

SJB Planning



Amendment C160 to the
Moreland Planning Scheme

1-9 Moreland Road,
Coburg

26 October 2016

Amanda K Ring

Executive summary

This Statement of Evidence addresses strategic planning matters associated with a proposal to rezone a significant parcel of industrial land on Moreland Road, Coburg wedged between Campbell Reserve and the Merri Creek.

From a review of submissions about Amendment C160 it is understood that it has broad support. In particular, Council supports the general proposition; it accepts that the industrial sector is not what it once was, that there is a consequential oversupply of employment-generating land, and that a number of declining industrial areas in the municipality are now suited to rezoning and a new future that realises a more relevant and efficient use of valuable land resources.

While the Council supports Amendment C160, its support is conditional and reflects the primary interests of submitters who seek more control and a greater level of certainty about future development contemplated for the site as a consequence of the planned new zones and development controls. In particular, Council's propositions in relation to:

- Building height; and
- Setbacks from the Merri Creek and landscaping;

as expressed in the draft Design and Development Overlay (DDO)¹ differ from those contemplated by the proponent of the amendment, and differ from what was exhibited and what Council officers have, over time, been saying about the controls.

To assist the Panel, this report:

- Reviews and explains the characteristics of the site and its context;
- Describes the intent and key aspects of Amendment C160;
- Explains the merits of the amendment having regard to relevant strategic and statutory contexts; and
- Reviews and explains, in general terms, how the Design and Development Overlay planned for the site can be improved, noting that this is to be covered in greater detail by Mr Andrew Clarke.

This report is one of a number of specialist reports that have been prepared on behalf of the proponent to assist the Panel with its considerations and recommendations to Council in relation to Amendment C160.

¹ The version of the DDO that reflects the decision of the responsible authority made at a Council Meeting on 14 September 2016

Name, qualifications and experience

1. My name is Amanda Ring and I am a Director of SJB Planning, which conducts business from premises located at 80 Dorcas Street, Southbank.
2. I hold a Bachelor of Town and Regional Planning obtained from the University of Melbourne and have been practising as a Town Planner since 1986. I have an employment history that includes positions with the former Shire of Melton, the City of Melbourne, the former Ministry of Planning and the Historic Buildings Council.
3. I have been a planning consultant since 1991, advising public sector and private clients on a wide range of strategic and statutory planning and development matters, including in relation to planning scheme amendments.
4. My area of expertise is urban and regional planning and heritage planning.

Instructions

5. In September 2016, Planning & Property Partners, on behalf of H & I Nominees Pty Ltd, approached me seeking assistance with an amendment to the Moreland Planning Scheme that proposes the rezoning of a significant parcel of industrial land the company owns at 1-9 Moreland Road, Coburg.²
6. I was asked if I could review the strategic attributes of the site and its suitability for rezoning and, in particular, assess the rezoning proposition in light of, inter alia, the Moreland Industrial Land Strategy (MILS) Review³ (which is the subject of Amendment C158) and whether the land to be rezoned Commercial is sufficient in the context of the site, the neighbourhood and the municipality as a whole.
7. After a site and area inspection and a review of briefing material, I verbally confirmed my general satisfaction with the rezoning proposition being advanced by Amendment C160 and agreed to prepare this report for the Panel.
8. More recently, I have received supplementary instructions in relation to photomontages and shadow diagrams prepared by Urbis in response to Panel directions dated 06 October 2016.⁴ Those instructions invited review of and reference to the material, as I considered appropriate, in this report.

² Planning & Property Partners letter of instructions dated 20 September 2016.

³ [Moreland Industrial Land Strategy 2015-2030 \(Final Version July 2016\)](#)

⁴ Planning & Property Partners letter of instructions dated 21 October 2016.

Facts, matters and assumptions

9. In preparing this report, I have:
- Reviewed a comprehensive range of material related to the preparation, authorisation and processing of Amendment C160, including but not limited to early and exhibited versions of the amendment, submissions about the amendment and the most recent version of the amendment prepared as a result of decisions made by Council at its meeting of 14 September 2016.
 - Visited the site and the surrounding area and considered the site's opportunities and constraints; and
 - Reviewed relevant State and local planning policies.
10. I have also considered:
- The objectives of planning in Victoria as set out in the *Planning and Environment Act 1987*;
 - the Ministerial Direction in relation to The Form and Content of Planning Schemes;
 - the Ministerial Direction No.1 relating to Potentially Contaminated Land;
 - the Ministerial Direction No.9 relating to Metropolitan Strategy;
 - the Ministerial Direction No.11 relating to Strategic Assessment Guidelines;
 - Planning Practice Notes relating to the strategic assessment guidelines for preparing and evaluating planning scheme amendments, writing schedules, the role of mandatory provisions in planning schemes, and aboriginal cultural heritage;
 - the Moreland Industrial Land Strategy 2015-2030 (Final Version July 2016), and other related reports referred to therein, being advanced by way of Amendment C158;
 - the Neighbourhood Centres Strategy (Draft Version December 2015) being advanced by Amendment C159;
 - a comprehensive range of material variously submitted to Council on behalf of H & I Nominees, by its planning consultant, Urbis, and most of which is contained within lodgement material dated 05 June 2015 and revised in February 2016⁵; and
 - built form representations and shadow diagrams prepared by Urbis in October 2016 in response to Panel directions.

⁵ Urbis Rezoning Report dated June 2105 (Revision 2 – February 2016)

11. Finally, I am aware that apart from landscape and traffic engineering evidence:
 - Mr Bryce Raworth (Bryce Raworth Conservation and Design) has prepared a report for the Panel in relation to heritage matters and the extent to which buildings at the site should be retained;
 - Mr Andrew Clarke (of Matrix Pty Ltd) has prepared a report for the Panel that explains his detailed review of the planned DDO; and
 - Mr Mark Sheppard (of David Lock & Associates) has prepared a report for the Panel in relation to urban design matters.

12. I rely on their opinions as relevant to their expertise and I also variously refer to the proponent's Revision 2 submission as prepared by Urbis and dated February 2016 (to minimise duplication of material before the Panel) and otherwise rely on further specialist reports (appended to that submission) including:
 - An Economic Assessment (prepared by Mark Dawson of Urbis) dated 05 June 2015.

13. My report addresses the matters in which my expertise lies and accurately reflects my own professional opinions. Except where stated, the opinions expressed in the report are not provisional opinions.

Summary of opinions

14. My opinions about the Amendment C160 are principally set out in paragraphs 49-133 of this report. These opinions form the basis of a summary and conclusions set out at paragraphs 134-139.

15. In summary, I consider that:
 - Amendment C160 can be supported in principle as offering a large, valuable and generally well-serviced parcel urban land a new, realistic and more efficient future.
 - The choice of zones planned for the land is appropriate noting the general decline in manufacturing and "white collarisation" of the workforce that has occurred in Victoria in recent decades. The combination of zones ensures that not all of the site will be able to host residential development and that where residential development is expected to occur it will not preclude commercial development from establishing at the site.
 - It is appropriate that the rezoning be accompanied by the introduction of a Design and Development Overlay.

- There is scope to improve the provisions planned for Schedule 25 to Design and Development Overlay⁶ to ensure the schedule meets the drafting standards expected by the Department of Environment, Land, Water and Planning.
- The amendment has had appropriate regard for the Strategic Assessment Guidelines for preparing and evaluating planning scheme amendments.

The site and surrounding area

The site

16. The subject site is large and of irregular but generally rectangular proportions. It is well described in material prepared by Urbis, on behalf of the proponent and again in material reported to Council.
17. Descriptions of the site in the amendment documents and supporting documents are made up of a combination of written material, a site survey and aerial and ground based photography. As a result, I have not recited the material or provided it again, in detail, in this report.
18. Comprising an area of almost 1.6 hectares the site presents as being mostly level though the survey explains typically moderate slope and steeper slopes at part of the eastern edge of the site.
19. It has frontage to Moreland Road (a Road Zone – Category 1). To the rear, the site interfaces with what I am instructed is a now closed section of Moore Street.
20. To the east, the site abuts the Merri Creek reservation (Beau Monde Reserve more specifically) where the interface is characterised by retaining walls, batters and mostly native tree and shrub vegetation that is quite densely planted and still maturing.
21. To the west side, the land abuts Campbell Reserve (home of the Moreland City Football Club), a local active and passive public open space that has frontage to Moreland Road and Moore Street, to the north.
22. The buildings occupying the subject site are biased to the western boundary.
23. The site's earliest building dates to the 1940s and it sits in the forward part of the site where it is visually prominent from Moreland Road. The building includes now out-dated loading facilities. It is explained in more detail in the specialist report prepared by Mr Bryce Raworth.

⁶ As decided by Council at its meeting on 14 September 2106.

24. The balance of the site is occupied by a heavily modified, large format warehouse-style building that includes storage and office and display spaces. It is built to most of the length of the western boundary and at least half of the site's northern boundary.
25. Bambis Co Pty Ltd is presently the sole occupant of the site. It is an import and distribution business that includes office, showroom and warehouse components.
26. Parking for more than one hundred cars is located to the east side of the buildings on the site and is typically underutilised.
27. Bambis Co Pty Ltd presently employs in the order of 40 people who are mostly employed in office-based positions.
28. I am instructed by the business owner that the site remains attractive to the company for its office/administrative and showroom functions but is no longer suited to warehouse activities because of its outdated format and access and loading constraints.

The surrounding area

29. The nature of the surrounding area has also been well described in various documents prepared by the proponent and the Council. It is also clear from submissions that submitters have a good appreciation of the neighbourhood and features characterising it.
30. In summary, however, it is appropriate to again record key aspects of the neighbourhood as follows:
 - The Merri Creek (including Beau Monde Reserve) to the east of the site is an important, regional environmental and recreational asset that offers formal and informal walking and cycling trails and connectivity with a variety of other passive and active spaces along its length, including spaces within the City of Moreland. It is typically very attractive with its mostly informal and native landscaping, its undulating topography, winding paths and the gentle sound of running water. While some of its urban interfaces are sensitive to the creek environs, there are a number that are not.
 - Further east, in the City of Darebin, is an industrial area centred on Anderson Street. It includes a large regional MFB facility, the aging Merri Business Park which includes Mark Tuckey (furniture manufacturer) and the relatively new, but small, Islamic Museum of Australia.
 - Moore Street to the north is a cul de sac. To its north is a residential neighbourhood (zoned Neighbourhood Residential) that mostly comprises traditional housing stock, some of which has been replaced with newer stock over time, and including two and three storey medium density housing adjacent to the Merri Creek.

- Beyond Campbell Reserve to the west is an industrial area (about double the size of the subject site) that hosts a variety of mostly smaller businesses and the larger and more prominent coffee importer, roaster and supplier, Genovese.
- To the south beyond Moreland Road is more industrial land, also interfacing with Merri Creek and extending west to Lincoln Street. The status of this industrial land is also changing, with approximately the southern half (interfacing with Allard Park) expected to be identified for transition to residential use. A residential neighbourhood sits between Lincoln Street and commercial activities located on the east side of Holmes Street.
- Moreland Road is an important east-west main road that crosses the Merri Creek and becomes Normanby Avenue, Thornbury. I understand it is a priority bus route⁷ and route bus stops are located in close proximity to the site. These buses connect with other public transport services including tram services in Holmes/Nicholson Street and the Moreland Train Station further west (approximately 1.5 km). In front of the site the road provides for one lane of traffic in each direction and bicycle lanes to both sides. Parking is restricted at the kerbs closer to the bridge but is generally available to the west of the site.

Current planning framework

Controls

31. The majority of the subject site is in the Industrial 3 Zone. This zone also applies to the closed section of Moore Street to the north.
32. In relative terms, the zone is quite restrictive so as to ensure land use/s compatible with neighbouring land use, including sensitive residential neighbourhoods.
33. Oddly, the “spur” of land at the site’s southwest corner (which provides access to the site’s loading dock) is partly included in the Public Park and Recreation Zone – the zone that captures the adjacent Campbell Reserve. On the face of it, the zone affecting this part of the site appears as an anomaly likely arising from a mapping error.

⁷ Traffic Assessment prepared by Ratio in June 2015 for the rezoning of land at 1-9 Moreland Road, Coburg (refer Appendix D of Urbis Rezoning Report dated June 2105 (Revision 2 – February 2016).

35. The whole of the site is affected by the Development Contributions Plan Overlay (Schedule 1), as is the balance of the land in the municipality. The Schedule allows the Council to obtain contributions from developers to fund a variety of desirable development and community infrastructure.
36. The Environmental Significance Overlay (Schedule 1) affects the whole of the site.
37. The Heritage Overlay (Ref No.117 in the Schedule) affects approximately three quarters of the site.
38. The Erosion Management Overlay affects a portion of the site at its eastern boundary.
39. The Land Subject to Inundation Overlay affects a sliver of the site in the northern reaches of its eastern boundary.
40. The Special Building Overlay affects the closed section of Moore Street to the north of the site.
41. As the Panel will observe, the site is far from being in a control vacuum. To the contrary, the current control regime affecting the site provides few opportunities for buildings or works of any of significance to occur at the site without planning permission.

Policy

42. I do not recite applicable State or local planning policy in detail; it is comprehensively and fairly set out in the material Urbis has prepared on behalf of the proponent. It is also set out in explanatory material prepared by the planning authority and in officer reports to Council.
43. It is apparent from Council's position in respect of the amendment, as well as submissions received about the amendment, that there is no substantive difference of opinion about the applicable policy framework.

Local Policy

44. Accordingly, I have elected to summarise the most influential policies as relevant, including proposed changes to policy anticipated, in general terms, to emerge for Amendments C158 and C159 relating to Industrial Land and Neighbourhood Activity Centres respectively:

Local Industrial Policy

- Council has, for at least a decade, been monitoring its industrial land supply and how it is used. It has acknowledged trends that demonstrate decline and shifts in the nature of industrial activity and the ramifications for the amount and location of industrial land. Recognising that its municipal supply exceeds demand, it has adjusted its strategies to ensure that the strategies continue to have relevance in a rapidly changing world.
- Despite the obvious challenges and influences entirely beyond its control, Council is committed to doing what it can to provide local employment opportunities for its residents, including in the industrial sector, but not to an extent which might see some of its valuable middle urban land resources blighted and otherwise underutilised.
- At its simplest, Council is seeking to find an appropriate balance having regard to the integrated thinking that needs to underpin planning in Victoria. More specifically, it is seeking to retain land for employment generation, but not too much, and ensure that enough land is available to meet the housing and community needs destined to emerge with expected, significant population growth.
- To this end, the current Local Planning Policy Framework adopts a targeted response to industrial land resources based on the Moreland Industrial Land Use Strategy of 2006 (MILUS). It commits to the protection of three Core Industrial Precincts in Brunswick, North Coburg and Newlands and a number of smaller Secondary Industry and Employment precincts scattered across the municipality.
- The Council's Municipal Strategic Statement identifies the site as a Multi-Use Employment Precinct immediately adjacent to the Moreland Road / Nicholson Street, Coburg / Brunswick Neighbourhood Activity Centre (NAC). Multi-Use Employment Precincts are identified as transitional precincts; precincts suited to a new and wider mix of employment-generating uses, as a priority, but with opportunities for residential use.
- Amendment C158 seeks to update and refine the Council's industrial land policies based on the Moreland Industrial Land Strategy 2015-2030⁸ (MILS). The Amendment is now seriously entertained; it is with the Department of Environment, Land, Water and Planning (DELWP) for assessment and approval.
- The MILS identifies the subject site located in a Category 2 – Employment Area that will allow residential uses provided opportunities are created for employment.

⁸ Final Version dated July 2015.

Local Housing and Neighbourhood Character Policy

- The City of Moreland has a growing population as a consequence of Melbourne's projected significant population growth to 2050; to in the order of 8 million people.
- Consistent with State planning policies, local housing policy aims to provide considerable new housing opportunities to meet the diverse needs of many and varied contemporary household types.
- Local policy explains that some of this growth will be accommodated on industrial land identified as having scope for future residential development.
- Consistent with State settlement and housing policies, significant housing growth is expected to occur in the municipality's activity centres so as to assist the management of slower rates of growth in hinterland residential neighbourhoods and take better advantage of significant public and private investment in these locations.
- The most significant housing growth is anticipated in the larger centres at Brunswick, Coburg and Glenroy.
- Neighbourhood activity centres (NACs) are also expected to accommodate significant housing growth but at a lesser rate of change to the three larger centres.
- Increased density anticipates that the character of these neighbourhoods will change over time.

Local Activity Centre Policy

- The subject site is located within the environs of the Moreland Road/Nicholson Street, Coburg/Brunswick NAC.
- Moreland's activity centres⁹ are expected to be the principal locations for a confluence of commercial, business, leisure and community facilities and, therein, key places of employment and social interaction. They are also locations that are typically well serviced by public transport.
- Consistent with State planning policies that advance "20-minute neighbourhoods", Moreland's residential neighbourhoods are well located to a range of centres, including higher order centres in the municipality and beyond it.
- Amendment C159 to the Moreland Planning Scheme is advancing the Council's draft Neighbourhood Centres Strategy (NCS).¹⁰ Amendment C159 is not yet considered seriously entertained, but a Panel is presently

⁹ Moreland designated activity centres derive from the Moreland Activity Centre Framework 2014.

¹⁰ Neighbourhood Centres Strategy Draft Version December 2015.

considering submissions about the amendment.¹¹ Its report was not available at the time of writing this report.

- The NCS identifies the subject site as a Focus Area for Change within the Holmes Street, Nicholson Street and Moreland Road, Coburg Neighbourhood Activity Centre.
- Current policy contemplates development comprising up to four-storeys but recognises that there can be circumstances where development of greater height could be achieved without unreasonable impacts on the setting or the amenity of the area.
- Amendment C159 also envisages development in NACs of up to four storeys and proposes mandatory height controls, despite Planning Practice Note 59 explaining that mandatory provisions in the VPPs are the exception.

Local Heritage Policy

- Council has quite detailed heritage policies aimed at conserving and enhancing all heritage places. It provides guidance when demolition is proposed and ample direction for new buildings and works and signage.

State Planning Policy

45. The SPPF is set out at Clauses 9-19 of the Moreland Planning Scheme.
46. The local policies summarised above are consistent with the State Planning Policy Framework. The framework aims to respond to society's various needs and expectations and demands for integrated planning and decision-making in favour of net community benefit and sustainable development for the benefit of present and future generations.
47. In particular, and as most relevant to Amendment C160, local policy is consistent with State:
 - Economic development policies relating to industrial land and activity centres;
 - Settlement and housing policies; and
 - Heritage policy.

¹¹ The Panel Hearing for Amendment C159 was conducted in early September 2016.

Amendment C160

48. The key components of Amendment C160 are set out as follows:
- The zoning of the subject site is proposed to change to a combination of the Commercial 2 and Mixed Use Zones. The former will be located at the front centre part of the site at Moreland Road.
 - The extent of the Heritage Overlay (HO) affecting the site is proposed to contract to more precisely identify the heritage values of the site that are linked to the 1940s 'moderne' building located at the front of the site.
 - An Environmental Audit Overlay (EAO) is proposed to affect the whole of the site in anticipation of the site accommodating sensitive land uses and as required by Ministerial Direction No.1 relating to Potentially Contaminated Land.
 - A Design and Development Overlay (DDO) is proposed to affect the whole of the subject site. Schedule 25 is proposed to manage the siting and design of future buildings and works, including complementary works relating to pedestrian and vehicle access and landscaping amongst others.

The key planning considerations

49. Amendments to planning schemes necessitate multiple and integrated considerations having regard to the Strategic Assessment Guidelines and, in many cases, the issues can be synthesised and especially so, in a case like this, when there is a broad level of support for Amendment C160.
50. Both the proponent and the Council have completed the assessment required by Ministerial Direction No.11; the proponent in the substantial and comprehensive Rezoning Report¹² and the Council in its Amendment C160 Explanatory Report.
51. Having reviewed these assessments, it is my view that the key issues for the Panel to decide and make recommendations about are:
- Is the subject land a legitimate candidate for rezoning?
 - If it is a legitimate candidate for rezoning, what new zone or zones should be attributed to it?
 - The need for and appropriateness of any complementary planning tools?
 - The extent and nature of any complementary planning tool?

¹² Urbis Rezoning Report dated June 2105 (Revision 2 – February 2016), Section 7 pp 33-36.

The site's candidacy for rezoning

52. The Strategic Assessment Guidelines expect that amendments are both needed and justified.
53. I am satisfied that the site is a good candidate for rezoning and that the amendment is needed and justified. Specifically:
- The whole of the site is no longer suited to the needs of the present owner/occupier. I am instructed that the continued success (and growth) of its business relies on decentralising and updating its warehousing functions.
 - In preparation for moving the low-employing warehouse functions to more suitable land with superior access and operational advantages, the owner has tried, unsuccessfully, to lease the warehouse since 2014. Industrial redundancy is a risk and with it site blight.
 - As the City of Moreland's ongoing work in relation to industrial land reveals, the demonstrated lack of demand for large parcels of industrial land and/or large premises reflects the long term decline in manufacturing in Victoria (including in the automotive sector), competition from better located and more accessible land in Melbourne's outer suburbs and the "white collarisation" of the workforce as a function of further education and structural shift to a predominantly service-based economy.
 - There are ample land and market opportunities in the municipality and adjacent areas for small-scale industries.
 - Urbis' economic assessment confirms that demand for large scale offices is also not likely in Moreland, but that expected population growth (and more housing) and structural shifts in the economy will likely support more small office-based employment which could comfortably co-locate with the Bambis office / administrative functions intended to stay at the site.
 - Significantly, policy confirms that the site is not located in any of the municipality's Core Industrial Areas that Council is committed to retaining and supporting.
 - It is presently located in a Multi-Use Employment Area (No.57) where a wider mix of land uses is appropriate and, in relation to large sites, this includes opportunities for residential development. Policy updates planned by Amendment C158 refines its status with the MILS identifying it as a Category 2 – Employment Area. It is an area that needs to prioritise employment opportunities and includes options for residential development.
 - The land is presently within the environs of a Neighbourhood Activity Centre and is intended to be included in an expanded Neighbourhood Activity Centre by Amendment C159. Policy explains that NACs are intended to be locations for a concentration and mix of land use and community activity.

54. Site attributes that also underpin the site's candidacy for rezoning for a more diverse land use and development include:
- It is retained in one parcel and, therein, offers considerable flexibility for alternative land use and development and scope for management of interface relationships and area amenity.
 - The heritage values of the site have real potential to be enhanced with rezoning. A broadening of land use opportunities will logically offer greater opportunities for recycling of the 'moderne' building at the front of the site.
 - The site as a whole is presently not particularly attractive and as Melbourne Water pertinently observed in its submission, *does not actively seek to enhance the interface of the Merri Creek reserve.*
 - It has few encumbrances and all, in my view, can be managed with rezoning and complementary controls, including a number of existing overlay controls that will continue to affect the land.
 - The site's unusual but advantageous position between two significant public open spaces - the Merri Creek corridor being a regionally significant public open space with valued aesthetic, landscape and environmental qualities, and the Campbell Reserve.
 - Scope, by virtue of size, to facilitate public access through the site.
 - A close, but not abutting, relationship with housing to the north, including medium density housing adjacent to the creek.
 - A generally accessible location in a middle suburban location and adjacent to a main road and close to public transport.

The choice and combination of new zones

55. It is apparent that the proponent and the Council both recognise that the present zoning of the land is losing currency and in order to avoid this large, older style building (parts of which have heritage value) and large site becoming an unattractive "white elephant" when the majority of the buildings are vacated, that it should sensibly be rezoned to deliver net community benefit.
56. Many submitters too acknowledge that positive outcomes for the site and surrounding area can flow from a rezoning that would diversify land use opportunities and realise new development.
57. The Strategic Assessment Guidelines require that amendments advance the objectives of planning and support planning policy, especially local policy. I am satisfied that the amendment is appropriately responding to and implementing policy in a number of ways, and most relevantly in relation to industry, housing and activity centre policy.

58. As explained throughout this report, the now seriously entertained Amendment C158 and the MILS report on which it is based, identifies the subject land as being in a Category 2 - Employment Area - a category that envisages transition to a broader business base and potentially more employment opportunities.
59. The MILS includes a number of strategies for Category 2 - Employment Areas and one, in particular, is aimed at prioritising employment in circumstances where land is transitioning to a broader base. Specifically, it aspires to an amount of floorspace that is
- at least equivalent to the amount of all proposed ground and first floor building space (inclusive of car parking, other services and circulation space).*
60. Based on the development concepts prepared for the site¹³ (and Figure 1 of Schedule 25 to the DDO¹⁴) I expect this to translate to many thousands of the square metres of commercial floorspace because of the unusually large area of the site (about 16,000 sqm).
61. Recognising the local economic characteristics and trends identified by Urbis¹⁵ it is very likely that this amount of new commercial, or employment-generating, floorspace would prove to be ambitious and not, in practice, realisable.
62. So while the rezoning proposal has had regard for many of the planned strategies for Category 2 - Employment Areas, it does not strictly accord with this MILS floorspace strategy in circumstances where a planned transition proposes residential uses.
63. In deciding to support the rezoning in the proportions planned, Council has in fact recognised that there is scope to vary from what will be one of a number of strategies for Category 2 - Employment Areas; that there is scope for a wider range of uses, including a significant amount of housing for a growing population, in a larger Neighbourhood Activity Centre.

¹³ Urbis Rezoning Report dated June 2105 (Revision 2 – February 2016).

¹⁴ As decided by Council at its meeting on 14 September 2106.

¹⁵ Economic Assessment (prepared by Mark Dawson of Urbis) dated 05 June 2015.

65. Council, in advancing the amendment, has also accepted that employment is being suitably prioritised at the subject site. It recognises that commercial floorspace, in relative terms, is able to generate significantly more employment than contemporary industrial floorspace. This particular proposition is well demonstrated by the existing Bambis use; 35 jobs in about 1000 sqm of office space and just 5 jobs in more than 10,000 sqm of warehouse space.
66. At its meeting of 14 September 2016, Council further accepted (consistent with adopted changes to MILS) that most of the subject site when rezoned to Mixed Use should be identified as a Category 3 – Transitional Residential Area.
67. As a result, there is general agreement that the combination of the Mixed Use Zone and Commercial 2 Zone is an appropriate mix when regard is had to geographic characteristics of the land, and the diminished demand for larger scale industrial development (and larger scale commercial development) and the increased employment opportunities which can be created with a more modest supply of commercial land.
68. Having regard to the foregoing, I am satisfied that Amendment C160 attributes an appropriate level of priority to employment generating activity by:
- Including a parcel of land at the centre front of the site in Commercial 2 Zone where it can take advantage of exposure to Moreland Road. The Commercial 2 Zone is designed, by reference to its purpose statements to:

To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.

Material submitted to Council to support the rezoning proposition suggests that the Commercial 2 Zone in this location will be able to accommodate between 4000-4500 sqm of commercial floorspace which, on the Urbis' evaluation¹⁶, suggests possible future employment figures well above the 40 jobs presently generated by the site and, possibly, up to about five times this number of jobs.

Significantly, the Commercial 2 Zone limits residential development. The Panel will note that Accommodation is a prohibited use at Section 3 of the table to Clause 34.02-1.

¹⁶ Economic Assessment (prepared by Mark Dawson of Urbis) dated 05 June 2015.

- Attributing a Mixed Use Zone to the balance of the site and the purposes of which include:

To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.

In addition to the employment opportunities that are expected to come with rezoning part of the site to Commercial 2, there is potential for even more employment in the Mixed Use Zone, although as Urbis anticipates, this will likely be modest. It is a bonus, nevertheless.

- It is noted too, that that preferred building heights envisaged by the proponent in its version of Schedule 25 to the Design and Development Overlay contemplate an allowance for a deeper ground floor to ceiling dimension so that these spaces can retain flexibility and encourage employment-generating uses over time. This approach is encouraged in the MILS in Category 2 – Employment Areas.

Complementary Planning Tools

69. The rezoning of the land, in general terms, advances policies in respect of industry, housing and activity centre policy. The Strategic Assessment Guidelines also anticipate that the Amendment have regard, as relevant to this case, to potential changes to the attractiveness and physical condition of the immediate and surrounding areas and impacts on the social life of the existing community.
70. There is a number of controls and policies already in place to ensure that future development emerges in an appropriate way including controls to manage the site's interface with the Merri Creek. Zone controls, overlays and particular provisions, together with a number of quite detailed local policies in relation to neighbourhood character, car and bike parking and vehicle access, advertising signs, heritage, development of five or more storeys, environmentally sustainable development, entertainment venues and licensed premises, and so on, already provide Council with a wide range of tools to ensure future development of the site has no unreasonable environmental, social and economic effects.
71. Amendment C160 will attribute significant redevelopment potential to the land. Taking account of the potential and a number of the site's sensitive interfaces, it is reasonable that the land be rezoned with an additional level of control to guide a degree and extent of development that, unashamedly, will be transformative.
72. The Design and Development Overlay (DDO) is a widely used Victoria Planning Provisions (VPP) tool and most often applied in circumstances where planning/responsible authorities are keen to establish parameters for future development of land.

73. The DDO is a tool that provides an additional measure of control over and above standard development controls set out (mostly) in zone provisions, but noting also that in this case the subject site is already affected and controlled by a number of overlays.
74. Typically, Design and Development Overlays are used to control siting, design and other aspects of development. In many cases, Schedules to the Design and Development Overlay that localise the extent of the additional layer of development control express parameters in relation to building height and setbacks.
75. Increasingly, Schedules address a wider range of site planning and design matters and this trend is demonstrated in the proposed Schedule 25 albeit there are differences of opinion as to what should legitimately be addressed in the schedule and, how, and to what extent?
76. I am satisfied that the Design and Development Overlay is an appropriate additional and complementary tool to manage change at the site over time. It is important, however, that any Schedule be drafted in a way that makes proper use of the Victoria Planning Provisions.
77. As use of the DDO as a planning tool has flourished and the breadth of matters that Schedules seek to control has expanded, conflicts and duplication are increasingly prevalent. The review and editing process implied in the Strategic Assessment Guidelines anticipates inter alia that any new provisions will be reconciled with other provisions in the Planning Scheme.
78. In this case, there is a number of aspects of the proposed Design and Development Overlay that, as a minimum, should be modified to better reflect contemporary drafting practice and expectations.
79. The VPP Practice Note relating to the writing of schedules explains eight principles that apply to the drafting and use of local content in a schedule, irrespective of the task that the schedule is to perform. These are extracted from the Practice Note for the Panel's convenience as follows:
1. *Schedules must be read with other planning controls.*
 2. *Local content should help to implement the State Planning Policy Framework (SPPF) objectives.*
 3. *Local content help to implement LPPF objectives.*
 4. *Local content should not duplicate other provisions.*
 5. *Local content can only do what its 'parent provision' enables it to do.*
 6. *Local content should be strategically justified.*
 7. *Local content should have legally certain meaning.*
 8. *Local content should be easy to read.*

80. Mr Andrew Clarke, of Matrix Planning, has completed a detailed review of the Schedule Council proposes for the Design and Development Overlay having regard to these principles, but my opinions about Schedule 25 are set out below.
81. In the first instance, there needs to be a thorough review of spelling, grammar and formatting. This aspect of review is part of making the content correct and easy to read.
82. From a more general perspective, however, the Council's preferred version of Schedule 25 exhibits some obvious departures from the Practice Note principles that I encourage the Panel consider when preparing its report and recommendations to Council. These departures and my opinions about them as set out in the following paragraphs.

Clause 1.0 Design objectives

83. There is scope to remove and rationalise the design objectives to, in particular, address issues of duplication and otherwise delete references to specific documents which should reasonably be considered to add nothing to the objectives or which will, on any view, not likely be approved.
84. References to the Neighbourhood Activity Centres Strategy and Moreland Apartment Design Code 2015 should also be removed.
85. Drafting should ensure that each of the remaining design objectives are supported by the of the balance of the Schedule.

Clause 2.0 Application requirements

86. There is scope to reduce these requirements as a number duplicate requirements set out in other provisions of the scheme including at Clauses 21 and 22 of the Moreland Planning Scheme or in the Environmental Audit and Heritage Overlay.
87. It is also noted that Council will have (and regularly invokes) the opportunity to ask for any information that it reasonably considers relevant to its decision in respect of an application for a planning permit pursuant to Section 54 of the Planning and Environment Act 1987.

Clause 3.0 Buildings and works

88. The Panel will observe that (the latest version of Schedule 25) proposes mandatory provisions.
89. The mandatory nature of the provisions is most obvious in relation to the height of buildings (under the heading Built Form) but, in fact, regularly appears throughout the schedule with the use of the word "must".

History of the mandatory provisions

90. I am aware that when the DEWLP¹⁷ authorised preparation of the amendment (in January 2016) it foreshadowed that mandatory provisions would not likely be approved on the basis that there was no strategic justification for the provisions in this location.
91. The further justification invited by DELWP was not prepared to my knowledge and, regardless, the amendment was exhibited with a combination of mandatory and discretionary height controls.

Council meeting of 14 September 2016

92. At its 14 September 2016 meeting, Council decided to change the exhibited version of the amendment, mostly in relation to the matter of building height. The changes were explained as being a response to submissions expressing concern about height in general but, in particular, at the Merri Creek and Moore Street interfaces.
93. The Council also decided to impose more onerous and mandatory Merri Creek interface setback requirements.

Height controls in the Merri Creek Environs

94. So far as I am aware, land adjacent to the Merri Creek is presently subject to either no height controls or height controls variously set out in residential zones, most of which are discretionary or otherwise strategically justified in the residential neighbourhoods. Some height guidance is also provided in Schedule 1 to the Environmental Significance Overlay.

Height considerations in a strategic context

95. Submitters concerns about the potential height of new buildings at the site are understandable; many people simply prefer that the environment that they are familiar with stays the same, or that change occurs in a more subtle and gradual way.
96. There is a level of comfort that can come from mandatory height controls but it is often a level of comfort that is gained at the expense of outcomes that can come from flexibility.
97. While conversation and debate about the future height of buildings at the site is legitimate it must be conducted within a strategic planning context; a context which requires the fair, orderly and efficient use of valuable urban land in a way that is sustainable and which, ultimately offers a net community benefit in the interests of all Victorians.

¹⁷ Department of Environment Land, Water and Planning.

98. It is also a conversation and debate that must recognise the VPPs. As explained in Planning Practice Note 59:

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.

99. There are no aspects of the subject site or its particular location that justify mandatory height or setback controls in a Mixed Use or Commercial 2 Zone, in my opinion.
100. Council and submitter expectations about height and setback at this site are either not consistent with current State and Local planning policy frameworks or are entirely capable of being managed with the Design and Development Overlay. Properly constructed, discretionary controls must ordinarily be accepted as providing the desirable *degree of freedom* to achieve specified objectives.
101. If the Panel concludes, as I have, that there is no strategic justification for mandatory controls at the site and, in this particular environment, then all references to mandatory controls, overt or implied, should be removed from the Schedule.
102. Expression of a preferred maximum height or heights is the more acceptable way for a planning authority to express its general expectations for building height.
103. In addition to planned discretionary heights controls for this particular site, Council has a comprehensive 14-page policy to assist the assessment of any development of five or more storeys.¹⁸

Drafting suggestions in relation to height provisions

104. There is also scope, in my opinion, for improved expression. For example, the reference in the Schedule to storeys adds nothing useful to the control and, instead, is simply confusing. Storeys can be shallower or deeper, depending on who is designing them and what they are being designed for.
105. The preferred height of buildings would be better expressed as an upper limit and not referenced to a base datum at adjoining land or some existing or future feature on the site. Height could be expressed in either metres (which is then measured above natural ground level) or metres AHD.¹⁹
106. The Schedule could (as per the exhibited version) then usefully identify a range of circumstances where a permit applicant might be able to demonstrate that built form above the preferred maximum height might be justified.

¹⁸ Clause 22.07 – Development of Five or More Storeys.

¹⁹ Australian Height Datum.

Setbacks from Merri Creek

107. Council proposes that the Schedule increase the depth of building setback from Merri Creek. Specifically, it proposes a mandatory setback of 50 metres from the Merri Creek (of itself an unclear description), or 12 metres from the eastern boundary, whichever is the greater.²⁰
108. The change appears to derive from the Development Guidelines for the Merri Creek 2004 which have only ever been discretionary and significantly exceeds the 30 metres starting point at Standard MC 13.
109. As to the mandatory nature of the proposed setback controls, there has been no strategic planning justification for the change. One can ask rhetorically, why at this site but not others along the length of the creek?
110. I also question the location of the setback controls in the Schedule – if in fact they are needed at all. If there is to be a setback control in the schedule, it is my preference that it be included under the heading Built Form, as setback controls are typically a corollary to height and they would ordinarily be expected to be found by a user of the planning scheme in this location in the schedule.

Eliminating duplication

111. Duplication of other planning scheme controls should be removed from Clause 3.0. The most obvious example occurs under the Heritage heading where there is duplication with the provisions of the Heritage Overlay.
112. The clause should not include any matter that, prima facie, could reasonably be the subject of permit conditions for development at a later date. The most obvious in this category is the requirement pertaining to the construction standards for public roads and laneways.
113. Reference to the Moreland Apartment Design Code should be removed. While the Council continues to advance its approval (by way of Amendment C142), this is an aspiration that is now highly unlikely to be realised given the current Minister's well-documented and publicised commitment to the introduction of Better Apartment Design Standards to the Victoria Planning Provisions.

Clause 5.0 Exemption for Notice and Review

114. There is scope to provide some exemptions from notification and review. This is a little used opportunity in Schedules and should be used more, in my view.

²⁰ The control is linked to Figure 1 intended to be included in Schedule 25.

Clause 6.0 Decision guidelines

115. The decision guidelines as presently drafted are of limited assistance to the decision-maker, in my opinion. The clause mostly identifies documents that provide a strategic basis for planned changes to the planning scheme – by this amendment and others currently being processed rather than anything in particular that might assist the application of discretion set out in the control.
116. Otherwise, the reference to the Development Guidelines for the Merri Creek 2004 is also unhelpful. The guidelines are already listed in the Reference Documents at Clause 21.04 and appear in various places in the Moreland Planning Scheme, including in Schedule 1 to the Environmental Significance Overlay. In any event, they were prepared to have an association with the Environmental Significance Overlay affecting the creek environs and the standards set out in guidelines have the potential to complicate and confuse the buildings and works matters set out in Schedule 25.
117. If decision guidelines are to be included in the Schedule it is my view that they should have an obvious or direct connection to the design objectives in the Schedule so as to actually assist the exercise of discretion in the control.

Figures in the DDO

118. A conceptual diagram like that appearing at Figure 1 is appropriate in the present circumstances but it should be amended to ensure consistency with other of my observations about the drafting of the schedule.
119. Figures 2 and 3 should be removed. Only Figure 2 is referred to in the schedule and where it is referred to it is in the context of a mandatory setback control – one which I do not consider appropriate in the circumstances.

Photomontages and shadow diagrams

Photomontages

120. The first objective set out in Schedule 25 explains the general height expectation for this site; that is, mid-rise. There is no definition of medium rise in the planning scheme and in reality it is a relative term. In my view, mid or medium rise development, in the context of a suburban setting like Coburg can reasonably be understood as being greater than four storeys and less than 10 storeys.
121. The proponent's development concept, sets out a preferred height framework ranging from four to six storeys that sensibly has regard for various of the subject site's interfaces and their degrees of sensitivity.

122. Importantly, the visual representation of the development concepts as preferred by Council, and the alternative preferred by the proponent, are indicative. To the extent that the creators of the photomontages have attributed “architecture” to the built form represented in the images, it will likely not bear any resemblance to what will eventually occur at the site as new buildings and works will evolve from more detailed site planning and design and will be reviewed for suitability as part of the permit application process.
123. Both development concepts express building envelopes with varying degrees of visibility – less visibility for Council’s concept and more for the concept advanced by the proponent. It is expected that new buildings in an urban environment will always be visible. As Panels and the Tribunal²¹ have regularly accepted, invisibility is typically not the planning test of whether buildings are appropriate for their locations and setting.
124. Mostly, the visual impacts of differences in height are not significant, in my opinion (refer to View VP A, B, C and F). That is, neither representation of the development concepts produces a remarkably visible outcome or one which could fairly be criticised in the relevant strategic context and maturing landscaped setting as being somehow unacceptable.
125. Views VP D and E offer greater contrast, in my opinion, and this is a consequence of the proponent’s control allowing, at the discretion of the responsible authority, greater height in the eastern part of the site and the consistent setback from the eastern boundary of 12 metres.
126. Discretion does not mean that the preferred maximum height, or even greater height will be realised at the site. Rather, if it is to be realised it must, on balance, be determined as being an acceptable planning outcome with net community benefit.
127. While the contrast between the concept envelopes represented in Views VP D and E is greater, the difference is not so great that the proponent’s envelope cannot be supported. In both these views the envelopes still bear relationships with the other elements in the urban landscape and present as medium rise forms. For this reason, the degree of freedom offered by the proponent’s discretionary controls should not be viewed as unacceptable, but providing more flexibility to realise the schedule’s objectives in the best possible way.

Shadow diagrams

128. The shadow diagrams prepared in response to Panel directions reveal that the majority of shadow cast by a development concept informed by the Council’s mandatory height and setback controls, falls within the site.

²¹ Victorian Civil and Administrative Tribunal.

129. As expected, the shadows cast by the proponent's development concept (with its preferred maximum heights and discretionary setback from the eastern boundary) are deeper but still generally confined within the site. The exceptions are noted as follows:
- At 11.00 am some shadow falls to the eastern edge of Campbell Reserve (where it is already in shadow from the existing warehouse) and shadow is cast to Moreland Road.
 - At 12.00 noon shadow is cast to Moreland Road.
 - At 1.00 pm shadow is cast to Moreland Road.
 - At 2.00 pm shadow is cast to Moreland Road and to the western edge of the Merri Creek (Beau Monde Reserve) by the most southerly of the building envelopes.
 - At 3.00 pm shadow is cast by all building envelopes well into Beau Monde Reserve, but not so far as the informal bike/walking track.
130. The most obvious points of difference between the shadows cast by the different concepts occurs at 2.00 pm and 3.00 pm.
131. At 2.00 pm the difference is very modest given the very small amount of the reserve that is impacted at this time.
132. The greater impact is at 3.00 pm. At this time, the impact still affects less than half of the reserve (as located to the west of the creek) and mostly stays clear of the paths²² on this side of the creek. For users of the reserve who might want to use it more passively, there will also be grassed areas with access to sunshine.
133. For these reasons, I consider that the degree of shadowing at 3.00pm is not excessive nor of qualitative impact that would justify the introduction of mandatory height or eastern boundary setback controls.

Summary and conclusions

134. At its core, Amendment C160 is recognising:
- the imminent redundancy of a large parcel of industrial land;
 - that more employment opportunities can be created by taking a different approach to zoning;
 - that redundant industrial land which is otherwise well located, can play a role in meeting the demands arising from current and projected population growth; and

²² Paths of the west side of the creek are the informal paths. The formal and wider, shared pedestrian and cyclist path is located on the east side of the Creek.

- that there are ways of managing future use and development of the land to ensure that it is acceptable and sustainable and that it delivers a net community benefit.
135. I am satisfied by reference to the Strategic Assessment Guidelines that it will advance the objectives of planning in Victoria. Amendment C160 is consistent with current and emerging planning policy. It is apparent that all stakeholders have taken a wide range of social, environmental and economic effects into account and there is broad support for it on this basis.
136. In particular, the amendment and, in due course, the nature of use and development expected to flow from it, will:
- ensure that the site is more efficiently utilised;
 - preserve the opportunity for more and different types of employment, directly and indirectly;
 - protect a valued heritage place;
 - provide higher density housing in a Neighbourhood Activity Centre location where residents have good access to public transport, public open space and other community facilities and services;
 - include a framework for mid-rise development that is contextually and strategically suited to the site's middle suburban location; and
 - respect and enhance engagement with all interfaces, in particular, with the significant public spaces to the east and west.
137. Clearly, the focus of interest in respect of Amendment C160 is not whether the subject land should be rezoned and how, but the extent to which it should be redeveloped. Even then, the debate has mostly been confined to debate about building height and setback from the Merri Creek.
138. In this regard, the proponent's propositions are reasonable and soundly based having regard to strategic context. There are opportunities to improve and otherwise refine proposed Schedule 25 to the DDO and, most significantly, to remove mandatory provisions in the absence of strategic justification so as to ensure the degree of flexibility for performance based outcomes that underpin the VPPs.

139. Subject to recommendations I make in this regard, I believe that Amendment C160 can be recommended to Council for approval.

In coming to these conclusions, I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Panel.



Amanda K Ring
BTRP MVPELA
26 October 2016