



## ROYAL HISTORICAL SOCIETY OF VICTORIA INC.

239 A'Beckett Street, Melbourne 3000

### **Submission to Heritage Council of Victoria Historic Strip Shopping Centres: DDOs and HOs 29 May 2019**

#### **1. Introduction**

Heritage Overlays (HOs) have served reasonably well in preserving local heritage. They are, however, now threatened, as planning focuses increasingly on development. Most commonly, the designation of activity centres involves pressure to develop. The Department of Environment, Land, Water and Planning (the Department) promotes planning that favours development, often at the expense of heritage. And local planning authorities often give greater weight to the need for development than to the heritage overlay. We fear that, if action is not taken to acknowledge and resolve the conflict between development-focused planning and HOs, the latter will lose much of their protective force.

Where these activity centres include sites covered by HOs, the development imperative is often in conflict with the HOs. Responding to pressure on activity centres, councils have embarked on a series of Design and Development Overlays (DDOs) covering historic strip shopping centres. But these DDOs often disregard the HOs and lead to, at best, a form of façadism. The Corkman Hotel, which was subject to a DDO for a 40-metre apartment building as well as to an HO, was only one manifestation of the conflict between DDOs and HOs. That conflict has manifested most acutely in regard to historic inner city shopping strips.

During 2018, the RHSV became aware that the City of Yarra had undertaken to develop DDOs for its shopping strips. We accept that Yarra Council's motivation was to reinforce the conservation of these centres, but, as planning amendments were drafted to implement these DDOs, it became clear that they disregarded fundamental preservation principles in their aim of facilitating the development expected of activity centres. The result of these amendments, if implemented, would be that only the façades of the historic buildings would be conserved.

The RHSV made submissions to Yarra Council regarding two of these amendments (and so did the National Trust), and the RHSV has been lobbying individual councillors to get the amendments amended. In the course of preparing these submissions, we became aware that the same approach was being applied throughout the historic strip shopping centres of the inner and middle suburbs.

Our aim is not, of course, to discuss any particular planning amendments. We cite these, rather, to show the general methodology coming into play in current planning and the heritage problems this methodology creates. We then offer some suggestions to redress these problems.

The function and powers of the Heritage Council include advising the Minister on the status of the State's cultural heritage resources and on any steps necessary to protect and conserve them, and also to advise on proposed amendments that may affect the conservation of cultural heritage. We therefore thought it appropriate to draw the Heritage Council's attention to the threat that these amendments pose to the conservation of heritage places in historic strip shopping centres and to ask the Council to advise the minister of these threats and request him to require appropriate changes.

## 2. Overview

Inner city councils, frustrated at the very loose interpretations of 'preferred height' controls, have been lobbying for the introduction of mandatory controls. The object of mandatory controls is to avoid random incursion of high-rise development, especially in the historic parts of activity centres where the HO has proved less effective than is desirable in controlling development.

Built form is most effectively controlled in the Planning Scheme via the DDO. The DDO allows preferred and mandatory heights and setbacks (both maximum and minimum) to be specified. This effectively creates building envelopes within which development can occur.

In heritage areas, if these building envelopes follow the form of the existing fabric, the DDO would provide another layer of protection for built heritage but it would also curtail the potential for additional development. Conversely, if these envelopes substantially exceed those of the existing fabric, this would create incentives for redevelopment and set up a tension between the objectives of the HO, which are to conserve heritage fabric, and those of the DDO, which are to promote increased development in its place.

In practice, in most heritage areas, a degree of change is acceptable and indeed to be encouraged so long as the essential significance of the place is not compromised. To ensure that it is not compromised, the Burra Charter principle is to consider **first** the cultural significance of the place. In effect, when considering additions and extensions to a contributory building in a heritage precinct, DDOs should follow Burra Charter principles and give primary consideration to both the street scene and the main part of the building; both are considered of significance.

Unfortunately most of the DDOs proposed or in place covering historic strip centres in the inner suburbs adopt a form that encourages redevelopment of most of the site, including of the historic buildings covered by HOs, retaining only the façade. These DDOs, which are in various stages of completion, are being or have been developed in the following local areas:

Melbourne City  
Boroondara  
Moonee Valley

Darebin  
Stonington  
Moreland

Yarra  
Port Phillip

While there are a number of variations in detail, most of the DDOs take the following form:

**A 'street wall' height is created, usually at 11 metres.**

This allows for a commercial floor to floor height of 4 metres on the ground floor and two residential floors above at 3 metres each, with a parapet of 1 metre. This is higher than most Victorian/Edwardian two-story shops, but not entirely out of scale. The DDO may require new infill development to match the height of adjacent historic façades.

**A setback for development above that level is then required.**

This is usually 5 or 6 meters.

**A height limit is then placed on development above the setback line.**

Various sight lines and solar access lines are used to justify the height that is being permitted, but, in most of the cases we are familiar with, the result is 6 storeys, and even higher with further set backs (see Figs 1 & 2, below).

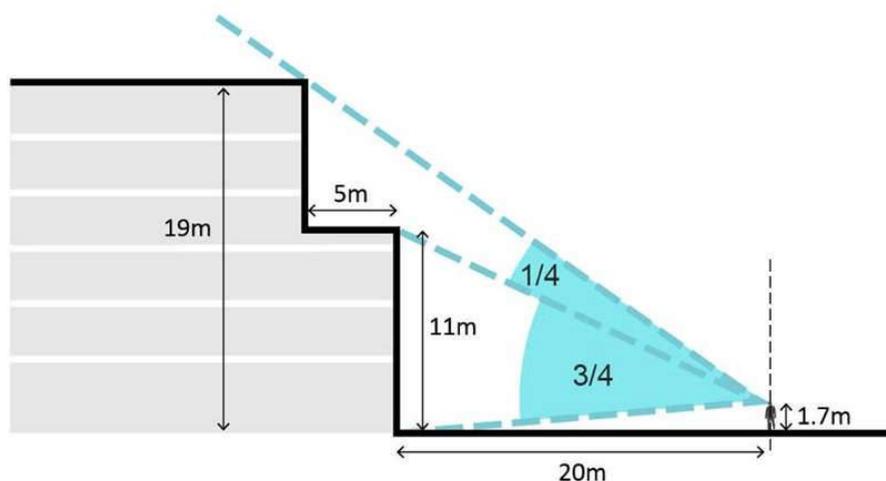


Figure 1. from DDO18 Moreland Planning Scheme

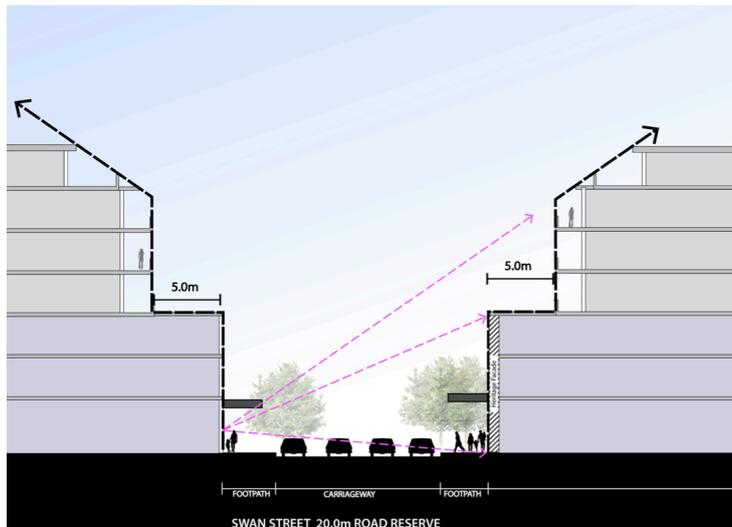
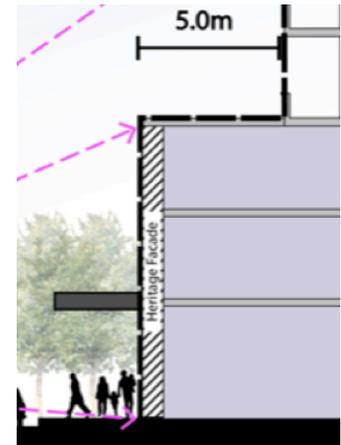


Figure 2: Upper level setbacks along Swan Street from Yarra C191 Built Form Heritage Review



Detail from Figure 2. The words read 'Heritage Façade'.

### 3 Impact of the New DDOs on Heritage Overlay Areas

These DDOs effectively give a green light to the demolition of all of the heritage fabric in an historic shopping strip except for the façades. They make no allowance for buildings or precincts covered by HOs or even for individually significant buildings. On the contrary, they encourage developers to demolish everything behind the façade.

Higher rise development set back only 5-6 metres from the frontage then creates a totally new context for the remaining façades, as the development will be visible from the street and will entirely remove the picturesque shop-row skyline with embellished parapets, gabled or hipped roof forms and original chimneys that are characteristic of so many Victorian/Edwardian shopping strips. This is an aggravated form of façadism because not only is the removal of most of the buildings' fabric encouraged, but also one of the most important features of the façades of that period is compromised—the skyline.

Façadism, a long discredited practice, is specifically discouraged in many councils' heritage guidelines. The Heritage Victoria/Heritage Council model guidelines certainly discourage façadism:

A façade is an exterior wall to a building or structure. Buildings are conceived in three dimensions. For a building to continue to be a Contributory Element, it should normally be retained in its original three-dimensional Form. Inadequate retention of fabric can result in Façadism and should be avoided.

Not only do these DDOs lead to demolition of most of the heritage sites that the HO was to protect, but also there is a significant danger, indeed a likelihood, that the developer will concentrate on maximising the residential potential of the development, leaving only a kiosk type shop within the 5-metre setback. This could undermine the viability of the shopping centre as a whole.

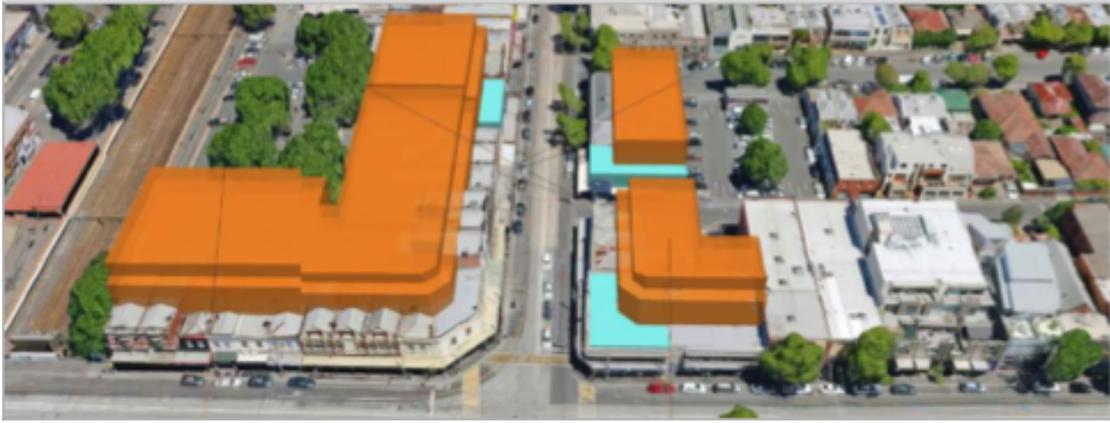


Figure 3 . Elevated view from Church Street looking west along Swan Street .The buildings extending both ways from the south-west corner of Church and Swan are some of the finest buildings in the area. Note also that there is no obligation under this or other amendments to conserve any of the heritage fabric between the façade and the higher built form

Some have argued that the setbacks in the DDO are a minimum and that greater setback may result as the HO is still in operation. But the provisions of a DDO rank higher than those of an HO. The HO is a generic overlay that applies across the state and the only way to provide more precise provisions, such as the consideration of view lines and setbacks etc., is to use a local policy, which is a lower order constraint than a schedule in an overlay. The purpose of the DDO is to provide greater certainty and clarity about what is permitted and what is not. But this cuts both ways. The planning authority might set a mandatory height control but would only rarely be in a position to prevent an owner from taking full advantage of it.

This is a misguided approach to urban consolidation. It fails to recognise the need for heritage conservation. Indeed, it actively undermines preservation by building specific development pressures into the higher level planning tool, the DDO.

#### **4 A Proper Approach to Heritage Conservation**

With Heritage Overlays having been in place for many years, the community could reasonably expect that the first task of planning for more intensive development in activity centres would be to identify the key heritage precincts and treat these as minimum change areas, while new development would be encouraged to locate in the other parts of the centre.

The heritage minimum change areas should then be managed like other HO areas, where demolition of significant and contributory buildings is at the least discouraged, if not prohibited, and where new development is permitted only if its mass and scale do not compromise the significance of the heritage place.

Most councils have heritage guidelines for HO areas that have successfully maintained the significant parts of contributory buildings, but allowed up to two-storey extensions to the rear, where these are not too visible from the street or other public areas. Usually such guidelines lead to retention of the principal roof

of the dwelling, its chimneys and normally at least the front two rooms. In commercial areas with higher heritage built forms, up to three- or four-storey extensions could be acceptable, provided these are sufficiently set back.

Often the historic core occupies a relatively small part of the activity centre allowing for substantial development throughout most of the area. Retaining the historic core would therefore have only a minor impact on the total increase in development across the centre. There is thus no reason why proper heritage conservation should not be in place here.

## **5 How did we get here?**

We have referred to the inner city councils' keenness to apply mandatory height controls to avoid inappropriate development, particularly in the historic shopping strips. However a greatly anticipated new Planning Practice Note (No. 59) issued in September 2018 still emphasises that mandatory provisions should only be applied in exceptional circumstances:

The VVP 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 (PPN 59, p. 1 para 4).

Department officers appear to have used the exceptionality of mandatory height limits as a bargaining chip to advance urban consolidation objectives over those of urban conservation. From the RHSV's close involvement in making representations on two DDO amendments in the City of Yarra, we understand that the Yarra City planners have been told that the approval of mandatory controls is contingent upon the DDO incorporating extensive redevelopment of heritage sites. This is a Faustian pact that promotes the demolition of all but the façade of heritage shops in exchange for mandatory controls requiring only a 5–6 metre setback and permitting demolition and development up to six storeys beyond that. It is sad to reflect that in all likelihood the planners in the Department and at the councils are pursuing these outcomes without realising that they are working towards a redeveloped street scene with 'pasted-on' façades.

Many of these amendments seem to have proceeded largely unnoticed. Some have been approved as interim controls and are only now going through the advertising and objection process. Some, however, have gone through the whole process with few objections. (Amendment C231 at Yarra seems to have been an exception, having aroused enormous controversy and attracted more than 400 objections.)

These amendments are of course quite hard to understand. The built form controls are mostly expressed in words rather than diagrams, which makes for very tedious reading, and while the background papers may be well illustrated, they are large documents, which take some time to wade through. There is also false advertising. Few would be concerned when the Explanatory Report for the Queens Parade amendment states:

Heritage buildings along Queens Parade are an important part of the character of the area and the controls have been designed to protect views to key historic landmarks and protect significant and intact streetscapes.

Even fewer would understand that the term ‘intact streetscapes’ means only façades.

The real danger is that all this will proceed as quietly as the amendments already approved and that only when development taking advantage of these DDOs is actually built will members of the community see how bad the development is and be outraged to discover that they can do nothing about it.

The State of Victoria has enjoyed great success in installing the Heritage Overlay. There are now 180,000 properties covered. It is regrettable that it should now be under such heavy attack. It is even more regrettable that the state government itself appears to be orchestrating this attack.

Most of the centres affected by these DDOs would have come under Amendment 224 of the Metropolitan Planning Scheme, introduced by the Cain government with the guidance of Planning Minister Evan Walker in the early 1980s. This amendment introduced the original urban conservation areas to nine inner city councils. This ground-breaking initiative became the basis of a regular program of heritage studies across the State over more than 30 years, resulting in extensive coverage of the Heritage Overlay. Now is the time to see the HO strengthened rather than diminished.

## **6 Approaches to a Resolution**

One approach to resolving the HO/DDO conflict would be to introduce Schedules to the HO. The HO is, after all, grouped together with Built Form Controls under Clause 42 of the Planning Scheme. Schedules similar to those of the DDO that deal with urban form would allow planning authorities to both promote development where it was appropriate and protect cultural heritage. By wrapping both the development facilitation and conservation functions within the same overlay, this would require the planning authority to resolve any conflict between the two functions when compiling the HO schedules. This would provide true certainty for both conservation and development.

A less radical approach would be for the Department to provide guidance as to how the DDO can be used to strengthen the HO and how to avoid undermining the HO’s objectives.

While the first alternative is probably the most desirable, it could take some time to achieve. Something approaching that effect could be achieved by the second.

## **7 Advice to the Minister**

We are therefore asking the Heritage Council to:

- Advise the Minister of its concern for effective heritage protection where DDOs provide for an extent of development that exceeds what could be reasonably expected under the HO.

- Recommend that the Minister examine all amendments that propose a DDO where a HO is in place, with a view to ensuring that the DDO does not encourage development that undermines the objectives of the HO.
- Ask the Minister to require the Department to prepare guidance on how DDOs should be drafted so that they support cultural heritage conservation.
- Recommend that DDOs currently in place over HO areas be reviewed to determine their likely impact on heritage conservation.