

Amendment C131 Monash Planning Scheme 256-262 Huntingdale Road, Huntingdale

Date of Inspection: various (most recent **6 February 2019**)

Date of Report: **February 2019**

Report prepared for **Polykastron Pty Ltd**

Report prepared by **Marco Negri**



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Contents

1	Introduction.....	3
2	Amendment C131	4
3	Planning Context.....	6
3.1	Existing Zones and Overlays	6
3.2	Planning Policy.....	7
3.3	Other Provisions and Documents	10
3.4	Ministerial Directions.....	10
4	Assessment of the Amendment.....	11
4.1	Overview.....	11
4.2	Strategic Justification.....	12
4.3	Proposed Victorian Planning Provisions Tools	14
4.4	Drafting of Proposed Schedule 5 to the RGZ 15	
5	Conclusion	20

Attachment 1 Expert Witness Declaration

Attachment 2 Figures and Maps

1 Introduction

- 1 I have been requested by **Planning & Property Partners (PPP)**, on behalf of Polykastron Pty Ltd, to consider the planning implications of proposed Amendment C131 (**the Amendment**) to the Monash Planning Scheme (**Planning Scheme**) as it relates to the land known as 256-262 Huntingdale Road, Huntingdale (**the Subject Land**).
- 2 Attachment 1 provides a summary of my professional qualifications and experience in accordance with the Planning Panels Victoria *'Guide to Expert Evidence'*.
- 3 Instructions from PPP were provided in correspondence dated 3 December, 2018.
- 4 The instructions include to review the materials provided in my brief and to prepare an expert report considering planning matters with particular regard for the following:
 - Whether the proposed rezoning to a Residential Growth Zone is appropriate in the proposed location;
 - Whether the proposed draft controls are appropriate for the site; and
 - Whether I would recommend any changes to the exhibited documents.
- 5 In preparing this report, I have:
 - Familiarised myself with the Subject Land and surrounds;
 - Reviewed the provisions of the Planning Scheme;
 - Reviewed the Authorisation letter from the DELWP dated 6 June, 2018;
 - Reviewed and considered the exhibited version of the Amendment and relevant background reports and accompanying material which informed the Amendment;
 - Reviewed the submissions received in response to the public exhibition of the Amendment;
 - Reviewed the Council Officer Reports associated with the Amendment as contained in the Agendas to Council Meetings held on 27 March, 2018 and 27 November, 2018;
 - Reviewed relevant Ministerial Directions and Practice Notes; and
 - Reviewed relevant strategy documents including the Monash Industrial Land Use Strategy, Monash Housing Strategy and Monash National Employment and Innovation Cluster.

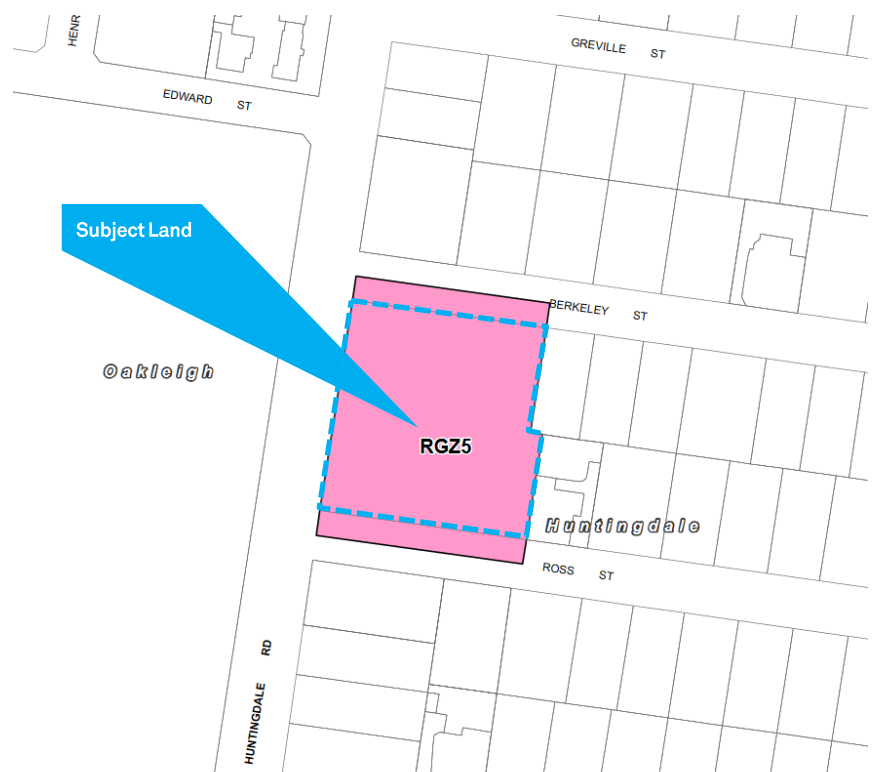


2 Amendment C131

- 6 The Amendment affects land known as 256-262 Huntingdale Road, Huntingdale. (Refer to Figures 5.1-5.6 of Attachment 2)
- 7 The Subject Land comprises Lots 1-3 on Plan of Subdivision TP876809. It has a frontage to three streets being Huntingdale Road, Berkeley Road and Ross Street and comprises a total area of approx. 4,130m². The land is occupied by a brick factory with at-grade car parking to the rear (adjoining the eastern boundary).
- 8 The Subject land is located in two zones, being partly in an Industrial 1 Zone and partly in a General Residential Zone – Schedule 2 (GRZ2). The surrounding properties to the north, east and south are also located in the GRZ2.
- 9 The land is also subject to Design and Development Overlay – Schedule 1 (DDO1).
- 10 The Amendment proposes to rezone the Subject Land to a more appropriate zone in order to facilitate a residential development on the land.

Figure 2.1
LAND AFFECTED BY THE AMENDMENT

Image an extract of the Exhibited Zone Map (forming part of Planning Scheme Map 13) that shows the extent of the Subject Land



- 11 More specifically, the Amendment:
 - Rezones the whole of the Subject Land from part IN1Z and part GRZ2 to a Residential Growth Zone 5 (GRZ5);

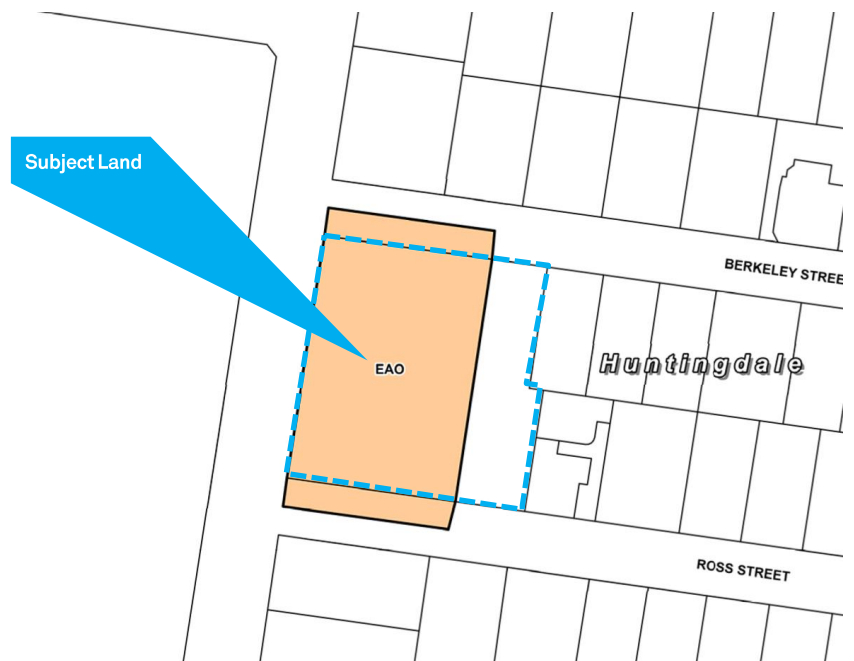


2 Amendment C131

- Deletes the Design and Development Overlay Schedule 1 (DDO1); and
- Applies the Environmental Audit Overlay (EAO) over part of the land.

Figure 2.2
PROPOSED EAO MAP

Image an extract of the Exhibited EAO Map (forming part of Planning Scheme Map 13EAO) that shows the extent of the Subject Land



12 The Amendment is required to:

- Facilitate residential development which is prohibited under the IN1Z.
- Rezone the land to the RGZ5 which will allow a more intense residential development to occur on the land subject to a future Planning Permit being obtained.

13 The Amendment will implement one of the recommendations of the Monash Industrial Land Use Strategy 2014 (MILUS). As noted in the Explanatory Report, MILUS seeks to support sustainable land use outcomes that balance Monash's role as a regional employment location against the need to facilitate more diverse housing opportunities and the need to create more economic development.

14 The Subject Land has been identified as 'Precinct 17' under MILUS and has been recommended to be rezoned for residential purposes. MILUS recognises that Precinct 17 offers the opportunity to act as a catalyst for new housing and recommends that residential uses be facilitated on the Subject Land in order to provide consistency with the residential area that surrounds the Subject Land.

3 Planning Context

3.1 Existing Zones and Overlays

- 15 The Subject Land is included within the IN1Z and GRZ2. Huntingdale Road is located in a Road Zone –Category 1 (RDZ1). (Refer to Zone Map at Figure 5.7 of Attachment 2)
- 16 The land opposite the Subject land is located in an IN1Z. The surrounding land on the east side of Huntingdale Road to the north, east and south of the Subject Land is included in the GRZ2.
- 17 The purpose of the IN1Z is:
- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - *To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.*
 - *To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.*
- 18 Under the IN1Z, use of the land for the purposes of 'Accommodation' is prohibited.
- 19 The purpose of the GRZ2 is to:
- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
 - *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*
- 20 The Subject Land is also affected by DDO1 which also applies to the industrial land opposite (on the west side of Huntingdale Road).(Refer to Overlay Map at Figure 5.8 of Attachment 2)
- 21 DDO1 to the industrial and commercial areas throughout the municipality. It is no longer relevant if the Subject Land is to be rezoned to a RGZ and therefore is proposed to be removed by the Amendment.



3 Planning Context

3.2 Planning Policy

22 Relevant provisions of the Planning Policy Framework (PPF) include:

- Clause 11.01 – Victoria
 - Clause 11.01-1R – Settlement – Metropolitan Melbourne
- Clause 11.02 – Managing Growth
- Clause 11.03 – Planning for Places
- Clause 13 – Environmental Risks and Amenity
 - Clause 13.04-11S – Contaminated and potentially contaminated land
- Clause 15.01 – Built Environment
- Clause 15.02 – Sustainable Development
- Clause 16 – Housing
 - Clause 16.01 – Residential Development
 - Clause 16.01-3S Housing Diversity
 - Clause 16.01-3R Housing Diversity – Metropolitan Melbourne
 - Clause 16.01-1R Integrated housing – Metropolitan Melbourne
 - Clause 16.01-2R Housing Opportunity Areas – Metropolitan Melbourne
 - Clause 16.01-2S Location of Residential Development
- Clause 17 – Economic Development
- Clause 17.03 – Industry
 - Clause 17.03-01S – Industrial land supply
- Clause 18 – Transport
- Clause 19 – Infrastructure

23 The following Clauses of the Local Planning Policy Framework (the LPPF) considered relevant to the Amendment include:

- Clause 21.01-1 – Municipal Profile
- Clause 21.04 – Residential Development

3 Planning Context

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- Clause 21.05 – Economic Development
 - Clause 21.08 – Transport & Traffic
 - Clause 22.01 – Residential Development and Character Policy
 - Clause 22.13 – Environmentally Sustainable Development Policy
 - Clause 23 – Operation of the Local Planning Policy Framework (Transitional)
 - Clause 23.01 – Relation to the Planning Policy Framework
 - Clause 23.02 – Operation of the Municipal Strategic Statement
 - Clause 23.03 – Operation of the Local Planning Policies
- 24 Clause 21.04-1 acknowledges that Monash is one of Melbourne's most populous municipalities, with an estimated 189,000 residents in 2016. The population is expected to increase by over 26,000 to over 215,000 by 2031.
- 25 It also acknowledges that the rising population has resulted in an increase in the number of households and that it is estimated this will drive demand for at least 10,000 new dwellings over the period 2016-2031.
- 26 The population in Monash is also noticeably ageing, with almost 22 per cent of the population aged over 60. There is a lower proportion of people in the younger age group (0-17 years) and a higher proportion of people in the older age group (65+ years) compared to Greater Melbourne.
- 27 Among the key issues for land use planning and development in Monash is a consideration of the current suburban form of predominantly single dwellings on large blocks throughout the municipality and determining appropriate locations for and design of multi-dwelling and new development.¹
- 28 Similarly, issues of sustainability and protecting the garden character of the municipality are also acknowledged by the Municipal Strategic Statement (MSS).
- 29 The MSS also acknowledges the impact of a changing lifestyle and the demands of an ageing population which have seen an increase in the redevelopment of traditional housing stock to multi dwelling developments. The MSS observes that there is also a noticeable increase in preferences for housing of a more intense nature, close to shops, restaurants and other commercial and community services and

¹ See Clause 21.01-2 of the Planning Scheme

3 Planning Context

facilities.²

- 30 The MSS cites the *Monash Housing Strategy 2014* which outlines a range of objectives, strategies and actions for future housing in the municipality and states that *'protecting valued urban character, heritage and amenity and the natural environment is one of the key issues confronting Monash for the foreseeable future'*.³
- 31 As the MMS observes *'...Competing interests, including the need for housing diversity while respecting neighbourhood character, require careful planning to ensure that development outcomes are of a high quality design standard and sympathetic to the existing or preferred neighbourhood character. As an established area, Monash is essentially fully developed and is now experiencing a resurgence of housing development through dual occupancy, multi-unit developments and more recently apartments. Redevelopment of former school sites, other government land and poorly positioned industrial sites into other urban uses is occurring. Monash offers significant residential, commercial and industrial redevelopment opportunities. Facilitation of these opportunities in a manner that seeks to protect, enhance and develop the physical, economic and social environments of Monash as a place that people want to conduct business as well as live is an ongoing challenge'*.⁴
- 32 In terms of the Vision and Strategic Framework Plan at Clause 21.01-3 of the Planning Scheme, among the major strategic directions cited is *'...identifying areas for revitalisation of older industrial premises.'*
- 33 Clause 21.04-1 of the MSS acknowledges that the City of Monash, like the rest of Melbourne, is experiencing a change in the housing structure and dwelling requirements of its population, with a noticeable shift towards increased density forms of housing, generally characterised by multi-unit dwellings.
- 34 This is presenting challenges in terms of where to encourage growth to accommodate changes in the size and structure of the population whilst still maintaining neighbourhood and garden character objectives.
- 35 Among the housing objectives and strategies at Clause 21.04 are those that seek to promote the provision of a variety of housing styles and sizes for a diverse population with different family and lifestyle preferences and a in a variety of residential environments and urban experiences.
- 36 Having regard to the abovementioned provisions, and as discussed further in the remainder of this report, the Amendment aligns with and advances a number of objectives and strategies of the PPF.

² See Clause 21.01-2 of the Planning Scheme

³ See Clause 21.01-2 of the Planning Scheme

⁴ See Clause 21.01-2 of the Planning Scheme

3 Planning Context

3.3 Other Provisions and Documents

37 A number of strategic documents are relevant in the background and consideration of the Amendment, including the following:

- *Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Department of Environment, Land Water and Planning, 2017)* (Plan Melbourne);
- *Monash Industrial Land Use Strategy 2014* (MILUS); and
- *Monash Housing Strategy* (Housing Strategy).

38 I have considered the above outlined strategic documents as appropriate in preparing this report.

3.4 Ministerial Directions

39 The following Ministerial Directions and Practice Notes are relevant to the consideration of the proposed Amendment:

- Ministerial Direction – Form and Content of Planning Schemes
- Direction No.9 Metropolitan Planning Strategy
- Direction No. 11 Strategic Assessment of Amendments;
- Direction No. 15 The Planning Scheme Amendment Process
- Direction No. 19 Ministerial Direction on the Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health and Ministerial Requirement for Information for Authorisation or Preparation of Amendments That May Significantly Impact the Environment, Amenity and Human Health
- Practice Note No. 46 Strategic Assessment Guidelines; and
- Practice Note No. 59 The Role of Mandatory Provisions in Planning Schemes

40 I have considered the above mentioned Ministerial Directions and Planning Practice Notes as appropriate in the preparation of this report.

4 Assessment of the Amendment

4.1 Overview

- 41 In general terms, given locational and strategic policy considerations, I believe the zone and overlay proposed as part of the Amendment are appropriate and support the outcomes sought by the Planning Scheme.
- 42 The present zoning of the Subject Land does not enable the full potential of the Subject Land to be realised, in part because residential use is prohibited in the IN1Z. The proposed RGZ will remedy this as well as provide the framework to allow for higher density development to locate on a site and in an area where more intense residential development is supported and encouraged.
- 43 State policy under the Planning Scheme and through various policy documents such as Plan Melbourne endorse the need for targeted development in appropriate locations such as the Subject Land.
- 44 Plan Melbourne together with local policies of the Planning Policy Framework endorse the transition of redundant industrial land to more suitable land use and development outcomes aligned with the physical and strategic context relevant to the particular land in question.
- 45 On this basis and having regard to my instructions in this matter, my assessment of the Amendment and the matters before the Panel takes the form of three parts, namely:
- The strategic basis for the Amendment having regard to the Planning Scheme, relevant Ministerial Directions and Practice Notes;
 - The appropriateness of the proposed application of the RGZ and EAO; and
 - The implications of Schedule 5 to the RGZ and its drafting as it specifically relates to the Subject Land.
- 46 The remainder of my report addresses the above considerations.



4 Assessment of the Amendment

4.2 Strategic Justification

- 47 Ministerial Direction No. 11 Strategic Assessment Guidelines requires a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations in order for it to be justified.
- 48 The Explanatory Report for the Amendment provides justification for the Amendment when assessed against the Strategic Assessment Guidelines, relevant Ministerial Directions and the provisions of the Planning Policy Framework including the LPPF of the Planning Scheme.
- 49 I am of the view that the strategic justification given by the Council in support of the Amendment is generally sound and well founded.
- 50 The purpose of Ministerial Direction No.9 is to require planning authorities to have regard to Metropolitan Planning Strategy in the preparation of planning scheme amendments.
- 51 The Council acknowledges both Plan Melbourne and its adopted MILUS as providing the strategic support for the Amendment. In this regard, I note the following:⁵
- The Amendment promotes the renewal of redundant industrial land in line with the principles of Plan Melbourne (Direction 1.3);
 - The Amendment supports redevelopment of the Subject Land in an appropriate location and in line with population growth trends and sustainability principles set out in Plan Melbourne (Direction 2.1);
 - The Amendment will promote greater choice and diversity of housing consistent with Plan Melbourne objectives (Direction 2.5); and
 - The Amendment supports the principle of a 20 minute neighbourhood and the creation of safer communities and healthy lifestyles consistent with Plan Melbourne (Direction 5.2).
- 52 Plan Melbourne serves to remind us of the longstanding commitment of planning policy to urban consolidation particularly in circumstances involving the renewal and regeneration of key sites including redundant industrial land in the established suburbs of Melbourne with good access to services and facilities, such as Huntingdale.
- 53 Plan Melbourne acknowledges the significance of urban renewal throughout metropolitan Melbourne in terms of the potential to accommodate change and future urban growth. Many renewal opportunities include former industrial and other sites that are under-utilised, redundant or simply displaced in terms of their attractiveness to accommodate industrial development. The Subject Land falls into this category of opportunity.
- 54 Plan Melbourne observes that urban renewal sites and precincts offer

⁵ See Explanatory Report for Amendment C131

4 Assessment of the Amendment

the opportunity to improve local amenity, accommodate more housing and offer the potential to achieve a greater density of development.

- 55 Direction 2.2 highlights the strategic importance of urban renewal opportunities in terms of accommodating housing growth including medium and higher density development in suitable locations.
- 56 In terms of the MILUS, the Amendment will implement one of the recommendations of the Strategy by enabling the rezoning of the Subject Land for residential use and development. The rezoning is said to endorse the consolidation of industrial activity into nearby core industrial precincts, which will in turn support their revitalisation.
- 57 As the Explanatory Report also notes the Amendment supports and seeks to implement the Planning Policy Framework, particularly having regard to:
- Clause 11.02-1S Supply of Urban Land by ensuring a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.
 - Clause 13.04-1S Use of Contaminated and Potentially Contaminated Land by ensuring that the potentially contaminated land has been assessed for its intended use and development and is safely used.
 - Clause 16.01-2S Location of Residential Development by ensuring an adequate supply of redevelopment opportunities within the established urban area to reduce the pressure for fringe development.
 - Clause 16.01-2R Housing Opportunity Areas – Metropolitan Melbourne by identifying this site as being one that offers opportunities for higher density housing to be provided due to its location near employment and transport.
 - Clause 17.03-1S Industrial Land Supply by ensuring that industrial uses are clustered in more appropriate locations within the Monash National and Innovation Employment Cluster and in turn facilitate further industrial development.
 - Clause 21.01 Municipal Profile – This clause recognises that the municipality is in Melbourne’s fastest growing population corridor and that the municipality itself is one of Melbourne’s most populous. Whilst this is the case, the population of the municipality is only predicted to increase marginally with the biggest demographic change being instead a shift in the population demographic in favour of older residents and smaller family sizes, partly because of a rapid increase in housing prices.
 - Clause 21.04 Residential Development – The Amendment responds to these issues by proposing increased housing density through the

4 Assessment of the Amendment

application of the RGZ5. The application of this zone will ensure higher density housing can be supported on the site in a manner that provides for a diversity of housing that complements the surrounding neighbourhood character.

- 58 I am confident having regard to the strategic settings of the Planning Scheme, the MILUS and Plan Melbourne, that the strategic basis for the Amendment is sound. It is aligned with metropolitan strategy, will implement State and local planning policy and has been informed by a process (through the MILUS) that has involved key stakeholders and agencies along its journey.
- 59 Having regard to the Ministerial Directions relevant to the assessment of the Amendment including Ministerial Direction No. 11 that requires a demonstration of its strategic justification, I am satisfied that in overall terms, the Amendment is warranted and justified. That is, the Amendment seeks to facilitate renewal and redevelopment of an industrial site for future residential use that is the subject of a strategic review and recommendation.

4.3 Proposed Victorian Planning Provisions Tools

- 60 I have considered the outcomes sought by the Amendment and the appropriateness of the VPP tools proposed for the Subject Land being to:
- Rezone the Subject Land to RGZ5;
 - Delete the DDO1; and
 - Apply an EAO.
- 61 The VPP tools selected as part of the Amendment including the proposed Schedule 5 to the RGZ are intended to apply a set of parameters including design objectives, requirements, a mandatory maximum building height, application requirements and decision guidelines.
- 62 It is noted that that selection of the RGZ as the preferred zone for the Subject Land (over the GRZ) was a condition of authorisation issued by the Minister for Planning. In authorising the preparation of the Amendment and the selection of the RGZ, the Minister also decided to not authorise the planning permit application concurrent with the Amendment.
- 63 The EAO is clearly logical and necessary and in line with Ministers Direction No. 1 - Potentially Contaminated Land.
- 64 I note that the EAO is only intended to apply to that part of the land that is currently included in the IN1Z. Given that the whole of the land appears to have a history of use for industrial purposes, there may also be a benefit in investigating whether the EAO should be enlarged to include all of the land.

4 Assessment of the Amendment

4.4 Drafting of Proposed Schedule 5 to the RGZ

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- 65 In my opinion, the Amendment has generally made proper use of the VPP tools available including the selection of the RGZ5 (instead of the General Residential Zone) and the accompanying EAO to guide development outcomes for the Subject Land. The following section of my report explores the specific drafting of the proposed new RGZ5 provisions.
-
- 66 Based on the supporting documentation that informed the preparation of the Amendment, the principal built form outcomes being advocated through the proposed RGZ5 are, in general terms, reasonable.
- 67 The Subject Land occupies a prominent corner location, bordered on three sides by extensive frontages to public roads. The land has a total area of approx. 4,310m² and an abuttal to residential zoned and developed land to the east (being to the east).
- 68 The Subject Land has a cross-fall of some 3m, varying between RL73.05 in the north-east corner and RL69.86 in the south-west corner. Any mature vegetation on the land is mainly confined to the eastern boundary of the land that interfaces with the existing residential properties along this boundary.
- 69 The purpose of the RGZ is as follows:
- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
 - *To provide housing at increased densities in buildings up to and including four storey buildings.*
 - *To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.*
 - *To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.*
 - *To ensure residential development achieves design objectives specified in a schedule to this zone.*
 - *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*
- 70 The selection of the RGZ is appropriate in the circumstances given its purpose and intentions of the Amendment which include:
- A Planning Policy Framework that is generally supportive of the outcomes sought by the RGZ;
 - Provisions which support increased residential densities in buildings up to 4 storeys in height (i.e. 14.5 metres);

4 Assessment of the Amendment

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- The opportunity to achieve greater housing diversity in a location benefitted by its proximity to services, including public transport;
 - Provisions that allow for transition to be achieved between the residential areas to the east and industrial land to the west; and
 - Provisions that seek to implement design objectives to secure a respectful and responsive design and built form outcome for the Subject Land.

71 The design objectives included at Clause 1.0 of the proposed Schedule 5 to the RGZ identify the preferred outcomes for the Subject Land including the form and quality of design, character considerations and visual impact. I regard these as generally acceptable noting they are virtually identical to those already in place for other RGZ zoned land in Monash.⁶

72 It is my opinion that the provisions at Clause 2.0 of the proposed Schedule 5 to the RGZ bear careful scrutiny in terms of the outcomes sought to be achieved. They identify the requirements of Clauses 54 and 55 relevant to the Subject Land. It is my view that some of the requirements go beyond the point of being necessary or reasonable and should be reviewed. I say this particularly noting the zoning proposed is RGZ and comparing the requirements proposed with those that apply in other arguably '*more sensitive*' zones.

73 In this regard and without necessarily identifying all of the concerns at this point, I question at least the following:

- The basis for a 7.6m front setback and why perhaps a lesser setback of 6m ought not apply (Standard A3 and B6);
- The 56% site coverage and why the default of 60% at least ought not to apply (Standard A5 and B8);
- The 25% permeability percentage when the default of 20% ought not to apply (Standard A6 and B9);
- The specificity of the side and rear setback provisions proposed, noting that the varied setbacks appear to relate to side street setbacks rather than side and rear boundary setbacks (Standard A10 and B17);
- The proposed walls on boundaries provision and why it should apply (Standard A11 and B18); and
- The private open space provisions need to be reviewed, particularly the minimum area/dimension requirements (Standard A17 and B28).

⁶ See Schedule 3 to the RGZ (at Clause 32.07)

4 Assessment of the Amendment

74 In terms of the proposed maximum building height requirement at Clause 3.0 of the Schedule, I generally accept that a four storey limit is an acceptable outcome for the Subject Land. That said, I am not convinced that a 14.5m mandatory maximum building height is necessarily justified in these circumstances.

75 The Council Officers assessment of the submissions justifies the proposed height on the following basis:⁷

“As stated above, the site is located within the environs of the Huntingdale Activity Centre, which has been identified as a location which will be undergoing change and is suitable for a greater intensity of development. In addition, this site has three street frontages, is 4310 square metres in size and it is on a main road. Accordingly, a maximum mandatory height of 14.5 metres is considered appropriate.

The General Residential Zone 2 allows development up to 11 metres or 3 storeys, so the proposed Residential Growth Zone 5 at 14.5 metres would allow one additional storey above the surrounding area.”

76 If a 14.5m maximum building height was not specified in the Schedule, then the default provision under Clause 32.07-9 of the RGZ would apply which states:

If no maximum building height is specified in a schedule to this zone, the building height should not exceed 13.5 metres.

A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.

77 In this case, the relevant height requirement would be discretionary rather than mandatory and therefore, able to contemplate the particular circumstances of a design where a variation to the height or number of storeys may be justified. Such flexibility is thought desirable given the location of the land on a corner surrounded on three sides by roads, the large area of the site, its slope and relative absence of constraints.

78 Having regard to the provisions of ‘Planning Practice Note 59: The Role of Mandatory Provision in Planning Schemes’ I do not consider that the Amendment meets the relevant criteria that would justify the use of a mandatory height control (over a discretionary control) in this case. The circumstances of the Subject Land are not so sensitive or particularly unique that would warrant a prescriptive control over building height as proposed.

⁷ See page 5 of Council Officers Report to the Council Meeting 27 November, 2018.

4 Assessment of the Amendment

79 As PPN59 observes:

- *Planning schemes based on the Victorian Planning Provisions (VPP) are predominantly performance based.*
- *A performance based planning scheme is able to accommodate variation, innovation, unforeseen uses and development or circumstances relevant to a particular application to produce results beneficial to the community.*
- *Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements.*
- *Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.*
- *A balance must be struck between the benefits of a mandatory provision in the achievement of an objective against any resulting loss of opportunity for flexibility in achieving the objective.*
- *Mandatory provisions will only be considered in circumstances where it can be clearly demonstrated that discretionary provisions are insufficient to achieve desired outcomes.*

80 PPN59 establishes criteria which are to be used to assess whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance based system. I do not consider that the criteria are met in this case.

81 Having regard to the guidance provided by PPN59 and the criteria contained therein, in my opinion the benefits of a mandatory maximum building height in this case do not outweigh the loss of opportunity and flexibility inherent in a discretionary (or preferred) maximum building height over the Subject Land.

82 Further to the above, I note the outcome of the Minister's 'Activity Centre Pilot Program'⁸ a key purpose of which was to examine the issue of mandatory planning controls and building heights in activity centres. Although directed more specifically at activity centres, the findings of the Pilot Program provide a reminder as to the circumstances dictating the use of mandatory versus discretionary provisions to control building height in activity centres. The outcome of the Pilot Study in fact led to a review of PPN59 and 60.

⁸ See Activity Centre Pilot Program, Key Findings Report, 2018.

4 Assessment of the Amendment

83 The Pilot Study found that:

- Preferred maximum height controls are generally an effective tool for facilitating development and administering height.
- The use of preferred maximum height controls should continue to be the preference for the application of height controls.
- Mandatory controls should only be applied when certainty in built form outcomes is necessary, and they are supported by strong strategic justification.

84 I therefore regard the application of a mandatory maximum building height requirement to the Subject Land in this case as being unnecessary and unjustified.

85 Finally, as is commonly the case in Panel proceedings, I anticipate that there will be an opportunity to 'workshop' appropriate refinements to the proposed RGZ5 provisions in response to the evidence and submissions. I envisage that my comments will be used to aid that process from the viewpoint of the owners of the Subject Land.

5 Conclusion

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- 86 I consider that the Amendment generally makes proper use of the Victoria Planning Provisions in terms of the tools selected and the general thrust of the provisions.
- 87 The Amendment generally acknowledges and responds to the locational and strategic policy context relevant to the Subject Land including the objectives and directions of the Planning Policy Framework and Plan Melbourne. I have concluded that the Amendment has a sound strategic basis with particular regard for the work undertaken by Council through the MILUS.
- 88 The application of the RGZ to the Subject Land will facilitate the possibility of a more appropriate residential development being achieved with a particular emphasis on achieving a higher density housing outcome, whilst also enhancing public amenity and responding to residential character and streetscape objectives.
- 89 The use of a RGZ will ensure that the future outcome for the Subject Land is subject to a framework which acknowledges the strategic opportunity presented by the location, its context and the limitations to be applied to any future built form.
- 90 The proposed Schedule 5 to the RGZ should be critically reviewed particularly in terms of the requirements contained in Clause 2.0 and the prescription of a mandatory maximum building height in Clause 3.0.
- 91 The EAO is clearly logical and necessary and in line with Ministers Direction No. 1 - Potentially Contaminated Land. Given that the whole of the land has a history of industrial use, it would be prudent to investigate whether the proposed overlay boundary should be enlarged to include all of the land rather than just that part of the land currently included in the Industrial 1 Zone.
- 92 For the above reasons, I consider that the Amendment should be supported with some refinement to the proposed RGZ5 provisions to address its shortcomings.

5

MARCO NEGRI
DIRECTOR
CONTOUR CONSULTANTS AUST PTY LTD

Attachment 1

Expert Witness Declaration

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Attachment 1 - Expert Witness Declaration

Name and Address	Marco Cristoforo Negri is a Director of Contour Consultants Australia Pty Ltd, Town Planners and Practices from Level 1, 283 Drummond Street, Carlton, in Victoria.
Professional Qualifications	Bachelor of Applied Science (Planning) Graduate Diploma of Planning & Design Member of the Planning Institute of Australia
Professional Experience	1986-1995: Town Planner in Local Government 1995-2002: Senior Town Planning Management in Local Government 2002-Present: Town Planning Consultant
Areas of Expertise	Strategic and Statutory Planning. Planning assessment of land use and development applications including major retail, residential and commercial developments. Expert advice to local government on a variety of statutory and strategic planning projects including policy development in relation to housing, retail, environmental and heritage issues. Advice to commercial clients covering the management of urban development.
Expertise to Prepare this Report	Professional training and experience in town planning and specialist experience in both residential and commercial development.
Instructions which Defined the Scope of this Report	I received instructions from Planning & Property Partners, on behalf of the owner of the Subject Land, to consider the town planning implications of proposed Amendment C131 to the Monash Planning Scheme.
Facts, Matters and Assumptions Relied Upon	<ul style="list-style-type: none"> • Familiarised myself with the Subject Land and surrounds; • Reviewed the provisions of the Planning Scheme; • Reviewed the Authorisation letter from the DELWP dated 6 June, 2018; • Reviewed and considered the exhibited version of the Amendment and relevant background reports and accompanying material which informed the Amendment; • Reviewed the submissions received in response to the public exhibition of the Amendment; • Reviewed the Council Officer Reports associated with the Amendment as contained in the Agendas to Council Meetings held on 27 March, 2018 and 27 November, 2018; • Reviewed relevant Ministerial Directions and Practice Notes; and • Reviewed relevant strategy documents including the Monash Industrial Land Use Strategy, Monash Housing Strategy and Monash National Employment and Innovation Cluster.
Documents Taken Into Account	Refer documents described in above and in the Statement.

Attachment 1 - Expert Witness Declaration

**Identity of Persons
Undertaking the Work**

I prepared this report with assistance from Andrew Biacsi also a Director at Contour.

Relationship with Applicant

I have no private or business relationship with the proponent, other than being engaged to prepare this report.

Summary of Opinion

Refer to Report.

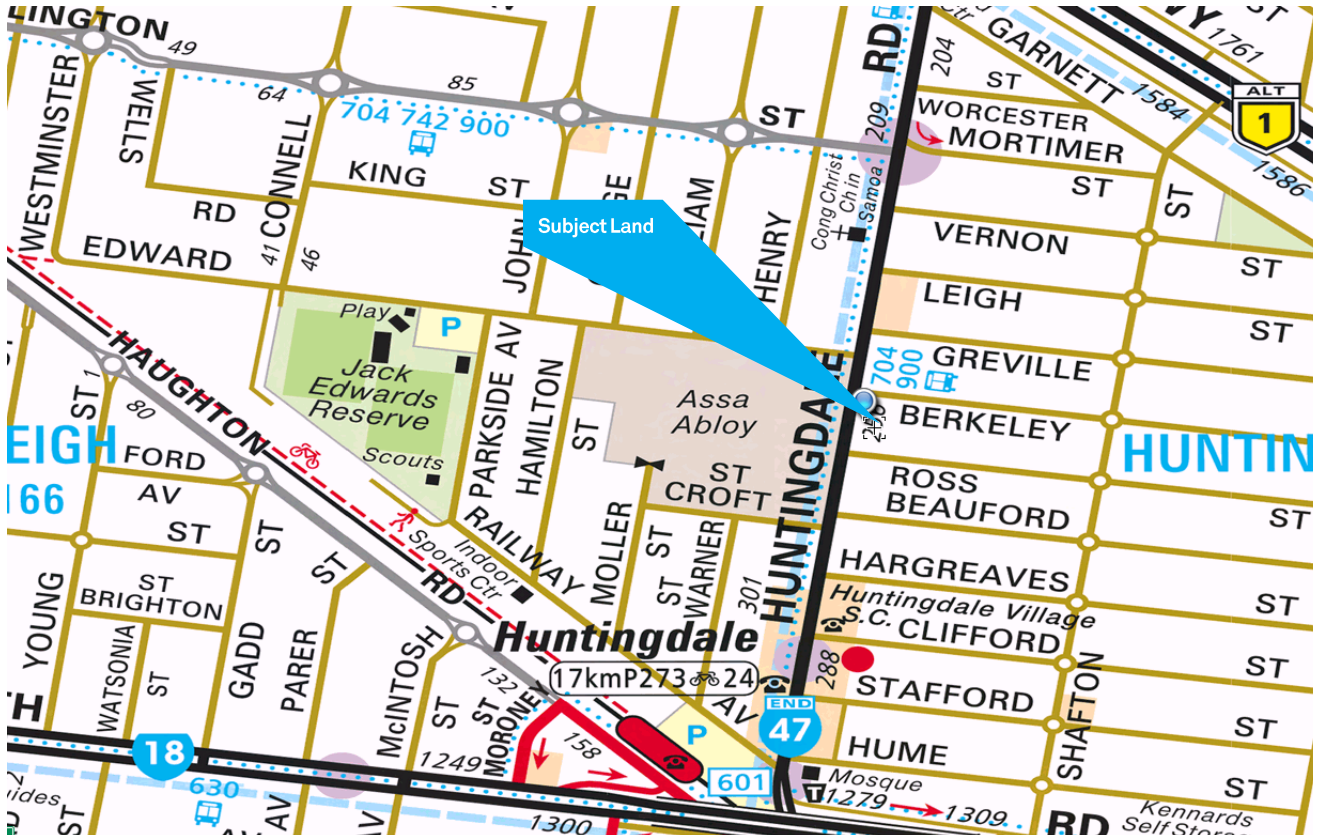
I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

MARCO C NEGRI
DIRECTOR
CONTOUR CONSULTANTS AUST PTY LTD

Attachment 2

Figures and Maps

Figure 5.1
LOCALITY PLAN



A2

Figure 5.2
AERIAL PHOTOGRAPH – SURROUNDS

Aerial image as at 14 January 2019 obtained from Nearmap



Figure 5.3
PHOTOGRAPHS OF EXISTING CONDITIONS – SUBJECT LAND

Image taken on 23 January 2019 showing the Subject Land as viewed from the southern side of Ross Street looking north along Huntingdale Road



Attachment 2 - Figures and Maps

Figure 5.4
PHOTOGRAPHS OF EXISTING CONDITIONS – SUBJECT LAND

Image taken on 23 January 2019 looking south down Huntingdale Road towards the Subject Land (as indicated)



Figure 5.5
PHOTOGRAPH OF EXISTING CONDITIONS – SURROUNDS

Image taken on 23 January 2019 showing two storey apartment building on the south side of Ross Street at the corner of Ross St and Huntingdale Road



Attachment 2 - Figures and Maps

Figure 5.6
PHOTOGRAPH OF EXISTING CONDITION –
SURROUNDS

Image taken on 23 January 2019 showing the interface of Subject Land with residential property to the east as viewed from the northern side of Berkeley Street



Figure 5.7
PHOTOGRAPH OF EXISTING CONDITION –
SURROUNDS

Image taken on 23 January 2019 showing the interface of Subject Land with residential property to the east as viewed from the southern side of Ross Street



Attachment 2 - Figures and Maps

Figure 5.8
ZONING MAP—EXISTING

Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0006/477006/monash13zn.pdf

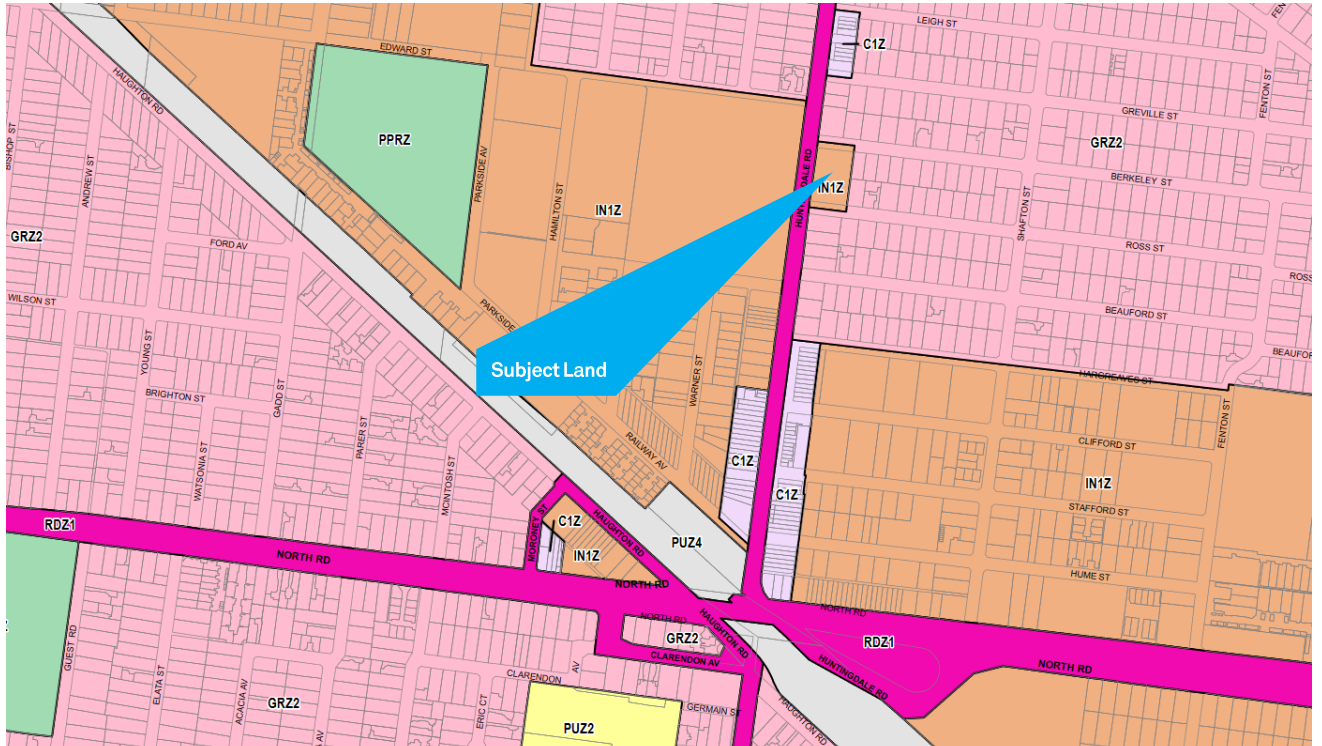


Figure 5.9
DESIGN AND DEVELOPMENT OVERLAY MAP—EXISTING

Image obtained from Planning Scheme http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0020/477002/monash13ddo.pdf

