome and consistent with relevant parent provisions, practice notes, advisory notes and ministerial directions issued by the Minister for Planning.
 - Drafted to be clear and unambiguous.

Amendment C47mans was gazetted on 3 March 2022 after the final Hearing day for Amendment C48mans. Consequently the exhibited Amendment documents and submissions to the Panel are drafted in and refer to the out-of-date format of the Planning Scheme.

In the following chapters the Panel has referred to both the Amendment documents as exhibited and updated PPF as relevant. Translation of the Amendment documents into the new PPF format is explored in Chapter 6.

(ii) Victorian planning objectives

The Amendment will assist in implementing policy objectives for planning in Victoria as set out in the *Planning and Environment Act 1987* (PE Act), in particular to:

- provide for the fair, orderly, economic and sustainable use and development of land
- provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
- secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- protect public utilities and other assets and enabling the orderly provision and coordination of public utilities and other facilities for the benefit of the community
- balance the present and future interests of all Victorians

- ensure sound, strategic planning and coordinated action at State, regional and municipal levels
- enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies
- ensure the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land
- facilitate development that achieves the objectives of planning in Victoria and planning objectives set up in planning schemes.

(iii) State planning policies

The Panel has expanded on the relevant State planning policies identified by Council in the Explanatory Report.

Table 1 Relevant State planning policy clauses

Relevant clause	Objective
11.03-6S (Regional and local places)	To facilitate integrated place-based planning.
12.03-1S (River corridors, waterways, lakes and wetland)	To protect and enhance river corridors, waterways, lakes and wetlands.
12.05-1S (Environmentally sensitive areas)	To protect and conserve environmentally sensitive areas.
12.05-2S (Landscapes)	To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.
14.02-2S (Water quality)	To protect water quality.
15.01-1S (Urban design)	To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.
15.01-2S (Building design)	To achieve building design outcomes that contribute positively to the local context and enhance the public realm.
15.01-3S (Subdivision design)	To ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods.
15.01-4S (Healthy neighbourhoods)	To achieve neighbourhoods that foster healthy and active living and community wellbeing.
15.01-5S (Neighbourhood character)	To recognise, support and protect neighbourhood character, cultural identity, and sense of place.
15.01-6S (Design for rural areas)	To ensure development respects valued areas of rural character.
15.03-1S (Heritage conservation)	To ensure the conservation of places of heritage significance.
15.03-1S (Aboriginal cultural heritage)	To ensure the protection and conservation of places of Aboriginal cultural heritage significance.

Relevant clause	Objective
17.04-1S (Facilitating tourism)	To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.
18.01-1S (Land use and transport integration)	To facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport.
18.02-4S (Roads)	To facilitate an efficient and safe road network that integrates all movement networks and makes best use of existing infrastructure.

(iv) Local planning policies

The Panel has identified a number of key relevant local planning policies (presented in the new PPF format introduced by Amendment C47mans) including:

- 11.01-1L-01 (Mansfield Township) which includes:
 - an objective to *“support the growth of Mansfield township as the focus of development in the Shire”*
 - strategies to:
 - Encourage the redevelopment of vacant or underutilised sites including retail and mixed use with possible car parking opportunities to the rear where possible.
 - Encourage a mix of tourist related uses, including cafes, restaurants, accommodation and tourist related retail within High Street and the town centre.
 - Support the development of the northern side of Mount Buller Road on the eastern side of Mansfield Township as the preferred linear corridor for business, commercial, mixed use and service industry.
 - Encourage relocation of service industries, light industrial, rural supplies and vehicle repair uses from the town centre to new industrial areas, including Mount Buller Road and Lakins Road once subdivided.
 - Provide on-site car parking as part of retail and commercial development, wherever possible.
 - The Mansfield Township Framework Plan with a number of notations relevant to the township entrances:
 - designated gateways and views
 - gateway areas identified for landscape treatment improvements or to retain landscaped median
 - future footpaths and shared trails
 - community and civic precincts
 - potential future land use change.
- 17.04-1L (Facilitating tourism in Mansfield Shire) with strategies to:
 - site and design tourism development to be unobtrusive and sympathetic to existing landscape features and complement the landscape character of the area
 - design signs for tourism uses to be sympathetic to the land on which it is to be located.⁷

⁷ Local planning policies are shown in the new planning policy framework format (see Chapter 2.1)

2.2 Other relevant planning strategies and policies

(i) Hume Regional Growth Plan

Clause 02.03 (Strategic directions, Mansfield Township) states:

The *Hume Regional Growth Plan 2014* considers Mansfield Township a sub-regional moderate growth centre in the Central Hume sub-region that is serviced by larger regional towns further west and north. It is the only urban centre with significant growth potential in the Shire and provides all major services and infrastructure for the community. Commercial and retail growth will occur within and around the shopping centre. There is a need for more industrial land to service demand. Existing infrastructure is capable of servicing growth however there is a need to increase water storage capacity.⁸

(ii) Municipal Planning Strategy

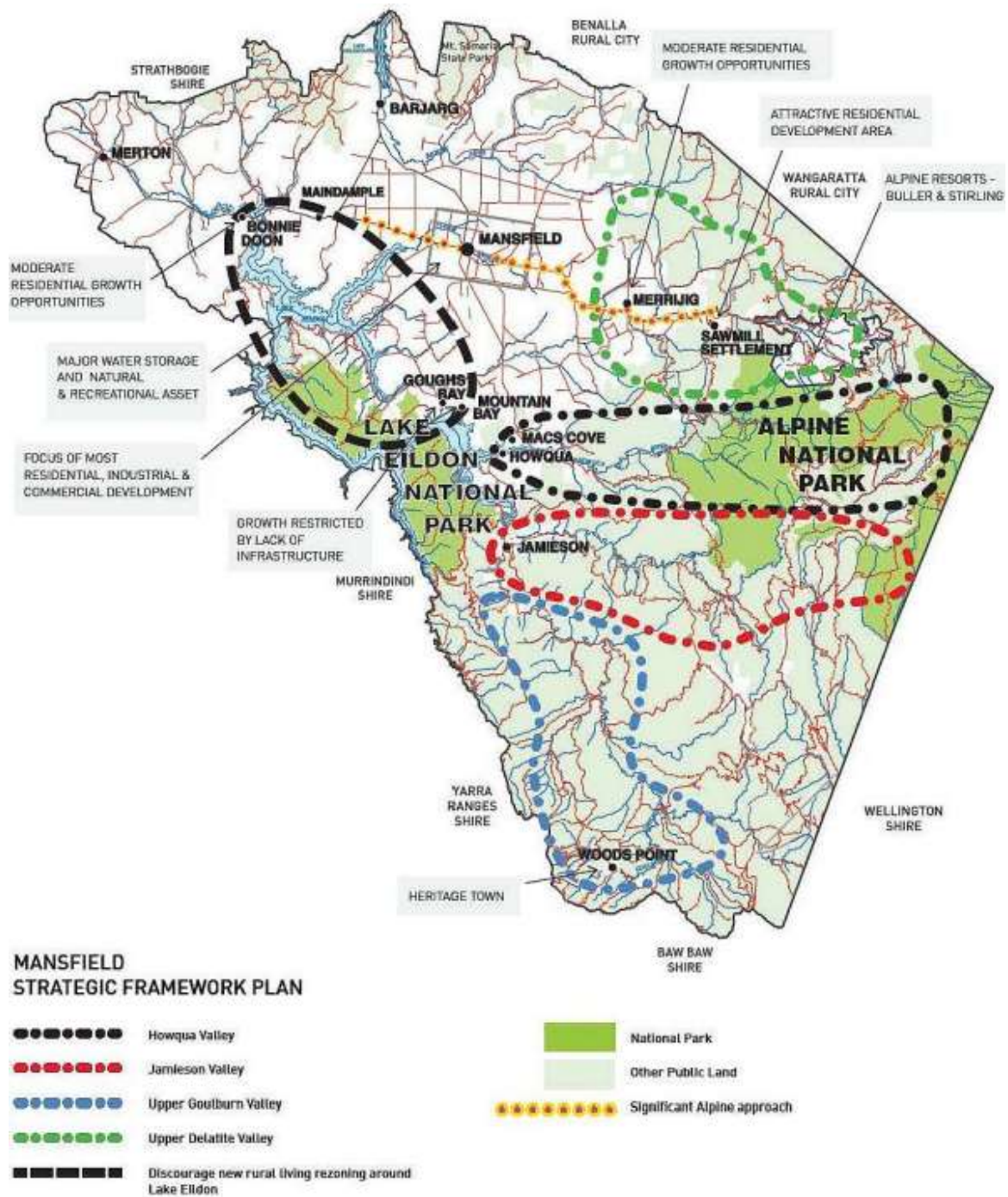
The MPS introduced by Amendment C47mans includes the following relevant content:

- Clause 02.01 (Context):
 - Mansfield Shire is located approximately 150 kilometres north east of Melbourne and has an area of 3,891 square kilometres.
 - Many areas in the Shire are of significant visual, cultural and environmental value and under high demand and increasing pressure for recreation, lifestyle and development activity.
 - The major urban centre is Mansfield Township, with numerous smaller settlements throughout the Shire.
 - Major mountain features include Mount Buller, Mount Stirling (both Alpine Resorts) and the Great Dividing Range.
- Clause 02.02 (Vision):
 - To live, work and play in an inclusive, dynamic and prosperous place where community spirit is strong and people are empowered to engage in issues that affect their lives.
- Clause 02.03 (Strategic directions) - Landscapes:
 - The scenic value of the mountains, foothills, valleys and cleared grazing country is characteristic of the municipality and of intrinsic importance to its landscape.
 - Rural areas are acknowledged as one of the Shire's and the region's greatest assets. Significant for rural production as well as from a natural landscape perspective promoting tourism and attracting visitors to the Shire, many of the rural valleys are recognised as having significant landscape qualities unique to the State and worthy of protection.
 - Approaches to the mountains also need to be protected for their significance and high visual amenity, particularly the state significant Mount Buller and Mount Stirling alpine vista.
 - Council's strategic directions for environmental and landscapes values are to:
 - Protect areas of remnant vegetation for their environmental, habitat and scenic values, including roadside vegetation, riparian environments, scattered trees and native grasslands.
 - Protect the landscape character of the Shire and significant landscape features including large old trees, visually significant ridges and view corridors.
 - Protect the environmental, landscape and visual significance of rural areas, mountain and environmental features and alpine approach areas.
- Clause 02.03 (Strategic directions) - Built environment and heritage:
 - The history of settlement and development in the Shire has resulted in Mansfield's rich built, cultural and natural heritage.

⁸ Mansfield Planning Scheme, updated Strategic Directions introduced via Amendment C47mans (gazetted 3 March 2022)

- Development of land along the Maroondah Highway and other major routes such as Mount Buller Road in the Shire need to be sensitive to their role as gateways to the Alpine areas.
- Mansfield Township's residential areas are characterised by wide streets with on street parking, large lots and street trees. Infill and medium density development will challenge the urban character of some areas in town but key attributes such as their spacious garden settings and identified heritage buildings should remain and be protected.
- The Shire's rich cultural and built heritage is a major part of the attractiveness and amenity of Mansfield.
- Council's strategic directions for the built environment and heritage are to:
 - Support development (including advertising signage) that is sensitive to the role of the Alpine approaches as gateways to Mansfield Township and the Alps.
 - Encourage development that respects the unique character and location of each settlement and protects areas of natural, environmental and architectural character.
 - Protect places of identified European and Aboriginal heritage significance.
- Clause 02.03 (Strategic directions) – Economic development:
 - With the significant visual, cultural and environmental value of many areas in the Shire, tourism is a key local economic driver, particularly around nature-based, food and wine, (on- and off-road) bicycle tourism.
 - The increasing number of visitors and added pressure to provide entertainment and recreation facilities that help reinforce Mansfield's competitive advantage in the tourism sector can negatively impact the built and natural environment and landscape character of the area.
 - Council's strategic directions for economic development are to:
 - Diversify the economic base, particularly to reinforce the role of the Shire as a year-round tourism destination.
 - Support commercial and retail development that complements anticipated urban growth and infrastructure improvements.
 - Support viable industrial business opportunities.
 - Attract high quality tourism development that is compatible with the environmental attributes and character of the area
 - Minimise the negative impact that tourism can have on the built and natural environment.
- Clause 02.03 (Strategic directions) – Transport:
 - The region is characterised by east-west transport connections providing access to the Hume and Goulburn Valley corridors, with many of these roads playing an additional role as Alpine approaches and major tourism routes.
 - Council's strategic directions for transport are to:
 - Protect the Alpine approaches as major transport and tourism routes.
 - Improve road safety by supporting the provision of an efficient movement network for vehicles, pedestrians and cyclists.
- Clause 02.04 (Strategic Framework Plan) identifies Mansfield as a focus for most residential, industrial and commercial development, and the plan also shows the significant alpine approach (see Figure 4).

Figure 4 Mansfield Strategic Framework Plan



Source: Planning Scheme, Clause 02.04

2.3 Planning scheme provisions

(i) Zones and Overlays

A common zone and overlay purpose is to implement the MPS and the PPF. Other relevant zone purposes are set out in Table 1. Relevant overlay purposes and objectives are set out in Table 3.

Table 2 Zone purposes

Control	Purposes
C1Z	<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.
C2Z	<ul style="list-style-type: none"> - To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services. - To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.
FZ	<ul style="list-style-type: none"> - To provide for the use of land for agriculture. - To encourage the retention of productive agricultural land. - To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture. - To encourage the retention of employment and population to support rural communities. - To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision. - To provide for or the use and development of land for the specific purposes identified in a schedule to this zone.
GRZ	<ul style="list-style-type: none"> - To encourage development that respects the neighbourhood character of the area. - To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport. - To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.
INZ1	<ul style="list-style-type: none"> - To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.
LDRZ	<ul style="list-style-type: none"> - To provide for low density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.
MUZ	<ul style="list-style-type: none"> - To provide for a range of residential, commercial, industrial and other uses which complement the mixed use function of the locality. - To provide for housing at higher densities. - To encourage development that responds to the existing or preferred neighbourhood character of the area. - To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.

Control	Purposes
RLZ	<ul style="list-style-type: none"> - To provide for residential use in a rural environment. - To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses. - To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area. - To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
Transport Zone (TRZ)	<ul style="list-style-type: none"> - To provide for an integrated and sustainable transport system. - To identify transport land use and land required for transport services and facilities. - To provide for the use and development of land that complements, or is consistent with, the transport system or public land reservation. - To ensure the efficient and safe use of transport infrastructure and land comprising the transport system. <p>The township entrances are located along roads zoned TRZ2 – Principal Road Network.⁹</p>
UFZ	<ul style="list-style-type: none"> - To identify waterways, major floodpaths, drainage depressions and high hazard areas within urban areas which have the greatest risk and frequency of being affected by flooding. - To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting. - To reflect any declarations under Division 4 of Part 10 of the <i>Water Act, 1989</i>. - To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.

⁹ Amendment VC200 introduced a new Transport Zone, to replace the Road Zone, and a number of consequential changes throughout the VPP

Table 3 Overlay purposes and objectives

Control	Purposes and objectives
DDO	<p>Purpose:</p> <p>To identify areas which are affected by specific requirements relating to the design and built form of new development.</p> <p>The parent clause of the DDO states that:</p> <p style="padding-left: 40px;">A schedule to this overlay must contain a statement of the design objectives to be achieved for the area affected by the schedule.</p> <p>Design Objectives for current DDO1 include:</p> <ul style="list-style-type: none"> - Ensure that building siting, design, form, height, appearance, scale and materials that are compatible with the role of land as an alpine approach or gateway to and from the Mansfield or Merrijig townships. - Ensure that buildings and other development meet the recommendations of The Mansfield Urban Design Framework 2005.
HO	<p>To conserve and enhance heritage places of natural or cultural significance.</p> <p>To conserve and enhance those elements which contribute to the significance of heritage places.</p> <p>To ensure that development does not adversely affect the significance of heritage places.</p> <p>To conserve specified 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.</p>

(ii) Other provisions

Relevant particular provisions include:

- Clause 52.05 (Signs)
- Clause 52.06 (Car Parking)
- Clause 52.29 (Land adjacent to the Principal Road Network)
- Clause 71.02-3 (Integrated decision making).

2.4 Ministerial Directions and Practice Notes**Ministerial Directions and Planning Practice Notes**

The Explanatory Report and Council's Part A submission discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 - Strategic Assessment of Amendments
- Ministerial Direction 15 - The Planning Scheme Amendment Process
- Ministerial Direction on Form and Content of Planning Schemes
- Planning Practice Note 46: Strategic Assessment Guidelines, August 2018 (PPN46).

That discussion is not repeated here.

The following relevant planning practice notes also apply:

- Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Schemes (PPN59)

- Planning Practice Note 91 – Using the Residential Zones (PPN91)
- Planning Practice Note 94 – Land use and transport integration.

Practitioner's Guide to Victorian Planning Schemes

The Practitioner's Guide to Victorian Planning Schemes (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure that:

- the intended outcome is within scope of the objectives and power of the Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPPs in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

2.5 Submissions

Council submitted that the Mansfield Design Guidelines provides the strategic and technical justification for the Amendment, including identifying preferred character for each of the four highway entrances to Mansfield, and recommends strategic directions and application of the DDO.

Council submitted the Amendment would improve environment, social and economic outcomes for Mansfield by:

- environmental – promotion of quality built form and landscaping, retention of significant vegetation and mature canopy trees in the public and private realms
- social – implementation of the community vision for the Township Approaches (which welcome visitors to the region and act as a gateway to the Victorian High Country) and recognition and protection of significant cultural and built heritage places
- economic – maintenance of the valued historic and unique country feel which enhances the overall amenity and tourism attraction of the town, and provides a quality built environment for business.

Several submitters expressed support for the Amendment including a range of agency, community group and individual submitters. Community submitters made passionate and detailed submissions explaining the history and significance of township gateway and Alpine approach protection for Mansfield.

Submitter 10 considered it would:

become an important and effective document in the Mansfield Planning Scheme that will define and protect the integrity of the four township approaches that welcome people to our community hub.

Dr Twycross (Submission 8) considered the Amendment was consistent with Clause 21 (Municipal Strategic Statement), Council Plan, Mansfield Shire Community Vision 2040 and the Mansfield Design Guidelines.

MMG (Submission 6) considered the Amendment was an opportunity to provide clarity and certainty for planning outcomes and to enhance development of the approaches to the town in an orderly manner and considered it would further the intent of providing a well-planned, welcoming, functional and aesthetic township arrival and departure experience.

Arts Mansfield (Submission 5) considered the Amendment an important tool for protecting Mansfield's natural environment, heritage, character and amenity.

MCHAC (Submission 4) generally endorsed the Amendment and considered it consistent with the Mansfield Design Guidelines and community consultation. It also considered the Amendment consistent with the *Local Government Act 2020* with regard to public engagement, strategic planning and public transparency.

Mansfield Historical Society Inc. (Submission 7) considered the Amendment important for protecting heritage and existing amenity of approaches, in particular the Station Precinct which is a dominant public space along western approach to the town.

While generally supportive of the Mansfield Design Guidelines and its translation into planning controls, submitters raised issues relating to specific requirements.

2.6 Discussion

The Panel agrees with Council and submitters that the Amendment is strategically justified and aligned with planning policy which seeks to:

- achieve integrated place-based planning
- create urban environments that are safe, healthy, functional, enjoyable and sustainable and that contribute to a sense of place and cultural identity
- facilitate development that recognises, protects and enhances valued landscapes and environments
- facilitate built form that contributes positively to the local context, enhances the public realm and is attractive, safe and accessible
- ensure development respects and conserves places of heritage significance
- facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport.

The Amendment responds to many issues identified in the MPS and is aligned with local planning policy for Mansfield. It intends to provide clear direction for built form along the Township Approaches to encourage development which complements and enhances the role and function of designated gateways, protects scenic landscape values and views, complements and improves infrastructure and landscaping in the public and private realm.

The Amendment responds directly to the following Strategic directions (Clause 02.03):

- Built Environment and Heritage - which seeks to ensure development of land along the Maroondah Highway and other major routes in the Shire is sensitive to their role as gateways to the Alpine areas
- Transport – which seeks to protect the Alpine approaches as major transport and tourism routes.

With regard to Clause 71.02-3 (Integrated decision making) the Panel considers the proposed Amendment will improve environment, social and economic outcomes for Mansfield. It will assist with decision making that achieves net community benefit and sustainable development for current and future community and visitors to Mansfield.

The Panel notes there are several community submissions supporting the Amendment, many of which consider the Mansfield Design Guidelines consistent with outcomes of community consultation undertaken by Council.

Specific issues relating to translation of the Mansfield Design Guidelines into the proposed planning controls are discussed in other chapters of this Report.

2.7 Conclusion

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Key issues

3.1 Equal treatment of all four gateways

(i) The issue

The issues are whether the:

- western and eastern approaches should be afforded greater protection
- current DDO1 protections should be retained.

(ii) Submissions

Several submitters were concerned that all of the township entrances were treated equally in the Amendment, without adequate recognition that *“not all four gateways are equal in weighting to the attributes, aspirations and financial success of the town”*.¹⁰

Ms Stegley explained:

9. The importance of the western and eastern approaches are marked by three major characteristics:
 - 9a. 90 percent of traffic flows through those 2 entrances, with far less traffic on the other entrances, they are more rural, in nature and far less developed as you would have seen.
 - 9b. The scenic vistas and approach to the alps is showcased on the west/east corridor.
 - 9c. Mansfield Station Precinct and Heritage assets are on the Western Gateway.¹¹

MMG provided Planning Scheme references which clearly highlight the significance of the east and west township entrances (specifically Clause 21.04-2 Character and Clause 21.05-1 Landscapes).

Several submitters were concerned the protections of the current DDO1 which applied to eastern and western approaches (the two main Alpine approach gateways - see Figure 2 and Figure 3) had been abandoned. They explained that DDO1 was put in place 16 years ago to protect the approach from Melbourne and the approach to Mt Buller. They were concerned that the change would:

- weaken planning protections and may not result in appropriate design outcomes for the eastern and western entrances
- remove significance gateway protections for commercial land along eastern and western entrances
- may trigger development applications that would increase height and change setback requirements on the land currently protected by the DDO1.

(iii) Discussion

The MPS recently introduced through Amendment C47mans continues to identify the elevated significance of the eastern and western gateways to Mansfield. The MPS makes specific reference to the eastern and western gateways:

¹⁰ Document 12, MMG submission

¹¹ Document 11

- Approaches to the mountains also need to be protected for their significance and high visual amenity, particularly the state significant Mount Buller and Mount Stirling alpine vista (Clause 02.03 Strategic directions – Landscapes)
- Development of land along the Maroondah Highway and other major routes such as Mount Buller Road in the Shire need to be sensitive to their role as gateways to the Alpine areas (Clause 02.03 Strategic directions - Built environment and heritage)
- Clause 02.04 (Strategic Framework Plan) shows the east and western entrances as “significant Alpine approach”.

The local policy at Clause 11.01-1L-01 (Mansfield Township) identifies designated gateways and views across the town, including the eastern and western entrances.

The Panel is satisfied that the local planning policy framework adequately identifies the significance of the eastern and western entrances.

With regard to whether the DDO1 requirements should be retained, the critical question for the Panel is whether these protections are consistent with the Mansfield Design Guidelines. The Amendment proposes to introduce new planning controls based on the Mansfield Design Guidelines. The Mansfield Design Guidelines is based on urban design analysis which underpins new proposed planning controls. This strategic assessment supersedes the existing controls, and it is not appropriate to revert to the current DDO1 requirements as a default.

The Panel notes the submissions providing general support for the Mansfield Design Guidelines and accepts this as the adopted strategic report underpinning the proposed new controls.

As identified by submitters, if the Amendment is approved planning permit applications may be submitted for proposals which respond to the new DDO requirements (rather than the current DDO1 where they apply). This should not be a concern if the new proposed DDO requirements are strategically sound.

Issues relating to the specific protections and requirements are discussed in other chapters of this Report.

(iv) Conclusions

The Panel concludes:

- The significance of the western and eastern approaches is appropriately recognised in policy.
- It is appropriate to amend DDO1 and introduce new DDO2 as derived from the Mansfield Design Guidelines, subject to the recommendations of this Report.

3.2 Mandatory requirements

(i) The issue

The issue is whether some requirements in the Schedules to the DDO should be mandatory.

(ii) Relevant guidelines

PPN59 provides guidance on the application of mandatory provisions in Planning Schemes., stating:

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.

PPN59 provides the following definitions:

A mandatory provision is a requirement or control that must be met and provides for no opportunity to vary the requirement.

A performance-based provision provides for flexibility in the approaches or variation in the measure to achieve the required outcome.

PPN59 explains while there will be circumstances where mandatory controls are required to provide certainty and ensure a preferred and efficient outcome, these cannot be common practice and *“may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast”*.

The circumstances in which it is appropriate to apply mandatory planning controls includes:

Mandatory provisions usually specify a maximum or a minimum built form requirement. The majority of mandatory provisions requested by councils are for building height controls, however they can also relate to such matters as:

- site coverage
- plot ratio
- setbacks to buildings
- lot sizes
- open space areas
- sight lines.

Mandatory provisions will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes.

PPN59 suggests criteria to assess whether proposed mandatory provisions are appropriate:

- Is the mandatory provisions strategically supported?
- Is the mandatory provision appropriate to the majority of proposals?
- Does the mandatory provision provide for the preferred outcome?
- Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?
- Will the mandatory provision reduce administrative costs?

The Practitioner’s Guide identifies that the DDO is intended to achieve the following planning outcomes:

- ... principally intended to implement requirements based on a demonstrated need to control built form and the built environment, using performance based rather than prescriptive controls.

(iii) Submissions

Council submitted the proposed planning controls were based on a performance or semi-performance based approach, which would allow Council to assess development proposals on their merits.

The Panel asked Council at the Hearing to clarify its use of the term semi-performance based. Council explained it was intended to provide for a proposal to either meet the specified criteria or be assessed on its merits.

Several submitters sought the introduction of mandatory provisions for some requirements, for example relating to building orientation and building height. MMG considered that mandatory

provisions were required to provide “*unequivocal guidance*”; to more precisely express a requirement not just an intent. Specific wording was suggested, and examples were provided of other Planning Schemes that include mandatory requirements.¹²

In response to Council final versions of the Amendment documents MCHAC submitted:

Council has not changed its position with “prescriptive” clauses (“must”), in favour of “performance based” (“should”). We believe this could lead to more VCAT challenges, and is inappropriate for our highly sensitive Alpine Approaches (parallel drawn to Mornington Peninsula Shire LPPF, where “must” is the predominant wording)

Community submitters recommended the language be changed in Council final versions of Amendment documents to ensure many requirements were mandatory and not discretionary.

(iv) Discussion

PPN59 sets the bar high for demonstrating whether mandatory planning controls are justified. Mandatory provisions must only be used where it has been clearly demonstrated that discretionary provisions are insufficient to achieve the desired outcome. This is consistent with guidance in the Practitioner’s Guide, which suggests the DDO is intended to include performance based rather than prescriptive controls.

This is important as the VPPs are designed primarily to be performance based to allow some flexibility in how a required outcome is achieved. Mandatory planning controls do not provide this flexibility, and consequently are only appropriate to introduce when extensive and rigorous analysis has been undertaken to justify the controls.

The Panel does not consider the need for mandatory provisions has been demonstrated for the Amendment. The Mansfield Design Guidelines do not identify the need for or recommend mandatory provisions.

The Panel considers the Council’s approach clearly conforms with the definition of performance based controls, which allows for compliance with a requirement by demonstrating a specified objective is achieved.

Issues relating to specific objectives and requirements are discussed in other chapters of this Report.

(v) Conclusion

The Panel concludes:

- Mandatory planning controls have not been strategically justified and should not be included in the Schedules to the DDO.

¹² Document 12, includes reference to Mornington Peninsula Planning Scheme DDO2

4 Schedules to the Design and Development Overlay

4.1 Naming of schedules

(i) The issue

The issue is whether the names of the Schedules to the DDO are appropriate.

(ii) Submissions

Several submitters requested the name of the current DDO1 'Alpine approaches and township gateways' be retained. Reasons given included:

- MCHAC:
 - the phrase "Alpine Approaches" more completely captures and supports the intent of the Amendment
 - it is consistent with the Municipal Strategic Statement which places emphasis on the Alpine Approach
 - it would retain the current wording of the DDO1 which reflects the sensitivity of parts of the Township Approaches
 - it reflects the fact that there is also a Significant Landscape Overlay - Schedule 1 (SLO1) in place
- Mansfield Historical Society:
 - it would be good if the headings of the new schedules could reflect the original intent of the Planning Scheme and DDO1 'Alpine approaches and township gateways'.

Submitter 10 considered the *Alpine Approach Study* (1983) was a landmark in local planning history which recognised and protected the importance of vistas towards the mountains, and that nothing had changed in the last 30 years to change this focus on township gateways and their connection to the Alpine Approaches. The Background Summary Report acknowledges the spectacular views and the name of the current DDO1 should be retained.

Submitter 8 considered it important to retain the phrase Alpine approach.

Council agreed with submitters that the names of the Schedules to the DDO should be changed, and suggested the following post exhibition changes:

- DDO1 - Alpine approaches and township gateways - Mixed Use, General Residential 1, Low Density Residential and Rural Living Zones
- DDO2 - Alpine approaches and township gateways - Farming, Urban Floodway, Industrial 1, Commercial 1 and Commercial 2 Zones.

(iii) Discussion

The Panel agrees with submitters and Council that the names of the exhibited Schedules to the DDO should be changed to more accurately reflect the purpose of protecting the township entrances and Alpine approaches.

Introducing the term 'Alpine approaches' is consistent with local planning policy for Mansfield which clearly identifies the need to protect scenic landscape character, values and views along

Alpine approaches. It is appropriate to retain the name from DDO1 'Alpine approaches and township gateways' as suggested by submitters and agreed by Council.

The Practitioner's Guide recommends that policy titles be short but descriptive, and the title must accurately reflect the content of the policy. The Panel considers the same principles should apply to naming schedules.

As currently drafted the names of the proposed Schedules to the DDO are very long and somewhat confusing as all of the relevant zones are listed. In contrast, the Mansfield Design Guidelines separates the relevant design guidelines under the headings 'residential' and 'industrial, commercial and farming'. The Panel considers use of these terms, rather than all of the relevant zone names, would result in a short, descriptive, more user friendly name for each of the Schedules to the DDO that reflects the intent of the schedule.

The Panel makes further comment on the form and content of the Schedules to the DDO in Chapter 6.

(iv) Conclusion and recommendation

The Panel concludes:

- The names of the Schedules to the DDO should be amended to be short, descriptive, more user friendly and better reflect the purpose of the planning control.
- The name Alpine Approaches and Township Gateways more appropriately reflects the purpose of the Schedules to the DDO.

The Panel recommends:

Amend the Schedules to the Design and Development Overlay to:

a) revise the names as follows:

- *Design and Development Overlay 1 - Alpine Approaches and Township Gateways – Residential Zones*
- *Design and Development Overlay 2 - Alpine Approaches and Township Gateways – Industrial, Commercial and Farming Zones.*

4.2 Regulation of land use

(i) The issues

The issues are whether the:

- Schedules to the DDO inappropriately attempt to regulate land use
- requirement "*Drive thru sales facilities should not be visible from a township approach*" is appropriate in DDO2¹³
- requirement relating to reduction in car parking is justified and appropriate in DDO2.

¹³ The DDO2 and Mansfield Design Guidelines refer to 'drive thru' facilities. The Panel refers to these as 'drive through' facilities throughout this report, apart from when quoting the DDO2, Mansfield Design Guidelines or submissions.

(ii) Submissions

140 High Street Pty Ltd (the landowner of 2-4 and 8-10 Station Street) stated that it is the proper function of a schedule to the DDO to regulate buildings and works, and not to regulate land use outcomes either directly or indirectly.

It submitted that some proposed requirements inappropriately sought to manage land use, for example:

- Buildings and works - Access and circulation:
 - Drive thru sales facilities should not be visible from a township approach.
- Decision guidelines:
 - A range of tourism, community and recreational land uses are provided along the approach and complement its role as a gateway to the alpine region.

More broadly it considered the proposal to regulate land use through the DDO improper, highly irregular and represented misuse of the VPPs.

It submitted the requirement relating to visibility of drive through sales facilities should be deleted from the DDO on the basis that it was excessive and contrary to the purpose of the C1Z.

Specifically:

- the *“notion of discouraging the mere ‘visibility’ of a drive thru facility is highly onerous and lacks urban design rationale”*
- the wording proposed by Council was *“extremely restrictive and may be interpreted as virtual prohibition of a Convenience Restaurant project that can be merely seen from a road that is identified as a township approach”*
- it was not strategically justified or appropriate as the land is zoned C1Z, which permits Convenience Restaurant as an ‘as of right’ use
- the current DDO1 which applies to the site specifically contemplates car parking at the frontage.¹⁴

140 High Street Pty Ltd explained the history of previous planning permit applications relating to its land. It acknowledged that the Victorian Civil and Administrative Tribunal (VCAT) decision did not support the previous planning applications, however this was based on the need for modifications to the design and presentation to High Street. It submitted that VCAT did not raise any significant or ‘in principle’ concern with the provision of a drive through in the frontage of the subject site, subject to more garden space and canopy vegetation.

140 High Street Pty Ltd submitted that the requirements relating to car parking reduction in DDO2 were not justified, unnecessary and at odds with Clause 52.06 (Car parking). It considered that guidance on car parking dispensations relates to the use of land and is discordant with the purpose of the DDO.

Several submitters supported the requirement relating to the visibility of drive through facilities.

MMG and MCHAC submitted that the proposed requirement responded to a ‘valued element’ of the township identified through community consultation and documented in the Background Summary Report:

¹⁴ Document 8

- The absence of chain fast food outlets and other franchise businesses such as motor dealerships, shopping centres, furniture chain stores, reflects the preference for 'local, small business' style shops.¹⁵

They considered the:

- Mansfield Design Guidelines provided adequate strategic justification for the requirement
- DDO was an appropriate planning tool to regulate buildings and works associated with a drive through facility.

MMG and MCHAC suggested the wording should be strengthened to say that *“Drive through sales facilities must not be visible from a township approach”*.

MMG relied on the Yarra Ranges Panel Report C126 which states that a planning scheme can provided additional guidance relating to the design of any new buildings associated with the use of a convenience restaurants under the C1Z. Further it relied on Yarra Ranges Planning Scheme DDO14 which includes a requirement *“Buildings and works that comprise drive through sales facilities are discouraged”*.

MCHAC supported the requirement, stating:

We confirm our view of the multiple built form, roadway, and signage elements of drive-throughs as being unacceptably distracting and dominant in the Alpine Approach. They also work on high volume traffic, which is inconsistent with the low traffic volume businesses that have established thus far in the current DDO1.

Council agreed with 140 High Street Pty Ltd that the proposed DDO2 decision guidelines incorrectly refer to use considerations. It stated that the DDO2 had incorrectly referred to use and any direct or implied control over use should be deleted. The Council final versions of Amendment documents included a number of changes to the wording of DDO2 to remove references to land use including:

- Buildings and works - Access and circulation:
 - Buildings and works associated with drive thru sales facilities should not be visible from a township approach.
- Decision guidelines proposed to be deleted:
 - ~~A range of tourism, community and recreational land uses are provided along the approach and complement its role as a gateway to the alpine region.~~¹⁶

Council proposed to retain the requirement for drive through sales facilities to not be visible with amended wording to ensure it clearly related to buildings and works, not land use.

Council considered the proposal was based on a *“comprehensive urban design based strategic study to protect the aesthetics and integrity of the prime entrance into the Mansfield township”*, relying on:

- guideline G4.2.7 of the Mansfield Design Guidelines which states *“Drive thru sales facilities are discouraged within view of the town approaches”*
- the ‘Summary of Opportunities and Constraints’ in the Background Summary Report (section 4.5) which *“relates to the impact that vehicle access, circulation and carparking has on visual amenity including through the removal of vegetation”*.¹⁷

¹⁵ Document 9, page 25

¹⁶ Document 15

¹⁷ Document 7, Council’s Part B submission

Council submitted justification for the guideline:

which specifically discourages the development of drive thru facilities within view of town approaches is due to the landscaping, access, car parking and sign requirements typically associated with drive through developments, all of which do not support the preferred character descriptions of each of the four townships.

Drive thru facilities are often designed with very few trees, heavily engineered lane treatments with concrete kerbs and other barriers and low landscaping (where present). They also tend to include large expanses of car parking located along the front and side setbacks.¹⁸

Council explained that there were other requirements relating to landscaping and setbacks intended to mitigate visual impact of development.

Council submitted:

Having regard to the landscaping, access, car parking and sign requirements of proposed DDO2, the inclusion of a guideline that discourages drive through sales within view of the town approaches is considered to provide clarity and consistency in DDO2.¹⁹

At the Hearing Council raised Yarra Ranges Planning Scheme DDO14 as an example of a similar planning control. In closing it agreed with 140 High Street Pty Ltd that the context was completely different, but clarified that it was tabled as an example of similar DDO drafting.

Council also proposed to remove references to car parking reduction.

(iii) Discussion

There was agreement between Council and parties that the purpose of the DDO is to regulate the design and built form of new development, not land use. There is no ambiguity in planning guidance which states that zones are the primary tool for guiding land use and development, and overlays generally seek to control specific aspects of the development of land. Consequently the Schedules to the DDO must not attempt to regulate land use.

Council conceded that elements of the DDO inappropriately included reference to land use. The Council final versions of Amendment documents propose changes to correct this. The Panel supports the proposed changes subject to the recommendations in this Report.

The Panel accepts that a drive through facility is a development and that buildings and works associated with it can be regulated by the DDO. This is consistent with the findings of other planning panels, such as Yarra Ranges Panel Report C126.

The Panel understands Council's intent is not to prevent development of a drive through facility, but to manage its visual impact on the township entrances. This was generally supported by community submitters. The Panel accepts the DDO can regulate visual impact of a development.

A critical question for the Panel is whether it is appropriate to include a requirement specifically relating to visibility of a drive through facility. The Panel has turned its mind to whether the proposed requirement has a strategic basis and is justified.

The section on 'Access and Circulation' in the Mansfield Design Guidelines includes 'Vehicle Access':

- objectives:

¹⁸ Document 7, Council Part B submission

¹⁹ Document 7, Council Part B submission

- O4.2.1 To provide safe, convenient and efficient access for all vehicles to and from industrial and business sites and the township approaches.
- O4.2.2 To minimise the impacts of driveway crossovers on pedestrian / cyclist access and the adjoining approaches streetscape.
- and one guideline relates to drive through sales facilities:
 - G4.2.7 *“Drive thru sales facilities are discouraged within view of the township approaches”*.

The relationship between the objectives and guideline is not obvious. The objectives focus on vehicle access, safety and function, and the guideline relates to visibility of a specific development. It is not clear whether the facility in its entirety should not be visible, or only elements of the facility, and from what view points it should not be visible.

The proposed requirement relating to visibility of drive through sales facilities is derived from this guideline. The Panel does not agree with Council that the proposed requirement has a clear strategic basis and is justified. This is not to say that the visual impact is not important, however the strategic basis of the guideline and what it is trying to achieve is unclear.

The Panel agrees with Council that a drive through facility consists of a variety of built form elements which have the potential to have a visual impact on the township entrances, such as landscaping, access, car parking and signage. These elements, among many others, are regulated by the proposed DDO. The exhibited Amendment documents did not include requirements relating to signs, and this is discussed in Chapter 4.8.

The Panel does not see any need for DDO2 to specify whether the drive through facility is visible if all the relevant buildings and works requirements of the DDO are met. The Panel is satisfied that there are sufficient requirements elsewhere in the DDO to regulate built form and landscaping elements, for example:

- Vehicle access should not be a dominant or prominent element when viewed from a township approach.
- Expanses of car park exceeding 6 car spaces should be located away from direct views lines from a township approach.

The proposal does not include specific requirements relating to the visibility of other types of facilities or developments that may be permitted under the C1Z. The critical role of the DDO is, as identified by Council, that *“any development meets the identified characteristics of the relevant approach”*. The Panel is of the view that if a proposal can meet the DDO requirements relating to each element, then there is no reason to include an additional requirement relating to drive through or any other type of facility, unless it has been strategically justified through a comprehensive urban design assessment.

The DDO intends to make sure that development complies with the design objectives and that it contributes to the preferred future character of the Township Approaches. A considered approach to design should be able to achieve this for any new use that is permitted under the relevant zone.

The Panel is not convinced that the Yarra Ranges Amendment C126 is relevant to this matter. The proposed DDO14 sought to discourage *“buildings that include drive through sales facilities associated with a convenience restaurant”* generally. The proposal did not relate directly to visibility of the facility, but discouraged the use. While this requirement was ultimately introduced

by the Minister for Planning it was not supported by the Panel, which was of the view that the proposal was in direct conflict with the VPPs.

The Panel agrees with Council and 140 High Street Pty Ltd that the buildings and works requirement relating to supply of car parking is not appropriate. It is appropriate to include strategically justified car parking requirements if they relate to design, however supply of car parking is assessed under Clause 52.06 (Car parking) with regard to proposed use of the land.

The Panel considers the removal of land use references in the preferred character descriptions may not be appropriate. This is discussed further in Chapter 6.3.

(iv) Conclusions and recommendations

The Panel concludes:

- The Schedules to the DDO should be redrafted to remove requirements that are intended to regulate land use.
- The strategic basis and urban design rationale for the requirement relating to visibility of drive through facilities has not been demonstrated. The requirement is not appropriate and should be removed from DDO2.
- The requirements relating to car parking reduction are not justified or appropriate and should be removed.

The Panel recommends:

Amend the Schedules to the Design and Development Overlay to remove references to regulation of land use.

Amend the Design and Development Schedule 2 to:

a) remove the following 'Buildings and Works' requirements:

- *Drive thru sales facilities should not be visible from a township approach.*
- *A reduction in car park provision may be considered where a development is being purpose built for a known end user and it can be demonstrated that lower car park numbers are required on the basis of employee numbers, alternative transport options and likely client / customer numbers. An area on the site will need to be set aside so that the full car parking requirements can be met to the Responsible Authorities satisfaction in the future if necessary. This area will need to be landscaped and maintained in the interim.*
- *Uses requiring the parking and the regular movement of trucks should provide designated truck parking areas. This does not include truck movements within loading areas.*

4.3 Building heights

(i) The issue

The issue is whether the proposed building heights are appropriate.

(ii) Submissions

Council submitted that the Schedules to the DDO would provide a performance based approach with:

- DDO1 applying to residential areas with a requirement to respond to the scale of existing development
- DDO2 applying to rural, industrial and commercial areas with a maximum building height of 9 metres provided there is minimal visual impact on township approach and significant landscapes views.

Council submitted the building height objectives of the Mansfield Design Guidelines state:

- To ensure building heights respond to the predominant 1-2 storey scale of built form along the approach.
- To ensure buildings are appropriately scaled to maintain key views from the approaches.

The exhibited Amendment includes the following building height requirements:

- DDO1:
 - Building heights should respond to the scale of existing development along the township approach within a residential area.
- DDO2:
 - Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for the purpose of the industry or business and it will have a minimal visual impact on views from the township approach and views to and from significant landscapes.

In relation to DDO1, Council explained that at the time the Amendment was prepared there were no mandatory height provisions in place for the GRZ and ResCode height requirements were relied on which applied a maximum height of nine metres. Specifically:

Guideline G5.5.2 on page 21 of the study suggests that building heights should generally not exceed 9m above natural ground level in accordance with ResCode, with some allowances for roof and architectural forms. In March 2017, Amendment VC110 introduced a mandatory height limit of 11 metres and maximum number of three (3) storeys across the GRZ for all planning schemes in Victoria.²⁰

To respond to the changes introduced by Amendment VC110 and building height guidelines with the study, Council proposed a post exhibition change to DDO1:

- Building heights should respond to the scale of existing development along the township approach within a residential area.
- [Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for a development in the Mixed Use Zone. \(new requirement\).](#)

In relation to DDO2, Council explained the urban design rationale was outlined in Section 5, guideline G5.5 of the Mansfield Design Guidelines. Council did not propose any post exhibition changes to DDO2 relating to building height.

Several submissions raised issues relating to the proposed height limits in DDO2, including:

- the current DDO1 six metre building height should be applied to all commercially zoned land
- there should be a mandatory six metre height limit along Approach 1: Maroondah Highway for both commercial and industrial uses
- the proposed nine metre height limit may be appropriate in some cases for industrial land

²⁰ Document 5, page 10

- industrial developments that require nine metres should be located away from gateway entrances
- allowing two heights may bring confusion and visual disharmony.²¹

Submitters were concerned that the proposed height limits would result in a negative visual impact on the township entrances.

Several submitters suggested that at a minimum, the six metre building height limit should apply to the commercial land where the current DDO1 applies. The current DDO1 applies to areas of commercially zoned land along the western approach which is highly sensitive, and along the eastern Mt Buller Road approach.

Ms Stegley submitted the six metre height limit would be consistent with the scale of existing development and would be more respectful of the heritage precinct directly over the road, which is covered by the Heritage Overlay.

Mansfield Historical Society considered restricting development to nine metres on industrially zoned land and six metres on all commercially zoned land would accurately reflect the current situation and avoid an outcome which has greater visual impact on the gateways. It considered this would more accurately reflect what the Amendment set out to achieve.

MCHAC was concerned the controls would result in a raft of new applications for incrementally higher buildings. It did not accept Council's view that protection would be provided by the requirement that *"building heights should respond to the scale of existing development along a township approach"*. It agreed with other submitters that the building height requirements for commercial and industrial land should be different, or at least the current height protections for land covered by the DDO1 should be maintained.

140 High Street Pty Ltd submitted it supported the revised height limits. It did not support limiting building height to six metres as this would result generally in single storey development which, along with the other requirements of the DDO2, may affect the viability of businesses and result in unintended design consequences such as larger floor areas.

In relation to DDO2, Council stated *"A building height limit of 9 metres would provide an opportunity for businesses to operate effectively whilst also integrating articulated facades, interesting roof forms and larger front and side setbacks with more landscaping around the building"*. It considered the DDO2 includes a guideline that protects against taller buildings by requiring industrial buildings along approach frontages to relate to the scale of any adjacent residential buildings (guideline G5.5.2).²²

In conclusion Council submitted the Mansfield Design Guidelines is a comprehensive study that provides the strategic basis for the proposed height controls, and specific proposals will be assessed on their merits at the planning permit application stage.

(iii) Discussion

In considering appropriate requirements for building heights along the Township Approaches, the Panel has reviewed the objectives and urban design analysis underpinning the Amendment.

²¹ Submissions 4, 6, 7, 8 and 9

²² Document 6, Tract report accompanying Council's A and B submissions

The proposed local policy (Clause 21.09) seeks to ensure that future development is compatible with the existing and preferred future character of these areas. Both Schedules to the DDO include design objectives with the intent to ensure development considers the local context, reinforces valued character, achieves the preferred future character and protects views.

The Background Summary Report identifies that buildings along all of the Township Approaches are predominantly one to two storey in height.²³ The Mansfield Design Guidelines includes building height objectives for land along all approaches:

- To ensure building heights respond to the predominant one to two storey scale of built form along the approach.
- To ensure buildings are appropriately scaled to maintain key views from the approaches.

Additionally for industrial, commercial and farming land:

- To ensure industrial and office building heights have minimal impact on the amenity of the adjoining approach.

The Panel notes in relation to the preferred character descriptions for each township approach, there is no reference to height requirements apart from for Approach 2: Mt Buller Road, which states:

- The presence of low scale built form and the detached pattern of development along the approach enable intermittent views to the surrounding local hills and are a key feature of this approach.

The objective to manage building height would have been strengthened if there was relevant content in the preferred character descriptions for all township entrances.

The Panel has prepared Table 4 to assist with comparison of the building height guidelines in the Mansfield Design Guidelines and the proposed planning controls.

It is clear that there is a close alignment between the Mansfield Design Guidelines and proposed controls. The intent of the Mansfield Design Guidelines is to encourage development of building height of one to two storeys along the township entrances (a nine metre building is commonly understood to be two storeys²⁴), to maintain key views and minimise visual impact.

The outdated reference to ResCode in the Mansfield Design Guidelines is confusing, and while it may have informed the original thinking about suitable heights, it no longer provides an appropriate reference point for the proposed controls. This is discussed further in Chapter 6.1.

In considering whether the six metre height limit should be retained on the land affected by the current DDO1, on other commercial land or along the length of Approach 1 as proposed by submitters, the Panel finds no strategic basis for this suggestion. The Mansfield Design Guidelines does not identify the need for a six storey building height limit to achieve the design objectives.

The Panel understands and accepts the strategic justification underpinning the proposed nine metre maximum building height is to respect the low scale, one to two storey existing character along the approaches.

²³ Document 9

²⁴ PPN91

Table 4 Building height guidelines and proposed requirements

Mansfield Design Guidelines – Building Height Guidelines	Proposed DDO Buildings and Works Requirements
Residential zoned land	DDO1
G5.5.1 Building heights should respond to the scale of existing development along the approach, and incorporate lower elements towards this interface to relate to the pedestrian scale.	Building heights should respond to the scale of existing development along the township approach within a residential area.
G5.5.2 Building heights should generally not exceed 9m above natural ground level in accordance with ResCode. Allowance for roof forms, architectural features and detailing and services may be permitted, if required. In this case, it will need to be demonstrated that these elements will have minimal visual impact on views from the approach and views to and from significant landscapes.	<u>Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for a development in the Mixed Use Zone.²⁵</u>
Industrial, commercial and farming zoned land	DDO2
G5.5.1 Building heights should respond to the scale of existing development along the approach, and incorporate lower elements towards this interface to relate to the pedestrian scale.	Building heights should respond to the scale of existing development along a township approach and incorporate lower elements towards this interface to create a pedestrian scale.
G5.5.2 Where an industrial development is located opposite a residential area, building heights along the approach frontage should relate to the scale of adjacent residential buildings.	Where industrial development is proposed opposite a residential area, building heights along the township approach frontage should relate to the scale of residential buildings.
G5.5.3 Building heights should generally not exceed 9m above natural ground level, unless a taller built form is required for the purpose of the industry or business. In this case, it will need to be demonstrated that the taller element will have minimal visual impact on views from the adjoining approach and views to and from significant landscapes.	Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for the purpose of the industry or business and it will have a minimal visual impact on views from the township approach and views to and from significant landscapes.

DDO1 applies to residentially zoned land including MUZ, GRZ1, LDRZ and RLZ. GRZ1 includes a default maximum building height requirement for house or residential buildings:

A building must not be constructed for use as a dwelling or a residential building that:

- exceeds the maximum building height specified in a schedule to this zone; or
- contains more than the maximum number of storeys specified in a schedule to this zone.

If no maximum building height or maximum number of storeys is specified in a schedule to this zone:

- the building height must not exceed 11 metres; and
- the building must contain no more than 3 storeys at any point

²⁵ Council final versions of Amendment documents - proposed post exhibition change

Schedule 1 to the GRZ does not include a maximum height limit, so the default height is 11 metres or three storeys. In contrast the default maximum building height for the Neighbourhood Residential Zone is nine metres or two storeys.

PPN91 explains that:

A maximum building height lower than the maximum building height specified in a residential zone can only be implemented by using an overlay to recognise a special neighbourhood, heritage, environmental, and landscape value or constraint.

In such cases, the height requirement in the overlay applies in addition to the height requirement in the zone.²⁶

In this regard the DDO is an appropriate planning tool to require a lower maximum building height.

The Panel supports the change proposed by Council to add a requirement to restrict development to 9 metres/two storeys in DDO1. The Panel understands support for taller buildings is limited to the MUZ, and this aligns with DDO2 by providing for consistency for industrial land along the township entrances.

The Mansfield Design Guidelines includes guidelines for development on any land within the approaches to demonstrate that built form above nine metres *“will have minimal visual impact on views from the approach and views to and from significant landscapes”* and the protection of views is proposed as a design objective for both DDO1 and DDO2:

Protect key view lines to natural landscape features surrounding the Mansfield Township from within the identified township approaches.

Only DDO2 includes a requirement relating to this guideline (see Table 4). It is not clear why this requirement has been omitted from DDO1. The Panel considers it would be beneficial to include this requirement to ensure a consistent approach to assessing proposals for building greater than 9 metres anywhere along the township entrances.

The Panel understands the concerns of submitters relating to impact on views and visual amenity, and the potential for future planning permit applications seeking to build taller buildings. As discussed in Chapter 3.1, applications will need to be assessed against all current Planning Scheme provisions including the new local policy and requirements of the new Schedules to the DDO.

The Panel does not consider the need for mandatory provisions has been demonstrated for the Amendment, as discussed in Chapter 3.2.

Issues relating to interface with heritage places is discussed in Chapter 4.9. Mandatory requirements

(iv) Conclusions and recommendation

The Panel concludes:

- The proposed building height provisions are strategically justified consistent with the intent of the Mansfield Design Guidelines.
- It is appropriate to include the additional requirement in DDO1 relating to buildings taller than nine metres, as proposed by Council.
- The additional requirements should be expanded to require *“minimal visual impact on views from the township approach and views to and from significant landscapes”*.

²⁶ PPN91 provides details of the updated residential zones following introduction of Amendment VC110 in 2017.

The Panel recommends:

Amend the Design and Development Overlay Schedule 1 to:

a) add a requirement under the heading 'Building heights':

- *Building heights should not exceed 9 metres above natural ground level, unless a taller built form is required for a development in the Mixed Use Zone and it will have a minimal visual impact on views from the township approach and views to and from significant landscapes.*

4.4 Access and circulation

(i) The issues

The issues are whether:

- the maps should be amended
- an additional requirement relating to access and circulation should be included in the Schedules to the DDO.

(ii) Submissions

The original submission from DoT recommended the following changes to the Schedules to the DDO:

- change the wording in the legend of the maps from 'Planned roundabout' with 'Potential roundabout' and 'Planned Heavy Vehicle Bypass' with 'Planned Heavy Vehicle Alternative Route'
- the requirements of Clause 52.29 (Land adjacent to the Principal Road Network) should be reflected in the provisions relating to access and circulation.

Following exhibition Council liaised with DoT to refine the Amendment. Council received further submission from DoT advising that it:

- was satisfied with Council's proposed changes subject to the addition of the requirement: Vehicle access points to sites located on arterial roads should be minimised and be provided by side streets or via shared access ways, wherever possible. (20 January 2022)
- was satisfied with the changes proposed by Council as a result of its submissions (27 January 2022).

Council agreed with the changes suggested by DoT.

(iii) Discussion

The maps were included in the attachment to Council's Part A submission, but were not included in the Amendment documents on the DELWP Browse Amendments website or in the Council final versions. It is not clear that the correct version of Schedules to the DDO including maps were exhibited.

The maps include a lot of detailed information that does not aid understanding of where the DDO applies, at the scale presented they are not legible and the content is at risk of becoming outdated. For example it includes all current land use zones, notations relating to potential road upgrades and a range of other information that is not legible (see example at Figure 5).

(iv) Conclusions and recommendation

The Panel concludes:

- Remove the maps from the Schedules to the DDO.
- An additional requirement relating to access and circulation should be included in the Schedules to the DDO.

The Panel recommends:

Amend the Schedules to the Design and Development Overlay to:

- a) include a new 'Buildings and works' requirement under the heading 'Access and circulation':
 - *Vehicle access points to sites located on arterial roads should be minimised and be provided by side streets or via shared access ways, wherever possible.*
- b) remove the maps.

4.5 Building setbacks

(i) The issue

The issue is whether the requirements relating to building setbacks are appropriate.

(ii) Submissions

Council submitted that the urban design rationale for the setbacks was included in Section 5 of the Mansfield Design Guidelines:

The urban design rationale for setbacks is outlined in the adopted study under Section 5, Building siting and design, in guidelines for setbacks G5.1.1 – G5.1.5. These setbacks include building setbacks being consistent with the predominant front street setback or 6 metres when no predominant front setback applies, landscaping of front setbacks and a side setback for development facing an approach of 3 metres, with an ability to reduce this setback under particular circumstances.

Council considered the performance based requirements would allow the integrity and character of setbacks along the Township Approaches to be assessed and protected.

Several submitters raised issues relating to setbacks, including:

- there should be no ability to reduce setbacks within a residential zone, on public land or where a Heritage Overlay applies (MCHAC)
- setbacks from front, rear and side boundaries should be specified
- side boundary setbacks for buildings less than 30 metres in width should be a minimum of 2 metres (MMG).

140 High Street Pty Ltd endorsed the inclusion of a front setback in the DDO2.

In response to issues raised in submissions, Council submitted that DDO2 was intended to mitigate the visual impacts of large expanses of car parking along the front and side setbacks by including landscaping along front setbacks. The proposal includes:

... a minimum 3 metre wide landscape strip that incorporates clean trunk canopy trees and low shrubs, grasses, and ground cover. DDO2 does require any landscaping to still enable clear views between the street and the building.²⁷

²⁷ Document 5, Council's Part A, page 8

It also submitted that the proposed side setback of 2 metres for buildings less than 30 metres in width to be arbitrary, had no strategic basis and was not adequate to provide meaningful space for landscaping and tree planting.

Council proposed minor drafting changes to the 'Building setback' requirements in the Schedules to the DDO.

(iii) Discussion

The preferred character descriptions for each township entrances identifies the combination spacious character and generous setbacks a key feature (front and side setbacks for Approaches 1, 2 and 3, and side and rear setbacks for Approach 4). Given the emphasis on spaciousness of the township entrances, the Panel considers it appropriate for the Schedules to the DDO to include performance based requirements to allow front setbacks to be determined based on predominant setbacks or a six metre minimum.

The Panel appreciates submitter's desires for sensitive interface treatments with residential and public land, and land with heritage values. The performance based approach will require consideration of the impact of a proposal on adjacent land. As discussed in Chapter 3.2, the Panel does not consider the need for mandatory provisions has been demonstrated for the Amendment.

While specific requirements for rear setbacks are not proposed, the Panel notes these are identified as a feature in the preferred character descriptions for Approach 4 and consequently will need to be considered when a planning permit application is assessed.

The Panel has reviewed the setback guidelines and requirements and observes there is some inconsistency in setback requirements. For example, where a development has a side interface with a township approach, the following requirements apply:

- DDO1:
 - Where development has a side interface with a township approach, provide **a minimum 3 metre side setback** for landscaping. This area may only be reduced if the facade addressing the approach is articulated such as using recessing and projecting elements in the building, changes in materials and providing transparent windows.
- DDO2:
 - Where development has a side interface to a township approach, provide **a minimum 4 metre setback** to the township approach for landscaping. This setback may only be reduced if the facade addressing the township approach is articulated through the use of techniques such as recessing and projecting elements of the building, using variety of materials (other than colorbond) and providing windows. This setback should not be reduced when the land on the opposite side of the township approach is within a residential zone.

Further, the Mansfield Design Guidelines include the following landscaping guidelines that describe setback requirements (Panel emphasis):

- Residential

G6.2.3 Where canopy trees are to be provided, deep soil zones should be **a minimum of 4.5 metres in width** to enable sufficient space for root zones. Landscaped areas of shrub, grasses, sedges and groundcovers should be a minimum of 2 metres in width to provide suitable space for planting.
- Industrial, Commercial and Farming

G6.2.2 Where canopy trees are to be provided, landscaped areas should be a minimum of 3 metres in width to enable sufficient space for root zones. Landscaped areas of shrub, grasses, sedges and groundcovers should be a minimum of 2 metres to provide for the effective impact of planting.

It is not clear why the guidelines and requirements differ. These variations are complicated and confusing. It would be preferable and more easily understood if a consistent approach was applied. Future work should involve review of guidelines and requirements to ensure consistent application across the township entrances.

The Panel supports Council's position that the minimum side boundary setback should be retained at three metres. While the guidelines and requirements vary, three metres is the minimum distance specified to accommodate a canopy tree.

(iv) Conclusions

The Panel concludes:

- The building setbacks are generally appropriate.
- Future work should involve review of guidelines and requirements to ensure consistent application across the township entrances.

4.6 Building siting and frontages

(i) The issues

The issue is whether the requirements relating to building siting and frontages are appropriate.

(ii) Submissions

Council submitted that the Schedules to the DDO require buildings to be oriented so the building frontage is parallel with the township approach. The requirements are derived from the Mansfield Design Guidelines relating to 'Building siting and design' and 'Building address'.

Several submitters raised issues relating to building siting and frontages:

- building siting controls should be revised to require buildings to be oriented so the building frontage is parallel with and facing the township approach (MCHAC)
- *"all frontages to major approach roads must have active major entrance and visual focus, whether commercial or industrial, with no ability for permit waiver"* (MMG)
- *"the language should be clarified to ensure all frontages to the major approach roads must be the active major entrance and visual focus of a development"* (Ms Stegley)
- it is more appropriate for the residential property to be oriented to the residential street not the township entrance (Submission 11, see Chapter 5.1).

140 High Street Pty Ltd considered the following design requirement was too prescriptive:

- Building address:
A façade that faces a township approach should have a minimum of 30 per cent transparent glazing.

Council final versions of the Amendment documents proposed the following changes:

- DDO1:
 - Buildings should be ~~orientated~~ sited so that the building frontage (i.e. entrance, foyer, etc.) is parallel with the township approach.
 - Buildings should be oriented so that the building frontage (i.e., entrance, foyer, etc.) faces the Township Approach.
 - Alternative orientation may be considered in cases where a building is proposed to be located on land with dual frontage where primary frontage and access is gained from a side street rather than the main township approach. In these cases, building design

should incorporate well designed dual frontage onto both the township approach and other access street, with any ancillary infrastructure or outbuildings located in side setbacks.

- Buildings should engage with the township approach through ground level occupation and the presence of habitable rooms and balconies at all levels. Supporting facilities ~~inactive uses~~, such as laundries, garages, and bathrooms, should be located away from the township approach where practicable.
- DDO2:
 - Buildings should be ~~orientated~~ sited so that their frontage ~~(i.e., entrance, reception, customer service area)~~ is parallel with the township approach.
 - Buildings should be oriented so that the building frontage (i.e., entrance, reception, customer service area) faces the Township Approach.

The coordinated community submission on Council final versions of Amendment documents suggested changes to wording, including mandatory provisions.

(iii) Discussion

The Panel understands and agrees with the intent of submissions that the frontage of buildings along township entrances should be oriented to the street and provide an active frontage. This aligns with the 'Building address' objectives and guidelines in the Mansfield Design Guidelines which include:

O5.2.1 To provide development which addresses the approaches and enhances the vibrancy of the street.

...

G5.2.1 Buildings should be orientated so that the building frontage (i.e. entrance, reception, customer service area) is parallel with the approach streetscape.

The Panel understands and supports the need for a flexible approach where a property has a dual frontage, particularly a residential property with primary access from a residential street.

The Panel agrees that the provisions should be amended, however the changes proposed by Council are poorly drafted and overly complicated. The Panel has recommended alternative wording below.

The Panel does not consider mandatory provisions in the Schedules to the DDO are strategically justified, as discussed in Chapter 3.2.

The Panel accepts that the requirement for *"a minimum of 30 per cent transparent glazing"* is based on the Mansfield Design Guidelines and notes that it is discretionary.

(iv) Conclusions and recommendations

The Panel concludes:

- The wording of requirements for building siting and frontages can be improved and should be amended.
- It is appropriate to include an additional requirement relating to dual street frontages.
- The discretionary requirement for a minimum 30 per cent glazing is consistent with the Mansfield Design Guidelines and should be retained.

The Panel recommends:

Amend the Design and Development Overlay Schedule 1 to:

- update or add requirements under the heading 'Building address' as follows:**

- *Buildings should be oriented so that the building frontage and entrance is parallel with and facing the township approach.*
- *When a building is located on land with two street frontages, buildings should be designed with dual frontages.*
- *Buildings should engage with the township approach through ground level occupation and the presence of habitable rooms and balconies at all levels. Service areas such as laundries, garages, and bathrooms, should be located away from the township approach where practicable.*

Amend the Design and Development Overlay Schedule 2 to:

a) revise the first dot point under the heading 'Building address' as follows:

- *Buildings should be oriented so that the building frontage and entrance is parallel with and facing the township approach.*

4.7 Roof forms

(i) The issue

The issue is whether the requirements relating to roof form are appropriate.

(ii) Submissions

Council submitted that both Schedules to the DDO include requirements based on urban design criteria, and DDO1 proposes a minimum 7 degree roof pitch. The requirements are derived from the Mansfield Design Guidelines relating to 'Building siting and design' and 'Roof forms'.

Several submissions raised issues relating to roof forms:

- roof lines should be constructed with a minimum 7 degree pitch and preferred 45 degree pitch (MMG and Ms Stegley)
- concern about removal of requirements from the current DDO1 requiring pitched roof designs rather than flat or skillion roofs (Dr Twycross).

While the Mansfield Design Guidelines specifies a minimum 7 degree roof pitch for residential areas, Council considered the submission for a preferred 45 degree roof pitch was not strategically justified.

Council final versions of the Amendment documents proposed minor wording changes. The coordinated community submission on Council final versions suggested changes to wording:

- DDO2

Use varied roof forms to provide visual interest along the township approach while ~~est~~ providing forms that are compatible with the character and function of industrial, [commercial](#) and office buildings [and the streetscape character](#).

(iii) Discussion

The Panel has reviewed the roof form guidelines and requirements and considers there to be a close alignment between the Mansfield Design Guidelines and Schedules to the DDO (albeit not exactly the same wording).

The Mansfield Design Guidelines includes common roof form objectives for residential and industrial, commercial and farming areas, which aim to create visual interest and variation, ensure integrated building design which reflects prevailing character and to minimise the visual impact of

roofing and building infrastructure. The Panel considers the requirements in the Schedule to the DDO appropriate to achieve the objectives.

The current DDO1 requires “*pitched roof designs rather than flat or skillion roofs only*”. The Panel considers this is captured in the Amendment, but notes it is not critical as the proposed requirements are based on the new Mansfield Design Guidelines.

The Panel supports the intent of drafting changes suggested by Council and community submitters. The Panel has recommended wording below.

(iv) Conclusion and recommendations

The Panel concludes:

- The roof form requirements are appropriate, subject to the changes recommended in this Report.

The Panel recommends:

Amend the Design and Development Overlay Schedule 1 to:

a) revise the first dot point under the heading ‘Roof forms’ as follows:

- *Use varied roof forms to provide visual interest along the township approach while providing forms that are compatible with the character of the approach.*

Amend the Design and Development Overlay Schedule 2 to:

a) revise the first and second dot points under the heading ‘Roof forms’ as follows:

- *Use varied roof forms to provide visual interest along the township approach while providing forms that are compatible with the character and function of industrial and commercial buildings, and streetscape character.*
- *Roof forms should have a low pitch unless necessitated by the particular industrial function. Steeper pitched roof elements may be used to reduce the bulk of a large roof area or to respond to the prevailing character.*

4.8 Signs

(i) The issues

The issues are whether the:

- requirements of the current DDO1 should be included in both Schedules to the DDO
- it is appropriate to include additional signage requirements in DDO2.

(ii) Submissions

DoT submitted that Council should consider including appropriate content relating to signs, as they have potential to impact on visual amenity and safety of road users.

Several submitters were concerned that the Schedules to the DDO did not retain the DDO1 signage controls, with suggestions to reinstate the DDO1 requirements and include them in the DDO2.²⁸

²⁸ Submissions 4, 6, 7, 8 and 10

Submissions were also made that sought:

- signage plans as a requirement for all development proposals so it can be assessed as part of the proposal rather than a condition of permit²⁹
- to apply specific sign categories to areas
- to avoid “*attention-seeking, pulsating and highly illuminated*” signs that would degrade the visitor experience.³⁰

Dr Twycross was concerned that the signage requirements in the DDO2 did not appear to contain some of the protections in the current DDO1, which he considered may dilute protections and is not consistent with the objectives of the Amendment.

Council’s Part B submission explained that the exhibited Schedules to the DDO did not include signage controls. It provided details of the signage objectives and guidelines in the Mansfield Design Guidelines, and submitted that the signage requirements in the current DDO1 are sound and should be retained to provide some signage control and guidance. It proposed to add the current DDO1 signage provisions to both of the Schedules to the DDO.

Following the Hearing, Council submitted its final version Amendment documents which included extensive signage requirements with a notation:

Council’s adopted position was based on the attachments to the Council report, which were the documents exhibited on Council’s website. It is acknowledged that these do not match the documents formally exhibited on DELWPs website. However, officers are obligated to reflect the position Council has taken on the matter, this was discussed within the hearing and it is up to Panel’s discretion and assessment.

In response to Council’s final version Amendment documents, 140 High Street Pty Ltd submitted its client had not been given proper notice of these signage controls and had not had a fair opportunity to respond and make submissions. It was concerned that the sign requirements proposed in Council final versions did not:

- form part of the exhibition material on the DELWP website
- reflect the more recent material of the Council’s Part B submission that was tabled during the Panel hearing.

140 High Street Pty Ltd considered the proposed signage requirements extended beyond the existing signage provisions of DDO1, and the proposed DDO2 boundary may not reflect the current DDO1 boundary. Specifically the proposed controls are “*more expansive, prescriptive and restrictive in nature having regard to the various versions of DDO2 made available to submitters in the exhibition material and Council’s Part B submission*”. Further, while the current DDO1 includes signage requirements this does not imply or assume that they will be included in the Schedules to the DDO which is based upon more recent strategic work.

140 High Street Pty Ltd submitted that the additional signage requirements should not be considered or approved as part of the Amendment “*unless further procedural steps are taken such as re-exhibition and independent Panel review*”.

MCHAC submitted that future signage controls were crucial to ensure appropriate development outcomes. Ms Stegley, MMG and MCHAC:

- supported reinstatement of the DDO1 controls in the Schedules to the DDO

²⁹ Submission 6 and 9

³⁰ Submission 10

- advised that the Council Agenda and Minutes of 16 November 2021 endorsed signage requirements in DDO2
- acknowledged the Council endorsed signage requirements had been reinserted by Council as a correction in its final version of Amendment documents.

The coordinated community submission on Council final versions for Amendment documents proposed inclusion of the signage controls from the current DDO1 plus the new proposed DDO2 signage controls for both Schedules to the DDO.³¹

(iii) Discussion

It appears that two versions of DDO2 were placed on exhibition:

- on the DELWP website, without sign requirements
- on Council's website, with sign requirements.

Further Council's submissions relating to signage changed throughout the Hearing:

- in its Part B submission Council advised that the exhibited Amendment did not include signage controls, and proposed insertion of the current DDO1 controls in both Schedules to the DDO
- its final version of Amendment documents proposed to insert signage controls from the current DDO1 plus the addition of controls that were intended to be exhibited in DDO2.

It is clear is that there is considerable confusion about the exhibited versions of the Schedules to the DDO.

Ministerial Direction 15 and the PE Act detail requirements for public exhibition and notice of a planning scheme amendment. This includes a requirement for a planning authority to give notice to the owners and occupiers of land that it believes may be materially affected by the amendment.

Council did not advise whether any further notice had been given to affected landowners and occupiers of the proposed changes.

The Panel does not consider it appropriate to insert the sign requirements from the current DDO1 into both Schedules to the DDO without adequate notice to affected landowners and occupiers on the basis that the:

- requirements were not exhibited with the Amendment
- land included in the Amendment is far more extensive than DDO1.

Further, it has not been demonstrated that the current DDO1 signage requirements are aligned with the new urban design and strategic work in the Mansfield Design Guidelines.

While the Panel agrees with DoT and other submitters that it would be beneficial to include requirements for signs in the Schedules to the DDO, the Panel also agrees with 140 High Street Pty Ltd that signage requirements may not have been adequately exhibited.

Council final versions introduce more restrictive signage controls than those intended to be exhibited. The Panel is of the view that further notice may be required to affected landholders and occupiers before these controls can be introduced into the Planning Scheme.

³¹ Documents 12.2 and 12.3

Under the circumstances, the Panel does not comment on specific issues relating to signage requirements raised in submissions.

(iv) Conclusion and recommendation

The Panel concludes:

- It is not appropriate to include signage requirements in the Schedules to the DDO without adequate notice and public exhibition as required by the PE Act.

The Panel recommends:

Retain the 'Signs' requirement of 'None specified' in the Schedules to the Design and Development Overlay.

4.9 Protection of heritage places

(i) The issues

The issue is whether heritage places are adequately recognised and protected.

(ii) Submissions

Dr Twycross submitted that the parent clause for the Design and Development Overlay required consideration and protection of *"any identified heritage places surrounding the site"*. He noted that the Background Summary Report clearly documented heritage values in and around the township entrances.

He identified the former railway station and precinct as a key feature of the township entrances, and heritage generally within Mansfield as an important aspect of local character and identity. He noted that the Heritage Overlay applied to sites along the township entrances that are opposite the current DDO1 including:

- Heritage Overlay Schedule 31 (HO31) – Former Railway Station and Precinct
- Heritage Overlay Schedule 26 (HO26) – Former Carinya (Amor's Home / Magnolia).

Dr Twycross submitted that some of the protections in the current DDO1 have not been retained, and considered this inconsistent with the objectives of the Amendment. With regard to heritage sites on the eastern and western gateways, he requested the wording be reinstated to ensure the current protections. Ms Stegley was also of the view that the current DDO1 appropriately included stronger protections relating to building height, roofline, setbacks and signage.

Submission 14 was concerned that the Heritage Railway precinct may not be as strongly protected as the current DDO1, in particular because the *"Taungurung Lands and Waters Council has numerous installations of cultural significance on the Railway Land"*.

Council did not propose any changes to the Amendment in response to submissions raising issues related to heritage protection.

The coordinated community submission on Council final versions of Amendment documents proposed the following:

- DDO2 – Design objectives
 - Ensure future development at the western township approach has regard to, reinforces and respects the identified heritage character and values of the heritage precinct and Mansfield Mullum Wetlands

- DDO2 – Buildings and works
 - Drive thru development must not be opposite any identified Heritage places.
- DDO1 and DDO2 - Decision guidelines - Maroondah Highway preferred character descriptions:
 - The Heritage Precinct is of significant heritage values and local importance.

(iii) Discussion

The Background Summary Report provides an overview of the history of Mansfield, and identifies the following implications for the Township Approaches study:

Heritage is an important aspect of local character and identity of Mansfield. It is unique and authentic, provides a connection to the past and can enrich a community's appreciation and experience of a place. There are opportunities to celebrate the unique heritage of Mansfield by ensuring adjacent uses respond sensitively to heritage places and/ or through the use of materials that reflect the historic qualities of Mansfield.³²

The Panel is surprised that identification of heritage values and mechanisms for protection of interfaces with heritage places have not featured more explicitly in the Mansfield Design Guidelines and proposed Amendment. The Panel observes that the maps proposed for inclusion in the Schedules to the DDO include a notation showing the heritage places identified by Dr Twycross. These maps are derived from the Mansfield Design Guidelines chapter relating to preferred character. The maps and preferred character statements are discussed further in Chapters 4.4 and 6.3.

Nevertheless, the Amendment does not propose changes to the protection of any heritage places. While some community submitters preferred how the current DDO1 interacts with sites protected by the Heritage Overlay, the Panel notes that the current DDO1 does not explicitly identify heritage values and is more limited in its requirements than the Amendment.

The Panel does not consider it appropriate to revert to the current DDO1 controls as discussed in other chapters of this Report.

As the Amendment is derived from the Mansfield Design Guidelines, in the absence of further work it is not appropriate or possible for the Panel to make recommendations for additional content relating to heritage values, such as in the preferred character descriptions as suggested by Dr Twycross.

The Panel agrees with Dr Twycross that the parent clause of the DDO includes a decision guideline which requires Council to take heritage into consideration when assessing a proposal for buildings or works:

- Whether the design, form, layout, proportion and scale of any proposed buildings and works **is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.**

This will trigger consideration of how a proposal may impact on identified heritage values.

In relation to the specific community recommended changes to the Schedules, the Panel notes:

- it is not appropriate to make additions to the preferred character descriptions or design objectives without further work

³² Page 10

- prohibition of a drive through facility opposite an identified heritage place is not appropriate, for the reasons discussed in Chapter 4.2.

(iv) Conclusions

The Panel concludes:

- The Amendment does not change protections for identified heritage places.
- The DDO parent clause requires consideration of whether a proposal is compatible with identified surrounding heritages places.
- Further work is required to determine if additional content over and above the DDO parent clause is needed to protect heritage places and values.

4.10 Accessibility

(i) The issue

The issue is whether the requirements relating to accessibility are adequate.

(ii) Submissions

Dr Twycross provided details of the requirements he considered missing, and noted his concerns related to the loss of reference to disability and pedestrian access. Dr Twycross noted that Council did not appear to have taken a position in relation to this issue raised in submissions which he considered inconsistent given the content of the current DDO1, references to access in the Mansfield Design Guidelines, guidance relating to access in Planning Practice Note 22: Using the Car Parking Provisions and the purposes of Clause 52.06 (Car parking).

In response to questions from the Panel, Council advised that:

- issues of accessibility were generally addressed by building regulations
- the DDO focussed on visual amenity.

The coordinated community submission on Council final versions of Amendment documents requested inclusion of:

- Pedestrian access must include universal access suitability to Australian Standards.

(iii) Discussion

The current DDO1 includes a requirement that buildings and works must *“Enable high levels of accessibility, including access for people with a disability”*.

The Mansfield Design Guidelines includes objectives and guidelines relating to pedestrian and cycling access, but do not relate specifically to accessibility or universal design.

The Panel agrees with Dr Twycross that it is surprising this has not been included in the urban design assessment. The Panel is not convinced that the Mansfield Design Guidelines is only restricted to issues of visual amenity; it clearly also includes many objectives and guidelines relating to function such as safety and movement.

While the Panel supports the intent of the submission to include a requirement relating to universal access, the Panel is of the view that further work is required to determine the exact requirements and drafting. Whilst a shortcoming in the current requirements, the lack of this content does not undermine the Amendment.

The Panel considers that future review of the Mansfield Design Guidelines should include consideration of accessibility and universal design.

(iv) Conclusions

The Panel concludes:

- The Amendment includes limited provisions relating to access, and no provisions relating to accessibility and universal design.
- Future review of the Mansfield Design Guidelines should include consideration of accessibility and universal design requirements.

5 Specific sites

5.1 9 Oaksford Drive, Mansfield

(i) The issues

The issues are whether:

- DDO1 should be applied to 9 Oaksford Drive, Mansfield
- development should be oriented to Oaksford Drive as the main street frontage
- the requirements of DDO1 are appropriate for a residential dwelling.

(ii) Submissions

Submission 11 objected to application of DDO1 to 9 Oaksford Drive, Mansfield. It considered the requirements of DDO1 more appropriate for a commercial or industrial development with direct frontage to Mansfield-Whitfield Road, and not for a residential development with no direct access or frontage to the Mansfield-Whitfield Road.

Specifically:

- the property is within the LDRZ, has no direct access or building frontage to Mansfield-Whitfield Road and development on the site should be oriented to Oaksford Drive
- the following DDO1 requirements are not achievable or practical for a development on the site:
 - Building setbacks to a township approach are to be consistent with the predominant front setback of the street.
 - Garages and car ports should be setback from front facades and should not present as a dominant element when viewed from the township approach.
 - Locate storage areas, sheds, water tanks, satellite dishes, television antennae, clothes lines, hot water services, evaporative units away from direct view lines from a township approach.

Council's response to submissions stated it was not appropriate to remove the DDO1 from the property, however it was appropriate to amend the DDO1 in response to issues raised.

Specifically:

- the requirement for the development to be parallel to the township approach is incorrect and the development should be oriented to Oaksford Drive as the main street frontage
- it is more appropriate and safer from an access and traffic management perspective to have frontage to a residential street rather than a main road.³³

At the Hearing Council recommended changes to Schedules to the DDO so that building frontages are parallel with and facing the township approach but allowing for dual frontages where appropriate.

(iii) Discussion

9 Oaksford Drive, Mansfield is located within a significant stretch of designated township approach land. No further submissions were received requesting individual properties or the residential

³³ Council report 16 November 2021, Attachment 2

area be removed from the DDO. It is appropriate that the property be included in the DDO as a part of the residential area that makes up the township approach.

It appears that the requirements have been drafted on the assumption that buildings will have primary access from the township approach road. Clearly this is not always the case and in fact access from side roads is encouraged, as discussed in Chapter 4.4.

While Council stated *“the requirement for development to be parallel to the township approach is incorrect and the development should be oriented to Oaksford Drive as the main street frontage”* the Panel notes that the Council proposed changes to the DDO1 maintain the requirement for buildings to be parallel to the township approach. The Panel has discussed the issue of building siting and frontages in Chapter 4.6 and supports frontage to a residential street in addition to the township approach.

With consideration of the other issues raised by the submitter, the Panel is comfortable that a residential property should be able to comply with the requirements relating to setback, location, dominance of garages and car ports and location of services and other facilities.

As discussed in Chapter 3.2, the requirements are performance based controls which provides flexibility in how the DDO1 design objectives are achieved and with consideration of the preferred character descriptions.

(iv) Conclusions

The Panel concludes:

- The DDO1 should be applied to 9 Oaksford Drive, Mansfield.
- Provision should be made for the residential building to front on to Oaksford Drive as the main street frontage (see Chapter 4.3).
- The requirements of DDO1 are appropriate for a residential dwelling.

5.2 Application of Schedules to the DDO

(i) The issue

The issue is whether it is appropriate to change application of the Schedule to the DDO in response to mapping anomalies identified by Council following exhibition of the Amendment.

(ii) Submissions

The Panel asked Council to clarify application of the DDO1 to farming zoned land during the Hearing. Council advised the DDO1 was applied to land proposed for less intensive development.

Following the Hearing Council submitted its final versions of Amendment documents including mapping anomalies. It submitted two maps showing proposed post exhibition changes, specifically:

- the large area of land on the west of the Midland Highway, north of Dead Horse Lane (see Figure 6) proposed to change from DDO1 to DDO2 as the land is in the FZ
- the area of land on the south side of the Maroondah Highway at the eastern most end of the township approach (see Figure 7) proposed to change from DDO2 to DDO1 as the land is in the RLZ.

Figure 6 Post exhibition proposed change from DDO1 to DDO2

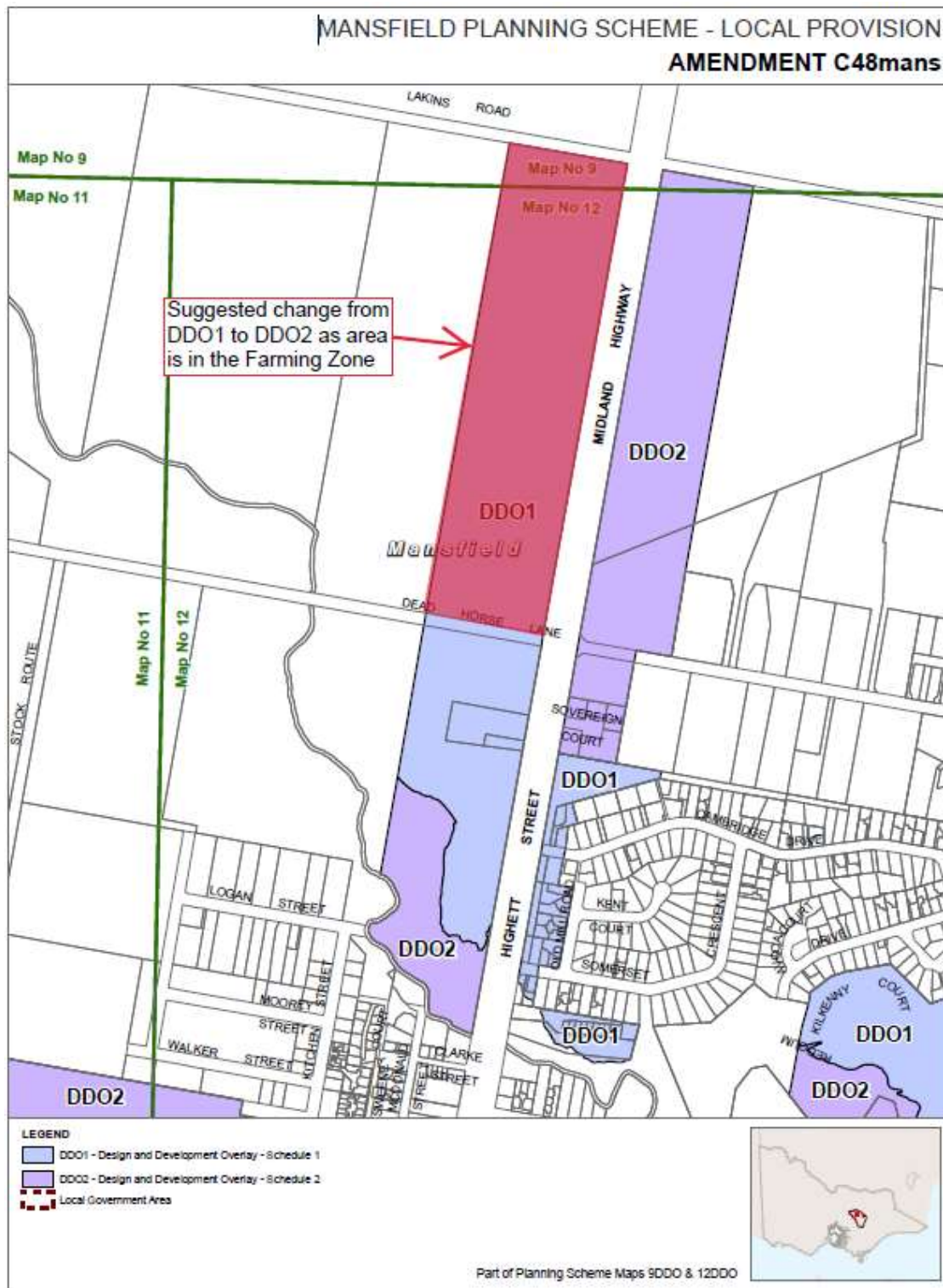
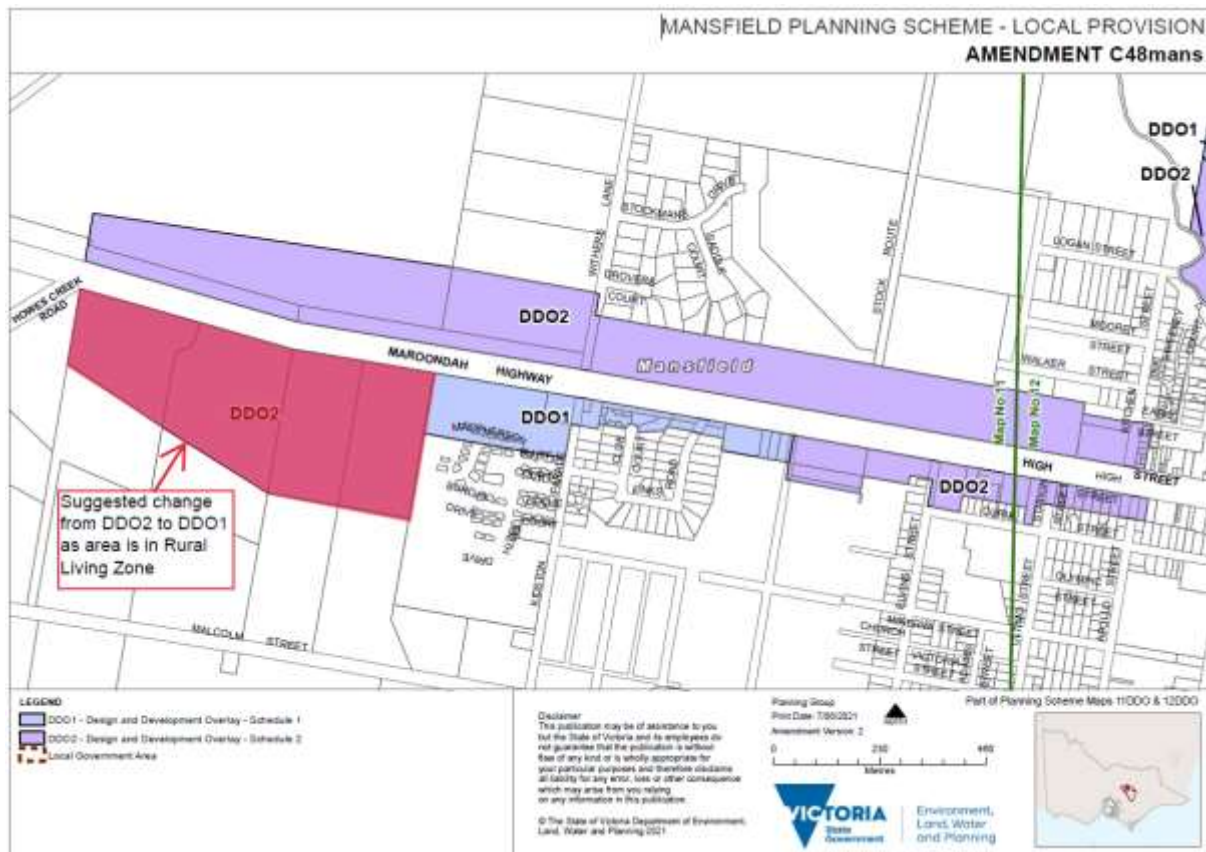


Figure 7 Post exhibition proposed change from DDO2 to DDO1

(iii) Discussion

A critical consideration for the Panel is whether the strategic work underpinning the amendment has been applied consistently, and whether essentially identical land has been treated differently for no explicit reason. In relation to the identified land, it appears that the Schedules to the DDO were not applied consistently and in accordance with the strategic intent of the Amendment; that is to apply DDO1 to residential land and DDO2 to industrial, commercial and farming land.

The Panel supports the proposed post exhibition change on the basis that it would result in consistent application of the proposed planning controls in accordance with the strategic basis of the Amendment.

However, as discussed in Chapter 4.8, Council as the Planning Authority is required to give notice to the owners and occupiers of land that it believes may be materially affected by the Amendment. The proposed changes were not exhibited through the exhibition process, and the Panel is not aware of whether the land owners or occupiers have been notified of the proposed change and provided an opportunity to make submissions.

The Panel notes that no submissions were received specifically in relation to either area of land.

The Panel is concerned that the proposed change differs significantly from the exhibited Amendment, and considers it not appropriate to support the proposed changes without adequate notice. Council will need to satisfy itself that it has met public notice requirements. If further notice is issued and no submissions are received, Council may proceed with the proposed change. If further notice results in submissions, Council will need to determine the appropriate process to meet its statutory requirements.

(iv) Conclusion and recommendation

The Panel concludes:

- It is appropriate to change application of the Schedule to the DDO as a result of mapping anomalies identified by Council following exhibition of the Amendment, subject to Council satisfying itself that adequate notice has been given to affected land owners and occupiers.

The Panel recommends:

Amend the Planning Scheme maps to show the following changes in accordance with Council's post exhibition changes, subject to Council satisfying itself that notice requirements have been met:

- a) Apply the Design and Development Overlay Schedule 1 to the area of land zoned rural living zone on the south side of the Maroondah Highway at the eastern most end of the township approach.**
- b) Apply the Design and Development Overlay Schedule 2 to the large area of land zoned farming zone on the west of the Midland Highway and north of Dead Horse Lane.**

6 Form and content of the Amendment

6.1 Mansfield Design Guidelines

(i) The issue

The issue is whether the Mansfield Design Guidelines should be included as a Background Document in the Planning Scheme.

(ii) Submissions

In response to a direction from the Panel which sought clarification of whether the Mansfield Design Guidelines were proposed to be included as a Background Document, Council clarified that it was proposed to be included. Council considered it appropriate to introduce the document into the Planning Scheme as it:

- forms the strategic basis for the township approach controls
- would be used in considering proposals and to aid with exercising discretion
- is referred to in the exhibited Clause 21.09.

Council proposed the document should be included in a new Schedule to Clause 72.08 (Background Documents).

Council submitted:

Listing of the adopted study as a background document is consistent with the intent of Planning Practice Note 13, Incorporated and background documents, which notes the use of background documents in outlining local policy, as a source of background information to a policy or control and role in decision making (but not with the statutory weight of an incorporated document).

At the time of the Hearing, the Schedule to Clause 72.08 had not been used in the Planning Scheme, however it was expected this would be introduced through Amendment C47mans.

This issue was not raised by submitters.

(iii) Discussion

The Panel notes that the purpose of a Background Document:

A background document provides information that helps to understand why a particular policy or provision has been included in the planning scheme. Background documents were previously referred to as 'reference documents'.

A background document is not part of the planning scheme and must not be directly relied on for decision making. If a background document contains content that is necessary for decision making (such as strategies or decision guidelines) then these must be extracted and placed in the relevant policy or control.³⁴

The Practitioner's Guide states that a document should be included as a Background Document if it helps users to understand the Planning Scheme. It also provides the following guidance:

Do not make a document a background document if the substantive elements of the document have been included in the scheme and require no further explanation.³⁵

³⁴ Practitioner's Guide, page 122

³⁵ Practitioner's Guide, page 23

While there may be some benefits to including the Mansfield Design Guidelines as a Background Document in the Planning Scheme, specifically as it provides context and some background information about its development and application as a planning tool, the Panel notes that the substantive and critical design requirements have been included in the Schedules to the DDO.

Further the Panel notes:

- while it has been through extensive consultation and was available on Council's website during the exhibition period, it was not formally proposed as a Background Document exhibited with the Amendment
- it was adopted by Council in 2018 and includes references to outdated requirements, as discussed in Chapter 4.3
- there is significant overlap in content between the Mansfield Design Guidelines and the proposed Schedules to the DDO
- there are some inconsistencies in content between the Mansfield Design Guidelines and the proposed DDOs, as discussed in Chapter 4.5
- proposed post exhibition changes to the Amendment would introduce further inconsistencies, for example Council final versions propose to relocate and reword some content from the preferred character descriptions that would be inconsistent with statements in the Mansfield Design Guidelines. This is discussed further in Chapter 6.3.

There is a risk that an inconsistent Background Document may cause confusion for users of the Planning Scheme. As currently drafted the Mansfield Design Guidelines would need to be updated prior to adoption of the Amendment by Council.

To avoid confusion the Panel considers it preferable to remove the reference to the Mansfield Design Guidelines from the local policy, and to ensure that the local policy and planning controls include the relevant objectives and guidelines.

(iv) Conclusions and recommendation

The Panel concludes:

- The Mansfield Design Guidelines should not be referenced in local policy in the Planning Scheme.
- The Mansfield Design Guidelines should not be included as a Background Document in the Schedule to Clause 72.08.

The Panel recommends:

Amend Clause 21.09 (Mansfield Township) to remove:

- ***Strategy 5.1 Ensure development is consistent with the Township Approaches Planning Controls and Guidelines Study, Mansfield, June 2018.***

6.2 PPF translation

(i) Discussion

As identified in Chapter 2.1, the Mansfield Planning Scheme was translated into the new PPF format after the final Hearing day for Amendment C48mans (Amendment C47mans gazetted on 3 March 2022).

The Panel understands that the Amendment was drafted in consultation with DELWP with a view to being ready for translation into the new PPF format. Council submitted in its Part A:

To date, the translation of the current local planning policy framework of the planning scheme into a single planning policy framework has not occurred. When approved, C48 content may be easily translated into the new single planning policy framework format.³⁶

Translation of the local policy into the new PPF format was not explored during the Hearing.

In general the Panel considers the content of the Amendment suitable for translation into the new PPF format, subject to the recommendations in this report. However the Panel notes that translation of the Amendment into the new PPF format provides an opportunity to refine and improve drafting of the Amendment. The Panel makes a number of high level observations for consideration by Council that may assist with this translation.

Policy application

The Practitioner's Guide states that a policy "*sets out the strategic basis for the application of a provision and, where appropriate, guides the exercise of discretion under other provisions*".

It would be appropriate to include a reference to the Schedules to the DDO to explain the area that the policy applies to. It may be appropriate to include maps in the local policy rather than in the Schedules to the DDO as originally intended. The Practitioner's Guide explains that it is an option to include maps in a local policy to provide "*visual expression of a policy or set out where it applies*".³⁷ As discussed in Chapter 4.4, the maps intended for inclusion in the Schedules to the DDO are not in a suitable format.

Objective

The Panel understands the importance of identifying the need for sensitive development along the Township Approaches in local policy. The Panel supports the proposed objective, which directly responds to the key policy issue identified and aims to ensure future development is consistent with preferred future character.

The reference to 'existing' character is however confusing, as existing character may be inconsistent with preferred character. The following wording of the objective is preferred to avoid this confusion:

To ensure future development along the four key Mansfield Township Approaches is compatible with the ~~existing and~~ preferred future character of these areas.

Strategies / preferred character descriptions

Strategy 5.1 relating to the Mansfield Design Guidelines is not required (see Chapter 6.1).

As a post exhibition change Council proposed a new 'Strategy' in local policy under 'Economic development and employment':

Encourage a range of tourism, community and recreational uses along the Maroondah Highway & Mt Buller Road approaches, complementing its role as a gateway to the alpine region.

The change was intended to remove references to land use from the Schedules to the DDO, as discussed in Chapter 4.2. The 'Strategy' is derived from the preferred character descriptions in the

³⁶ Document 5, Council's Part A Submission, page 5

³⁷ Practitioner's Guide, page 81

Mansfield Design Guidelines. In the exhibited Amendment the preferred character descriptions are proposed to be incorporated into the Planning Scheme as decision guidelines in the Schedules to the DDO.

The preferred character descriptions present an integrated summary of the preferred character and desired future qualities of each of the Township Approaches. It is preferable to maintain the integrity of the preferred character descriptions in the Planning Scheme, including reference to land use.

The Panel suggests it may be appropriate to relocate the entire preferred character descriptions into the 'Strategy' section of the local policy. The Panel considers this would more accurately reflect the intent of the Mansfield Design Guidelines and be consistent with the purpose of the local policy. The preferred character descriptions could be cross referenced in the decision guidelines in the Schedules to the DDO.

This is consistent with guidance on drafting a local policy in the Practitioner's Guidelines, which states:

Local policy provides the detailed policy directions for a municipality.

...

Local policy has a role in providing direction at a municipal level where:

- locally specific policy guidance is needed on a particular matter
 - directions intersect with a number of controls (for example, urban design considerations may apply to multiple zones)
 - guidance is needed to support decision making associated with a zone, overlay or other controls (such as non-residential uses in a residential zone).
- ...
- Strategies are statements that outline how an objective is to be achieved. Strategies must be able to be implemented via a planning scheme.³⁸

If preferred character descriptions are relocated to the Strategy section of local policy the wording may need to be refined to ensure consistency with planning guidance.

(ii) Conclusions and recommendation

The Panel concludes:

- The Amendment documentation will need to be carefully translated into the new format PPF before adoption to ensure that it is consistent with the changes introduced by Amendment VC148 and C47mans.
- Translation of the Amendment into the new PPF format provides an opportunity to refine and improve drafting of the Amendment.

The Panel recommends:

Prior to adoption:

- a) **translate the Amendment into the new Planning Policy Framework to be consistent with Amendments VC148 and Mansfield C47mans.**
- b) **refine and improve drafting of Amendment documents during translation to the new Planning Policy Framework format.**

³⁸ Practitioner's Guide, page 79

6.3 Final form of Schedules to the Design and Development Overlay

(i) Omitted content

Submissions

Council advised that its final version of Clause 21.09 (Mansfield Township) erroneously omitted content including:

- Within Objective 12 – Transport and access
 - Strategy 12.5 Require the key township approaches in Mansfield to be developed as envisaged by their preferred character, enhancing tourist appeal and usability for residents.
- Within Implementation
 - Applying the Design and Development Overlay to land that contributes to the creation of the unique character of the Mansfield Township Approaches.

The content was included by Council in the Amendment documents prepared for exhibition, and the content was exhibited on the Council website.

Council advised that following the Hearing various community submitters advised that this content was missing and requested it be included within Clause 21.09 to the Mansfield Planning Scheme. Council requested that the ordinance not be omitted as it was important to the Amendment.

The Panel sought clarification on whether the ordinance had been exhibited as part of the Amendment. Council advised it was included in documents on Council's website but not on the DELWP website.

Discussion

The Panel has considered whether the omitted content:

- is consistent with the strategic intent of the Amendment
- applies the findings of the Mansfield Design Guidelines
- is necessary to understand or adds value to the exhibited Amendment
- is subject of issues raised in submissions.

The omitted content is consistent with the strategic intent of the Amendment and supports implementation the Mansfield Design Guidelines. It clarifies how the Mansfield Design Guidelines will be implemented through Schedules to the DDO. It does not relate to issues of concern raised in submissions. On this basis the Panel considers that addition of the content does not transform the Amendment, and may be suitable to include in the Amendment.

In considering whether the content should be included in the Amendment, the Panel has turned its mind to guidance on local planning policy drafting. The Practitioner's Guide states that a planning scheme provision must not duplicate another provision. In relation to:

- Strategy 12.5:
 - the Panel questions whether it duplicates content already included in the local policy through Objective 5 and associated strategies
 - it is not clear how the proposed Strategy 12.5 directly relates to implementation of Objective 12 which states *"To provide an efficient movement network for vehicles, pedestrians and cyclists"*
- Implementation:
 - the Panel questions whether this content may be better located in the 'Policy application' section within the new PPF local policy format, as discussed above.

The Panel is not convinced that the content adds value or is required to implement the objectives of the Amendment. Further it may duplicate existing content and not be appropriate in the new PPF format.

Conclusion

The Panel concludes:

- It is not appropriate to include the additional content erroneously omitted from exhibited Amendment documents.

(ii) Drafting issues

Submissions

In general, 140 High Street Pty Ltd supported introduction of more guidance to assist in defining the preferred built form and landscape character. While it considered while some elements of the DDO2 were consistent with the purpose and role of the DDO, on balance a number of the proposed requirements were inappropriate or unjustified, too prescriptive and/or duplicated other provisions in the Planning Scheme. For example, it considered following requirement is too prescriptive and *“does not allow sufficient room for innovation, architectural expression and will make for an overly homogenous streetscape rather than one with a variety in design responses and sense of character”*:

- Landscaping
Setbacks adjacent to a township approach, should include a minimum 3 metre wide landscape strip that incorporates clean trunk canopy trees that will exceed 7 metres in height, and enable clear views between the street and the building.

Community submitters were generally supportive of detailed and prescriptive requirements to provide certainty for community, land owners and Council. The coordinated community submission on Council final versions of Amendment documents made a number of suggestions for changes or improvements to drafting.

Council submitted that while it agreed in principle to remove unjustified and overly prescriptive content, it was unsure of the exact changes proposed by the submitter. Council final versions of the Amendment documents included a number of changes responding to issues raised in submissions and other suggested wording improvements.

Discussion

The Panel has reviewed the Schedules to the DDO with consideration of the issues in this Report, the Practitioner’s Guide and the Ministerial Direction on Form and Content of Planning Schemes. While the Panel has not undertaken a detailed review of all provisions, it observes generally that the Schedules are very detailed, include many requirements and could be simplified.

140 High Street Pty Ltd did not provide details of its concerns relating to the *“several other requirements and decisions guidelines”* it considered overly prescriptive and unreasonable in the DDO2. Nor did it provide detailed comment on the Council final version of Amendment documents to assist the Panel to understand its concerns.

It is significant that the Amendment is performance based. While the Schedules to the DDO include high levels of detail and multiple requirements, planning permit applicants can suggest alternatives that respond to the objectives and decision guidelines. This is discussed further in Chapter 3.2.

In addition to the recommendations in this Report, the Panel makes a number of observations and recommendations to assist with drafting improvements. The Panel supports some of the proposed changes to the Schedules to the DDO as proposed by Council or submitters, and has recommended wording below. Unless otherwise stated in this Report, the Panel does not support the post exhibition changes proposed in Council final versions of the Amendment documents.

Conclusion and recommendations

The Panel concludes:

- The drafting of the Schedules to the DDO is generally appropriate, but could be improved and simplified.

The Panel recommends:

Amend the Schedules to the Design and Development Overlay to:

- a) revise the wording relating to a permit to construct or extend a fence under the heading 'Buildings and works' as follows:
 - *A permit is required to construct or extend a fence within 6 metres of the common boundary of the lot with frontage to a township approach, unless it meets all of the following requirements: ...*

Amend the Design and Development Overlay Schedule 1 to:

- a) revise the second dot point under the heading 'Access and circulation' as follows:
 - *Undercroft car parking should be screened from a township approach with the car park entrance incorporated into the building's design.*

Amend the Design and Development Overlay Schedule 2 to:

- a) revise the fourth and sixth dot points under the heading 'Car parking' as follows:
 - *Car parking and accessways should be setback at least 3m from the common property boundary with a township approach.*
 - *Undercroft car parking should be screened from a township approach with the car park entrance incorporated into the building's design.*
- b) revise the last sentence of the first dot point under the heading 'Landscaping' as follows:
 - *Semi-mature trees should be planted where appropriate.*
- c) revise the fourth dot point under the heading 'Subdivision' as follows:
 - *Where direct access or a service road is not appropriate, industrial and commercial developments may side onto the approach provided: ...*
- d) revise the final dot point under the heading 'Application requirements' as follows:
 - *The location and size of future signs.*

Prior to adoption, the form and content of the Schedules to the DDO should be reviewed with consideration of the recommendations in this Report and drafting guidance.

(iii) Separate DDO schedules

The Amendment documents were originally drafted as one Schedule to the DDO, and this was revised into two Schedules following authorisation of the Amendment. DDO1 and DDO2 propose the same Design objectives, and include various other duplicated content.

Council submitted in its Part A:

Separate DDO schedules were considered warranted for clarity and user ease as they separate differing policy intent and controls between more sensitive residential areas (DDO1) and less intense rural, industrial and commercial areas (DDO2) where slightly less rigorous approaches and controls are being applied.³⁹

The Practitioner's Guide includes **drafting rules** which:

seek to ensure that a provision is drafted clearly and unambiguously and will be effective in achieving the intended outcome. For a planning scheme to be effective, both legally and in meeting policy objectives, the intent and operation of all provisions must be clear. It is also important that anyone affected by a planning scheme can easily understand a provision and the obligations it imposes.⁴⁰

The Panel considers that while the intent was to ensure that the Schedules to the DDO are clear and unambiguous, as currently drafted the Schedules to the DDO are unnecessarily complicated, are not easily understood and several provisions are duplicated.

It is not uncommon to see Schedules to the DDO with common objectives and specific requirements for precincts or areas of land. The Panel considers in this case it would be more logical and consistent with the Practitioner's Guide to present the content in a single Schedule to the DDO.

The Panel prefers a single Schedule to the DDO which includes requirements for different areas in accordance with the design requirements of the Mansfield Design Guidelines. This would simplify the planning provisions:

- allowing content that is common to both Schedules to be presented only once
- making it easier to interpret and apply
- avoiding the risk of any inconsistencies between the Schedules to the DDO.

While a single DDO is preferred, the Panel considers this a drafting matter for further consideration by Council and DELWP. The Panel has made conclusions and recommendations on the Amendment documents as exhibited.

Conclusion

The Panel concludes:

- A single DDO Schedule is preferred and would assist to ensure requirements are clear and unambiguous.

³⁹ Document 5, Council's Part A Submission, page 5

⁴⁰ Practitioner's Guide, page 21

Appendix A Submitters to the Amendment

No.	Submitter
1	Department of Environment, Land, Water and Planning
2	Goulburn Valley Water
3	AusNet
4	Mansfield Cultural Heritage & Arts Centre Inc.
5	Arts Mansfield
6	Mansfield Matters Group Inc.
7	Mansfield Historical Society Inc.
8	Dr William Twycross
9	Sarah Stegley
10	Joan Tehan
11	Andrew Cowin
12	140 High Street Mansfield Pty Ltd
13	Chris Johnstone and Rebecca McMillan
14	Aunty Bernadette Franklin
15	Department of Transport

Appendix B Document list

No.	Date	Description	Provided by
1	25/01/2022	Panel Directions and Hearing Timetable	Planning Panels Victoria (PPV)
2	09/02/2022	Map of submitters with location Township approaches site visit photos	"
3	14/02/2022	Letter – suggested site inspection locations	"
4	14/02/2022	Email – further suggested site inspection locations provided by Sarah Stegley	"
4A	14/02/2022	Mansfield Matters Group site inspection request	Mansfield Matters Group (MMG)
5	14/02/2022	Council Part A Submission, with attachments: <ol style="list-style-type: none"> 1. Exhibited amendment documentation 2. Council meeting minutes, 26 June 2018 3. <i>Township Approaches Planning Controls and Guidelines Study, Mansfield</i>, June 2018 4. Strategic Assessment Guidelines checklist 5. Summary of submissions 6. Suggested changes to Schedule 1 and 2 of the Design and Development Overlay 7. Suggested amended Schedule to Clause 72.08 	Council
6	16/02/2022	Council Part A and Part B Supplementary Submission prepared by Tract, accompanying Council's submission	"
7	18/2/2022	Council Part B Submission, with attachments: <ol style="list-style-type: none"> 1. Suggested changes to exhibited Schedule 1 to the Design and Development Overlay 2. Suggested changes to exhibited Schedule 2 to the Design and Development Overlay 3. Suggested Schedule to Clause 72.08, Background documents 	"
8	18/02/2022	140 High Street Pty Ltd submission, prepared by Ratio, with attachments: <ol style="list-style-type: none"> 1. Attachment A - 140 High Street Pty Ltd v Mansfield SC [2021] VCAT 291 (20 April 2021) 2. Attachment B - previous development plans (VCAT) 3. Attachment C - current development plans 4. Attachment D - Council Request for Further Information letter 5. Attachment E - Submission to Amendment C48mans 6. Attachment F - service station endorsed plans 	140 High Street Mansfield Pty. Ltd. (140 High St Pty Ltd)

No.	Date	Description	Provided by
9	21/02/2022	<i>Township Approaches Planning Controls and Guidelines Study, Mansfield, Background Summary Report, June 2018</i>	Council
10	21/02/2022	Letter of authorisation from DELWP	“
11	21/02/2022	Hearing submission	Sarah Stegley
12	21/02/2022	Mansfield Matters Group submission with attachments: 1. Clause 21.09 with tracked changes 2. DDO1 with tracked changes 3. DDO2 with tracked changes	MMG
13	21/02/2022	Mansfield Cultural Heritage & Arts Centre (Submitter 4) and Dr Will Twycross (Submitter 7) submission	Mansfield Cultural Heritage & Arts Centre (MCHAC) and Dr Will Twycross
14	21/02/2022	Yarra Ranges C126 Panel Report	140 High Street Pty Ltd
15	22/02/2022	Council final version of Amendment documents showing tracked changes (Council final versions)	Council
16	22/02/2022	Further Panel directions	PPV
17	01/03/2022	Response to Council final Amendment documents	MMG
18	01/03/2022	Response to Council final Amendment documents	MCHAC
19	01/03/2022	Response to Council final Amendment documents	Sarah Stegley
20	01/03/2022	Response to Council final Amendment documents	140 High Street Pty Ltd
21	08/03/2022	Clause 21.09 Ordinance clarification	Council
22	17/03/2022	Email to Council from the Panel seeking further clarification	PPV
23	21/03/2022	Email to Panel in response to request for clarification	Council