

Planning and Environment Act 1987

Panel Report

Monash Planning Scheme Amendment C122 Part 2 Mixed Use Rezonings Oakleigh and Hughesdale

8 July 2015

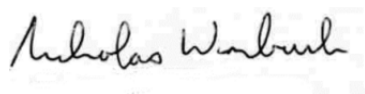
Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Monash Planning Scheme Amendment C122 Part 2

Mixed Use Rezonings Oakleigh and Hughesdale

8 July 2015

A handwritten signature in black ink, appearing to read "Nicholas Wimbush". The signature is written in a cursive style and is positioned above the printed name.

Nick Wimbush, Chair

1 The Amendment and submissions

Monash Planning Scheme Amendment C122 Part 2¹ (the Amendment) was prepared by the Monash City Council as Planning Authority. As exhibited, the Amendment proposes to implement recommendations from the Monash Industrial Land Use Strategy 2014 (MILUS) by:

- Rezoning 1354-1360 Dandenong Road and 620 Neerim Road, Hughesdale and 190-192 Atherton Road and 4 Henry Street Oakleigh from the Industrial 1 Zone (IN1Z) to the Mixed Use Zone (MUZ)
- Removing the Design and Development Overlay Schedule 1 (DDO1) from the properties
- Applying the Environmental Audit Overlay (EAO) to the properties.

The Amendment was exhibited between 10 October and 21 November 2014. Submissions were received from the APA Group (APA) and Multinet Gas (Multinet) in relation to high pressure gas pipelines along Dandenong Road. A third, late, submission was received from the owners of 190-192 Atherton Road, Oakleigh supporting the Amendment and opposing the submissions of the gas companies.

At its meeting of 24 February 2015, Council resolved to refer all the submissions to a Panel.

2 Panel process

Mr Nick Wimbush was appointed on 30 March 2015 under s153 of the *Planning and Environment Act 1987* to consider the submissions.

(i) 1st Directions Hearing

A Directions Hearing was held on 1 May 2015 at Monash Council in Glen Waverley. Attendees at the Directions Hearing(s) are shown in Table 1. The Panel undertook brief unaccompanied inspections of the Amendment sites at this time.

At the Directions Hearing the status of the submissions from the APA Group and Multinet Gas was discussed and whether the submissions constituted 'objections'. Following the Directions Hearing the Panel wrote to the gas companies seeking clarification. This clarification was received (see Appendix A), and whilst restating the importance of the issue and the need to address the gas pipelines at the development stage, both submissions clearly stated that they were not objecting to the Amendment.

The Panel, in directions dated 19 May 2015, indicated its intent to complete the matter 'on the papers' and invited written submissions on whether, and if so how, the gas pipeline proximity issue should be addressed in the Amendment.

¹ Amendment C122 was split into three parts. Part 1 was non contentious and has been submitted to the Minister for Planning for approval, this report covers Part 2, and Part 3 is to be abandoned.

(ii) 2nd Directions Hearing

Following the Panel’s directions, Council wrote to the Minister for Planning on 11 June 2015 (see Appendix B) advising that the Panel was no longer required due to the lack of ‘objecting’ submissions to the Amendment and suggesting that the gas pipeline issue be better dealt with at the State level, rather than through this Amendment. This issue is discussed further in Section 4.

The Panel convened a second Directions Hearing on 3 July 2015 to discuss the Amendment and Panel process. At this point a response from the Minister for Planning to Council’s letter of 11 June 2015 had not been received. Following this 2nd Directions Hearing the Panel indicated that it would complete its report ‘on the papers’ as previously advised and that it had enough material before it to complete the report. Directions were issued accordingly on 6 July 2015. Council subsequently indicated to the Minister for Planning that they considered the Panel process should proceed (see Appendix B).

Table 1 Parties to the Hearings

Submitter	DH1	DH2
Monash City Council	Mr John Rantino, Maddocks Lawyers assisted by Ms Helen King from Council	Mr John Rantino, Maddocks Lawyers assisted by Ms Helen King from Council
Mr Carlos A Pereira ²	Ms Elizabeth Priddle, Bazzani Scully Priddle Lawyers	Ms Alison Elverd, Bazzani Scully Priddle Lawyers
Chadstone Mitsubishi	Mr Mathew Chapman, Hellier McFarland assisted by Mr Adam and Mr Troy Stambanis	Mr Mathew Chapman, Hellier McFarland

3 Issues dealt with in this report

The Panel has reviewed the Explanatory Report for the Amendment and the MILUS adopted by Council in July 2014. The Panel is satisfied that the Amendment is strategically supported and will implement the relevant part of the MILUS as well as supporting broader planning objectives in Monash and the metropolitan area.

No substantive submissions argued that the Amendment is not appropriate or should be modified and the Panel does not address the strategic planning context further.

The one outstanding issue raised by submitters is that of the proximity of the Amendment sites to high pressure gas pipelines. This issue is discussed in Section 4.

² Who has entered into a contract to purchase 190-192 Atherton Road and 4 Henry Street, Oakleigh.

4 The gas pipeline issue

(i) The issue

Both APA and Multinet in their original and additional submissions identified the presence of high pressure gas pipelines along Dandenong Road near the Amendment sites and outlined the regulatory framework related to such pipelines.

As put by Multinet, this generally includes:

The Australian Standard AS2885 – Pipelines Gas and Liquid Petroleum, places technical safety obligations on pipeline licensees, in line with requirements of Section 109 of the Pipelines Act 2005 and Section 21(2) of the Pipelines Regulations 2007. AS2885.3 states that ‘Where there are changes in land use planning or (land use) along the route of the existing pipelines to permit Residential, High Density, Industrial or Sensitive Development... a safety assessment shall be undertaken and additional control measures implemented until it is demonstrated that the risk from the loss of containment involving rupture is as low as reasonably practicable (ALARP) (Section 4.7.4: Change of Location Class).

APA provided a copy of their guidelines for development in close proximity to pipelines, which includes consideration of planning controls, restriction of development in the easement and within close proximity, crossing of pipelines, measurement length and urban encroachment issues and the need to plan for local gas utility infrastructure.

APA’s guidelines include discussion of the alternative risk reduction measures outlined in AS2885 including maximum allowable operating pressures, the use of ‘no-rupture’ pipes, pipeline relocation, land use modification and pipeline protection.

APA in their second submission made reference to the State Planning Policy Framework (SPPF) Clause 19.03-6 *Pipeline infrastructure*; submitting that it is up to State and local planning authorities to determine whether development is appropriate given the (low) risk of a pipeline rupture.

As outlined in section 2(i), APA and Multinet made it clear in their later submissions that they are not objecting to the Amendment, but that the high pressure gas pipeline issues will need to be addressed prior to development; and that a safety management study will be required at that time.

(ii) Discussion

There does appear to be some confusion and interchangeability in the submissions about land use and development, two distinct terms used in planning. The Panel is satisfied from the submissions of APA and Multinet however, that they are not objecting to the Amendment. The Panel considers they are raising important issues associated with the high pressure gas pipelines that will need to be considered at the development stage.

In this case, the proposed zoning (MUZ), gives some comfort to the Panel about the range of use and development that may occur when full consideration is given to the high pressure

gas pipeline issue. The MUZ provides for a wide range of uses, both 'sensitive' (for example dwellings and accommodation) and 'non-sensitive' (for example office, shop, industry (with restrictions), warehouse). The Panel is satisfied that development of the Amendment sites should be possible within the uses allowed in the MUZ, even if residential and other sensitive uses are curtailed due to safety risk assessments.

The Panel notes that development in proximity to high pressure gas pipelines is not an uncommon occurrence³, and could be expected to increase in frequency and significance as an issue as Melbourne and regional centres increase in size and population density.

In relation to the SPPF clause raised by APA, the Panel considers the first strategy under Clause 19.03-6 the most relevant:

Recognise existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided.

It is not clear how pipelines are to be recognised in planning schemes, and in this case recognition is neither in the scheme or planned in the Amendment. It would be less than helpful to do so in a relatively small site specific Amendment as is proposed here. If such recognition or other improvement in treatment of pipelines in planning is needed or proposed, then this should be done via a Statewide control. The Panel notes that the clause appears to be conditioned to allow pipeline protection as an alternative to planning scheme recognition.

As noted in the letter from Council to the Minister for Planning, the Panel is aware that there is an interdepartmental working group⁴ with industry representation which has been established to consider planning and development issues around high pressure gas pipelines. The Panel considers Council should consider referring these particular sites to the Committee as a case study to highlight the complexities that can occur when balancing urban development and intensification with the (low) risks posed by such essential infrastructure.

(iii) Panel conclusion

The Panel concludes that the presence of the high pressure gas pipelines adjacent to the Amendment sites is likely to impose the need for additional safety and risk assessment and may put constraints on development. However the Panel is satisfied that these issues can be addressed at the development stage, and that the MUZ should provide the opportunity for an appropriate range of uses.

The Panel does not recommend a change to the Amendment as a result of these submissions but considers that Council should refer the issue to the Land Development Around Pipelines Working Group.

³ See for example the Panel Report for Greater Geelong C285.

⁴ The Land Development Around Pipelines Working Group is being coordinated by Energy Safe Victoria.

5 Conclusions and recommendation

The Panel concludes that Amendment C122 Part 2 to the Monash Planning Scheme is supported in policy and should proceed. The presence of high pressure gas pipelines in the vicinity is an issue that will need to be addressed more fulsomely at the time of development; but the Panel is satisfied that the proposed zoning provides for appropriate flexibility in land use to respond to any implications of the pipelines at that time.

The Panel recommends:

- 1. Adopt Monash Planning Scheme Amendment C122 Part 2 as exhibited.**

Appendix A Further submissions from Multinet Gas and APA Group

Multinet Gas Distribution
ABN 53 634 214 009



Multinet Gas
43-45 Centreway
Mt Waverley VIC 3149
PO Box 449
Mt Waverley VIC 3149
T 03 8846 9900
F 03 8846 9999
www.multinetgas.com.au

Our Reference: [x]

11 May, 2015

Mr Nick Wimbush
Panel Chair
Planning Panels Victoria
1 Spring Street
Melbourne Victoria 3001

Dear Nick

Re: Monash Planning Scheme Amendment C122 Part 2: Precinct 11 (Hughesdale) and Precinct 13 (Oakleigh) mixed Use Rezoning

In reference to the recent letter dated 1 May 2015 regarding the above mentioned issue Multinet Gas wish to clarify what any changes to a planning scheme mean to a pipeline owner or operator.

There are strict safety requirements Multinet Gas need to meet in regards to operating high pressure gas pipelines. One of these requirements is to assess any encroachment or changes to the environment along the pipeline route which currently has a rating classification of T1 for that area in question (T1 meaning residential land developed for community living with multiple dwellings).

Any changes to a planning scheme that impacts the type of development along a pipeline route need to be assessed to identify any impact the changes have on the integrity of the pipeline and the pipeline location classification rating as explained in a letter directed to Dr Andi Diamond dated 10 November 2014.

Multinet Gas will need to conduct a Safety Management Study for that section of the pipeline to assess and threats to the integrity of the pipeline and any future changes to location class. Additional control measure may need to be taken under Section 109 of the *Pipelines Act 2005* and Section 21(2) of the *Pipelines Regulations 2007*. Under the direction of Department of State Development, Business and Innovation (DSDBI) has reviewed the proposal with the ESV and has directed Multinet to review the proposal in the re-classification of the current Class of T1. The development will be within the bounds of the pipeline 4.7 kWm² radiation zone and also within the 12.6kWm² radiation zone.

From this a Safety Management Study specific to the develop the C122 Monash Planning Scheme at Dandenong Rd with Neerim Rd, Bletchly & Paddington Rd as part of Planning Scheme Map 6 will need to be undertaken. The Dandenong Rd ,Henry St and Huntingdale Rd, Part of Planning Scheme Map 13, under the Mixed Used Zone (MUZ) applications would be required to be assessed as part of the Safety Management Study



Multinet Gas are not objecting to the amendment but require that all parties involved are aware that a Safety Management Study under Australian Standard AS2885 is mandatory and shall be conducted as part of the planning stage prior to development begins. This is to ensure integrity of the pipeline or safety to the public is not put into question.

For further information, please contact Neil Pendergast on T: (03) 8846 9916 or email to Neil.Pendergast@ue.com.au

Kind Regards,

per N.J.P.

Mark Beech
General Manager Gas Network
Multinet Gas

APA Group E-mail: 15 May 2015

Dear Greta,

As per our discussion yesterday, APA GasNet does not object to Monash Planning Scheme Amendment C122.

The matters raised in our submission dated 17 November 2014 are recommendations to the future use of the sites, that relate to the Australian Standards 2885 and the recommended land use and development surrounding high pressure gas transmission pipelines. These standards have been developed to protect the integrity of such pipelines to prevent loss of life and injury in the unlikely event of a full bore rupture of a pipeline.

It is up to local and state planning authorities to decide whether such risks are proportionate to the type of development and/or land use change proposed (we reference the State Planning Provision Framework, 19.03-6, Pipeline infrastructure). Should this amendment become successful, the proposed land use change may attract the need for further actions such as a Safety Management Study and risk assessments.

If you have any further queries, please do not hesitate to contact me or Lachlan Marshall.

Kind Regards,
Miles Verheijden
Land Services Officer (Planning)

Heritage, Environment & Land Management
APA Group
180 Greens Road, Dandenong, Vic 3175
Phone: 03 9797 5265

Email: miles.verheijden@apa.com.au

Appendix B Correspondence to Minister for Planning

Contact John Rantino
Direct 03 9258 3664
Email john.rantino@maddocks.com.au
Our Ref JXR-6432849

11 June 2015

The Hon. Richard Wynne MP
Minister for Planning
Level 20
1 Spring Street
MELBOURNE VIC 3000

Dear Minister

Amendment C122 Part 2 to the Monash Planning Scheme

We act on behalf of Monash City Council, the proponent of the above planning scheme amendment (**Amendment**).

During the exhibition of the Amendment, two submissions were received to the rezoning of two small industrial precincts from Industrial 1 to Mixed Use Zone. The submissions were both from gas companies. Both related to high pressure gas pipes located within the vicinity of the precincts. It was unclear from the submissions whether the companies opposed the Amendment or whether they were requesting changes to the Amendment (and, if so, what those changes were). Consequently, Council requested that you appoint a Planning Panel to consider the submissions.

Following a Directions Hearing, the Panel Chair requested that both submitters clarify the nature of their submissions. Both submitters advised in writing that they neither objected to the Amendment nor required changes to the Amendment.

It is therefore evident that Council has received no submissions of the type referred to in section 23(1) of the *Planning and Environment Act 1987*.

It is open to Council to adopt the Amendment without recourse to a Planning Panel.

Accordingly, our client respectfully withdraws its request to you to appoint a Planning Panel to consider the Amendment.

While the Act contemplates the referral of submissions which do not request a change to a planning scheme amendment (s. 23(2)), for the reasons that follow, Council sees no necessity or benefit in so doing in this case.

By way of explanation:

- There is currently no mechanism for the referral of development, or change of use, applications to the utility providers in order to consider the potential impact of development or use on gas or other infrastructure;
- Given the length of many gas pipelines and the range of different locations across Melbourne and Victoria, if the gas companies or other utility providers have issues with respect to the impact of development or use on infrastructure, those issues need to be considered in a more systematic manner than can be addressed via Amendment C122 Part 2.

[6432849: 14928754_1]



Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia
Telephone 61 3 9258 3555
Facsimile 61 3 9258 3888
info@maddocks.com.au
www.maddocks.com.au
DX 259 Melbourne

Interstate offices
Canberra Sydney
Affiliated offices around the world through the
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Maddocks

Council is aware, through the Panel Report for Amendment C285 to the Greater Geelong Planning Scheme, that an inter-agency working group, including the Metropolitan Planning Authority and Energy Safe Victoria, has been investigating a more systematic approach to addressing issues of high pressure gas pipelines (Page 26 of the Panel Report).

Through recent discussions with officers within your Department, we are aware that this working group is still continuing to meet. Council believes this group provides an appropriate vehicle to address this issue, and would be happy for this letter to be referred to the Working Group as a case study.

A copy of the Panel Chair's Direction to the submitters, the submitters' responses and the most recent correspondence from the Panel Chair to Council is attached. Our client would appreciate you passing on its thanks to the Panel Chair again, as he has been instrumental in untangling an unclear process.

If you require any further information, please contact John Rantino on 9258 3694.

Yours sincerely

John Rantino
Partner



Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3000

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Contact John Rantino
Direct 03 9258 3694
Email john.rantino@maddocks.com.au
Our Ref JXR:6432849

3 July 2015

The Hon. Richard Wynne MP
Minister for Planning
Level 20
1 Spring Street
MELBOURNE VIC 3000

Dear Minister

Amendment C122 Part 2 to the Monash Planning Scheme

We refer to our letter to you dated 11 June 2015.

Our client withdraws its request regarding the appointment of the Panel to consider the Amendment and instead will await the Panel's Report.

Yours sincerely

John Rantino
Partner

cc.
Mr N Winbush
Planning Panels Victoria
planning_panels@delwp.vic.gov.au

[6432849; 15060831_1]

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