

# Amendment C278: Sunlight to public parks

## Submission from the Carlton Residents Association

The proposal to increase the winter sunlight access to Melbourne’s public parks is laudable. The major difficulties arise in the:

- designation of the different park types and
- the planning controls [height limits] deployed to achieve the increased sunlight access

### Designation of the different park types

It is not at all clear why Argyle Square is designated as a Park Type 2 [that is as a park located in a growth area]. This park is totally within an existing Design and Development Overlay [DDO47] where the recommended Maximum Building Height is 4 storeys. While this Building Height may be exceeded, any application to do so “must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.” The relevant Design Objectives and Built Form Outcomes are as below.

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#### Design Objectives

- To maintain the predominant low scale nature of the area.
- To ensure development supports high levels of pedestrian amenity related to access to sunlight and sky views and a pedestrian friendly scale.

And again

**Table to Schedule 47**

Area	Maximum Building Height	Built Form Outcomes
DDO 47 Central Carlton South	4 storeys	New development respects and is consistent with the built form especially low scale of the existing older building stock in the street.  Development that creates an environment with high pedestrian amenity along Lygon street.  Development that does not overshadow Argyle Square, Carlton Gardens or the Royal Society of Victoria Gardens between 11am and 2pm on 22nd September and 22nd March.

Given that the Hodyl Report considers that low-scale areas include “those parts of the study area with height controls of 4 storeys or less” Argyle Square should be designated as a Park Type 1 where no additional shadows should be permitted. Further, given that Argyle Place North currently includes low scale buildings, and many heritage places with a Street Wall height MUCH lower than the DDO recommended Maximum Height of 4 storeys, this area cannot be considered as a Growth Area. [See Google Streetscape view illustrated below]





South East Corner of Lygon and Pelham Streets opposite Argyle Square – this area should not be designated as a Growth Area

## **The planning controls deployed to achieve the increased sunlight access**

The second major difficulty arises with the proposed use of street wall heights and building heights [whichever is lower] to determine the allowable [additional] shadows that may be permitted as a result of any development. Although the Design and Development Overlay 61 [which covers both the University and Lincoln Squares] includes preferred maximum Street Wall Heights of 24 metres for those streets fronting the squares, these heights are not MANDATORY.

Recent development applications in the City North area have frequently exceeded the recommended maximum heights specified in DDO61. How would these applications be processed under the proposed DDO Schedule 8 Controls? **Will the recommended maximum Street Wall Heights of DDO61 in effect become mandatory heights under the Schedule 8 provisions?**

A further complication arises on the East side of Swanston Street, where the DDO45 does NOT include a Street Wall Height recommendation, but just a recommended maximum building height of 9 storeys, which again, is not mandatory. This would translate to an actual street wall [and building] height maximum of 32 metres for a residential building with a non-residential use at ground level. This compares with the recommended Street Wall Height of 24 m which applies to Lincoln Square North.

## **A final observation concerns the location of the DDO8 areas on the Exhibited Planning Scheme Map [Melbourne C278melb ddoMap05 Exhibition Gazetted]**

### **Example 1 DDO8 areas South of Faraday and Barkly Streets Carlton.**

No doubt, the intention of these DDO's is to ensure that no additional shadows are cast over the Carlton Gardens, a Park Type 1. But, these DDO's are located within a General Residential Zone Schedule 2 area, where the [mandatory] maximum building heights are 8 metres [with few exceptions]. However, if the overall building height is 9 metres or less, NO overshadowing analysis is required. According to the proposed Schedule 8 to CI 43.02 of the DDO

A permit is not required for:

- Buildings and works where the overall building height is 9 metres or less.
- Buildings and works to an existing building(s) which do not alter the height or setback of any part of an existing building.

Although the maximum height of 8 metres only applies to dwellings and residential buildings, given that low scale heritage dwellings are the dominant land use, and that the whole area is covered by a heritage overlay, the established heritage policy guidance [in the Melbourne Planning Scheme] should limit additional shadowing impacts of any new non-residential land uses.



Pocket Park at corner of Palmerston and Canning Streets – located within a low scale heritage area

### **Example 2 DDO8 areas within the General Residential Zone Schedule 2 area immediately to the North of Palmerston Street.**

Because these areas fall within an area where the overall building height is 9 metres or less, NO overshadowing analysis is required. As above, it is not at all clear what purpose is achieved by these DDO8 areas. [See image above]

### **Example 3 DDO8 areas within the Central Carlton North DDO48 area [bounded by Elgin, Rathdowne, Grattan and Cardigan Streets.]**

This area has a mandatory maximum building height of 10.5 metres. According to this DDO48, “A permit may be granted to replace or alter a building or works existing at the approval date but which do not comply with the *Maximum Building Height* specified in the table, only if the responsible authority is satisfied an increased height improves the amenity and enhances the urban character of the area.”

However, given the Design Objectives of DDO48, it is difficult to imagine any situation where an increased height could improve the amenity and enhance the character of the area.

#### Design Objectives

- To maintain the predominant low scale nature of the area.
- To ensure development supports high levels of pedestrian amenity **related to access to sunlight and sky views** and a pedestrian friendly scale.

Given that any area with a mandatory maximum building height of 10.5 metres would be considered a low scale area, and that there are no existing or new park proposals suggested for this area, it is not clear what will be achieved by the DDO8 areas included within the DDO48 area.

It is possible that new and generous grassed medians could be located in Cardigan Street [for example] but, given that Drummond Street, within the DDO48 area, already has generous grassed medians, why is it that

Drummond Street is provided with so little DDO8 “coverage”? Surely, the Drummond Street median could justify a NO ADDITIONAL OVERSHADOWING control [ie be considered as a Park Type 1 when formally designated].

#### **Example 4: DDO8 areas within the Keppel St, Cardigan St and Cemetery Rd East Residential Growth Zone.**

This area has been the subject of a major refurbishment of the low scale heritage places fronting Keppel and Cardigan Streets [the former Queen Elizabeth Hospital site] and the construction of new low to mid-rise apartment buildings to the North of the site. Although there are two small pocket parks on this site [Parks Type 1]; one fronting Keppel Street, and one surrounding the former chapel building on Cardigan Street, these pocket parks are surrounded by low scale buildings [two storeys or lower].

Given that it is unlikely that this site will be redeveloped in the next forty to fifty years, it is not clear what purpose will be served by including a DDO8 Overlay over this site.



North West Corner of Elgin and Drummond Streets, Carlton

#### **Example 5: DDO 8 areas on the North side of Elgin Street between Lygon and Canning Streets**

These DDO's are located within a Commercial 1 Zone [C1Z] where there is NO height guidance at all. Since it is unlikely that new parks will be created on the South side of Elgin Street, it is not clear what will be protected and how. Any reconfiguration of the median strips located in Elgin Street will probably be designed with transport considerations uppermost. If these medians were to be designated as Parks Type 2 [rather unlikely] there would be no way to measure any ALLOWABLE shadow, since there are NO specified street wall or building heights in the C1Z. This area is not ‘covered’ by other DDO controls. [See image above]

#### **Concluding Comments**

The proposal to ensure that new development responds with appropriate building heights and setbacks to protect sunlight access to our municipal parks is laudable.

A major query arises over the efficacy of the implementation mechanisms proposed. It is not clear, for example, how a street wall height that is not a mandatory height control in an existing Design and Development Overlay, can, in effect, become a mandatory height for the purposes of limiting additional

shadowing in our high growth areas.

While many of the height controls in the Carlton area are recommended maximum building heights, which may be exceeded, the CRA accepts that for the purposes of determining whether a park falls within a low scale or a growth area, that these recommended maximum heights can, and should, provide the appropriate benchmark. Further, while the limited additional overshadowing test is also based upon discretionary street wall heights/building heights, the CRA accepts that these discretionary heights should be regarded as mandatory for the purposes of this test.

Further, at the other extreme, it is not clear what purpose would be served by including DDO8 overlays over those residential areas that currently have a mandatory maximum height [with few exceptions] of 8 metres. The proposed Planning Scheme Amendment makes it clear that where the overall building height is 9 metres or less, NO overshadowing analysis is required. Surely, DDO8 overlays would be redundant in these situations.

Finally, the designation of Argyle Square as a Park Type 2 cannot be accepted. This square is surrounded by a DDO which provides for a maximum building height of 4 storeys. Although this height may be exceeded, given the preponderance of low scale heritage places located on Argyle Place North, and the strongly worded DDO Design Objectives [which seek to maintain the predominant low scale of the area to support 'high levels of pedestrian amenity related to access to sunlight and sky views ...'] this area cannot be considered as a Growth Area.

Ewan Ogilvy [for the CRA] 21 August 2019

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## **Overview of this Amendment**

Amendment C278 proposes to protect sunlight in parks across the municipality excluding the central city, Southbank and Docklands.

The revised approach is to:

- Introduce winter sun access protection to all parks to support healthy living.
- Increase sunlight protection hours to 10am to 3pm in winter from the current 11am to 2pm in spring and autumn, for people to be able to enjoy our parks for longer periods throughout the day.
- Introduce a mandatory 'no additional overshadowing' control.
- Allow limited additional overshadowing of parks in growth areas to balance sunlight access to parks with the need to support development intensification.
- Modify the hours of protection for Fawkner Park, the Botanic Gardens and smaller parks on the edge of the central city to 10am to 2pm recognising that after 2pm, winter shadow from tall city buildings will cast a shadow across these parks.

This new approach is informed by the findings of the *Sunlight Access to Public Parks Modelling Analysis Report, February 2018* undertaken by Hodyl + Co on behalf of Council [brief title Hodyl Report]. The report recommends a revised policy approach to provide winter sunlight protection across a broader range of hours.

Amendment C278 proposes to change the Melbourne Planning Scheme by:

- Amending Clause 21.17 Reference Documents to include the *Sunlight Access to Public Spaces Modelling Analysis Report, February 2018* by Hodyl + Co.
- Amending Clause 22.02 (Sunlight to Public Spaces Policy) to distinguish between parks within and outside the central city and Southbank, and to reflect a shift to protecting winter sunlight access

across a broader range of times during the day to all public parks outside the central city and Southbank. This policy does not apply to Docklands.

- Introducing a new Schedule to the Design and Development Overlay (DDO8). The proposed DDO8 introduces new planning scheme requirements for the protection of sunlight access for all public parks in the municipality (excluding parks the Hoddle Grid, Spring Street South, Southbank and Docklands).
- Inserting DDO8 to Planning Scheme Maps 1 to 11.
- Replacing the schedule to Clause 72.03 with a new schedule to Clause 72.03 to include new maps in the Planning Scheme.

[Extracts from the Participate Melbourne Website 9 August 2019 - Key documents have been underlined.]

<https://participate.melbourne.vic.gov.au/amendmentc278/amendment-overview>

## **Key Findings of Hodyl Report [p 5]**

This Report investigated sunlight access to 157 open spaces across the municipality and found a clear divide between available sunlight within **low-scale areas (those parts of the study area with height controls of 4 storeys or less) and growth areas (areas with height controls over 4 storeys).**

### **Low-scale areas (4 storeys and below)**

There are 133 parks located completely within low-scale areas. All of these parks have high levels of winter sunlight access. This will remain as new buildings built according to the existing height controls will generally retain high levels of sunlight access to these parks. Protecting winter sunlight access to these parks is therefore achievable with negligible effects on future development outcomes or capacity.

### **Growth Areas**

There are 24 parks located within or immediately adjacent to growth areas. Providing winter sunlight access to these parks requires a more diversified response that considers the context of each park, the extent of existing overshadowing and the potential overshadowing from current height controls.

## **Key Policy Recommendations for the Carlton Area [p 14]**

### **Assessment process for developers and decision-makers**

#### **1. Assess whether an overshadowing assessment is required:**

- If the overall building height is 9 metres or less - no overshadowing assessment is required
- If the building height is above 9 metres overshadowing assessment is required

#### **2. Identify category of control that applies to a park that may be affected by the development:**

A mandatory No Additional Overshadowing control in winter is proposed between the hours of 10am and 3pm. This can be moderated in the following circumstances only (See Map 1 extract following):

- Exemption 1: For parks immediately abutting areas with height limits over 4 storeys, limit any additional overshadowing to that cast by the planning scheme street wall height or the overall height limit of adjacent sites (whichever is lower). That is, for those Growth Areas of Carlton, additional overshadowing cast by the planning scheme height control or street wall height [whichever is lower] between 10am to 3pm on June 21<sup>st</sup> is allowed.
- Exemptions 2 and 3 [Do not apply to the Carlton Area]

**3. Developer to test the overshadowing impact of their development proposal to ensure that it complies with the designated control for the affected park.**

The map illustrated below is also included as Map 7 in the Exhibited Schedule 8 to Clause 43.02 Design and Development Overlay. Those Parks coloured in deep blue are designated as Park Type 2, with the remaining parks [coloured green] being designated Park Type 1. The Permit requirements of this Schedule are as follows:

A permit cannot be granted for buildings and works that do not comply with the requirements set out in Table 1 [below]. In the event that buildings and works cast shadow over two or more parks in different categories, the requirement for each respective park must be met.

Park Type	Hours and date
1	Buildings and works must not cast additional shadow onto the park between 10am and 3pm, on June 21 beyond the existing shadow.
2	Buildings and works must not cast additional shadow onto the park between 10am and 3pm on June 21 beyond the existing shadow or allowable shadow (whichever is the greater).
3	Not applicable to Carlton

For the purpose of Schedule 8, the following Definitions apply:

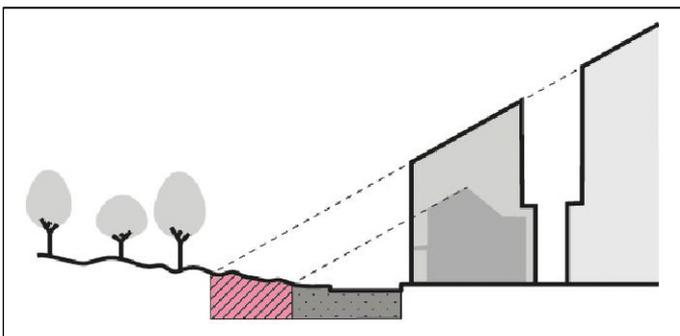
**Park** means the land identified as Park Type 1, 2 or 3 on Maps 1 to 10

**Land abutting a park** means land with a common boundary to a park or land separated from the park by a public street or laneway.

**Existing shadow** means any shadow cast by existing buildings and works

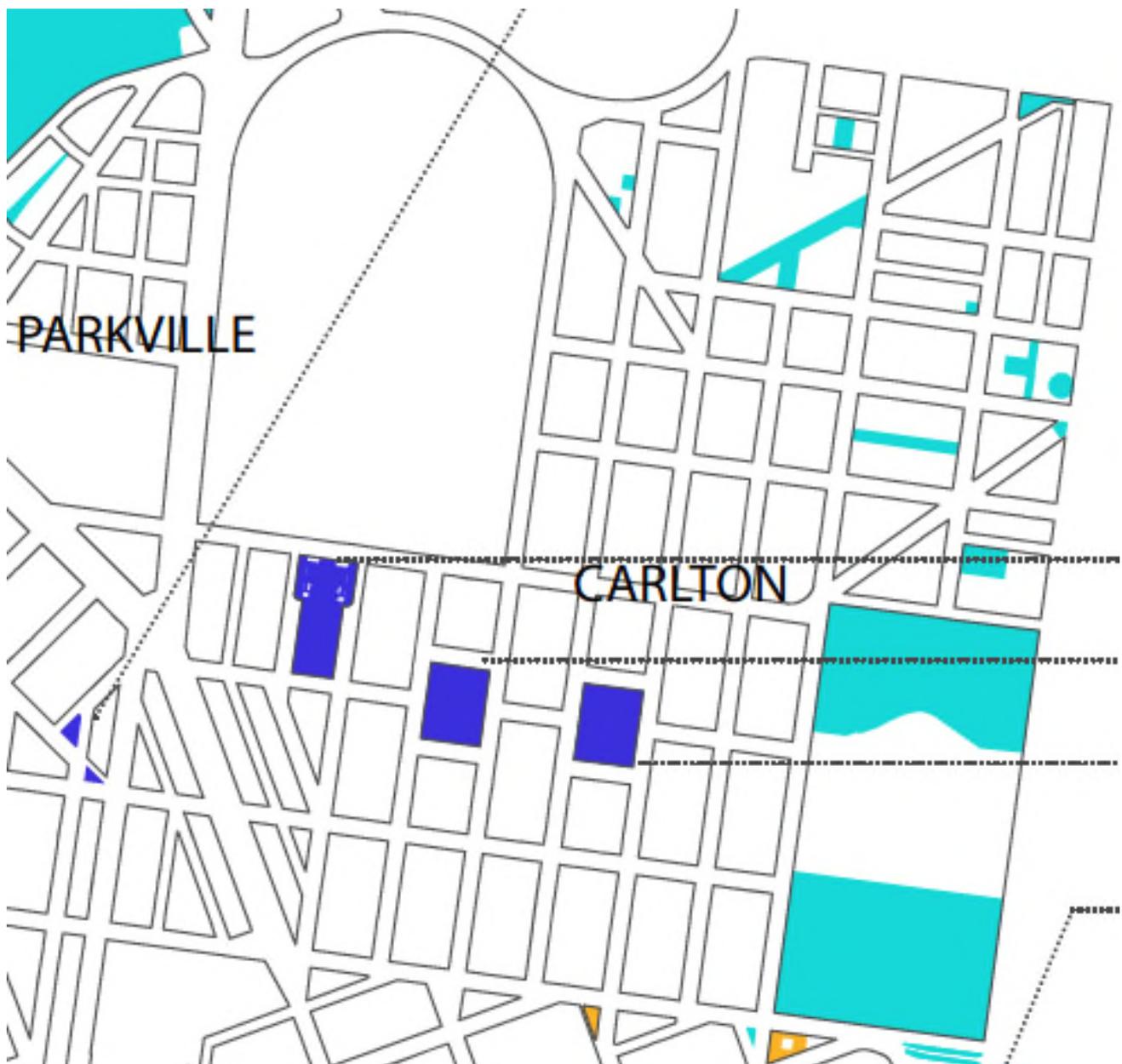
**Allowable shadow** means the shadow that would be cast on the park, between 10am and 3pm, June 21, by a street wall of a building on land abutting a park, built to the lower of any street wall height requirement or building height requirement specified in this planning scheme as shown in Figure 1 below.

**Figure 1**



Existing shadow [grey area] and Allowable shadow [hatched red area]

## Proposed sunlight access controls for all parks



**Any building 9 metres or below across the municipality is not subject to an overshadowing assessment**

**Buildings taller than 9 metres will be assessed against the following controls for each park (as identified in the map above):**

- Standard condition: No additional overshadowing between 10am - 3pm on June 21
- Exemption 1: Reduced time period - no additional overshadowing between 10am-2pm on June 21
- Exemption 2: Partial overshadowing allowed for shadows cast by planning scheme height control or street wall height control (whichever is lower) between 10-3pm on June 21
- Exemption 3: Rob Barassi Snr Park - Partial overshadowing allows shadow to 40 metres within the park (measured from northern property boundary) between 10-3pm on June 21

**Map 1** Proposed sunlight access controls for all existing parks in the municipality



