

## 5. LEGISLATIVE REQUIREMENTS

### 5.1 PLANNING AND ENVIRONMENT ACT 1987 (THE ACT)

The *Planning and Environment Act 1987* is the relevant legislation governing planning in Victoria. The Act identifies subordinate legislation in the form of Planning Schemes to guide future land use and development.

Section 60 of The *Planning and Environment Act*, requires the Responsible Authority to consider the following before deciding on an application:

- *The relevant planning scheme;*
- *The objectives of planning in Victoria;*
- *All objections and other submissions which it has received;*
- *Any decision and comments of a referral authority which it has received; and*
- *Any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.*

Section 61(4) of the Act makes specific reference to covenants. Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restrictive covenant.

### 5.2 MANNINGHAM PLANNING SCHEME

**Clauses of the Manningham Planning Scheme the Responsible Authority must consider:**

- State Planning Policy Framework
- Local Planning Policy Framework
- Clause 37.08 Activity Centre Zone, Schedule 1
- Clause 45.06 Development Contributions Plan Overlay, Schedule 1
- Clause 45.09 Parking Overlay, Schedule 1
- Clause 52.02 Easements, Restrictions and Reserves
- Clause 52.06 Car Parking
- Clause 52.29 Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road
- Clause 65 Decision Guidelines

#### **Zone**

##### Clause 37.08 Activity Centre Zone, Schedule 1

The purpose of the Activity Centre Zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To encourage a mixture of uses and the intensive development of the activity centre:*
  - *As a focus for business, shopping, working, housing, leisure, transport and community facilities.*
  - *To support sustainable urban outcomes that maximise the use of infrastructure and public transport.*
- *To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.*
- *To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.*

- *To facilitate use and development of land in accordance with the Development Framework for the activity centre.*

A permit is required to construct a building or construct or carry out works unless the schedule to this zone specifies otherwise.

An apartment development must meet the requirements of Clause 58.

Clause 58 does not apply to an application for a planning permit lodged before the approval date of Amendment VC136.

Schedule 1, relevant to Doncaster Hill Principal Activity Centre outlines the following objectives:

*Land use and development objectives to be achieved*

- *To advance Doncaster Hill as a sustainable and vibrant mixed-use activity centre with a strong sense of place and civic identity.*
- *To develop the centre as a focus for contemporary high density residential development incorporating a mix of complementary retail, social, commercial and entertainment uses.*
- *To ensure the activity centre enhances the social, environmental, economic and cultural elements of the municipality and region, advancing Doncaster Hill as a destination in Melbourne's East.*

*Land use*

- *To provide for a vibrant range of mixed uses that support the strategic role of the Doncaster Hill Principal Activity Centre.*
- *To provide for a high level of activity that attracts people, provides a focal point for the community, creates an attractive and safe urban environment, increasing opportunities for social interaction.*
- *To ensure mixed use development comprises flexible floor spaces for a range of uses.*
- *To substantially increase the provision, intensity and diversity of housing (especially affordable housing), that allows for all sectors of the community to live in the centre.*
- *To provide for high-density residential development on individual sites in conjunction with a diversity of other uses including a mix of retail, commercial, social, community and entertainment uses.*
- *To encourage commercial and small-scale retail uses at the lower level of buildings, with high-density style residential development on upper levels.*

*Built form*

- *To create treed boulevards framed by podiums, consistent front setbacks and a high quality landscape along Doncaster, Williamsons and Tram Roads.*
- *To encourage innovative, contemporary architecture that provides a distinctive sense of identity for the Doncaster Hill Principal Activity Centre.*
- *To emphasise the existing dramatic landform of Doncaster Hill through built form that steps down the hill.*
- *To ensure an appropriate transition in height both within the activity centre and to surrounding neighbourhoods.*
- *To encourage built form that capitalises on key views and vistas including to the middle-ground and distant features including Dandenongs, the Kinglake Ranges and the central Melbourne skyline.*
- *To encourage the provision of urban art within built form or in adjacent public areas.*
- *To encourage the built form at gateway locations identified in the Framework Plan to be designed to act as markers with distinguishing architectural or urban design treatments*

### *Environmental sustainability*

- *To ensure Australian Best Practice environmentally sustainable design is met in relation to building energy management, water sensitive urban design, construction materials, indoor environment quality, waste management and transport.*

### *Public realm*

- *To encourage active street frontages and pedestrian generating activities to be located along main roads.*
- *To ensure public spaces are minimally impacted by overshadowing, including preserving solar access in mid-winter to the key boulevards of Doncaster Road and Williamsons Road.*
- *To facilitate the enjoyment of public urban spaces/plazas, streetscapes, pedestrian and bicycle paths by ensuring that these areas are not excessively overshadowed or affected by wind tunnelling.*
- *To encourage artwork in suitable locations to contribute to creating a distinctive sense of identity.*

### *Open space and landscaping*

- *To achieve development that provides accessible, safe, attractive and functional private and public open space opportunities, which are well connected and integrated within a permeable urban environment.*
- *To create a healthy and consistently landscaped environment that is dominated by native and indigenous planting.*
- *To maximise opportunities for landscaping in the public and private realm.*
- *To ensure each precinct has ready access to well designed public open space.*

### *Transport and access*

- *To achieve development of circulation networks that focus on providing strong linkages within the Doncaster Hill Principal Activity Centre, and enhance public transport, pedestrian and bicycle users' amenity.*
- *To provide for well-defined vehicular, bicycle and pedestrian access both within and external to all precincts, with strong pedestrian crossing points to be established between the north and south sides of Doncaster Road.*
- *To encourage the integration of car parking areas into buildings and the unique sloping landform, including providing under-croft and basement as opposed to open-lot parking.*

Under the ACZ1, the subject site is located in **Precinct 2C**. The objectives for Precinct 2C (clause 5.2-3) are as follows:

- *To encourage an appropriate mix of residential and commercial uses in the precinct.*
- *To encourage the greatest area of high-density development to locate along the Doncaster Road ridgeline.*
- *To encourage the provision of cafes, restaurants and outdoor eating within the precinct.*
- *To retain and enhance the historic elements within the precinct and develop a link with the historic and arts enclave in Precinct 1.*
- *To support and connect with the pedestrian link proposed for the Doncaster Road, Williamsons and Tram Roads intersection at the western end of the precinct.*
- *To create a landmark gateway building at the eastern and western ends of the precinct.*
- *To create a public urban space/plaza with good solar access abutting the south side of Doncaster Road, with convenient access to the north side.*
- *To develop an area of open space as a passive green park, with urban play opportunities, and located in an area convenient to the precinct with well defined pedestrian links.*

Table 5.2-3 of the Scheme sets out the following precinct requirements:

Maximum height (excluding basement)	Design Element Height:	Setbacks
40m	8.0m above maximum height	5m to front podium edge from front boundary 11m to front tower edge from front boundary 4.5m from side boundaries 5m from rear boundary

## Overlays

### Clause 45.06 Development Contributions Plan Overlay

*A permit must not be granted to subdivide land, construct a building or construct or carry out works until a development contributions plan has been incorporated into this scheme.*

*This does not apply to the construction of a building, the construction or carrying out of works or a subdivision specifically excluded by a schedule to this overlay.*

*A permit granted must:*

- *Be consistent with the provisions of the relevant development contributions plan.*
- *Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.*

### Clause 45.09 Parking Overlay

*This overlay operates in conjunction with Clause 52.06. A schedule to this overlay may:*

- *Vary the requirements of Clause 52.06 as allowed by this overlay.*
- *Specify additional requirements to the requirements of Clause 52.06 as allowed by this overlay.*
- *Specify requirements for the provision of a financial contribution as a way of meeting the car parking requirements of Clause 52.06 or this overlay.*

## State Planning Policy Framework

The relevant sections of the state planning policy framework are as follows:

Clause 11.01-1 (Activity Centres) includes the objective to build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres.

Clause 11.01-2 (Activity Centre Planning) includes the objective to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.

Clause 15.01-1 (Urban Design) seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. Strategies towards achieving this are identified as follows:

- *Promote good urban design to make the environment more liveable and attractive.*
- *Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.*
- *Require development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.*
- *Ensure transport corridors integrate land use planning, urban design and transport planning and are developed and managed with particular attention to urban design aspects.*
- *Encourage retention of existing vegetation or revegetation as part of subdivision and development proposals.*

Clause 15.01-2 (Urban Design Principle) policy objective is:

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

The strategy to achieve this is to apply the listed strategies to development proposals for non-residential development or residential development not covered by Clause 54, Clause 55 or Clause 56.

Responsible Authorities are also required to have regard to the State's *Design Guidelines for Higher Density Housing*, which is referenced at Clause 15.01 of the Scheme.

The strategies include the application of design principles to the proposed development relating to context, public realm, safety, pedestrian spaces, energy and resource efficiency, architectural quality and landscape quality.

Clause 15.01-4 (Design for Safety) policy objective is:

- *To improve community safety and encourage neighbourhood design that makes people feel safe.*

The policy seeks to improve community safety and encourage neighbourhood design that makes people feel safe. The strategy identified to achieve this objective is to ensure the design of buildings, public spaces and the mix of activities contribute to safety and perceptions of safety.

Clause 15.01-5 (Cultural Identity and Neighbourhood Character) policy objective is:

- *To recognise and protect cultural identity, neighbourhood character and sense of place.*

The clause includes several strategies to achieve this objective, including to:

- *Ensure development responds and contributes to existing sense of place and cultural identity.*
- *Ensure development recognises distinctive urban forms and layout and their relationship to landscape and vegetation.*
- *Ensure development responds to its context and reinforces special characteristics of local environment and place by emphasising:*
  - *The underlying natural landscape character.*
  - *The heritage values and built form that reflect community identity.*
  - *The values, needs and aspirations of the community.*

Clause 15.02-1 Sustainable development: Energy and resource efficiency

The policy objective is:

- *To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.*

The clause has the following strategies:

- *Ensure that buildings and subdivision design improves efficiency in energy use.*
- *Promote consolidation of urban development and integration of land use and transport.*
- *Improve efficiency in energy use through greater use of renewable energy.*
- *Support low energy forms of transport such as walking and cycling.*

Clause 16.01-1 Residential development: Integrated housing

The policy objective is:

- *To promote a housing market that meets community needs.*

The clause has the following strategies:

- *Increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.*
- *Ensure that the planning system supports the appropriate quantity, quality and type of housing, including the provision of aged care facilities.*
- *Ensure housing developments are integrated with infrastructure and services, whether they are located in existing suburbs, growth areas or regional towns.*
- *Encourage housing that is both water efficient and energy efficient.*

Clause 16.01-2 Residential development: Location of residential development

The policy objective is:

- *To locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.*

The clause includes several strategies to achieve this objective, they include:

- *Increase the proportion of housing in Metropolitan Melbourne to be developed within the established urban area, particularly at activity centres, employment corridors and at other strategic sites, and reduce the share of new dwellings in greenfield and dispersed development areas.*
- *Encourage higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport.*
- *Ensure an adequate supply of redevelopment opportunities within the established urban area to reduce the pressure for fringe development.*
- *Facilitate residential development that is cost-effective in infrastructure provision and use, energy efficient, incorporates water efficient design principles and encourages public transport use.*
- *Identify opportunities for increased residential densities to help consolidate urban areas.*

Clause 16.01-3 Strategic redevelopment sites

The policy objective is:

- *To identify strategic redevelopment sites for large residential development in Metropolitan Melbourne.*

Specific reference is made at clause 16.01-3 to “strategic redevelopment sites” which are described as:

- *in and around Central Activity Centres;*
- *in or within easy walking distance of Principal or Major Activity Centres;*
- *in or beside Neighbourhood Activity Centres that are well served by public transport;*

- *on or abutting tram, train, light rail and bus routes that are part of the Principal Public Transport Network and close to employment corridors, Central Activities Districts, Principal or Major Activity Centres;*
- *in or near major modal public transport interchanges that are not in Principal or Major Activity Centres;*
- *able to provide ten or more dwellings, close to activity centres and well served by public transport.*

Clause 16.01-4 Housing diversity

The policy objective is:

- *To provide for a range of housing types to meet increasingly diverse needs.*

Clause 18.01-1 integrated Transport: Land use and transport planning

The policy objective is:

- *To create a safe and sustainable transport system by integrating land-use and transport.*

Clause 18.02-1 Movement networks: Sustainable personal transport

The policy objective is:

- *To promote the use of sustainable personal transport.*

Clause 18.02-2 Cycling

The policy objective is:

- *To integrate planning for cycling with land use and development planning and encourage as alternative modes of travel.*

The clause includes several strategies to achieve this objective including to:

Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, shopping and community facilities and other major attractions when issuing planning approvals.

Clause 18.02-4 Management of the road system

The policy objective is:

- *To manage the road system to achieve integration, choice and balance by developing and efficient and safe network and making the most of existing infrastructure.*

Clause 18.02-5 Car parking

The policy objective is:

- *To ensure an adequate supply of car parking that is appropriately designed and located.*

The policy is relevant to the proposal because the application seeks a reduction in the standard car parking requirement of the Scheme. The objective is to ensure an adequate supply of car parking that is appropriately designed and located. It is also required to allocate or require land to be set aside for car parking subject to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking. Proposals are also encouraged to facilitate the use of public transport.

## **Local Planning Policy Framework (LPPF)**

### **Municipal Strategic Statement**

#### Clause 21.03 Key Influences

This clause identifies that future housing need and residential amenity are critical land-use issues that will challenge Manningham's future growth and sustainable development. The MSS acknowledges that there is a general trend towards smaller household size as a result

of an aging population and smaller family structure which will lead to an imbalance between the housing needs of the population and the actual housing stock that is available.

This increasing pressure for re-development raises issues about how these changes affect the character and amenity of our local neighbourhoods. In meeting future housing needs, the challenge is to provide for residential re-development in appropriate locations, to reduce pressure for development in more sensitive areas, and in a manner that respects the residential character and amenity valued by existing residents.

Clause 21.09 (Activity Centre and Commercial Areas) outlines that *principal, major and identified neighbourhood activity centres will be the focus of increased residential growth and development*. In particular, Doncaster Hill Principal Activity Centre will:

- *Challenges mainstream community planning and building design to achieve desired environmental outcomes.*
- *Provides more local jobs to reduce journey to work trips.*
- *Provides housing where residents may walk to facilities and services.*
- *Encourages reduced levels of car ownership and increased public transport usage.*

The vision for Doncaster Hill Principal Activity Centre is outlined in Council's *Doncaster Hill Strategy (2002)* and includes:

- *To implement the objectives of Melbourne 2030 in respect of Principal Activity Centres as a focus for retail, social, commercial, entertainment, civic and residential uses.*
- *To integrate ecologically sustainable development principles and techniques into every facet of the design, construction and operation/occupancy stages of new development to raise the aspirations of all users, appropriate for a city looking towards a long-term, responsible and sustainable future.*
- *To ensure that built form outcomes demonstrate the use of contemporary architecture combined with innovative urban design and building techniques that incorporate ecologically sustainable design principles.*
- *To emphasise the existing dramatic landform of Doncaster Hill through built form that steps down the hill.*
- *To encourage high density, high rise residential development.*
- *To provide a greater diversity of dwelling types.*
- *To alleviate pressure for more intense residential development in established urban areas.*
- *To reduce travel demand and change travel behaviour.*
- *To promote the development of sustainable transport options.*
- *To meet the future infrastructure requirements of Doncaster Hill in a comprehensive, timely and equitable way.*
- *To develop an integrated mixed-use precinct for Doncaster Hill Activity Centre which provides for an appropriate mix of uses and functions on a location specific level, including the provision of:*
  - *mixed uses within buildings, particularly along boulevard locations*
  - *small scale retail opportunities at ground floor level in conjunction with other mixed use developments*
  - *additional commercial/office floor space*
  - *flexible floor spaces within buildings to ensure life cycle adaptability.*

Within Doncaster Hill Principal Activity Centre there are various precincts delineated in accordance with their topographic orientation and aspect on Doncaster Hill, their relationship to main roads, and their present and future uses.

Clause 21.10 (Ecologically Sustainable Development) highlights Council's commitment to ESD and outlines a number of ESD principles to which regard must be given. These include



building energy management, water sensitive design, external environmental amenity, waste management, quality of public and private realm and transport.

In relation to sustainability, the ACZ1 requires applicants to submit a Sustainability Management Plan that *demonstrates the application of Australian best practice rating tools and design principles, use of emerging technology, and a commitment to 'beyond compliance' throughout the construction period and subsequent operation of the development.*

## **Local Planning Policy**

### Clause 22.08 Safety through urban design

This policy applies to all land in Manningham. It endeavours to provide and maintain a safer physical environment for those who live in, work in or visit the City of Manningham. The policy seeks attractive, vibrant and walkable public spaces where crime, graffiti and vandalism is minimised.

### Clause 22.09 Access for disabled people

This policy also applies to all land in Manningham. It seeks to ensure that people with a disability have the same level of access to buildings, services and facilities as any other person. The policy requires the needs of people with a disability to be taken into account in the design of all proposed developments.

## **Particular Provisions**

### Clause 52.02 Easements, Restrictions and Reserves

A permit is required before a person proceeds:

- *Under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.*

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

### Clause 52.06 Car Parking

Pursuant to Clause 52.06-5, car parking is required to be provided at the following rate:

- *1 space for 1 and 2 bedroom dwellings.*
- *2 spaces for 3 or more bedroom dwellings.*
- *1 visitor space to every 10 dwellings (varied by the Parking Overlay, Schedule 1).*

Clause 52.06-9 outlines various design standards for parking areas that should be achieved.

### Clause 52.29 Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road

The purpose of this clause is:

- *To ensure appropriate access to identified roads.*
- *To ensure appropriate subdivision of land adjacent to identified roads.*

A permit is required to create or alter access to a road in a Road Zone, Category 1. A permit is required to create or alter access to land in a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road.

#### Clause 52.34 Bicycle Facilities

Pursuant to Clause 52.34-3, the following number of bicycle spaces are required in development of four or more storeys:

- *1 space for every 5 dwellings for residents.*
- *1 space for every 10 dwellings for visitors.*

#### **General Provisions**

#### Clause 65 Decision Guidelines

This clause outlines that before deciding on an application, the responsible authority must consider, as appropriate:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The purpose of the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*