

4.2 AMENDMENT C122 TO THE MONASH PLANNING SCHEME IMPLEMENTING THE MONASH INDUSTRIAL LAND USE STRATEGY BY REZONING FIVE INDUSTRIAL PRECINCTS AND UPDATING PLANNING PROVISIONS

(MM: File No. TP417)

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council resolves to:

1. Split Amendment C122 into three parts:
 - a. Part 1 – Rezone Precinct 3 from Industrial 1 Zone to General Residential Zone Schedule 2 and rezone Precinct 4 from Industrial 1 Zone to Mixed Use Zone;
 - b. Part 2 – Rezone Precinct 11 and Precinct 13 from Industrial 1 to Mixed Use Zone; and
 - c. Part 3 – Rezone Precinct 26 from Commercial 2 Zone to Industrial 1 Zone.
2. Adopt Amendment C122 (Part 1) and submit the Amendment to the Minister for Planning for approval.
3. Request the Minister for Planning appoint a Panel to consider the submissions and Amendment C122 (Part 2) to the Monash Planning Scheme.
4. Refer all submissions received to Amendment C122 (Part 2) to the Panel appointed by the Minister for Planning.
5. Abandon Amendment C122 (Part 3).
6. Notify all submitters to the Amendment of Council's decision in this Amendment.

INTRODUCTION

The purpose of this report is to consider the results of the formal public exhibition of Amendment C113, to determine a response to submissions on the Amendment and whether or not to proceed with all or parts of the Amendment.

In response to submissions it is recommended to split the amendment into three parts, adopting Part 1 (Precincts 3 & 4), referring Part 2 (Precincts 11 & 13) to an independent Panel and abandoning Part 3 (Precinct 26).

BACKGROUND

At its meeting on 29 July 2014, Council resolved to adopt the *Monash Industrial Land Use Strategy 2014* (with an addendum to re-examine one of the precincts that

abutted land in neighbouring Kingston which had recently been rezoned). It also resolved to request the Minister for Planning authorise the preparation and exhibition of an amendment to rezone areas designated as Precincts 3, 4, 11, 13 and 26 in the Monash Industrial Land Use Strategy.

Exhibition of Amendment C122 commenced on 10 October 2014 and concluded on 21 November 2014.

PROPOSAL

The amendment proposes to make changes to zones and overlays affecting the following five precincts:

Precinct 3 - 11-19 Stewart Street, Mount Waverley

- Rezone the land from Industrial 1 Zone to General Residential Zone Schedule 2.
- Delete the Design and Development Overlay Schedule 1 (Clause 43.02) from the land.
- Introduce the Environmental Audit Overlay over the land.

Precinct 4 - 1-5/615 Warriqal Road, Ashwood

- Rezone the land from Industrial 1 Zone to a Mixed Use Zone.
- Delete the Design and Development Overlay Schedule 1 (Clause 43.02) from the land.
- Introduce the Environmental Audit Overlay over the land.

Precinct 11 - 1354- 1360 Dandenong Road, and 620 Neerim Road, Hughesdale

- Rezone the land from Industrial 1 Zone to a Mixed Use Zone.
- Delete the Design and Development Overlay Schedule 1 (Clause 43.02) from the land.
- Introduce the Environmental Audit Overlay over the land.

Precinct 13 - 190-192 Atherton Road, Oakleigh and 4 Henry Street, Oakleigh

- Rezone the land from Industrial 1 Zone to a Mixed Use Zone.
- Delete the Design and Development Overlay Schedule 1 (Clause 43.02) from the land.
- Introduce the Environmental Audit Overlay over the land.

Precinct 26 - 1 Jacksons Road, Mulgrave and 634-638 Wellington Road, Mulgrave

- Rezone the land from Commercial 2 Zone to Industrial 1 Zone.

In addition, the amendment proposes to make changes to the following existing provisions within the Monash Planning Scheme:

- Amend Clause 22.08 (Outdoor advertising policy) to strengthen the performance criteria for 'promotion sign'.
- Amend the schedule to Clause 32.04 (Mixed Use Zone) to modify the front setback provision to align with Clause 54 and Clause 55 requirements.

- Amend Schedule 1 to Clause 43.02 (Design and Development Overlay) to remove the 7m building height requirement; and to require landscaping within the 3m setback to the Monash Freeway and the reservation extension of Westall Road (between Princes Highway and the Monash Freeway).

RESULTS OF EXHIBITION

Consultation Overview

Public exhibition was undertaken from 10 October 2014 until 21 November 2014.

The consultation included:

- A letter and Notice of Amendment to all owners, occupiers of the subject sites and abutting properties, government agencies, neighbouring Councils and organisations who may be materially affected by the Amendment.
- Notice of Amendment in the Oakleigh Monash Leader on 14 October 2014.
- Notice of Amendment in the Government Gazette on 16 October 2014.
- Notification, including copies of Amendment Documents to the Statutory Ministers.
- Full copies of the Amendment Documentation available at the Glen Waverley Civic Centre and the Oakleigh Service Centre.
- Full Amendment Documentation available for downloading from Council's website.

Feedback Received

A total of 7 submissions have been received.

Three submissions were from public authorities and a neighbouring Council, acknowledging the amendment. The submitters advise that they have no objections to the amendment.

Two submissions were from natural gas network distributors who raised concerns with the proposed rezoning of two of precincts (Precincts 11 and 13), as major gas mains exist in the road reserve adjacent to these Precincts.

Two submissions were received representing the land owners of Precinct 26 (the land on the corner of Jacksons and Wellington Roads).

The main issues raised in the submissions are set out in this report, followed by officer's comments.

No submissions were received on Precincts 3 and 4.

A detailed summary of the submissions and the issues identified are attached [Attachment 1].

Implications of Major Gas Pipes on Rezoning and development

Issues

Both MultiNet Gas and the APA Group advise that the proposed properties within Precinct 11 (1354-1360 Dandenong Road and 620 Neerim Road) and Precinct 13 (190-192 Atherton Road and 4 Henry Street, Oakleigh) are impacted by the proximity of two major gas pipes in the road reserve. Each company is responsible for one of the pipelines. The pipelines generally run along the frontages of the sites, close to Dandenong Road.

These sites are currently in the Industrial 1 Zone where sensitive uses such as residential are prohibited. Rezoning to Mixed Use Zone would allow sensitive land uses to operate on these properties.

Under Clause 19.03 (Pipeline infrastructure) of the Monash Planning Scheme, there is a need to:

ensure that gas, oil and other substances are safely delivered to users and to and from port terminals at minimal risk to people, other critical infrastructure and the environment,

by:

Recognis(ing) existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided.

Based on safety guidance set out in the relevant Australian Standard, the recommended safety distance between the pipelines any sensitive use is 450 metres. This would encompass both precincts proposed to be rezoned, as well as all existing residential properties along the pipeline route.

The companies have advised that further discussions are required in order to determine the need for safety assessments (such as a Safety Management Study) to be undertaken. The companies advised that sensitive uses, such as medical centres, place of worship, aged care or educational facilities and high density residential areas should be separated by 450m. These are uses that would be envisaged under the proposed rezoning. A range of guidelines for construction and ongoing management of these properties are set out in the submission.

Officer comments

It is noted that most of the land fronting Dandenong Road either side of Precincts 11 and 13 is in the General Residential Zone, and is developed with housing and other

residential properties. There are currently no requirements in the planning scheme, except at the subdivision stage, to gain input from gas transmission or distribution companies about the implications to safety, including the potential damage to the gas pipelines, including using the sites for the sensitive uses listed above.

The sites in question are well suited for residential or similar uses. Their locations are also consistent with Plan Melbourne. The submissions from the gas companies are not mandatory requirements but strong recommendation based on Australian Standards. These are recommendations that the companies are seeking to see applied to a range of locations across metropolitan Melbourne. In addition, a similar issue arose in panel hearings considering rezoning in Geelong, and advice was provided that an interdepartmental state government committee was considering a consistent approach to this matter. An update on the status of this interdepartmental committee is being pursued by Council officers, to determine whether a clear state wide direction is now available.

The land is deemed suitable for inclusion in a zone that will facilitate its redevelopment. It is therefore recommended that the matter is referred to an Independent Panel appointed by the Minister for Planning, to resolve the issue of well located housing and associated uses while addressing the need to minimise safety risks to human life posed by gas infrastructure.

Ongoing discussions will continue with state government representatives to seek clearer state wide directions will continue in the interim, along with discussions with the companies to determine what is involved in the development and implementation of the safety management strategy. Both aspects can then be presented and discussed with the Independent Panel.

Precinct 26 (636 Wellington Road and 1 Jacksons Road, Mulgrave)

Issues

Precinct 26 comprises the corporate offices and distribution centres for OfficeMax (636 Wellington Road, Mulgrave) and the Adidem Group best known as The Body Shop (1 Jacksons Road, Mulgrave). A childcare centre known as The Children's Centre at The Body Shop is also accommodated within the precinct along with the weekly Mulgrave Farmers Market.

OfficeMax at 636 Wellington Road Mulgrave have raised concerns with the proposed rezoning of Precinct 26 from Commercial 2 Zone to Industrial 1 Zone, and proposed an alternative zone. OfficeMax submit that the proposed Industrial 1 Zone limits redevelopment opportunities on the site by prohibiting retail and housing uses. Additionally, they are concerned that the proposed Industrial 1 Zone threatens the amenity of the adjoining residential uses generating land use conflicts and the creation of an isolated industrial area. Recognising the existing office and warehousing uses within Precinct 26 and the adjacent residential land, OfficeMax submit that the Mixed Use Zone would be more appropriate.

Frondeil Properties as owners of 1 Jacksons Road have also raised concerns with the potential residential amenity issues associated with proposed rezoning to Industrial 1. They have noted that the use of the site by the Body Shop is likely to cease within the next eighteen months and requested no change to the current Commercial 2 Zone until a decision about the future use of the site is made.

Officer Comments

The recent State government change of the Business 3 Zone to the Commercial 2 Zone in 2013 allows small scale supermarkets and ancillary shops within Precinct 26 without a planning permit for use. Amendment C122 proposed to rezone this precinct to Industrial 1 in order to reinstate the prohibition on retail uses. The submissions indicate that the site is inappropriate for industrial use and that neither party has an interest in establishing dedicated industrial uses. Given the proximity of surrounding residential uses and the opposing submissions from the land owners it is considered inappropriate to rezone the site to Industrial 1.

It is acknowledged that an Industrial 1 Zone may allow industrial uses that are incompatible with the residential uses that surround Precinct 26. The Industrial 1 Zone is identical to the current Commercial 2 Zone in terms of allowing industry and warehouse uses without a permit. However, the Commercial 2 Zone offers greater third party notification and appeal rights for a change of land use where a permit required. On this basis the Commercial 2 Zone is a more appropriate zoning given the abutting residential context.

Rezoning Precinct 26 to Mixed Use as suggested in the OfficeMax submission provides the opportunity to redevelop the land for medium to high density housing. It may result in an undesirable outcome given the Precinct is not proximate to an activity centre or established urban infrastructure, such as public transport. Additionally, rezoning the land to Mixed Use as part of C122 would constitute a transformation of the amendment. Such a change would require further strategic analysis and notification as part of a fresh amendment process.

Having regard to this analysis of the OfficeMax and Frondeil Properties submissions, it is recommended that the current zoning of Commercial 2 Zone be retained and the proposed rezoning of the site to Industrial 1 (Amendment C122- Part 3) be abandoned.

CONCLUSION

Based on the submissions received and the issues raised it is recommended that Amendment C122 be split into three parts and that each part should proceed as follows:

- Amendment C122 (Part 1)

Precinct 3, 11-19 Stewart Street, Mount Waverley and Precinct 4, 1-5/615 Warrigal Road, Ashwood be adopted and submitted to the Minister for Planning for approval

- Amendment C122 (Part 2)

Precinct 11, 1354- 1360 Dandenong Road, and 620 Neerim Road, Hughesdale and Precinct 13, 190-192 Atherton Road, Oakleigh and 4 Henry Street, Oakleigh be referred to an independent panel to allow further consideration of the two submissions concerning gas pipelines and sensitive uses.

- Amendment C122 (Part 3)

Precinct 26 - 1 Jacksons Road, Mulgrave and 634-638 Wellington Road, Mulgrave be abandoned.

Summary of Submissions to Amendment C122 to the Monash Planning Scheme

Submission Number	Summary of submission	Officer comments
1	City of Whitehorse confirmed receipt of the notice of amendment and advised it has no concerns with the proposed amendment.	Noted.
2	Department of Environment and Primary Industries confirmed receipt of notice of the amendment and advised it has no objections to the proposed amendment.	Noted.
3	Melbourne Water confirmed receipt of notice of the amendment. It advised it has no objection to the amendment and does not wish to appear before any subsequent Independent Panel on this matter.	Noted.
4	<p>MultiNet Gas, who are the gas distribution network operator in this area, advised that two precincts are within the radiation zones of high pressure gas pipeline(s), namely:</p> <ul style="list-style-type: none"> • Dandenong Road, Henry Street and Huntingdale Road (Precinct 13 – 190-192 Atherton Road and 4 Henry Street, Oakleigh) • Bletchley and Paddington Roads and Dandenong and Neerim Roads (Precinct 11 – 1354-1360 Dandenong Road and 620 Neerim Road) <p>AS2886 – Pipeline Gas and Liquid Petroleum – requires that, in the event of a rezoning or landuse to ‘residential, high density, industrial or sensitive development’ a ‘safety assessment is to be undertaken and additional control measures implemented until the risk from the loss of containment involving rupture is as low as reasonably practicable’.</p> <p>There may be the requirement for Multinet Gas to undertake a Safety Management Study, including placing restrictions on future development. Council are requested to acknowledge these requirements and ‘ensure any future developments are socialised with Multinet Gas prior to any commitments’.</p>	<p>Clause 19.03 of the Planning Scheme specifies the need to:</p> <ul style="list-style-type: none"> • Recognise existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided. • Provide for environmental management during construction and on-going operation of pipeline easements. <p>Both precincts are proposed to be rezoned to Mixed Use, which allows residential development without a planning permit. Therefore, the provisions of Clause 19.03 and the relevant Australian Standard both apply.</p> <p>It is important that, prior to making a decision on the rezoning of the sites, a better understanding of what encumbrances these pipelines place on the development opportunities of the sites, as well as implications for different land uses.</p> <p>It appears that some of the key issues can be better identified through a meeting with Multi-Net Gas, affected property owners and other relevant</p>

		<p>groups (as identified with the gas companies), through a workshop. It is then recommended that the matter be identified as one in which Council seeks advice from an Independent Panel regarding how best to address this issue in determining the appropriate zone for the precincts and any measures to minimise safety risks to human life.</p>
<p>5</p>	<p>APA GasNet, a subsidiary of the APA Group, owns, manages and operates the gas distribution pipeline assets within the vicinity of Precincts 11 and 13.</p> <p>APA GasNet advised that it must be notified of any new development within close proximity to high pressure gas transmission systems. Sensitive uses, such as medical centres, place of worship, aged care or educational facilities and high density residential areas should be separated by the required distances. A range of guideline requirements set out in the submission.</p> <p>It is recommended that Monash Council, through its officers or design engineers, have ongoing discussions with APA GasNet to discuss the scope of issues relating to the rezoning and subsequent development adjacent to and / or across APA GasNet infrastructure to ensure it is protected.</p>	<p>Clause 19.03 of the Planning Scheme specifies the need to:</p> <ul style="list-style-type: none"> • Recognise existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided. • Provide for environmental management during construction and on-going operation of pipeline easements. <p>Precincts 11 and 13 are proposed to be rezoned to the Mixed Use Zone, which allows residential development without a planning permit. Therefore, the provisions of Clause 19.03 and the relevant Australian Standard both apply.</p> <p>It is important that, prior to making a decision on the rezoning of the sites, a better understanding of what encumbrances these two pipelines place on the development opportunities of the sites, as well as implications for different land uses.</p> <p>It appears that some of the key issues can be better identified through a meeting with APA GasNet, affected property owners and other relevant groups (as identified with the gas companies), through a workshop. It is then recommended that the matter be identified as one in which Council seeks advice from an Independent Panel regarding how best to address this issue in determining the appropriate zone for the precincts and any measures to minimise safety risks to human life.</p>
<p>6</p>	<p>The Sweett Group, on behalf of the owner of 636 Wellington Road, Mulgrave (OfficeMax site within Precinct 26), opposed the rezoning of the site from Commercial 2 Zone to Industrial 1 Zone for the following</p>	<p>The recent conversion of the Business 3 Zone to the Commercial 2 Zone in 2013 allowed small scale supermarkets and ancillary shops within Precinct 26 to establish without the need for a planning permit for use.</p>

	<p>reasons:</p> <ul style="list-style-type: none"> • The Industrial 1 Zone is not suitable as the site is isolated from other industrial areas and surrounded by residential development, potentially creating land use conflicts between sensitive and industrial uses. • This rezoning is based on limited assessment of economic and market competition issues. <p>The submission requested the site be rezoned Mixed Use Zone instead, for the following reasons:</p> <ul style="list-style-type: none"> • The building is suitable and remains appropriate for a commercial use. • The Mixed Use Zone provides a range of potential development options including commercial, warehousing, office and limited industrial. • It also allows housing development that is consistent with the recently adopted <i>Monash Housing Strategy 2014</i>, and which will complement the surrounding residential development. 	<p>Amendment C122 proposed to rezone this precinct to Industrial 1 such that these uses were prohibited. Having regard to the submissions received against the proposed rezoning it is considered unnecessary to eliminate the discretion to allow the use of Precinct 26 for supermarkets and shops.</p> <p>It is acknowledged that an Industrial 1 Zone may allow industrial uses that are incompatible with the residential uses that surround Precinct 26. The Industrial 1 Zone is identical to the current Commercial 2 Zone in terms of allowing industry and warehouse uses without a permit. However, the Commercial 2 Zone offers greater third party notification and appeal rights for a change of land use where a permit required. On this basis the Commercial 2 Zone is a more appropriate zoning within a residential context.</p> <p>Rezoning Precinct 26 to Mixed Use as suggested in the OfficeMax submission provides the opportunity to redevelop the land for medium to high density housing. This may be an undesirable outcome given the Precinct is not proximate to an activity centre or a train station. Additionally, rezoning the land to Mixed Use as part of C122 would constitute a transformation of the amendment. Such a change would require further strategic analysis and notification as part of a fresh amendment process.</p> <p>Given the proximity of surrounding residential uses and the opposing submissions from the land owners it is considered inappropriate to rezone the site to Industrial 1. The current zoning of Commercial 2 Zone should be retained and the proposed rezoning of this precinct should be abandoned..</p>
7	<p>Nevett Ford lawyers on behalf of the owners of 1 Jacksons Road, Mulgrave (Adidum Group/Body Shop site within Precinct 26) opposed the rezoning of the site from Commercial 2 Zone to Industrial 1 Zone for the following reasons:</p> <ul style="list-style-type: none"> • There is no logic provided to rezone this property to Industrial 	<p>The recent conversion of the Business 3 Zone to the Commercial 2 Zone in 2013 allowed small scale supermarkets and ancillary shops within Precinct 26 without a planning permit. Amendment C122 proposed to rezone this precinct to Industrial 1 such that these uses were prohibited. Having regard to the submissions received against the proposed rezoning it is considered unnecessary to eliminate the discretion to allow the use of</p>

	<p>1. The site is currently used as the administrative headquarters of the Body Shop Business in Australia and is used for warehousing and distribution of Body Shop products. There is also an associated childcare centre on the premises.</p> <ul style="list-style-type: none"> • The basis for the rezoning states ‘this precinct will continue to perform its role as a corporate head office and distribution centre into the near future’ – but under the existing zoning these uses are permit not required therefore there is no need for rezoning. • It’s wrong to state the precinct will continue its role as it is likely The Body Shop will cease occupying the site in the next 18 months. As such, the company will be looking at all possible uses for the site, and recognise there will be extensive opposition if it is to be used for industrial purposes (which it could do as of right under the proposed rezoning). • Until the future of the site is resolved, the site should remain in its current Commercial 2 zone. 	<p>Precinct 26 for supermarkets and shops.</p> <p>It is acknowledged that an Industrial 1 Zone may allow industrial uses that are incompatible with the residential uses that surround Precinct 26. The Industrial 1 Zone is identical to the current Commercial 2 Zone in terms of allowing industry and warehouse uses without a permit. However, the Commercial 2 Zone offers greater third party notification and appeal rights for a change of land use where a permit required. On this basis the Commercial 2 Zone is a more appropriate zoning within a residential context.</p> <p>Given the proximity of surrounding residential uses and the opposing submissions from the land owners it is considered inappropriate to rezone the site to Industrial 1. The current zoning of Commercial 2 Zone should be retained and the proposed rezoning of this precinct should be abandoned.</p>
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