

Planning and Environment Act 1987

Panel Report

Moreland Planning Scheme Amendment C160

1-9 Moreland Road, Coburg

Front page

9 January 2017

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Panel Report pursuant to section 25 of the Act

Moreland Planning Scheme Amendment C160

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9 January 2017



Sue Porter, Chair



Peter Gaschk, Member

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List of Abbreviations

ACHRIS	Aboriginal Cultural Heritage Register and Information System
AHD	Australian Height Datum
C2Z	Commercial 2 Zone
CDZ	Comprehensive Development Zone
DCPO	Development Contribution Plan Overlay
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
EAO	Environmental Audit Overlay
EMO	Erosion Management Overlay
ESD	Environmentally Sustainable Development
ESO	Environmental Significance Overlay
FoMC	Friends of Merri Creek
HO	Heritage Overlay
IN3Z	Industrial 3 Zone
IPO	Incorporated Plan Overlay
LAC	Local Activity Centre
LPPF	Local Planning Policy Framework
LSIO	Land subject to Inundation Overlay
MCMC	Merri Creek Management Committee
MILS	Moreland Industrial Land Strategy
MILUS	Moreland Industrial Land Use Strategy
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NAC	Neighbourhood Activity Centre
NCS	Neighbourhood Centre Strategy
NRZ	Neighbourhood Residential Zone
PPN	Planning Practice Note
PPRZ	Public Park and Recreation Zone

RGZ	Residential Growth Zone
SFP	Strategic Framework Plan
SPPF	State Planning Policy Framework
SUZ	Special Use Zone
VPP	Victoria Planning Provisions

Executive Summary

(i) Summary

Moreland Planning Scheme Amendment C160 (the Amendment) seeks to:

- Rezone the site to Mixed Use Zone (MUZ) and Commercial 2 Zone (C2Z) to maximise residential development opportunities and provide employment land.
- Introduce a new Design and Development Overlay (DDO25) to support the transition of this site from industrial to medium density residential development. The DDO25 seeks to implement development and design controls, specifically including mandatory building heights to six storeys.
- Modify the extent of the Heritage Overlay (HO) to reflect the remaining significant fabric of the industrial building.
- Apply the Environmental Audit Overlay (EAO) to ensure potential contamination associated with previous industrial uses is addressed as part of any future redevelopment of the site.

The subject site is 1-9 Moreland Road, Coburg and has total land area of approximately 1.6 hectares. The majority of the site is used for show rooms, offices and warehouse distribution purposes, with associated car parking as well as loading and unloading facilities. The landowner requested the Amendment as the economic viability of the site for traditionally based industrial use was no longer able to meet changing industrial practices, requirements and market demands.

Fifteen submissions were received in response to the exhibition of the Amendment. Whilst some were supportive of the general thrust of the Amendment there were a number of submissions that raised concerns about:

- consistency with industrial policy
- building heights and setbacks
- impacts on the Merri Creek
- traffic, access and transport
- heritage
- landscaping
- environmentally sustainable development
- potential contamination
- Cultural Heritage Management Plan.

The Panel has reviewed a large volume of material in respect to Amendment C160. All submissions, evidence and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

In considering the Amendment, the Panel is aware that over a two-year period, Council has undertaken a significant amount of strategic work focused on broader strategic planning for both its industrial land and neighbourhood centre areas across the municipality. Amendment C160 is one of three amendments prepared almost simultaneously by Council. These Amendments are:

- Amendment C158 - *Moreland Industrial Land Strategy (MILS)*

- Amendment C159 - *Moreland Neighbourhood Centre Strategy*
- Amendment C160 – Rezoning No 1 – 9 Moreland Road.

The Amendments are all relevant as each makes specific recommendations about the future use and development of this land.

Amendment C158 seeks to implement the *Moreland Industrial Land Strategy (MILS)* through the identification of this land as *Employment Area - Category 2* in the Strategic Framework Plan and the introduction of policy which seeks to ensure employment uses are both prioritised and guaranteed. Residential uses are only supported provided they are subservient to the employment priority proposed. Importantly, this Amendment has been through a Panel process, adopted by Council and submitted to the Minister for approval, and as such is 'seriously entertained' policy. In this context, the Panel places considerable weight and gives appropriate consideration to the policy settings established in this Amendment.

Amendment C159 seeks to implement *Moreland Neighbourhood Centre Strategy*, which identifies this site within a '*Focus Area for change*' with a predominantly residential future, with smaller employment focus along Moreland Road. It is understood that the position adopted in this Strategy reflects Amendment C160. This Amendment has been through the Panel process, however, the report was not available at the time of writing this report and the Amendment has not been adopted by Council. The Panel has therefore considered this strategy, but cannot place a similar level of weight on its recommendations due to its status.

Whilst Amendment C160 was prepared in an emerging policy context, the Panel must consider it against the existing planning policy framework, and may have regard to the seriously entertained policy context.

The Panel considers the strategic directions for this site are clear. Despite submissions and evidence which says there is a strategic imperative to maximise the residential opportunities offered by this site, the Panel has found to the contrary. Both the existing and proposed Strategic Framework Plans clearly identify the land within a '*Non-residential area*', both identify employment uses as the main focus, and if any residential development is possible, it must be secondary to this employment.

The Panel notes the existing and proposed policy framework, including MILS all recognise the importance of protecting employment land for employment purposes and for taking a long-term perspective towards the protection of this economic resource for the long-term sustainability of the municipality.

The importance of this land for employment purposes has not only recently been reaffirmed with its designation as an '*Employment Area*' in MILS and Amendment C158, but it has also been strengthened with an increase in the area to be dedicated to employment uses.

Whilst there were submissions that the amount of employment floor space required by existing and proposed policy is unlikely ever to be achieved and the amount of C2Z land is an appropriate focus on employment, the Panel was not presented with any economic evidence which justifies that the majority of this site is not required for future employment purposes and can be transitioned to residential without impacting on the future of the Moreland economy. The Panel considers this is a significant shortcoming of this Amendment. For this

reason, the Panel considers that a case to vary from both the existing and proposed policy framework and the findings of MILS has not been justified.

This key finding has significant implications for this Amendment and impacts on the other recommendations made in this report.

As a consequence, the Panel considers the proposal to include the bulk of the site within a MUZ, which is primarily a residential zone; as well as the proposed DDO25 which principally seeks to transition the development of this site from industrial to medium density residential development, is not consistent with either the existing or proposed policy frameworks which explicitly identify this as a non-residential area, and at best seek, to prioritise employment uses over residential uses. For this reason, the Panel considers these aspects of the proposed Amendment are not strategically justified and are therefore not supported.

The Panel is satisfied that the proposal to rezone land along the Moreland Road frontage to C2Z is both strategically justified and appropriate, particularly given its prominent location along Moreland Road and is supported.

The Panel also has concerns with a number of other aspects of the proposed DDO25, including the rationale and justification for the proposed heights, particularly along the Merri Creek interface and Campbell Reserve. Simply, the Panel has not been persuaded that there is any justification to increase the building height on this site from the four storeys supported by existing and proposed local policy. Similarly, the Panel has found there is no strategic justification for the application of mandatory height controls.

The Panel has also found that there are a number of structural/content issues associated with the proposed DDO25, particularly in terms of references to mandatory controls, duplication of other provisions within the planning scheme, reliance on Reference Documents as decision guidelines, as well as the level of specificity in the Figures supporting the DDO25 (amongst others). Had the Panel supported the general intent of the Amendment and the DDO25, it would have recommended substantial changes to it to address these issues.

The Panel is also satisfied that the proposed reduction of the HO as exhibited is justified and appropriate and supports this change. However, the Panel also recommends that the relevant citation should be amended to reflect this change to avoid any future confusion when planning applications are made and considered within and around the reduced HO.

The Panel is also satisfied that as there is the potential for soil contamination associated with previous industrial uses, the proposed application of the EAO is both justified and appropriate to ensure any contamination issues are addressed as part of any future development which may include sensitive uses.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Moreland Planning Scheme Amendment C160 be adopted as exhibited subject to the following:

- 1. Delete the proposed Mixed Use Zone from the Amendment.**

- 2. Delete the proposed Schedule 25 of the Design and Development Overlay from the Amendment.**

(iii) Further recommendations

The Panel makes the following further recommendations:

- 3. Council consider amending the relevant heritage citation to reflect the revised heritage status.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Amendment C160 (the Amendment) proposes to:

- Rezone the subject site to part Mixed Use Zone (MUZ) and Commercial 2 Zone (C2Z).
- Introduce a Design and Development Overlay (DDO25) which includes a mandatory maximum height of 6 storeys.
- Modify the extent of the Heritage Overlay (HO) to apply to the office building fronting Moreland Road; and
- Apply the Environmental Audit Overlay (EAO) to ensure potential contamination issues are addressed.

(ii) Purpose of the Amendment

The purpose of the rezoning is to facilitate both residential and commercial use/development, maximising the opportunities the site presents being located within a Neighbourhood Activity Centre.

The DDO25 is intended to implement a series of design objectives and built form requirements to provide certainty in terms of the built form future of the site; including a mandatory six storey height.

The modification to the existing HO is intended to reflect the remaining significant fabric of the building.

The EAO is required to ensure potential contamination associated with previous industrial uses is addressed as part of any future redevelopment of the site.

(iii) The subject site

The Amendment applies to land shown in Figure 1.

The subject site is located at 1-9 Moreland Road, Coburg and has total land area of approximately 1.6 hectares. The majority of the site is used for show rooms, offices and warehouse distribution purposes, with associated car parking as well as loading and unloading facilities. The site sits above the Merri Creek due to both the topography and a series of retaining walls which significantly elevate the site along the boundary with the Merri Creek Reserve.

The site is surrounded by residential uses to the north along Moore Street, industrial uses to the south across Moreland Road, sporting ovals at Campbell Reserve to the west and Merri Creek Reserve to the east.

It is within the Moreland Road/Nicholson Street, Coburg - Neighbourhood Activity Centre (Neighbourhood Centre).



Figure 1 The subject site

1.2 Amendment background

It is understood that over the last two years, the Proponent has been in discussions with the Moreland City Council about plans to redevelop the subject site from the current office/warehouse use, to a predominantly residential development, with a smaller commercial component located fronting Moreland Road.

Council and the Proponent have been in agreement about the proposed change in land uses and the proportions of the site dedicated to both residential and commercial uses; and the associated proposed zonings. Where disagreement between the Council, Proponent and submitters arises is how this is to be implemented, what the layout and built form outcomes should be, particularly in terms of height and what level of certainty versus flexibility should be built into the DDO. The Proponent is also seeking a reduced HO boundary around the administration office than what was exhibited by the Council.

During this same period, Council has also undertaken a significant amount of strategic work. This includes the Municipal Strategic Statement (MSS) Review, implementation of the new residential zones; and specifically relevant to this Amendment, the review of the *Moreland Industrial Land Use Strategy (MILUS)* and subsequent preparation of the *Moreland Industrial Land Strategy (MILS)* and Amendment C158 which sought to implement its recommendations in local planning policy. In addition, Council prepared the *Neighbourhood Centre Strategy (NCS)* and the subsequent preparation of Amendment C159 which seeks to implement the recommendations of that strategy.

Whilst all three amendments were prepared around the same time, Amendment C158 is the most advanced having gone through a Panel process, been adopted by Council and submitted to the Minister for Planning for approval. As such it is a '*seriously entertained*' policy which the Panel may consider.

On the other hand, Amendment C159 has not progressed as far at the time of writing this report and whilst it has been through a Panel Hearing, the Council has not yet formally considered the Panel Report, or adopted a final position on the Amendment. On that basis, the Amendment is not *'seriously entertained'* and it does not carry the same weight as C158.

During this period of substantial policy development, Amendment C160 was prepared and exhibited.

Therefore, during the life of this Amendment, the policy framework which guides the future use and development of this land has been emerging.

A critical issue for this Panel is whether the strategic directions for this site have changed since the Amendment commenced, and therefore whether the Amendment is consistent with the existing and proposed strategic directions emerging for this site?

1.3 Panel process

The Amendment was prepared by the Moreland City Council (Council) as Planning Authority. It was prepared at the request of Urbis Pty Ltd on behalf of H & I Nominees Pty Ltd and Moreland Road Property Investments Pty Ltd and others (the Proponent) and was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 12 January 2016.

Authorisation of the Amendment was subject to the following condition:

Any independent planning panel, appointed pursuant to section 153 of the Planning and Environment Act 1987, must not consider submissions to Amendment C160 to the Moreland Planning Scheme, until the panel for Amendment C158 has released its report and that report has been considered by council. In the event that no panel is required to consider submissions to Amendment C160, or if no submissions are made, Council must not adopt Amendment C160 until the panel for Amendment C158 has released its report and that report has been considered by Council.

The Authorisation also contained a number of advisory notes which should be considered prior to submitting the Amendment for exhibition, including:

- *The proposed height limits in Design and Development Overlay, Schedule 25 (DDO25), should be specified in metres rather than storeys, particularly in section 3.0 – Built Form.*
- *Consideration should be given to removing those application requirements (section 2.0) which duplicate other parts of the Moreland Planning Scheme, including the requirement for a:*
 - *contaminants report (duplicate Environmental Audit Overlay)*
 - *sustainability management plan (SMP) (duplicate Clause 22.08)*
 - *accessibility report (duplicate Clause 21.03 and the Disability Discrimination Act 1992)*
 - *affordable housing report (duplicate Clause 21.03)*
 - *geotechnical report (duplicate Erosion Management Overlay).*

- *Those provisions relating to the Moreland Apartment Design Code 2015 should be removed or revised, given this document does not currently have any formal standing in the Moreland Planning Scheme.*
- *The proposed maximum mandatory height limit of 6 storeys is not likely to be supported, as there is no strategic basis for a mandatory height limit at this location. Prior to exhibiting the amendment, it is recommended that the height limit be altered to discretionary, or that further strategic work be undertaken to underpin the requirement for a mandatory height limit. Any application of a mandatory maximum height limit must have regard to Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes.*

Council has complied with the condition and responds to the advice through submission.

The Amendment was placed on public exhibition between 3 March and 7 April 2016, with 15 opposing submissions received.

At its meeting of 14 September 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 19 September 2016 and comprised Sue Porter (Chair) and Peter Gaschk (Member).

A Directions Hearing was held in relation to the Amendment on 4 October 2016. Following the Directions Hearing, the Panel undertook an unaccompanied inspection of the subject site and its surrounds.

The Panel then met in the Brunswick Town Hall on 7, 8, 9 and 11 November 2016 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
H & I Nominees Pty Ltd & Moreland Road Property Investments Pty Ltd and others	Mr Mark Naughton of the firm Planning and Property Partners Pty Ltd who called the following expert witnesses: <ul style="list-style-type: none"> - Ms Amanda Ring, Town Planner, SJB Planning - Mr Andrew Clarke, Town Planner, Matrix Planning Australia Pty Ltd - Ms Charmaine Dunstan, Traffic Engineer, Traffix Group - Mr Bryce Raworth, Conservation Consultant and Architectural Historian, Bryce Raworth Pty Ltd - Mr Tim Vernon, Landscape Architect, CDA Design Group Pty Ltd - Mr Peter Haack, Landscape Architect, Urbis - Mr Mark Sheppard, Urban Designer, David Lock and Associated (Australia) Pty Ltd
Moreland City Council	Mr Mark Marsden assisted by Mr Richard Tolliday, Mr Ryan McMinn and Mr Mynir Vahanvati

Submitter	Represented by
Merri Creek Management Committee	Ms Luisa Macmillan
Friends of Merri Creek	Ms Ann McGregor
Kit Andrews	
Gertraud Brunner	
John Demagistris	

1.4 Summary of issues raised in submissions

The key issues raised in the submissions are briefly summarised as follows:

(i) Planning Authority

The key issues for the Council were:

- The Amendment is strategically justified and will assist in meeting Moreland's future housing and employment needs, particularly given the site's location within a Neighbourhood Centre.
- The proposed DDO25 with mandatory heights is appropriate, as it will provide certainty about future built form, particularly along the frontage to Merri Creek.
- The need to manage height along Merri Creek, and whether the existing retaining wall should be removed.
- The need to manage the traffic and access to minimise any adverse amenity impacts on nearby residential areas.
- The need to ensure future development would not adversely impact the significant office building.
- The need to provide greater setbacks from the Merri Creek.

(ii) Proponent

The key issues for the proponent were:

- The Amendment is strategically justified and will assist in meeting Moreland's future housing and employment needs, particularly given the site's location within a Neighbourhood Centre.
- The need to maximise the opportunities the site presents for residential development.
- The proposed heights are overly restrictive and should be calculated from the Campbell Reserve boundary.
- The proposed mandatory controls are not justified and a performance based approach to heights, setbacks, interface treatments and access should be adopted.
- The proposed traffic arrangements are appropriate, however, greater access to the site from the north and through the site would not be unacceptable.
- Reduction of the HO is appropriate, however, only a five metre wide buffer around the office building is required.

- The drafting of the DDO is not consistent with the relevant planning practice note and is in need of significant redrafting.

(iii) Relevant agencies

The key issues for Melbourne Water were:

- No objection, however, regard should be had for the open space values associated with the Merri Creek and flood levels.

(iv) Individual submitters or groups of submitters

The key issues by submitters were:

- The proposed heights are excessive and will result in visual bulk and potential overshadowing, particularly along the significant Merri Creek which is inconsistent with State and local policy.
- Potential adverse impacts on the Merri Creek and Campbell Reserve.
- Potential impacts of traffic/car parking along Moore Street, in particular the potential to create a 'rat run' between Moore Street and Moreland Road.
- Whether the HO should be modified.
- The need for greater integration between the site and the Merri Creek Reserve in terms of built form and landscaping.
- The need to ensure landscaping and environmental sustainable development measures are incorporated into the development before completion.
- The need to address potential contamination issues and ensure contaminants do not enter Merri Creek.

These issues will be addressed throughout this report.

1.5 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions, evidence and other material presented to it during the Hearing, and observations from a site visit.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned or referenced in the report.

This report deals with the issues under the following headings:

- Planning context
- Strategic justification for the rezoning and Design and Development Overlay
- The detail of the Design and Development Overlay
- The Design and Development Overlay
- Building heights and setbacks
- Traffic, access and parking
- Landscaping
- Environmentally Sustainable Development
- Heritage

- Potential Contamination.

1.6 Limitations of this report

It was evident that many of the submitters wanted this Amendment to define many of the detailed aspects of a future development of the site, such as car parking provision and waste collection, etc.

The Panel wishes to emphasise this Amendment seeks to change the zoning of the site to enable the development of the land for commercial and residential purposes, to establish the parameters around the built form aspects of that future development, as well as reduce the area of the HO and introduce an EAO.

Any future development on this site would most likely be the subject of a planning permit application, whether consistent with submissions to this Amendment or in another form. It is then when the details associated with any future development will be submitted to Council for consideration, giving both Council and residents an opportunity to assess and comment on specific aspects of any development proposal.

A planning permit application is not before this Panel, and therefore it is not the role of this Panel to consider these more detailed aspects of the development.

The role of this Panel is to consider submissions to the Amendment as exhibited, to ensure the Amendment is strategically justified, that the proposed schedule to the DDO provides appropriate guidance about the design objectives and standards for the future development of the site, the information to be provided and the decision guidelines that will be applied when making any decisions about the future development of the site.

For these reasons, where submissions raise issues that would normally be dealt as part of a planning permit application, the Panel will not make further comment on them. This is not to suggest the Panel considers these invalid issues, rather, they are not up for review as part of this Amendment.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment. In doing so, it found and reviewed additional policies not specifically identified by Council which are also relevant to the Amendment.

In addition, it also reviewed proposed policy to be introduced by Amendment C158 which is 'seriously entertained'.

The Panel has also made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

2.1.1 State Planning Policy Framework (SPPF)

Council submitted the Amendment is supported by the SPPF and identified a number of these policies in the Explanatory Report. This list also contains the additional policy identified by the Panel:

- **Clause 11 – *Settlement*** – seeks to build up a network of activity centres as a focus for high-quality development, activity and living for the whole community and to create healthy and active neighbourhoods, maintaining Melbourne's identity as one of the world's most liveable cities.
- **Clause 11.01-1 – *Activity centre network*** – seeks to develop a network of activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres that are a focus for business and housing, amongst others.
- **Clause 11.03 – *Open space*** – seeks to ensure land use and development adjoining regional open space networks (and others) complements the open space in terms of visual and noise impacts, treatment of waste water to reduce turbidity or pollution and preservation of vegetation.
- **Clause 11.04-8 – *Open space network in metropolitan Melbourne*** – seeks to ensure that development does not compromise waterways as significant open space, recreation, aesthetic, conservation and tourism assets including the Merri Creek regional park.
- **Clause 12.04-1 – *Significant environments and landscapes – Environmentally Sensitive Areas*** - seeks to protect and conserve environmentally sensitive areas and in particular, those with significant recreational value, specifically identifying the Merri Creek.
- **Clause 13.03-1 – *Use of contaminated and potentially contaminated land*** – seeks to ensure that potentially contaminated land is suitable for its intended future use and development; and that contaminated land is used safely.
- **Clause 15 – *Built Environment and Heritage*** – seeks to create urban environments that are safe, functional and provide good quality environments with a sense of

place and cultural identity. It also seeks to ensure the conservation of places of heritage significance.

- **Clause 16 – Housing** – encourages new housing to be located in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.
- **Clause 17 – Economic Development** – seeks to provide for a strong and innovative economy, where all sectors of the economy are critical to economic prosperity. It states that planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential. In doing so, it seeks to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial premises. It also seeks to locate commercial facilities in existing or planned activity centres, to ensure the availability of land for industry and to protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development. It also seeks to avoid approving non-industrial land uses which will prejudice the availability of land for future industrial requirements in identified industrial areas.
- **Clause 18 – Transport** – seeks to create a safe and sustainable transport system by integrating land-use and transport.

2.1.2 Local Planning Policy Framework (LPPF)

Council submitted the Amendment is supported by the LPPF and identified a number of these policies in the Explanatory Report. This list also contains additional policy identified by the Panel.

- **Clause 21.01-2 – Key Issues** – identifies population growth and the associated needs for housing and employment as key issues, amongst others. It recognises that industry is in transition, reflecting the changing nature of manufacturing and growth in the service economy; that the ratio of local jobs to residents in the work force is low compared to the Melbourne average with the vast majority of Moreland residents travelling outside the municipality to work; and that there is a desire to provide greater opportunities for Moreland residents to work locally to reduce travel times to work, reduce congestion and for the sustainability and health benefits of less car reliance.
- **Clause 21.02 – Vision** – outlines a vision that by 2017 a sustainable Moreland will have a more resilient community, more attractive, accessible and safe places, a stronger local economy and services that meet the needs of the growing community.
- **Clause 21.02-2 – Sustainable Neighbourhoods** – states that sustainable neighbourhood will include a mix of key elements, including housing and employment, amongst others.
- **Clause 21.02-3 - MSS Strategic directions** – identifies seven key strategic directions to guide planning decisions to achieve the vision with the key spatial directions

illustrated on the Strategic Framework Plan (SFP). The SFP specifically identifies this site as *'Multi-use Employment Precinct'* and within a *'Non-residential area'*.

- **Clause 21.02-3 - MSS Strategic Direction 2 – Land for Industry and Economic Regeneration** - states Council is committed to the continued presence of industry and other commercial businesses within the municipality for the contribution they make to a sustainable economy and a diversity of employment opportunities. Being located within a *Multi-Use – Employment Precinct* it recognises this land reflects the sites suitability to transition to accommodate a wider mix of commercial uses that contribute to economic regeneration and more diverse employment opportunities which are predominantly located within or adjacent to activity centres. It also identifies their transition will support and reinforce the economic and employment objectives of activity centres and that residential uses will only be supported if priorities for employment have been addressed.
- **Clause 21.02-3 - MSS Strategic Direction 3 – Housing – Significant Housing Growth** – identifies that significant housing growth is encouraged within Moreland's activity centres, including *'Moreland Road/Nicholson Street, Coburg/Brunswick NAC'*. It states the Commercial 1 (C1Z), Mixed Use (MUZ) and Residential Growth Zones (RGZ) define the total extent of area within these centres where increased densities are encouraged with predominantly apartment and townhouse style development in buildings of three to four storeys.
- **Clause 21.03 – Strategic Framework** – provides the MSS objectives and strategies to implement the vision and strategic directions set out in Clause 21.02 and states it is to be read in conjunction with the SFP which identifies this land as *'Multi-use Employment Precinct'* and *'Non-residential area'*.
- **Clause 21.03-1 – Activity Centres** – seeks to support a network of activity centres across Moreland to provide residents with walkable access to their daily and weekly shopping and service needs, to facilitate change to the scale of built form in accordance with their size and role in the activity centre network; and to support activity centres as important commercial and employment clusters. A specific strategy seeks to ensure that residential uses do not undermine the viability of businesses operating in the activity centre.
- **Clause 21.03-2 – Land for Industry and Economic Regeneration – Objective 5** – seeks to manage the transition from traditional industrial areas to multi use precincts which prioritise opportunities for new commercial uses. It seeks to facilitate a transition in *'Multi-use–Employment Precincts'* to accommodate a wider mix of industrial and commercial uses, such as offices; and to ensure commercial uses are prioritised over residential uses. It states that where residential development is proposed, it should be located within a mixed-use building that has commercial uses at ground and first floor as a minimum. In relation to implementation, it states the appropriate zones are Industrial 3 (IN3Z) and C2Z.
- **Clause 21.03-4 – Urban Design, Built Form and Landscape Design – Objective 10** – seeks to ensure development responds and contributes to its context and any relevant heritage significance. In doing so, it seeks to ensure the overall siting and building envelope is based on a considered analysis of the site's context and features, including site size, shape and orientation. It also seeks to ensure site

design, building frontages, design articulation and internal layout achieve a good interface with and surveillance of the public realm. Large sites provide a network of public streets, footpaths and lanes connecting through the site into the surrounding street and pedestrian network, as appropriate.

- **Clause 21.03-5 – Environmentally Sustainable Development – Objective 13** - seeks to encourage development to contribute to environmental sustainability.
- **Clause 21.03-6 – Open Space Network – Objective 16** – seeks to protect the biodiversity, amenity and recreational values of the open space network. In doing so, it seeks to ensure development does not unreasonably overshadow public open space and creates a continuous public open space corridor with a minimum of 50 metres on each side along the Merri Creek, with 30 metres from the edge of the embankment on each side being a vegetated buffer.
- **Clause 22.01 – Neighbourhood Character** – supports change towards a new character to accommodate buildings of up to and including four storeys having regard to interfaces with adjoining zones. It states that for ‘*Substantial Change Areas – (Commercial, Mixed Use and Residential Growth Zones)*’ it is policy to ensure that building height does not exceed four storeys unless it can be demonstrated that the prevailing height of surrounding buildings is five or more storeys, in which case the prevailing should not be exceeded; or, if the site is large enough to allow the visual impact of the development to be mitigated through the design response in which case the building height at the interface with adjoining properties and at the street frontages should not exceed four storeys. It also seeks to ensure that development is designed to provide a suitable transition at interfaces with adjoining zones and that this may include a transition in height and/or suitable landscaping.
- **Clause 22.06 – Heritage** – seeks to encourage the conservation and enhancement of all heritage places and to protect them from inappropriate development. In doing so, it seeks to encourage the retention of contributory or significant heritage fabric required to maintain the original streetscape appearance. It also seeks to encourage new buildings, alterations and additions that respect the existing scale, massing, form and siting of contributory or significant elements; and do not dominate the heritage place or precinct and obscure important view lines to contributory or significant heritage buildings. In particular, in relation to ‘*Industrial heritage places*’ it seeks to encourage the retention of contributory or significant heritage fabric when sites are redeveloped.
- **Clause 22.07 – Development of five or more storeys** – establishes a number of local design guidelines to achieve good urban design solutions for development of five or more storeys. The design themes include the public-private interface, off site impacts, movement and access, internal planning and design and technical performance. This policy applies to both residential and non-residential developments.
- **Clause 22.08 – Environmentally Sustainable Development** – seeks to ensure that development achieves best practice environmentally sustainable development from the design stage through to construction and operation. In doing so, it sets a number of key objectives in relation to energy performance, water resources,

indoor environment quality, stormwater management, transport, waste management and urban ecology.

2.2 Proposed amended policy – Amendment C158

The purpose of Amendment C158 is to implement the recommendations of the MILS and seeks to amend Clauses 21.02 – *Vision*, 21.03 – *Strategic Framework* and 21.04 – *Reference Documents*.

As ‘*seriously entertained*’ policy the Panel considers the following proposed amended policies are relevant:

- **Clause 21.02-3 – MSS Strategic Directions – Strategic Direction 2: Land for Industry and Economic Regeneration** – identifies that industrially zoned land identified as *Employment Areas (Category 2)* reflects its suitability to maintain industry and employment uses and potentially transition to a broader business base, contributing to economic regeneration and a diversity of employment opportunities. It states these areas are predominantly located within or adjacent to activity centres and their transition will support and reinforce the economic and employment objectives of activity centres. It identifies that residential uses will only be supported if priorities for employment have been addressed and guaranteed and where residential uses are allowed, subsequent planning permit decisions must have regard to policy to prioritise industry and employment uses in these areas.
- **Clause 21.02-3 – MSS Strategic Directions – Strategic Direction 3: Housing** – identifies that in addition to land within the Commercial 1 Zone (C1Z), MUZ and RGZ, increased housing densities and a change in character towards a more dense urban environment are also encouraged in *Transitional Residential Areas (Category 3)* that have been rezoned to MUZ and RGZ.
- **Clause 21.03 – Strategic Framework** – identifies the site as being within an ‘*Employment Area*’ and retains the ‘*Non-residential area*’ designation.
- **Clause 21.03-2 – Land for Industry and Economic regeneration – Objective 5 – Employment Areas (Category 2)** - supports the transition to accommodate a broader range of employment generating uses, including a mix of industry, office based uses and other compatible employment uses. It also seeks to ensure that employment uses are prioritised over residential uses and that where multi-use development is proposed, including a residential component, the amount of employment floor space should be at least equivalent to the amount of all proposed ground floor and first floor building floor space (inclusive of car parking, other services and circulation space). It also seeks to encourage a flexible floor plate layout and increased floor to ceiling heights at ground and first floor to facilitate a variety of employment uses over time.
- **Clause 21.03-2.1 – Implementation – Employment Areas (Category 2)** – identifies the IN3Z and C2Z as the most appropriate zones to prioritise employment. It states that where residential uses are to be permitted, one of the following zoning configurations should be applied, these being C1Z; Special Use Zone (SUZ) or Comprehensive Development Zone (CDZ) with an associated schedule, or a mix of zones on larger sites with the zones and revised employment area category applied

to ensure employment uses are prioritised. It also states that an Incorporated Plan Overlay (IPO) or a Development Plan Overlay (DPO) should be considered in conjunction with the rezoning to confirm the location of employment uses. It also identifies the application of DDO may be appropriate where confirmation of the design and site layout detail is required.

- **21.03-3 Housing – Objective 7** – seeks to encourage increased density housing to be located on former industrial sites designated as ‘*Transition-Residential Areas*’ (Category 3) that have been rezoned to the MUZ and RGZ.

2.3 Other planning strategies used in formulating the Amendment

A number of planning strategies have been relied upon in formulating this Amendment and are important to consider, these include:

(i) Moreland Industrial Land Use Strategy 2004

The *Moreland Industrial Land Use Strategy* (MILUS) is a Reference Document to the Moreland Planning Scheme and underpins the strategic directions for industry and employment contained within the existing MSS. It provides direction on the long-term planning and zoning of industrial land by categorising all industrial land into five different categories. The subject site is categorised as a ‘*Multi-Use Employment (Area 57)*’ for which the purpose is:

To identify areas that are appropriate to accommodate a wider mix of employment opportunities, including a mix of industry and offices or wholly offices (or other employment uses which support Council’s other land use policies). Industrial uses wishing to continue or to establish are supported.

Residential use in these areas should not generally be supported unless certain criteria can be met and at least equivalent employment opportunities to previous industrial uses must be provided as a minimum.

(ii) Moreland Industrial Land Strategy (Final) July 2016

The *Draft Moreland Industrial Land Strategy*¹ (MILS) updates and replaces MILUS. It underpins Amendment C158 and is intended to guide planning decisions about the future of Moreland’s industrial land for the next 15 years.

The strategy identifies the challenge for Moreland is to protect enough industrially zoned land for potential future employment in recognition of the significant economic benefit that can be gained for the municipality. Whilst recognising that Moreland has not yet experienced significant reinvestment in industrial land for office based employment uses, it indicates the demand for this growth is expected in the coming years, linked to the changing nature of the resident workforce. Yet at the same time, it recognises that commercial land in the south of municipality is highly valued for residential uses. It emphasises the importance of retaining industrial land cannot be underestimated because it is important in

¹ The Amendment was based on the *Draft Moreland Industrial Land Strategy*. Following the incorporation of the Panel comments the strategy was confirmed as the final dated July 2016.

providing local employment opportunities for residents both now and in the future, thereby improving the sustainability of the municipality and supporting a diverse community.

The strategy includes industrial land within three categories, these being:

- **Core Industry and Employment Areas (Category 1)** - will be the main location for industrial businesses, with some growth in office and small retail development.
- **Employment Areas (Category 2)** - will maintain industry and employment uses to support a transition from industrial to a broader range of employment uses. Residential uses are appropriate only where employment outcomes are prioritised and guaranteed to Council's satisfaction, meeting a defined employment floor space strategy which is the amount of employment floor space should be at least the equivalent to the amount of all proposed ground and first floor building floor space (inclusive of car parking, other services and circulation space).
- **Transition-Residential Areas (Category 3)** – will be few small industrial sites and precincts that are poorly located for continued industrial or alternative commercial use that will contribute to Moreland's housing supply and transition to quality residential environments designed to maximise a contribution to housing supply.

The MILS Framework Plan includes the subject land in 'Category 2 – Employment Areas' and states that any decision to rezone land "*will give utmost priority to the protection of existing businesses and facilitating new employment opportunities. Residential uses will only be allowed in Category 2 Areas if council is satisfied with the priority given to employment uses first and foremost.*"² It also states that any rezoning request should be accompanied by (amongst others):

- *A policy context assessment, detailing how the proposed amendment is consistent with the relevant MILS category and all other relevant policy pertaining to the site or precinct. If there are any inconsistencies with the policy framework, an analysis of the net community benefit of the proposal should be supplied.*
- ...
- *An Economic Impact Assessment.*

(iii) Neighbourhood Centres Strategy (Draft) November 2015

The draft Neighbourhood Centres Strategy (NCS) has been prepared to establish land use and built form recommendations for Moreland's Neighbourhood Centres. It establishes a vision for Neighbourhood Centres which complements Moreland's broad approach to sustainability contained in the Council Plan and MSS.

The Strategy includes the subject site within a 'Focus Area for Change' in the 'Nicholson – Holmes Streets/Moreland Road, Coburg Neighbourhood Centre'.

It identifies that Council's MSS vision encourages a low-rise scale built form for Neighbourhood Centres, which includes mixed-use apartment buildings, as well as townhouses and unit style developments generally up to four storeys, including mandatory heights.

² Moreland Industrial Land Strategy 2015-2030 – page 10

The Strategy seeks to concentrate a mix of retail, commercial and community uses in Neighbourhood Centres to meet the daily and weekly shopping and service needs of the local community. Recognising MILS identifies the land as *Employment Area – Category 2*, it seeks to ensure employment uses are prioritised over residential uses by ensuring that either 16% of the total site area, (provided at lower levels of multi-level buildings or on specific area of larger sites) or allocation of all usable floorspace not required for car parking or other services at ground floor and first floors of multi-level buildings, is dedicated to commercial floorspace.

In relation to this site, it identifies commercial uses are to be focussed on Moreland Road, with the remainder of the site dedicated to residential uses and identifies the C2Z and MUZ as appropriate zones.

2.4 Planning scheme provisions

(i) Zones

The subject site is included within an IN3Z with a small spur of land fronting onto Moreland Road located within the Public Park and Recreation Zone (PPRZ).

The purpose of the Industrial 3 Zone is to:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict.*
- *To provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community.*
- *To allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations.*
- *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.*

(ii) Overlays

The site is affected by a number of overlays including:

- **Heritage Overlay (HO117)** - applies to the existing office building and warehouse across approximately 75% of the site.
- **Environmental Significance Overlay (ESO)** - applies across the entire site due to its location adjacent to the Merri Creek.
- **Erosion Management Overlay (EMO)** – applies to the north-eastern portion of the site.
- **Development Contributions Plan Overlay (DCPO)** – affects the entire site.
- **Land subject to Inundation Overlay (LSIO)** – affects a small portion of land along north-eastern boundary of the site.

2.5 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted the Amendment meets the relevant requirements of the following Ministerial Directions:

Ministerial Direction No 1 – Potentially Contaminated Land

The previous industrial use of the site is consistent with the definition of potentially contaminated land. As the proposed part MUZ would allow for sensitive uses either as-of-right or subject to a planning permit, the application of an EAO is consistent with this Ministerial Direction.

Ministerial Direction No 9 – Metropolitan Strategy

This Ministerial Direction requires that planning scheme amendment have regard to Plan Melbourne. Council submitted the Amendment is consistent with the following directions contained in Plan Melbourne as it will:

- **Direction 2.2** – help reduce the cost of living by increasing housing supply in the established urban area near services and public transport.
- **Direction 3.2** – improve local travel options through the creation of a network of public streets and footpaths that provide new pedestrian and bike access through the site.
- **Direction 4.1** – contribute towards the concept of a 20-minute neighbourhood through creation of a compact and mixed use development that includes a network of new public streets and connections to the existing network.
- **Direction 4.5** – include new open spaces and enhanced landscaping along the interfaces with Campbell Reserve and Merri Creek Reserve.
- **Direction 4.8** – facilitate design excellence by creating public spaces, streets and communal spaces framed by new buildings. The DDO will ensure that off-site amenity impacts such as visual bulk and overshadowing are managed.

The Panel considers other relevant directions include:

- **Direction 1.2** – strengthen the competitiveness of Melbourne’s employment land.
- **Direction 1.5** – plan for jobs closer to where people live.

Ministerial Direction No 11 - Strategic Assessment Guidelines

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46 (Strategic Assessment Guidelines).

The Form and Content of Planning Schemes (s7(5))

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

(ii) Planning Practice Notes (PPNs)

The following PPNs are relevant to this Amendment.

PPN10 - Writing Schedules

Identifies schedules can be used to supplement or 'fine tune' the basic provisions of the planning scheme, adapting it to local circumstances and locally defined objectives in order to implement objectives and strategies contained in the MSS. It identifies eight principles for drafting and the use of local content in a schedule which include:

- Schedules must be read with other planning controls.
- Local content should help to implement SPPF objectives.
- Local content should help to implement LPPF objectives.
- Local content should not duplicate other provisions.
- Local content can only do what its 'parent provision' enables it to do.
- Local content should be strategically justified.
- Local content should have a legally certain meaning.
- Local content should be easy to read.

This practice note is relevant to the drafting of the proposed Schedule 25 to the DDO.

PPN30 - Potentially Contaminated Land

Identifies land known to have been used for industrial and other uses is defined as potentially contaminated. When preparing amendments, it states a planning authority must satisfy itself that the environmental condition of the land is suitable for sensitive uses (where proposed). This practice note is relevant to the application of the EAO over the subject land.

PPN46 - Strategic Assessment Guidelines

Recognises that *Minister's Direction No 11 - Strategic Assessment of Amendments* requires a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations. It identifies that as the Amendment would seek to introduce a zone and overlay that will produce a different or new land use or development outcome on this site, the Amendment requires a full assessment against the strategic considerations and outlines the range of issues that should be addressed.

PPN59 – The role of mandatory provisions in planning schemes

States that planning schemes are predominantly performance based, specifying an objective to be achieved and providing a degree of freedom about how it is achieved. It highlights that mandatory provisions are an exception, based on the principle that there should be discretion for most developments and applications to be tested against objectives and performance outcomes, rather than merely prescriptive mandatory requirements. It recognises there will be circumstances where mandatory provisions will provide certainty and ensure a preferable and efficient outcome, including areas of high heritage value, strong and consistent character themes or sensitive environmental locations, such as along the coast. It emphasises that a balance must be struck between the benefits of a mandatory provisions in the achievement of an objective against any resulting loss of opportunity for flexibility in achieving the outcome. In considering whether a mandatory control is appropriate, it states they must be strategically supported, appropriate to the majority of proposals, provide for a preferred outcome; as well as consider whether the majority of proposals not in accordance with the mandatory provision will be clearly unacceptable.

PPN60 - Height and setback controls for activity centres

Recognises that change in and around activity centres is anticipated and encouraged, but recognises it needs to be managed to ensure new development maintains amenity and integrates with existing land uses and built forms.

It identifies this is to be addressed through the structure planning process whereby a framework for the integrated development of an activity centre and surrounds is developed, providing the foundation for activity centre change by clarifying preferred directions for future growth and articulating how this change will be managed.

As part of this process, structure plans may propose preferred built form outcomes including minimum or maximum building heights and setbacks, but that they must be soundly based on the outcomes of strategic research that includes a comprehensive built form analysis. In undertaking this built form analysis, Councils need to demonstrate that proposed height controls are based on identifiable objectives or outcomes. Proposed height controls must be selected through a comprehensive built form analysis that achieves the following:

- identifies significant opportunities for change within an activity centre
- explores alternative built form objectives and outcomes to accommodate this change, including an analysis of visual and amenity impacts
- selects appropriate heights and built form outcomes at a precinct level through evaluation of built form objectives, land use outcomes and economic growth consistent with State policy.

It states that height and setback controls should be discretionary combined with clear design objectives. A flexible approach is considered more likely to accommodate contextual variations and innovative design than mandatory controls. Mandatory height and setback controls are only to be considered in exceptional circumstances, which may include significant landscape precincts such as natural waterways, regional parks and areas where dense tree canopies are the dominant feature. Even where exceptional circumstances are identified, mandatory height and setback controls should only be applied where absolutely necessary to achieve the built form objectives or outcomes identified from the comprehensive built form analysis. It is also necessary to demonstrate that discretionary controls could result in an unacceptable built form outcome.

It identifies a DDO as the preferred planning instrument to implement both discretionary and mandatory height controls, stating that if height is measured in terms of storeys, this should also be expressed in metres and referenced to a defined point at the frontage or Australian Height Datum.

2.6 Discussion

This Amendment raises a number of significant issues in relation to strategic justification, principally in relation to the proposed zones; as well as heights, and in particular the proposed use of mandatory heights.

The Amendment also raises a number of issues in relation to consistency with PPNs, particularly in the drafting of the DDO.

These are issues will be discussed throughout this report.

2.7 Conclusion

The Panel concludes that not all aspects of the Amendment are strategically justified, in particular the proposed inclusion of land within a MUZ is at odds with both existing and proposed policy which seeks to prioritise and guarantee employment uses on the land. Similarly, the Panel concludes the proposed DDO25 appears to have a disproportionate emphasis on addressing design and development issues associated with residential development, rather than prioritising and guaranteeing employment uses on the land. The Panel was not satisfied there was enough detail in the DDO schedule to ensure priority had been given to employment use on the subject land over residential use.

The Panel also concludes the proposed heights above four storeys are not strategically justified and are not based on a comprehensive context and built form analysis which adequately demonstrates they are an appropriate response to sensitive interfaces, particularly the Merri Creek Reserve and Campbell Reserves. Similarly, the Panel has concluded the proposed application of mandatory controls has similarly not been adequately justified. This was also a matter raised in advice by DELWP to the Council as part of its amendment authorisation.

The Panel is satisfied that inclusion of land fronting Moreland Road within the C2Z is strategically justified and appropriate, (noting that further strategic work may determine the need for more commercial floor space allocation) and that the modifications to the HO and the inclusion of the site within an EAO are also both strategically justified.

3 Strategic justification for the proposed rezoning and Design and Development Overlay

3.1 The issue

Over several years, Council has undertaken a significant amount of strategic work to inform and guide the long-term planning for Moreland. This work has involved residential strategies, MSS reviews, the review of MILUS and preparation of the MILS (and subsequent Amendment C158) and the NCS (and subsequent Amendment C159). At the same time, Council has been in discussions with the owners of the subject site about the redevelopment of the land for commercial and residential purposes, and subsequently prepared Amendment C160. It is therefore clear to the Panel this Amendment has been prepared in an evolving strategic context.

Whilst all three Amendments were running almost concurrently, Amendment C158 (implementation of MILS) is the first amendment that has been exhibited, considered by a Panel, adopted by Council and forwarded to the Minister for approval. As such, it is the only amendment which has the status as being *'seriously entertained'* which the Panel may have regard to.

When considering this Amendment in light of the existing and proposed policy framework, it became evident there are differences in terms of the recommended future land uses and development outcomes for this site which have significant implications for this Amendment.

The critical issue for this Panel is whether the Amendment is consistent with the existing and proposed local policy framework. In particular, whether residential development is appropriate, and if so, whether appropriate priority between employment and residential uses has been achieved; and subsequently whether the proposed DDO25 has the appropriate focus.

3.2 Evidence and submissions

Mr Naughton, on behalf of the Proponent, relied on the evidence of Ms Ring to outline the strategic justification for the Amendment. In her evidence, Ms Ring did not recite the applicable State or local planning policy in detail, submitting that it is *"comprehensively and fairly set out in the material Urbis has prepared on behalf of the proponent. It is also set out in the explanatory material prepared by the planning authority and in officer reports to Council."* Based on this, she stated:

It is apparent from Council's position in respect of the amendment, as well as submissions received about the amendment, that there are no substantive difference of opinion about the applicable policy framework.

Ms Ring summarised what she considered are the most influential policies. In relation to industrial policy, it was her evidence that Council has been monitoring industrial land supply for some time and whilst it has recognised a shift in focus, it still maintains a focus on employment including this land within an employment category that will allow for residential uses provided opportunities are created for employment.

Referring to MILS, Ms Ring acknowledged the site is located within *Category 2 – Employment Area* which aims to prioritise employment and provide at least the equivalent of the proposed ground and first floor space (inclusive of car parking, other services and circulation space) for employment purposes. However, given the unusually large area of the site, it was her evidence that this was likely to translate to many thousands of square metres of commercial floorspace. Whilst she accepted the Amendment does not “*strictly accord with this MILS floorspace strategy*”, and relying on the economic analysis work prepared by Urbis in support of the Amendment, she said it is “*very likely that this amount of new commercial, or employment-generating floorspace, would prove to be ambitious and not, in practice, realisable.*”

Ms Ring said the area of the proposed C2Z places the appropriate emphasis on employment as residential uses are prohibited under the zone and the proposed 4000-4500 square metres of commercial floorspace would provide well over 40 jobs, which she said is five times more than the current number. Ms Ring acknowledged that any additional employment achieved on the MUZ land, would be modest, but a “*bonus, nevertheless.*”

It was Ms Ring’s evidence that the entire site is no longer suited to the needs of the present owner/occupier, who has been unsuccessful in leasing out the large warehouse since 2014, with industrial redundancy and site blight being real risks. She stated that:

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.

... 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.

In support, Ms Ring said that Council has recognised there is scope to allow for a wider range of uses in *Category 2 – Employment Areas*, including a significant amount of housing; and on that basis Council has accepted that employment is being suitably prioritised.

In relation to local housing policy, Ms Ring said it recognises that significant housing growth is expected within activity centres to assist with the slower rates of growth in the hinterland residential neighbourhoods and to take better advantage of significant public and private investment in these locations, including this Neighbourhood Centre. She said the NCS has identified this site as a ‘Focus Area for Change’ and this Amendment offers this large, valuable and generally well serviced parcel of urban land a new, realistic and more efficient future.

For these reasons, she was satisfied the Amendment is strategically justified and should be supported.

Ms Ring also said that when rezoned to MUZ, that part of the site should be amended from ‘*Category 2 – Employment Area*’ to ‘*Category 3 - Transitional Residential Area*’.

Whilst Mr Clarke did not review the strategic justification for the proposed Amendment in his evidence, he did comment on the proposed MUZ saying *“The Mixed Use Zone is appropriate for high density housing with a minor retail/commercial component at Ground Floor.”*

Mr Naughton submitted the site qualifies as a *major strategic redevelopment site* and that this Amendment will unlock the development potential of the site. He submitted the rezoning will assist in the implementation of State and existing/emerging policies, as it will provide significant new housing which will assist in meeting metropolitan supply challenges in a strategic, highly connected and highly serviced location, as well as providing employment and job opportunities. For these reasons, he submitted the Amendment is strategically justified and should be supported.

On behalf of Council, Mr Marsden, submitted the Amendment is supported by State policy as it will facilitate a significant contribution to housing supply in an area well serviced by existing amenities and services. He also submitted the Amendment is consistent with the MSS, which outlines Council’s direction for a sustainable Moreland with a more resilient community, more attractive environment with more accessible and safe places and a strong local economy that provides services to meet the needs of the growing community. He submitted the following strategic directions³ in relation to activity centres and land for industry and economic regeneration are relevant:

- *Council is committed to creating sustainable neighbourhoods where people can walk to shops and services, employment, schools, public transport, parks and community services.*
- *Council will facilitate housing development to meet the needs of the growing and diverse population.*
- *Council is committed to the continued presence of industry and other commercial businesses within the municipality for the contribution these businesses make to a sustainable economy and a diversity of employment opportunities.*

Mr Marsden submitted the Amendment is consistent with MILS and the associated Amendment C158 as it prioritises employment uses by applying the C2Z to part of the site fronting Moreland Road, which seeks to encourage offices and employment generating uses and prohibits residential uses. It also applies the MUZ to the rest of the site to allow for residential uses. He also submitted that following the adoption of this Amendment, that the MUZ portion of the site should be changed to *‘Transition Residential Area’*.

3.3 Discussion

From the material and evidence presented to the Panel, it appears the exhibited Amendment, submissions and evidence have all been predicated on the basis that as the site is located within an Activity Centre, there is a strategic imperative to accommodate both residential and employment uses on this land. In addition, given its large size, the site should be considered as a *strategic redevelopment site* and therefore, in particular, there is a

³ Clause 21.02-3

strong strategic imperative to maximise the opportunities it offers for residential development.

The Panel accepts the site is located within the Nicholson Street/Moreland Neighbourhood Centre (albeit on the eastern edge) and recognises that State, metropolitan and local policy all support the principle of urban consolidation with medium or higher density development generally focussed within Activity Centres. However, the Panel does not interpret this policy as stating that every site within an Activity Centre is automatically a potential residential site. Activity centres are intended to provide for a range of uses including residential, employment, business, community infrastructure and services etc. The critical question to this Panel is therefore, what role does the policy framework specifically identify this site as playing within the NAC and the broader municipality?

To this extent, the SPPF and Plan Melbourne do not provide any specific guidance and it is the LPPF which is most relevant. The Panel recognises, however, that the LPPF has been evolving with the review of MILUS, preparation of MILS and subsequent Amendment C158; as well as the NCS and subsequent Amendment C159.

Therefore, whilst this Panel must consider this Amendment in the context of the existing LPPF, it is also important to consider it in the context of the emerging policy.

This is also then complicated by the fact that the emerging policy is at different stages, with Amendment C158 being *'seriously entertained'* with a decision by the Minister imminent, yet C159 is still at the Panel stage (at the time of writing this report) and as a consequence cannot be treated as *'seriously entertained'* in the same manner as Amendment C158.

The critical question for this Panel is therefore what are the existing and future local strategic directions for this site and is the proposed Amendment consistent with those directions?

To answer this question the Panel must therefore focus on the existing and emerging strategic planning policy framework and the relevant supporting strategic work.

(i) Consistency with the existing LPPF

When considering the existing LPPF, it is evident there is very clear and specific strategic direction in relation in this land.

The Strategic Framework Plan⁴ includes the site within a *'Multi-use employment precinct'*:

... reflecting their suitability to transition to accommodate a wider mix of commercial uses to contribute to economic regeneration and more diverse employment opportunities. These areas are predominantly located within or adjacent to activity centres and their transition will support and reinforce the economic and employment objectives of activity centres. Residential uses in these precincts will only be supported if priorities for employment have been addressed. [Panel's emphasis]

⁴ Clause 21.02

The Strategic Framework Plan also specifically identifies this site as being within a *'Non-residential area'*.⁵

The Panel considers this an unequivocal statement that whilst the employment precinct may contemplate residential uses, the SFP does not and therefore the strategic focus for this land is employment uses.

Recognising the SFP could be amended to remove the *'Non-residential'* annotation, enabling the consideration of residential uses in line with the employment category, the Panel has also considered whether the Amendment is consistent with the employment category and other policy relating to this site.

The emphasis of the employment category is that provided priority for employment has been made and can be clearly demonstrated, then, and only then, should land also be considered for residential use. It is the Panel's view that this places a clear obligation on firstly establishing the amount and type of land required for employment uses on the site; and only after that to contemplate other land uses that will complement this employment priority outcome.

The MSS provides guidance on prioritising employment and residential uses with an objective⁶ which seeks *"To support activity centres as important commercial and employment clusters"* and a strategy which seeks to *"Ensure residential uses do not undermine the viability of businesses operating in activity centres."* It also provides guidance about managing the transition from traditional industrial areas to multi use precincts and prioritising opportunities for new employment uses⁷ over residential uses, when it states that: *"Where residential development is proposed it should be located within a mixed use building that has commercial uses at ground and first floor as a minimum."* (Panel's emphasis)

The MSS also states the appropriate zones for land within the *'Multi-Use employment precinct'* are IN3Z or C2Z⁸.

The Panel considers the existing strategic directions in relation to this site are currently unequivocal and the proposed Amendment is not consistent with the existing LPPF for the following reasons:

- It proposes the MUZ over the bulk of the site providing for residential development which is contrary to the SFP's designation of this site as a *'Non-Residential Area.'*
- It removes land from IN3Z which is considered the appropriate zone for prioritising employment uses.
- It provides 4,500 square metres of commercial space compared to the area of the ground and first floor which is considered the minimum that should be provided, dedicating the remaining land to primarily residential development.
- The emphasis of the DDO25 is clearly on managing residential development as it is entitled *'Urban Renewal Precinct'* and the first design objective is to *"support the*

⁵ Clause 21.02

⁶ Clause 21.03-1 – Objective 3 and Strategy 3.2

⁷ Clause 21.03-2 – Objective 5 and Strategies 5.2 and 5.3

⁸ Clause 21.03-2.1 – Implementation

*transition to a quality medium density residential development*⁹ and the design objectives and standards substantially apply to residential development outcomes.

- The DDO25 provides no specific guidance about how to manage/transition employment development, particularly in terms of floor levels and consequent impact on building heights, access, loading/unloading, car parking, etc.

For these reasons, the Panel considers the Amendment is not consistent with the existing LPPF. It also agrees with an observation made by Mr Naughton that the Amendment “*wouldn’t get across the line*” if it was based on the existing policy framework alone and that the Panel should also consider the Amendment in the context of the proposed policy.

(ii) Consistency with the proposed LPPF

The proposed policy is to be introduced via Amendment C158 which has the status of ‘*seriously entertained*’.

Amendment C158

In relation to proposed amendments to the SFP, the Panel notes the subject land has been reclassified to ‘*Employment Area.*’ which is described as:

A select number of precincts of industrial land have been identified as Employment Areas (Category 2) reflecting their suitability to maintain industry and employment uses and potentially transition to a broader business base and employment opportunities to contribute to economic regeneration and more diverse employment opportunities. These areas are predominantly located within or adjacent to activity centres and their transition will support and reinforce the economic and employment objectives of activity centres. Residential uses in these precincts will only be supported if priorities for employment have been addressed and guaranteed. Where Employment Areas have been rezoned to a zone that allow for residential uses, subsequent planning permit decisions must have regard to policy to prioritise industry and employment uses in these areas. (Panel’s emphasis)

The Panel also notes that despite now being within the defined Neighbourhood Centre boundary which is defined as the ‘*Extent of areas around designated NACs/LACs where increased housing density is encouraged within 400m of centre*’, the SFP still retains the site’s designation as being a ‘*Non-residential area*’.

The Panel therefore considers that the strategic intent for this site has not changed under Amendment C158. However, while the employment category may contemplate residential development, the SFP still does not.

The Panel considers the proposed policy changes contemplated under Amendment C158 strengthen the emphasis on employment being the focus for land, rather than residential, with the objective¹⁰ “*To support the transition from traditional industrial uses to a broader range of employment uses and prioritise employment uses over residential uses within*

⁹ Proposed DDO25 – Design Objective 1

¹⁰ Proposed Clause 21.03-2 - Objective 5

Employment Areas (Category 2)” and that “... *Where multi-use development including a residential component is proposed, the amount of employment floorspace should be at least equivalent to the amount of all proposed ground floor and first floor building floor space (inclusive of car parking, other services and circulation space.*” [Panel’s emphasis]. The Panel interprets this as an increased emphasis on the need to provide for more employment use, rather than less, as the amount of employment space to be provided has increased to also include the area dedicated to car parking, services and circulation.

In identifying three new employment categories, the proposed policy seeks to encourage increased housing densities and a change in character towards a more dense urban environment in the ‘*Category 3 - Transition Residential Areas*’ which are to be included within a MUZ or RGZ, not within ‘*Category 2 – Employment Land*’.

The Panel also notes that both Council and witnesses for the Proponent both recommend the employment category for the proposed site MUZ portion of the site be reclassified to *Category 3 - Transition Residential Areas*. The Panel considers this is a clear acknowledgement that the scale of residential development proposed is not consistent with the *Employment Area* intent, rather reflecting a proposed change of emphasis for this site.

Again, the IN3Z and C2Z are identified as the appropriate applicable zones in order to prioritise employment, however, the proposed policy now identifies that an Incorporated Plan Overlay (IPO) or Development Plan Overlay (DPO) may also be appropriate where confirmation of the location of employment uses is required, and acknowledges that a DDO may also be appropriate where confirmation of the design and site layout detail is required.

The Panel also notes this site was not specifically considered by the Amendment C158 Panel and there were no recommendations in that Panel Report which suggested this is not the appropriate employment category for this land. In fact, this Panel notes the Amendment C158 Panel did consider land opposite the subject site on the south side Moreland Road and recommended it be retained within the *Employment Area*, whilst land further to the south be included within the *Transition Residential Area*.

The Panel therefore considers the exhibited Amendment is not consistent with the proposed policy framework to be implemented through Amendment C158 for the same reasons. More significantly, the Panel considers the proposed policy raises a number of other additional issues:

- Even greater emphasis is placed on employment land, requiring a greater dedication of land to employment uses with no greater emphasis on the need to provide for residential development.
- There is recognition that the scale of residential development to be provided is not consistent with the intent of *Employment Areas* and requires a change to the employment category to reflect the proposed Amendment.

Amendment C159 and Neighbourhood Centres Strategy

Whilst Amendment C159 is not as advanced as Amendment C158 and is not ‘*seriously entertained*’, it and the supporting NCS were referred to as future policy that would provide strategic support for Amendment C160. For this reason, the Panel has considered, but not relied on them in considering this Amendment.

Amendment C159 includes this site within a ‘Focus Area for Change’ identifying the proposed MUZ area as ‘Residential frontage’ and the land fronting Moreland Road as ‘Commercial frontage’. It also states a key direction is to “Support retail, commercial and industrial uses”¹¹ and specifically to “Encourage commercial based employment uses in addition to residential uses, in the redevelopment of the 1-9 Moreland Road site.” Another key direction¹² is to “Rezone the following sites/precincts to ensure the zoning framework facilitates the creation of a distinct retail/commercial cluster at the heart of the Centre, as follows (consistent with their categorisation in the Draft Moreland Industrial Land Strategy); ... 1-9 Moreland Road from IN3Z to an appropriate mix of zones to guarantee employment priorities (e.g. C2Z and MUZ).”¹³ (Panel’s emphasis)

How these site specific recommendations came to be reflected in this Strategy was discussed at the Hearing and Mr Marsden advised it was amended to reflect C160. The Panel notes it does not appear to have been based on any detailed strategic analysis about whether this is an appropriate outcome for the site, or whether it is consistent with emerging employment policy through Amendment C158. Saying this, the Panel recognises this Amendment was prepared in a rapidly evolving strategic context.

Interestingly, the Panel notes that whilst MILUS and MILS were not cited as reports that informed this Strategy, it makes reference to MILS and in seeking to concentrate a mix of retail, commercial and community uses in Neighbourhood Centres to meet the daily and weekly shopping and service needs of the local community, it seeks to:

- *Ensure employment uses are prioritised over residential uses on sites designated ‘Category 2 – Employment’ in the Moreland Industrial Land Strategy (MILS). The employment floorspace requirements of the MILS should be met, as follows:*
 - *16% of the total site area, provided at lower levels of multi level buildings or on specific areas of larger sites; or*
 - *allocation of all usable floorspace not required for carparking or other services at ground floor and first floor of multi level buildings, whichever results in the greater provision of commercial floorspace.*

The Panel has concerns with the direction of this strategy in relation to this site, for the following reasons:

- It identifies this site as substantially residential, despite the existing and proposed SFP still identifying it as a ‘Non-residential area’.
- It relies in part on the 16% of the total site area being an appropriate test to ensure employment uses are prioritised over residential uses. This test was not ultimately supported by Council and the Amendment C158 Panel and was removed before submitting it to the Minister for approval.

The Panel notes the 16% requirement was examined in detail at the C158 Panel Hearing, which concluded:

¹¹ Key Direction 2 - p 42

¹² Key Direction 2 – p 42

¹³ Key Direction 3 – p 42

The mechanism now proposed by Council officers, and supported by expert evidence, that “the amount of employment floorspace should be equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space)” appears to represent a reasonable response to preserving employment outcomes in a time of a changing employment environment. The Panel supports this revised approach to the 16 per cent criteria and the replacement of ‘mixed use’ (which some submitters suggested creates ambiguity with the preference for a MUZ) with ‘multi-use’ ...¹⁴

The key issue for this Panel is that whilst Amendment C158 was based on the draft MILS which originally recommended that 16% of a site is an appropriate amount of space to dedicate to employment uses, that Panel and Council ultimately rejected that position and adopted an approach which requires that *“the amount of employment floorspace should be equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space).”* For a site of this size, this equates to a substantial amount of employment space that would be required to achieve compliance with this policy, which is not achieved through this Amendment. This outcome was acknowledged in Ms Ring’s evidence.

As the site specific recommendations to be implemented by this Amendment C159 are now not consistent with the proposed policy to be implemented by Amendment C158, the Panel has not been assisted by this strategy in assessing the strategic directions for this site under Amendment C160.

(iii) Residential, employment or both?

The Panel acknowledges that residential development on this site has the support of Council, many submitters and the Proponent.

The Panel certainly recognises its location within a NAC gives it a degree of policy support, it is substantial in size, has locational advantages and the support of Council and many submitters for this land use outcome. However, the Panel must consider the Amendment within the context of the existing policy framework, with regard for the future policy context; and it must do so based on the information and evidence before it.

Whilst Mr Naughton submitted the SFP is *aspirational* and the Panel should not be bound by the designation that the land is within a ‘*Non-residential area*’, the Panel disagrees. As outlined in *Planning Practice Note 4: Writing a Municipal Strategic Statement*, the Vision and SFP are inter-related and *“provide an opportunity to set out the key State and local directions of the planning scheme and assist the balancing of policies.”* In particular, the SFP *“provides the spatial representation of the key strategic directions and key issues of the municipality and should have clear links to the objectives and strategies of the MSS.”* Therefore the Panel must be directed by the SFP when considering if an amendment is strategically justified.

The Panel notes the ‘*Non-residential area*’ designation is not being amended either via this Amendment or Amendment C158, despite a site-specific change to the employment

¹⁴ page 32

category being made. If there was an intent to alter this designation then Amendment C158 provided that clear opportunity, however, it did not propose such a change and there was no recommendation by the Amendment C158 Panel that it should.

However, the need to ensure the SFP accurately reflects the strategic directions for a site was highlighted by the C158 Panel which said:

The Panel acknowledges that Council has identified a category for each on its SFP however, as noted at the Hearing, this plan contains directions for residential, commercial/retail and industrial land which makes it 'very busy' and only upon close scrutiny can the reader understand which category applies where. In this regard, the Panel considers it important that MILS is updated to reflect any change to the categorisation of areas so there is no inconsistency and another method of obtaining the same information. The SFP should also be updated to reflect any changes to categorisation.

The existing and proposed SFP both clearly identify the subject land as non-residential employment land and whilst the employment category recognises there is the potential to accommodate some residential development, it clearly expresses the emphasis is on employment uses first and foremost, with residential (if considered and assessed as a suitable use on the site) a secondary and subservient component to the employment use on the land.

Having considered these policy frameworks, the Panel has concluded the proposed rezoning to MUZ and emphasis of the DDO is not consistent with strategic directions for this site, and therefore it is not strategically justified.

In response to submissions from Mr Naughton and Mr Marsden that the Panel could recommend changes to the SFP to remove the reference to 'Non-residential' and identify the land as 'Category 3 – Transitional Residential', the Panel does not consider this appropriate for a number of reasons, these being:

Lack of economic justification

The Panel was not presented with any detailed and municipal-wide economic evidence that demonstrates the amount of commercial land proposed is sufficient to prioritise and guarantee employment opportunities in accordance with either existing or proposed policy, or that the existing *Multi-use employment precinct* and proposed *'Category 2 – Employment Areas'* are not the most appropriate employment categories for this land.

Whilst the Panel recognises that MILUS is now outdated and therefore it could be argued the existing strategic context is also outdated, this work has been recently updated via MILS and the subsequent preparation of C158. The veracity of MILS was tested at Panel and found to be *"a well-researched and founded document that takes a rational approach to the remaining industrial areas in Moreland."* It also found that the *"economic evidence provided adequate justification for and the retention of most industrial land and makes a sound case for setting aside other employment land that provides for future employment uses that respond to Moreland's changing economy."* In this context, the Panel retained the proposed *'Category 2 – Employment Areas'* for this site.

Simply, this Panel has not been presented with any economic evidence that suggests there is a justifiable reason to change the SFP 'Non-residential area' designation, the approach adopted in MILS and Amendment C158.

Whilst Ms Ring referred to an economic assessment undertaken by Urbis in 2015 which said that given the recent decline in demand for industrial land in this location, the amount of commercial land proposed by C160 is appropriate, the Panel has not been persuaded by this assessment for the following reasons:

- This assessment was undertaken in mid 2015 and many of the assumptions it makes about future demand for employment land are not consistent with MILS.
- The recommendations of MILS and the importance of protecting employment land for future employment purposes were tested and found to be rational and justified.
- Urbis was not called upon to give evidence to this Panel and therefore this Panel did not have the opportunity to test Urbis's assumptions and conclusions on this matter.

In response to submissions from Mr Naughton and Ms Ring's evidence that the current warehouse does not provide much employment itself, the Panel notes that MILS recognises that whilst some industries may not be significant employment generators in their own right, they still contribute to the overall economy. The Panel therefore does not accept this as justification to change the employment category.

Similarly, in response to suggestions that retention of the existing office and construction of an additional commercial building along Moreland Road will provide five times more employment than already exists on the site, the Panel again does not accept this as justification to change the employment category. Whilst this may be the case, that is not to say that greater employment opportunities will not be possible if the land is retained and developed for some other employment use. The Panel simply was not presented with any substantial and tested economic evidence to enable it to come to that conclusion with confidence.

The Panel notes that MILS clearly recognises that a challenge for Moreland will be to protect enough employment land in industrial zones for potential employment and to maximise the employment opportunities it presents, and considers this is also the challenge faced by this Panel in assessing this Amendment.

Whilst submissions from Mr Naughton and evidence from Ms Ring said that with a changing economy this land may not be required for employment purposes, again the Panel has no evidence to support this claim. The Panel notes that MILS clearly recognises that whilst there has not been significant reinvestment in office based employment uses yet, this is expected to occur in the coming years linked to the changing nature of the resident workforce. In the meantime, MILS recognises there will be pressure to convert industrial land to residential uses, particularly in this part of the municipality, but recognises the challenge will be retaining sufficient employment land to accommodate this future employment growth. The Panel notes that MILS clearly states:

The Strategy should set a long term view on the future use and development of industrial land and his approach should be based in a rational and logical assessment of the intrinsic suitability of land for different purposes.

*The importance of retaining industrial land cannot be underestimated because of the value-generating activities they currently host and will host in the future and because they are important in providing local employment opportunities for residents, thereby improvising the sustainability of the municipality and supporting a diverse community. ... As the municipal population grows over the coming decades and as urban sustainability becomes more important, local employment opportunities will become more rather than less important.*¹⁵

The Panel also notes this is an issue considered by the C158 Panel when it said:

*As best as future employment land can be estimated, the Panel accepts that MILS achieves this. By conserving the majority of industrial land the Council demonstrates a prudent approach.*¹⁶

Based on MILS and the Amendment C158 Panel Report, the Panel considers the application of 'Category 2 – Employment Area' to this site has been considered and reasoned and the Panel has not been presented with any evidence or submissions which convince this Panel that a change to the employment category is justified. The Panel has also not been convinced on the evidence and submissions made to it that removal of the 'Non-residential area' designation is appropriate.

This Panel considers the future use of this land raises the fundamental planning question of net community benefit. Are the interests of the community best served by maintaining this land for future employment purposes, or converting a substantial proportion of the site to residential? Based on the policy context and the strategic work undertaken by Council with MILS and C158, the Panel can only conclude the greatest net community benefit will be achieved by the retaining this land for future employment purposes, particularly given there are other opportunities to achieve higher density residential development elsewhere within this and other activity centres. The Panel also considers this approach is consistent with the objectives of planning which seek to "provide for the fair, orderly, economic and sustainable use, and development of land" and "to balance present and future interests of all Victorians." As noted by the Amendment C158 Panel, this approach is 'prudent'.

The Panel also notes that MILS outlines the information that would be required in support of any application for an amendment to vary either the category or zone, which includes an Economic Impact Assessment and where any inconsistencies in the policy context exist, an analysis of the net community benefit of the proposal should be supplied.

Based on the information before it, and particularly the absence of any credible and tested economic evidence, this Panel cannot conclude with confidence that this site is not required for predominantly employment purposes. Without a detailed economic assessment and broader strategic assessment, the Panel does not consider it would be appropriate (or prudent) to recommend either a change to the SFP in terms of whether it can contain any residential development and the employment category.

¹⁵ p6

¹⁶ p29

Employment uses not prioritised

The Panel notes this Amendment was originally prepared based on the pre-adopted Amendment C158 version of MILS which identified 16% of the total site as sufficient to prioritise employment uses¹⁷. Accordingly, the C2Z was located fronting Moreland Road and the remainder of the site was included within the MUZ. The Panel notes the amount of C2Z floorspace (at 4,500 square metres) occupies approximately 28% of the site.

The Panel notes the appropriateness of this benchmark was extensively examined during the C158 Panel hearing, which said:

The opportunity for Category 2 areas allows employment space to co-exist with residential development but without it being a token provision of completely dominated by the residential development component is at the core of the challenge for the implementation of MILS.

The mechanism now proposed by Council officers, and supported by expert evidence, that “The amount of employment floor space should be equivalent to the amount of all proposed ground and first floor building floorspace (inclusive of car parking, other services and circulation space)” appears to represent a reasonable response to preserving employment outcomes in a time of a changing employment environment. The Panel supports this revised approach to the 16 per cent criteria ...’ [Panel emphasis]

Therefore, it appears to this Panel, that the basis upon which this Amendment was originally prepared is no longer consistent with MILS or the proposed policy, which were amended to reflect the recommendations of the Panel Report. Clearly given the size of the site, an approach which relies on dedicating 16% or 28% to employment uses is no longer considered sufficient or appropriate. As discussed previously, the current strategic direction is for all ground and first floors of development to be dedicated to employment, and this has been increased through C158 to now also include areas of car parking, other services and circulation space. Given the size of this site, the Panel recognises this would require a substantial amount of employment floor. Nevertheless, the policy is also clear, this is considered to be a minimum requirement and it is not a matter that is up for review as part of this Amendment. The Panel therefore considers the proposed area of the MUZ and the emphasis of the DDO do not place sufficient emphasis on prioritising employment uses on this land.

In response to Mr Naughton’s submission and Ms Ring’s evidence that development of the ground and first floor for employment purposes would be unlikely to occur or be appropriate, again the Panel was presented with no evidence to support this. For this reason, the Panel cannot draw the same conclusion. In addition, the need for the first and ground floors to be dedicated to employment uses is already a strategic directive contained within the MSS, and is reinforced and strengthened in the proposed MSS. Therefore this is also not a matter for review as part of this Amendment.

¹⁷ Council Report seeking Authorisation dated 9 December 2015.

Whilst submissions were made that the MUZ will also allow employment uses and is therefore an appropriate zone, the Panel does not agree. Firstly, it strongly encourages residential development as stated in its key purposes which is not supported as a priority for this land. Secondly, the MUZ is primarily a residential zone and as recognised by Ms Ring and the economic assessment work undertaken by Urbis, any employment that would be achieved under this zone would likely be minimal and considered only a “bonus.”

The Panel also does not accept submissions that references to a “mixed use building”¹⁸ and “a mix of zones”¹⁹ equates to MUZ. The Panel interprets these as multi-uses and a number of zones. These policies also identify the C2Z and IN3Z as the appropriate zones, with no mention of the MUZ.

The Panel therefore considers the proposed C2Z and the current IN3Z are the most appropriate zones for the site as they will enable the establishment of alternate employment uses and prohibit residential development.

In relation to the proposed DDO25, the Panel notes it is entitled ‘Urban Renewal Precinct’ and in the view of the Panel, has been predominantly drafted to address the future residential development as it seeks to “support a transition to quality medium density residential development”. The Panel notes the DDO25 makes no mention of employment development (other than along Moreland Road) and provides no guidance in terms of floor to floor heights which ultimately affect over building height; as well as access, loading/unloading, storage, carparking etc. In addition, the schedule does not provide specific direction on any transition provisions that would address how the MUZ and C2Z will function to ensure that priority is given to employment outcomes on the land. All of which the Panel considers are critical elements associated with developing the land for employment purposes. For these reasons, the Panel is not satisfied the DDO25 places the appropriate emphasis on ensuring and guaranteeing employment development on the site in line with existing and proposed policy.

Precedence

Given that MILS and Amendment C158 are based on the most recent strategic work available, the Panel does not consider it appropriate to recommend approval of an Amendment which is not consistent with this future policy, without clear strategic justification to do so. This Panel considers this would be making policy ‘on the run’ and could potentially undermine the implementation of future policy and MILS before it is even approved by the Minister.

Transformation of the Amendment

Whilst Council and Mr Naughton both identified that if the Amendment were to be approved as exhibited, the employment category should also be amended to ‘Transition Residential’, the Panel notes that this action was not exhibited or part of this Amendment.

The Panel considers that such a change in the employment category as part of this Amendment would substantially transform the Amendment, not in relation to reflecting the

¹⁸ Existing Clause 21.03-2 – Strategy 5.3.

¹⁹ Proposed Clause 21.03-2.1.

proposed residential development as that has been clearly exhibited, but rather in changing the employment emphasis from a predominantly employment focus. This is based on the fact that *'Transition Residential Area'* clearly seeks to *"Discourage new industry and business from locating in Transition-Residential Areas"* and *"Discourage existing businesses from expanding in Transition-Residential Areas. ..."* The Panel considers this is a significant policy shift in focus for this site which has not been exhibited and properly considered.

The Panel considers that such a change should be the subject of a new Amendment which considers the potential economic impact on the Neighbourhood Centre and the municipality as a whole, rather than on a site by site basis. The Panel therefore considers there is significant economic analysis work that would need to be undertaken to support such a change, which simply has not been done at this point.

The Panel is also concerned that to approve this Amendment, without such changes to the SPF and the employment category, would create a tension in the planning scheme between the zone provisions, DDO25 and consistency with the existing and proposed policy, as they would have competing and often conflicting requirements, making consideration of any future planning permit application difficult.

3.4 Conclusion

The Panel has therefore concluded that the proposal to rezone land to Mixed Use Zone combined with the emphasis of the DDO25 is not consistent with the existing and proposed policy for this site and therefore should not be supported.

The Panel has concluded that the proposed Commercial 2 Zone is consistent with the existing and proposed policy and should be supported.

3.5 Recommendations

The Panel makes the following recommendations:

Delete the proposed Mixed Use Zone from the Amendment.

Delete the proposed Schedule 25 of the Design and Development Overlay from the Amendment.

4 The Design and Development Overlay

4.1 The issues

Whether the DDO has the appropriate focus, has been appropriately drafted, and ultimately whether the DDO is the most appropriate control to achieve the strategic objectives for the site?

4.2 Evidence and submissions

In her evidence, Ms Ring stated she supports the application of a DDO, however, it should be modified to better reflect contemporary drafting practice and expectations in accordance with PPN10 which sets out the principles that apply to the drafting and use of local content in a schedule.

In his evidence Mr Clarke said the DDO was also not drafted in accordance with PPN10 and there is a need for not only structural changes, but also changes to content. In particular, he submitted there is a need to amend the:

Mandatory provisions – to remove all references to mandatory provisions and replace them with performance based discretionary controls.

Design objectives - to remove duplication with other provisions of the planning scheme and delete references to specific documents as they provide no further guidance when considering an application.

Application requirements – to remove duplication with other requirements contained within the planning scheme. Also, remove the requirement for road upgrades as these have not been agreed and will be dependent on further work and the requirement for an Acoustic Report.

Built Form – to express a maximum building height which is adjusted to account for more realistic floor for floor levels for residential and commercial development and to round heights up to the nearest metre.

Moreland Road Interface - to remove the prescribed dimensions for the outdoor dining and seating space.

Heritage – to remove reference to the ‘original loading dock’ as a reference for future built form and to delete reference to heritage matters as these are dealt with under the HO parent control.

Merri Creek and Campbell Reserve Interfaces – to remove reference to the need to limit development below tree height as he expected this was already considered in setting the heights and it would be unnecessary to replicate the same outcome. He also submitted that whilst this may be an objective, it should not be a control.

Circulation and access – to remove reference to the Figure 1 Concept Plan in relation to pedestrian connectivity; the requirement relating to public roads and laneways, as this is a permit condition and not a DDO control; and the need for a Section 173 Agreement indemnifying Council for public access on private land.

Design Detail – remove reference to the *Moreland Apartment Design Code*.

Landscaping – to remove the duplication which requires the integration of planting along open space reserves and the requirement for deep soil planting.

Subdivision – to remove this requirement as it is already dealt with under the *Circulation and Access* requirements.

Decision Guidelines – remove all reference to Reference Documents because any guidance should be contained within the Design Objectives, not a Reference Document.

Proposed Figures 2 and 3 – should be deleted as they are not referenced in the text to DDO25 and provide unnecessary design detail which is overly prescriptive.

Mr Clarke also submitted that if the preferred maximum heights controls are met they should be exempt from third party notice, decision and appeal rights. He said that matters such as the treatment of interfaces to the adjacent open space reserves do not involve third parties, but rather Council and other government agencies whose interests can be represented by Council and the owner/developer of the site.

Mr Sheppard also had concern about the level of specificity in the Figures to the DDO25 in terms of heights, setbacks, road/footpath locations, saying this suggests there is only one way in which to manage the development of the site. He emphasised there could be many other more appropriate and site responsive outcomes that could achieve the best outcome for this site which would be ruled out by the approach adopted by the exhibited DDO25.

Mr Marsden submitted the Council acknowledges that some of the requirements of the proposed DDO25 replicate other requirements of the Moreland Planning Scheme, however, he submitted this was intentional and designed to provide certainty for landowners/developers and the community about the expectations with regard to this land. He submitted the inclusion of these provisions was intended to create a 'one stop shop approach' for future applicants and to emphasise the weight that will be given to certain MSS policy standards, as they apply to the site.

In relation to the concerns about the level of specificity in the concept plan, Mr Marsden submitted this is a notional concept plan which identifies an optimal outcome for development of the site, orienting buildings towards the site's boundaries, providing activation on the boundaries, increasing permeability through the site via east/west link and conserving the heritage building. Whilst he accepted there could be alternative plans, he submitted it is difficult to conceive how a fundamentally different plan could result in a superior outcome. He submitted the concept plan provides clear directions on how the site should be developed, whilst providing flexibility, submitting the level of flexibility sought by the Proponent could result in a fundamentally different plan to the one that was submitted.

The suggested deletion of Figure 2, 3 and 4 was not supported by Council, as Mr Marsden submitted these figures illustrate the intent of the DDO25 to assist designers and decision makers; and to provide clarity for the community around what type of development can be expected within the precinct.

In terms of other more specific suggestions, Mr Marsden submitted:

- reference to the *Moreland Apartment Design Code 2015* should be retained as the *Moreland Apartment Design Code 2015* is seriously entertained policy
- the suggested exclusions from notice and review are not supported as people should have the opportunity to have input into decisions about the development of this land
- deletion to the requirement for an ESD report was not supported because the ESD policy has an expiration date and Council needs to make it clear that this will continue to be a requirement of development of the precinct
- deletion of the need for an acoustic report was not supported as the MUZ allows for non-residential uses, including industrial uses, and therefore noise attenuation may be required. The provision of the acoustic report would ensure that new development is designed to ensure the future resident's amenity is maintained
- deletion of reference documents from the decision guidelines was not supported as these documents have been vital in informing the proposed Amendment and should be considered during and future planning permit application.

4.3 Discussion

4.3.1 Is the focus of the DDO consistent with local policy?

As discussed in Chapter 3, the existing and proposed SFPs both state the land is in a 'Non-residential area.' The proposal to introduce a DDO entitled 'Urban Renewal Precinct', the first objective seeking to "support a transition to quality medium density residential development" with the vast majority of the design objectives, application requirements and buildings and work controls and the Concept Plan and associated Figures primarily relating to the residential development of the site, is considered inconsistent with the policy framework and therefore not strategically justified.

Whilst there was a suggestion at the Hearing that the first Design Objective could be expanded to make reference to 'commercial' uses, the Panel is not convinced this would be sufficient and would not provide adequate guidance to developers and future decision makers. The existing and proposed policy framework requires an area equivalent to the ground and first floor (including car parking, other services and circulation space) be dedicated to employment uses. For a site of this size, that would be a substantial amount of employment floor space compared to what is proposed and would likely have significant associated requirements in relation to access, car parking, as well as loading and unloading. The proposed DDO25, however, provides no guidance or appropriate transition provisions in relation to these issues. In addition, the Panel does not consider the design layout illustrated in the Concept Plan even entertains this type of development.

For this reason, the Panel does not consider the focus of the DDO25 is consistent with the strategic directions of this site. The Panel considers that to be consistent with policy, the Design Objectives and associated controls would need to be significantly expanded to address the design and development implications of a substantial employment focus and priority on this site.

Therefore, whilst the evidence and submissions made suggestions about detailed changes that should be made to the proposed DDO25, the Panel does not consider it would be appropriate to recommend changes to the schedule whilst it has fundamental concerns with the strategic policy focus of the DDO.

Given the Panel considers that the DDO25 does not achieve the right balance in implementing the LPPF and therefore the emphasis of DDO25 is not strategically justified, it will not seek to make specific recommendations about the drafting of the DDO25, as the Panel considers that further work is required to ensure it reflects the strategic policy directions and intentions for this site.

Having said that, the Panel considers it appropriate to respond to some of the criticisms that Mr Clarke and Ms Ring had of the DDO25, however these are intended more as comments to assist in any further work on the DDO25, rather than direct recommendations.

4.3.2 Has the DDO been appropriately drafted?

In considering the evidence presented, the Panel has had regard to the PPN10 – *Writing Schedules* which establishes guiding principles for the drafting of schedules which are discussed below.

In relation to the other schedule drafting concerns raised by Mr Clarke and Ms Ring, the Panel makes the following comments:

- **Design Objectives:**
 - It agrees that reference should not be made to ensuring compliance with a Reference Document. All relevant objectives in these strategies should be reflected in the Design Objectives, unless referenced elsewhere in the planning scheme.
 - It agrees that it should not include a requirement to conserve and enhance the heritage values of the site, as this is addressed in the head clause to the HO which cover those parts of the site with recognised heritage values.
 - It agrees it should not refer to the *Moreland Apartment Deign Code 2015* as this does not form part of the planning scheme at this time. Should Council wish to consider it as 'seriously entertained' policy in the consideration of a permit application, it is entitled to do so.
 - The Panel also considers the design objectives should be expanded to address the design and development of the land for employments purposes.
- **Application requirements**
 - It agrees with Mr Clarke that all traffic issues should be dealt with through the preparation of a Traffic Engineering Report and that there is no need for duplication.
 - It agrees with Mr Clarke and Ms Ring that requirements which duplicate other sections of the planning scheme should be deleted as this approach is contrary to a principle in the PPN10 which states that local content should not duplicate other provisions. Duplicating them does not provide any further clarity or strength around the need to address these issues. Therefore, references to the need to provide a contamination site assessment report, Sustainable

Management Plan, Accessibility Report, Affordable Housing report and Geotechnical Report should all be deleted from the Application Requirements.

- The Panel does not agree, however, with Mr Clarke that an Acoustic Engineering Report should not be provided. The policy framework identifies this site as predominantly employment land, therefore the Panel considers it appropriate to obtain a report which demonstrates the use of appropriate materials and building techniques which will ensure satisfactory internal noise levels, particularly if there is to be a residential component associated with any future employment focused development.
- The Panel can understand Council's desire to create a 'one stop shop' for applicants and decision makers in the belief that it will make it easier to clearly articulate the development expectations and requirements in relation to a site. However, a DDO schedule is only one of a number of planning controls that may apply to a site and must be read with other planning controls.

The Panel considers it is not appropriate to attempt to articulate all of the development controls as they relate to a site within DDO schedule, as it could lead to situation where applicants or decision makers may not have regard to other important relevant sections of the planning scheme; or an incorrect emphasis or reliance on reference documents, etc, when it comes to implementing decisions.

For this reason, the Panel does not consider the desire to create a 'one-stop-shop' as sufficient justification to depart from the established drafting practice and considers the DDO is just one of a number of elements of the planning scheme which must be considered.

The Panel also considers this approach is not consistent with the PPN principle that all Schedules are to be read in conjunction with other planning controls.

- The Panel notes that in authorising the Amendment, DELWP advised Council that consideration should be given to removing application requirements that duplicate other parts of the Moreland Planning Scheme, specifically the requirement for a contaminant report, sustainability management plan, accessibility report, affordable housing report and a geotechnical report. Advice was also given that those provisions relating to the *Moreland Apartment Design Code 2015* should be removed or revised given the document does not have any formal standing in the Moreland Planning Scheme.

- **Built Form**

- It agrees that references to building heights should not be mandatory, but rather preferred maximum building heights, as discussed in Chapter 4. In addition, references to 'must' throughout the DDO are not appropriate where the control is not mandatory control.

- **Heritage**

- It agrees these controls should not replicate what is already addressed through the HO head clause.

- ***Merri Creek and Campbell Reserve Interfaces***

- It agrees with Mr Clarke that the reference to buildings appearing below the tree line should be an objective rather than a control, however, it does not agree there is no requirement for any reference to this as it would have been factored into defining appropriate heights in the first place. The Panel has seen no evidence to confirm that this was a consideration in proposing the heights. The Panel considers this is an important objective in seeking to manage the potential impact of built form on the adjoining open spaces and should be included, if not strengthened.

- ***Circulation and access***

- It agrees with Mr Clarke that reference to access points and pedestrian connectivity in accordance with Concept Plan 1 and Figures 2,3 and 4 should be deleted. Whilst the reference to the Concept Plan is discretionary and the emphasis is on 'generally consistent', the references to Figures 2, 3 and 4 are drafted as mandatory controls – this can lead to confusion. The Panel also considers them inappropriate as they have not factored in any of the circulation and access arrangements associated with the development of the land for employment purposes, which this Panel considers could be substantially different outcomes than that proposed.
- It agrees with Mr Clarke that there is no need to include a control which requires that public roads and accessways be designed and constructed in accordance with Council standards, as this should be a condition on any permit issued.
- It agrees with Mr Clarke that references to the need for a Section 173 Agreement to indemnify Council from access to private property are not necessary and therefore should be deleted.

- ***Design detail***

- It agrees with Mr Clarke that reference to the *Moreland Apartment Design Code 2015* should be deleted as this does not form part of the planning scheme at this time.

- ***Landscaping***

- It agrees with Mr Clarke that reference to the planting within the Merri Creek Reserve to buffer views should be deleted as this is not land owned by and therefore under the control of the Proponent. The Panel does not, however, agree that references to planting within the site to buffer views should be removed. The Panel considers that landscaping within the site will be important in managing visual bulk along these sensitive interfaces, especially if a case can be made for heights above four storeys, which based on the photomontages will be visible above these tree lines.

- ***Subdivision***

- It agrees with Mr Clarke that the Plan of Subdivision should not be tied to the Concept Plan which shows the road plan, given there may be alternate road layouts, particularly given the DDO25 has not considered the implications of substantial employment development on this land.

- **Decision Guidelines**

- It agrees with Mr Clarke that reference to Reference Documents as decisions guidelines is not appropriate and should be removed. All relevant guidance in the Reference Documents should be incorporated into the DDO25 (unless already covered elsewhere in the planning scheme), leaving the Reference Documents to perform their intended role which is only to provide background information.

- **Exemptions from Notice and Review**

- It does not agree with Mr Clarke and Ms Ring that any future development should be exempt from the notice requirements unless the preferred maximum height is exceeded. The issues associated with the future development of this site extend beyond the height alone and it is appropriate that third parties have the opportunity to consider the proposal in its entirety and make comments. On that basis, the Panel would not support notice exemptions.

4.3.3 Is the DDO the most appropriate planning tool to provide certainty?

The Panel notes that part of the reason why Council proposed to apply a DDO with the associated requirements to comply with Concept Plans and associated Figures, was to provide a level of certainty to both the Proponent, decisions makers and the community.

The Panel agrees that with a site of this size and with the strategic imperative to 'guarantee' and 'prioritise' employment uses, as well as some of the design and development outcomes, that providing a level of certainty around height for example may be appropriate. The Panel considers, however, that the DDO may not in fact be the appropriate tool to provide the level of certainty that Council is seeking.

As outlined in Chapter 3 the existing and proposed policies both identify the IPO or the DPO as the appropriate planning tools to prioritise and to show where employment uses will be located. The Panel recognises this cannot be achieved with a DDO, as the DDO only relates to development and built form outcomes and does not relate to land uses. Both, however, could be used to provide certainty in relation to development outcomes such as access and circulation, as well as heights etc.

4.4 Conclusions

The Panel concludes that the focus of the proposed DDO25 does not achieve the right balance in prioritising employment development and therefore implementing the LPPF. On that basis, the Panel does not consider it to be strategically justified.

The Panel has also concluded that there is the need to make structural changes to the proposed DDO25 to ensure that it is consistent with PPN 10 – *Writing Schedules*.

The Panel concludes that the proposed DDO25 should be deleted from this Amendment.

4.5 Recommendation

The Panel makes the following recommendation:

Delete proposed Design and Development Overlay – Schedule 25 from the Amendment.

5 Building heights and setbacks

5.1 The issue

The exhibited DDO25 contains discretionary four storeys height limits (12 metres) along Moore Street and south-eastern side of Moreland Road, five storeys (15 metres) at the interface with Merri Creek and six storeys (18) at the interface with Campbell Reserve; with a mandatory maximum height of six storeys. Following exhibition, these heights were all amended by Council to be mandatory and the height along Merri Creek reduced to four storeys.

The key issue is whether the proposed buildings heights are appropriate and whether the use of mandatory heights is justified?

5.2 Evidence and submissions

Meg A'Hearn (Submission 1), Gertraud Brunner and Kit Andrews (Submission 3), Colin and Mary Dyer (Submission 8); and Wendy Aitkens and Chris Balfour (Submission 10) all submitted that any development over three storeys is *“out of step with other developments along Merri Creek”* and that given the elevation of the site, the proposed heights will impact on both the Merri Creek and Campbell Reserve. Specific concern was raised about potential overshadowing of these open spaces; and as Merri Creek and Campbell Reserve represent some of the only open space in the area, it is critical to protect both from overdevelopment.

Melita Ludekens and Barbara Gutthann (Submission 4) objected to the proposed heights, primarily in relation to the impact it would have on the character of the area, which would be heightened by the fact that the site has no surrounding buildings and would be prominent. They also raised concern about the impact on visual amenity and potential overshadowing, submitting the maximum height for Moore Street, Campbell Reserve and Merri Creek interfaces should not exceed the current height of three storeys; and the maximum height for any other part of the site should not exceed four storeys.

Joanna and Ned McCarron (Submission 5) raised concern about potential overshadowing of Campbell Reserve and Merri Creek, particularly in winter, emphasising these are some of the only open spaces in the area and must be *“critically protected from overdevelopment”* with building height limited to three stories. They emphasised the need to ensure development does not create a continuous wall of built form along Merri Creek and the Campbell Reserve interface by including breaks between the buildings. They also emphasised the need to ensure the site design and layout achieves a high quality interface with surveillance of the public realm, including Campbell Reserve, Merri Creek, Moreland Road and Moore Street, including sufficient lighting to improve public safety.

Richard Cox (Submission 7) submitted the building height at the Moore Street interface should be limited to three storeys to more accurately reflect the height of built form along this interface. He submitted the proposed six storey height along Campbell Reserve interface is inappropriate as it will be visually dominating, even with the proposed breaks in built form, and that it should be limited to three storeys, with additional heights permitted where additional setbacks are achieved. Similarly, he highlighted the site falls significantly towards Merri Creek and that heights should respond to the topography. He also

acknowledged that the DDO contains standards in relation to overshadowing and that the orientation of the site is beneficial to addressing this. However, he submitted it should be confirmed that the maximum permitted storey height and setbacks will achieve the objective. He also submitted that early morning/late afternoon are when many people access these public open spaces and consideration should be given to the amenity of these public spaces in these key hours. He was supportive of breaks in the built form and improved passive surveillance.

John Demagistris (Submission 11) was broadly supportive of the Amendment, but had concerns about whether a potential redevelopment could result in increased overshadowing of his property. He emphasised the need to ensure that several aspects of the DDO remain in any final amendment, including ensuring building height at the Moore Street interface does not exceed the scale of the existing warehouse and that new development provides a minimum three metre landscape setback to Moore Street. Similarly, the development must not cast any additional shadow of Merri Creek and Campbell Reserve by creating breaks between buildings.

Susie Kumar (Submission 12) submitted that whilst she does not disagree with the proposed rezoning, she does not agree with the DDO having a maximum mandatory building height of six storeys as it does not take into account the frontage onto the Merri Creek linear parkland space. She submitted that failure to identify the Merri Creek on the Moreland Road Concept Plan suggests that this space is not important or valuable. She submitted that six storeys along the creek frontage is not 'best practice' particularly given the height of the existing podium upon which the existing building sits.

Robert Dunn (Submission 13) submitted that six storeys is too tall for this location and that it will lead to unacceptable levels of shadowing for both the Merri Creek and Campbell Reserve, submitting three storeys would be more appropriate as it would ensure existing amenity is retained. He also submitted the site is worthy of an iconic development which must integrate seamlessly into its surrounds; and to achieve this a buffer area should be provided between the development and Campbell Reserve to create a community garden. He submitted the future development should not impose itself on Merri Creek, but rather blend in seamlessly.

The Merri Creek Management Committee(MCMC) (Submission 14) submitted that whilst it does not object to the proposed rezoning, given the sites' intimate relationship to Merri Creek, a sensitive design approach is required when considering the east facing interface. MCMC raised particular concern about the proposed maximum five storey building height along the Merri Creek interface and whether that was an appropriate building form. It recommended the DDO schedule should require greater articulation or stepping back of the built form from this interface. It also queried whether the DDO25 will guide a better interface between the site, its retaining wall and the Merri Creek.

The Friends of Merri Creek (FoMC) (Submission 15) emphasised the importance of Merri Creek from a recreational, aesthetic, cultural and environmental perspective and submitted the proposed Amendment is contrary to the MSS²⁰ which seeks *"To protect the biodiversity,*

²⁰ Clause 16

amenity and recreational values of the open space network” and the objectives of the ESO1 which seek to protect and enhance the visual character of the waterway. In particular, it submitted that a six storey development on this visually prominent site along the Merri Creek will have a significant visual impact on the creek corridor and will be detrimental to the experience of recreational users of the parkland. It was also submitted this cannot be addressed with additional landscape screening due to clearance zones around the high voltage transmission lines. It was submitted that such a development will set back the steady progress towards the restoration and enhancement of the Merri Creek over the past forty years and devalue a community asset that has cost millions of dollars of public investment.

The FoMC submitted the Neighbourhood Character Policy²¹ includes an objective for Neighbourhood Activity Centres that supports change up to and including four storeys, having regard to interface with adjoining zones and the NCS. Accordingly, they submit that four storeys should be the maximum height allowed on the site, given its elevation and visual prominence and the impact on the amenity of the Merri Creek open space corridor. The Amendment should also take into consideration the feasibility of further screening plantings.

The FoMC also submitted that the MSS²² seeks to create a continuous public open space corridor with a minimum width of 50 metres on each side of Merri Creek, however, the section in front of this site is less than that and this Amendment should seek to rectify that along the eastern boundary of the subject property.

Melbourne Water (Submission 9) reiterated a number key issues, including support for the 30 metre setback from the top of Merri Creek as an additional buffer, as well as the need to ensure future development is screened from open space areas by enhanced buffer planting and where possible, the side of buildings facing the creek have an open, pleasant interface with sensitively selected fascia, which is considered particularly important given the proposed height of the mixed use development. Finally, it identified the DDO25 should also specify ‘enhanced landscaping’ with locally indigenous species within the site and adjoining the creek side of the public open space.

On behalf of the proponent, Mr Naughton submitted that the site has few constraints (apart from recognising the need to address Merri Creek) and that this Amendment will help unlock the potential of this site. However, the DDO proposed by Council *“fails to provide the best possible strategic framework required for the redevelopment of the site. In particular, the use of mandatory controls, and their formulation, will unreasonably constrain the site’s development potential, resulting in a missed opportunity.”*

Mr Naughton submitted that the SPPF, Plan Melbourne, the MSS and the new residential zones, all reinforce the need to optimize or maximise development within and adjacent to Activity Centres. He submitted that given large areas of NRZ have been applied to areas within the municipality with character considerations, the policy balance has clearly shifted towards providing greater emphasis on the protection of suburban character, conversely

²¹ Clause 21.01

²² Clause 16.7

with the strongest support for intensification in an around Activity Centres including this one. He submitted that where an area is not an established residential area with neighbourhood character development constraints and the relevant Activity Centre is one which has a focus for change, that there is an imperative to achieve urban consolidation and there must be a very good reason to limit height and introduce mandatory controls.

Mr Naughton also submitted that mandatory controls must be *“underpinned by a robust and comprehensive contextual and strategic analysis that identifies a clear need for the mandatory controls, and be considered necessary to address particular adverse design outcomes for the area subject to the proposed controls (as identified in the robust and comprehensive contextual and strategic analysis)”* and outlined the substantial level of strategic work that would be required to support mandatory control, which he submitted has not been done.

For these reasons, he submitted there is no justification for mandatory controls and *“Simply, a large strategic opportunity presented by this site and which is otherwise consistent with strategic policy objectives, should not be unreasonably fettered by the imprecision of mandatory built-form controls that have no proper strategic base.”*

Mr Naughton submitted the height limits expressed by Council raise a number of significant issues insofar as a future development application is concerned, which are compounded by the mandatory nature of height controls, effectively reducing the practical height of all buildings by an additional storey. To address this, he submitted the ‘Figures’ accompanying the DDO25 should be deleted, the maximum heights expressed in metres and take into account practical floor to floor height dimensions, that maximum heights should be from Campbell Reserve boundary and a clearly defined datum, and that mandatory maximum height should be discretionary. All which he submitted was supported by the evidence of Mr Sheppard, Ms Ring and Mr Raworth.

Mr Naughton also raised concern about the proposed 50 metre setback, based on the Merri Creek Development Guidelines, submitting this setback was intended to be land that would be acquired by Council to create a consistent creek corridor, not a development setback and therefore it is inappropriate to include it.

Mr Naughton emphasised that whilst much of the discussion was about proposed built form, the ‘detail’ would be considered through a planning permit application where compliance with the objectives and decision guidelines of the DDO would have to be demonstrated.

In her evidence, Ms Ring recognised that current policy contemplates development up to four storeys but recognises there are circumstances where development of greater height could be achieved without unreasonable impacts on the setting or the amenity of the area.

Whilst recognising that mandatory heights can provide a level of comfort to people, she said that comfort is often gained at the expense of better outcomes that can come from flexibility. She said that whilst a conversation and debate about the future height of buildings is legitimate, it must be conducted within a strategic planning context which requires the fair, orderly and efficient use of valuable urban land in a way that is sustainable and ultimately offers a net community benefit in the interest of all Victorians. It was her opinion that based on the guidance contained in PPN59, mandatory height or setback

controls are not justified and that Council and submitter expectations about heights and setbacks are entirely capable of being managed within a DDO which is properly constructed with discretionary controls that provide the desirable 'degree of freedom' to achieve the desired results.

In his evidence, Mr Sheppard stated that following an assessment of the policy framework, he considered a balanced response is required to the site, whereby future development achieves the sites' potential for housing growth and commercial uses in the less sensitive part of the subject land, scaling down in intensity adjacent to more sensitive interfaces.

Mr Sheppard did not support the proposed use of mandatory height controls as he considered they do not have a strong strategic basis and do not have regard for the "site's strategic redevelopment attributes". He said "In my view, the opportunity presented by the Subject Land to accommodate housing growth is too valuable to be wasted by an unnecessarily conservative height" He said the heights should be discretionary with four storeys along Moore Street (61.4m AHD), three commercial storeys along Moreland Road (59.80m AHD), four storeys along Merri Creek (61.40m AHD) and six storeys (or more if detailed analysis justified that outcome) along Campbell Reserve, all to be calculated from an AHD along Campbell Reserve.

Mr Sheppard also raised concern about how heights translate storeys into metres. He said all storeys assume a three metre floor to floor height, which he considered is not adequate and should be increased to 3.2 metres for residential level and four metres for employment; has not allowed for a raised ground floor for residential uses for privacy reasons and that additional height for a roof and parapet is needed. For these reasons, he considered that they should be increased accordingly.

Based on building height modelling prepared by Urbis, which showed two potential scenarios, it was Mr Sheppard's opinion that "the building height fronting the Merri Creek should be increased to 5 levels above the height of the road along the eastern boundary. However, because the level of the road has not been determined, it would be more appropriate for the height limit to be expressed as an AHD level similar to the other height in the proposed DDO. ... I recommend a maximum height of 61.40m AHD."

In terms of the impact on both Merri Creek and Campbell Reserve, Mr Sheppard was satisfied the proposed heights are an appropriate response to these open space interfaces, given the mature vegetation that exists along both interfaces, which he said will soften the visual impact of the development. He did not consider that additional overshadowing from a building of this height would be unreasonable as it would be limited to the afternoons and only partially affect the Merri Creek upper level walking path. He also said he did not consider Campbell Reserve to be as sensitive to building height, but rather the scale and location of the open space provides an opportunity for increased height. For that reason, it was his opinion this interface could achieve greater than six storeys, particularly in the centre of the site and at the Campbell Reserve interface, whilst still responding to the surrounding context.

Mr Sheppard also made the observation that there is no Design Objective in the proposed DDO25 in relation to height along Merri Creek, which he assumed should seek to ensure that development does not visually overwhelm the creek environment. However, whilst he

agreed with this aspiration, he stated that *“The question is whether the proposed maximum height strikes the right balance between achieving it and capitalising on the opportunity presented by the Subject land as a strategic redevelopment site.”*

In referring to photomontages prepared by Urbis, Mr Sheppard said both Scenario 1 and 2 ensure the Creek environs is not visually overwhelmed.

In respect to the mandated building setbacks from Merri Creek, Mr Sheppard said this setback does not reflect the height and location of buildings along the Creek environs and is not justified from an urban design perspective.

Mr Clarke also did not support the proposed use of mandatory height and setback controls, recommending they should all be performance based discretionary controls. He supported the revised floor to floor levels referred to by Mr Sheppard and raised concern about the level of precision (to the nearest decimetre) the heights are expressed in. Mr Clarke does not support the Council’s proposal to link building height with tree height outcomes.

On behalf of Council, Mr Marsden submitted the proposed building heights are appropriate as State and local policy encourages development on large sites in existing urban areas close to public transport, service and amenities. He submitted the heights have been based on directions contained within the MSS and local policy²³ which recognise that land within the Activity Centre will experience growth, and on a considered analysis of the site’s context, size and features; and whether visual impacts can be mitigated through design.

Mr Marsden submitted the NCS and subsequent Amendment C159 originally proposed a four storey mandatory height limit for the site, however, it was removed from the proposed DDO24 *“because council was aware that a request for a planning scheme amendment for the subject site was imminent.”*

Mr Marsden submitted the proposed four storey building height along the Merri Creek is appropriate as it will not cast additional shadow over the Merri Creek Reserve from 11am to 3pm at 22 September; the setbacks of buildings as per DDO25 will ensure a less dominant and intrusive built form when viewed from within the Merri Creek corridor; the existing and proposed new trees will help screen views towards buildings and the large breaks between buildings will reduce the mass of the buildings and allow views through the site.

Mr Marsden also submitted that Council does not support Scenario 2 as an alternative development option.

In terms of where heights should be calculated from, Mr Marsden originally submitted the height of the building at the Merri Creek interface should be measured from the lowest point along eastern boundary, resulting in the lowering of the building by almost three storeys when viewed from the Merri Creek. During the Hearing, Mr Marsden accepted the heights could be taken from Campbell Reserve on the condition provided the overall heights are not increased.

Mr Vahanvati, Council’s Urban Designer, also made submissions on behalf of Council about the appropriate treatment of the Merri Creek interface, submitting the retaining wall should

²³ Clause 21.02-3 – Strategic Direction 1 – Activity Centres, Clause 21.03-4 – Urban Design Built Form and Landscape Design, Clause 22.01 – Neighbourhood Character and Clause 22.01.

be removed, the site graded to transition into the Merri Creek Reserve and the setback integrated with the Reserve. He submitted the heights of the buildings fronting Merri Creek Reserve should be calculated from the mid-point ground level at that eastern boundary interface.

Mr Marsden also submitted that post exhibition Council had amended DDO25 to include a requirement to ensure that buildings appear below tree height when viewed from the Merri Creek and that the side of the buildings use natural materials and muted colours to manage the visual impact of any future development on Merri Creek. At the same time, he submitted a 12 metre mandatory setback should be provided to Merri Creek to ensure there were no intrusions of built form into this setback in order to ensure it is publicly accessible.

In terms of the Campbell Reserve interface, Mr Marsden submitted the proposed heights are appropriate as all buildings will be setback a minimum of 12.5 metres behind an internal street, they would not cast additional shadow over the reserve from 11am to 3pm at 22 September, the existing and proposed trees will help screen views towards buildings, the large breaks between buildings will reduce the mass of buildings and allow views through the site towards Merri Creek and windows and balconies will face towards the reserve providing a safer and active interface that the existing blank wall.

In terms of heights to Moore Street, Mr Marsden submitted the proposed four storeys is appropriate as the building is already between 8-11 metres high along the street edge, the proposed buildings will be setback a minimum of three metres from Moore Street to accommodate landscaping, Moore Street is over 20 metres wide and the mass of building will be broken down by windows and balconies.

In terms of the proposal for mandatory heights, Mr Marsden submitted they will ensure specific built form outcomes are achieved and provide clarity on suitable heights for both landowners and the community. He submitted the proposed heights for each interface should be mandatory to ensure the interface with each boundary is properly addressed, as any height above the maximum heights has the potential to detract from the heritage significance of the office building, overwhelm Campbell Reserve, the Merri Creek corridor and Moore Street. He submitted the proposal for mandatory heights substantially complies with the PPN59 – *Role of Mandatory Provisions in Planning Schemes* and is consistent with Plan Melbourne²⁴ which supports the introduction of mandatory controls along waterways. His submission included an officer assessment of the proposed mandatory building heights against PPN59.

In summary, he concluded that given the significance of Merri Creek as an environmental, heritage and recreation corridor and abuttals to other sensitive interfaces including Campbell Reserve and Moore Street, mandatory controls over the entire site are justified.

Mr Marsden accepted it would be appropriate to refer to heights in metres as opposed to storeys and accepted there appears to be variation in the Scheme between the definition of the height of a storey between 3 and 3.5 metres and that this should be refined. However, he submitted the overall height of the building should not be increased.

²⁴ Initiatives 4.2.4 and 5.6.2.

5.3 Discussion

The Panel will deal with the issues of buildings heights and setbacks, and whether these should be mandatory separately.

5.3.1 Building Heights

In considering the issue of building heights, the Panel notes that much of the justification for the proposed heights hinges on the assumed strategic imperative to maximise the opportunities this site offers for residential development. In fact, in the Panel's view, all of the expert evidence appears to have been predicated on the basis that this site is a *strategic redevelopment site* and therefore increased heights are justified.

As concluded by this Panel, the LPPF does not identify this as a significant residential redevelopment site, as it is within a *'Non-residential area'* and an *'Employment Area'* where employment uses are the clear priority. On that basis, the Panel cannot agree with the evidence of Ms Ring, Mr Sheppard or the submissions of Mr Naughton and Mr Marsden which suggests there is a strategic imperative to allow additional height on this site to maximise the residential opportunities.

The Panel considers any proposed heights controls must be strategically justified based on existing policy and provisions, its local context and how it responds to the site's key characteristics and outlook, including an assessment of any potential amenity impacts on surrounding areas and sensitive interfaces.

(i) Consistency with policy and provisions

The Panel notes the MSS identifies that areas for *'Significant Housing Growth'* within Activity Centres include land zoned C1Z, RGZ or MUZ (as proposed) which define the total extent to which increased densities are encouraged. It identifies these areas *"are expected to experience a change in character towards a more dense urban environment, with housing predominantly apartment and townhouse style in buildings of three to four storeys."*²⁵

The *Neighbourhood Character Policy* similarly identifies NACs as *'Substantial Change Areas'* where a change towards a new character to accommodate buildings of up to and including four storeys having regard to interfaces with adjoining zones will be supported. It states that for *'Substantial Change Areas – (Commercial, Mixed Use and Residential Growth Zones)'* (as proposed) it is policy to ensure that building height does not exceed four storeys unless it can be demonstrated that the prevailing height of surrounding buildings is five or more storeys, in which case the prevailing should not be exceeded. Or if the site is large enough to allow the visual impacts of the development to be mitigated through the design response, the building height at the interface with adjoining properties and at the street frontages should not exceed four storeys. In doing so, it seeks to ensure development is designed to provide a suitable transition at interfaces with adjoining zones.

What is clear from this policy is that even in areas where substantial residential growth is anticipated and there is a strategic imperative to maximise residential development

²⁵ Clause 21.02 – Strategic Direction 3.

opportunities, the MSS and the local policy clearly identify four storeys as the appropriate height.

The Panel also notes that recent strategic work has considered the issue of building heights within Neighbourhood Centres, including this centre, and whilst this is not yet policy, it does shed light on Council's thinking in relation to heights within this Activity Centre. The NCS states "... Council's MSS Vision encourages a low-rise scale of built form change for Neighbourhood Centres. This includes mixed-use and apartment buildings as well as townhouse and unit style development generally up to four storeys." It recognises this height is considered the right scale in order to accommodate housing growth commensurate with the role of Neighbourhood Centres in the overall activity centre hierarchy.

It is therefore clear that Council not only intends to maintain this established policy position of four storey built form scale within this Neighbourhood Centre, but it has also sought to reinforce this as an appropriate height through the introduction of mandatory controls via Amendment C159. It is also understood this mandatory height was originally proposed to apply to this site, however in recognition of this Amendment, it was removed. The appropriateness of these proposed mandatory controls has been the subject of review at the C159 Panel Hearing, however, the Panel Report was not available to this Panel at the time of writing this report.

The Panel therefore considers the existing LPPF establishes a clear policy position, that even in areas where substantial change and increased residential densities are proposed, heights should be a maximum of four storeys. This Amendment exceeds this policy context by proposing a maximum building height of up to six storeys.

The Panel notes submissions that the proposed six storey height was based on the *Moreland Activity Centre Framework* prepared in 2015 which it is understood nominated an indicative scale of development for industrial sites of 4-6 storeys. The Panel can find no reference to this ever making it into policy. Similarly, the Panel also notes the Urbis 'Rezoning Report' supporting the Amendment states that six storeys is appropriate as future development is "*anticipated to be in the order of 5-6 storeys in relevant planning policy guidance*". Again, the justification for six storeys appears to be based on '*anticipated*' changes to policy, which appear to not have eventuated.

The Panel therefore concludes at this time there is no clear strategic justification or policy basis upon which heights exceeding four storeys could be considered on the site.

The Panel notes the current four storey discretionary height limit can be exceeded where it can be demonstrated that the prevailing height of surrounding buildings is five or more storeys, in which case the prevailing height should not be exceeded; or if the site is large enough to allow the visual impacts of the development to be mitigated through the design response, yet it still states the building height at the interface with adjoining properties and at the street frontages should not exceed four storeys.

(ii) Local context

In considering whether heights above four storeys on this site would be appropriate the Panel has had regard for the *Development of five or more storeys*²⁶ policy. It states that applications for developments of five or more storeys should be accompanied by an Urban Context Report which is to provide a comprehensive urban context analysis that will form the basis for consideration of height, scale and massing and demonstrate how development will take into account the physical, cultural and strategic context of its location. It also requires a Design Response which outlines how the proposal responds to the urban context report and other policy. Whilst the Panel recognises this policy applies to permit applications, it is also useful in guiding the consideration of the heights controls as part of this Amendment, as it outlines the relevant issues that should be considered.

Having said that, the Panel notes the Urbis 'Rezoning Report' submitted in support of the Amendment did not provide this level of analysis. However, in assessing the local context it relied on the 'Nicholson' (up to 10 storeys in part), yet also recognised that built form is predominantly low-rise residential with the majority included within the Neighbourhood Residential Zone. Mr Marsden confirmed this is still the case.

The Panel therefore did not find the context analysis provided by Urbis helpful in considering whether the proposed heights are justified.

In considering the prevailing building heights, whilst certainly a tall building within the local context, the Panel does not consider the 'Nicholson' as sufficient justification for a six or more storey development on this site. It is not reflective of prevailing height around the site which the Panel observed is relatively low rise residential, it is located centrally within the activity centre and is surrounded by development. This site is, however, is located on the eastern edge of the Activity Centre and has three sensitive interfaces, these being the Merri Creek to the east, Moore Street to the north and Campbell Reserve to the west.

Therefore the Panel does not consider that the proposed heights are consistent with the prevailing building heights and therefore the case for an increase in height above the four/five storeys is not supported by policy.

Therefore, the only policy justification for building heights above four storeys is if the *"site is large enough to allow the visual impacts of the development to be mitigated through the design response"*²⁷.

At 1.6 hectares, this is certainly a large site in an urban context. The Panel accepts that it should be possible to design a building in excess of four storeys which does not have a significant visual impact on the surrounding area. The question for this Panel, is whether the proposed heights and setbacks in DDO25 will achieve that.

The Panel will consider the impact of the proposed buildings heights on each of the interfaces separately.

²⁶ Clause 22.07

²⁷ Clause 22.01-3

Merri Creek

The Panel considers the Merri Creek interface to be the most sensitive given its proximity to the Merri Creek Reserve, the slope of the site and the fact that the common boundary is largely defined by retaining walls which runs almost the entire length of the eastern boundary, ranging in height from two to seven metres. The retaining wall is a significant issue along this boundary, and whilst it creates a level footprint for development, it creates an elevated platform which significantly increases the visibility of built form from east. In addition, the Proponent has also indicated he has no intention of removing it which was strongly supported by the evidence of Mr Sheppard, Mr Haack and Mr Vernon. There is vegetation on the western side of the creek and along the eastern edge of the retaining wall which provides some screening of the existing development, however, even with a substantial setback the existing built form at four storeys is visible from the Merri Creek Reserve.

Whilst in his evidence, Mr Haack said that the *“most visually sensitive interface with the Merri Creek Reserve is not a pristine visual setting, but rather a riparian landscape located within an inner urban environment with adjacent built form of varying character, form and scale.”* the Panel does not consider this is justification to allow increased heights that may have a greater visual impact on Merri Creek.

The Panel notes that both State²⁸ and Local Policy²⁹ both specifically recognise the value of Merri Creek as an open space corridor and emphasise the need to ensure development does not adversely impact on both the landscape character, as well as amenity (amongst others) of this open space. It is an open space of some considerable significance, value and importance to the Moreland community as evidenced in the submissions made by the MCMC and FoMC.

In addition, the Panel notes that ESO1 - *Merri Creek and Environs (includes Edgars, Merlynston and Campbellfield Creeks)* applies to both the site and the Merri Creek Reserve. The *‘Statement of Significance’* clearly recognises that Merri Creek draws its significance from its role as a continuous corridor and is important because it contributes to the linking of areas of environmental, heritage and recreation values along the creek. It recognises that *“Revegetation works and parkland development, including path construction, have created a linear parkland of outstanding quality and landscape character – one which plays an important role in the park system of the metropolitan region.”* The Panel notes the ESO1 contains a *‘Landscape character’* objective which seeks *“To ensure that the scenic qualities and visual character of the waterway corridor are not compromised by the inappropriate siting of buildings, the placement of fill or lack of screening vegetation.”*

The Panel considers the strategic emphasis and the ESO, both *‘raise the bar’* in terms of assessing the impact of heights on the sensitive Merri Creek Reserve. Whilst the Panel acknowledges the transmission tower in this reserve is not a sympathetic element, it does not consider this justification to allow further significant built form close to this sensitive interface.

²⁸ Clauses 11.04-8 and 12.04-1.

²⁹ Clause 21.03-6.

The Panel also agrees with the submitters that this is an important local recreational resource and it is appropriate that development of this site respond appropriately to this interface.

Given the lack of detailed urban context report, the Panel has had to rely on the photomontages provided by the Proponent, the evidence provided, submissions made and its own observations from a site inspection.

Based on the photomontages, the Panel considers that a building on top of the existing retaining wall along the length of the property with the heights and setbacks proposed by DDO25 (Scenario 1) and as proposed by the Proponent (Scenario 2) allows a built form that is highly visible from the Merri Creek Corridor. Whilst some views may be screened by vegetation along the western path, the Panel considers the longer distance views from the elevated path on the eastern side of Merri Creek will be more visible and significant.

The Panel agrees with submissions which raise concern that this could lead to excessive visual bulk along this interface and impact significantly on the Merri Creek Reserve and environs. Whilst the Panel accepts Council's proposal to amend the DDO25 to require new buildings to use natural materials and muted tones, the Panel is not convinced these will be sufficient to ameliorate the potential visual bulk that could occur.

Whilst evidence was presented that the built form would be softened by existing and proposed vegetation, based on the photomontages and cross sections presented, the Panel was not convinced this would be sufficient to address the issue of visual bulk and the built form and would still be highly visible for the eastern walking/riding path. The Panel was also persuaded by submissions from MCMC and FoMC that the existing vegetation within the reserve has been planted in less than optimal soil conditions (fill) which has impacted on the growth rates and ultimate height of trees within the reserve. The Panel does not consider that for a site of this size, that it is either appropriate or practical to seek to solely rely on planting within the reserve to provide screening for this site. The Panel considers that given the size of this site, there is adequate scope to incorporate all landscaping on the site itself, particularly if the retaining wall is retained.

In relation to the retaining wall, whilst the Panel can see how its removal could improve integration with the Merri Creek Reserve, it can also see how this could have significant impact on existing vegetation both within the reserve and on the subject site. The Panel is not convinced that the benefits to be gained from removing the retaining wall, outweigh the dis-benefits in this case. The Panel considers this is an issue that requires further investigation.

The Panel also notes there will be an increase in overshadowing in the afternoons along the western edge of the Merri Creek. Mr Sheppard notes that in development Scenario 2, additional shadow would be cast on the steeply sloping land west of the path along the Creek (between 2.30pm to 3pm), however, he does not consider this to be significant from an amenity perspective. Given the orientation of the site and the reserve, the Panel did not consider this additional overshadowing to be significant and accepts Mr Sheppard's evidence in this regard. The Panel also notes that evidence provided by Mr Haack and Mr Vernon also supported this view.

Nevertheless, the Panel still has concerns that the heights proposed by the DDO would not respond appropriately to the Merri Creek Corridor, which is recognised as a significant environmental, recreational and heritage corridor. For this reason, the Panel does not consider the proposed height at this particular interface responds to this local context and can see no reason to vary the existing preferred four storey heights established by the current policy.

The Panel also agrees with Mr Sheppard that the Design Objectives of the proposed DDO25 do not provide specific guidance about what the DDO seeks to achieve along this interface, other than general statements about *“high quality interface”* and ensuring *“development does not create a continuous built form along the Merri Creek.”* The Panel supports the Design Objective that development is not to create a continuous wall of built form. However, had it supported the proposed heights in the DDO25, the Panel would have recommended that the Design Objectives be expanded to provide more useful and specific guidance about how development should respond to this interface. The Panel also supports the development controls which require that the development should not cast any additional shadowing of Merri Creek Parklands Reserve beyond the line of existing shadows cast from 11am to 3pm measured at 22 September; and that development should appear below tree height when viewed from both the Merri Creek Trail and the informal path.

Campbell Reserve

The Panel considers that Campbell Reserve is also a sensitive interface, however, to a lesser extent than the Merri Creek Reserve, given the flat nature of the land and the mature vegetation that exists along the boundary within the reserve. The Panel accepted Mr Sheppard’s evidence that a more robust built form could be provided along this interface. The Panel is also satisfied that any development of the heights proposed is unlikely to result in unreasonable overshadowing of the open space. However, it does qualify this position to a degree. Mr Sheppard’s evidence on this interface recommended discretionary heights with capacity to exceed the six storey height. The Panel cannot justify this conclusion based on the limited evidence presented around this matter. Further detailed urban design analysis would be required before the Panel could justify such a position.

The Panel still considers that development along with interface should present as four storeys, with any higher levels recessed. Given the size of any future development of the land, the Panel considers this would still provide significant floor space above the four storey interfaces.

Again, the Panel supports the need for breaks between the built form to ensure it is not one continuous built form and the requirement for development to not cast any additional shadowing on Campbell Reserve beyond the line of existing shadows cast from 11am to 3pm at 22 September. However, it would have sought more specific design objectives with appropriate urban design analysis about how to deal with this interface.

Moore Street

This is the only part of the site which is opposite a residential interface. This residential land is located within a NRZ and therefore built form will be limited to eight metres, maintaining the low density nature of this development.

The Panel is satisfied the proposed four storey height control in this location is appropriate as it largely reflects the existing built form and is located to the south of the residential development, and therefore will not present any potential for overshadowing.

The Panel therefore considers the heights proposed appropriately respond to this interface.

South side of Moreland Road

The southern side of Moreland Road contains an industrial building which is three-four storeys high. Given the height and industrial nature of the existing building and the site's location along Moreland Road, the Panel considers this to be the most robust interface as led by evidence on behalf of the Proponent.

The Panel is therefore satisfied that the proposed four storey height limit along this road is an appropriate response to this interface.

In summary, based on the information presented, the Panel does not consider the case for preferred heights above four storeys has been strategically justified or responds appropriately to the local context. The Panel is concerned that the height and setback of development anticipated by the DDO25 would likely have a significant impact on the Merri Creek Reserve, and to a lesser degree Campbell Reserve.

The Panel recognises that with a site of this size, there is the potential to provide heights above four storeys through recessed upper levels without significantly impacting on the surrounding development. However, the Panel does not consider this DDO25 provides enough guidance to ensure that is achieved. The Panel considers that more specific Design Objectives would be required.

Whilst the Panel recognises the ultimate height of any development will be assessed as part of any future planning permit application which would require an urban context report, the Panel considers that if preferred heights are to be identified in a DDO, then the Panel should be confident that they are appropriate. In this case, this Panel has not been presented with any evidence which gives it that confidence.

Having said that, the Panel recognises that the existing policy in relation to height limits is discretionary and there is nothing to stop the owner from submitting a permit application for a development in excess of four storeys today and having it considered on its merits. The Panel is satisfied the existing policy, zone provisions and the objectives of the ESO1 provide sufficient guidance to enable the Responsible Authority to consider the appropriateness of any such a proposal, whether the land retains its existing zoning or is rezoned as proposed.

(iii) Where should heights be calculated from?

There was no dispute amongst the parties that a specified location and AHD should be defined from which to base all building heights. However, a dispute arose in identifying where the heights should be calculated from and what impact that would have on overall building heights across the site.

The Panel considers the critical issue is not so much which point or AHD is chosen, as this simply becomes a reference point. The critical issue for the Panel is what impact this has on overall heights at sensitive interfaces.

At the Hearing, it was clear the Proponent's preferred reference point was the south-western Campbell Reserve corner, whereas the Council preferred the centre of the eastern boundary with the removal of the retaining wall. Towards the end of the Hearing, Mr Marsden accepted Campbell Reserve corner, but stipulated this should not result in an increase in the overall heights. What became clear to the Panel throughout this discussion and based on cross sections provide by both the Proponent and Council, was that the ultimate difference in building heights between the two was almost two levels of development along the most sensitive Merri Creek interface. This is a significant difference and has the potential to create visually intrusive and bulk impact along this linear reserve.

This was further complicated by the fact that the existing and proposed policy requires the ground and first floors be dedicated to employment uses. The Panel was informed this would require a four metre floor to floor area, which also impacts on the overall building height, although this has not been factored into the DDO25.

Based on the information before it, the Panel agrees with Mr Marsden that it would be appropriate to limit the height along the Merri Creek interface to four storeys.

For these reasons, the Panel does not consider it has sufficient information before it to make an informed recommendation about what the overall heights across the site should be, other than to emphasise that whichever datum point is chosen, the development along the Merri Creek interface should not exceed four storeys and that any development also needs to account for employment uses at the ground and first floor across the site.

(iv) Expression of heights

The Panel agrees with overall evidence led which states the floor levels should be expressed in metres instead of storeys. There is no practical need to go to the nearest decimetre and the floor levels should reflect the latest standards.

In terms of the calculation of overall height, the Panel also considers that under the current policy framework which requires the ground and first floors be dedicated to employment uses, increased floor to floor heights of four metres for employment levels needs to be accounted for and should be considered as part of the end height.

5.3.2 Setbacks

In relation to the two setbacks referred to in the Concept Plan, the Panel has considered the policy basis for each.

The Panel notes the reference to 50 metres in MSS³⁰ does not refer to a building setback, but rather the aim to create a continuous public open space corridor within 50 metres on each side along Merri Creek (and others), with a minimum 30 metres wide vegetated buffer from the embankment. For that reason, the Panel agrees with Mr Naughton that this relates more to open space provision than suggested setback. The Panel does not support this proposed setback from the eastern boundary.

³⁰ Clause 21.03-6

5.4 Are mandatory heights and setbacks justified?

The Panel agrees with Ms Ring that whether it is appropriate to apply mandatory heights and setbacks is fundamentally a question of certainty versus flexibility.

Whilst there is the scope to introduce mandatory provisions, the planning system generally adopts a performance based approach whereby heights and setbacks are discretionary and performance based; and any mandatory controls need to be strategically justified.

As discussed, the Panel does not consider the proposed heights above four storeys and setbacks are neither strategically justified, nor appropriate. For this reason, the Panel does support the proposal to introduce these as mandatory heights either.

Having said that, even if the Panel were prepared to support the discretionary heights, it does not consider mandatory heights are justified. The Panel agrees with Mr Naughton that the introduction of mandatory controls should be *“underpinned by a robust and comprehensive contextual and strategic analysis that identifies a clear need for the mandatory controls, and be considered necessary to address particular adverse design outcomes for the area subject to the proposed controls (as identified in the robust and comprehensive contextual and strategic analysis).”* Simply, the proposal for mandatory controls has not been supported by a contextual or strategic analysis and therefore the Panel does not consider that they have been adequately justified. The Panel does not accept the Council officer evaluation of the proposed heights against the relevant Practice Note constitutes a legitimate design analysis to justify mandatory heights on the site.

Whilst the Panel recognises that Council’s intent behind proposing mandatory controls is to provide certainty for all parties, this is not sufficient justification and the Panel considers there is a need for a more detailed, robust and strategic analysis to justify them.

The Panel is satisfied that the existing policy and provisions of the planning scheme provide adequate control and guidance to consider any proposal for a development which exceeds four storeys, and therefore the Panel does not consider that mandatory controls are justified.

Whilst the Panel accepts Mr Marsden’s submissions that mandatory controls may be justified along the Merri Creek given the significance of the open corridor, the Panel considers that further detailed analysis and strategic work would need to be undertaken to support mandatory controls along this particular interface.

The Panel also notes that in authorising the Amendment, DELWP advised Council that the proposed maximum mandatory height limit of six storeys would not likely be supported as there is no strategic basis for mandatory height limits at this location. Further, that prior to exhibiting the Amendment, it was recommended the height limit be altered to discretionary, or that further strategic work be undertaken to underpin the requirement for a mandatory height limit, having regard to PPN59.

5.5 Conclusions

The Panel concludes there is no strategic justification to increase the preferred height on this site from four to a maximum of six storeys. Similarly, the Panel does not consider the proposed heights have not been appropriately justified within the local context and

therefore does not support them. For the same reasons, the Panel considers there is no justification to include mandatory controls in relation to heights and setbacks.

The Panel has also concluded that there is already scope for a permit application to be made for a built form which exceeds four storeys, and that the existing policies and provisions in the Planning Scheme are adequate and appropriate to enable the Responsible Authority to consider any such application.

The Panel has already concluded that the DDO25 should be deleted and therefore the Panel does not make an additional recommendation in regards to matters addressing height controls and setbacks in the DDO.

6 Traffic, access and parking

6.1 The issues

Whether the proposed DDO25 adequately deals with traffic, access and car parking issues and in particular:

- Traffic management in adjoining road network
- Primary vehicular access to the subject land, including restricted access from Moore Street
- Priority for pedestrian and bicycle movements
- On site and street parking.

6.2 Evidence and submissions

A number of submitters raised concern about the impact of any future development as anticipated by the DDO25 might have on traffic congestion and on-street parking in Moore Street. Two common themes emerged with all these submissions. Firstly, that no vehicle access should be permitted from Moore Street to the overall development. Secondly, any potential 'rat runs' through the subject land should be absolutely avoided.

Meg A'Hearn (Submitter 1) raised concern about the amount of traffic that could be generated from a development over three storeys.

Tara Walsh and Ben Smart (Submitter 2) did not oppose the proposal, however, raised a number of specific traffic issues, primarily that Moreland Road should be the main point of access to on-site car parking, access to the site during construction and for rubbish/waste collection. They also emphasised that sufficient on-site car parking should be provided to ensure visitors don't need to park on Moore Street.

Gertraud Brunner and Kit Andrews (Submitter 3) and Wendy Aitkens and Chris Balfour (Submission 10) raised concerns about the impact of any future development on Moore Street. They highlighted that Moore Street is a dead end street, narrow in parts and can be congested when sporting activities are underway at Campbell Reserve (weekends were also highlighted due to soccer matches). Mention was also made of adverse traffic impacts resulting from the operation of a mosque in nearby Nicholson Street. They submitted that any further large-scale commercial/residential development in the area will exacerbate the existing traffic flow problems and suggested all access and services should be from Moreland Road, with the only access to Moore Street for pedestrians. They further submitted that future redevelopment should meet all of its resident/visitor needs on site.

Melita Ludekens and Barbara Gutthann (Submission 4) indicated support for traffic routing, which placed Moreland Road as the sole entry/exit point for traffic and prevented through traffic. They also indicated support for the free passage of pedestrians and bikes between Moore Street/Merri Creek and Moore Street/Moreland Road, given the physical limitations of Moore Street and the traffic demands that are already placed on the street.

Joanna and Ned McCarron (Submission 5) submitted the Amendment will have a negative impact on public safety on Moore Street due to increased traffic on what is already a very congested narrow road. To address this, they submitted all traffic should be required to

enter and exit the development from Moreland Road, not Moore Street. They raised concerns that the site could be used as an alternative route to avoid the Moreland Road/Nicholson Street intersection, thus impacting existing traffic flows and residents in the area and submitted that avoiding through traffic should be a fundamental consideration. They also suggested that Moreland Road should be the main point of access to on-site car parking, access to the site during construction, for rubbish collection and that sufficient on-site car parking should be provided to ensure visitors did not need to park on Moore Street.

Richard Cox (Submission 7) submitted that given the narrow width and dead end nature of Moore Street, traffic flow along this section of the road could result in traffic gridlock in the area. He submitted that under '*Circulation and access*' provisions of the DDO, the suggestion that vehicle access to Moore Street should be restricted to dwellings in the northern part of the site, should be amended to ensure all vehicle access to the site is via Moreland Road. He emphasised this is necessary to ensure that cars trying to access Moreland Road do not use the site as an alternate route. He also submitted that given the current traffic flow issues along Moore Street, the subject land should accommodate all of its residents parking needs on site and not rely on Moore Street. He also submitted that refuse collection should be undertaken internally within the site, and if that's not possible, from Moreland Road. He was supportive of the prioritisation of pedestrian and cycle movements.

Colin and Mary Dyer (Submission 8) submitted that public streets on the development should not connect through to Moore Street and that rear vehicle access should be mandatory to avoid further access onto Moore Street. Whilst they do not object to increased medium density residential development, they submitted that Tram Route 8 is already overburdened and questioned what impact a development of this type will have on this service.

Wendy Aitkens and Chris Balfour (Submission 10) submitted the application requirement which calls for a Traffic Engineering report must be a 'proper and fully independent' report that reflects the traffic activity on the street, considers varied and multiple times of day and date (including weekends) to truly reflect the actual traffic flows and issues. They also submitted that given the physical limitations of Moore Street, how many more 'huge developments' should be allowed in a street as narrow as this part of Moore Street? They submitted the 'buildings and works' requirement in the DDO should specify that no dwellings entries by car should be provided along the Moore Street interface, but rather only pedestrian and bike entries. They also submitted any redevelopment should require safety crossing measures on the footpath along Moreland Road where the proposed egress/ingress appoints are located as many cyclists, including children, use this side of the road to access the Merri Creek bike path to travel to and from school. In support of these submissions they referred to the width of Moore Street, current parking/access difficulties, particularly around rubbish collection.

John Demagistris (Submission 11) was broadly supportive of the Amendment, but emphasised the need to ensure that primary vehicle access to the site must be from Moreland Road and that vehicle access to the site from Moore Street be limited to access buildings in the northern part of the site only, avoiding opportunity for through traffic to use the site as an alternative route.

Robert Dunn (Submission 13) submitted that all traffic movements must occur on the Moreland Road side of the property, with no vehicular access to Moore Street provided.

Mr Naughton, on behalf of the Proponent, relied upon the expert evidence led by Ms. Dunstan and Mr Clarke.

Ms Dunstan said that the scale of development facilitated by the proposed rezoning, inclusive of vehicle access locations, is appropriate and will not cause any safety implications or issues. It was her evidence that based on survey work, there was a low demand for on-street parking in the vicinity of the site. Ms Dunstan also said the site is well serviced by existing public transport options including tram and buses; as well as on-road bicycle lanes and informal bicycle routes surrounding the site.

In response to submitters concerns over the use of Moore Street, Ms Dunstan conceded that this street is constrained between Nicholson Street and the western boundary of Campbell Reserve. She recommends it would not be appropriate to use Moore Street as a major or only access point to the subject land, but did not support submissions seeking to restrict vehicular access to Moreland Road only. She said vehicular access to the site should be permitted to both Moreland Road and Moore Street, with Moreland Road acting as the primary access.

In response to submitter and Council concerns about the potential for 'rat-running' if a direct vehicular connection was provided between Moore Street and Moreland Road, Ms Dunstan noted the provisions of the DDO25 did not preclude a vehicular connection between Moore Street and Moreland Road, nor did she think it should. She was confident that appropriate design measures could be applied to ensure that 'rat-running' was avoided and recommended this could be dealt with at any planning permit stage associated with any redevelopment of the site. In respect to parking concerns, Ms Dunstan agreed with the Council that this matter is best handled through Clause 52.06 provisions at the planning permit stage. However, she agreed that it would not be appropriate for a development of the scale proposed by the Amendment to be reliant on parking in Moore Street.

Mr Marsden, on behalf of Council, submitted that the proposed redevelopment of the subject land would generate additional traffic along Moore Street, however, he did not consider this would conflict substantially with existing traffic flows in that street. He emphasised that DDO25 should clearly state that through traffic from Moore Street to Moreland Road should not be permitted.

In response to concerns raised by submitters around on-site parking, Mr Marsden submitted this was a matter that could be guided by policy and provisions³¹ when a permit application is being considered. He submitted these policies are not being changed by this Amendment and will be applied diligently to any new redevelopment proposal on the subject land. He also submitted the subject land is large enough to ensure that all required on-site parking is provided on the site.

³¹ Clause 22.03 (Car and bike parking and vehicle access) and Clause 52.06 (Car parking).

6.3 Discussion

A critical issue for the Panel in the consideration of these issues is the weight the Panel should give to Ms Dunstan's evidence. As outlined in her Statement of Evidence, Ms Dunstan's *'Scope of Work'* was to provide an assessment of the traffic engineering impacts of the proposed rezoning which contemplates a potential development comprising 300 apartments and 4,000-4,500 square metres of commercial floor area.

As outlined in Chapter 3, the Panel has concluded that residential development on this site is not supported by the existing or proposed MSS, and even if it had been, the zones proposed and the DDO25 do not place sufficient emphasis on or prioritise employment uses over residential.

At the Hearing, the Panel questioned Ms Dunstan whether she had considered the potential traffic, access and parking issues associated with a predominantly employment based development; where either the entire site, or at least the ground or first floor were dedicated to employment uses. She accepted she had not, working on the instructions that the proposed zoning configuration was strategically justified.

When asked what the likely traffic implications could be, she conceded the traffic numbers could increase *'six-fold'* if the area of commercial development was considerably greater than the 4,000 - 4,500 square metres as proposed. She also conceded that the traffic/access and parking issues would be quite different. However, as this was not part of her scope of works, she had not turned her mind specifically to these issues.

As the Panel has concluded that residential development of the site and the area dedicated to employment is not strategically justified at this point, and Ms Dunstan's evidence is substantially based on the assumption that it is, the Panel cannot place as much weight on her evidence, as it relates primarily to residential development.

The Panel has also considered the DDO25 and the associated directions in relation to traffic and parking and notes that there is no Design Objectives which relate specifically to vehicular traffic and parking, despite that the Panel notes there are *'Application Requirements'*, *'Buildings and Works Controls'* and *'Decision Guidelines'* that do. As the intent of these is to ensure the achievement of the Design Objective, the Panel considers there needs to be Design Objectives which specifically deal with these issues.

The Panel also has concern in relation to the Concept Plan and Figures 2, 3 and 4 which all specify the location for the public roads and accessways, as they generally relate to the residential development of the site. The Panel is concerned that these layouts have not factored in any options associated with at least two levels of employment use and the associated need for car parking and loading/unloading. On that basis, the Panel considers the level of specificity in the Concept Plan and Figures do not provide useful guidance to address the full range of potential issues that could be encountered in developing this site in accordance with its existing and proposed strategic directions, and in fact could complicate matters.

What was clear from Ms Dunstan's evidence, however, is that the traffic implications associated with a development that has to provide the amount of employment floorspace required by existing and local policy, could have significant traffic, access and car parking

implications for this site, which in the Panel's view have not been adequately addressed in DDO25. The Panel considers this is an instance where if the Amendment was approved in its current form, this could lead to significant issues when considering any future permit application, as the proposed DDO25 would be in conflict with existing and local policy and would provide no meaningful guidance to decision makers in how to deal with these issues.

Having said that, the Panel will respond generally to a number of the issues raised through submissions and Ms Dunstan's evidence:

- Moreland Road should be the main point of access to the site, particularly for any vehicles seeking access to the employment uses. Whether signalisation is required will be determined following further investigation of the future development proposal for the site.
- The possibility of vehicular connection between Moore Street and Moreland Road requires further assessment. Its appropriateness will be largely dependent on the ultimate use/s of the land.
- Opportunities for pedestrian and bicycle access through the site should be actively encouraged.
- Further traffic assessment around the design and capacity treatments for Moore Street and Moreland Road intersections is required.

The Panel notes that many of the concerns raised by submitters related to specific matters would be addressed during the planning permit stage, such as waste collection, car parking provision and access during construction; and are generally guided by other existing provisions already in the planning scheme. As this is not a planning permit application where these issues of detail are properly considered, the Panel will not address these further.

6.4 Conclusions

The Panel concludes that given DDO25 is based on the premise that the extent of the proposed residential development of the site is strategically justified, and has not examined in enough detail, the traffic, access and parking issues associated with predominantly employment uses in accordance with the existing and proposed policy. The Panel therefore finds that the traffic, access and car parking requirements have not been adequately addressed in DDO25.

The Panel has already concluded that the DDO25 should be deleted and therefore the Panel does not make additional recommendations in respect to the matters identified in the DDO in respect to traffic, access and parking.

7 Landscaping

7.1 The issues

The exhibited amendment seeks to address landscaping outcomes on the subject land through application of the proposed DDO25.

The key issues the panel needs to address on this matter include:

- Do the proposed DDO25 provisions properly address the key design objective and enhance the landscape setting of the subject land and other sensitive interfaces?
- Should the approved landscaping outcomes on the subject be implemented ahead of approval of the amendment?

7.2 Evidence and submissions

Seven submissions were received requesting that Council not approve the Amendment until landscaping specified in the DDO25 has been planted. Meg A'Hearn (Submitter 1), Gertraud Brunner and Kit Andrews (Submitter 3), Colin and Mary Dyer (Submission 8), Wendy Aitkens and Chris Balfour (Submission 10) all questioned whether Council could ensure that the development is not signed off until such time as the landscaping is complete. Ms A'Hearn also submitted that any future development of the site not create a 'gated' community.

Joanna and Ned McCarron (Submission 5) submitted that poor landscape design that does not enhance the precinct character and does not integrate the development into the surrounding context must not occur. They submitted Council should not sign off the development until landscaping and public open space development is complete as past experience has indicated this does not always occur.

Richard Cox (Submission 7) submitted adequate tree protection measures should be put in place to protect any significant trees in the Campbell and Merri Creek Reserves.

Robert Dunn (Submission 13) submitted the unique landscape character and setting of the site requires a full and comprehensive landscape plan. He submitted that a wildlife corridor must be put in place to connect the Merri Creek and Campbell Reserve to enable fauna to travel freely between the two areas of parkland and that connectivity between Merri Creek and Campbell Reserve must also be built into the east end of Moore Street to ensure the current and future residents can access these areas. He also submitted the landscape plan must be signed off before the commencement of works.

Submissions from Friends of Merri Creek (FoMC) (Submission 15) and Merri Creek Management Committee (MCMC) (Submission 14) highlight the importance of managing and enhancing significant landscape environments adjoining and included in the subject land. They submit the Amendment should ensure the adjoining Merri Creek corridor is maintained as a major environmental, social and economic asset, with a focus on balancing landscape treatment and enhancing the creek environs and surrounds.

MCMC further highlights challenges and constraints around introducing new landscape form into the area and they note landscaping limitations created by poor quality of landfill associated with initial development of the subject land and the presence of the 220KV transmission lines and tower in the Merri Creek Parklands adjacent. In particular, they

tabled General Guidelines prepared by AusNet Services titled *'Your guide to planting near electricity lines'*, to highlight that type, height and coverage of landscaping within or near designated transmission line easements will be restricted along the boundary of the subject land. They submit that the proposed schedule to the DDO25 is a minimum to maintaining hard fought landscape gains in the Merri Creek Parklands precinct adjoining the subject land.

Melbourne Water (Submission 9) submitted it has no objection to the Amendment in principle, however, are interested in exploring potential positive environmental outcomes that can be achieved. In outlining the current site conditions, Melbourne Water identified that the subject site is subject to overland flooding from Merri Creek and that for a storm event with a 1% chance of occurrence in any one year, the applicable flood level for the property is 36.75 metres to Australian Height Datum (AHD).

The Authority also identified that Merri Creek and its environs provides an important regional open space and habitat link and contain many Aboriginal cultural heritage sites of significance; and as such, it is important that the recreational, cultural, aesthetic and ecological functions of the area are protected, improved and restored. It was highlighted that the current industrial development does not actively seek to enhance the interface of the Merri Creek Reserve, and the Amendment provides an opportunity for positive environmental outcomes which Melbourne Water is principally in support of.

Mr Naughton relied upon landscape evidence presented by Mr Haack and Mr Vernon. They both say that the compliant and alternative design options proposed under Scenarios 1 and 2 provide an appropriately vegetated setting for the future development of the land.

Mr Haack says that the Merri Creek Reserve in this location is more typically a riparian landscape located within an inner urban environment, impacted by adjacent and surrounding urban built form of varying character, form and scale. Nevertheless, he says there should be no expectation or reason that the section of the Merri Creek Reserve immediately adjacent to the subject land should be fully screened from views of any development resulting from the application of the DDO schedule requirements. He also points out that other interfaces with Moore Street and Moreland Road will be subject to street tree planting under the DDO25 and existing vegetation within Campbell Reserve provides significant screening and landscape setting for the subject land and surrounds. Further, he said that the retaining wall and existing vegetation within the subject land along the edge of the retaining wall should be retained wherever possible, acknowledging that whilst some of this vegetation is not of high quality it can still function as a visual screen to any redevelopment that results on the subject land in the future.

Mr Vernon's evidence generally concurs with Mr Haack's observations and recommendations. He supports a landscape communal open space network that will help provide visual separation of the various built forms proposed under the DDO25, as well as establishing visual sightlines from Campbell Reserve through to the vegetation within the Merri Creek reserve area. He encourages a redevelopment of the subject site as this will provide the potential to produce a continuous vegetated interface to Merri Creek and Campbell Reserve. He also supports Mr Haack's findings to the keep the existing retaining wall and existing vegetation that will help enhance the Creek environs.

On behalf of Council, Mr Marsden submitted that the DDO contains specific requirements for the preparation of a Landscape Plan that will provide detail on the planting strategy that will ultimately occur on the subject land and that this planting will need to refer to the *Development Guidelines for the Merri Creek*. In response to concerns raised during exhibition, he advised that additional guidance has been provided in the proposed DDO25 requiring trees of a 15 metre mature height along the interface with the Merri Creek and additional landscaping requirements within the Merri Creek Reserve.

7.3 Discussion

The Panel accepts the landscape environment adjoining the two significant interfaces being the Merri Creek Parklands Reserve and Campbell Reserve form significant 'landscape bookends' to the context and physical setting of the subject land. Expert evidence presented by the proponent confirms the importance of maintaining and where possible enhancing these interface environments.

The Panel agrees with Council that providing a specific Landscape Plan as part of the DDO25 is appropriate. The Panel considers the buildings and works requirements outlined under Clause 3.0 – '*Landscaping*' are well thought out and generally address the overall thrust of submissions made around this matter. The only issue of concern is the requirement for planting to be undertaken within the Merri Creek Reserve to buffer views. The Panel does not consider this is appropriate as it is not part of the subject site. Other mechanisms need to be explored to achieve this.

The Panel notes the concerns raised by the FoMC and MCMC that the landscaping treatment should be linked with built form assessment on the subject land. It also acknowledges that there will be significant locational and physical constraints and challenges to continue enhancing the landscape setting within which the subject land finds itself. Nevertheless, the Panel is satisfied that the specific '*Application Requirement*' identified in Clause 2.0 of the DDO25, namely that a Landscape Plan detailing the planting strategy associated with each stage of development is the most appropriate planning approach and tool to achieve the design objective around this matter.

The Panel also notes that any proposed landscape treatment on the subject land adjoining the Merri Creek Parklands Reserve will need to consider the associated matters contained within the document titled '*Understanding planning issues along the Merri Creek & Policy: Development Guidelines for the Merri Creek (2004)*'. This is a Reference Document in the Moreland Planning Scheme and provides useful recommendations about landscape treatment in and around the Merri Creek, as well providing lists of suitable species and model conditions for planning permits and other associated matters. Interestingly, in respect to landscape development conditions, the document suggests that landscape implementation could be linked via permit conditions requiring the landscaping to be implemented before the 'use/occupation of development starts.'

Given the size of the site, the Panel considers that overall advance planting ahead of the approval of the amendment is neither practical or necessary, particularly noting that the site could be undergoing a range of redevelopment phases across an extended time period. The Panel also notes there may be approved sections of the site that could have discrete landscape areas implemented ahead of other agreed redevelopment stages. In this scenario

the Panel would expect a series of landscape plans could be developed as approvals are given to redevelop various sections of the subject land.

The Panel considers the Council as the Planning and Responsible Authority, could firstly consider a series of agreed principles and performance criteria for overall landscaping across the site and approve this within one holistic Landscape Plan for the subject land. The requirement contained in the DDO Schedule would not preclude this approach being taken. This Plan could also address the appropriate timing and staging of landscape implementation and maintenance of such landscaping, linked with redevelopment phases of the land.

7.4 Conclusions

The Panel concludes the requirement for a Landscape Plan (or series of plans) to be prepared and approved, detailing the planting strategy associated with each stage of development, together with more specific landscape design elements specified under Clause 3.0 of the schedule are appropriate.

The Panel also concludes that consideration should be given for the Landscape Plan to address the matter of ongoing landscape implementation and performance via an agreed series of criteria as part of any future DDO (or other appropriate planning tool arising from the further strategic work recommended by the Panel to be undertaken).

Whilst the Panel has recommended against the DDO25 in previous Chapters, these conclusions may assist in guiding any future development of a DDO (or other agreed planning tool).

8 Environmentally Sustainable Development

8.1 The issues

Whether the Amendment adequately addresses ESD principles?

8.2 Evidence and submissions

Meg A'Hearn (Submitter 1), Gertraud Brunner and Kit Andrews (Submitter 3), Colin and Mary Dyer (Submission 8) and Wendy Aitkens and Chris Balfour (Submission 10) questioned how Council can guarantee that ESD measures are both included in the development and function properly.

Robert Dunn (Submission 13) submitted that ESD measures must be fully incorporated in the design with stormwater captured for reuse and solar panels installed to reduce the environmental footprint.

Melbourne Water (Submission 9) submitted that as the site will be covered by largely impervious surfaces, it will generate rapid, high runoff volumes in storm events and that onsite measures should be required to detain, and if necessary, treat runoff before it discharges to Merri Creek. The need for a Stormwater Management Plan once the site proceeds to the design phase of the development was also identified.

8.3 Discussion

The Panel notes that these are issues that are best dealt with during the planning permit application stage and will be guided by both State and local policy³² in relation to ESD and water quality outcomes.

The Panel is satisfied there is adequate direction already contained within the planning scheme to guide decision-making if and when a planning permit is lodged for the development of this land.

8.4 Conclusions

The Panel concludes the planning scheme already provides the appropriate strategic directions to deal with ESD in the future development of the land and that it is during this permit application stage that these issues will be properly considered.

No change to the Amendment is recommended.

³² Clause 22.08

9 Heritage

9.1 The issues

Whether the proposed modification to Heritage Overlay (HO117) is appropriate and whether the revised heritage overlay provides an appropriate level of statutory protection?

9.2 Evidence and submissions

Gertraud Brunner and Kit Andrews (Submitter 3) and Susie Kumar (Submission 12) questioned the reasoning for partially deleting HO117.

Melita Ludekens and Barbara Gutthann (Submission 4) opposed the reduction in the HO on the basis that Moreland has a very limited number of historical buildings and any buildings which still can be restored should be kept. They submitted that the HO should be retained and restoration of the existing building encouraged.

Mr Naughton, on behalf of the Proponent, relied upon evidence from Mr Raworth.

Mr Raworth notes that past heritage citations for the site correctly concentrate upon the office administration building and he supports the retention and restoration of this particular building. However, he submits that the main factory/warehouse building retains little evidence, internally or externally, of its original use as a place for the manufacture of stationary products. On this basis, he says that a reduction in the current HO to the office administration building is appropriate. Under further questioning from the Panel on whether the current citation for the site is out of date, Mr Raworth agreed it would be appropriate for the current citation to be reviewed and updated to reflect current heritage information.

He also says that whilst accepting the DDO25 is generally acceptable to guide redevelopment on the subject land, he did not agree with the extent of the 'visual' buffer width around the administration building sought by Council. During questioning by Council, Mr Raworth acknowledged that some buffer around the administration building was appropriate, however, he was ambivalent around the exact distance this buffer should be. Whilst he preferred a 5 metre buffer, he also accepted the basis of the submission raised by Council around a buffer up to 18 metres. He also noted under cross-examination by Mr Marsden that the definition of 'curtilage' could be improved.

Mr Raworth also did not support specific restoration actions and strategies to protect important view lines to that building via controls proposed in the DDO schedule. His view is that these matters are more appropriately dealt with under the existing parent provisions of the HO and these outcomes need to be in a more flexible form.

Mr Marsden, on behalf of Council, submitted the modification to the HO was supported by a detailed heritage review of the existing buildings on the site. This review work identified that the office building was of local significance and offered the potential to be restored as part of any adaptive re-use of the subject land. He accepted that the review also found that the existing warehouse building under the HO, no longer possessed heritage value and could be demolished.

Mr Marsden highlighted that the review findings were supported by the Council's Heritage Advisor, subject to the revised overlay boundary being applied to a five metre buffer to the east and 18 metre buffer to the north and west of the original office building.

Council supported its Advisor's recommendation that restoration requirements for the office building be specified in the schedule to the DDO including:

- New development must respect the scale and visual prominence of the tower element of the Administration Building.
- View lines to the Administration Building from the east and west along Moreland Road should be protected.
- New development within 18 metres directly behind the Administration Building should be generally consistent with the scale and form of the original former loading dock area.
- Restoration of the Administration Building should include:
 - Removal of extraneous items currently fixed to the tower
 - The restoration of the original colour scheme
 - The removal of later additions that obscure views to the original building.

9.3 Discussion

(i) Is the reduction in the Heritage Overlay justified?

There was no dispute amongst the parties that significant industrial heritage should be protected. Where the dispute arises is determining what is of heritage value and whether the heritage overlay can be reduced.

The Panel acknowledges the detailed heritage assessment work carried out by the Council and the Proponent as part of this Amendment. The Panel finds this work properly addresses the matters that need to be considered when establishing heritage significance under the planning policy framework. This work has recommended the retention and modified use of a heritage overlay on the subject land to protect and manage the significant heritage fabric that remains on the land, which is limited to the administration building, recognising that the warehouse has been substantially modified and no longer retains its significant saw roof top form.

The Panel also notes that no other evidence has been led to suggest the site contains other significant heritage fabric.

The Panel considers there should be a modified heritage overlay boundary around the office administration building that ensures the integrity of this building is protected and considered in any redevelopment proposal into the future. Mr Raworth preferred a five metre buffer distance for that boundary interface around the administration building. The Council seeks a large buffer distance (18 metres to the north and west of the building) to ensure this building and its surrounds are properly assessed.

In relation to whether a 5 or 18 metre buffer should be provided, the Panel noted that Mr Raworth expressed some ambivalence to the final buffer boundary. The Panel has erred on the side of caution and recommends that the Council's proposed boundary treatment as exhibited in the Amendment for the heritage overlay should apply. If further review of the

citation and statement of significance for the site identifies a reduced modified overlay boundary is justified, the Council can then address this matter in the appropriate manner.

The Panel also considers that the relevant citation should be amended to reflect this amended status to avoid any future confusion on this matter.

(ii) Does the revised heritage overlay provide the appropriate level of statutory protection?

The Panel considers the most appropriate planning tool to protect and manage the significant heritage fabric on the subject land is the HO. This is the planning tool best equipped to both protect and manage the ongoing local heritage fabric that remains on the subject land. It is important that this heritage fabric is considered in any redevelopment of the subject land that may occur into the future. The use of the HO will achieve this outcome as provisions in this overlay require detailed assessment of heritage significance, including addressing any recommended restoration of that fabric.

Evidence led by the Proponent's heritage expert Mr Raworth, suggested adding 'extra' planning control around building heights and restoration treatment linked with heritage fabric is not necessary or appropriate. He does not support the use of the DDO schedule to 'flag' important heritage restoration work and protect important views of the heritage asset on the subject land. The Council believes this approach will add greater weight and clarity around future redevelopment of the subject land.

Mr Raworth says this power is already available to the Responsible Authority in the parent clause of the HO. The Panel agrees with this. The duplication of any planning control is simply not necessary and often leads to further confusion (rather than clarity) for those seeking to interpret and apply those controls.

However, as stated previously, the Panel recommends that the current site citation and statement of significance should be reviewed. As noted by Mr Raworth, this work is required to ensure the significant industrial heritage fabric is properly recorded and then added to update Councils' heritage records. This review will also ensure that significant restoration works recommended by the Council heritage advisor can be properly assessed and analysed against that citation, particularly when an application is ultimately submitted for adaption or re-use of those buildings contained in the heritage overlay.

9.4 Conclusions

The Panel concludes the proposed modification to the existing HO is appropriate and should be approved as exhibited, including the 18 metre buffer.

The Panel also concludes that the current heritage citation and statement of significance for the subject land should be reviewed and amended as appropriate to reflect the significant heritage fabric that remains on the subject land.

No change to the Amendment is recommended.

9.5 Other Recommendations

The Panel recommends:

Council consider amending the relevant heritage citation to reflect the revised heritage statement of significance.

10 Potential contamination

10.1 The issues

Whether the application of the EAO over the subject land is appropriate?

10.2 Submissions

Four submissions were made on this matter. Meg A’Hearn (Submitter 1), Gertraud Brunner and Kit Andrews (Submitter 3) and Colin and Mary Dyer (Submission 8) all submitted that if there is contamination on site, can Council ensure that “*contaminated soil isn’t dumped into the stormwater*”.

Robert Dunn (Submission 13) submitted contaminants must be removed from the site rather than capped to ensure pollutants do not enter the Merri Creek.

Melbourne Water (Submission 9) submitted that the inclusion of the site within an EAO is a positive outcome for the Merri Creek as it will ensure site contamination will be removed prior to development and use. It also highlighted the need for proper site environmental management during all stages of the process to ensure no pollution or sediment enters Merri Creek.

Mr Marsden submitted that Council has chosen to apply the EAO over the entire site as the Amendment proposes to rezone part of the subject land to MUZ which would allow for sensitive uses either ‘as of right’ or subject to a planning permit. He submitted the EAO needs to be applied to the land in accordance with Ministerial Direction No 1 as it has a history of potentially contaminating uses.

Mr Naughton advised that the proponent does not oppose the EAO over the subject land.

10.3 Discussion

Ministerial Direction No 1 applies to potentially contaminated land across Victoria. The Direction identifies potentially contaminated land as including industry, mining, or the storage of chemicals, gas, wastes or liquid fuel.

When preparing a planning scheme amendment under the *Planning and Environment Act 1987*, Ministerial Direction No 1 requires a planning authority to address the following matter:

In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.

The Council has placed the EAO over the subject land due its industrial uses over time. The Council therefore submits this site may be potentially contaminated. The Panel supports the inclusion of the site under an EAO. The particular provisions of the EAO will properly address the technical assessment and any clean-up procedures that may arise out of this site assessment. The Panel also notes that the overlay requires input from the Environment

Protection Authority. In addition, a certificate of environmental audit must be issued for the subject land in accordance with Part 1XD of the *Environment Protection Act 1970*, or an environmental auditor appointed under that Act to assess whether the environmental conditions of the land are suitable for the sensitive use permitted on the subject land. The Panel is satisfied the application of the EAO on the subject land meets the requirements and provisions of the Ministerial Direction.

Whilst the Panel has concluded that residential use of the land is not strategically justified at this time, it notes it is possible that some sensitive uses could still be considered under the provisions of the current IN3Z and C2Z, and therefore the Panel considers that it is appropriate to apply the EAO to the site.

The Panel is satisfied that should any further development of the land occur, the EAO will ensure that the removal of any contaminants is undertaken in the most appropriate manner.

10.4 Conclusions

The Panel concludes that the application of the EAO is appropriate and supported and that any concerns around the technical clean-up of contaminated land (if required) are properly addressed under the application of the EAO.

The Panel therefore supports the application of the EAO as proposed and makes no further recommendations.

No change to the Amendment is recommended.

Appendix A Submitters to the Amendment

No.	Submitter
1	Meg A'Hearn
2	Tara Walsh and Ben Smart
3	Gertraud Brunner and Kit Andrews
4	Melita Ludekens and Barbara Gutthann
5	Jo and Ned McCarron
6	Urbis on behalf of the Moreland Road Property Trust
7	Richard Cox and Helen Kratzmann
8	Colin and Mary Dyer
9	Melbourne Water Corporation
10	Wendy Atkins and Chris Balfour
11	John Demagistris
12	Susie Kumar and Chris Sawyer
13	Robert Dunn
14	Merri Creek Management Committee
15	Friends of Merri Creek
16	Public Transport Victoria

Appendix B Document list

No.	Date	Description	Tabled by
1	7/11/16	Map of Merri Creek Interface (Setbacks)	Mark Marsden
2	7/11/16	Part B Council submission	Mark Marsden
3	7/11/16	Moreland Planning Scheme Clauses 21.02, 21.03 and 22.01	Mark Marsden
4	7/11/16	Plan Melbourne Initiatives 4.2.4 & 5.6.2	Mark Marsden
5	7/11/16	Copy of title and Section 173 Agreements (x2)	Mark Naughton
6	7/11/16	Plan of Survey Review site	Mark Naughton
7	7/11/16	Melbourne Water Referral advice (Flooding)	Mark Naughton
8	7/11/16	Aerial Map (Urbis) 50m buffer from Merri Creek	Mark Naughton
9	7/11/16	Yarra C195 – Minister’s Decision and DDO1 Schedule	Mark Naughton
10	7/11/16	Submission by Mr Mark Naughton	Mark Naughton
11	8/11/16	Panel Report C134	Mark Naughton
12	8/11/16	Diagram showing 12m/50m setbacks from Merri Creek	Mark Naughton
13	8/11/16	DDO Parent Clause 43.02	Mark Naughton
14	8/11/16	Urbis – Economic Assessment advice	Mark Naughton
15	8/11/16	DDO18 and DDO19 Schedules (C134) and Clause 2.0 Activity Centre Zone Schedule 1	Mark Naughton
16	8/11/16	Schematic Elevations and Height Design – subject land	Mark Marsden
17	9/11/16	Boroondara C183 Part A Panel Report	Mark Marsden
18	9/11/16	Heritage Overlay Parent Clause	Mark Marsden
19	9/11/16	Urbis letter to Council on MILS Review C158	Mark Naughton
20	11/11/16	DDO25 (Clean and Marked up Copies) Submitters Locality Map and Direction 4.2 Plan Melbourne	Richard Tolliday
21	11/11/16	C159 DDO24 Map Parts A, B and C Council submission	Richard Tolliday

No.	Date	Description	Tabled by
22	11/11/16	Submission by Friends of Merri Creek	Ann McGregor
23	11/11/16	Submission by Merri Creek Management Committee AusNet – Your Guide to Planting Near Electricity Lines AAT Enforcement Order (Appeal No 1995/25397) Planning Permit CPS 4552 Coburg City Council	Luisa McMillan
24	11/11/16	Submission	John Demagistris
25	11/11/16	Council Revised DDO25	Mark Marsden
26	11/11/16	Moreland Council closing submission	Mark Marsden
27	11/11/16	Email from Max Walton (Moreland CC) to Nicholas Touzeau (Urbis) dated 29 September 2015 Schematic Diagram of site layout by Council dated 9 July 2015	Mark Marsden