

1.1 MONASH PLANNING SCHEME AMENDMENT C159 - 1 JACKSONS ROAD AND 636 WELLINGTON ROAD, MULGRAVE
(FILE NO. W18-336)

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

1. *Receives and notes the Panel Report on Amendment C159 to the Monash Planning Scheme.*
2. *Adopts Amendment C159, generally as exhibited, with the following changes as recommended by the Panel and set out in this report, including:*
 - a) *The refinement of the proposed second objective and the deletion of all decision guidelines of the Mixed Use Zone Schedule 2;*
 - b) *Reinstatement of application requirements in Mixed Use Zone 2 relating to a staged site plan and indicative land uses and yields, and*
 - c) *Modifications to Design and Development Overlay Schedule 16 to:*
 - i) *split Sub-Precinct D into two sub-precincts: D1 and D2*
 - ii) *include key Australian Height Datum points for existing site levels in Map 1*
 - iii) *Make the Panels recommended consequential and minor wording changes.*
3. *Authorises the Director City Development to finalise the Amendment documentation in accordance with the recommendations of this report and submit the Amendment to the Minister for Planning for approval.*
4. *Notifies all submitters of Council's decision on this Amendment.*

INTRODUCTION

The purpose of this report is to consider the Panel Report and recommendations for Amendment C159.

The Amendment applies to the land at 1 Jacksons Road and 636 Wellington Road, Mulgrave (the site). The Amendment proposes to facilitate the future development of the land, including for residential development.

The Amendment seeks to amend the Monash Planning Scheme by:

- Rezoning the whole site from the Commercial 2 Zone to the Mixed Use Zone – Schedule 2 (MUZ2);
- Deleting the Design and Development Overlay Schedule 1;
- Applying the Design and Development Overlay Schedule 16 (DDO16) over the whole site;

- Applying the Environmental Audit Overlay over the whole site; and
- As a consequence, amending the Schedule to Clause 32.04 to read Schedule 1.

BACKGROUND

The Subject Site

The site is currently within the Commercial 2 Zone and comprises two land titles in separate ownership, totalling an area of 5.4 hectares and comprising:

- 1 Jacksons Road – 3.7 hectares with a two level office building, child care centre and warehouse (known as the Body Shop site)
- 636 Wellington Road – 1.7 hectares, two level office building and warehouse

Other uses on the site include the weekly Mulgrave Farmers Market, which operates under the management of the Wise Foundation. This is popular with the community and operates every Sunday from 8:00am to 1:00pm with up to 70 primary producers, food and craft stalls. The location of the subject site is shown on Figure 1 below.

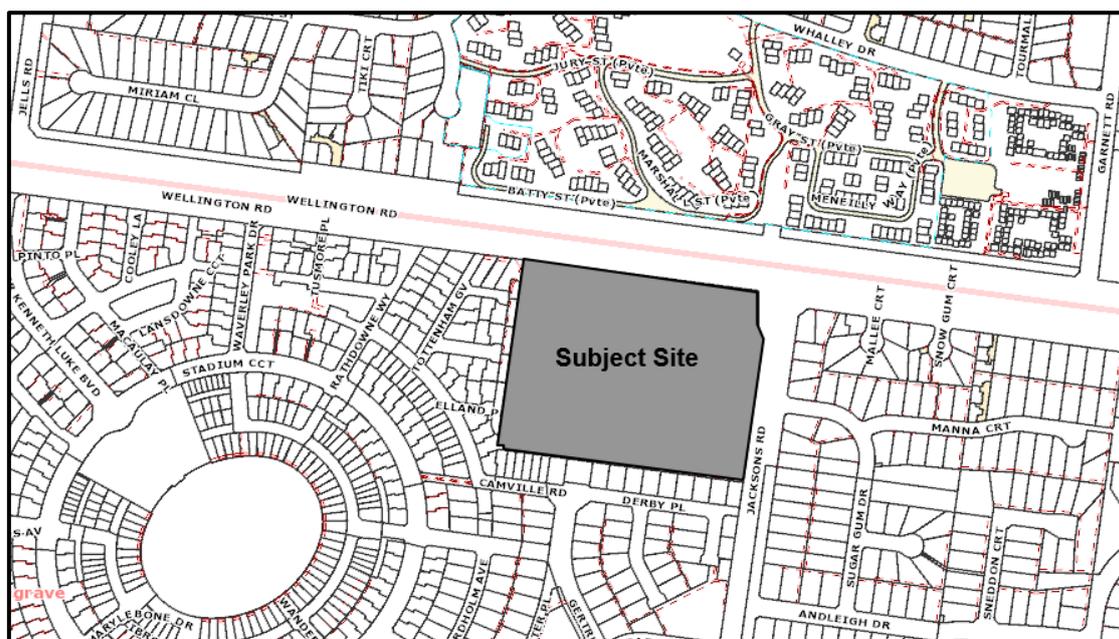


Figure 1: Subject site

Proposed Amendment C159

The Amendment is seeking to change the zoning of the site from Commercial 2 Zone (C2Z) to the Mixed Use Zone (MUZ), introducing a Schedule 2 to the MUZ. The objectives for the proposed MUZ2 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.

The Mixed Use Zone (MUZ) would allow for the development of various types of medium density residential uses, which are currently prohibited in the Commercial 2 Zone. The MUZ will also allow the current uses on the site to continue and offer the opportunity for other non-residential uses.

The scale of development on the site is proposed to be managed through the application of the schedule to DDO16. The proposed DDO16 would introduce a series of design objectives, design requirements and development outcomes to manage the future design and scale of development and ensure the amenity and character of surrounding residential areas is maintained.

At its meeting on 25 June 2019, Council considered a request from both owners of the site to rezone the land. Council resolved to request the Minister for Planning to authorise Council to prepare Amendment C159.

Exhibition of Amendment C159

Amendment C159 was exhibited between 14 October 2019 and 18 November 2019. In response to the consultation on the Amendment, three submissions were received from:

- Two local residents; and
- The Environment Protection Authority Victoria.

In summary, Council identified the main issues raised by submissions as:

- Property values
- Proposed building heights
- Increased traffic
- Impact on the flora and fauna
- Potentially contaminated land

At its meeting on 25 February 2020, Council considered submissions to the Amendment and resolved to request that the Minister for Planning appoint an independent Panel to consider the submissions.

DISCUSSION

Panel Hearing and Panel Report

The Minister for Planning appointed a one person Panel to review the amendment. The hearing was originally scheduled to be heard during COVID19 restrictions in Victoria. Both Council and the proponent requested a hearing 'on the papers' rather than a hearing by video conferencing technology. None of the three submitters had requested to be heard at the Hearing.

Detailed directions were provided by the Panel for input from both parties. This included submissions from both parties, including questions to witnesses from Council and the Panel. This was followed by addendums to various expert witness reports and further submissions including preferred wording for relevant schedules.

The Panel identified the key issues raised through the submissions, and in the hearing as being:

Proposed rezoning

- 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?

Proposed overlay controls

- The appropriateness of using the Design and Development Overlay compared with the Development Plan Overlay
- Has draft Design and Development Overlay (Schedule 16) been drafted appropriately?
- Proposed Environmental Audit Overlay

Response to submissions

- Potential overlooking and overshadowing
- Impacts on viewlines and landscape values
- Traffic and infrastructure impacts
- Future business viability
- Mulgrave Farmers Markets
- Potential devaluation
- Disturbance from construction

The Panel supported most of the Council submissions on the Amendment including the rezoning of the site, the use of the Design and Development Overlay tool and the proposed overlay controls, including the application of mandatory building heights across the site for the various sub-precincts. The Panel also determined that the application of the Environmental Audit Overlay was appropriate for the site.

However the Panel recommended that:

- Modifications to Schedule 2 to the Mixed Use Zone regarding the refinement of the proposed second objective and the deletion of all decision guidelines.
- The Panel also made comments regarding an aspect of authorisation by DELWP where DELWP required the removal of application requirements from MUZ2.
- Modifications are made to Schedule 16 to the Design and Development Overlay including (DDO16):
 - Splitting Sub-Precinct D into two sub-precincts: D1 and D2. Sub-Precinct D2 to apply to land at 636 Wellington Road and have tempered built form expectations.
 - Identification of key Australian Height Datum points for existing site levels and make reference to natural ground level for nominated building heights.
 - Consequential wording changes and some other minor amendments.

A copy of the Panel Report is provided at **Attachment 1**.

The following section discusses the additional Panel recommendations listed above.

Panel recommendation –

Modifications to Objective 2 of Schedule 2 of the Mixed Use Zone

The Panel recommend that the objective be modified as follows to provide a clearer statement of the vision for the site:

“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~~

Officer comment

The Panel supports the recommended changes that Council submitted to the Panel through the Hearing process. It supports an emphasis on this site to encourage health and community services and to clarify that these uses should be located on parts of the site that are easily accessed by the public. It also considered that the proposed changes 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.

Officer recommendation

Support the Panel changes.

Panel recommendation –

Removal of the decision guideline of Schedule 2 of the Mixed Use Zone

The Panel recommend that the following decision guideline be deleted:

“Whether the intensity of development proposed is consistent with the site context and provides for an appropriate level of dwelling diversity.”

The Panel does not agree with the Council position that a specific guideline is required to ensure contextually appropriate development of an appropriate intensity or a suitable level of housing diversity on the site occurs. 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 it clear that it seeks housing diversity within development of medium density.

Officer comment

Council submitted to the Panel that this decision guideline was necessary to assist with the direction of the first objective of MUZ2. However, the justification provided by the Panel to delete decision guideline is accepted.

Officer recommendation

Support the Panel recommendation to delete the decision guideline.

Panel comment –MUZ2 Application Requirements removed at Authorisation.

The Panel made the following comments:

“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.”

Officer comment

On 16 August 2019 the Minister for Planning authorised Council to prepare Amendment C159. One condition of the authorisation was that Council remove all Application Requirements for MUZ2. Some of these Application Requirements were considered to be more appropriate to be included in Design and Development Overlay Schedule 16, whereas others were required to be deleted entirely. Two of the Application Requirements required to be deleted entirely were as follows:

- “A staged site plan that sets out the stages of development of the land for the entire site.
- Indicative land uses and yields.”

In authorising the Amendment, DELWP had issues with the use of the Design and Development Overlay (DDO) on the site as opposed to the Development Plan Overlay (DPO). DELWP indicated that to progress a DDO on the site it would be necessary to remove application requirements that a staging plan and land uses and yields to be submitted to Council for approval. As an alternative Council added these as Application Requirements for the MUZ2. These were added, not as a requirement for development to necessarily be undertaken in stages or be planned in stages, but as an indication as to what would need to be submitted and considered as part of future planning permit applications.

As noted above the Panel has determined that it is appropriate to include these application requirements in the MUZ2.

Officer recommendation

Support the Panel recommendation to include these application requirements for MUZ2 relating to a staging plan and land uses and yields.

Panel recommendation –Splitting Sub-Precinct D of DDO16 into two sub-precincts: D1 and D2.

The Panel recommends that built form expectations should be tempered for the part of 636 Wellington Road that is within Precinct D (core) unless further excavation occurs for the setting of buildings.

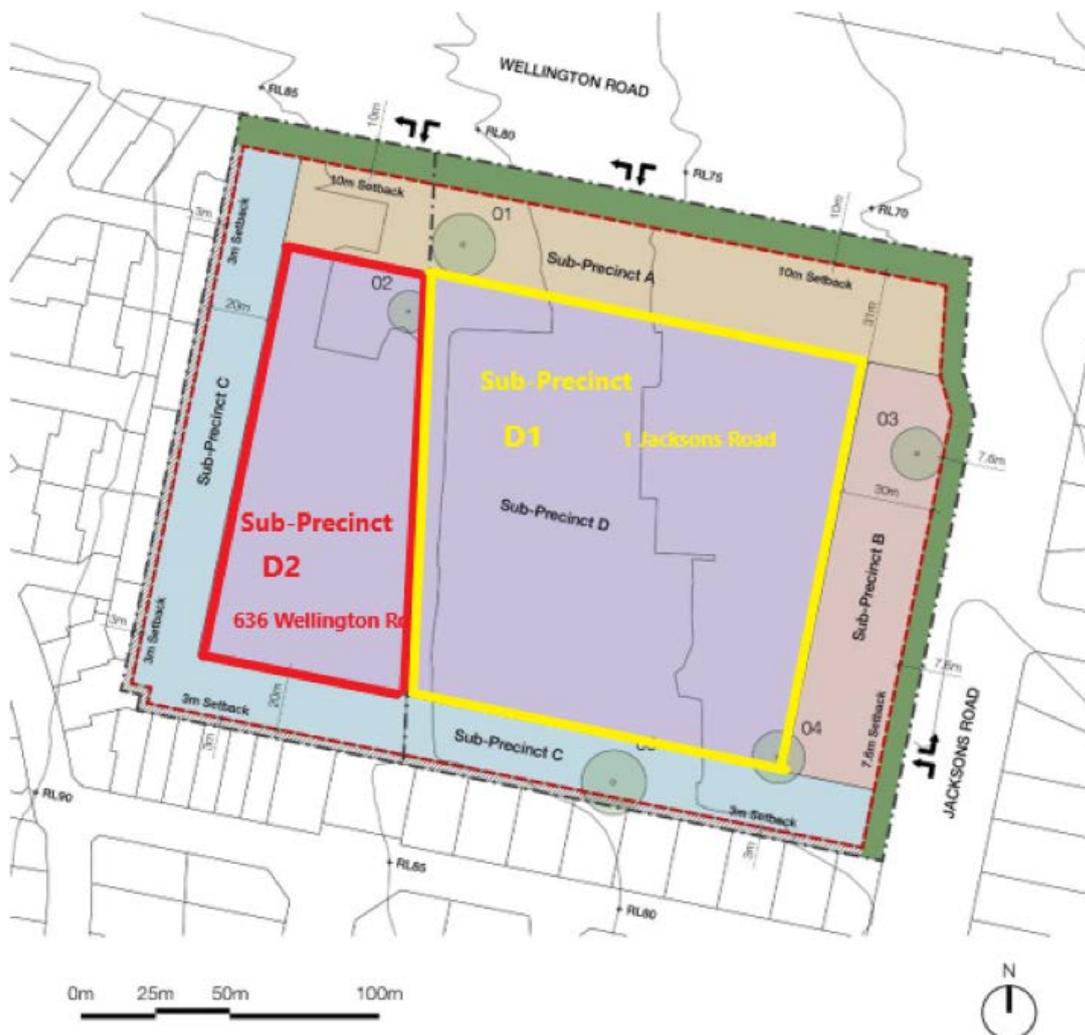
The Panel is concerned that on the 636 Wellington Road portion of Precinct D there is not the same capacity to support buildings of heights up to six storeys, due to its much higher elevation compared to the 1 Jackson Road portion of Precinct D. The Panel is concerned that unless substantial excavation 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 cannot reasonably sustain buildings up to six storeys without potentially significant impacts on neighbourhood character and adjoining properties. 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 split into two areas - Sub-Precinct D1 and D2 (See Map 1 below). Precinct D1 should be applied to the core of the site for land at 1 Jacksons Road as exhibited.

Sub-Precinct D2 should be applied to the part of 636 Wellington Road that is currently 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.

Map 1

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



However, the Panel goes on to note that if substantial changes were made to the current site levels at that point, such as excavation to lower the site levels, higher built form could be considered on a proportional basis to the proposed maximum mandatory 6 storeys.

This would 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.

Officer comment

The recommendation of the Panel and their analysis is supported in the context of the potential for impacts on adjoining properties of potentially six storey buildings within Sub-Precinct D at 636 Wellington Road.

Importantly, the Panel accepts that mandatory building heights are appropriate across all the Sub-Precincts on the site.

The solution that is being suggested by the Panel for the new Sub-Precinct D2 for proportional heights based on potential excavation is introducing a hybrid provision that is both mandatory and discretionary. This is complex and confusing both to prepare in DDO16 and for future development applications. The most appropriate option is to accept the Panels initial statement that the new Sub-Precinct D2 should be one storey higher than what is permissible in Sub-Precinct C, which is five storeys.

Council will need to work with the proponent to prepare the new Table 1d for Sub-Precinct D2 in DDO16 prior to submitting to the Minister of Planning for approval.

Officer recommendation

Support the Panel recommendation to split Sub-Precinct D into two new Precincts:

- Sub-Precinct D1 for 1 Jacksons Road; remain at 6 storeys; and
- Sub-Precinct D2 for 636 Wellington Road, change to 5 storeys.

Panel recommendation –

Australian Height Datum points and natural ground level for nominated building heights.

The Panel has recommended that key Australian Height Datum points for existing site levels should be included on Map 1 to establish natural ground level relevant to the nominated building heights in DDO16.

Officer comment

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.

It will be necessary to change the Maximum Building Height header for each of the tables in DDO16 as follows:

Maximum building Height Built Form Requirements Above Existing Ground Level
(Established by Australian Height Datum Levels in Map 1)

Council will need to work with the proponent to prepare the new Map 1 for DDO16 prior to submitting to the Minister of Planning for approval.

Officer recommendation:

Support the Panel recommendation and include Australian Height Datum Points on Map 1 of DDO16, which provides clarity about where the building heights are measured from.

Panel recommendation –

Consequential wording changes and some other minor amendments for DDO16.

The Panel made changes to DDO16 that were a consequence of other changes noted above. The Panel also made some minor wording changes to DDO16 for clarity. All changes are shown in **Attachment 2** (revised MUZ2) and **Attachment 3** (revised DDO16).

Officer comment

The consequential changes are supported.

Officer recommendation:

Support the Panel changes as shown in Attachments 2 and 3.

POLICY IMPLICATIONS

The proposed Amendment C159 is consistent with the strategic policy directions of *Plan Melbourne 2017-2050* and the Monash Planning Scheme.

Specifically, Direction 1.3 of Plan Melbourne aims to “*Create development opportunities at urban renewal precincts across Melbourne*” and Policy 1.3.1 is to “*plan for and facilitate the development of urban renewal precincts*”, and goes on to state that:

“Urban renewal precincts should be developed as mixed-use neighbourhoods that offer a range and choice of housing as well as other services. They should offer high levels of amenity and connectivity and integrate into surrounding neighbourhoods...”

A number of former industrial and other sites— including government sites— around Melbourne are currently underutilised. Local planning authorities should identify and plan for ways these sites can be repurposed to create jobs and accommodate growth.”

FINANCIAL IMPLICATIONS

The statutory fees for the processing and consideration of the amendment, and any future planning panel fees are paid for by the applicant for the Amendment.

CONCLUSION

Amendment C159 proposes to facilitate the future development of 1 Jacksons Road and 636 Wellington Road, Mulgrave by rezoning the land from Commercial 2 Zone to the Mixed Use Zone Schedule 2 (MUZ2). The proposed Design and Development Overlay Schedule 16 (DDO16) has been prepared to ensure the form and scale of future development on the site takes into account the topography and surrounding neighbourhood character, and does not impact the character of surrounding residential uses, particularly within the neighbouring Waverley Park Estate.

A Planning Panel hearing for Amendment C159 was held 'on the papers' during April and May 2020. The Panel for the Amendment was supportive of the proposed rezoning of the land and the application of DDO16. The Panel was also supportive of the application of an Environment Audit Overlay for the site.

The Panel has recommended that some modifications be made to the schedule of MUZ2 and DDO16 including:

- The refinement of the proposed second objective and the deletion of all decision guidelines of MUZ2.
- Reinstatement of application requirements in MUZ2 relating to a staged site plan and indicative land uses and yields.
- Modifications are made to DDO16 to split Sub-Precinct D into two sub-precincts: D1 and D2, the inclusion of key Australian Height Datum points for existing site levels in Map 1 and that the recommended consequential and minor word changes are made.

It is recommended that Council adopt Amendment C159 with the modifications noted in this report, and submit Amendment C159 to the Minister for Planning for approval.