

**1.6 MONASH PLANNING SCHEME AMENDMENT C129 – FORMER TALBOT QUARRY
1221-1249 CENTRE ROAD OAKLEIGH SOUTH - CONSIDERATION OF PANEL
REPORT
(TP438:SM)**

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

- 1. Receives and notes the Panel report on Amendment C129.*
- 2. Notes that the Panel report recommends:*
 - a. the abandonment of that part of the amendment that proposes to rezone the land (Part1); and*
 - b. The adoption of that part of the amendment that proposes to extend the Environmental Audit Overlay over all of the land (Part 2).*
- 3. Having considered the Panel report in accordance with Section 27(1) of the Planning and Environment Act 1987 (the Act), adopts the recommendation of the Panel and splits Amendment C129 into two parts in accordance with the Panel report.*
- 4. Pursuant to Section 28 of the Act abandons Amendment C129 –Part 1.*
- 5. Pursuant to Section 29(1) of the Act adopts Amendment C129 – Part2.*
- 6. Notes that the Director City Development has written to Panels Victoria to clarify that:*
 - a. Council was clear in position that it did not unconditionally support the rezoning, but considered that the Panel process was an appropriate mechanism for a full review of the complex issues of the site;*
 - b. the notification of the amendment went to approximately 1000 residents within a 1 kilometre radius of the site in Monash and Kingston and was considered adequate;*
 - c. the explanatory report followed the format provided by the Ministerial guideline;*
 - d. the explanatory report was reviewed and approved by officers of the Department of Environment Land Water and Planning through the authorisation process; and*
 - e. if the Panel has concern with or suggestions for improvements to the format and structure of information in State standard Explanatory Report template they may wish to raise this as an issue with the Department of Environment Land Water and Planning.*
- 7. Notes that the Panel concluded that:*

- a. *Council is not obligated to purchase the site for open space and it is not the role of the Panel to recommend that it must do so.*
- b. *There is no acknowledged demand for additional public open space in Oakleigh South.*
8. *Resolves not to purchase part or all of the site for Public Open Space.*
9. *Notes that officers will arrange a meeting with residents to discuss the Panel report and answer any questions that may arise.*
10. *Gives notice of the above decisions by writing to the proponent and all submitters to the Amendment.*

PURPOSE OF THIS REPORT

The purpose of this report is to consider the Panel report and recommendations on Amendment C129. The report recommends that Council adopt the recommendations of the Panel and resolves to split the amendment into two parts and abandon Part 1, rezoning of the site to the Comprehensive Development Zone and adopt Part 2, extension of the Environmental Audit Overlay and submit Part 2 of the amendment to the Minister for Planning for approval.

A copy of the Panel report is provided at Attachment 1.

BACKGROUND

There have been ongoing discussions over a number of years with representatives of the land owner of the former Talbot Avenue Quarry, the Victorian Planning Authority (VPA) and the Environment Planning Authority (EPA). These discussions were instigated by the owner of the Talbot Avenue Quarry so as to progress the potential remediation process, rezoning and redevelopment of the former quarry and land-fill site known as the Talbot Road Quarry.

The 18.8 hectare site is currently zoned General Residential 2 (western portion) and Special Use 2 – Earth and Energy Resources Industry. As the quarrying and landfill operations have ceased many years ago, the land owner requested a rezoning of the land to facilitate redevelopment for residential or other suitable urban uses dependent on the suitability of the site for such uses.

The majority of the land is also subject to an Environmental Audit Overlay. This overlay identifies potentially contaminated land and is designed to:

“To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.”

As noted above, the majority of site is currently within an Environmental Overlay and, as a former landfill, is categorised as a “high risk” site under the EPA framework for dealing with contamination. The current and standard regulatory

approach to dealing with these sites requires that a Statement or certificate of Environmental Audit in accordance with Section 53Z of the Environment Protection Act 1970 for the site should be provided to Council prior to any consideration of a planning scheme amendment request. This would provide certainty that the land is capable of being used for residential purposes prior to being rezoned. This approach is consistent with the requirements of the Potentially Contaminated Land – General Practice Note – 2005, Department of Sustainability and Environment and the Minister’s Direction No.1 – Potentially Contaminated Land.

However, the owner indicated that undertaking an audit prior to the rezoning would not provide sufficient certainty to warrant the expense and effort of remediating the site given its size and complexity. They also advised that this is not the process undertaken more recently for several sites in metropolitan Melbourne, including the former Amcor paper mill site in Alphington.

In support of the rezoning request, and the staged process that was proposed, the owner commissioned several site investigation reports by EPA endorsed environmental and contamination specialists.

These reports have confirmed that there are both contamination, particularly gas and ground water issues, and geotechnical issues that need to be addressed as part of the remediation of the site, and prior to the redevelopment of the site.

These reports indicated that it is feasible to remediate and manage the site to a standard that would allow for urban uses, including residential.

On the basis of the initial reports the owners requested that a staged approach to the remediation process be taken. This proposed process was the approach set out in the *Potentially Contaminated Land Advisory Committee Report 2012* prepared for the Victorian State Government. The Government indicated at the time that they were supportive of the processes outlined in the Advisory Committee Report and would commence the review policy framework. (*Although the bulk of the Advisory Committee report was broadly supported by the State Government in 2013, to date none of the recommendations of the Advisory Committee Report have been implemented.*) The staged approach was also supported by other State Government Departments, including the EPA that Council sought advice from.

The process proposed would provide for the remediation of the site and allow the audit process to occur in a series of steps, as each stage of the remediation is

determined completed and signed off by EPA approved auditors.

This approach proposed to delay the completion of the environmental audit until prior to the commencement of any redevelopment. This was intended to provide certainty about the rezoning to an urban zone, allowing planning permits to be issued for a range of urban uses and so as to provide flexibility to progressively remediate the site to standard that suits the proposed uses.

To facilitate the staged approach and provide flexibility for range of uses, the amendment proposed the use of a Comprehensive Development Zone (CDZ) which allows the inclusion of site specific requirements and a tailored list of potentially appropriate uses. In addition to allowing a staged and tailored approach to address contamination, the CDZ includes for provision of a Development Plan that would broadly set out the general development forms and land uses proposed for the site.

In response to the request from the land owner, at its meeting on 27 September 2016, Council resolved to request authorisation from the Minister for Planning to prepare and exhibit an amendment to the Monash Planning Scheme to rezone land at 1221-1249 Centre Road, Oakleigh South to the Comprehensive Development zone.

As part of seeking authorization for the amendment, Council submitted the draft amendment documentation, including the Explanatory Report to the Minister for Planning for consideration. The form and content of the Explanatory Report was approved as part of the Authorisation process.

The approach proposed to the rezoning involves the use of a Comprehensive Development Zone (CDZ), which includes requirements for the submission of:

- A Site Environmental Strategy Plan (SESP); and
- An Environmental Site Assessment (ESP).

Both the SESP and ESP were required to be endorsed by an EPA approved auditor and submitted with any planning permit application.

Once a planning permit had issued an environmental audit would need to be undertaken and state that the land is fit for the purpose provided for by the planning permit. This audit would need to occur prior to any development commencing on the site. Should the audit find that residential development is not possible given the contamination levels of the site, the proposed zone would allow for consideration of a range of commercial and other non-sensitive uses.

Overview of Amendment C129

Amendment C129 proposed to:

- Rezone the land at 1221-1249 Centre Road, Oakleigh South from part Special Use Zone Schedule 2 and General Residential Zone Schedule 2 to the Comprehensive Development Zone Schedule 2.
- Introduce Schedule 2 of the Comprehensive Development Zone to the Monash Planning Scheme, including the requirements, as part of any future planning permit processes, to:
 - prepare an Overall Development Plan for the subject site and
 - submit a Site Environmental Strategy Plan (SESP) and an Environmental Site Assessment (ESA), which are to be reviewed and approved to ensure they adequately address and manage any residual site contamination issues from the past land uses.
- Make a minor correction to the boundary of the existing Environmental Audit Overlay to incorporate the whole of 1221-1249 Centre Road, Oakleigh South, within the Overlay.
- Amend Clause 21.04 and Clause 22.04 within the Local Planning Policy Framework to refer to urban renewal sites, including the subject land.
- Amend Schedule 81.01 (Incorporated Document) to include the Comprehensive Development Plan (CDP).

Exhibition of Amendment C129

Amendment C129 was exhibited between 2 February 2017 and 3 March 2017.

The consultation included:

- Letter and formal Notice of Amendment to approximately 1000 owners and occupiers, which is approximately a 1 kilometre radius of the site as shown in Attachment 2.
- Public notice in the Monash Bulletin and the Victorian Government Gazette.
- Information available on Council's website.
- Signage on the site, displaying the Notice of Amendment.
- A drop in information session on Wednesday 15 February 2017, from 4-7pm, held in the Clayton Community Centre. Council officers facilitated the session, with the assistance of representatives of the site owners. Approximately 15 people attended this session.

Seven submissions were received to the amendment from:

- Four local residents
- The Victorian Planning Authority
- The Environment Protection Authority
- The City of Kingston (officer submission)

Advice was also received from South East Water, confirming it had no comment and did not wish to be further notified of the amendment.

After the formal exhibition period a community forum was held at Oakleigh in September 2017 to discuss issues associated with the proposed Amendment and the former quarry site. Approximately 40 people attended this session.

Issues raised in submissions to the amendment

All submitters agreed that, in its current condition, the land is underused, in poor condition, and a blight on the local area. However, the submitters raised a number of concerns with regard to the potential future uses and development of the site, as well as the proposed process to address the environmental issues and other site conditions.

Issues main issues raised can be summarised:

- The staged approach to considering contamination and remediation of the site in the rezoning process rather than requiring an environmental audit upfront prior to rezoning.
- The potential future development of the site for high density development.
- The detail of the structure of the proposed planning controls, including the approval process for any future development.

Council considered the responses received as part of the exhibition of the amendment at its meeting of 30 May 2017 and resolved to request an independent Panel to consider all submissions and the proposed Amendment.

Whilst the rezoning of the land from Special Use Extractive was generally considered appropriate by all parties, at issue was the appropriateness of the staged approach as proposed by the applicant and the potential for a future residential development as shown on the proponent's website. (This was also part of an earlier application to Council which was withdrawn.)

Given the complexity of the issues, the varying and changing advice from the EPA, VPA and the environmental experts, referral of the amendment to the Panel was considered an appropriate mechanism to test not only the rezoning of the property but the staged process proposed by the applicant.

In deciding to refer the Amendment and submissions to an independent Panel it was noted in the May 2017 Council report that the:

“proposed rezoning and application of the Comprehensive Development Zone was not a guarantee that the land can be used for sensitive uses such as residential nor did it in any way bind Council to approve any future development if that development is considered inappropriate from either an environmental, land use or built form outcome.”

It was also noted that:

“The changes retain the staged approach and provide sufficient certainty for the developers to undertake the complete environmental works necessary to allow for the redevelopment of the site to a range of potential suitable urban uses.

In the light of these recommendations, it is considered that there is merit in continuing with the Amendment. However, the changes do not resolve all the issues raised by submitters. Therefore, it is recommended the Amendment is referred to an Independent Planning Panel for consideration.”

PURPOSE/DISCUSSION

Council referred the amendment to an independent Panel for consideration of the amendment and all submissions made to the amendment.

Panel hearing

A two person independent Panel was appointed by the Minister for Planning to consider the submissions to Amendment C129, and to provide a report and recommendations for Council’s further consideration.

All submissions received were referred to the Panel and submitters were invited to attend and present their views at the Panel hearing.

The Panel hearing was held over the following days:

- 8, 10 and 11 August, 12 and 30 October 2017; and
- 4, 5, 6 and 14 June 2018,

at Planning Panels Victoria and Monash Civic Centre.

At the commencement of the Panel hearing there were 7 submitters who wished to be heard:

- 4 local residents,
- the Victorian Planning Authority,
- the Environment Protection Authority; and
- Kingston City Council

After the commencement of the Panel hearing, 343 objecting submissions, the majority of which were pro forma submissions, were received by Council from local residents. These submissions were referred to the Panel as late submissions. Subsequent to the referral of the late submissions several other parties were admitted to the Panel process to present their submissions. All additional submissions were considered by the Panel.

The Panel report

The Panel hearing and the Panel report provide(d) an in depth comprehensive review and analysis of the issues of the amendment. Consistent with the issues raised in the initial submissions to the exhibition of the amendment the Panel report refers to the following main themes:

- Contamination, geotechnical and remediation issues;
- Zoning and planning scheme issues; and
- Other issues

Overall the Panel made the following recommendation:

*“Based on the reasons set out in this Report, principally the extent of contamination, incomplete and ongoing environmental information, inadequate planning for ongoing management, geotechnical uncertainties, and statutory drafting difficulties, **the Panel recommends that, except for the proposed extension to the Environmental Audit Overlay which should proceed, the Monash Planning Scheme Amendment**Error! Use the Home tab to apply AAA Panel Name to the text that you want to appear here. **C129 be abandoned.**”*

Contamination, geotechnical and remediation issues

The contamination issues considered generally relate to soil contamination, landfill gas, groundwater, leachate and geotechnical issues.

The Panel concluded:

“The evidence concerning site contamination and remediation was incomplete and inadequate to persuade the Panel that the master planned urban community which is intended to follow the rezoning and shown on the Comprehensive Development Plan is likely to be a feasible outcome.

The Panel considers that the geotechnical or structural issues and their interaction with the management of the contamination remediation works have not been adequately addressed.”

Officer comment

As noted in previous reports, the site is a complex one that is made more difficult by the history of the site as a sand quarry and land fill. The information on the history of the site is incomplete. The amendment proceeded on the basis that the technical reports provided by consultants to the land owner indicated that the land could be remediated. However, despite ongoing research and the lengthy

Panel hearing the environmental consultants/auditors have not been able to confirm that the land can be made suitable for urban residential uses. Whilst the applicant for the rezoning was aiming to develop the land for residential purposes, Council was always clear that this would only be possible if the site conditions and any remediation proved acceptable. Whilst the proposed Comprehensive Development zone did make provision for residential development, it also identified a range of other non-sensitive uses that may be appropriate in the event that residential was not possible. Further to this, Council was unwilling to consider a development that included residential as part of this process until it was determined through audits that this was a suitable outcome. This was why the combined permit and rezoning application originally lodged by the land owner in 2015 was withdrawn in 2016 as a condition of exhibiting Amendment C129.

Zoning and planning scheme issues

The zoning and planning scheme issues cover the proposed staged approach to the remediation and rezoning of the site prior to completion of an audit, compliance with ongoing management arrangements.

The Panel concluded:

“No suitable ongoing strategic management arrangements have been identified to manage risks during the lengthy staged development phases and in the post development period. The Panel considers that the CDZ schedule, even after several redrafts by the Proponent and the Council, fails to adequately set the framework for the ongoing management of the remediation works and regulation of the use of land.

The site’s environmental characteristics are more uncertain and hazardous than those for which a SESP approach, as discussed in the Potentially Contaminated Land Controls Advisory Committee Report of 2012, was envisaged. Not all of the criteria that were recommended by the Advisory Committee as needing to be met before adopting a SESP approach to site assessment in advance of a rezoning are satisfied.

The parties failed to persuade the Panel that there are any precedents for this proposal – no sites to which the Panel was referred were comparable in terms of scale together with the combination of geotechnical and contamination characteristics found at the subject site.

The uncertainties which would remain, both at the time of rezoning and for some years to come, about the use able to be made of the subject land, makes the proposed statutory documentation confused and unworkable.

While the strategic planning policies give some general support to residential development in this locality, this presupposes the site itself can be made suitable.

The information to hand recommends against the rezoning of this site in advance of a statutory environmental audit due to the size of this site; the extent and the even now not fully understood characteristics of the unregulated landfill(s); the absence of any buffer to existing and new residential development; and the site's structural problems. These factors mean that only an environmental audit of the entire site and a final structural assessment will properly identify the purposes for which the land can be used and developed. The Panel considers that it would be premature to rezone the land before those investigations are complete."

Officer comment

The amendment was drafted to accord with the alternative planning process set out in the *Potentially Contaminated Land Controls Advisory Committee Report of 2012*. The inherent difficulty in drafting the amendment is that the contamination reports were never completed to a level that provided confidence for a particular land use or development and consequently the proposed zone needed a high degree of flexibility to accommodate a range of potential uses.

In addition to the lack of clarity around the environmental suitability of the site, although the *Potentially Contaminated Land Controls Advisory Committee Report of 2012* was broadly supported by the State government in 2013, no progress has been made in the preparation of planning scheme material to support the staged approach.

Fundamentally the amendment process has reinforced the need to undertake an adequate assessment of the suitability of land for redevelopment prior to rezoning, rather than a staged approach which becomes complex and may result in onerous and unworkable ongoing management regimes for the individual land owners into the future. The Panel process allowed Council to test and receive advice as to whether the proposal to stage remediation and audits set out in *Potentially Contaminated Land Controls Advisory Committee Report of 2012* was able to be supported given the complex issues associated with this site.

Other issues

In addition to the contamination and planning scheme issues, the Panel considered a range of other matters raised in submissions. These included the need for the land as open space, the extension of the Environmental Audit Overlay, community consultation on the amendment and future amenity concerns.

Public Open space

The Panel concluded that, *“There is no identified urgent demand for public open space in this locality.”*

Officer comment – Public Open Space

The area immediately around the Talbot quarry includes Talbot and Davies Reserves. The views of the Panel are supported in not requiring the land for public open space. In addition to there being no pressing need for additional public open space in this location, the high level of contamination and remediation required make this land unsuitable for public open space.

Community consultation

The Panel also made a number of comments in the report about the adequacy of the historical community consultation for the site and the appropriateness of the amendment documentation. In particular the Panel stated that it considered the Explanatory report as *“less than informative about the extent of remediation required for this contaminated land to be used for urban purposes.”* And this resulted in *“consequential inadequate notice to would-be submitters about the true nature of the site’s environmental problems and the proposal”*.

Officer comment – Adequacy of consultation

Notification of the amendment was extensive, going to approximately 1000 residents within a 1 kilometre radius of the site. More detail on the notification and consultation process is set out earlier in this report.

The Panel raised concerns about the adequacy of the consultation for the site and the potential that many residents were not aware of what was proposed as a result of the notification process. The Panel is critical of the Explanatory Report for what it considers to be not highlighting the former use of the site and the potential for contamination.

The Explanatory Report was prepared in accordance with the Ministers guidelines and reviewed by the Department of Planning as part of the authorisation process. In addition to being approved by the Department of Planning the Explanatory report notes on the first page that the land was a former extractive industry and land fill site. At page 1 the Explanatory report also notes that a full environmental assessment is required for confirmation that the land can be developed for urban uses. In addition the letter sent with the Notice of Amendment provided an explanation of the amendment and the former uses of the site as a quarry and landfill.

The Explanatory Report then discusses the proposed rezoning under the section entitled Ministerial Direction 1: Potentially Contaminated land. This format is the

format that Council is required to follow when preparing amendment documents, to suggest otherwise is unhelpful.

CONSULTATION

Consultation was undertaken in accordance with the requirements of the Planning and Environment Act as set out earlier in this report.

As the Panel Hearing has concluded there are no further formal opportunities for community consultation as part of the consideration of Amendment C129.

All parties who made a submission have been advised that Amendment C129 and the Panel Report was being considered by Council at this meeting.

CONCLUSION

As the Panel has noted the amendment process has been lengthy and difficult issue to deal with. As a former sand quarry and land fill the site is extremely complex.

Council proceeded with the amendment on the basis that the issues may be able to be worked through in a staged manner and that there was merit in investigating the issues through the Panel hearing process. Unfortunately the complexity and uncertainty of the remediation for the site fundamentally drives how the land should be dealt with. Given that the environmental consultants have not been able to confirm that the land can be developed and used for urban purposes it is appropriate to abandon that part of the amendment that proposes to rezone the land. The site is too complex and there is simply insufficient information to warrant a process that departs from the standard audit process. On that basis the recommendation of the Panel to abandon the rezoning proposed by the amendment should be accepted.

It should be noted that the abandonment of the amendment does not preclude the remediation and redevelopment of the site. Should the owner wish to proceed with any redevelopment they need to complete the remediation in accordance with the current standard process set out in the *Potentially Contaminated Land – General Practice Note – 2005, Department of Sustainability and Environment and the Minister’s Direction No.1 – Potentially Contaminated Land*.

The extension of the Environmental Audit Overlay to the balance of the site will fix up a long standing anomaly in the Monash Planning Scheme. This part of the amendment should be adopted and submitted to the Minister for Planning for approval.

Attachments

1. Monash Planning Scheme Amendment C129 Panel Report 2018

2. Map of C129 notification area