

5. LEGISLATIVE REQUIREMENTS

5.1 PLANNING AND ENVIRONMENT ACT 1987 (THE ACT)

The Act 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 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 Act 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:

- Planning Policy Framework
- Clause 32.07 Residential Growth Zone, Schedule 2
- Clause 32.08 General Residential Zone, Schedule 2
- Clause 43.02 Design and Development Overlay, Schedule 8
- Clause 52.06 Car Parking
- Clause 52.29 Land Adjacent to the Principal Road Network
- Clause 52.34 Bicycle Facilities
- Clause 65 Decision Guidelines

An apartment development of five or more storeys, excluding a basement, must ordinarily meet the requirements of Clause 58. However, pursuant to Clause 32.07-5 (Residential Growth Zone) and 32.08-6 (General Residential Zone), Clause 58 does not apply to an application for an amendment of a permit under section 72 of the Act, if the original permit application was lodged before the approval date of Amendment VC136. Amendment VC136 was approved on 13 April 2017, and the original permit application was lodged 20 November 2014.

Zones

Clause 32.07 Residential Growth Zone, Schedule 2

The purpose of the General Residential 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 provide housing at increased densities in buildings up to and including four storey buildings.*
- *To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.*

- *To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.*
- *To ensure residential development achieves design objectives specified in a schedule to this zone.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

A Planning Permit is required to construct two or more dwellings on a lot.

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.

Schedule 2 to the Residential Growth Zone does not specify a maximum building height requirement for a dwelling or residential building.

If no maximum building height is specified in a schedule to this zone, the building height should not exceed 13.5 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Neighbourhood Residential Zone, or Township Zone must meet the requirements of Clauses 55.03-5, 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.

Clause 32.08 General Residential Zone, Schedule 2

The purpose of the General Residential Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To encourage a diversity of housing types and housing growth 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.*

A Planning Permit is required to construct two or more dwellings on a lot.

An application to construct or extend a dwelling or residential building on a lot must provide a minimum garden area of 35% for lots above 650 square metres.

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.*

Schedule 2 to the General Residential Zone does not specify a maximum building height requirement for a dwelling or residential building.

A basement is not a storey for the purposes of calculating the number of storeys contained in a building.

Overlays

Clause 43.02 Schedule 8 to the Design and Development Overlay

The design objectives are as follows:

- *To increase residential densities and provide a range of housing types around activity centres and along main roads.*
- *To encourage development that is contemporary in design that includes an articulated built form and incorporates a range of visually interesting building materials and façade treatments.*
- *To support three storey, 'apartment style', developments within the Main Road sub-precinct and in sub-precinct A, where the minimum land size can be achieved.*
- *To ensure new development is well articulated and upper storey elements are not unduly bulky or visually intrusive, taking into account the preferred neighbourhood character.*
- *To encourage spacing between developments to minimise a continuous building line when viewed from a street.*
- *To ensure the design and siting of dwellings have regard to the future development opportunities and future amenity of adjoining properties.*
- *To ensure developments of two or more storeys are sufficiently stepped down at the perimeter of the Main Road sub-precinct to provide an appropriate and attractive interface to sub-precinct A or B, or other adjoining zone.*
- *To ensure overlooking into adjoining properties is minimised.*
- *To ensure the design of carports and garages complement the design of the building.*
- *To ensure the design of basement and undercroft car parks complement the design of the building, eliminates unsightly projections of basement walls above natural ground level and are sited to allow for effective screen planting.*
- *To encourage landscaping around buildings to enhance separation between buildings and soften built form.*

Permit Requirement

- *A permit is required to construct or carry out works.*
- *A permit is required to construct or extend a front fence within 3 metres of a street, if the fence is associated with 2 or more dwellings on a lot or a residential building.*

Building Height & Setbacks

- Any building or works must comply with the requirements set out in Table 1 and 2 of this Schedule.
- A permit cannot be granted to vary the condition regarding the minimum land size and configuration specified in Table 2 to this Schedule.
- A permit cannot be granted to vary the Maximum Building Height specified in Table 2 to this Schedule.
- For the purposes of this Schedule, the Maximum Building Height does not include building services, lift over-runs and roof mounted equipment, including screening devices.
- For the purposes of this Schedule, balconies, terraces, and verandahs may encroach within the Street Setback by a maximum of 2.0m, but must not extend along the width of the building.

Table 1

Sub-Precinct	Maximum Building Height	Condition regarding minimum land size	Street setback
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DDO8-1 (Main Road) Sub-precinct	11 metres provided the condition regarding minimum land size is met. If the condition is not met, the maximum height is 9 metres, unless the slope of the natural ground level at any cross section wider than eight metres of the site of the building is 2.5 degrees or more, in which case the maximum height must not exceed 10 metres.	1,800 square metres must be all in the same sub-precinct. Where the land comprises more than one lot, the lots must be consecutive lots which are side by side and have a shared frontage	For two or more dwellings on a lot or a residential building: <ul style="list-style-type: none"> • Minimum front street setback is the distance specified in Clause 55.03-1 or 6 metres, whichever is the lesser • Minimum side street setback is the distance specified in Clause 55.03-1
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Table 2

Sub-Precinct	Maximum Building Height	Condition regarding minimum land size	Street setback
DDO8-2 (Sub-precinct A)	11 metres provided the condition regarding minimum land size is met. If the condition is not met, the maximum height is 9 metres, unless the slope of the natural ground level at any cross section wider than eight metres of the site of the building is 2.5 degrees or more, in which case the maximum height must not exceed 10 metres.	1,800 square metres must be all in the same sub-precinct. Where the land comprises more than one lot, the lots must be consecutive lots which are side by side and have a shared frontage.	For two or more dwellings on a lot or a residential building: <ul style="list-style-type: none"> • Minimum front street setback is the distance specified in Clause 55.03-1 or 6 metres, whichever is the lesser • Minimum side street setback is the distance specified in Clause 55.03-1

Planning Policy Framework

The relevant sections of the Planning Policy Framework are as follows:

Clause 15.01-1L (Safer neighbourhoods - Manningham) seeks to facilitate buildings, subdivisions, street layout, car parks and public open space that are safe.

Strategies towards achieving this are identified as follows:

- *Design buildings to provide informal surveillance of adjacent open space.*
- *Create private and public open space areas that are accessible, functional and safe.*
- *Locate playgrounds in areas that are clearly visible to guardians and residents and avoid locating playgrounds behind buildings or in secluded areas.*
- *Design landscaping of public spaces to provide clear and unobstructed views.*
- *Utilise landscaping with low shrubs or ground covers to increase effectiveness of natural surveillance.*
- *Avoid the planting of trees and shrubs with dense foliage near pathways.*
- *Avoid rear lane ways and pedestrian tunnels unless adequate surveillance opportunities for these areas can be incorporated into the design.*
- *Locate automatic teller machines where there are clear sightlines in the public realm.*
- *Design and locate buildings, including car parks, to promote public safety by:*
 - *Maximising visibility and sightlines to and from public and communal spaces.*
 - *Avoiding hidden car spaces, blind corners and areas of potential entrapment.*
- *Design pedestrian entrances to be clearly visible from streets and public areas, to provide shelter and to provide a transitional space between the public and private realm.*
- *Ensure development and landscaping surrounding open car parks provide casual surveillance opportunities.*
- *Provide clear directional signage within car parks and at entry and exit points.*
- *Encourage open and transparent fences along street frontages and public areas to allow surveillance and visibility.*
- *Design buildings to discourage external roof access.*
- *Encourage the use measures to manage graffiti and vandalism.*
- *Avoid enclosing public spaces that adjoin private property.*
- *Ensure streetscapes:*
 - *Are attractive.*
 - *Clearly define areas for pedestrian and vehicle movement.*
 - *Provide natural surveillance and visibility for pedestrians, drivers and occupants of adjacent land*

Clause 15.01-2S (Building Design) seeks to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development.

Strategies towards achieving this are identified as follows:

- *Ensure a comprehensive site analysis forms the starting point of the design process and provides the basis for the consideration of height, scale, massing and energy performance of new development.*
- *Ensure development responds and contributes to the strategic and cultural context of its location.*
- *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
- *Improve the energy performance of buildings through siting and design measures that encourage:*
 - *Passive design responses that minimise the need for heating, cooling and lighting.*
 - *On-site renewable energy generation and storage technology.*
 - *Use of low embodied energy materials.*
- *Ensure the layout and design of development supports resource recovery, including separation, storage and collection of waste, mixed recycling, glass, organics and e-waste.*
- *Encourage use of recycled and reusable materials in building construction and undertake adaptive reuse of buildings, where practical.*

- *Encourage water efficiency and the use of rainwater, stormwater and recycled water.*
- *Minimise stormwater discharge through site layout and landscaping measures that support on-site infiltration and stormwater reuse.*
- *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
- *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
- *Ensure development is designed to protect and enhance valued landmarks, views and vistas.*
- *Ensure development considers and responds to transport movement networks and provides safe access and egress for pedestrians, cyclists and vehicles.*
- *Encourage development to retain existing vegetation.*
- *Ensure development provides landscaping that responds to its site context, enhances the built form, creates safe and attractive spaces and supports cooling and greening of urban areas.*

Clause 15.01-2L (Environmentally Sustainable development – Manningham) seeks to achieve best practice in environmentally sustainable development from the design stage through to construction and operation.

Strategies

- *Facilitate development that minimises environmental impacts.*
- *Encourage environmentally sustainable development that:*
 - *Is consistent with the type and scale of the development.*
 - *Responds to site opportunities and constraints.*
- *Adopts best practice through a combination of methods, processes and locally available technology that demonstrably minimise environmental impacts.*

Energy performance

- *Reduce both energy use and energy peak demand through design measures such as:*
 - *Building orientation.*
 - *Shading to glazed surfaces.*
 - *Optimising glazing to exposed surfaces.*
 - *Inclusion of or space allocation for renewable technologies.*

Integrated water management

- *Reduce total operating potable water use through appropriate design measures such as water efficient fixtures, appliances, equipment, irrigation and landscaping.*
- *Encourage the appropriate use of alternative water (including greywater, rainwater and stormwater).*
- *Incorporate best practice water sensitive urban design to improve the quality of stormwater runoff and reduce impacts on water systems and water bodies.*

Indoor environment quality

- *Achieve a healthy indoor environment quality, including thermal comfort and access to fresh air and daylight, prioritising passive design over mechanical heating, ventilation, cooling and lighting.*
- *Reduce indoor air pollutants by encouraging use of low-toxicity materials.*
- *Minimise noise levels and noise transfer within and between buildings and associated external areas.*

Transport

- *Design development to promote the use of walking, cycling and public transport, in that order; and minimise car*

- *dependency.*
- *Promote the use of low emissions vehicle technologies and supporting infrastructure.*

Waste management

- *Promote waste avoidance, reuse and recycling during the design, construction and operation stages of development.*
- *Encourage use of durable and reusable building materials.*
- *Ensure sufficient space is allocated for future change in waste management needs, including (where possible) composting and green waste facilities.*

Urban ecology

- *Protect and enhance biodiversity by incorporating natural habitats and planting indigenous vegetation.*
- *Reduce urban heat island effects through building design, landscape design, water sensitive urban design and the*
- *retention and provision of canopy and significant trees.*
- *Encourage the provision of space for productive gardens, particularly in larger residential developments.*

Clause 15.01-4S (Healthy neighbourhoods) policy objective seeks to create neighbourhoods that foster healthy and active living and community wellbeing.

Strategies towards achieving this are identified as follows:

- *Design neighbourhoods that foster community interaction and make it easy for people of all ages and abilities to live healthy lifestyles and engage in regular physical activity by providing:*
 - *Connected, safe, pleasant and attractive walking and cycling networks that enable and promote walking and cycling as a part of daily life.*
 - *Streets with direct, safe and convenient access to destinations.*
 - *Conveniently located public spaces for active recreation and leisure.*
 - *Accessibly located public transport stops.*
 - *Amenities and protection to support physical activity in all weather conditions.*

Clause 15.01-5S (Neighbourhood character) policy objective is to recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Strategies towards achieving this are identified as follows:

- *Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.*
- *Ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.*
- *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:*
 - *Pattern of local urban structure and subdivision.*
 - *Underlying natural landscape character and significant vegetation.*
 - *Neighbourhood character values and built form that reflect community identity.*

Clause 15.01-5-01L (Landscaping Manningham) policy strategies are as follows;

- *Provide landscaping to soften built form and the appearance of large areas of car parking, accessways and development.*
- *Incorporate indigenous planting and canopy trees.*
- *Provide setbacks to enable the retention of canopy trees and landscape treatments along road frontages roadside boundaries and interfaces with adjoining sites to complement the boulevard theme and character of the area.*

- *Retain existing vegetation and canopy trees along road frontages.*
- *Retain native vegetation where possible or, incorporate new native vegetation into landscaping.*
- *Support landscaping that provides visual interest to commercial uses and carparking areas to the surrounding area*

Clause 15.01-5L-02 (Neighbourhood character)

This policy outlines the division of Manningham into four Residential Character Precincts. The precincts seek to channel increased housing densities around activity centres and main roads where facilities and services are available. In areas which are removed from these facilities a lower intensity of development is encouraged. A low residential density is also encouraged in areas that have identified environmental or landscape features.

Precinct 2 – Residential Areas Surrounding Activity Centres and Along Main Roads.

This precinct applies to the areas surrounding activity centers and along main roads.

While the site is subject to two zones, both zones are located identified as being within Precinct 2.

The Precinct 2 objective is to promote substantial change that is high quality, contemporary and designed to provide a transition between sub precincts in Precinct 2.

Precinct 2 strategies are as follows;

- *Provide for contemporary architecture.*
- *Encourage use of varied and durable building materials in building facades that provide visual interest.*
- *Provide a graduated building scale and form from side and rear boundaries.*
- *Incorporate a landscape treatment that enhances the overall appearance of the development and any adjacent main road.*
- *Integrate car parking into the design of buildings and landform.*
- *Encourage the built form fronting Doncaster Road at the former Eastern Golf Course (Tullamore) to be of a scale that provides an appropriate transition to Doncaster Hill Major Activity Centre.*
- *Support development as follows:*
 - *Apartment-style developments along main roads and on larger, consolidated lots in DDO8-1 - Sub-Precinct Main Road.*
 - *Apartment-style development of two-storeys, or three-storeys on larger consolidated lots, in DDO8-2 - Sub-Precinct A.*
 - *Low-rise development of one and two-storeys in DDO8-3 - Sub-Precinct B.*

The site is located within the **Main Road Sub-Precinct** and **Sub-Precinct A**.

Clause 16.01-1S (Housing Supply) policy objective is to facilitate well-located, integrated and diverse housing that meets community needs.

Strategies towards achieving this are identified as follows:

- *Ensure that an appropriate quantity, quality and type of housing is provided, including aged care facilities and other housing suitable for older people, supported accommodation for people with disability, rooming houses, student accommodation and social housing.*

- *Increase the proportion of housing in designated locations in established urban areas (including under-utilised urban land) and reduce the share of new dwellings in greenfield, fringe and dispersed development areas.*
- *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.*
- *Identify opportunities for increased residential densities to help consolidate urban areas.*
- *Facilitate diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.*
- *Encourage the development of well-designed housing that:*
 - *Provides a high level of internal and external amenity.*
 - *Incorporates universal design and adaptable internal dwelling design.*
- *Support opportunities for a range of income groups to choose housing in well-serviced locations.*
- *Plan for growth areas to provide for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres*

Clause 19.03-3L (Wastewater, drainage and stormwater management – Manningham) policy objective is to provide safe and efficient wastewater, drainage and stormwater management systems.

Strategies towards achieving this are identified as follows:

- *Ensure that any land use or development that may increase water runoff from a site either:*
 - *Detains stormwater on site.*
 - *Undertakes or assists with off-site works to maintain or increase drainage capacity.*
- *Promote the on-site detention, absorption of stormwater through*
 - *The use of permeable paving, pebble paths, lawns and gardens.*
 - *Capture and reuse functions within detention systems.*
- *Encourage natural biological filtration systems in areas of high sediment or nutrient runoff, including roadside developments and subdivisions.*
- *Support the use of pollutant traps to prevent garbage entering the waterways.*
- *Ensure development connects to mains water.*
- *Encourage connection to sewer where available and within reasonable proximity.*

Particular Provisions

Clause 52.06 Car Parking

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

- *1 space for 1 and 2 bedroom dwellings.*
- *2 spaces for 3 or more bedroom dwellings.*

No residential visitor car parking spaces are required for any part of the land identified as being within the Principal Public Transport Network Area.

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

Clause 52.29 Land Adjacent to the Principal Road Network

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 Transport Zone 2.

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 65.01 Decision Guidelines

This clause outlines that before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *The matters set out in section 60 of the Act.*
- *Any significant effects the environment, including the contamination of land, may have on the use or development.*
- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the environment, human health and amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*
- *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*
- *The impact the use or development will have on the current and future development and operation of the transport system.*