

Planning and Environment Act 1987

Panel Report

Monash Planning Scheme Amendment C159

1 Jacksons Road and 636 Wellington Road, Mulgrave

23 June 2020

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue, you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment under section 27(1) of the *Planning and Environment Act 1987* (the Act).

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of this Panel, but it must give reasons under section 31 (1) of the Act and section 9 of the *Planning and Environment Regulations 2015* if it does not follow the recommendations.

If approved by the Minister for Planning, a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette under section 37 of the Act.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Monash Planning Scheme Amendment C159

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23 June 2020



Dalia Cook, Chair

Contents

	Page
1 Introduction.....	4
1.1 The Amendment.....	4
1.2 Procedural issues.....	6
1.3 Summary of issues raised in submissions	6
1.4 The Panel’s approach	6
2 Proposed rezoning	8
2.1 Key issues.....	8
2.2 Is it appropriate to remove the land from commercial zoning?.....	8
2.3 Is the proposed application of the Mixed Use Zone justified?	12
2.4 Has the proposed Schedule 2 to the Mixed Use Zone been drafted appropriately?	14
3 Proposed overlay controls.....	18
3.1 The issues	18
3.2 The appropriateness of using the Design and Development Overlay compared with the Development Plan Overlay.....	18
3.3 Has draft Design and Development Overlay (Schedule 16) been drafted appropriately?	22
3.4 Proposed Environmental Audit Overlay.....	32
4 Response to submissions.....	34
4.1 Introduction.....	34
4.2 Potential overlooking and overshadowing	34
4.3 Impacts on viewlines and landscape values.....	35
4.4 Traffic and infrastructure impacts.....	37
4.5 Future business viability.....	38
4.6 Mulgrave Farmers Market.....	39
4.7 Potential devaluation	39
4.8 Disturbance from construction	40

Appendix A Panel preferred version of Mixed Use Zone (Schedule 2)

Appendix B Panel preferred version of Design and Development Overlay (Schedule 16)

Appendix C Document list

List of Tables

	Page
Table 1 Key development outcomes for each Sub-Precinct in DDO16 Schedule as exhibited.....	23

List of Figures

	Page
Figure 1 Subject land	4
Figure 2 Sub precincts for the site.....	22
Figure 3 Site topography	27

Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Amendment	Amendment C159 to the Monash Planning Scheme
C2Z	Commercial 2 Zone
Council	Monash City Council
DDO(16)	Design and Development Overlay (Schedule 16)
DELWP	Department of Environment, Land, Water and Planning
EAO	Environmental Audit Overlay
first economic report	<i>Economic Report for rezoning from Commercial 2 Zone to Mixed Use Zone, Deep End Services, 3 December 2018</i>
MSS	Municipal Strategic Statement
MUZ(2)	Mixed Use Zone (Schedule 2)
Planning Scheme	Monash Planning Scheme
PPN23	<i>Planning Practice Note 23 - Applying the Incorporated Plan and Development Plan Overlays, November 2018</i>
second economic report	Economic Expert Statement for Panel hearing prepared by Justin Ganly, Deep End Services, dated 7 April 2020
subject land	1 Jacksons Road and 636 Wellington Road, Mulgrave

Overview

Amendment summary

The Amendment	Monash Planning Scheme Amendment C159
Common name	1 Jacksons Road and 636 Wellington Road, Mulgrave
Brief description	The Amendment proposes to rezone the land from Commercial 2 Zone to Mixed Use Zone (Schedule 2) and to replace Design and Development Overlay (Schedule 1) with Design and Development Overlay (Schedule 16). The Amendment would also apply the Environmental Audit Overlay to the land.
The Proponent¹	Frondeil Properties Pty Ltd and JKD Mulgrave Pty Ltd
Planning Authority	Monash City Council
Authorisation	16 August 2019
Exhibition	14 October to 18 November 2019
Submissions	Number of Submissions: 3 (Susan and Terry Newland, Environment Protection Authority, Clive and Leone Blakeway) Opposed: 2

Panel process

The Panel	Dalia Cook, Member
Directions Hearing	16 March 2020, Ibis Glen Waverley
Panel Hearing	'On the papers' with the consent of parties, with material submitted between 27 March and 27 May 2020.
Site inspections	Unaccompanied, 16 March and 17 June 2020
Representation and witnesses	Mr Andre Schmid, Town Planner for Monash City Council Mr Chris Townshend SC and Mr Barnaby McIlrath instructed by Mr Rory O'Connor of Hall & Wilcox. They called expert evidence from: <ul style="list-style-type: none"> Mr Justin Ganly, Economist, Deep End Services Mr Bernard McNamara, Town Planner, BMDA Development Advisory.
Citation	Monash PSA C159 [2020] PPV
Date of this Report	23 June 2020

¹ Amended with the permission of Monash City Council to reflect a change in ownership of part of the land.

Executive summary

The subject land is a substantial property on the corner of Jacksons Road and Wellington Road, Mulgrave. It has a history of commercial use but some key tenants have ceased business operations on the site and moved elsewhere. The land contains commercial and warehousing buildings of up to two storeys in height with substantial car parking and loading areas. The property has been developed in two parts with separate vehicular access reflecting the steep differential in levels. The property also contains a number of established trees.

The owners of the subject land requested the land be rezoned to reflect its capacity for medium density residential redevelopment as well as for commercial uses of a suitable scale. The Mixed Use Zone was considered most appropriate.

In terms of controls over future built form, Amendment C159 (the Amendment) to the Monash Planning Scheme (Planning Scheme) proposes to replace the more generic Design and Development Overlay (Schedule 1 – Industrial and Commercial Design and Development Area) with a bespoke Design and Development Overlay (Schedule 16) applying to only this property.

The subject land has been identified as having a likelihood of contamination which the parties propose to address through the application of the Environmental Audit Overlay with its associated requirements.

The Amendment was subject to public exhibition and three submissions were received.

The Environment Protection Authority recommended Council undertake further work to satisfy itself that the Environmental Audit Overlay was warranted, consistent with relevant Practice Notes published by the Department of Environment, Land, Water and Planning (DELWP).

Two other submissions were received from nearby residential landowners. They raised issues including concerns about unprecedented built form and consequential impacts on their amenity. They also emphasised potential impacts of a substantial increase in density on the land including traffic congestion, perceived devaluation of their properties and negative effects of construction.

Broader issues addressed by parties in submissions and evidence related to:

- whether removing the land from a commercial zone and rezoning it to the Mixed Use Zone (Schedule 2) is strategically justified
- whether the Design and Development Overlay is a suitable planning scheme tool to achieve consolidated renewal of this site, and whether the provisions of Schedule 16 are acceptable as drafted.

The Panel considers that it is opportune to rezone the land and that the Mixed Use Zone suitably recognises its current setting within a residential neighbourhood, consistent with policy provisions seeking to provide greater housing stock at higher densities. The Panel accepts that the land is not strategically required for larger scale commercial or industrial land use. However, a positive aspect of the Mixed Use Zone is that it would also make provision for a suitable level of commercial land use on the site, recognising historic and existing conditions as well as the land's potential role to service new dwellings and the surrounding local area.

The Panel has considered the merits of progressing the Amendment with a Design and Development Overlay as the principal control over built form as proposed rather than a more structured approach to site planning as would be required through a Development Plan Overlay. This issue arose in evaluation of the Amendment by DELWP at authorisation stage.

The Panel notes the strong preference of Monash City Council (Council) to apply the Design and Development Overlay, especially considering that this overlay would maintain third party rights of review through future permit applications. This approach was accepted by the Proponent although it was not originally its preferred way forward. Its planning expert confirmed that the Design and Development Overlay was a reasonable use of Victoria Planning Provisions 'tools' that would lead to integrated site outcomes.

The Panel accepts there are a number of ways that strategic planning for this site could be achieved. In some respects, the Development Plan Overlay would have been a more targeted way to facilitate holistic redevelopment of this site.

However, recognising the substantial time, investment and public input it has taken for the Amendment to get to this point, the Panel accepts that the Design and Development Overlay could also achieve acceptable outcomes for this site subject to careful management of permit applications by Council. Importantly, this approach is supported by the Panel given the particular conditions of this site and the joint approach taken by the Amendment to apply a tailored schedule to the Mixed Use Zone.

In terms of the content of the draft Design and Development Overlay, the Panel accepts that this site is a suitable candidate in both policy and contextual terms to provide medium density development within buildings of up to four or six storeys. The notion that built form on the site should be limited to existing building heights would represent an underdevelopment of the land in both strategic and contextual terms.

At the same time, it is important for the overlay to recognise and give effect to the need to moderate built form especially in light of the close residential abutments along the southern boundary and the elevated nature of the land. This is also important given the emphasis on viewlines as a valued aspect of neighbourhood character in the Planning Scheme.

The Panel concludes that appropriate objectives for this land have been proposed by the Design and Development Overlay Schedule 16 and that generally suitable parameters have been set for each Sub-precinct, subject to one notable qualification.

The Panel is concerned that unless substantial excavation was to occur on the land at 636 Wellington Road (to similar levels as the adjacent portion of 1 Jacksons Road beneath the embankment), this elevated part of the site can not reasonably sustain buildings up to six storeys without potentially significant impacts on neighbourhood character. This should be identified as a differentiated Sub-Precinct D with maximum building height defined by reference to Australian Height Datum to allow existing levels to be retained or modified.

There is also some scope to improve the drafting of the draft zone and overlay provisions. The Panel makes recommendations in light of the submissions, evidence and its own expertise.

However, the Panel does not accept that it would be appropriate to convert maximum building heights for the central and roadside sub-precincts from mandatory to discretionary as suggested in evidence for the Proponent. This would constitute a significant change to a key element of the exhibited Amendment that would require re-notification. In any event,

the Panel is not inclined to support these changes since it considers the built form controls propose building heights at the upper end of the right balance between maximising an underutilised site to achieve housing and commercial policy aspirations, yet recognising its relative distance from activity centres and the need to respect the established low rise character of the surrounding area.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Monash Planning Scheme Amendment C159 be adopted as exhibited subject to the following:

- 1. Amend Schedule 2 to the Mixed Use Zone in accordance with the Panel preferred version in Appendix A to this report and consider the reinstatement of application requirements to achieve integrated site planning.**
- 2. Amend Schedule 16 to the Design and Development Overlay in accordance with the Panel preferred version in Appendix B to this report subject to:**
 - a) Converting Sub-Precinct D as it applies to land at 1 Jacksons Road, Mulgrave to Sub-Precinct D1 with the same built form requirements as exhibited.**
 - b) Converting Sub-Precinct D as it applies to land at 636 Wellington Road, Mulgrave to Sub-Precinct D2 with a mandatory maximum building height by reference to an appropriate Australian Height Datum to be fixed (suggested up to one storey higher than maximum building heights in Sub-Precinct C).**
 - c) Making consequential changes to mapping and diagrams to reflect the Panel's recommendations including the identification of key Australian Height Datum points for existing site levels and making appropriate reference in the remainder of the provision to establish natural ground level for nominated building heights.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to provide for the redevelopment of the land for a mixed use future following the cessation of key office and warehousing uses.

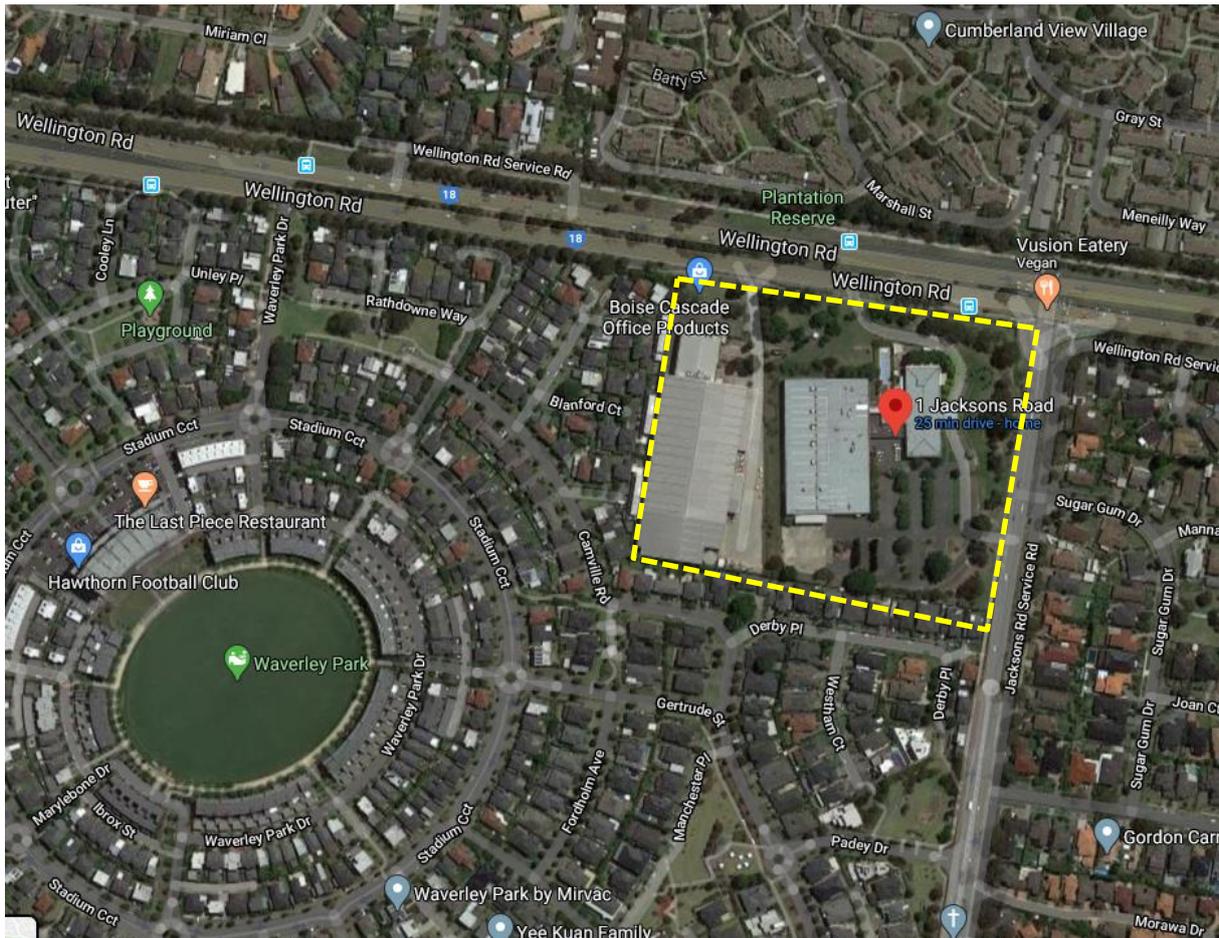
The Amendment proposes to:

- rezone the land from Commercial 2 Zone (C2Z) to Mixed Use Zone (Schedule 2) in Clause 32.04 (MUZ2)
- remove the Design and Development Overlay (Schedule 1) and apply the Design and Development Overlay (Schedule 16) in Clause 43.02 (DDO16) in its place
- apply the Environmental Audit Overlay in Clause 45.03 (EAO) to the whole site.²

(ii) The subject land

The Amendment applies to land shown in Figure 1.

Figure 1 Subject land



Source: Google Maps

² Including consequential changes to the Planning Scheme.

The land is comprised of two parcels. It is located on the south western side of the intersection of Jacksons and Wellington Roads, Mulgrave³ and has an area of 53,440sqm (almost 5.4 hectares). It is surrounded by residential development in all directions including aged care facilities, with the more recently developed Waverley Park Ridge Estate to the west and south within the General Residential Zone (Schedule 3) and subject to a Neighbourhood Character Overlay (Schedule 1).⁴

The land has operated in two parts, with the OfficeMax warehouse and office building to the west and the former Body Shop headquarters to the east (now known as the Adidem site), each with its own main road access.⁵ The site has a significant fall from the south western and western boundaries towards Jacksons Road and the corner of Wellington and Jacksons Road of over 20 metres.⁶ There is also a steep drop forming a topographic barrier between the two property titles such that there is currently no convenient pedestrian or vehicular access between the different parts of the land.

The Panel was advised that a relatively confined portion of the existing buildings on the eastern part of the site (closer to Jacksons Road) is now used as an administrative base for Link Health and Community and a childcare centre.

The nearest activity centre is Waverley Gardens to the south or Wheelers Hill Neighbourhood Activity Centre to the north, with Brandon Park Shopping Centre further north west. The SmartBus route runs along Wellington Road (connecting to Caulfield Railway Station) and there are a number of bus services along Jacksons Road (connecting to Dandenong and Glen Waverley Railway Stations).

(iii) Conditional authorisation

The process of authorisation of the Amendment was relatively involved, with numerous discussions between Council and DELWP officers. A key issue was whether the use of the Design and Development Overlay as proposed was appropriate, rather than the Development Plan Overlay.

DELWP officers indicated that they considered the Development Plan Overlay was the “best overlay tool to use”.⁷ They confirmed that as an element of the Smart Planning program, they seek to ensure consistency with state planning policy and to be satisfied that the proper Victoria Planning Provisions ‘tool’ is being used in the right way.

Council sought to progress the Amendment with a tailored Design and Development Overlay schedule, which was the subject of conditional authorisation to prepare the Amendment by the Minister for Planning on 16 August 2019. Conditions of authorisation included changes to the content of the proposed Design and Development Overlay, including deletion of various decision guidelines. Likewise, authorisation was conditional on deleting all application requirements from the Mixed Use Zone schedule and transferring them to the Design and Development Overlay schedule, as well as deleting certain decision guidelines proposed for

³ Both of which are included in a Road Zone (Category 1).

⁴ This is supplemented by the Waverley Park Concept Plan 2002.

⁵ Part of the Adidem site benefited from a planning permit for the use and development of a new childcare centre on the south eastern corner of that site. It is not known if the commencement date for this permit has been extended.

⁶ Council clarified that the most accurate current contour plan is in Figure 3.

⁷ Letter to Council from DELWP in Appendix E of Part A submission, Document 7.

the Mixed Use Zone schedule. This latter change was omitted by Council as an oversight and is now sought to be resolved through the Panel process.

1.2 Procedural issues

The Hearing was scheduled during Coronavirus Disease Stage 3 restrictions in Victoria. The parties requested a hearing ‘on the papers’ rather than a hearing by video conferencing technology, principally since Council explained that at that point in time it could not ensure access to this technology.

Detailed directions were provided by the Panel with party input to facilitate a fair process, including questions to witnesses from Council and the Panel. This was followed up by addendums to various expert witness reports and further submissions including preferred wording for relevant schedules. Key documents are referenced in the Document List at Appendix C.

1.3 Summary of issues raised in submissions

The Environment Protection Authority made a submission recommending Council undertake further work to satisfy itself that the Environmental Audit Overlay was warranted, consistent with relevant Practice Notes published by the Department of Environment, Land, Water and Planning (DELWP).

Two other submissions were received from nearby residential landowners. They raised a broad range of issues including concerns about unprecedented built form and consequential impacts on their amenity. They also emphasised potential impacts of a substantial increase in density on the land including traffic congestion, perceived devaluation of their properties and negative effects of construction.

1.4 The Panel’s approach

The Panel has carefully considered the matters in section 12 of the *Planning and Environment Act 1987* as they pertain to issues to be considered by planning authorities in preparing a planning scheme amendment. It has also focused on the Strategic Assessment Guidelines (Planning Practice Note 46, August 2018) as referenced in *Ministerial Direction No. 11 Strategic Assessment of Amendments*.

Overall, the Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel has considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in this report.

In addition to evaluating submissions made, an important role of the Panel in this Amendment is to consider whether appropriate zone and overlay controls and schedules are proposed. This is particularly pertinent in light of concerns expressed by officers of DELWP when considering the request for authorisation.

Therefore, the first two chapters of this report begin with consideration of the strategic justification for the Amendment then evaluate the form of the proposed schedules to the zone and overlay provisions.

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by and suitably implements relevant sections of the Planning Policy Framework and is consistent with relevant Ministerial Directions and Practice Notes. The Amendment is strategically justified and uses acceptable Planning Scheme tools to guide the redevelopment of this urban renewal site.

The Amendment should proceed subject to addressing more specific issues raised in submissions as discussed in the following chapters:

- Proposed rezoning
- Proposed overlay controls
- Response to submissions.

2 Proposed rezoning

2.1 Key issues

Key issues relating to the proposed rezoning of the subject land are:

- is it appropriate to remove the land from commercial zoning?
- is the proposed application of the Mixed Use Zone justified?
- has the proposed Schedule 2 to the Mixed Use Zone been drafted appropriately?

2.2 Is it appropriate to remove the land from commercial zoning?

(i) Relevant Planning Scheme policies, strategies and studies

Planning Scheme policies

Council submitted that the Amendment was consistent with state and local planning policy, emphasising the following:

- Clause 11 (Settlement) seeks to ensure an adequate supply of urban land. The Amendment responds to the need to unlock the development potential in underutilised sites to help accommodate housing, health and community uses and provide for economic growth. The Amendment would continue the transition from industrial to office and commercial use recognised in Clause 21.05 (Economic Development), noting that out of centre development is generally discouraged. The Mixed Use Zone would further enable a wider variety of land use.
- Clause 16 (Housing) seeks integrated housing outcomes to support increased densities in appropriate locations. The Amendment would facilitate increased housing supply (particularly medium density housing) in an existing urban area on an underutilised site. This aligns with local planning policies in Clause 21 recognising the shift to an older demographic and smaller housing sizes in the municipality.
- Clause 18 (Transport) – the site interfaces with the Principal Public Transport Network and once developed would provide improved site permeability for pedestrians and cyclists.

Monash Industrial Land Use Strategy

This strategy was adopted by Council in 2014. It provides strategic direction for the future planning and development of industrial land including the rezoning land no longer required for industrial use. In its Part A submission, Council explained that the Strategy addresses competing land use objectives to balance the municipality's role as a regional employment location with the need to facilitate more diverse housing opportunities, urban renewal and economic development.

The land is identified within Precinct 26: Corner Wellington Road and Jacksons Road Mulgrave. When the Strategy was formulated and approved in 2014, the Vision and strategic direction was based on an expectation that the precinct would continue to perform its role as a corporate head office and distribution centre into the foreseeable future. On that basis, it provided *"there is no strategic justification for considering a change in use at this stage"*. Consequently, the Strategy recommended the precinct be rezoned to Industrial 1 which would provide greater flexibility for office uses.

Monash Planning Scheme Amendment C122

This subject land was originally included in Amendment C122 and was proposed for rezoning to Industrial 1 Zone as outlined above. Having considered submissions, Council resolved to abandon the proposed change in zoning. In summary, it adopted the view of its officer who explained:

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.

At that time, the officer commented on the prospect of rezoning the subject land to the Mixed Use Zone as follows:

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.

It is evident that site and contextual circumstances and the emphasis in policies have changed with the passage of time. The current Amendment has picked up on opportunities foreshadowed for further strategic assessment in favour of Mixed Use rezoning.

Monash Housing Strategy 2014

This strategy aims to protect the Garden City character of the municipality while identifying preferred locations for increased housing intensity. The Strategy generally directs higher density development to locations proximate to activity centres, as well as around the Monash National Employment and Innovation Cluster.

The Strategy includes the land within Category C, which is identified as an area with “limited development potential”. However, it also recognises that larger sites may provide opportunities for more intensive development outcomes.

Amendment C125 (implemented in parts) changed the suite of residential zones to reflect the outcomes of the Strategy⁸ and updated Clause 22.01 (Residential Development and Character Policy).

Plan Melbourne 2017-2050

Plan Melbourne seeks to accommodate Melbourne’s substantial future growth in population and employment. It emphasises the 20 minute neighbourhood in Principle 5. Outcome 2 is particularly relevant to this Amendment in that it seeks to provide housing choice in locations close to jobs and services, with the following directions:

⁸ Land within “Accessible Areas” is a focus of further strategic work by Council.

- 2.1 Manage the supply of new housing in the right locations to meet population growth and create a sustainable city.
- 2.2 Deliver more housing closer to jobs and public transport ...
- 2.5 Provide greater choice and diversity of housing.

Melbourne Commercial and Industrial Land Use Plan

The final version of this state-wide plan prepared by DELWP was released on 6 April 2020. The Executive Summary indicates that:

The plan will play an important role in supporting Melbourne’s industrial and commercial areas to thrive and will help to facilitate a more diverse industrial and commercial base, while also providing long-term business and employment opportunities.⁹

In addenda to their evidence, Mr Ganly and McNamara called by the Proponent confirmed that the Plan:

- incorrectly identifies the land as an industrial site but notes that it is isolated from other industrial sites
- identifies the site within a ‘local area’ (being the lowest designation in the hierarchy), although its characteristics do not fit within this category as defined
- does not identify the land in mapping for existing and future commercial land
- identifies that the site is in a region with significant amounts of higher order land available within the Monash National Employment and Innovation Cluster and regionally significant industrial land in Clayton, Rowville and Scoresby.

In Mr McNamara’s opinion, the site does not fit within commercial land use recommendations within this Plan which focus principally on land in neighbourhood and larger activity centres. In his view, this confirms the status of the subject land as an “orphan site”.

(ii) Evidence and submissions

Council conceded that the proposed rezoning to Mixed Use Zone was not supported by its Industrial Land Use Strategy 2014. However, once the former office and warehousing uses ceased on the subject land, it took the view that it was relevant to consider the potential for a change in use.

At a meeting of Council, it specifically resolved to note:

... the proposed change of zone from Commercial 2 Zone to Mixed Use Zone is not currently supported by the Monash Industrial Land Use Strategy 2014, but recognises the changed circumstances of the site and is supported by Plan Melbourne 2017-2050 the Monash Housing Strategy 2014 and the strategic directions of the Monash Planning Scheme.

Council considered that the land is currently underutilised and observed a transition in the municipality away from traditional industrial uses. It noted the conclusions in the Proponent’s economic assessments that it would not be in the future interests of Victoria for the land to remain in a commercial zone.

Council submitted that the application of a residential zone is now appropriate given the surrounding area is primarily zoned General Residential Zone and Neighbourhood Residential Zone (Schedule 4). It also considered that the size of the site allows taller built form and a

⁹ Page v.

wider range of land use without undue impacts on neighbouring properties, which made the application of the Mixed Use Zone most appropriate of the residential suite of zones.

Council considered that rezoning the land in combination with applying the Design and Development Overlay and Environmental Audit Overlay would provide for the fair, orderly, economic and sustainable use and development of the land. More specifically, it submitted it would facilitate redevelopment in a manner more suitably aligned with planning policy objectives.

The Proponent relied on two detailed expert reports to confirm the appropriateness of removing the land from the Commercial 2 Zone. The first was titled *Economic Report for rezoning from Commercial 2 Zone to Mixed Use Zone, 3 December 2018* (first economic report).¹⁰ In that report, the “proposed new vision for the land” was described as:

... the new hub is intended to be predominantly residential with potential complementary uses including health and aged care services, a childcare centre, ongoing community market, and other potential uses including small-scale office and retail space.

The second assessment was an expert report prepared for the Panel by Mr Justin Ganly of Deep End Services on behalf of the Proponent (second economic report).¹¹ Mr Ganly’s evidence also included a review of the first economic report. In addition, the Proponent circulated an addendum to the expert report of Mr Ganly to respond to the final version of the Melbourne Commercial and Industrial Land Use Plan.¹² Mr Ganly also responded in writing to questions put by the Panel and Council.¹³

Mr Ganly accepted the opinions in the first economic report that, in summary:

- the land is of “very low strategic value” in the context of industrial land supply for the City of Monash, validated by land use and economic changes on the site. Instead, the industrial market in the municipality has expanded and consolidated into the industrial node near Monash University, as well as Oakleigh, Clayton and Springvale¹⁴
- the context of the site has changed, rendering the site “an isolated industrial node” in a residential area.

Mr Ganly’s key findings were that:

- The site is an ineffective island site that supports minimal employment (down to 75 jobs in December 2018¹⁵) and has poor competitive prospects compared with other land in the region - noting that the take up of industrial land within the Commercial 2 Zone, Industrial 1 Zone and Special Use Zone (Schedule 6) in the City of Monash continues to be very modest. It is also “virtually impossible” for this site to compete with other industrial estates or business parks in the region and, as such, could be removed from industrial or commercial land supply.
- The Mixed Use Zone would allow for uses that are complementary to higher density housing in a suitable location which includes public transport accessibility.

¹⁰ Prepared by Mr Chris Aberly, Deep End Services.

¹¹ Document 7.

¹² Document 12.

¹³ Document 14.

¹⁴ Although the Panel notes that the first report may have proceeded on the assumption that the land was zoned Industrial 1 Zone.

¹⁵ Equating to 14 jobs per hectare – far less than typical for similar locations which are 100 jobs per hectare or above.

In expert evidence for the Proponent, Mr McNamara similarly expressed the view that the site was an underutilised island site that could not take advantage of proximate opportunities for commercial synergies.

Mr Ganly's evidence proceeded on an assumption that new retail uses would be "modest in scale" to ensure they would not affect the orderly operation of nearby centres such as the Wheelers Hill Neighbourhood Activity Centre and the Waverley Park (undesigned) local centre.

The proposed rezoning to the Mixed Use Zone was not a matter directly opposed by submitters. However, one submission to Council expressed concern that commercial premises (including retail) may face failure. Mr Ganly disagreed with this projection, especially since he supported commercial development on this site that was moderate in scale and directed to providing amenity to on-site residents and workers.

(iii) Discussion

The subject land has a long history of commercial and light industrial use which has been recognised in relevant strategic assessments. However, the site is not sufficiently used, well located or dimensioned for its change in zoning to have any meaningful impact on the overall supply of commercial or industrial use in either the municipality or the relevant catchment.

The Panel agrees with expert evidence presented on behalf of the Proponent that the land is of very low strategic value in the context of commercial or industrial land supply for the City of Monash. Importantly, recent strategic planning work has identified sufficient opportunity for commercial and industrial use in the locality in areas that are better located or more capable of providing relevant synergies for this type of land use.

Moreover, the context of the site has developed substantially into a residential neighbourhood and the site is now clearly an isolated 'island site' in terms of its land use. Commercial and industrial land uses with high intensity (such as 24 hour operations) would have the potential to unreasonably impact the amenity of this setting.

The subject land is also well placed to meet the challenges recognised in policy to provide additional housing to meet demand, whereas all forms of accommodation (including dwellings) are prohibited under the current zoning.

The Mixed Use Zone would preserve the right to seek permission for a wide range of commercial or potentially even industrial land uses subject to certain amenity limitations so this site could continue to generate some level of employment. For example, permission could be sought for existing commercial land use of Office, Warehouse and Childcare centre.

(iv) Conclusion

The Panel concludes:

- There is clear support for the rezoning of the subject land from the commercial suite of zones to a zone that would allow a broader range of land use.

2.3 Is the proposed application of the Mixed Use Zone justified?

(i) Evidence and submissions

The first economic report concluded that:

... there are positive economic and employment benefits in rezoning the site to Mixed Use zone and no material impacts on the effective supply of high quality industrial land in Monash. The change will allow the land to revert to a range of higher and better uses which should deliver a net gain in jobs and economic activity.

Mr Ganly pointed to statistics that indicate that the local population is ageing, with associated demand for significant new forms of accommodation for residents in a smaller format; Asian migration is increasing and housing affordability makes the future supply of new dwellings challenging. In his opinion, the subject land is well located to respond to these challenges through the potential delivery of medium density housing. More specifically, he considered that the site was *“ideally placed to contain another modern, integrated and vertical facility”*.¹⁶

Another factor influencing Mr Ganly’s opinion about the suitability of the site for higher density residential use was his observation that it was *“extremely well served by frequent bus connections”* to higher order train stations.

Council did not accept this description of the site’s accessibility to public transport, emphasising lengthy travel times or indirect routes to these destinations and a likely heavy continued reliance on car dependent transport.

One submission to Council expressed the view that the site was likely to become a ‘white elephant’ if developed for apartments or student accommodation, presumably implying that buildings may remain untenanted and left vacant for extended periods. Mr Ganly took a contrary view, expressing the view that the site is ideally located for new apartments or other forms of accommodation and is well served by public transport. He also considered that the alternative was to perpetuate the retention of what he regarded as dated and largely unoccupied buildings which *“dominate the subject site”*.

(ii) Discussion

The application of a residential zone is appropriate in light of surrounding zoning which is consistently residential as well as recognised demand for new and diverse housing. The Panel considers that the most pertinent way for this suburban site to contribute to a balanced approach to policy objectives is through the provision of housing at increased densities, as well as a range of complementary uses that would generate employment and provide a range of services for residents.

The land has reasonable access to services and facilities such that it could comfortably contribute to an increase in residential population. In the Panel’s opinion, this is effectively its ‘highest and best use’, noting that a key purpose of the Mixed Use Zone is to provide for housing at higher densities. The use of land for dwellings would not require a planning permit (although its development would require such permission). Other types of accommodation such as an aged care facility would be permissible with a permit.

Another apposite purpose is to *“encourage development that responds to the existing or preferred neighbourhood character of the area”*. This is to be distinguished from zones such as the Residential Growth Zone which generally contemplates a new neighbourhood character evolving.

¹⁶ Second economic report, page 15.

The Mixed Use Zone also recognises the capacity for a wide range of land use outcomes. Another purpose is *“to provide for a range of commercial, industrial and other uses which complement the mixed-use function of the locality”*. The table of uses would allow certain land uses such as Food and drink premises, Medical centre, Office or Shop to operate with a confined footprint without a planning permit, or with larger floor areas subject to a permit. Industrial uses and warehouses for certain purposes are permitted with a permit.

Another indicator that the selected zone is appropriate is the inclusion of a requirement that land used for industry, service station or warehouse must not adversely affect the amenity of the neighbourhood and particular application requirements are specified. While this is replicated in some extent in the existing zone provisions, its inclusion is particularly relevant given residential abutments noting that the same level of amenity is not likely to be expected in a purely commercial zone.

There is also the capacity to include a maximum building height through specification in the schedule, which is not a feature of the current Commercial 2 Zone and would allow consideration of buildings of any height. Likewise, a maximum building height has not currently been specified through the current Design and Development Overlay (Schedule 1).

(iii) Conclusions and recommendations

The Panel concludes:

- The application of the Mixed Use Zone to the subject land is justified and it is the zone most capable of facilitating the site’s potential to achieve balanced policy outcomes.

2.4 Has the proposed Schedule 2 to the Mixed Use Zone been drafted appropriately?

(i) Evidence and submissions

Objectives

The exhibited objectives of Schedule 2 proposed to apply to the subject land are:

- To provide a range of medium density housing opportunities incorporating a diverse mix of residential dwelling types.
- To encourage a diversity of land uses, with a focus on health and community services, in easily accessible locations for the broader community.

In evidence, Mr McNamara explained that residential, health and community uses are all permissible within the General Residential Zone which adjoins the site. He suggested the second objective should expressly recognise that some retail and commercial uses are also anticipated by the rezoning by re-wording the objective *“to provide opportunities for health, community, commercial, and retail land uses, in easily accessible locations for the broader community”*.

Council responded in its Part B submission that:

It is considered appropriate to encourage these activities, which are different to the primary objectives set out in the VPP Mixed Use Zone (MUZ). It is considered that the wording proposed by Mr McNamara is essentially providing little further guidance or direction for the site than what is currently included in the VPP MUZ.

Council also explained that it expects that the redevelopment of the site will be predominantly for residential accommodation. It submitted that any retail uses should be small scale, with

major retail uses not supported for this site. It explained that the precise mix of uses would be determined through future planning permit applications which would have regard to the objectives of the schedule. It also sought to clarify the intent behind the wording “in easily accessible locations”. Council therefore proposed a change to the wording of the second objective to read:

To encourage a diversity of land uses, providing opportunities for health and community services and small scale complementary retail and commercial uses, in easily accessible locations on the site.¹⁷

In response to questions by the Panel, Mr McNamara similarly responded that:

My view is that the Site has serious limitations for many uses (such as larger format retail uses) that have large building footprints. The existing, separated industrial buildings sit uncomfortably on this sloping and isolated commercial site. The Site is not recognised in any activity centre hierarchy. These factors will impact on the scale and type of any retail/commercial land use/s which might be attracted to the Site. For these reasons I expect that residential use will be the dominant outcome possibly accompanied by non-residential uses such as, medical, childcare a convenience store or a service use. I would have no objection if the words *limited scale* retail and commercial uses were to be included.

Application requirements

Schedule 2 as originally drafted by Council proposed a number of requirements for integrated plans including a staging plan and indicative land uses and yields for the land.

However, DELWP considered this was beyond the scope of the schedule, referencing the need for proportionality in particular as outlined in the Practitioners Guide to Victorian Planning Schemes. It also considered that other requirements were too onerous for conventional permit applications and requested application requirements be curtailed to only requirements for a landscape plan and arboricultural assessment. It explained that it would be possible for Council to require additional plans if this was justified for the assessment of particular applications.

Decision guidelines

In giving conditional authorisation for the Amendment, DELWP requested Council delete the second and third decision guidelines proposed for MUZ2. Council now supports this position (noting that it was not actioned in the exhibited information due to an oversight).

Mr McNamara supported the deletion of *all* decision guidelines since he considered that the decision guidelines in the Mixed Use Zone and DDO16 would suffice.

(ii) Discussion

The site is generally well located close to employment, education and services and facilities in the sense that it is in an established outer suburb of Melbourne. It is also a substantial site that is currently under-developed. It is therefore appropriate for the schedule to be titled ‘Urban Renewal Precinct’.

That said, it is within a residential enclave and the Panel accepts Council’s submission that even though it is on the Principal Public Transport Network, it is not especially well connected

¹⁷ Reflecting its final preferred version from its closing submission.

compared with other parts of the municipality such as areas adjacent to activity centres.¹⁸ It is likely that residents will need to travel further afield to access a full range of day to day facilities and that there will be higher than average car dependence compared to areas located closer to activity centres or key transport nodes. While there are nearby bus stops available for future residents, bus connectivity to other key activity areas and train stations is often indirect or lengthy.

The site is also located within an area of established low scale residential development, generally consistent with zoning and overlay expectations, especially those seeking limited change. The question is to what extent these factors should influence the reasonable future density of redevelopment of the site.

The Mixed Use Zone parent provision has a purpose to achieve 'higher' dwelling densities. The Panel considers that this site is reasonably well located to meet state and local policy objectives for *medium* (rather than high rise) housing densities as proposed in the first objective of the schedule, which would shape expectations for 'higher' dwelling densities for this site.

The Panel supports an emphasis on this site seeking to particularly encourage health and community services, which would be consistent with policy aspirations for greater local services for residents. It is also reasonable to clarify that these uses should be located on parts of the site that are easily accessed by the public. This preference for health and community services does not foreclose the opportunity for a broader range of uses that may be permitted under the zone rather, it provides a site specific focus in line with Amendment documentation. In reality, the take up of this vision will depend on market demand and developer willingness. One further wording change suggested by the Panel is the addition of small scale *or* complementary retail and commercial uses since it may be acceptable to permit more substantial retail and commercial uses if they were genuinely complementary to the residential offer.

The Panel considers Council's proposed changes to the second objective generally reflect a legitimate intent to limit the scale and function of non-residential uses to those that are either small scale or complementary to the residential offer. This is particularly important given the hierarchy of activity centres in the Planning Scheme and the fact that there is no policy support for out-of-centre development for more intensive non-residential use (despite the historic use of the land).

Overall, the Panel supports the modified wording of the second objective as a more clear statement of the vision, noting that it would not negatively affect people given notice of the Amendment.

With respect, the Panel is not necessarily persuaded that there is no scope to include application requirements tailored to this site such as a staging plan and indicative land uses and yields. The requirement for an applicant would be to provide this as appropriate, governed by the scope of the permit application. The Panel suggests that this element be re-visited with the Department before approval since it would make for a more targeted and effective control to achieve orderly planning for the site.

¹⁸ The Panel notes the routes referred to in paragraph 28 of Mr McNamara's submission but also notes the detailed responses of Council to questions asked of Mr McNamara.

The Panel further agrees with DELWP and Mr McNamara that there is no advantage in providing any decision guidelines within the schedule. It does not consider that a specific decision guideline is required as proposed by Council to ensure contextually appropriate development of an appropriate intensity or a suitable level of housing diversity. By virtue of the 'parent provision' of the Mixed Use Zone (Clause 32.04-14), the responsible authority must consider the objectives of the schedule before deciding on an application.

The proposed Schedule 2 makes clear that it seeks housing diversity within development of medium density. Similarly, Schedule 16 to the Design and Development Overlay will ensure that built form is responsive to site context and is of appropriate intensity as discussed in Chapter 3.

(iii) Conclusions

The Panel concludes:

- Draft Schedule 2 to the Mixed Use Zone is generally acceptable subject to modifications including:
 - refinement of the wording of the second objective
 - deleting all decision guidelines.

(iv) Recommendations

The Panel recommends:

- 1. Amend Schedule 2 to the Mixed Use Zone in accordance with the Panel preferred version in Appendix A to this report Proposed Design and Development Overlay and consider the reinstatement of application requirements to achieve integrated site planning.**

3 Proposed overlay controls

3.1 The issues

Key issues are:

- The appropriateness of the use of the Design and Development Overlay compared with the Development Plan Overlay
- Whether the proposed Schedule 16 to the Design and Development Overlay has been drafted appropriately, including:
 - facilitating integrated site outcomes to the extent possible
 - providing for suitable building heights, setbacks and a new built form character
- whether it is appropriate to include the land in the Environmental Audit Overlay.

3.2 The appropriateness of using the Design and Development Overlay compared with the Development Plan Overlay

(i) Relevant Planning Scheme policies, strategies and studies

Clause 15 (Built Environment) seeks quality built environments. Council submitted the application of the Design and Development Overlay would facilitate this while recognising the site's natural and strategic context.

Clause 22.01 (Residential Development and Character Policy) seeks to encourage positive contributions to neighbourhood character; encourage a variety of housing types and direct residential growth to neighbourhood and activity centres, nominated boulevards and the Monash National Employment Cluster.

Council submitted that the Design and Development Overlay (Schedule 16) seeks to manage competing interests of incremental change and housing diversity with maintaining existing neighbourhood character. Council explained that the provisions of the schedule, especially the design objectives, seek to manage built form impacts recognising the low scale of the surrounding residential area. It emphasised the importance of proposed mandatory building heights in this context.

(ii) Evidence and submissions

In its letter authorising the preparation of the Amendment, DELWP advised that it would be preferable for the Development Plan Overlay to be used instead of the Design and Development Overlay.

Council submitted that the Design and Development Overlay was the most appropriate tool since it would ensure that the design and built form of future development were evaluated through a planning permit process that maintained third party rights. It explained that there had been significant community interest in involvement in further permit processes for this site, which many considered more important than the proposed change in zoning.

In its Part A submission, Council also explained that the Proponent was not in a position to supply the level of detailed information required for a Development Plan Overlay such as potential future densities and a more detailed site plan representing building locations and

heights. This was considered to involve a significant extension of the timeframe for progressing development.

The Proponent submitted that:

Ultimately, the Proponents acknowledge that this is a situation where there is more than one VPP tool that could do the job... Each approach has pros and cons... It is important, for this Amendment, that the tool is supported by the Planning Authority. In the absence of any profound shortcomings, the Planning Authority's preference ought to be afforded considerable weight, particularly when the Proponents have invested in the process in cooperation with that preference and the Amendment has been exhibited on this basis.

Mr McNamara explained his view that either the Development Plan Overlay *or* the Design and Development Overlay could be effective in facilitating the redevelopment of the subject land, as long as appropriate objectives and guidelines were designated.¹⁹ He considered that it was not necessary to develop a "master planned" response for the subject land since the property is not overly large, the two lots will retain separate main road accesses and the residential perimeter could be managed with building height and setback controls.

When asked by the Panel how integrated site planning could be achieved for this site, Mr McNamara responded that permit applications will be subject to the zone and overlay assessment requirements which include requirements to demonstrate the relationship of buildings to topography and to the precinct generally. In addition, in his view:

The practical situation will be that in order to satisfy the Design Objectives under DDO16, any applicant will be required to submit a design which, as a minimum, covers the whole of one title. Any move to subdivide sections or to shortcut this site planning requirement is unlikely to be supported at any level in the development approvals process.

This was clarified in his later responses to mean that due to maximum building height controls, it is likely that a whole site plan would be prepared to deliver efficiencies of development yield, densities, design and built form.

When asked how the site could be expected to provide open space or shared infrastructure in the absence of a Development Plan Overlay, Mr McNamara responded that:

The Design Objectives of DDO16 also require that an application addresses the issues of built form character, site planning, scale, and that it deliver high quality interfaces across private and public realms. I cannot see how an applicant can respond to these matters without, as a minimum, addressing the whole of one parcel. The fact that the land parcels addresses different main road frontages and are at different topographical levels will simplify the responses and make for effective outcomes.

He also referred to the application of the provisions of Clause 56 pertaining to subdivision that may be proposed for the subject land, since it addresses site planning, context, lot design, access and movement, on site amenity and integrated water and management of utilities.

When asked how integrated movement networks and access could be ensured, Mr McNamara responded that the circulation and access requirements under Clause 2.0 (buildings and works) recognise the provision of separate primary frontages for the two land parcels as well as topographical constraints. He nevertheless expressed a preference for an internal access

¹⁹ He confirmed that the Comprehensive Development Zone or Incorporated Plan Overlay would not be appropriate given the lack of flexibility for a site that has not been master planned and could be developed over time by separate owners.

road between the two parcels (albeit steep) and considered there was nothing in the draft control that would prevent this.

(iii) Discussion

There is a legitimate question as to which is the appropriate Victoria Planning Provisions ‘tool’ to use for future site planning and relevant approvals.

Planning Practice Note 23, November 2018 addresses *Applying the Incorporated Plan and Development Plan Overlays* (PPN23). PPN23 provides guidance for selecting the appropriate overlay in the following terms:

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.

Development proposals on this site will have the potential to affect third party interests, although this is not determinative of itself in the Panel’s view.

The Panel accepts DELWP’s preliminary view that there are a number of obvious benefits of using the Development Plan Overlay to guide future permission for this site. In the Panel’s opinion, these benefits include:

- integrated site planning from the outset, including the movement network, access and roadway upgrades, potential building envelopes or height of buildings, the preferred location of categories of land use, areas for open space, landscaping and the like. This is achievable under the current ownership pattern of two collaborative owners
- a guide to development staging across the entire landholding
- capacity to specify conditions of future use including the preparation of integrated plans, such as a traffic management plan and the like (which were sought to be included in the original version of application requirements in the Mixed Use Zone schedule but were deleted as conditions of authorisation).

The Panel recognises that the benefits stated above are not necessarily ‘front and centre’ in the rationale for the Design and Development Overlay which has its principal focus on future built form.

However, the Panel takes a pragmatic view in light of the substantial progress of the Amendment over many years, including negotiation leading to agreement by the Proponent, followed by an extensive public consultation process. Other important considerations indicating the legitimacy of the approach taken include:

- a) a key element of future planning for this site is the establishment of parameters for built form. These are clearly addressed within the draft Design and Development Overlay schedule
- b) preferred land use outcomes are largely defined by an associated bespoke schedule to the Mixed Use Zone
- c) the surrounding context is residential with numerous abuttals. Council has a strong preference to maintain conventional third party notice and review rights for future planning permit applications for this site, which would not be preserved if the Development Plan Overlay was used

- d) the site is not so substantial in size that would automatically necessitate a Development Plan to achieve acceptable site planning overall; for example, all other Development Plan Overlays in the Monash Planning Scheme appear to apply to sites with notably higher development potential or represent unique opportunities (such as former school sites)
- e) the site's topography suggests to the Panel that there is likely to be constrained potential for direct connectivity between the two sites without a fundamental change to existing site topography
- f) there is still a genuine opportunity for Council to consider how integrated site outcomes would be achieved when individual planning permit applications are applied for, including internal movement networks, traffic and access, open space and the like. Albeit, this will require greater focus at the assessment stage than a conventional permit application for a stand alone site. Orderly planning would necessitate consideration of the interaction between proposed land use, development and infrastructure to achieve a degree of integrated site planning. This is reinforced to the extent possible in the provisions of DDO16. For example, a relatively strong emphasis is placed in the text and mapping of the overlay control on the need to provide pedestrian linkages to connect all parts of the precinct, with pedestrian and vehicle permeability between the site frontages and central portion of the site in particular
- g) similarly, referral authorities such as the road authority could provide a trigger point for any access or roadway upgrades that would apply to the site as a whole, with contributions from various stages or elements of development as may be justified.

That said, the Panel is not persuaded by the evidence of Mr McNamara that there is a reasonable likelihood that permit applications will be made on a whole of site (or title) basis. While this should be strongly encouraged, the development of this land may be more incremental. In that instance, Council would need to give careful attention to issues of integrated site planning including the need to create a new movement and infrastructure network, identifying areas of open space, coordinated landscaping and the like. This approach is encouraged by provisions such as Clause 65 of the Planning Scheme.

Likewise, when subdivision is permitted, such applications should be carefully evaluated under the provisions of Clause 56 of the Planning Scheme having regard to integrated site planning objectives.

(iv) Conclusions

The Panel concludes:

- In the particular circumstances of the site and the history of the Amendment, the use of the Design and Development Overlay to guide the renewal of this site is acceptable in principle, especially when used in combination with a tailored schedule to the Mixed Use Zone to guide future use and development.
- Permit applicants and Council will still need to give priority to integrated site considerations when development and land use proposals for this land are formulated and assessed in future to achieve orderly planning consistent with the Act and Planning Scheme.

3.3 Has draft Design and Development Overlay (Schedule 16) been drafted appropriately?

(i) Design objectives

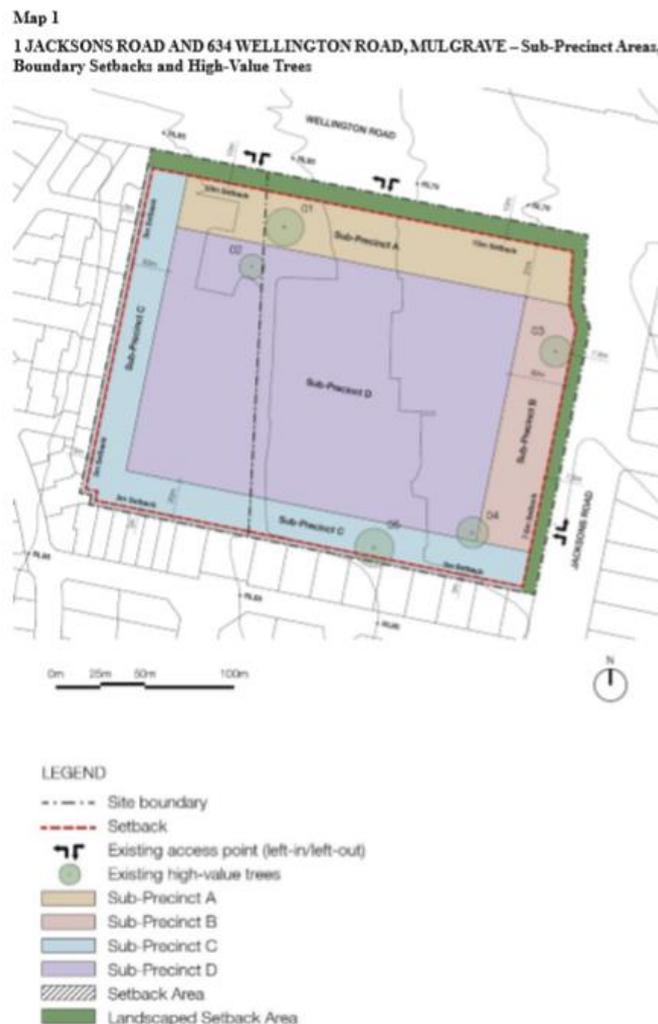
Key design objectives within the schedule include, in summary:

- providing a medium rise built form character with buildings that respond to the variable site topography
- ensuring site planning, built form and scale and design delivers high quality interfaces with the private and public realm and avoids unreasonable off site amenity impacts
- providing building separation to promote views across and through the site
- landscape design that retains high value trees and enhances the new character of the precinct and adequate open space
- a high standard of internal and external amenity.

(ii) Outline of sub-precinct areas, boundary setbacks and high value trees

Map 1 of DDO16 proposes four Sub-Precincts for the site, shown in Figure 2 below. This map also identifies high value trees and nominates boundary setbacks.

Figure 2 Sub precincts for the site



Source: Exhibited DDO16

In summary, the schedule proposes the following:

Table 1 Key development outcomes for each Sub-Precinct in DDO16 Schedule as exhibited

Area	Location	Key development outcomes
Sub-Precinct A	Wellington Road frontage	<ul style="list-style-type: none"> - 4 storey maximum building height (13.5 metres) - Preferred minimum setback of 10 metres from the main road - Prominent built form presence framing higher built forms within the site - Landscaped front setbacks - Views through the site and from adjoining residential properties
Sub-Precinct B	Jacksons Road frontage	<ul style="list-style-type: none"> - As above but preferred minimum 7.6 metre setback from the main road
Sub-Precinct C	Residential interface to west and south	<ul style="list-style-type: none"> - 4 storey maximum building height (13.5 metres) - Lower buildings separated from abutting properties by landscaped setbacks - Preferred minimum 3 metre setbacks with staggered setbacks exceeding (ResCode B17 profile) - Promote views through the site and protect off site amenity
Sub-Precinct D	Centre of site (core)	<ul style="list-style-type: none"> - 6 storey maximum building height (22 metres) - Preferred 12 metre setback at ground level and 18 metres at upper levels (above third storey) including to buildings in other Sub-Precincts - Managing level change between the two parts of the site for acceptable amenity outcomes - Protection of off site amenity - Promoting views through the site

Area	Location	Key development outcomes
		<ul style="list-style-type: none"> - Permeability having regard to level differences - Landscaping between buildings

For all areas, the draft schedule provides that:

Building form should consider the variable site topography and its impact on longer distance views to the Dandenong Ranges.

Building design should moderate visual bulk by managing building height, length and breadth, building spacing, composition, high quality architectural details and materiality.

(iii) Evidence and submissions

Building heights

A significant concern for submitters was the extent to which new buildings would be visible from nearby residential properties. They submitted that allowing buildings to a height of six storeys in Precinct D would be an “eyesore”, especially since there is no other building constructed to this height on this side of Wellington Road, not even in the vicinity of the Waverley Gardens Shopping Centre.

Council acknowledged that the scale of development proposed for this site has the potential to impact adjoining properties.

Some submitters referred to the expectation they had that existing building heights would be maintained on the site for any new development and suggested that the site should be protected as one of the last remaining properties in the area to be redeveloped (referencing the heritage overlay applying to the Waverley Park grandstand). They considered that introducing an overlay with provision for four to six storey buildings would set an undesirable precedent for the area.

Council submitted that it was not reasonable to expect that large low scale development will be maintained on this site into the future, explaining:²⁰

The current Design and Development Overlay Schedule 1 (DDO1) which the Amendment proposes to replace, does not have a maximum height limit, nor does it take into account the topography of the land, and it has less generous setbacks than the proposed DDO16. Therefore under the current planning controls, a new building could be built higher than the present buildings on site or as proposed under this amendment.

Council recognised that the site sits at the top of an escarpment with visibility across long distances to the east, north east and south east. However, it explained its support for the proposed maximum heights, in summary²¹

- the approach to heights takes account of the challenging site topography
- the heights in Precinct C would be generally comparable to those allowed in the adjacent General Residential Zone (3 storeys), allowing for topographic differences. Higher levels would require greater setbacks from the shared boundary

²⁰ In its Part B submission.

²¹ Part B submission, page 14.

- six storeys was considered acceptable for the central area, allowing for future development while limiting impact on adjoining properties which would have a minimum 20 metre separation. The potential maximum heights of adjoining residential areas to the south and west were used to estimate the impacts of building height in Precinct D that would be visible external to the site
- precincts with main road abuttals were limited to four storeys with design objectives to ensure buildings would be visually unobtrusive and would respect surrounding residential character
- building heights are combined with generous minimum separation distances between buildings.

Overall, Council considered that the objectives of DDO16 and MUZ2 “provided significant flexibility for good design in the context of medium rise, moderate building height”.

The Proponent submitted that the combination of height and setbacks for Precinct C along parts of the site with a residential interface would result in an appropriate built form presentation. They emphasised that taller built forms in Precinct D would be separated a minimum 23 metres from residential properties. Mr McNamara considered this would be more in the nature of a 30-35 metre practical separation once roadways and other features were factored in.

Potential to change some mandatory building heights to discretionary

The Proponent sought to depart from the exhibited version of the schedule in one notable respect. Mr McNamara gave evidence that it was more appropriate to nominate a *combination* of preferred (discretionary) maximum building heights and mandatory maximum building heights. He referred to *Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes* and considered there was no need for mandatory controls in the central and roadway sections of this urban renewal site in particular, noting that they do not have direct residential abuttals.

Mr McNamara preferred a more flexible approach to performance-based design, suggesting discretionary heights for part of the site would provide greater opportunity to retain high value trees and open spaces.

Council strongly opposed this part of Mr McNamara’s evidence, submitting that the application of mandatory building heights across the entire site was a key aspect of the preparation of DDO16, especially since the subject land is surrounded by predominantly low density, low rise residential development. Council also considered that the site does not have especially good access to employment and services - with limitations on access by public transport in terms of frequency and lack of direct connections. In this context, it considered that mandatory provisions would provide reasonable certainty to surrounding residential properties. Council also pointed out that the ability to design a quality building or to protect vegetation is not constrained by building height.

Council noted that the Proponent did not make any submissions concerning this element of the Amendment during exhibition. It also took the view that if discretionary heights were to be entertained now, this would require re-exhibition to enable further community input since mandatory heights were the basis of the community response to the Amendment.

Setbacks

Mr McNamara explained that the planning controls for the Waverley Park Ridge Estate did not prescribe minimum setbacks to the subject land which have resulted in buildings close to or up to the common boundary. In his opinion, this justified the minimum three metre setback proposed at ground level for Sub-Precinct C of the subject land together with staggered upper level setbacks.

The Proponent submitted that the proposed setback controls for precinct C greatly exceed the requirements of Clause 55 (because they are in addition to a 3 metre boundary setback rather than the property boundary). When combined with a mandatory maximum building height of 4 storeys or 13.5 metres (whichever is the lesser), this was considered to constitute *“a relatively conservative response given the strategic attributes of the site and its present zoning”*.

Impacts on character

Submitters explained that the Amendment would have the capacity to reduce open space in the local area, especially since there is no identified plan for new areas of open space on the site. They were also concerned about impacts of higher density development on the character of the area.

Mr McNamara explained that the subject land was excluded from surrounding neighbourhood character areas in the Monash Housing Strategy 2014 because of its non residential zoning. He regarded this as a positive element since it would allow the site to establish its own character with higher and denser built form while being respectful of neighbouring areas.

Mr McNamara supported the redevelopment of the subject land with a degree of freedom, tempered by:

- ensuring that residential interface areas are sensitively managed, and
- working with the topography, and
- maintaining where practical, the majority of the high value trees.

Reference to existing ground level in determining maximum building heights

A condition of authorisation for the Amendment was the need to change the headings to Tables 1a, 1b and 1c by deleting the words ‘above existing ground level at 1 January 2019’ when referencing maximum building heights. DELWP explained that this was to avoid uncertainty in the application of the provisions, particularly since these ground levels were not specified in the control. However, it suggested in further correspondence to Council that it may be reasonable to include levels by reference to Australian Height Datum as part of the control.

On reflection, Council advised that it still sees merit in including these words to clarify natural ground levels given the significant differential in topography across the site and its heavily modified state. It referenced the definition of ground level in Clause 73.01 of the Planning Scheme as ‘the natural level of a site at any point’, which it considered unhelpful. It explained that defining existing ground level is *“critical in determining appropriate heights for future development and determining the potential impact on the adjoining residential properties”*.

The Panel considers that the proposed maximum building heights for each Sub-Precinct are generally appropriate (with one key exception addressed below) since:

- As it stands, the Commercial 2 Zone that applies to the site does not prescribe a maximum building height. Buildings to any height could be considered in the absence of proposed guidelines seeking more targeted built form outcomes for each area of the property (as proposed through this Amendment).
- For Sub-Precincts A and B – the site is on the corner of two substantial main roads. Although existing buildings along the two main road corridors tend to be of modest height, these corridors are not particularly sensitive in built form terms (beyond the impact on broader viewlines to the Dandenong Ranges). Residential properties on opposite sides of the road are well removed and often shielded by falling topography. The control proposes a preferred minimum landscaped setback of 10 metres to Wellington Road and 7.6 metres to Jacksons Road with provisions seeking building separation to allow views in and through the site.²² Allowing taller buildings would also be consistent with optimising opportunities for mixed use which are more likely to be pursued in areas with main road exposure. In this context, four storey buildings can be sustained along the main roads provided they are well designed and setbacks including landscaping are consistent with the Garden City character. There is also capacity to require a greater front setback within the context of a planning permit application depending on the siting and design of buildings.
- For Sub-Precinct C – maximum allowable heights for adjacent residential land would allow buildings to three storeys. The fall of the land is a very relevant consideration as well as the relative lack of sensitivity along the western elevation given extremely high walls built to the boundary. For example, the existing building at the front of 636 Wellington Road has an equivalent 3 storey scale but sits well below this infrastructure. The cross sections provided demonstrate that due to site levels being lower than adjacent land, a building of four storeys (or with the alternative more restrictive condition) will achieve a generally comparable perceived maximum height when viewed from those residential properties. This will also be moderated by a requirement for a minimum three metre setback with building modulation stepping away from the common boundary, reflecting ResCode requirements. Although this represents development of greater overall scale than surrounding dwellings, it can reasonably be absorbed in this physical setting subject to following the overarching design principles in the proposed schedule (including directions to moderate visual bulk).
- For Sub-Precinct D – this core area of the site is well separated from sensitive residential interfaces by at least 20 metres in all directions, with an additional three metre setback generated by future buildings within Sub-Precinct C. The centre of the site contains the greatest opportunity to achieve the policy vision for this substantial infill site to increase residential densities and create a more sustainable community while containing the lowest opportunity for direct visual impact. Notably, the topography also works in favour of allowing taller built form in this part of the site, since buildings of 6 storeys will (for the most part) be located in benched or downward sloping areas of the site.

²² This is less than the existing 20 metre discretionary minimum setbacks but would be consistent with planning policy making more efficient use of underutilised sites.

- The building heights are identified as mandatory *maximums* – that does not necessarily mean that it will be appropriate to issue a planning permit for all buildings within each Sub-Precinct at this maximum height. Issues of design, interfaces, site context and amenity will be critical inputs to the acceptability of proposed heights.

However, the exception to the above support for the Sub-Precinct controls as exhibited is the opportunity that would be provided for the eastern part of the land at 636 Wellington Road to sustain buildings of six storeys notwithstanding its far higher elevation than areas within Precinct D on 1 Jacksons Road. The Panel is concerned that unless substantial excavation were to occur on the land at 636 Wellington Road (to similar levels as the adjacent portion of 1 Jacksons Road beneath the embankment), this elevated part of the site can not reasonably sustain buildings up to six storeys without potentially significant impacts on neighbourhood character.²³ A key element of character in the surrounding area is the stepping of buildings down the natural slope.

The Panel recommends that Sub-Precinct D be further differentiated in two; such as Sub-Precinct D1 and D2. D1 should be applied to core of the site for land at 1 Jacksons Road as exhibited. A differentiated Sub-Precinct D2 should be applied to the part of 636 Wellington Road that is currently identified within Sub-Precinct D, most likely with a preferred building height of four to five storeys (one level above the adjacent Sub-Precinct C) unless natural ground level is reduced through development.

However, if substantial changes were made to the current site levels at that point, higher built form could be considered on a proportional basis to a maximum mandatory 6 storeys (such as if this part of the land was excavated to the equivalent of two storeys). This would probably be more simply explained by providing a maximum AHD for building height in this Sub-Precinct potentially up to one storey above that permissible within current Sub-Precinct C. Ideally these levels would be confirmed through volumetric modelling overlaid on existing site levels to be provided by the Proponent.

The Panel also recommends a number of other refinements to allowable built form as follows:

- deletion of the reference to 13.5 metres as maximum building height for Precincts A and B, with the sole reference to 4 storeys. This will allow flexibility for varying floor to floor heights to facilitate genuinely mixed use development, since commercial and residential floor to floor often differ from one another. This type of development is most likely in these sub precincts having regard to the encouragement for such uses to be accessible.
- there is scope for buildings of the height proposed along the main road corridors without seeking them to be “visually unobtrusive” as a design outcome. Instead, the development outcome should focus on seeking high quality design, articulated buildings and a preference for more recessive upper levels. This would suitably moderate the visual impact of taller buildings close to the two main roads, recognising that the property is an elevated corner site. This outcome was supported in evidence by Mr McNamara.

²³ This was reinforced by the indicative cross sections provided by the Proponent during the course of the hearing.

Mandatory versus discretionary controls

The Panel is conscious that its principal role is to evaluate the appropriateness of the Amendment in light of submissions referred to it. The Proponent's planning expert, Mr McNamara, appears to have revisited whether certain mandatory building heights are appropriate as exhibited, although this was not reflected in submissions to the Amendment.

The Amendment involved extensive public consultation, especially noting the number of adjacent residential interfaces. As a result, the public has the expectation that building heights would be mandatory for this site as exhibited. In these circumstances (and since Council maintains its support for mandatory height provisions even after having regard to the evidence), the Panel is not in a position to make recommendations otherwise. It would not be appropriate to do so without giving fulsome public notice of this change to the provisions of the overlay control, especially since it would impact on the key issue of building heights.

Irrespective of submissions, all elements of the Amendment must have a threshold level of acceptability to warrant authorisation in the form proposed. For completeness, the Panel has considered the criteria in *Planning Practice Note 59* as outlined in divergent evidence and submissions for the Proponent and evidence for Council. It emphasises the following in particular:

- there is some merit in providing certainty through mandatory building heights for this site given the sensitivity of its abutments, the extent of change allowed for this site compared with surrounding land and the potential impacts on viewlines recognised by the Planning Scheme
- the objectives of the schedule to promote medium density and medium rise built form scale is strongly supported by the Panel (and would represent a significant departure from existing conditions on this site and the broader area)
- this site is not especially well connected to services and facilities and is less well placed to support 20 minute neighbourhoods than most sites identified in the Residential Growth Zone (given its purpose), yet it is earmarked for potentially taller built form. This can be accommodated in some locations due to site topography and the positioning of the site at the interface of two main roads but the Proponent has not made out a case that higher built form is inherently capable of respecting neighbourhood character. This justifies caution in building heights which should balance the need to accommodate increased residential densities while respecting existing neighbourhood character, as is a key objective of the zone and local planning policy
- in the Panel's view, the majority of proposals not in accordance with the mandatory provision are likely to be unacceptable since the site has challenging topography and is elevated from many key viewlines. Also, there is minimal prospect of any nearby land achieving or exceeding the building heights proposed
- the Panel does not accept that there is necessarily greater scope to retain valued trees or open spaces on this site using discretionary, as opposed to mandatory, controls or that creative outcomes will otherwise be discouraged. High value trees are identified on Map 1 and are encouraged to be retained through the design objectives (reinforced through the application requirements) irrespective of building height

- the Panel does not accept Mr McNamara's suggestion that mandatory heights are likely to result in buildings of uniform height across the site, noting objectives of the overlay. The strong influence of variations in topography also makes this unlikely in practice.

Reference to site levels

The Panel accepts Council's position that the acceptability of maximum building heights is directly tied to existing topography. In these circumstances, rather than referencing unspecified levels at a particular point in time (as proposed by Council), the Panel prefers the approach suggested by DELWP to include relevant site levels as Australian Height Datum points in Map 1 and to align the wording of the tables accordingly. The Panel does not consider this change needs further notification since it merely documents existing site conditions.

(v) Conclusions and recommendation

The Panel concludes:

- Schedule 16 to the Design and Development Overlay is generally acceptable as exhibited, subject to changes including:
 - tempering built form expectations for the part of 636 Wellington Road within Precinct D (core) unless further excavation occurs for the setting of buildings. This could be achieved by providing a maximum Australian Height Datum for future development up to one storey higher than adjacent Sub-Precinct C
 - providing greater flexibility for buildings of mixed use character along the two main roads by providing for buildings of a maximum number of storeys rather than metres and providing more appropriate building design expectations for these interfaces
 - inclusion of existing site levels within Map 1 and an indication that building heights in the tables are preferable to these, rather than referencing a particular point in time.
- The Panel does not support modifications to the control to provide discretionary building heights for parts of the site as recommended in expert evidence for the Proponent.

The Panel recommends:

- 2. Amend Schedule 16 to the Design and Development Overlay in accordance with the Panel preferred version in Appendix B to this report subject to:**
 - a) Converting Sub-Precinct D as it applies to land at 1 Jacksons Road, Mulgrave to Sub-Precinct D1 with the same built form requirements as exhibited.**
 - b) Converting Sub-Precinct D as it applies to land at 636 Wellington Road, Mulgrave to Sub-Precinct D2 with a mandatory maximum building height by reference to an appropriate Australian Height Datum to be fixed (suggested up to one storey higher than maximum building heights in Sub-Precinct C).**
 - c) Making consequential changes to mapping and diagrams to reflect the Panel's recommendations including the identification of key Australian Height Datum points for existing site levels and making appropriate reference in the remainder of the provision to establish natural ground level for nominated building heights.**

3.4 Proposed Environmental Audit Overlay

(i) Relevant legislative provisions, Planning Scheme policies and strategies

Section 12 of the Act requires a planning authority to:

... take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment.

Clause 13 of the State Planning Policy Framework seeks to ensure potentially contaminated land is suitable for its intended future use.

Council submitted the Amendment responds to these provisions by applying the Environmental Audit Overlay.

Ministerial Direction No. 1 – Potentially Contaminated Land requires a planning authority preparing a planning scheme amendment to satisfy itself that the environmental conditions of land proposed to be used for a sensitive use or public open space are, or will be, suitable for that use. A sensitive use includes dwellings or a child care centre which would be permissible under the Mixed Use Zone.

Ministerial Direction No. 1 provides for the requirement for an environmental audit to be included in an amendment where required. This can be done by applying the Environmental Audit Overlay. This mechanism would in effect defer the requirements for an environmental audit until the site is to be developed for a sensitive use.

A key purpose of the Environmental Audit Overlay is:

To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.

(ii) Evidence and submissions

Council as the planning authority supported the inclusion of the land in the Environmental Audit Overlay in light of its past use.

The Environment Protection Authority made a submission to the Amendment. In summary, it urged Council to satisfy itself that the site is potentially contaminated before adopting the Amendment since it proposes to apply the Environmental Audit Overlay to the entirety of the land.

The Proponent submitted that it was appropriate to include the land within the Environmental Audit Overlay and would accept the associated requirements of Clause 45.03 of the Planning Scheme to obtain a statement or certificate of environmental audit before redevelopment started. The Proponent relied on the Stage 1 report prepared by Compass Environmental on 30 March 2020 in support of the appropriate use of this overlay.

A key element of the Compass Environmental report was to determine the level of assessment required to support the proposed rezoning in accordance with *DSE General Practice Note; Potentially Contaminated Land, June 2005*. Other objectives included a review of background information and an assessment of the site's contamination status to identify relevant risks.

The report included an inspection of the site but does not appear to have included sampling in this stage of assessment.²⁴

The report concluded that the main identified potential sources of contamination include the possible presence of fill (including building demolition rubble) and the past agricultural use of the site. It classified these potential sources as 'medium risk' in accordance with the *DSE General Practice Note*.

Several areas of the site were found to contain potential sources of contamination classified as 'high risk', including the underground and above ground fuel storage infrastructure and substation area. Other potential areas of 'high risk' may be associated with the former Motorola Australia facility at 1 Jacksons Road.

The report recommended an intrusive assessment be undertaken if the land is rezoned to allow a change in use.

(iii) Discussion

The Panel accepts the position of the Environment Protection Authority that there is in effect a threshold for the application of the Environmental Audit Overlay which is dependent on a suitable level of examination and a broad assessment of risk. This is consistent with the purpose of the overlay that encompasses contamination which may have a significant adverse effect on land use.

The Panel finds that the outcomes of the Phase 1 report prepared by Compass Environmental on behalf of the Proponent are sufficient to justify the application of the Environmental Audit Overlay to the land. It has been prepared in accordance with the relevant Practice Note and has had regard to relevant risk factors. The report has identified plausible potential medium and high risks of site contamination that would justify the owner needing to obtain a certificate or statement of environmental audit before commencing a sensitive use.

Therefore, the Panel is satisfied that the application of the Environmental Audit Overlay is appropriate since the land is potentially contaminated and is unlikely to be suitable for sensitive uses without more detailed assessment and remediation works or management.

(iv) Conclusion

The Panel concludes:

- There is sufficient justification to include the entirety of the land within the Environmental Audit Overlay. This will ensure that potential contamination is identified and addressed before any change to a sensitive use occurs.

²⁴ The report refers to soil testing undertaken earlier in the south east area of the site which identified EPA Fill Material.

4 Response to submissions

4.1 Introduction

This chapter addresses the remaining issues raised in submissions where they have not been responded to under individual chapters above.

Both sets of submissions are from private individuals who reside in the Waverley Park Ridge Estate adjacent to the site. They emphasised the potential impacts on their quality of life if medium density housing and commercial use were proposed on the site, especially in areas where buildings could be seen from nearby residential properties. One submitter was also concerned about a lack of commitment for the Mulgrave Farmers Market (which had been operating on the land on Sundays) to continue. They regarded this as a significant community initiative.

Key issues include:

- has the Amendment dealt appropriately with potential overlooking and overshadowing of neighbouring properties?
- how has the Amendment dealt with potential impacts on existing viewlines and landscape values?
- has the Amendment made suitable provision for potential traffic and access arrangements?
- is potential devaluation of nearby properties a relevant consideration?
- how should disturbance from construction be controlled?

4.2 Potential overlooking and overshadowing

(i) Evidence and submissions

Clive and Leone Blakeway expressed concern about the potential for future buildings in nominated Precinct C to permit buildings up to 4 storeys high with a minimum 3 metre setback from the shared residential boundary to dwellings in Derby Place. They were concerned this would result in overshadowing to their properties and may result in a lack of privacy to alfresco or other outdoor areas.

(ii) Discussion

The orientation of the land is such that there is capacity for overshadowing and unreasonable visual bulk to residential properties, especially those to the south. Many of these appear to have their public open space areas orientated to the north with conventional boundary fencing.

Although it is not clear from the Design and Development Overlay schedule proposed, the relevant and applicable test for acceptable overshadowing from new residential development is set out in the ResCode requirements of the Planning Scheme at Clause 55. Buildings to be assessed under ResCode will need to be designed so they do not unreasonably overshadow private open space areas or north facing windows. Alternatively, depending on the height of the buildings to be constructed, some of these issues may be governed by the Better Apartment Design Standards in Clause 58 (five storeys and above) which provides a guide to a number of elements of building design.

This will need to be demonstrated at the stage a planning permit is applied for residential development.

Similarly, overlooking is controlled by the provisions of ResCode in respect of residential development; noting that it seeks to prevent *unreasonable* overlooking. This is generally referable to a 9 metre ‘arc’ which is likely to necessitate some screening of windows or balconies of new residential apartments facing residential properties within a 9 metre separation distance from habitable room windows or private open space. Differences in site levels between the properties will also influence what is acceptable.

However, the provisions governing overlooking and overshadowing from non-residential development are less apparent. There may be an opportunity for Council to consider this issue as part of the need to protect the reasonable amenity of adjacent residential properties when a planning permit is applied for all types of development.

(iii) Conclusions

The Panel concludes:

- In all likelihood, reasonable protection from overlooking and overshadowing will be evaluated at the stage a planning permit is sought for residential development in line with Planning Scheme provisions.
- For non-residential development, Council could consider appropriate conditions to protect sensitive interfaces when granting a planning permit.

4.3 Impacts on viewlines and landscape values

(i) Relevant policies, strategies and studies

Relevantly, Clause 21.04 seeks increased densities to be strategically located and supports retention and enhancement of the Garden City Character. It identifies the subject land on the boundary of the Dandenong Valley Escarpment Character Area and the Garden City Suburbs Northern Character Area. This is further given effect to in Clause 22.01 of the Planning Scheme (Residential Development and Character Policy).

The Concept Plan for Waverley Park Estate (2002) provides:

Views are an important historic element of the site and they contribute to a sense of legibility and place. Heritage Victoria has nominated a range of views and vistas and the subdivision masterplan will weave these into the visual framework and legibility of the site. These views will include the focus upon the grandstand from the main entrance at Wellington Road and through the site from Jacksons Road. [Panel emphasis.]

(ii) Evidence and submissions

Submitters were concerned that buildings of up to four storeys in Precinct C would have the potential to “destroy” existing views from their residential properties. They also explained the potential impacts of tree removal on the southern side of the property on birds and other fauna.

Council responded that the site is a long standing, modified industrial site that provides minimal habitat for local wildlife. Notwithstanding, the provisions of DDO16 would seek to retain high value trees to minimise impacts on local wildlife.

(iii) Discussion

Viewlines

There is no legal right to maintain a particular private view, however valued it may be. Therefore, when the Planning Scheme seeks to protect views as part of neighbourhood character and amenity, it should not be understood as preserving the outlook from each individual property.

However, in this instance, the Planning Scheme emphasises viewlines to the Dandenong Ranges as a valued part of neighbourhood character. In the Panel's view, there is a balance to be struck between allowing optimised redevelopment of the land and the protection of key viewlines and outlooks.

The Panel considers that a reasonable approach has been taken in DDO16 as exhibited. It expressly seeks meaningful gaps between building forms and calls for consideration of the impacts on existing views from nearby properties.

No doubt the redevelopment of the site will involve taller buildings closer to shared property boundaries. Planning Panels and the Victorian Civil and Administrative Tribunal have often observed that the fact that new buildings can be seen does not necessarily equate to unacceptable visual bulk. The full suite of building placement, modulation, design, materials and building separation will need to be considered through a permit application to provide an acceptable outcome in this setting.

It is also relevant that residential properties are generally at a higher elevation than the subject land and, to this extent, there is likely to be some maintained capacity for views over or between buildings as long as suitable breaks are provided between buildings and maximum building heights are reasonably contained.

Landscape values

The Panel is satisfied that the provisions of the draft Design and Development Overlay schedule suitably emphasise the need to retain valued trees as part of any redevelopment. This is important in a character sense. Likewise, it is important for landscaped setbacks to be provided to main roads and other interfaces as provided in the draft schedule.

Beyond this, the Panel considers that it is inevitable that redevelopment of the site will result in higher site coverage than existing. The site is currently spacious and landscaped (mainly with grass and shrubs) with a relatively low proportion of buildings. That said, it also currently has a high proportion of hard stand areas designated for loading and parking. This presentation will be improved by integrated access and parking solutions within contemporary development, as well as the need for landscape plans for the site.

Beyond established trees, the site does not have any known ecological values that require protection. The more pertinent issue is to ensure that an appropriate Garden City character is created commensurate with expectations in the Planning Scheme. This would still be preserved by the application of local policy in Clause 22.01 of the Planning Scheme which applies to all residential zones.

(iv) Conclusions

The Panel concludes:

- The provisions of the Design and Development Overlay Schedule 16 in combination with other policies in the planning scheme have the capacity to ensure appropriate landscape outcomes and the protection of key viewlines.

4.4 Traffic and infrastructure impacts**(i) Evidence and submissions**

Submitters considered that the redevelopment of the site would place greater strain on localised infrastructure, especially roads and public transport (buses) without an ability to mitigate this stress.

Some residents expressed particular concern about the potential for more intensive development on the land to exacerbate vehicle queuing along Jacksons Road at peak hour. Submitters were of the view that this would potentially be compounded by introducing a new signalised intersection. Instead, they recommended consideration be given to widening Jacksons Road to alleviate congestion in light of its function as a major truck route as well as a bus route.

Council and the Proponent relied on the Transport Impact Assessment Report prepared by GTA Consultants dated 13 December 2018. That report considered potential traffic impacts of the proposed change in zoning. It concluded that the two northern site access intersections to Wellington Road would continue to operate satisfactorily if the site was comprehensively redeveloped, with limited impacts on the signalised intersection. However, it identified a potential future need to upgrade the existing access to Jacksons Road to include signalisation to operate at a 'good' level of service.

(ii) Discussion

The site is on the Principal Public Transport Network. Although the site is served by public transport, with relatively direct bus access, the site is not highly proximate to an activity centre offering a full range of services and facilities. Ongoing decisions need to be made by relevant authorities as to the level of demand and associated level of service that can be provided. There is still likely to be a relatively high level of car dependence in this part of Mulgrave.

No doubt the development of this land will result in a notable increase in local traffic, although this will be distributed into two main roads through a series of access and egress points. These roads are controlled by VicRoads and permission will most likely be required under the planning scheme to alter access to them.²⁵ This would be a trigger to assess the effects of traffic from the development on the road network and could facilitate a requirement for upgrades if and when required.

To the Panel's knowledge, there has been no determination about the prospect of additional signalisation as a result of this development. This cannot be conclusively determined at the current stage in advance of knowing what development is proposed and what additional demands it will place on the road network.

²⁵ Being roads in a Road Zone (Category 1).

Options to enhance the operation of the access points and intersection for development of this scale would normally be considered through a permit requirement for a Traffic Impact Assessment or similar. Following that, design options would be evaluated and the developer's contribution to any roadworks calculated (potentially a full contribution).

At this stage, it is appropriate for the new planning controls to set objectives to create improved pedestrian, cyclist and vehicle access networks through the site. This is a matter of integrated site planning that should be considered from the outset. This has been suitably addressed in the Design and Development Overlay although the Panel recognises likely practical constraints at the interface between the two property boundaries in particular arising from site topography.

The land is within an urban area serviced by existing infrastructure. It is clearly a candidate for more intensive infill development. Relevant servicing authorities will be consulted at relevant points of development approval (especially subdivision) and requirements will be imposed on the development commensurate with anticipated demand. In the Panel's experience, this is likely to include requirements for drainage works to limit off site discharge to pre-development levels.

(iii) Conclusions

The Panel concludes:

- The site is well located in an established area with access to services.
- Traffic and infrastructure requirements including upgrades will need to be evaluated as part of planning permit applications. Relevant conditions will be imposed to ensure suitable safety and functionality for all users.
- At this stage, it is appropriate for the Design and Development Overlay to emphasise the need to create a more useable and accessible internal road and pedestrian network through the site. However, the ability to which these can be maximised is likely to be influenced by topographic conditions.

4.5 Future business viability

(i) Evidence and submissions

Susan and Terry Newland were concerned about the long term viability of businesses seeking to establish on the site, especially in light of local vacancies and reduced demand for warehouses.

(ii) Discussion

The issue of future business viability is broadly relevant to the designation of zoning. The strategic opportunities to be provided by the site have been considered in expert reports on behalf of the Proponent. Both Mr Ganly and Mr McNamara have expressed the view that the site is suitable for smaller scale retail and commercial uses, especially those that serve a local function and complement the housing to be established. This is supported by Council.

The schedule to the Mixed Use Zone does not specify minimum floor areas for employment generating uses. The Mixed Use Zone provides a broad range of opportunities for different types of commercial or office use, as well as enabling a high proportion of residential land use if appropriate. There is also scope to design floorspace that is capable of being adapted to varying uses over time.

In these circumstances, there are opportunities for the development to meet emerging market and community demands. It is far from an obvious conclusion that commercial tenancies will not be taken up, especially given the likely lead time for the comprehensive redevelopment of the site and the opportunities provided by the Mixed Use Zone.

(iii) Conclusions

The Panel concludes:

- The capacity for new businesses to establish on the subject land has been addressed suitably at a strategic level in the expert reports provided on behalf of the Proponent. These experts and Council have agreed to wording in the objective to the Mixed Use Zone to reflect commercial or retail tenancies of a limited scale.
- The Mixed Use Zone provides flexibility to respond to predicted demand for employment generating land use on this site.

4.6 Mulgrave Farmers Market

The Panel was advised that up until concerns about the spread of Coronavirus Disease, the Mulgrave Farmers Market had operated on the front portion of the site each Sunday. This was regarded as a benefit to the community, offering produce and opportunities to connect.

Local residents were concerned that the future of the market had not been confirmed as part of the Amendment.

The Panel recognises that this use of the land delivered community benefits. It is not aware of potential plans to retain the market if the land was redeveloped or any specific commitment that may have been made in this regard, although it notes the vision for the site in Mr Ganly's expert report as including an ongoing community market (reflected in an objective of the schedule to the zone encouraging community services).

However, there is nothing to prevent this use (in the same or a different format) from continuing on the site if rezoned if the owners and community were willing.

4.7 Potential devaluation

(i) Submissions

Resident submitters expressed concern about impacts on property values within the Waverley Park Ridge Estate if a four or six storey building was constructed near their back yards. They emphasised that maximum permissible heights in their residential estate are 3 storeys.

Council responded that *"property values are influenced by many factors not just changes to planning provisions. They are not a basis on which to object to a neighbouring development"*.

(ii) Discussion

The Act includes objectives in section 4 to provide for the *"fair, orderly, economic and sustainable use, and development of land"*. It also seeks *"to balance the present and future interests of all Victorians"*. Likewise, in considering whether to approve an Amendment, a planning authority needs to consider economic effects the Amendment may have.²⁶

²⁶ Section 12(2)(c) of the Act.

That said, there are a number of Panel reports that have elaborated on what economic effects are relevant when considering an Amendment. In the main, these have been confined to economic benefits that affect sectors of the population (such as types of economic benefit that would lead to a net community benefit) rather than private individuals.

Submitters who were concerned about devaluation of their properties did not rely on any evidence to demonstrate their allegation. In the Panel's experience, when an underutilised commercial site is redeveloped comprehensively including new residential development, there is high potential for this to become a more desirable destination. This could conceivably have a positive effect on adjacent land values. Likewise, there may be other benefits to local residents if the mixed use functions on the site provided services such as a medical centre or childcare that make the overall location more sought after.

One other factor to consider is that one role of the Design and Development Overlay is to set the framework for a quality redevelopment that meets emerging housing and commercial needs. This is intended to ensure that the ultimate design is functional and responds suitably to its context.

(iii) Conclusions

The Panel concludes:

- Concerns about devaluation of private residential properties should be given little weight in assessing the appropriateness of the Amendment.

4.8 Disturbance from construction

(i) Evidence and submissions

Submitters expressed concern that the redevelopment of the site would be likely to cause noise and disruption for nearby residents. They emphasised that there need to be targeted controls in place to ensure that impacts on lifestyle are minimised especially in terms of noise, dust, dirt and waste.

Council considered that these matters would be controlled through permit conditions and relevant Local Laws rather than within zone or overlay controls. Typically, these would address hours of construction, arrangements for vehicle access and traffic management, noise, dust and the like.

(ii) Discussion

The Panel understands submitters' concerns about the potential impacts of the redevelopment of this large site with multiple residential interfaces. This is also important if the redevelopment is staged over an extended period of time. The Panel accepts that the development of a substantial site in close proximity to existing residential properties needs to be managed carefully to ensure that disruptions are not excessive or unreasonable.

However, the Panel agrees with Council that the appropriate time to address this issue is at the planning permit stage. It accepts Council's position that a detailed Construction Management Plan would need to be a requirement of any planning permit to be issued. A binding condition would attach to the permission to ensure that detailed, specific measures

are formulated to the satisfaction of Council before works start. Adherence to this plan would be enforceable by Council or any person who may be affected.

There are also likely to be particular requirements for management of traffic and waste on adjacent roadways which would be controlled by the road authority. In addition, there are state-wide environmental protection regulations that govern the hours for use of particular types of construction equipment.

(iii) Conclusions

The Panel concludes:

- The issue of construction disturbance is important but not a matter that should be addressed in the proposed planning controls at the Amendment stage. Instead, it should be carefully controlled through planning permits and other regulatory processes.

Appendix A Panel preferred version of Mixed Use Zone (Schedule 2)

[Tracked Added](#)

~~Tracked Deleted~~

--/--/---
Proposed C159mona

SCHEDULE 2 TO CLAUSE 32.04 MIXED USE ZONE

Shown on the planning scheme map as *MUZZ*

1 JACKSONS ROAD AND 636 WELLINGTON ROAD, MULGRAVE – URBAN RENEWAL PRECINCT

1.0 Objectives

--/--/---
Proposed C159mona

To provide a range of medium density housing opportunities incorporating a diverse mix of residential dwelling types.

To encourage a diversity of land use, [providing opportunities for](#) ~~with a focus on~~ health and community services [and small scale or complementary retail and commercial uses](#), in easily accessible locations ~~on the site.~~ [for the broader community](#)

2.0 Clause 54 and Clause 55 requirements

	Standard	Requirement
Minimum street setback	A3 and B6	None specified
Site coverage	A5 and B8	None specified
Permeability	A6 and B9	None specified
Landscaping	B13	None specified
Side and rear setbacks	A10 and B17	None specified
Walls on boundaries	A11 and B18	None specified
Private open space	A17	None specified
	B28	None specified
Front fence height	A20 and B32	None specified

3.0 Maximum building height requirement

--/--/---
Proposed C159mona

None specified.

4.0 Exemption from notice and review

--/--/---
Proposed C159mona

None specified

5.0 Application requirements

--/--/---
Proposed C159mona

None specified

6.0 Decision guidelines

--/--/---
Proposed C159mona

[None specified.](#)

- ~~▪ The appropriateness of the land use with consideration of its context having regard to transport movement networks, surrounding land uses and interfaces with publicly accessible areas.~~

7.0 Signs

--/--/---
Proposed C159mona

None specified.

Appendix B Panel preferred version of Design and Development Overlay (Schedule 16)

--/--
Proposed C159mona

SCHEDULE 16 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO16**

1 JACKSONS ROAD AND 636 WELLINGTON ROAD, MULGRAVE - URBAN RENEWAL PRECINCT

1.0

Decision objectives

--/--
Proposed C159mona

To provide for the development of a medium rise built form character with a moderate building height that transitions in response to the variable topography across the site.

To ensure that site planning, built form, scale and architectural qualities deliver high quality interfaces with the private, communal and public realms and avoid unreasonable off site amenity impacts.

To ensure separation between buildings that promote views across and through the site.

To ensure landscape design enhances the new character of the precinct and integrates the development with its context including the retention and ongoing health of the precinct's high value trees.

To ensure development provides a high standard of internal and external amenity for those living and working in, or visiting the precinct including the provision of adequate open space.

2.0

Buildings and works

--/--
Proposed C159mona

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

Building height

Development must not exceed the ~~maximum building height~~ [built form requirements relating to building height](#) specified in Tables [1a](#), [1b](#) and [1c](#).

The maximum building height excludes rooftop services which should be hidden from view from any adjoining public space or designed as architectural roof top features. Roof top services include, but are not limited to; plant rooms, air conditioning units, lift overruns and roof mounted equipment.

A permit may not be granted to vary this requirement.

Table 1a Built form requirements for Precinct A and B

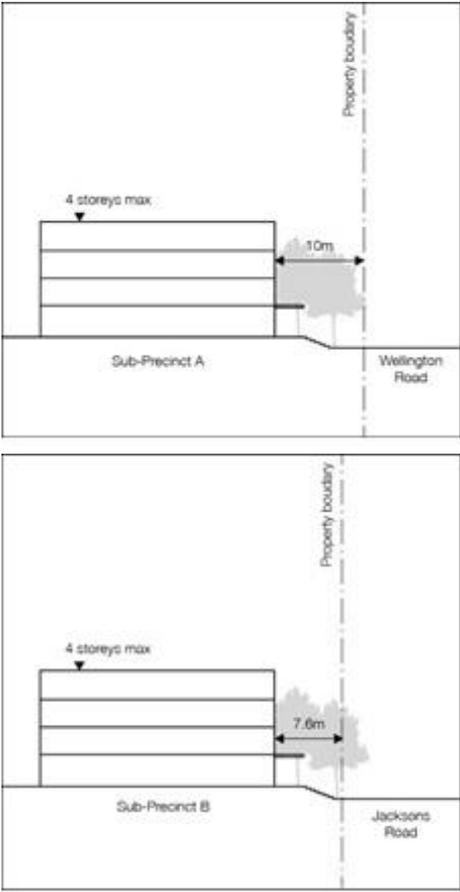
Built Form Sub-Precinct	Maximum Built form requirements Building Height	Development outcomes
<p>Sub-Precinct A and B:</p> <p>Wellington Road and Jacksons Road Interface</p> 	<p>4 storeys (13.5 metres)</p>	<p>Buildings form a prominent built form presence to Wellington and Jacksons Road, frame the higher built forms within the site, allow for connections between Wellington Road and the rest of the precinct and provide for:</p> <ul style="list-style-type: none"> ▪ Buildings that are designed to be visually unobtrusive to Wellington Road and Jacksons Road through recessive and <u>Articulated</u> architecture, particularly <u>to create visually recessive for</u> upper storeys. ▪ Landscaped front setbacks to Wellington Road and Jacksons Road, including the provision of canopy trees. ▪ Buildings orientated to Wellington Road and Jacksons Road with a <u>strong cohesive</u> architectural presentation. ▪ Promote views through the site and from adjoining residential properties. ▪ Pedestrian and vehicular permeability to Sub-Precinct D having regard to the substantial level differences.

Table 1b Built form requirements for Precinct C

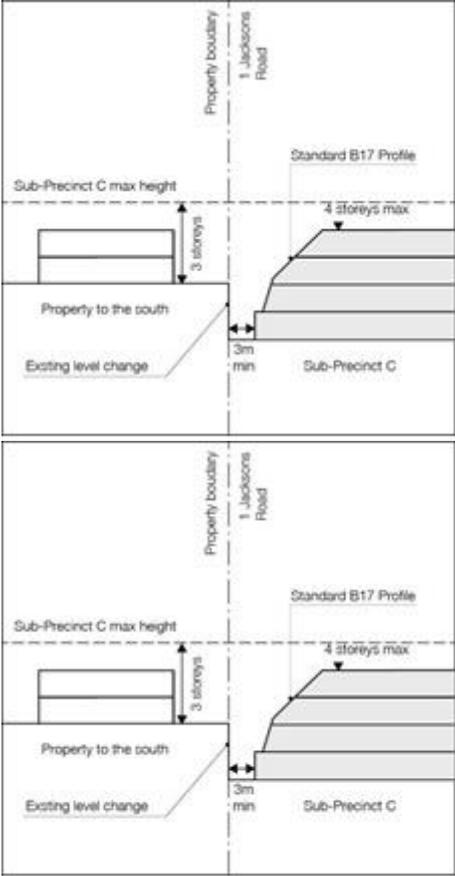
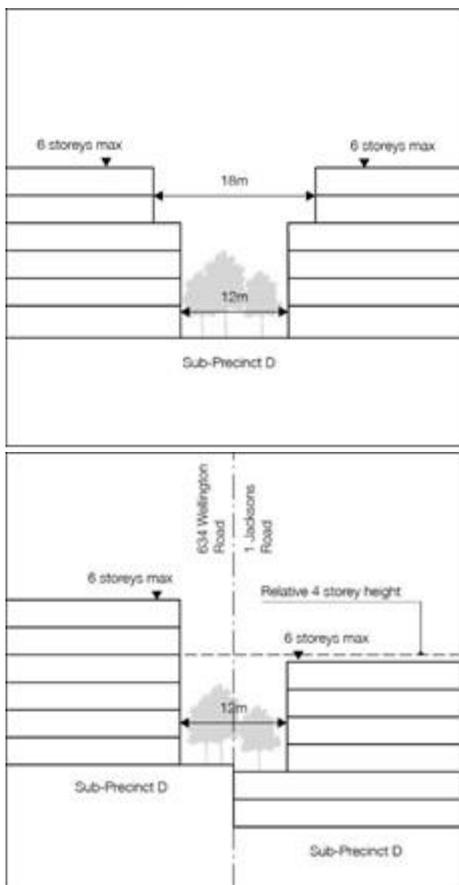
Built Form Sub-Precinct	Maximum Building Height Built form requirements	Development outcomes
<p>Sub-Precinct C: Residential Interface</p> 	<p>4 storeys (13.5 metres)</p>	<p>Lower height buildings separated from existing abutting residential properties and provide for:</p> <ul style="list-style-type: none"> ▪ Building height to not exceed 4 storeys or the maximum height permitted in the adjoining residential zone based on that existing ground level. ▪ Landscaped setbacks to Wellington Road, Jacksons Road and existing residential interfaces, including the provision of canopy trees. ▪ Protection of off-site amenity, particularly overshadowing to the south. ▪ Development setback from the southern and western precinct boundaries by at least 3 metres, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres. ▪ Promote views through the site from adjoining residential properties.

Table 1c Built form requirements for Precinct D1²⁷

Built Form Sub-Precinct	Maximum Building Height Built form requirements	Development outcomes
Sub-Precinct D1: Core Precinct	6 storeys (22 metres)	<p>Buildings which take advantage of the more centralised location to provide increased built form and provide for:</p> <ul style="list-style-type: none"> ▪ Appropriate management of the level change between 1 Jacksons Road and 634 Wellington Road to manage the amenity impacts between buildings. ▪ Protection of off-site amenity, particularly overshadowing to the south. ▪ Promote views through the site from adjoining residential properties. ▪ Permeability within sub-precinct and to Sub-Precincts A, B and C, having regard to the substantial level differences. ▪ Landscaping between buildings, including canopy trees.



Building setbacks

Development should be set back in accordance with any preferred setbacks specified in Map 1 to this schedule.

An application to vary the preferred setbacks must demonstrate how the development will continue to achieve the design objectives of this schedule and the relevant precinct development outcome.

Buildings constructed within each precinct should be separated at lower levels by at least 12 metres to enable the planting of canopy trees and by at least 18 metres at upper levels (above the third storey) in accordance with Tables 1a, 1b and 1c to allow equitable access to daylight and outlook and in recognition of the suburban context of the site.

Building form and design

Building form should consider the variable site topography and its impact on longer distance views to the Dandenong Ranges both from other development (existing and future) within the precinct and from abutting residential properties.

Building design should moderate visual bulk by managing building height, length and breadth, building spacing, composition, high quality architectural details and materiality.

Buildings neighbouring existing residential properties should provide ground level setbacks capable of supporting screening vegetation and transitional upper level setbacks to maintain the amenity of adjoining residential properties.

²⁷ The indicative cross sections will need to be amended to show a reduced maximum building height for new Sub-Precinct D1 in the bottom left figure if the Panel’s recommendations are adopted

Buildings should utilise materials that do not generate glare and ~~to~~ minimise ~~the~~ reflectivity ~~for~~ on traffic.

Development must be designed to ensure limited visibility of car parking areas and loading bays from Jackson Road and Wellington Road. Car parking, turning areas or other hard stand areas should be located away from primary internal accessways [where practicable](#).

Utility areas such as waste and recycling areas and services including antennas, air- conditioning units, electrical substations and firefighting equipment should be located to minimise their visual impact, particularly to streets and public areas whilst remaining compliant with service provider requirements.

Circulation and access

Pedestrian linkages should be provided to connect all parts of the precinct.

The design and siting of buildings and works should promote a high degree of pedestrian/ cyclist/ vehicle permeability.

Primary vehicle access for the eastern and central parts of the precinct (1 Jacksons Road) should be from Jacksons Road.

Primary vehicle access for the western part of the precinct (634 Wellington Road) should be from Wellington Road.

Landscaping

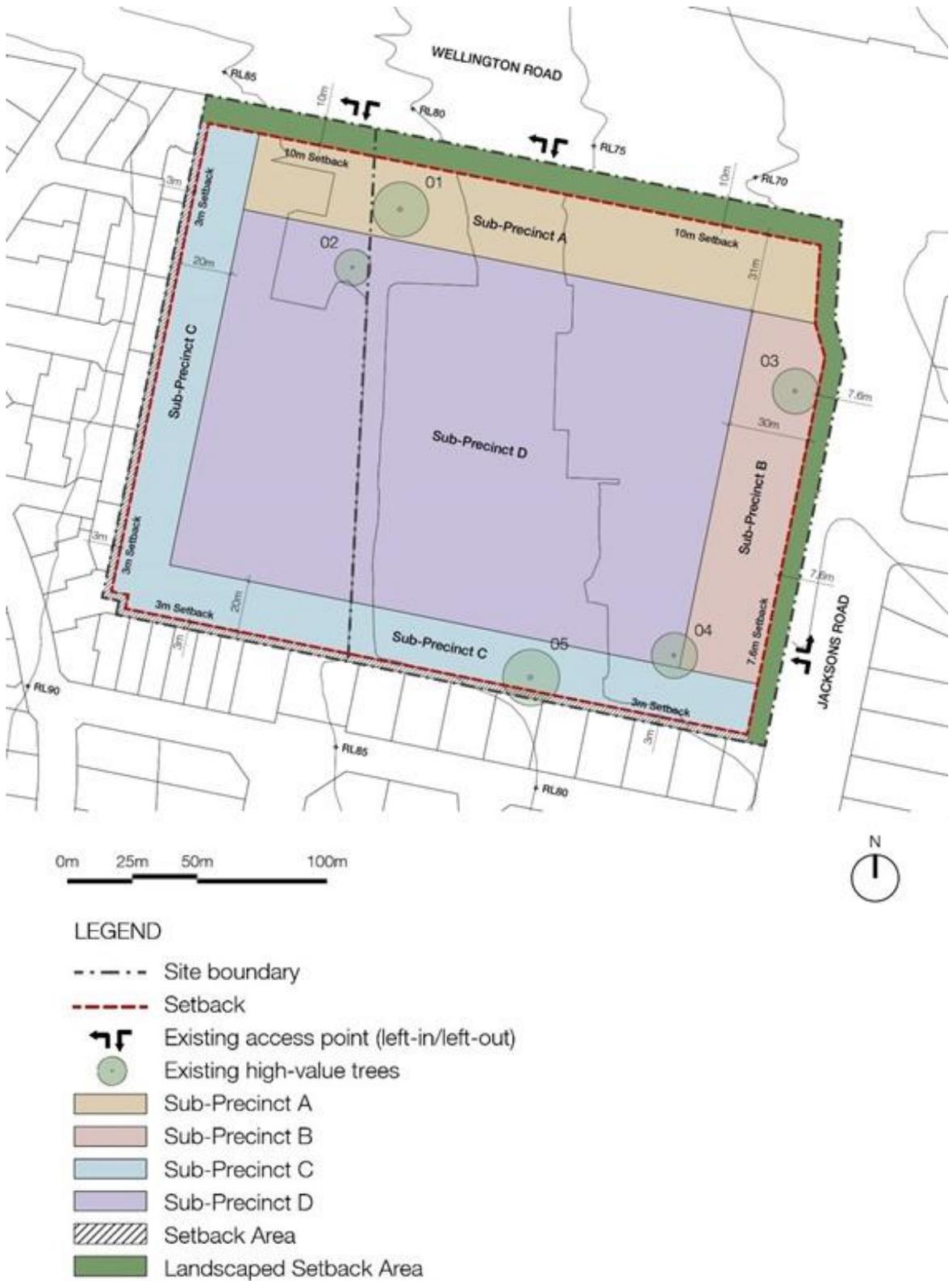
Existing high value trees in the precinct and existing trees on neighbouring sites should be retained and protected.

Development should incorporate new canopy trees with a mature height of 20 metres or more.

New landscaping should incorporate a mix of low, medium and high canopy species, and offer seasonal variation and colour.

Map 1²⁸

1 JACKSONS ROAD AND 634 WELLINGTON ROAD, MULGRAVE – Sub-Precinct Areas, Boundary Setbacks and High-Value Trees



²⁸ This should be amended to reflect the Panel’s recommendations to rename Sub-Precinct D into D1 and D2 and to reflect Australian Height Datum points referable to existing topography.

Table 2 High value tree reference for Map 1

Tree No.	Species	Common Name
1	<i>Quercus bicolor</i>	Swamp White Oak
2	<i>Corymbia maculata</i>	Spotted Gum
3	<i>Eucalyptus bicostata</i>	Victorian Blue Gum
4	<i>Quercus canariensis</i>	Algerian Oak
5	<i>Quercus canariensis</i>	Algerian Oak

3.0

--/---
Proposed C159mona

Subdivision

None specified.

4.0

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Proposed C159mona

Signs

None specified

5.0

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Proposed C159mona

Application requirements

The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

- An Arboricultural Assessment of all trees within the site and on abutting land (including nature strips) where they may be impacted by the development and which:
 - Identifies key arboricultural details including species name, common name, health, structure and retention value
 - Nominates all trees as either for removal or for retention
 - Provides Structural Root Zones and Tree Protection Zones for all trees proposed for retention in accordance with Australian Standard AS4970-2009
- A Landscape Plan prepared by a landscape architect or a suitably qualified landscape designer, drawn to scale and dimensioned which:
 - Identifies, retains and protects significant vegetation on the site and significant vegetation on adjoining properties in proximity to the development, including the identification of tree protection zones.
 - Proposes new canopy trees and other vegetation that will enhance the landscape character of the area.
 - Provides a schedule of all proposed trees, shrubs and ground covers including the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material.
 - Provides the location and details of all fencing, external lighting, surface materials and other landscaping elements.
 - Identifies the extent of any cut and fill, embankments or retaining walls associated with the landscape treatment of the site.
 - Identify measures to maintain landscaping, including weed control, pruning, mulching and irrigation systems

6.0

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Proposed C159mona

Decision guidelines

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The relationship of the proposed building to the topography of the site both at the

development's location and the precinct generally with regard to the anticipated development outcomes specified in Tables 1a, 1b and 1c.

- Any impact, ~~including potential impact,~~ on the functionality of pedestrian, bicycle and vehicle movements and the anticipated ~~development~~ outcomes in Tables 1a, 1b and 1c.
- The height of new development and its setbacks from both the site's boundaries and other development within the precinct (both existing and future), with regard to the relevant sub-precinct preferred development outcomes specified in Tables 1a, 1b and 1c.

Appendix C Document list

No.	Date provided	Description	Provided by
1	19/03/20	Letter of authorisation (Department Environment, Land, Water and Planning) dated 16 August 2019	Monash City Council (Council)
2	19/03/20	Exhibited Amendment documentation including revised Explanatory Report, mapping and proposed controls	
2a		Minutes of Council meeting – 25 June 2019	
2b		Minutes of Council meeting – 25 February 2020	
2c		Letter requesting appointment of Panel	
2d		SJB Rezoning Report March 2019	
2e		GTA Transport Impact Assessment December 2018	
2f		Deep End Services – Economic Report December 2018	
2g		Submissions (3) – Environment Protection Authority Victoria, C & L Blakeway and S & T Newland	
2h		Beveridge Williams Survey Plans dated November 2016 (Version A)	
3	31/3/20	Panel directions	Planning Panels Victoria
4	2/04/20	Email responding to Panel directions	Council
5	8/04/20	Part A submission with appendices	Council
6		Expert evidence report of Mr Bernard McNamara, BMDA Development Advisory	Proponent
7		Expert evidence report of Mr Justin Ganly, Deep End Services	
8	15/04/20	Compass Environmental Phase 1 Site Assessment	Proponent
9		Questions for expert witnesses from Panel	Planning Panels Victoria
10	17/04/20	Part B submission with attachments	Council
11		Proponent submissions with preferred version of controls	Proponent
12	26/04/20	Addenda Mr Ganly and Mr McNamara addressing <i>Melbourne Industrial and Commercial Land Use Plan</i>	Proponent
13	29/04/20	B McNamara response to questions from Panel and Council question responses	Proponent
14		J Ganly response to questions from Panel and Council	Proponent
15	4/05/20	Planning Authority further submissions addressing evidence	Council
16	20/05/20	Narrated video ‘walkthrough’ by SJB	Proponent

No.	Date provided	Description	Provided by
17		Preferred version of controls including explanation	Proponent
18	27/05/20	Closing submissions	Council
