

PLANNING PANELS VICTORIA

IN THE MATTER OF AMENDMENT C159 TO THE MONASH PLANNING SCHEME

SUBMITTERS	FrondeU Properties Pty Ltd and JKD Mulgrave Property Pty Ltd
PLANNING AUTHORITY	Monash City Council
SUBJECT LAND	1 Jacksons Road, Mulgrave 636 Wellington Road, Mulgrave

WRITTEN SUBMISSIONS

Introduction

1. These submissions are made on behalf of FrondeU Properties Pty Ltd and JKD Mulgrave Property Pty Ltd – the owners of the Subject Land¹ and the proponents of Planning Scheme Amendment C159 to the Monash Planning Scheme (the **Amendment**) – in accordance with the directions of the Panel made on 31 March 2020.
2. They have been prepared to inform the Panel’s assessment of the Amendment on the papers and are designed to be read in conjunction with the following materials previously filed with the Panel:

¹ FrondeU Properties owns the land situated at 1 Jacksons Road, Mulgrave (described in some of the materials as the ‘Adidem site’). JKD Mulgrave Property Pty Ltd owns the land situated at 636 Wellington Road, Mulgrave (described in some of the materials as the ‘OfficeMax site’).

- a. the exhibited planning scheme amendment documentation which, in addition to the proposed planning controls and explanatory report, relevantly comprises:
 - i. the ‘Rezoning Report’ prepared by SJB Planning dated March 2019 (Rev 8);
 - ii. the ‘Economic Report’ prepared by Deep End Services dated 3 December 2018; and
 - iii. the ‘Traffic Impact Assessment’ prepared by GTA Consultants dated 13 December 2018;
 - b. the expert witness statements prepared on behalf of the Proponents, being:
 - i. the report of Bernard McNamara of BMDA Development Advisory dated 2 April 2020; and
 - ii. the report of Justin Ganly of Deep End Services dated 7 April 2020;
 - c. the ‘Phase 1 Site Assessment’ prepared by Compass Environmental Pty Ltd dated 30 March 2020; and
 - d. the Council’s ‘Part A Submission’ dated 8 April 2020.
3. This written submission comprises the following three parts:
- a. first, an overview of the Proponent’s core contentions in respect of the Amendment, having regard to the key elements of the Strategic Assessment Guidelines;
 - b. second, a response to the submissions that have been made in respect of the Amendment; and
 - c. third, the drafting of the proposed planning controls.
4. The Proponents adopt (and do not repeat) the comprehensive accounts of the background to the Amendment contained within the Council’s Part A Submission and the expert witness statement prepared by Mr McNamara. They note, more particularly, that those accounts relevantly include detailed descriptions of:

- a. the physical context of the Subject Land and its surrounds;²
- b. the existing planning controls and policy settings that apply to the Subject land;³
- c. the terms of the Amendment;⁴ and
- d. the processing of the Amendment to date.⁵

Core Contentions – Strategic Assessment Guidelines

5. The Proponents' core contentions in respect of the Amendment can be usefully organised by reference to Strategic Assessment Guidelines specified within *Ministerial Direction No. 11*. Whereas the explanatory report to the Amendment itemises the Amendment's response to the various guidelines in turn, the analysis that follows groups those matters into the following three categories:
 - a. first, the rationale for the Amendment (Strategic Assessment Guideline 1);
 - b. second, the means by which the Amendment will support and implement the applicable policy framework (including both the Planning Policy Framework and the Local Planning Policy Framework) (Strategic Assessment Guideline 5 - 7); and
 - c. third, the use of the Victoria Planning Provisions (Strategic Assessment Guideline 8).

The Rationale for the Amendment

6. The Amendment is required to facilitate the urban renewal of the Subject Land.
7. As demonstrated by the Economic Report prepared by Deep End (as reviewed and updated by Mr Ganly), the former industrial and commercial premises on the Subject Land have reached the end of their useful life, and the land is poorly suited to accommodate new commercial or industrial operations.

² Evidence statement of Mr McNamara, section 2, pp 7-10; Council Part A submissions, sections 2.1-2.3.

³ Evidence statement of Mr McNamara, section 3, p 11, sections 5-6, pp 16-23; Council Part A submissions, section 3 (Policy Context).

⁴ Council Part A submissions, section 4 (Proposed Amendment C159 and Authorisation).

⁵ *Ibid.*

8. This is well demonstrated by the fact that the land has been substantially underutilised for a considerable period of time:
 - a. The previous long-term tenant at 1 Jacksons Road (the 'Body Shop') vacated the premises after the business was sold (in or around February 2015) and the new owners of that business relocated the staff to premises in Chadstone at the end of March 2017. The warehouse function was also moved to an external third-party-logistics supplier, after which those premises have been vacant;
 - b. OfficeMax vacated the premises at 636 Wellington Road in or around 2015 when the company's operations were largely consolidated in New South Wales. Those premises are now predominantly vacant (with the warehouse facilities being occupied only on an intermittent basis).
9. The majority of the Subject Land was developed in the early 1970s at a time when it was situated at the outer eastern fringe of Metropolitan Melbourne.⁶ The city has expanded substantially since then, such that the Subject Land now constitutes a discrete and isolated pocket of commercially-zoned land, surrounded in all directions by residential development, including the former Waverly Park which itself has been transformed for housing.
10. The changed character of the surrounds also severely impacts its potential to be put to productive commercial or industrial use in the future. The impression now is that the subject land forms part of a larger area with an underlying mixed use and residential focus. As Mr Ganly's statement demonstrates, there are a relatively large number of existing industrial and commercial properties available for lease that are of a similar size to the Subject Land, and that are substantially better-positioned to accommodate the anticipated demand for commercial and industrial premises within the region. A comparison of the

⁶ See the development history description provided in Mr Ganly's evidence statement at p 6. Mr Ganly highlights that the site was first developed only two years after the Waverly Park football ground was completed; the adjoining section of the Monash Freeway was then still under construction.

attributes of the Subject Land with those of the Monash Technology Precinct or the Carribean Business Park bring these competitive disadvantages into stark focus.⁷

11. That the existing facilities on the Subject Land are dated, and in the case of the warehouse situated at 1 Jacksons Road, of a specialised nature, constitute further impediments to the land being put to a productive commercial or industrial use in the future. So too do the following additional features of the land identified by Mr McNamara:⁸

- *Lack of business exposure: The retaining walls and setbacks offer little exposure to the two main roads. This reduces the attractiveness for businesses that require/prefer 'business exposure' to a main road.*
- *The Site is effectively 'two sites' separated by a significant level change making the land less usable.*
- ...
- *Inefficiencies: the significant land slope/division and disjointed road access arrangements would make any industrial or commercial reuse/redevelopment of the land less efficient.*

12. The existing under-utilisation of the site, and its capacity to be put to a higher and better use, present clear opportunities for the Amendment to facilitate the achievement of a marked net community benefit. Furthermore, that those opportunities are best realised by means of urban renewal (in the form of a mixed use but predominantly residential

⁷ Mr Ganly explains, in this respect, that (at [27] and [28]):

The [Caribbean] Business Park adjoins Eastlink and contains more than 50 office and industrial tenants on an approximately 200 ha site (i.e. almost 40 times larger than the subject site which is also in the C2Z).

The master planned estate includes a range of high quality industrial and warehouse buildings, has attractive landscaping, extensive parklands and the lakeside feature of the Caribbean Market area. Additional amenities in the Business Park include child care, dining, significant open space and a gymnasium.

He concludes at [32]:

In my opinion, it is virtually impossible for a development on the subject site to compete with other industrial estates and business parks within the region, with the contrast to the Caribbean Business Park being stark.

Similarly, Mr McNamara's evidence observes:

The Amendment will allow the urban renewal of an isolated commercial site which is currently under-utilised and failing. As 'out-of-centre' commercial land, surrounded by residential development on all sides, the Site does not present as a location where commercial or industrial uses would generally be supported or expected under the provisions of Planning Policy Framework.

⁸ Evidence statement of Mr McNamara, [104].

neighbourhood), is an outcome that is entirely in keeping with clearly-stated policy objectives that exist at both a state and local level.

Strategic support

13. Mr McNamara’s expert witness statement provides a detailed description of the strategic support for the Amendment. Mr McNamara’s evidence in this respect is consistent with the position adopted by the Planning Authority (and as set out in Council’s Part A Submissions) and is not seriously contested before the Panel.
14. It is appropriate, for present purposes, to commence by noting the broad directives contained within Plan Melbourne 2017-2050 that bear upon the Amendment:⁹

The demographic changes facing Melbourne are profound. Between 2015 and 2051 Melbourne is projected to grow by 3.4 million people, from a population of 4.5 million to almost 8 million. During the same period, Victoria’s total population will reach 10.1 million. A population increase of that magnitude would require another 1.6 million dwellings and 1.5 million jobs.

15. Plan Melbourne’s growth planning strategies are varied but relevantly include the need to realise urban renewal opportunities associated with a changing economy and the increasing importance of ‘knowledge-based businesses that locate close to each other for knowledge and resource sharing.’¹⁰
16. Policy 1.3.1 calls for the ‘Plan[ning] for and facilit[ation of] the development of urban renewal precincts’, and relevantly recognises that:¹¹

Significant opportunity exists across Melbourne for urban renewal precincts to accommodate future growth. By concentrating development within urban renewal precincts, other residential areas can be protected.

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

...

A number of former industrial and other sites—including government sites—around Melbourne are currently underutilised. Local planning authorities should

⁹ p 7.

¹⁰ Plan Melbourne 2017-2050, p 25. This text relates to policy 1.1.3 to: ‘Facilitate the development of national employment and innovation clusters’.

¹¹ p 39.

identify and plan for ways these sites can be repurposed to create jobs and accommodate growth.

17. The need for more housing in well-located areas is central to settlement and housing policies at the State level:

a. Clause 11.01-1S (Settlement) includes strategies to:

Promote and capitalise on opportunities for urban renewal and infill redevelopment.

b. Clause 11.01-1R (Settlement - Metropolitan Melbourne) includes the strategy to:

Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.

c. Clause 16.01-2R (Housing opportunity areas - Metropolitan Melbourne) relevantly provides:

Strategies

Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.

Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:

...

- *Urban-renewal precincts and sites.*

...

Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.

d. Clause 16.01-2S (Location of residential development) includes strategies to:

Ensure an adequate supply of redevelopment opportunities within established urban areas to reduce the pressure for fringe development.

Facilitate residential development that is cost effective in infrastructure provision and use, energy efficient, water efficient and encourages public transport use.

Identify opportunities for increased residential densities to help consolidate urban areas.

- e. Clause 16.01-3S (Housing diversity) relevantly provides:

Objective

To provide for a range of housing types to meet diverse needs.

Strategies

Ensure housing stock matches changing demand by widening housing choice.

- f. Clause 16.01-3R (Housing diversity - Metropolitan Melbourne) provides:

Strategy

Create mixed-use neighbourhoods at varying densities that offer more choice in housing.

18. These State-level imperatives are supplemented by the local provisions of the Scheme.

Indeed, as clause 21.04 (Residential development) explicitly recognises:¹²

Like the rest of metropolitan Melbourne, the City of Monash is experiencing a change in the housing structure and dwelling requirements of its population, with a noticeable shift towards increased density forms of housing, particularly multi-unit dwellings and apartments.

Changes in lifestyle choices and family structures in Melbourne have resulted in a notable decrease in the number of persons per household and changes in housing preferences towards lower maintenance homes. This is evidenced in an increasing need for more diverse forms of housing within the municipality.

19. Mr Ganly's analysis provides further context in this respect having regard to the particular characteristics of the locality. As Mr Ganly observes, '[t]he region surrounding the subject site is ageing and significant amounts of new but smaller forms of accommodation will be required for these residents'.¹³ Furthermore, as matters presently stand, apartments account for just 3.5% of dwellings in Mulgrave and

¹² Clause 21.04-1, 21.04-2.

¹³ Evidence statement of Mr Ganly, [41]. See also, the Council's Part A submissions at p 19:

... 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. The proposed amendment responds to these factors by rezoning the land to the Mixed Use Zone and applying a new Design and Development Overlay Schedule 16 which will provide opportunity for higher medium density apartment style living which will, in turn, provide additional housing diversity and more affordable housing.

Wheelers Hill (demonstrating the extent to which this form of housing is under-represented within the locality).¹⁴

20. Clause 21.04-3 seeks to respond to these challenges by:

... encourage[ing] the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.

21. The clause includes the related strategy to:

Promote a variety of dwelling sizes and types to promote greater affordability of housing and choice in medium and large urban developments.

22. The Amendment clearly aligns positively with these policy directives (at both State and local levels).

23. It is equally important to recognise that there would be little strategic disbenefit in removing the Subject Land from the industrial and commercial land use base of the municipality.

24. Both Mr McNamara and Mr Ganly have undertaken an analysis of opportunities and constraints in this respect, assessing and comparing the potential of the site for residential, commercial and industrial use. For the reasons outlined above, both conclude that the site is no longer a suitable proposition for predominantly commercial or industrial uses, and that the site can best deliver upon strategic planning objectives by being redeveloped as a mixed use neighbourhood.

25. The impediments of redeveloping the site for productive ongoing commercial or industrial use were recognised at a local level in the *Monash Industrial Land Use Strategy Background Report*¹⁵ (with the site being removed from strategic consideration under Amendment C122 as a consequence). Furthermore, at a State level, the recently-released *Melbourne Commercial and Industrial Land Use Plan* attributes no importance to the Site as an industrial or commercial site.

¹⁴ Evidence statement of Mr Ganly, [49].

¹⁵ Monash Industrial Land Strategy Background Report 2014, pp 147-148, referred to also in the Council's Part A submissions, p 13.

Use of the Victoria Planning Provisions

Mixed Use Zone and the proposed Schedule 2

26. The MUZ is the most appropriate zone within the VPPs to support the strategic aspirations for this site. As stated in its purpose, it provides for ‘housing at higher densities’ and the promotion of uses which ‘complement the mixed-use function of the locality.’
27. The proposed Schedule 2 to the MUZ (**MUZ2**) includes site-responsive objectives and decision guidelines to guide future development on the site. Subject to the changes to objective 2 of the schedule suggested by Mr McNamara, the rationale for which is addressed further below, the schedule is supported by the Proponents as an appropriate means of facilitating the realisation of the land use aspirations for the Subject Land.

DDO16

28. Consistent with the preferred approach of the Planning Authority, the Proponents support the application of the DDO control to the land (as opposed to the DPO control), as a means of providing guidance concerning future development outcomes on the Subject Land.
29. The essential differences between the DPO and DDO controls are well-illustrated by their respective purposes.¹⁶
30. The purposes of the DPO include:

To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.

To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.

31. The purposes of the DDO include:

To identify areas which are affected by specific requirements relating to the design and built form of new development.

¹⁶ See also Table 1 of Mr McNamara’s evidence, p 27, which contains an inventory of the differences between the DDO and DPO.

32. The site is comprised of two parcels in separate ownership. Whilst the site may be developed in a coordinated way, this cannot be guaranteed (such that the application of a DPO may prove inefficient, if not problematic). Indeed, whilst there would be efficiencies in developing the Subject Land together, Mr McNamara describes the scope for the sites to be developed either separately or in a coordinated fashion (and for acceptable planning outcomes to be achieved under either scenario).
33. Each parcel benefits from extensive main road frontages and independent vehicle access. It is noted, in this latter respect, that the Traffic Impact Assessment is not predicated on the provision of internal connections between the two sites, and instead assumes the maintenance of existing access arrangements.¹⁷ The site's interfaces are discrete – residential to the west and south; main roads to the north and east.
34. The proposed design objectives specified within the Schedule, along with the applicable provisions of the zone and policy framework, provide adequate guidance concerning appropriate land use and development outcomes across the site. The Proponents accept the Planning Authority's position that there is not a need in this case for a development plan to be prepared in advance of permit applications being made in respect of the site. The operation of other provisions of the Scheme will ensure that appropriate provision is made for open space and drainage as part of future development outcomes (see, for instance, clauses 65.01 and 65.02 of the Scheme), being matters that are appropriately resolved as part of subsequent design and planning processes that will necessarily need to be undertaken in respect of the land.
35. The site is, however, clearly 'affected by specific requirements' relating to topography, interfaces and vegetation (of the type that are properly addressed by means of DDO controls). These have been analysed and addressed in the proposed DDO16 via the designation of the four precincts and the specification of particular built form requirements. DDO16 provides a level of direction concerning outcomes for the land that is 'fit for purpose', maintaining an appropriate balance between guiding future outcomes and maintaining design flexibility. The Proponents note, in this respect, that the decision guidelines specified in DDO16 call up matters relevant to the integration and planning of development across the sites comprising the subject land.

¹⁷ See section 3.2.

36. Accordingly, subject to changes to the mandatory nature of height limits for Precincts A, B and D (as recommended by Mr McNamara), the Proponents support the adoption of a DDO for the site and the proposed DDO schedule.
37. Ultimately, the Proponents acknowledge that this is a situation where there is more than one VPP tool that could do the job. This is common to many amendments supporting land use and development transformation. Each approach has pros and cons. For example, a DPO provides for a master plan and provides scope for infrastructure provision, but avoids third party processes. The DDO provides an overall decision-making framework for permit applications, with third party process, and relies upon appropriate permit conditions or agreements pursuant to section 173 of the *Planning and Environment Act 1987 (Vic)* to deal with public works based on conventional legal principles. It is important, for this Amendment, that the tool is supported by the Planning Authority. In the absence of any profound shortcomings, the Planning Authority's preference ought to be afforded considerable weight, particularly when the Proponents have invested in the process in co-operation with that preference and the Amendment has been exhibited on this basis.

The Environment Audit Overlay

38. The Environment Audit Overlay is appropriately applied to the site given the potential for the land to be contaminated as a consequence of its historical land use.
39. A 'Phase 1 Site Assessment' has been undertaken by Compass Environmental Pty Ltd in respect of the land (dated 30 March 2020) in response to the submission made by the EPA in respect of the Amendment.
40. That assessment confirms the potential for contamination to be present and, consistent with the position of the Planning Authority, provides a sound factual basis upon which to apply the proposed planning control.

Response to Submissions

41. Three submissions were mad to the Planning Authority in respect of the Amendment. The EPA’s submission principally concerned the application of the EAO to the Subject Land (and has been addressed by the provision of the Phase 1 Site Assessment). This part of the submissions responds to the remaining submissions (noting that neither submitter has sought to be heard in order to make any further submissions before the Panel).

Submission no. 1

- 42. Submission no. 1 raises concerns with the scale of development, and most particularly, with the proposed interface to existing residential properties abutting precinct C.
- 43. As Mr McNamara’s evidence illustrates (refer Figure 1), the proposed setback controls for precinct C greatly exceed the requirements of clause 55. They adopt the B17 profile, but are taken from a 3m boundary setback rather than the property boundary. They are further supported by a mandatory requirement that overall building height must not exceed the maximum height in an abutting residential zone, or 4 storeys / 13.5m, whichever is the lesser. This constitutes a relatively conservative response given the strategic attributes of the site and its present zoning.

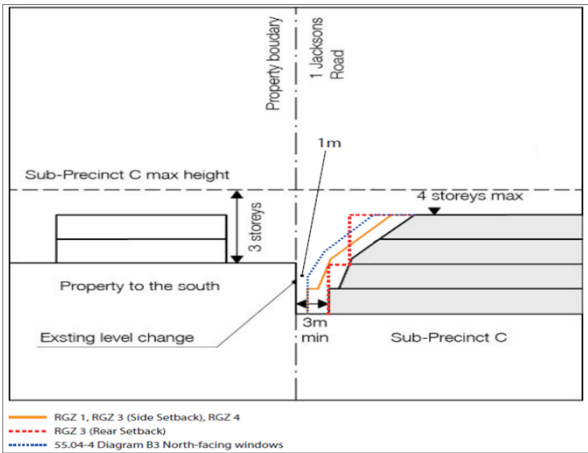


Figure 1 Setback diagram, extract from Mr McNamara’s evidence, p 30

44. Whilst the topographical conditions along the interface differ, it is generally the case that the neighbouring land to the south is situated a considerable height above the Subject Land (as shown in Figure 1). Even where the differential is less pronounced, the application of

the built form setbacks and height measures proposed will achieve acceptable interface outcomes that are adequately protective of residential amenity.

45. The first submitter also raises a number of other concerns regarding traffic, flora and fauna, character and the need for housing or commercial floorspace on the site. The Traffic Impact Assessment that was exhibited with the planning scheme amendment materials adequately addresses the submitters queries in respect of traffic. Aside from the question of need (which is contrary to the expert evidence), the balance of the matters raised are adequately addressed through the Planning Policy Framework, Local Planning Policy Framework and decision guidelines that will apply to future permit applications for the site.

Submission no. 3

46. Like submission no. 1, submission no. 3 raises built form interface concerns, including in respect of overshadowing, visual bulk and impacts to outlook.
47. The submitter also raises concerns regarding the prospect of 6 storey development occurring within Precinct D, as well as issues in respect of traffic generation and tree protection.
48. Precinct D is setback from existing residential properties by a minimum of 23m. Intervening development within Precinct C is to be developed to a height of 4 storeys. This provides for an appropriate (and relatively conservative) transition in scale, whilst properly locating taller development centrally within the site away from sensitive interfaces.
49. In relation to tree retention and landscaping, DDO16 relevantly includes:
- a. the design objective –

To ensure landscape design enhances the new character of the precinct and integrates the development with its context including the retention and ongoing health of the precinct's high value trees;
 - b. the requirements that –

Existing high value trees in the precinct and existing trees on neighbouring sites should be retained and protected.

Development should incorporate new canopy trees with a mature height of 20 metres or more.

50. High value trees are marked in Map 1 of DDO16.
51. Together, these directions provide adequate guidance in respect of appropriate tree protection and new planting responses.
52. The Proponents again rely on the ‘Traffic Impact Assessment’ prepared by GTA Consultants in response to the issues raised in submissions concerning traffic associated with the redevelopment of the land.

The Proposed Controls

53. A marked-up and annotated version of the controls is Appendix 1 to these submissions. The changes have been prepared to document Mr McNamara’s recommendations.
54. They relevantly include:
 - a. changing the second objective in the proposed MUZ2 to better align the schedule with the purpose and terms of the parent control and to recognise the scope of commercial uses that may properly complement the predominantly residential outcome contemplated for the Land;¹⁸ and
 - b. changing the height limits for precincts A, B and D from mandatory to discretionary.¹⁹
55. The Proponents rely upon and do not repeat Mr McNamara’s reasoning in each respect.

Conclusion

56. For the reasons set out above, and consistent with the evidence of Mr McNamara and Mr Ganly, the Proponents contend that the Panel should recommend that the Amendment be adopted by the Council subject to the modifications shown in Appendix 1 to these submissions.

¹⁸ Evidence statement of Mr McNamara, [14]-[15], [125].

¹⁹ Evidence statement of Mr McNamara, [17]-[23], [149].

57. The Proponents note that the Panel has issued a series of written questions to both Mr Ganly and Mr McNamara (as foreshadowed in the Panel’s directions). Both experts are in the process of preparing written responses to the Panel’s questions, which will be provided to the Panel upon completion. To the extent that those responses raise further issues in respect of the drafting of the control, or that are otherwise appropriately addressed in submissions, the Proponents propose to circulate any such further material with leave of the Panel.

17 April 2020

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APPENDIX 1
Proposed Modifications to the Planning Controls