

Monash Planning Scheme

Amendment C159

TOWN PLANNING REPORT

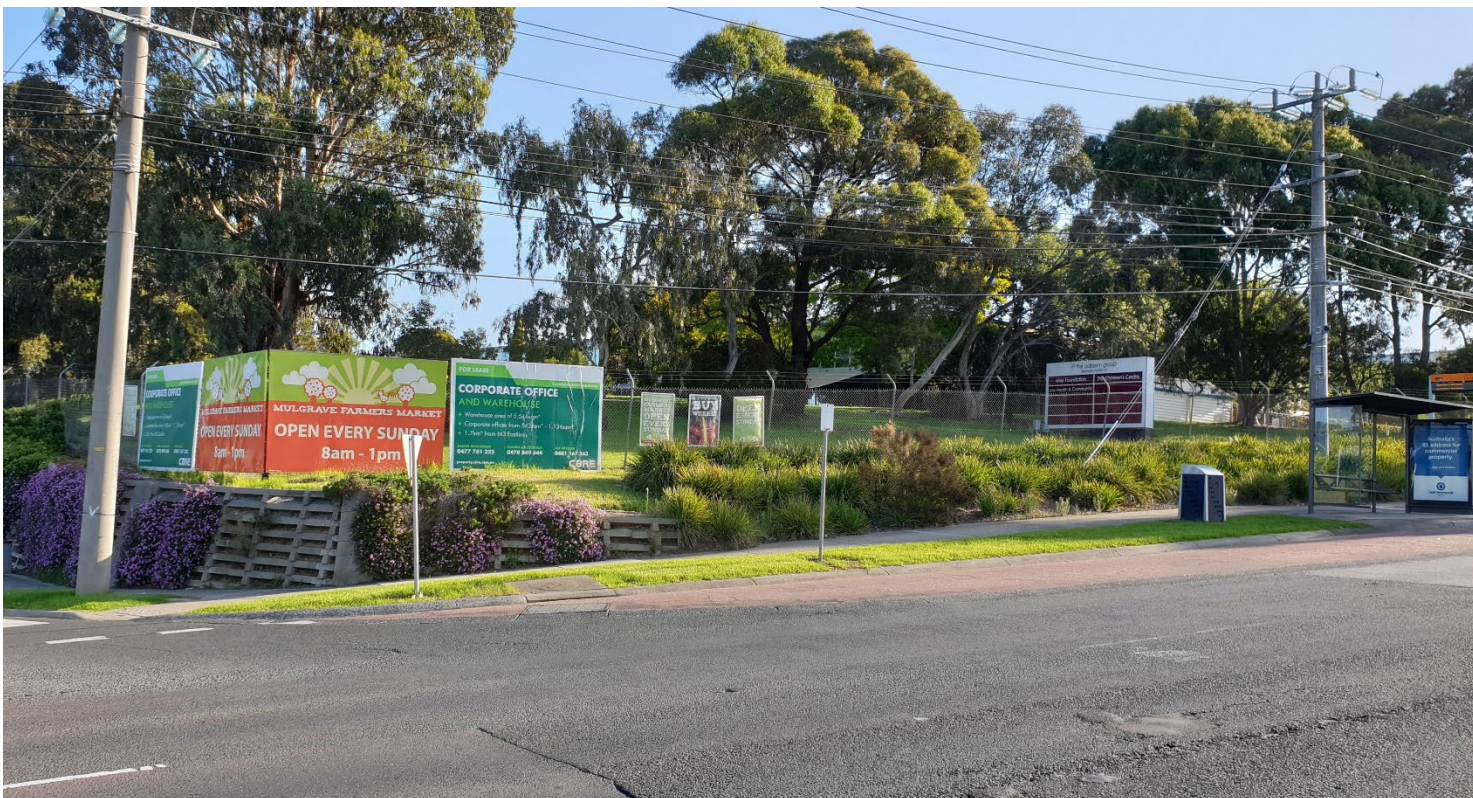
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PLANNING REPORT

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1 EXECUTIVE SUMMARY

1.1 Background

1. As the Principal of BMDA Development Advisory, I have been asked by Hall & Wilcox Lawyers, on behalf of the owners of the land at 1 Jacksons Road and 636 Wellington Road, Mulgrave (referred to as the 'Site' in this report) to provide specific town planning advice relating to Amendment C159 to the Monash Planning Scheme.
2. Amendment C159 has been prepared to facilitate the medium density residential and mixed-use redevelopment of the Site. Under the amendment, the Site will be rezoned from Commercial 2 Zone (C2Z) to Mixed Use Zone (MUZ) and with new Schedules.

1.2 Method

3. In undertaking the investigations that underpin the expert conclusions in this Report, I have:
 - inspected the Site and surroundings;
 - reviewed the exhibited Amendment C159 documents;
 - reviewed the existing planning controls applying to the Site;
 - reviewed the relevant provisions State and Local Planning Policy Frameworks;
 - reviewed the Monash Housing Strategy 2014, Monash Industrial Land Use Strategy 2014 and the Draft Melbourne Industrial and Commercial Land Use Plan;
 - assessed the proposed mandatory provisions against Planning Practice Note 59; and
 - reviewed the potential use of the Development Plan Overlay against Planning Practice Note 23.

1.3 Conclusions

4. The Amendment should be supported. The Amendment will facilitate the urban renewal of a Site that is failing as a commercial area. The Amendment would enable the use and development for a range of housing, community and commercial uses on a well-located Site.
5. I would go further in that I recommend that development controls by way of building heights be altered to be a combination of mandatory and discretionary maximum building height controls. I see insufficient justification for mandatory building height controls to be placed over the central and roadside sections of the Site.
6. The Amendment will allow the urban renewal of an isolated commercial site which is currently under-utilised and failing. As 'out-of-centre' commercial land, surrounded by residential development on all sides, the Site does not present as a location where commercial or industrial uses would generally be supported or expected under the provisions of Planning Policy Framework.
7. The Site presents as an urban renewal opportunity as encouraged by *Plan Melbourne 2017-2050*. A predominantly residential land use outcome presents as the appropriate use for the Site under the Planning Policy Framework.
8. The re-use of land within the Priority Public Transport Network area for medium density mixed use and residential use is strongly supported by the provisions on the Planning Policy Framework.
9. The proposed rezoning of the land to the Mixed Use Zone, Schedule 2 to the Mixed Use Zone and the application of Design and Development Overlay – Schedule 16 is an appropriate combination of planning controls to facilitate the renewal of the Site.
10. The Site has a history of being an 'orphan' Site. The Monash Industrial Land Use Strategy 2014 was ambiguous in its recommendations for the Site's future zoning. In 2015, the planning authority decided to exclude the Site from Am C122, leaving it as C2Z rather than change it to Industrial 1 Zone (I1Z). In the intervening period, the Site has lost its remaining reasons to operate as a primarily commercial or industrial site.

11. The Monash Housing Strategy 2014 excluded the Site from the surrounding neighbourhood character areas because of its non-residential zoning. I see this as a positive in assessing the renewal opportunities. The large Site can be designed to have its own character, while being respectful of neighbouring areas.
12. The Draft Melbourne Commercial and Industrial Land Use Plan attributes no importance to the Site as an industrial or as a commercial site. Under my reading, the Draft Plan:
 - Identifies the Site as a local area, and not of metropolitan significance.
 - The Draft Plan incorrectly identifies the Site as 'Industrial land' on Map 2 and not as Commercial land on Map 3 in the Draft Plan (an illustration of its status).
 - The Site does not fit with the commercial land use recommendations which focus on land within neighbourhood and larger activity centres, confirming its 'orphan' status.
 - The Draft Plan nominates local planning authorities as the appropriate authority to plan and manage the supply of local industrial and commercial land.
13. I consider the Mixed Use Zone to be the appropriate zoning to manage the transition of the Site from its current commercial uses to a mixed use outcome, including significant residential development.
14. Schedule 2 of the Mixed Use Zone identifies 2 Objectives for the Site:
 - The first objective identifies a predominantly residential land use outcome consisting of a diverse mix of residential dwelling types which I consider appropriate.
 - The second Objective seeks to encourage the location of health and community uses on the Site.
15. I consider that the second Objective (which might be interpreted as confining the non-residential uses to health and community uses) as being problematic in the future. I recommend that the Objective be re-worded as:

'To provide opportunities for health, community, commercial, and retail land uses, in easily accessible locations for the broader community.'

Development Plan Overlay or Design and Development Overlay

16. Urban renewal for sites may be managed under a variety of VPP tools. The two most commonly used tools are the Design and Development Overlay (DDO) and the Development Plan Overlay (DPO) - (proposed by the Proponent). I consider that either VPP tool, with appropriate objectives and guidelines, can be effective in facilitating the redevelopment of the Site.

Design and Development Overlay - Schedule 16 (DDO16)

17. I support the design objectives of DD016 to manage the future built form outcomes of a mixed-use redevelopment of the Site. I note that the planning controls used for the redevelopment of the former VFL land (Waverley Park) have not allowed for any building setback along the western Site boundary. This will require that the DDO16 building height and setback controls along the Site boundaries will need to do 'all the work'. This explains the 3-metre garden setback plus building envelopes that are proposed along the boundaries.
18. However, in areas away from the boundary interfaces, I see insufficient justification for imposing mandatory maximum building height controls. My view on this applies to the large central section (Sub-Precinct-D) and to the two arterial road frontages (Sub-Precinct-A and Sub-Precinct B).
19. For Sub-Precinct-D, and looking at the Site's context, its sloping topography and relationship to surrounding residential character areas, I do not believe that a uniform, mandatory 6-level height limit will provide for the most appropriate built form and design response for the Site.

20. The neighbourhood character statements applying to the south and west identify trees and vegetation as key contributors to character. Given the existing vegetation on the Site, I consider that scope within the controls should be provided for narrower, taller buildings; to enhance the vegetation character rather than adopt a design that will deliver larger floorplate 6-storey buildings.
21. I also do not consider that mandatory building height controls are necessary along the two arterial road frontages.
22. For this reason, I consider that a combination of discretionary (Sub-Precincts A, B and D) and mandatory (Sub-Precinct C) building height controls in combination with the design objectives will provide a fairer and probably better built form and landscape outcomes on the Site.
23. I find support for this position within Planning Practice Note No.59 (The Role of Mandatory provisions in Planning Schemes).

2 SUBJECT SITE

24. Amendment C159 applies to two adjoining lots of land at 1 Jacksons Road, Mulgrave, and 636 Wellington Road, Mulgrave (referred to collectively as the 'Site' in this report) (Figure 1).
25. The Site sits above both boundary roads. There is a 2-3 metre retaining wall to manage the level change between the Site and Jacksons Road/Wellington Road (Figure 2). The existing Jacksons Road entry is located at the lower level of the Site to allow a connection with the road.
26. The Site is rectangular in shape and has an area of approximately 5.4ha. The Site slopes significantly from west to east (approximately a 20m fall). The Site also falls from south to north along the eastern boundary of the Site (Figure 3).
27. The two lots of land which make up the site are under separate ownership. It is my understanding that the redevelopment of each lot may occur separately and at different times. There is a significant level change between the two lots which is currently managed by a retaining wall/embankment located along the eastern side of the shared lot boundary (Figure 4).
28. The 900 SmartBus route runs along Wellington Road, connecting the Site to Caulfield Railway Station. The 681, 691, 850, 862 bus routes run along Jacksons Road. The 850 bus route runs along the Wellington Road, connects the Site to Dandenong and Glen Waverly railway stations.

1 Jacksons Road, Mulgrave (2/PS321707)

29. The land at 1 Jacksons Rd is 3.7ha and occupied by a two level office building, child care centre, warehouse and at-grade car parking areas to the south-east of these buildings. The lot has vehicle crossovers to Jacksons Road and Wellington Road.
30. There are established trees along the grassed northern, southern and eastern boundaries of the Site as well as within the at-grade carpark located to the south-east of the buildings (Figure 1).

636 Wellington Road, Mulgrave (PC365169)

31. The land at 636 Wellington Road is a 1.7ha and occupied by a two level office building and warehouse with a small at grade car park located to the north of the building (along the Wellington Road frontage). The land has an existing (and steep) vehicle crossover to Wellington Road.
32. Established trees are located on the northern section of the lot, fronting Wellington Road and within the carpark located to the north of the building (Figure 1).



Figure 1. Site Aerial Image, Site highlighted in blue (VicPlan 2020)

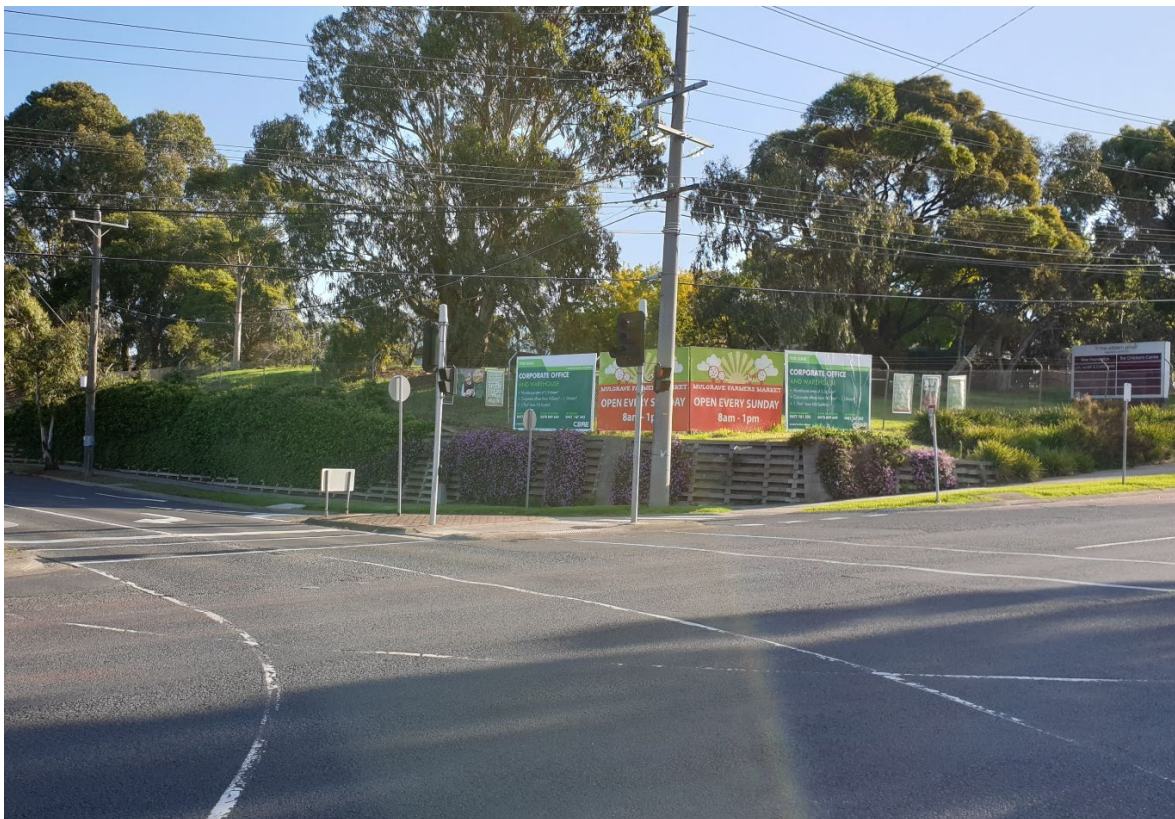


Figure 2. Jacksons Road/Wellington Road retaining wall



Legend

Contour Metro 1-5M

— 1m

— 5m

Figure 3. Contour Map/Aerial (Vicplan 2020)



Figure 4. Level Change 636 Wellington Road (left of shot) and 1 Jacksons Road (right of shot)

2.1 Surrounding Area

33. The Site sits as a single, isolated commercial area within a larger residential area. In previous years the Site was adjoined by the VFL stadium and large car park areas. (now Waverley Park)

North:

34. The Site is bordered to the north by Wellington Road. Wellington is a 6-lane, divided arterial road in a Road Zone Category 1.

35. Land on the northern side of Wellington Road has been developed for single and two storey residential village development which ‘turns its back’ on Wellington Road and instead fronts an internal road network.

36. The residential areas to the north of Wellington Road are zoned Neighbourhood Residential Zone Schedule 4 – Dandenong Valley Escarpment Areas. The objectives for the NRZ4 land are:

- *To ensure new development maintains the important view lines to the Dandenong Ranges, along the streets and between buildings.*
- *To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.*
- *To encourage open gardens to the street, and the planting and retention of significant trees.*

East

37. The Site is bordered by Jacksons Road to the east. Jacksons Road is a 4 lane arterial road with a service road on the eastern side. Land on the eastern side of Jacksons Road has been developed for predominantly single storey dwellings which front on to the service road. The service road sits approximately 1-1.5m beneath the level of Jacksons Road. The area continues to slope west-to-east through the properties and continues to Dandenong Creek. Land to the north of Wellington Road, land and to the east of Jacksons Road is zoned Neighbourhood Residential Zone Schedule 4 – Dandenong Valley Escarpment Areas.

South and West

38. Land to the south and east of the site has been predominantly developed for two storey dwellings in the recent decades as part of the redevelopment of Waverly Park. The dwellings are built hard up to the western boundary of the site in parts at heights of two storeys. Along the southern site boundaries, the dwellings are generally setback from the Site boundaries by private backyards.

39. The residential land to the south and east is zoned General Residential Zone – Schedule 3 – Garden City Suburbs.

40. The neighbourhood character objectives for GRZ3 land are:

- *To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.*
- *To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.*
- *To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.*
- *To support new development that locates garages and carports behind the front walls of buildings.*

3 EXISTING STATUTORY PLANNING CONTROLS

3.1 Zoning

41. The Site is currently zoned Commercial 2 Zone (C2Z).
42. The purpose of the C2Z is:
 - *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - *To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.*
 - *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.*
43. Accommodation (including dwelling) is a Section 3 (Prohibited) use in the C2Z.
44. A range of retail, commercial, institutional and light industrial uses can be approved in the C2Z.

3.2 Overlays

45. The Design and Development Overlay – Schedule 1 ‘Industrial and Commercial Design and development Area’ currently applies to the Site. The proposed Amendment removes the DDO1 from the Site.
46. DDO1 applies to numerous commercial and industrial properties in Monash municipality. It provides for building setback and landscape controls.
47. DDO1 nominates the following objectives:
 - *To ensure that development, including front setbacks, is in keeping with and contributes to the Garden City Character as set out in the Municipal Strategic Statement.*
 - *To ensure that the building scale and form in terms of height and bulk complements and does not visually overwhelm surrounding buildings. To ensure that streetscape engineering details of new developments integrate with the existing streetscape.*
 - *To ensure that fences or planting along property boundaries do not adversely affect urban character or adjacent open space.*
 - *To ensure that the landscape treatment within the front setback contributes to the positive aspects of the applicable industry or business Character Type identified in Clause 22.03.*
 - *To retain existing on-site vegetation if possible. To ensure that car parking, vehicle access and service areas do not visually impinge on front setbacks or affect streetscape elements such as trees and nature strips.*
 - *To minimise visual clutter.*
48. DDO1 applies discretionary built form controls to the Site:
 - Buildings and car park areas must be set back from the front boundary of a site at least 20m from Wellington Road and Jacksons Road.
 - Buildings must be setback from land in a residential zone or land used for a hospital or school at least the distance calculated by the following formula: Distance = H/2 + 1.5m where H = height of building nearest the boundary in metres.

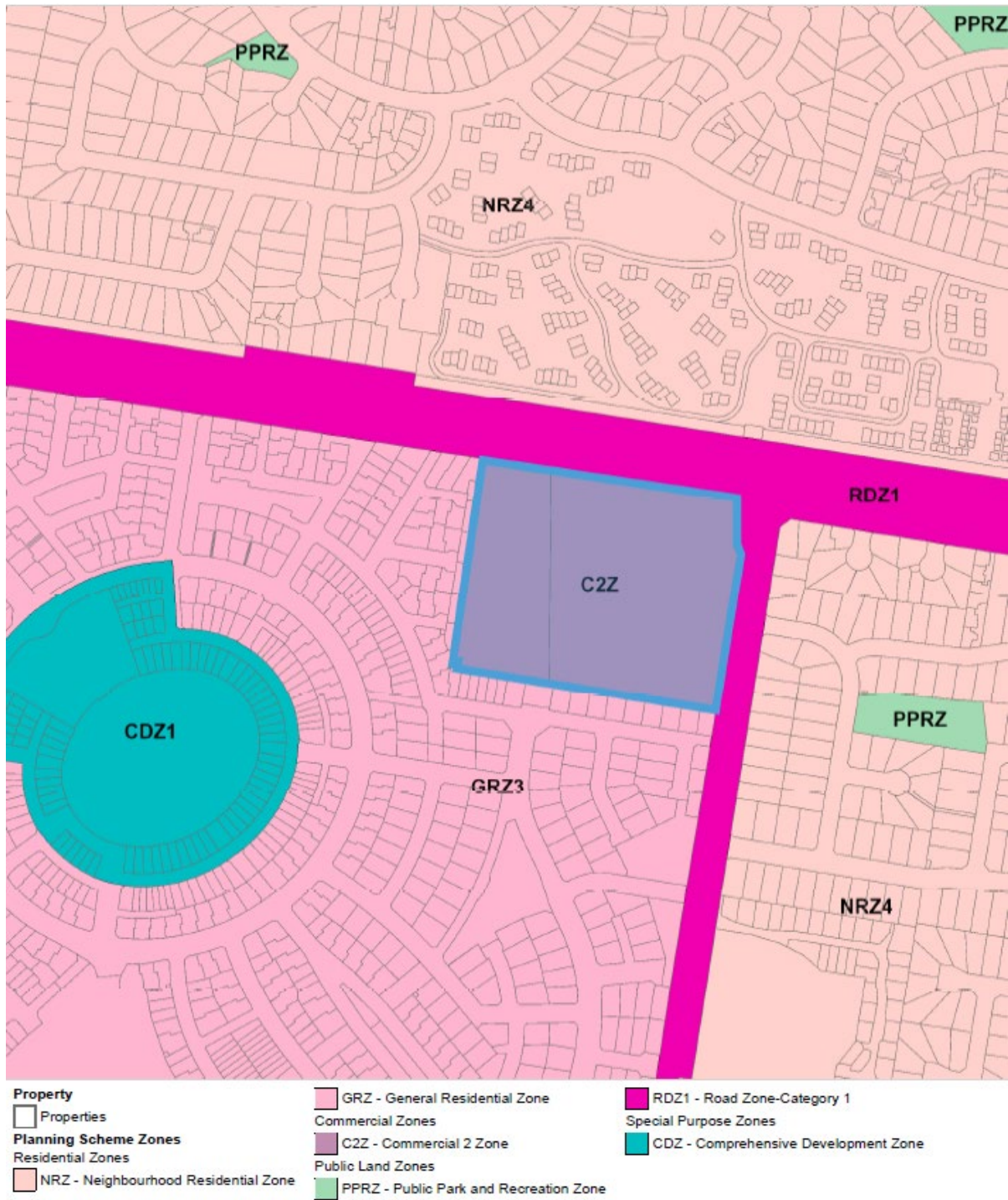


Figure 5. Existing Zoning, Site highlighted in blue (VicPlan 2020)

4 AMENDMENT C159

49. Amendment C159 rezones the site from the Commercial 2 Zone to the Mixed Use Zone and applies a design and development overlay to facilitate a medium rise, mixed-use redevelopment of the Site.

50. Per the explanatory report:

The Amendment proposes to rezone the land at 1 Jacksons Road, Mulgrave and 636 Wellington Road, Mulgrave to facilitate the improved development potential of the land, including for residential development.

The Amendment:

- *Rezones the whole site from Commercial 2 Zone to the Mixed Use Zone - Schedule 2.*
- *Deletes the Design and Development Overlay Schedule 1*
- *Applies the Design and Development Overlay Schedule 16 over the whole site.*
- *Applies the Environmental Audit Overlay over the whole site.*
- *As a consequence, amend the existing Schedule to Clause 32.04 Mixed Use Zone to read 'Schedule 1'.*

4.1 Mixed Use Zone

51. In contrast to the existing Commercial 2 Zone applying, the MUZ will allow the Site to be developed for a wide range of commercial and residential uses (subject to a permit).

52. The purpose of the Mixed Use Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. To provide for housing at higher densities.*
- *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
- *To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.*

53. In contrast to the existing Commercial 2 Zone applying, the MUZ will allow the Site to be developed for a wide range of commercial and residential uses.

4.2 Mixed Use Zone – Schedule 2 (MUZ2)

54. Adding to the MUZ controls, the proposed Schedule 2 to the Mixed Use Zone is constructed to deliver an outcome weighted towards residential uses.

55. The objectives of 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. (proposed MUZ2 Clause 1.0)*

56. The objectives of the MUZ2 clearly identify a more specific residential and limited commercial land use mix for the Site in comparison to the broader range of supported uses available under a standard Mixed Use Zone (with no schedule applying).

4.3 Design and development Overlay – Schedule 16 (DDO16)

57. DDO16 identifies the following design objectives:

- *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. (proposed DDO16 Clause 1.0)*

58. DDO16 includes mandatory height controls across the entire Site. DDO16 divides the Site into 4 Sub-Precincts (A, B, C, and D) (Figure 6). A summary of the proposed mandatory height controls and discretionary setback controls is provided at Table 1.

59. The deletion of DDO1 will remove the mandatory 20 metre road frontage building setback.

60. DDO16 will mandate building setbacks from boundaries as:

- Wellington Road setback: 10 metres
- Jacksons Road: 7.6 metres
- residential boundaries: 3 metres

61. In addition to the height and setback controls, DDO16 also provides planning provisions relating to building form and design, circulation and access, and landscaping.

Table 1. DDO16 Height and Setback Controls

Sub-Precinct	Mandatory Maximum Building Height	Discretionary Setback Controls
A (Wellington Road frontage)	4 storeys (13.5m)	10m to Wellington Road
B (Jacksons Road frontage)	4 storeys (13.5m)	7.6m to Jacksons Road
C (western and southern shared boundary to residential properties)	4 storeys (13.5m)	Development setback from the southern and western precinct boundaries by at least 3 metres, plus 0.3 metres for every metre of height over 3.6metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.
D (core/central area)	6 storeys (22m)	12m lower level setback between buildings for the lower 4 storeys. 18m above 4 storeys



Figure 6. DDO16 – ‘Map 1 - 1 Jacksons Road and 634 Wellington Road, Mulgrave – Sub-Precinct Areas, Boundary Setbacks and High-Value Trees’

5 STATE PLANNING POLICY FRAMEWORK

62. The following Clauses of the State Planning Policy Framework are considered relevant to the proposed Amendment:

- *Clause 11.01-1S – Settlement*
- *Clause 11.01-2S – Supply of urban land*
- *Clause 13.04-1S Contaminated and potentially contaminated land*
- *Clause 13.07-1S Land use compatibility*
- *Clause 15.01-1S Urban design*
- *Clause 15.01-2S Building design*
- *Clause 16.01-1S Integrated housing*
- *Clause 16.01-1R Integrated housing – Metropolitan Melbourne*
- *Clause 16.1-2S Location of residential development*
- *Clause 16.01-2R Housing opportunity areas – Metropolitan Melbourne*
- *Clause 16.01-3S Housing diversity*
- *Clause 16.01-4S Housing affordability*
- *Clause 17.01-2S Innovation and research*
- *Clause 17.02-1S Business*
- *Clause 17.02-2S Out-of-centre development*
- *Clause 17.03-1S Industrial land supply*
- *Clause 18.02-2S Public Transport*
- *Clause 18.02-2R Principal Public Transport Network*

63. As a large site within the Principal Public Transport Network, the Site enjoys a broad support for a variety of land use outcomes including, residential, industrial and commercial land uses.

- *To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses. (Objective, Clause 11.01-2S – Supply of urban land)*
- *To facilitate greater use of public transport and promote increased development close to high-quality public transport routes. (Objective, Clause 18.02-2S Public Transport)*
- *Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect. (Strategy, Clause 18.02-2R Principal Public Transport Network)*

Urban Renewal Planning Policy Support

64. As land within an established suburban area with good access to employment and services, the urban renewal of the Site is strongly supported. This policy support extends to place a responsibility on planning agencies that development opportunities should be optimised and not overly constrained by existing conditions. I have listed the most relevant objectives and strategies within the SPPF:

- *Plan for development and investment opportunities along existing and planned transport infrastructure. (Strategy Clause 11.01-1S – Settlement)*
- *Encourage a form and density of settlements that supports sustainable transport to reduce greenhouse gas emissions. (Strategy, Clause 11.01-1S – Settlement)*
- *Limit urban sprawl and direct growth into existing settlements. (Strategy, Clause 11.01-1S – Settlement)*
- *Promote and capitalise on opportunities for urban renewal and infill redevelopment. (Strategy, Clause 11.01-1S – Settlement)*

- *Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services. (Strategy, Clause 11.01-1S – Settlement)*
- *To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses. (Objective, Clause 11.01-2S – Supply of urban land)*
- *Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development. (Strategy, Clause 11.01-2S – Supply of urban land)*
- *Ensure that sufficient land is available to meet forecast demand (Strategy, Clause 11.01-2S – Supply of urban land)*
- *To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects. (Objective, Clause 13.07-1S Land use compatibility)*
- *Ensure the compatibility of a use or development as appropriate to the land use functions and character of the area by:*
 - *Directing land uses to appropriate locations.*
 - *Using a range of building design, urban design, operational and land use separation measures. (Strategy, Clause 13.07-1S Land use compatibility)*

Residential Renewal Planning Policy Support

65. Focussing the urban renewal strategies onto those that deal with residential re-use and intensification finds that the Site has strong support in this direction. The Site is a renewal site in an established urban area. It offers the opportunity for higher density housing that is well located. The Site can accommodate more affordable housing in a variety of forms without negative environmental effects.

- *Increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land. (Strategy, Clause 16.01-1S Integrated housing)*
- *To locate new housing in designated locations that offer good access to jobs, services and transport. (Objective, Clause 16.1-2S, Location of residential development)*
- *Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in greenfield and dispersed development areas. (Strategy, Clause 16.1-2S, Location of residential development)*
- *Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport. (Strategy, Clause 16.1-2S, Location of residential development)*
- *Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development. (Strategy, Clause 16.1-2S, Location of residential development)*
- *Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use. (Strategy, Clause 16.1-2S, Location of residential development)*
- *Identify opportunities for increased residential densities to help consolidate urban areas. (Strategy, Clause 16.01-2S, Location of residential development)*
- *Identify areas that offer opportunities for more medium and high-density housing near employment and transport in Metropolitan Melbourne. (Strategy, Clause 16.01-2R, Integrated housing Metropolitan Melbourne)*
- *Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:*
 - *In and around the Central City. Urban-renewal precincts and sites.*
 - *Areas for residential growth.*
 - *Areas for greyfield renewal, particularly through opportunities for land consolidation.*
 - *Areas designated as National Employment and Innovation Clusters.*

- *Metropolitan activity centres and major activity centres.*
- *Neighbourhood activity centres - especially those with good public transport connections.*
- *Areas near existing and proposed railway stations that can support transit-oriented development. (Strategy, Clause 16.01-2R, Integrated housing Metropolitan Melbourne)*
- *Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport. (Strategy, Clause 16.01-2R, Integrated housing Metropolitan Melbourne)*
- *Direct new housing to areas with appropriate infrastructure. (Strategy, Clause 16.01-2R, Integrated housing Metropolitan Melbourne)*
- *To provide for a range of housing types to meet diverse needs. (Objective, Clause 16.01-3S, Housing Diversity)*
- *Ensure planning for growth areas provides for a mix of housing types through a variety of lot sizes, including higher housing densities in and around activity centres. (Strategy, Clause 16.01-3S, Housing Diversity)*
- *Create mixed-use neighbourhoods at varying densities that offer more choice in housing. (Strategy, Clause 16.01-3R, Housing Diversity – Metropolitan Melbourne)*
- *Improve housing affordability by:*
 - *Ensuring land supply continues to be sufficient to meet demand.*
 - *Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.*
 - *Promoting good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.*
 - *Encouraging a significant proportion of new development to be affordable for households on very low to moderate incomes. (Strategy, Clause 16.01-4S, Housing affordability)*

Business/Commercial Renewal

66. There is little planning policy support for the Site to be redeveloped for commercial or business uses. Clause 17.02-1S seeks 'To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.' The strategies in support of this objective encourage commercial facilities to be located within planned or existing activity centres, as follows:

- *Plan for an adequate supply of commercial land in appropriate locations. (Strategy, Clause 17.02-1S, Business)*
- *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure. (Strategy, Clause 17.02-1S, Business)*
- *Locate commercial facilities in existing or planned activity centres. Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres. (Strategy, Clause 17.02-1S, Business)*
- *Provide small scale shopping opportunities that meet the needs of residents and workers in convenient locations. (Strategy, Clause 17.02-1S, Business)*

67. The Site is not an existing or planned activity centre. There is a case for the Site to provide for the needs of the local population in a new residential area, however the Waverley Park redevelopment while recent, could not now be regarded as 'new'.

Industrial land supply

68. Clause 17.03-1S seeks 'To ensure availability of land for industry'. The land is not industrially zoned nor is it proposed to be. The location of the Site within a residential area with no connections to

other industrial areas, results in the land not being supported for industrial land uses under Clause 17.03-1S, being:

- *Provide an adequate supply of industrial land in appropriate locations including sufficient stocks of large sites for strategic investment.*
- *Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development.*
- *Avoid approving non-industrial land uses that will prejudice the availability of land in identified industrial areas for future industrial use.*

69. While the site is large by a residential or commercial perspective, it is not considered a large industrial site. If redeveloped, for industrial purposes, the site would remain an isolated, medium sized industrial site with limited connections to any other industrial land.
70. Clause 17.03-1S seeks to maintain industrial land for employment generating uses. However, when seeking to identify land for industrial purposes, the Planning Policy Framework identifies a preference for industrial land which forms part of a larger industrial precinct and allows for future industrial expansion.
71. As noted in the Monash Industrial Land Use Strategy Background Report (2014), the Site is *'relatively isolated from these larger industrial precincts.'* Given the existing residential development surrounding the Site, it does not fit as land where industrial uses would be encouraged under the Planning Policy Framework.

5.1 Draft Melbourne Industrial and Commercial Land Plan

72. The Draft Melbourne Industrial and Commercial Land Plan has been prepared by the State Government to provide *'clarity and certainty around how industrial and commercial areas are planned to ensure they operate efficiently and remain viable.'* The Draft Plan was exhibited for public comment in December 2019. The comments are currently being assessed prior to a final plan being released.
73. The Draft Plan is largely focused on ensuring that Melbourne maintains a solid supply of industrial land. In addressing commercial land, the Plan is less detailed and refers mainly to land in activity centres.
74. The Draft Plan divides commercial areas into three categories, being *'state-significant'*, *'regionally significant'* and *'local'* commercial areas. Under this designation the Site would be classified as a *'Local commercial area'*. Being *'out-of-centre'* land, the Site does not fit with the description of *'local commercial areas'* being:
- 'Neighbourhood activity centres are local centres that provide access to local goods, services and employment opportunities and serve the needs of the surrounding community. Planning for these areas should create opportunities for local businesses and new jobs and deliver better access to local services and facilities.'* (Draft Melbourne Industrial and Commercial Land Use Plan, p.36)
75. Given the lack of consistency with any of the commercial land categories, the Site is a poor fit as a location for commercial land use under the Draft Plan.
76. I note that *'Map 2: Existing and future industrial land, 2018'* of the Draft Plan incorrectly identifies the Site as *'Other Industrial Land – Existing'*. This classification is not consistent with the Commercial 2 Zone applying to the Site. The Site is not identified on *'Map 3: Existing and future commercial land, 2018'* (See Appendix 1).

6 LOCAL PLANNING POLICY FRAMEWORK

77. The following Clauses of the Local Planning Policy Framework are considered relevant to the proposed Amendment:

- *Clause 21.04 Residential Development*
- *Clause 21.05 Economic Development*
- *Clause 21.07 Business Parks and Industry*
- *Clause 22.01 Residential Development and Character Policy*
- *Clause 22.03 Industry and Business Development and Character Policy*

Clause 21.04 Residential development

78. Clause 21.04 divides residential land in Monash into 8 categories. As a C2Z property, the Site is not included in a category. However, the land is located on the boundary of the ‘Dandenong Valley Escarpment Area and the ‘Garden City Suburbs Northern Areas’. The neighbourhood character of each category is identified in Clause 22.01 of the Monash Planning Scheme.

79. Clause 21.04 implements the findings of the Monash Housing Strategy 2014.

Map 3 – Residential development framework map

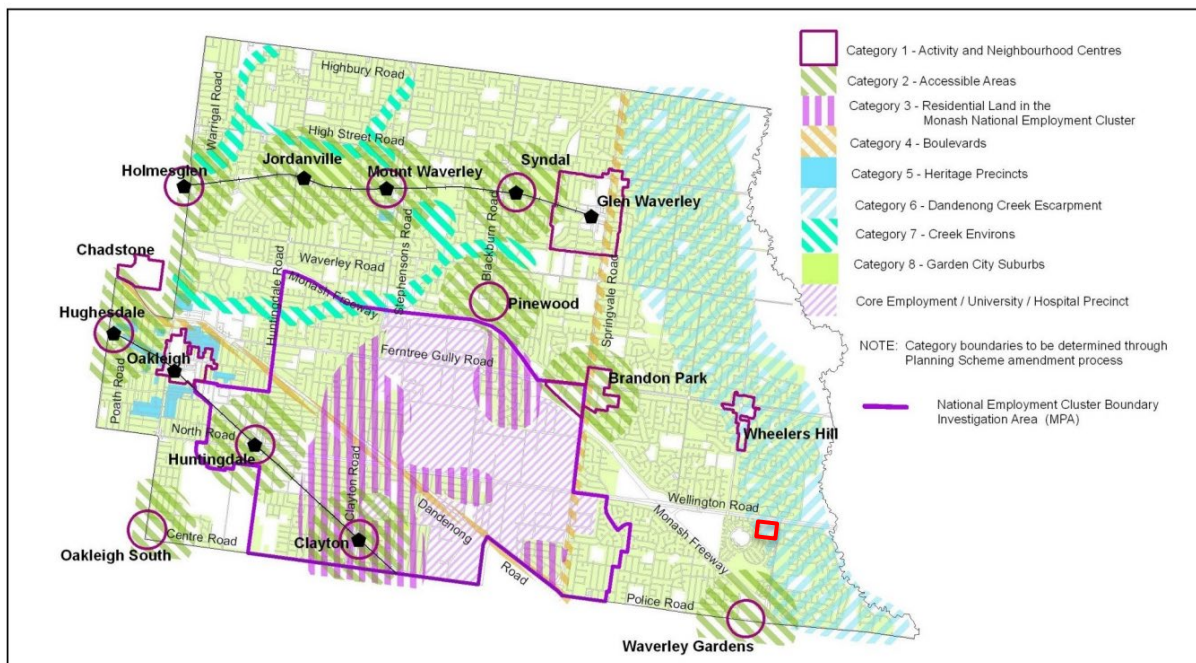


Figure 7. Clause 21.04 Map 3 – Residential Development Framework Map (Site highlighted in Red)

80. The Amendment provides an opportunity to respond to some of the key issues identified in the Clause by facilitating the development of a higher density housing type that will augment the surrounding suburban residential areas.

81. The Clause identifies the following key issues for Monash:

- *Increased residential densities need to be strategically located to reduce travel demand and promote liveability.*
- *The retention of neighbourhood character and enhancement of garden city character is very important to the Monash community and redevelopment needs to be respectful of these character considerations.*

- *Residential development should be located and developed to acknowledge sustainable living practices, regional changes in demographics, lifestyle choices and housing markets, location of employment and levels of economic development.*
- *Changes in lifestyle choices and family structures in Melbourne have resulted in a notable decrease in the number of persons per household and changes in housing preferences towards lower maintenance homes. This is evidenced in an increasing need for more diverse forms of housing within the municipality.*
- *Monash contains heritage places, precincts and creek environs of special character that have limited potential to support residential growth.*
- *There is a lack of affordable housing, which is a particular issue for newly arrived migrant families.*
- *The population in Monash is noticeably ageing, resulting in a shift in the demographic nature of the community.*
- *The needs of an older population are likely to differ in terms of accessibility for those with limited mobility and proximity to activity centres and facilities.*
- *Demand for quality student accommodation has outstripped the local supply in some areas of Monash, which has resulted in housing shortages and a significant number of students living in substandard, shared housing facilities.*

82. The provisions of Clause 22.01 which implement the Monash Housing Strategy 2014 are discussed in a different section.

Clause 21.05 Economic Development

83. Clause 21.05 identifies the following 'key issues' effecting economic development in Monash:

- *Global pressures such as rising energy prices, the desire to achieve world's best practice, the drive towards more sustainable operations, competition for information and knowledge, and continuing trade liberalisation all impact on economic development.*
- *There is a notable preference for clustering of businesses and industry in accessible, attractive and well serviced locations.*
- *Demand has increased for the provision of restricted retail type developments. (Bulky goods retail stores)*
- *Most of Monash's businesses are small (78% employ less than 5 people), working in increasingly competitive environments.*
- *The major growth sectors are service industries, manufacturing, e-commerce and high technology industries.*
- *There is an increasing need for improved access to information, communication systems and partnering.*
- *There is a notable loss of industrial premises in exchange for office-type or commercial industries which reduces the amount of industrial employment within the municipality.*
- *Demand for skilled labour to meet the requirements of emerging industries is rising.*
- *Social changes are apparent in the community such as the general aging of society and increasing expenditure on leisure, entertainment, cultural and other lifestyle activities.*
- *There is concern about the negative impact of gaming machines, particularly in lower socio-economic areas given their proliferation in Monash.*

84. In response to these issues, the economic policy seeks to encourage the development of employment generating uses, particularly within the Monash Technology Precinct, and discourage out-of-centre development.

85. The Monash Technology Precinct is included as part of the Monash National Employment and Innovation Cluster within *Plan Melbourne 2017-2050*.

86. As the Site sits outside of any of the Monash Technology Precinct and is not located within an existing or planned activity centre, the Clause does not directly encourage the use of the Site for commercial purposes. The proposed mixed-use redevelopment of the Site supports the following provisions of the Clause:

- *'To encourage appropriate mixed use development while ensuring that the amenity of neighbourhoods is not adversely affected. (Objective, Clause 21.05); and*
- *'Discourage out of centre development and overspill from larger activity centres of centre-based uses such as large convenience restaurants.'* (Strategy, Clause 21.05)

Clause 21.07 Business Parks and Industry/Clause 22.03 Industry and Business Development and Character Policy

87. Clauses 21.07 and 22.03 seek to guide the form and design of commercial and industrial development in Monash. The provisions of Clause 21.07 are primarily concerned with the ongoing management of commercial and industrial development rather than seeking to guide the provision or location of industrial and commercial land.

88. Clause 22.03 provides more specific guidance regarding the design and development of residential and commercial development. Clause 22.03-character statements for industrial land in commercial. As a commercially zoned property, the Site is not included in the industry character statements.

89. It is noted that the Site was included in the Monash Industrial Land Use Strategy (2014). The Strategy nominates the following for the Site.

- *'Vision and Strategic Direction*
It is expected that this precinct will continue to perform its role as a corporate head office and distribution centre location into the foreseeable future. There is no strategic justification for considering a change of land use at this stage.
- *Recommended Zoning*
It is recommended that this precinct be rezoned to Industrial 1 which under the reformed zones provides the flexibility for office uses.' (Monash Industrial Land Use Strategy 2014, pp.28)

90. The rezoning of the Site has not occurred in the intervening years between the adoption of the Strategy on 29 July 2014. When formally considered by the planning authority as part of Am C122 in 2015, the Council resolved to remove the Site from the draft amendment. The recommendation to rezone the Site to Industrial 1 Zone did not proceed. Since that time, the Site has seen a reduction in activity with the office uses and distribution uses declining or being curtailed.

Clause 22.01 Residential Development and Character Policy

91. Clause 22.01 provides policy guidance for residentially zoned land in Monash. As commercially zoned land (under the existing zoning), the Site is not included in any residential character precincts.

92. The Site sits between the 'Dandenong Valley Escapement' area to the north and east and the 'Garden City Suburbs Northern' areas to the south and west. The theme of these character areas is to retain the neighbourhood character of the areas.

93. The objectives of the Clause are:

- *To build upon the important contribution that landscaping makes to the garden city character of Monash.*
- *To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.*

- To protect and enhance the special character of the heritage precincts, the creek environs and the Dandenong Valley Escarpment.
- To encourage the provision of a variety of housing types to accommodate future housing needs and preferences. To achieve best practice environmentally sustainable development.
- To direct residential growth to neighbourhood and activity centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princes Highway).

94. As a relatively large urban renewal site, not within any residential ‘character’ area, I consider that the residential redevelopment of the Site can be undertaken with a degree of freedom tempered by:

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

95. When redeveloped, the Site will have its own character; one that is higher and denser in form, but one which respects, rather than replicates the neighbourhood character of surrounding areas.

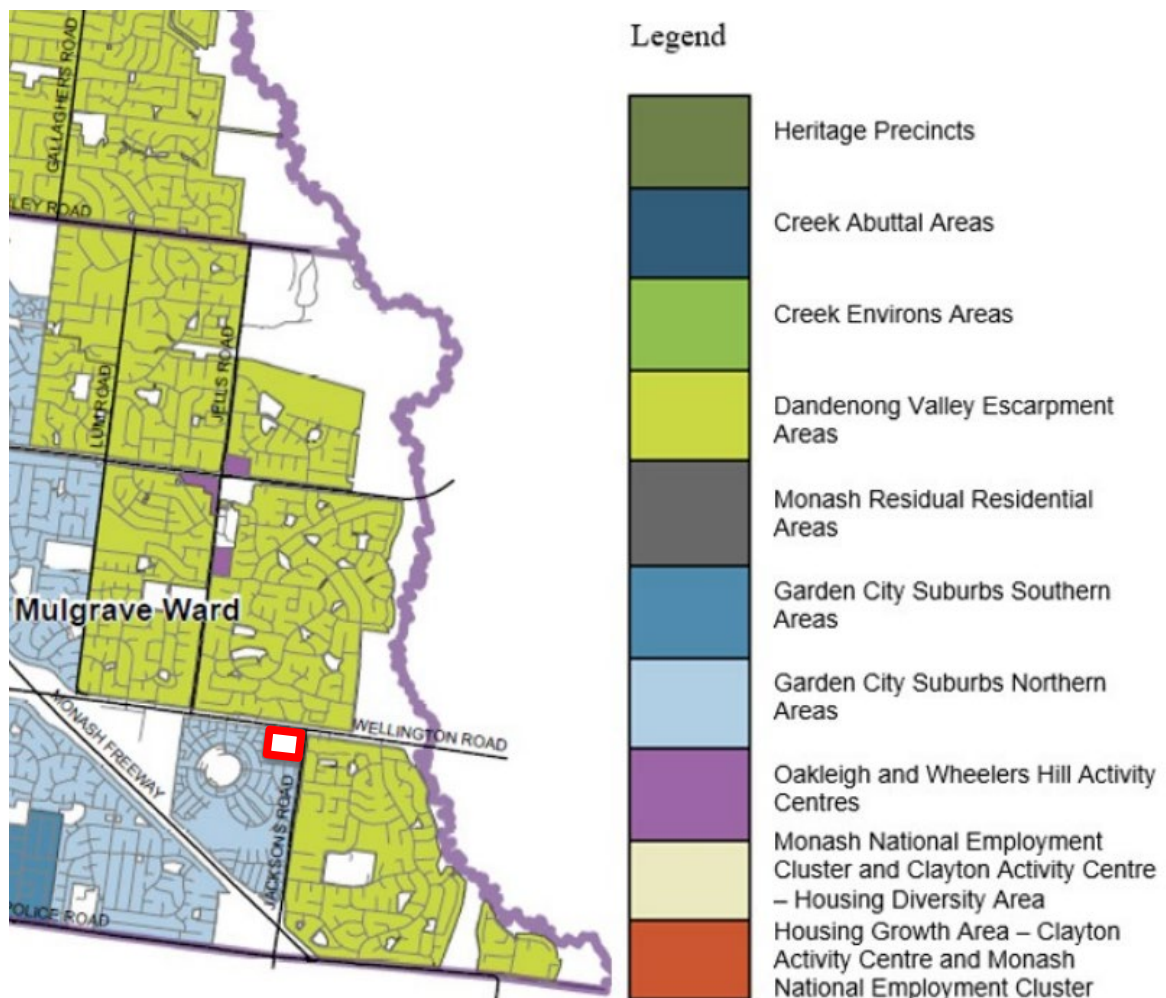


Figure 8. Clause 22.01 – Exert of Map 1 Neighbourhood character types (Site highlighted in red)

7 ASSESSMENT

7.1 Introduction

96. The Site presents as a disconnected land parcel; one which is commercially zoned, identified for industrial uses, (six years ago) in an abandoned amendment and as land which is surrounded by residential areas.
97. The Site does not offer a possibility to connect to any existing or planned commercial or industrial areas and as such, is not a location which is supported for commercial or industrial uses under the Planning Policy Framework. As a relatively small, hilly, under-utilised commercial property, the Site fits as the type of land suited for urban renewal for predominantly residential uses.

7.2 Which use is most appropriate for the Site?

Residential, 2020 style.

98. From Planning Policy perspective, the assessment in Section 6 leads me to support the predominantly residential re-use of the Site that will be encouraged under the Mixed Use Zone.
99. A predominantly residential re-use also fits comfortably with the land use of the surrounding areas.
100. The re-use of the Site for a higher and denser form of residential development might also be seen as the next generation of Mulgrave housing.
101. In the late 1960 and 1970s, the Mulgrave conventional lot low density housing grew up around the Site as VFL Park was established.
102. In 2002, Mirvac commenced redevelopment of 'Waverley Park' as a medium density suburb. The housing stock is provided as a mixture of single smaller lot and medium density town houses. Mirvac provided detached dwellings, attached housing and 3 level apartment buildings, but still a very homogenous land use.
103. In 2020, in Melbourne, we have major challenges to provide additional and much needed housing in environments which are attractive, affordable, and more diverse. The Site presents as this generation's opportunity to deliver a mixed use and medium to high density residential outcome.

Commercial use

104. Examining the Site as a purely commercial opportunity, I see:
- A disconnected commercial/industrial site.
 - No business exposure: The retaining walls and setbacks offer little exposure to the two main roads. This reduces the attractiveness for businesses that require/prefer 'business exposure' to a main road.
 - The Site is effectively 'two sites' separated by a significant level change making the land less usable.
 - The existence of residential neighbourhoods to the south and west may dissuade significant re-investment in the Site, with commercial investors preferring other less challenging locations.
 - Inefficiencies: the significant land slope/division and disjointed road access arrangements would make any industrial or commercial reuse/redevelopment of the land less efficient.
105. Activity centre policy seeks to concentrate commercial facilities within the activity centre boundaries. If redeveloped for commercial uses, the Site would not form part of any existing or planned activity centre. Both State and Local Planning Policy seeks to concentrate commercial land uses within existing and planned activity centres.

106. The existing commercial land uses of Office, Warehouse and Child Care Centre could be permitted under the existing C2Z and the proposed MUZ2. The change of zone would not introduce any 'existing use rights' issues. (Some of these uses appear to be no longer operating on the Site, leading to sections of the Site to be vacant).
107. The Site could be developed for Office uses in accordance with policy framework, however, as noted in the Monash Industrial Land Use Strategy Background Report,
- 'The opportunity for more intensive development however is likely to be limited by the elevation of the site which limits exposure to either Wellington Road or Jacksons Road and to some extent accessibility to the site. This will limit the opportunities for dedicated office uses which would prefer a more prominent main road frontage while the sloping nature of the site may also limit the ability to develop parts of the site for industrial uses.'* (Monash Industrial Land Strategy Background Report, 2014 pp, 147-148)
108. From a review of the site and surrounds, I agree that due to the change in levels across the site and the established trees along each frontage, the Site does not offer a level of visibility thought to be necessary for most office or retail uses.
109. From a planning policy perspective, the Site is not a location which would be supported for large scale commercial land uses.

7.3 Urban renewal/residential re-use of the Site

110. A clear policy priority of the Planning Policy Framework is to support infill redevelopment within established suburbs and in proximity to the Principal Public Transport Network. The provisions of the SPPF seek to concentrate housing growth within established areas (where possible) to maximise the uses of existing infrastructure and reduce pressure on the urban fringe. The relevant provisions of the Planning Policy Framework to guide the redevelopment of the Site are identified in Section 6 of this report.
111. In addition to the relevant provisions of the Planning Policy Framework identified in Section 6 of this report, the Site also presents as an urban renewal opportunity as which should be utilised under Plan Melbourne 2017-2050. Direction 1.3 of Plan Melbourne is to *'create development opportunities at urban renewal precincts across Melbourne'*. The Direction is supported by two Plan Melbourne policies as follows:
- *Policy 1.3.1 - Plan for and facilitate the development of urban renewal precincts.*
 - *Policy 1.3.2 - Plan for new development and investment opportunities on the existing and planned transport network. (Plan Melbourne 2017-2050, Department of Environment, Land, Water and Planning, pp. 38-39)*
112. The Site presents the following attributes which make it appropriate for urban renewal for mixed use and residential purposes:
- The Site is currently under-utilised/under-developed with large sections of the site and some buildings being vacant.
 - The Site is within the Principal Public Transport Network area.
 - The Site provides an opportunity within close proximity of a major employment hub.
 - The Site can be redeveloped while maintaining the amenity of adjoining dwellings.
113. By facilitating a medium density mixed-use/residential redevelopment of the Site, I consider the redevelopment of the Site for mixed-use and residential purposes to be fully consistent with the Direction 1.3 and the Policies 1.3.1 and 1.3.2.

7.4 Is the Mixed Use Zone an appropriate VPP tool?

114. I consider the proposed rezoning to Mixed Use Zone (MUZ) to be an appropriate zoning to facilitate the residential and redevelopment of the site. The MUZ will allow the existing commercial uses on the Site to be maintained while viable (noting that some commercial operations have already ceased) while also allowing the future redevelopment of the Site for residential, some retail and commercial purposes.
115. The MUZ allows a permit to be granted for a range of commercial, retail and residential uses. While I do not consider the Site to be an appropriate for a large retail centre, the MUZ will allow convenience retail opportunities which will be of benefit to future residents of the Site and surrounds. The range of permissible uses under the MUZ also will allow the continued commercial use of existing buildings prior to the redevelopment of the Site occurring without triggering existing use rights provisions.
116. The Mixed Use Zone provisions have 'in-built' amenity impact protections for abutting residential area through the application of Clause 55 objectives and standards and maintaining third-party appeal rights.
117. The MUZ requires:
- 'Any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone, or Township Zone must meet the requirements of Clauses 55.03-5, 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary' (Clause 32.04-10, Monash Planning Scheme).*
118. In totality, the Mixed Use provides a level of flexibility to facilitate the mixed use urban renewal of the Site, consistent with the purpose of the zone.

7.5 Will the site specific provisions Mixed Use Zone – Schedule 2 appropriately guide the renewal of the Site?

119. Schedule 2 to the Mixed Use Zone (MUZ2) provides an additional level of detail to identify the residential/mixed use outcome which is sought for the site. The use of Schedule 2 to provide additional land use guidance is consistent with the purpose of the Mixed Use Zone (head of power) and provides a co-ordinated land use and development direction in conjunction with the built form provisions of DDO16.
120. I support the MUZ2 the purpose of design objectives to provide a more specific land use and development direction for the Site. Regarding the content of the design objectives, I fully support the first design objective, and partially support the second design objective.

MUZ2 Objective 1

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

121. The design objective is consistent with the Planning Policy Framework which most supports a residential urban renewal of the land and the likely redevelopment of the Site under the Mixed Use Zone.

MUZ2 Objective 2

'To encourage a diversity of land uses, with a focus on health and community services, in easily accessible locations for the broader community.'

122. The wording in this Purpose raises questions as to the choice of the MUZ. If the intention was to provide residential, health and community uses, then all these uses are permissible within the

General Residential Zone which adjoins the Site. MUZ, while situated within the residential zone ‘family’ provides for retail and commercial uses as additional uses, consistent with the name of the zone.

123. This leads me to suggest that for clarity, the second zone Purpose should be re-worded. The Purpose should recognise that some retail and commercial uses are also anticipated as part of the renewal. A range of small to medium scale commercial and/or retail uses could be integrated into the mixed use development of the Site, consistent with the provisions of the Mixed Use Zone itself.

124. The wording of the second purpose in MUZ2 (which includes ‘*easily accessible locations*’) suggests that the planning authority intends to use this schedule on other sites.

125. As such, I recommend the second MUZ2 Objective be reworded as follows:

‘To provide opportunities for health, community, commercial, and retail land uses, in easily accessible locations for the broader community.’

7.6 Is Design and Development Overlay – Schedule 16 (DDO16) the appropriate VPP tool to manage the renewal of the Site?

126. While several planning tools can be used to manage the redevelopment of a former commercial site, the Design and Development Overlay is an appropriate VPP tool to manage the built form aspects of the redevelopment of the Site. Alternatively, a Development Plan Overlay could also be implemented to manage the redevelopment of the Site and extend into land uses as appropriate.

127. In my view, either control can effectively facilitate the urban renewal of the Site. A comparison of the Design and Development Overlay and the Development Plan Overlay is provided at Table 1.

128. I note that other planning controls such as the Comprehensive Development Zone or the Incorporate Plan Overlay could also be applied. I do not consider either of these controls appropriate, given the lack of flexibility they provide for a Site which has not been master planned and could be developed over time by separate owners.

Table 1. DDO and DPO Comparison

Item	Design and Development Overlay	Development Plan Overlay
Purpose	<ul style="list-style-type: none"> ▪ To implement the Municipal Planning Strategy and the Planning Policy Framework. ▪ To identify areas which are affected by specific requirements relating to the design and built form of new development. 	<ul style="list-style-type: none"> ▪ To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies. ▪ To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land. ▪ To exempt an application from notice and review if it is generally in accordance with a development plan.
Site Plan Requirement	Not Required	A Development Plan is required to be approved prior to the approval of a planning permit either for the entire Site or in Stages. Future planning permits must be generally in accordance with the approved Development Plan.

		A schedule to the Development Plan Overlay can allow Permits to be approved prior to the approval of a Development Plan for the entire, generally subject to a requirement that the permit will not prejudice the achievement of the Development Plan Overlay objectives.
Land Use	Built form control only, no guidance regarding the arrangement/location of uses on the Site is provided.	The Development Plan Overlay can identify the location/arrangement and relationship between of future uses on the Site.
Built Form Controls	Built form controls including height controls and setback controls can be applied through the Design and Development Overlay Schedule.	Built form controls including height controls and setback controls can be applied through the Development Plan Overlay Schedule.
Implementation with multiple owners	<p>The Design and Development Overlay applies built form controls and application requirements for future planning permit applications.</p> <p>While seeking to encourage a master planned response, the application requirements of the proposed DDO16 do not require for a full site masterplan to be approved.</p>	<p>The Development Plan Overlay can be applied across a site which includes multiple lots which are owned by separate parties.</p> <p>However, if different owners have different development programs, as may be the case for the Site, the preparation of a development plan will require co-operation between the two owners.</p> <p>The DPO Schedule can allow a development Plan to be prepared and approved in stages. However, a staged approval process removes a benefit of the DPO which is to establish an integrated plan across the Site.</p>
3rd Party notice and review	3 rd -party notice and review rights continue to apply.	Planning permits are exempt from 3 rd -party notice and review rights.
Access Arrangements	The DDO is a built form control. It does not seek to identify future access arrangements (internal roads, vehicle crossover, pedestrian access ways)	The Development Plan Overlay can be used to identify the future access arrangements through the Site either via the DPO Schedule or via requirements for a Development Plan.

129. As shown in Table 1, There are benefits and constraints to both the DPO and DDO approach.

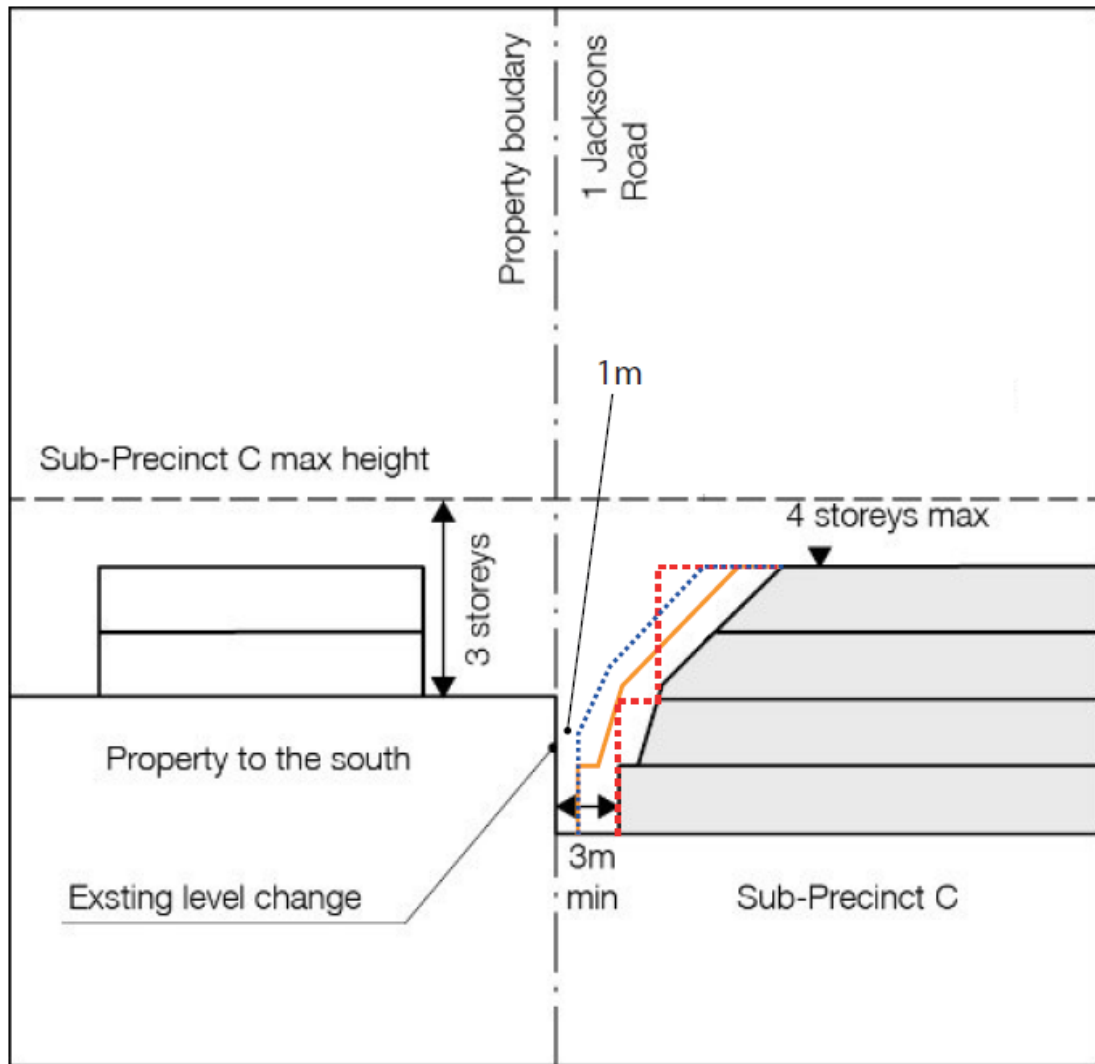
130. *Planning Practice Note 23: Applying the Incorporated Plan and Development Plan Overlays* provides guidance for the use of the Development Plan Overlay. The provisions of Practice Note 23 generally support the application of a DPO to manage the redevelopment of a large site for a variety of uses.

131. The Practice Note identifies that third party rights do not apply. Practice Note 23 notes '*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.*'

132. The Site qualifies under the criteria for a DPO pathway, having only two lands ownerships. The two owners may proceed in a coordinated manner but may not. The significant difference in ground level and remaining tenancy occupation matters would need to be resolved if the land was to be developed in a coordinated manner.
133. In reality, the material which supports the Amendment does not provide what could be described as a 'draft development plan'. In these circumstances Council was not supportive of the application of a DPO to the Site due to the removal of third-party appeal rights.
134. DDO16 will facilitate the urban renewal for the site for medium scale mixed-use and residential purposes without requiring a master planned response.
135. I do not see this as a concern. The site is not overly large. The two lots will retain separate main road accessways. The residential perimeter can be managed with building setback and height controls.

7.7 Are the provisions of DDO16 appropriate?

136. I consider the provisions of DDO16 will support the redevelopment of the Site in alignment with the Planning Policy Framework and Plan Melbourne, while respecting the character of adjoining properties.
137. However, I do not consider that the application of mandatory building height controls over the areas not bordering the residential boundaries as necessary.
138. I consider that the application of a mandatory controls may result in a poorer design outcome than a performance-based design which would work with the lands and allow some higher buildings while retaining high value trees and more open areas.
139. In designing building height controls over the Site, I note that no building setbacks are provided for along the western boundary within Waverley Park. This means that for amenity, the Site will need to do 'all the work'.
140. This leads me to support the boundary provisions within Sub-Precinct-C of a 3 metre landscape strip and a mandatory 13.5m maximum building height with stepped building setbacks above grounds level.
141. I note that the setback controls of the DDO16 are more restrictive than the setback controls applying under the Residential Growth Zone, despite neighbouring dwellings being constructed along the shared boundary to the Site at 2-storey heights (Figure 9).
142. The provisions of DDO16 will maintain the existing canopy trees within the 10m setback to Wellington Road and 7.6m to Jacksons Road. The retention of high value existing canopy trees outside of the boundary areas could be more assured through more flexible design approach, rather than through the 6-storey maximum mandatory built form.
143. Alternatively, a discretionary height control would provide an opportunity for building heights to be better balanced against other design objectives.
144. I note that the DDO16 does not remove third party notice/review rights. As such, the application of a discretionary height control would be open to public notification and open to appeal to VCAT.
145. From a review of the surrounding context, relevant provision of the planning policy framework and *Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes (PPN59)*, I do not consider there to be a need for mandatory controls; certainly not for the central areas of an urban renewal site.



- RGZ 1, RGZ 3 (Side Setback), RGZ 4
- - - RGZ 3 (Rear Setback)
- 55.04-4 Diagram B3 North-facing windows

RGZ 1, RGZ 3 (Side Setback), RGZ4
 1 metre plus:
 - 0.3 metres for every height over 3.6 metres up to 6.9 metres; or
 - 1 metre for every metre of height over 6.9 metres.

RGZ 3 (Rear Setback)
 3 metres for the first 2 storeys plus:
 - 2 metres for third storey.

55.04-4 Diagram B3 North-facing windows
 1 metre plus:
 - 0.6 metres for every metre of height over 3.5 metres up to 6.9 metres;
 - 1 metres for every metre of height over 6.9 metres.

Figure 9. Setback Controls Comparison (DDO16 southern and western boundary requirements)

146. Practice Note 59 establishes the criteria when considering whether mandatory controls should be applied. Planning Practice Note 59 notes *‘Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements’*
147. In its recent consideration of Amendment C155 to the Glen Eira Planning Scheme, the Panel supported the use of mandatory height limits along sensitive interfaces but did not support the use of mandatory height controls in the central area of the urban renewal precinct. While the ‘East Village’ precinct considered in Amendment C155 was a larger urban renewal site than the Site under consideration in Amendment C159, the application of Planning Practice Note 59 remains similar.
- ‘The Panel supports discretionary height limits where there are less sensitive interfaces (Commercial West, Commercial North, Mixed Use and Retail sub-precincts). In practice, whether these should be varied upwards goes beyond urban design considerations and should be considered in light of the suite of controls for the precinct and its vision. When these are considered they should act as a limit to this discretion. This is an important consideration, but not to a level that warrants mandatory heights across the entire precinct.’ (Glen Eira Planning Scheme Amendment C155 Panel Report, 11 February 2020 p. 73).*
148. With similar reasoning, I do not consider there to be sufficient strategic justification to support the application of mandatory height controls for land within an urban renewal precinct which does not manage a sensitive interface.
149. Given, the lack of strategic justification for mandatory controls being applied to Sub-Precinct D ‘core’ I recommend the 22m height control being redrafted as discretionary control. I hold the same views in reviewing Sub-Precinct -A and Sub-Precinct -B.
150. For clarity, my views on mandatory and discretionary height controls are to be taken as preferred positions and are secondary in my general support for the Amendment.
151. I have provided an assessment against the criteria set out in Practice Note 59 in Table 2.

Table 2. Planning Practice Note 59 - Mandatory Height Controls Criteria/Assessment

PPN 59 Criteria	Assessment
Is the mandatory provision strategically supported?	The exhibited documents do not include an urban design assessment to provide strategic justification for the mandatory height limits. I have not seen any evidence as to why a building in excess of 6 storeys may not be appropriate on central sections of the Site.
Does the proposed measure have a sound strategic basis having regard to the planning objective to be achieved and the planning policy framework generally?	The mandatory controls will deliver a medium density, built form character as identified in the objectives of DDO16. However, a more varied built form would also deliver a medium rise character while providing opportunities to achieve design objectives such as improved public realm and retention of canopy trees.

Does the proposed mandatory measure clearly implement a policy or achieve an objective rather than just being a prescriptive tool?	The height controls applying to sub-precinct C can be said to be aimed at managing the interface between the Site and the adjoining properties. I see no such rationale for the other Sub-Precincts.
Is the mandatory provision appropriate to the majority of proposals?	No The mandatory height controls have an important role along the boundaries with the residential areas. This is a minor section of the Site.
Has the scope of the proposed mandatory provision been carefully considered to ensure that it will be appropriate in the vast majority of cases to limit the unnecessary loss of the flexibility and opportunity available in a performance-based system?	From the exhibited documents, I do not consider that alternate development outcomes have been fully considered.
Will the considered application of planning policy to be implemented by the proposed measure lead to the outcome prescribed by the measure in the vast majority of cases or is it merely one of a number of possible outcomes?	Good, and aimed for planning policy outcomes may be achieved with mandatory or discretionary building height controls
Does the mandatory provision provide for the preferred outcome?	The mandatory height control provides for a uniformly, stepped development outcome across the entirety of the Site. I consider that the controls will discourage more creative design outcomes across the Site.
Does a proposed mandatory provision resolve divergent opinions within the community as to a preferred outcome when a consistent outcome is necessary?	The existing DDO1 applying to the Site (to be removed by the proposed Amendment) only limits heights in terms of boundary setbacks to be achieved. Despite this lack of limitation, development on the Site has only been developed at low heights. I note that third party and notice and appeal rights are maintained under the provisions of DDO16, allowing adjoining residents to object to a proposal or appeal a permit for buildings that are not considered appropriate.
Does a proposed mandatory provision avoid the risk of adverse outcomes in circumstances where there is likely to be constant pressure for development inconsistent with planning policy?	Not to my knowledge.
Is there real evidence of development exceeding the proposed control?	Not to my knowledge.
Will the majority of proposals not in accordance with the mandatory provision be clearly unacceptable?	No. The maintenance of mandatory building heights controls along the boundary areas with the residential interfaces will mean that any variations

	<p>in height above the maximum (e.g. 6 storey) levels will be separated from the sensitive areas, by probably at least 30-35 metres, allowing for landscaping (3m), Sub-Precinct -C (20m) and internal roads etc.</p>
<p>Will the majority of proposals not in accordance with the requirements fail to meet the objectives of the control?</p>	<p>The design objectives nominated at sub-clause 1.0 of DDO16 could be achieved by a variety of midrise building forms, some of which may not be in accordance with the mandatory height control.</p>
<p>Will the mandatory provision reduce administrative costs?</p> <p>Will the proposed mandatory provision reduce costs imposed on councils, applicants and the community to the extent that it significantly outweighs the benefit of a performance-based provision?</p>	<p>Not to my knowledge.</p>

8 Conclusion

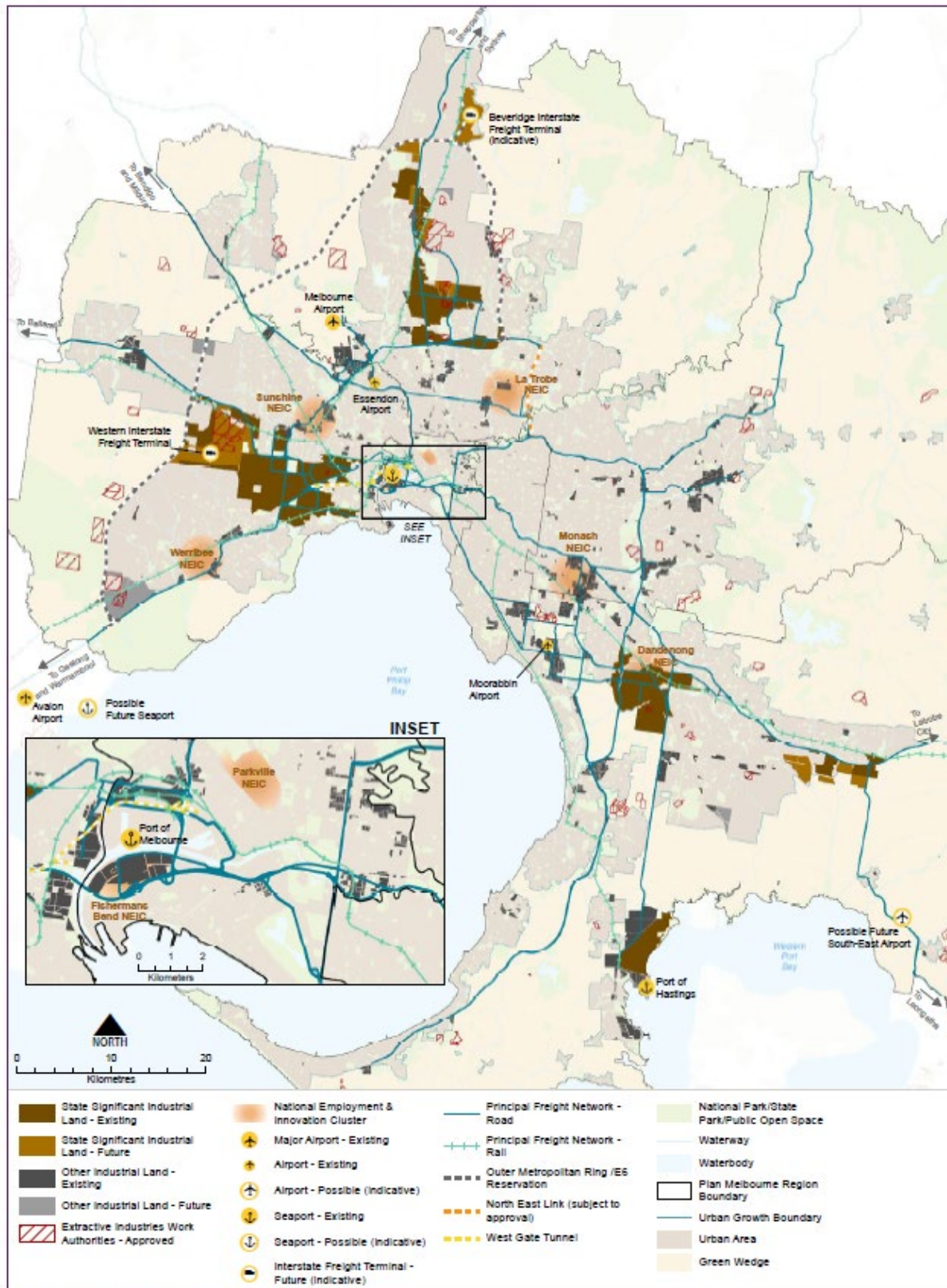
152. The Amendment is strongly consistent with Metropolitan planning policies which encourage urban renewal in the middle suburbs. The Planning Authority has monitored the functioning of the Site from 2014. In my view Council has reached the correct position that the Site is no longer contributing in a meaningful way to the commercial and industrial base of the municipality. Given that the Site presents as a highly competent site for a 2020 generation, medium to high density residential and mixed use site.
153. Consistent with current thinking, the Site should accommodate non-residential uses which will add life, convenience and productivity within the new neighbourhood. The encouragement of mixed use should be recognised in the Schedule 2 to the Mixed Use Zone by wording which does not exclude retail and commercial uses.
154. While I fully support for the Amendment, I see little justification under a performance based planning system for the imposition of mandatory building heights over those sections of the Site which do not directly abut residential property boundaries.

Bernard McNamara

2 April 2020

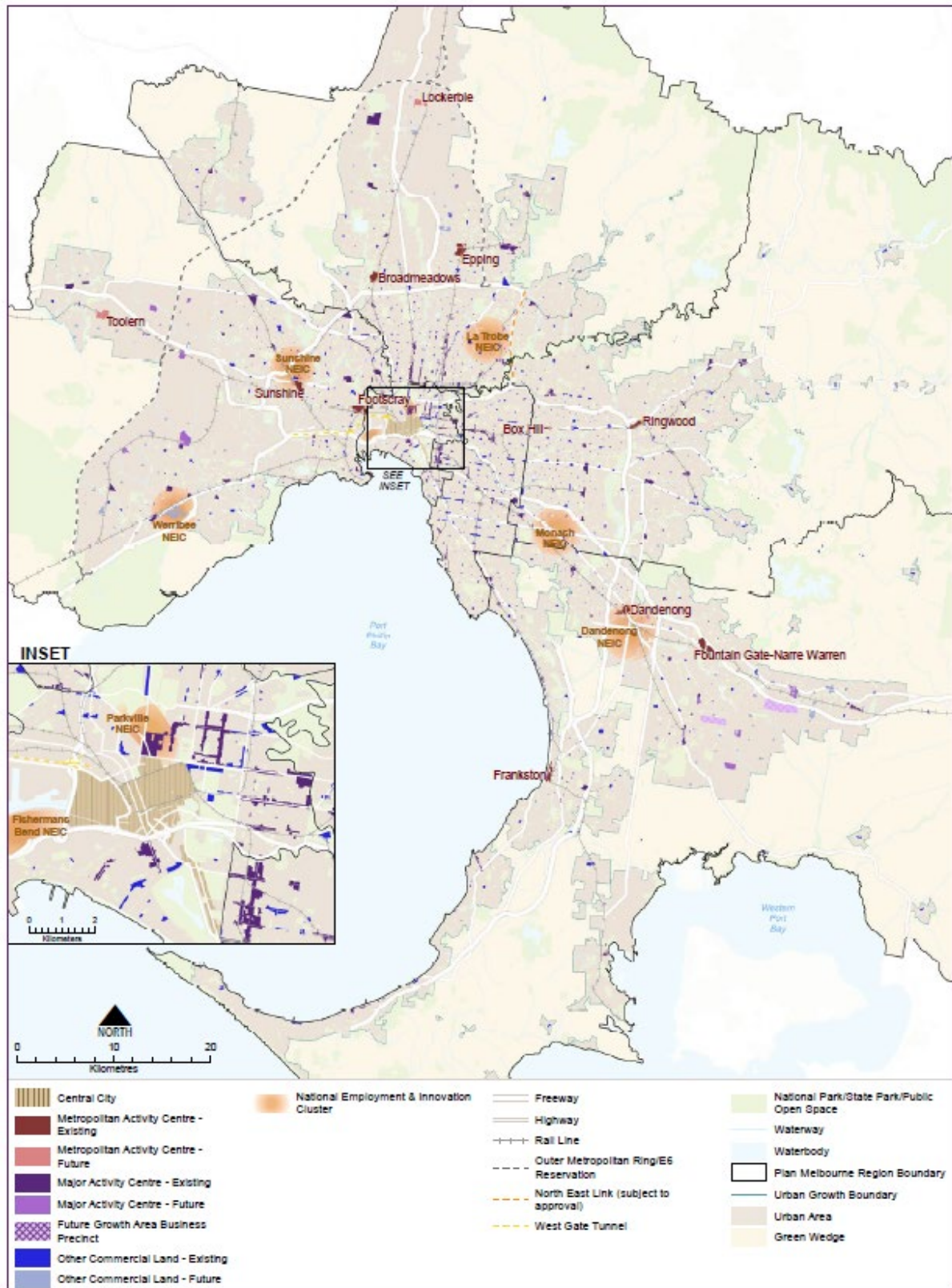
Appendix 1:
Draft Melbourne industrial and commercial land use plan
(Map 2 and 3)

Map 2: Existing and future industrial land, 2018



Source: Department of Environment, Land, Water and Planning

Map 3: Existing and future commercial land, 2018



Source: Department of Environment, Land, Water and Planning

Appendix 2

Expert Report Statement, Monash Planning Scheme Am C159

Properties 1 Jackson Road and 636 Wellington Road, Mulgrave

Name and Address: Bernard McNamara,

Principal, BMDA Development Advisory, Ground Level 312 St Kilda Road, Southbank 3006

Qualifications and Experience:

Bachelor of Town and Regional Planning, University of Melbourne

Graduate Diploma of Management, RMIT University

Professional Experience: Practising Town Planner for over 30 years in local government, private consulting, a private development corporation and a publicly listed development corporation.

2007-current: Principal of BMDA Development Advisory, providing property development and town planning services to a range of development companies and organisations in retail/commercial, residential, infrastructure and mixed-use fields.

Areas of Expertise relevant to this matter

- Statutory and Strategic Planning practice
- Urban renewal analysis and development planning
- Commercial building project design and street-based precinct planning
- Management of multi-level residential and commercial buildings within inner Melbourne
- Master planning and concept design planning of major developments
- Project management of development approvals for retail, commercial, infrastructure and residential projects, as a single use and in mixed use
- Commercial development feasibility analysis assessment
- Town planning due diligence

Planning Project and Policy work that is relevant to this statement:

Plan Melbourne: Member, Ministerial Advisory Committee 2012-2013 for *Plan Melbourne 2014* and re-appointed 2015-17 for *Plan Melbourne 2017-2050*.

Judge of the Urban Development Institute of Australia (Vic) Awards for Excellence 2009-2016: assessing (inter alia) retail centres, activity centres, residential and mixed-use projects in growth areas, for assessment for design, environmental and commercial performance.

Epping Central: Pacific Epping: Retail and Mixed-Use developments (major projects, planning scheme amendments, development contributions agreements, infrastructure agreements for Pacific Group of Companies) 2010-Current

Urban renewal assessment, Altona North, Hobsons Bay Planning Scheme Am C88: Assessment of VPA major urban renewal project; preparation of evidence, focussing on the mixed use precincts fronting Blackshaws Road.

Dandenong Plaza, urban renewal project involving the 'right-sizing of a former department store anchored mall-based regional shopping centre into a mixed use precinct requiring a master plan, and specific approvals and agreements.

Responsibility for development approvals in Central Melbourne, Southbank, Box Hill, Richmond, Northcote, and Central Dandenong for commercial and retail town planning Permit application processes, involving tall building subject to detailed design and development overlay controls.

Sunshine Town Centre and St Albans activity centre: commercial and strategic property advice for Brimbank City Council: 2013-15

Preparation of planning scheme amendments on behalf of private clients and carriage of these through the amendment process. Chadstone, Pacific Epping Plaza, Pacific Werribee, Dandenong Plaza, plus numerous representations for clients whose properties have been the subject to planning scheme amendments.

Town planning and project management development roles on major retail centres including Pacific Epping, Pacific Werribee, Dandenong Plaza, Myer centre Albury, Hoppers Crossing, growth area local town centres, Coles supermarket projects.

Expertise to make this report: Urban renewal and activity centre planning policy analysis, Strategic planning policy analysis, Site design expertise. Experience with the planning and design of commercial buildings, residential apartment buildings, retail and activity centres, retail, commercial and mixed-use projects and development of feasibilities for residential, retail and mixed-use projects and in the assessment of potential acquisitions and projects for clients.

Declaration of any business interests with the party for whom the report is commissioned: I have no business interests with the applicants or associated other than the commission for this report.

Instructions: I have been instructed by Hall & Wilcox Lawyers to prepare a town planning report in relation to planning scheme amendment as it relates to the Properties.

Facts Matters and Assumptions: I have visited the site and surroundings. References to the material that I have used are contained in my report. Assumptions and any exclusions are set out in the report.

Persons involved in the report content: Self and staff within BMDA consultancy

Summary of Opinions See statement

Declaration:

I have made all the inquiries that I believe are appropriate and that no matters of significance which I regard as relevant has to my knowledge been withheld from the Panel

Bernard McNamara

2 April 2020