Planning and Environment Act 1987

WHITEHORSE PLANNING SCHEME

AMENDMENT C41 AND PLANNING PERMIT WH/12727

EXPLANATORY REPORT

Who is the planning authority?

This amendment has been prepared by the Whitehorse City Council, which is the planning authority for this amendment.

The amendment has been made at the request of The Planning Group on behalf of Phileo Australia Limited.

The amendment has been prepared under Division 5 of Part 4 of the *Planning and Environment Act 1987* to facilitate a combined Amendment and planning permit process.

The Combined Permit and Amendment Process

Division 5 of Part 4 of the *Planning and Environment Act 1987* provides for a combined permit and amendment process. The provisions provide for a planning authority to consider an application for a planning permit concurrently with an amendment to a planning scheme.

The Minister for Planning has granted a permit at the same time as the Amendment has been approved.

The application for a permit was made in respect of the northern and western part of the land affected by the Amendment (which is included in a Residential 1 Zone) under Division 5 of Part 4 of the Act.

Land affected by the amendment.

The amendment applies to the land that is known as 14 Federation Street, Box Hill and as described in Certificate of Title Volume 6520 Folio 967 (the subject land). The subject land is irregular in shape and has a width of 275 metres (approx) along the northern boundary, a depth of 270 metres (approx) along the western boundary, with a total site area of 7.035 hectares.

The subject land was originally the former Standard Brickworks and associated quarry. The brickworks commenced operation in approximately 1884 and ceased operation in 1988. The land was then used as a landfill between 1990 and August 1999. The former Hoffman Kiln and other brick making buildings in the south-western corner of the subject land have been included on the Victorian Heritage Register. The Whitehorse Planning Scheme includes a Heritage Overlay over this section of the subject land, which is not affected by this amendment.

What the amendment and Permit application does.

The amendment rezoned that part of the land on the northern and western sides of 14 Federation Street, Box Hill from an Industrial 1 Zone (IN1Z) to a Residential 1 Zone (R1Z) and the balance of the site, being the former landfill and Brickworks complex from an Industrial 1 Zone (IN1Z) to a Special Use Zone 3 (SUZ3). The amendment has changed the zoning Map No. 1 of the Whitehorse Planning Scheme. The amendment has also replaced the previous Special Use Zone Schedule 3 (Extractive Industry). The last remaining extractive industrial site in the Whitehorse Planning Scheme was rezoned as a result of the approval of Amendment C63 to the Whitehorse Planning Scheme.

The Environmental Audit Overlay (EAO) and the Heritage Overlay (HO5) affecting the site have not been altered by the amendment.

The Planning Application WH/12727 was considered concurrently with the Planning Scheme Amendment. The plans accompanying the application show:

- Seventy-nine (79) dwellings (71 double storey and 8 three storey) to be constructed around the northern and western periphery of the site.
- The size of the dwellings ranges between $100m^2$ to $200m^2$ and are mainly two and three bedroom residences, with several four bedroom (including study) residences.
- Materials include face brickwork for external walls to first floor window sill level and painted Harditex above brickwork, timber windows, pitched tiled roofs, metal deck to flat roofs and timber framed pergolas.
- Three vehicular access points to service the residential component from Federation Street, Mont Albert Road extension and Surrey Drive. The proposed vehicular access for 12 of the dwellings in the north-east corner of the site is proposed over Council land along Surrey Drive.
- Provision of secluded open space for the dwellings.
- Car parking is provided to the rear of a number of the dwellings and accessed via rear accessways.
- A landscape buffer measuring between 2.5 metres and 3 metres will be provided along the northern boundary of the site and a 1.0 metre landscape strip is provided along the western boundary.
- 2.3 hectares of communal open space area adjacent to the dwellings and bordering Surrey Drive.

The amendment and Planning Application WH/12727 are supported by the following documents:
- A planning submission by The Planning Group.
- A Traffic Engineering Assessment and Supplementary Report by Turnbull Fenner.
- Environmental Site Assessment by Golders Associates.
- Completion and Rehabilitation Plan by Golders Associates.
- Monitoring and Cap Construction Report by Golders Associates.
- Risk and Management Assessment by Golders Associates.
- Geotechnical Investigation by AS James Pty Ltd.
- Site Management Plan by Golders Associates.
- Environmental Audits and Statements.

Strategic assessment of the amendment

- Why is the amendment required?

The closure of the Brickworks in 1988 and the conclusion of the land filling operation in 1999, indicates that the industrial zoning is no longer appropriate. The landfill operation has ceased and the rehabilitation of the subject land has been carried out generally in accordance with a Site Rehabilitation Plan approved by the Environmental Protection Authority (EPA). The industrial land use is no longer appropriate in this locality and it is unlikely that the subject land would be zoned for industrial uses in the future.

The Panel also recommended that an Environmental Audit of the whole site be undertaken prior to further consideration of the amendment and that subject to a satisfactory report that the amendment be adopted. The audits were completed on 24 January 2006 and divide the site into three stages and the findings were as follows:

<u>Stage 1 – Proposed Residential Development Area</u>
This Environmental Audit Report was issued on 18 October 2004 and relates to the land along the north and north-western boundaries of the site, which is to be developed for the 79 dwellings. A Statement of Environmental Audit was issued on the same date which states that the Stage 1 area is suitable for sensitive uses (including low, medium and high density residential use), recreation/open

space, commercial uses and industrial uses, subject to conditions relating to groundwater, landfill gas monitoring, gas venting systems for new buildings, and implementation of a Site Management Plan.

Stage 2 - Former Landfill

A combined Environmental Audit Report for Stages 2 and 3 was issued on 24 January 2006 and relates to the balance of the land not subject to the residential development application. A Statement of Environmental Audit was issued on the same date which states that the Stage 2 area is suitable for recreation/open space, commercial uses and industrial uses, subject to conditions relating to groundwater and leachate, implementation of a Site Management Plan and overarching Environment Improvement Plan, and ongoing management of landfill gas. That is, at this point in time, residential use or other sensitive uses are not deemed appropriate.

Stage 3 – Brickworks Buildings

A combined Environmental Audit Report for Stages 2 and 3 was issued on 24 January 2006 and relates to the balance of the land not subject to the residential development application. A Statement of Environmental Audit was issued on the same date which states that the Stage 3 area is suitable for commercial and industrial uses, subject to conditions relating to groundwater and leachate, retention of the Hoffman kiln building, restricted access to the Hoffman kiln building and implementation of a Site Management Plan and overarching Environment Improvement Plan. That is, at this point in time, residential use or other sensitive uses are not deemed appropriate. A Place of Worship falls within a commercial category for the purpose of environmental audits but there may be implications for some aspects of the use, which may be sensitive, such as child care.

The rezoning Stage 1 of the subject land from an Industrial 1 Zone to a Residential 1 Zone was required to enable development of the proposed residential development of the north and north-west sections of the subject land for medium density housing. This is consistent with the third recommendation of the Panel report on the amendment.

Given the Statements of Environmental Audit the inclusion of Stages 2 and 3 in a Residential 1 Zone, as exhibited, was considered to be inappropriate and as the ongoing industrial use is unlikely an alternative zone was required. The appropriate zone was considered to be a Special Use Zone.

The residential zoning on Stage 1 reflects the predominant nature of the surrounding uses and development given the residential land adjacent to the north, east and west boundaries of the subject land. The Special Use Zone for the balance of the site provides recognition of the possible long-term future use of the site for residential purposes by allowing very limited use or development sympathetic to the surrounding residential area in the short to medium term in recognition of its environmental issues.

It is considered that there should be some clear direction in the Planning Scheme about the future potential of this land, as the site is identified as a strategic redevelopment site in the MSS. A new Local Policy has been included at Clause 22.15 of the Planning Scheme '14 Federation Street, Box Hill'. The Local Policy ensures that any future use and development of the land is in accordance with any Statements of Environmental Audit, and recognises that the land has potential for future residential development following the resolution of environmental issues, and subject to Environmental Audit reports confirming the appropriateness of any such use.

The amendment achieves the desirable planning outcomes identified by the Panel, including avoiding the development of the land for industrial purposes and encouraging residential development on those parts of the site demonstrated to be suitable for this purpose.

There is the ability to adopt Amendment C41 with these changes. The change to rezone part of the land to a Special Use Zone has been considered as part of the current Amendment, as it allows a very limited range of uses and development and does not raise new issues of concern or potential impacts for surrounding residents. In addition there are no land uses prohibited under the Residential 1 Zone that the Special Use Zone would permit.

- How does the amendment implement the objectives of planning in Victoria?

The objectives of planning in Victoria seek to provide for the fair, orderly economic and sustainable use and development of land. In particular planning needs to secure a pleasant and safe living and recreational environment for all Victorians. The amendment and associated planning permit allow for an appropriate residential development on land without environmental constraints and a Special Use Zone that will ensure that a safe living environment is provided for future residents and that the environmentally constrained land is not used for residential or other sensitive uses.

The environmental, social and economic effects of the amendment and development and its consistency with state and local policies are addressed in the following sections.

- How does the amendment address the environmental effects and any relevant social and economic effects?

The amendment and associated permit enable the northern and north-western sections of the subject land to be developed for residential purposes.

Social Effects

The rezoning of part of the subject land for residential and open space development will have beneficial social impacts in terms of broader strategic policies regarding urban consolidation and providing greater housing choice, as well as ensuring that the subject site is developed for purposes, which are compatible with the surrounding area.

Economic Effects

The rezoning and residential development is not expected to have any significant economic impacts.

Environmental Effects

The subject land has a number of environmental issues that are required to be managed. The environmental issues relate to settlement of the landfill, potential gas emissions, leachate, stormwater and drainage, construction considerations and landscaping. The rezoning and residential development, on Stage 1, is not envisaged to have any significant environmental impacts on the locality subject to appropriate environmental management being implemented for Stages 2 and 3.

The former use of the subject land as a waste landfill has required the preparation and implementation of a Site Rehabilitation Plan. The Environment Protection Authority has monitored the rehabilitation of the subject land. This rehabilitation plan required the landfill area to be capped with a compacted clay soil and revegetated. In addition, a site management plan has been prepared to manage the landfill filled area and future works on the subject land.

Environmental Monitoring

There has been environmental monitoring undertaken for gas emissions, leachate and effect on stormwater from the materials in the landfill. Ongoing testing and monitoring will continue to ensure the appropriate management of these environmental issues. Permit WH/12727 includes references back to the Statements of Audit, a Site Management Plan (SMP) and an Environmental Improvement Plan (EIP), and also includes requirements for financial assurances to deal with a range of contingencies that may arise from the former landfill. A Pollution Abatement Notice (PAN) issued by the EPA also includes a separate requirement for financial assurance to ensure that the on-going monitoring and management requirements of the PAN can be met.

The fundamental principals behind the permit conditions are that any contamination arising from the land fill site should be managed such that there is no unacceptable impact on the uses proposed on Stage 1, and that the full responsibility and financial burden of monitoring/maintaining the land fill should remain with the current owner at this point in time.

In addition, the inclusion of Stages 2 and 3 of the property in a Special Use Zone ensures that the environmental issues are effectively managed to protect the sensitive uses on the site and to ensure consistency with the Statements of Environmental Audit for these two stages.

Based on the outcomes of the Environmental Audits, and environmental and legal advice provided to the planning authority, the former landfill is not recommended to be used or developed for any purpose at this time. The Panel Report states that the EPA advised at the hearing that the land should be regarded as 'hazardous'. Use of the land for open space or any other purpose should not be contemplated until such time as Council and the EPA are satisfied that it is no longer 'hazardous' and the issues related to its use as a former landfill have been resolved.

- Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment is affected by relevant Ministerial Directions, which are as follows:

- Ministerial Direction No. 1 (Potentially Contaminated Land) seeks to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination. Accordingly, and as directed by the panel, audits have been undertaken for the whole site and three Statements of Environmental Audit provided. These statements support the inclusion of the site in two zones to ensure that sensitive uses, such as residential or open space, are not undertaken within Stages 2 and 3 of the property.

- Ministerial Direction No. 9 (Metropolitan Strategy) seeks to ensure that planning scheme amendments have regard to the Metropolitan Strategy. In particular the provision of additional diverse housing on Stage 1 of the property seeks to create a more compact city close to a Principal Activity Centre and Transit City, while ensuring that it is a great place to be and has a safe living environment. The inclusion of the balance of the site in a Special Use Zone with an additional site specific local planning policy recognises the potential future use of the site for possible residential use subject to the appropriate management of environmental issues on the land.

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

- How does the amendment support or implement the State Planning Policy Framework?

The following policies are most relevant to the proposal:

Clause 11 'Introduction, Goal and Principles': planning and responsible authorities should integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.

Clause 12 'Metropolitan Development' (Melbourne 2030): This policy includes a number of key directions for Metropolitan Melbourne to ensure that land use and transport planning and investment always contribute to economic, social and environmental goals. The key directions include:

- 'A more compact city' which seeks to concentrate new development at activity centres near current infrastructure and in areas best able to cope with change. An important aim is to locate a substantial proportion of new housing in or close to activity centre and other strategic redevelopment sites that offer good access to services and transport. Box Hill is identified as a Principal Activity Centre.
- 'A great place to be' seeks to create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity.

Clause 14 'Settlement': This policy encourages consolidation of existing urban areas while respecting neighbourhood character.

Clause 15 'Environment': Clause 15.06 relates to Soil Contamination and seeks to ensure that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.

Clause 16 'Housing': This policy encourages development of well-designed medium density housing which respects the neighbourhood character, improves housing choice, makes better use of existing infrastructure and improves energy efficiency of housing.

- How does the amendment support or implement the Local Planning Policy Framework?

Municipal Strategic Statement
The following policies are most relevant to the proposal:

Clause 21.02 'Key Issues' identifies four key land use issues of relevance to the municipality. These are Environment, Housing, Economic Activity and Infrastructure.

Clause 21.04 'Strategic Directions' identifies 14 Federation Street as a strategic redevelopment site.

Clause 21.05 'Environment' seeks to protect areas of cultural and heritage significance and seeks to achieve more sustainable development.

Clause 21.06 'Housing' includes a three tiered housing strategy in the Whitehorse Planning Scheme and identifies strategic redevelopment sites as areas of substantial change. These are areas nominated to accommodate increased residential densities. The redevelopment of the sites should provide a diversity of housing compatible with the character and service in the adjoining area. Residential development must also be consistent with the Residential Development Policy at Clause 22.03.

Clause 21.07 'Economic Activity' seeks to facilitate the appropriate development of strategic sites in association with the community. The strategies to achieve this objective include the development of appropriate planning controls and design guidelines for these redevelopment sites. The exhibition of the amendment and draft planning permit, with their consideration by a panel and further refinement through the preparation and consideration of Environmental Audits identified that the inclusion of part of the site in a Residential 1 Zone and the balance of the property in a Special Use Zone is the most appropriate planning outcome for the site.

Local Planning Policies

Clause 22.01 'Heritage Buildings and Precincts' requires development of heritage sites and adjoining sites to respect the significance of a heritage place.

Clause 22.03-4 outlines the objectives and policies for 'substantial change' areas including the need to prepare a master plan for strategic redevelopment sites to facilitate higher density housing on these sites.

In addition Clause 22.15 '14 Federation Street, Box Hill' provides a link between the MSS and Special Use Zone and ensures that the environmental issues on the property and their implications for the future use and development of the property are appropriately recognised.

- Does the amendment make proper use of the Victoria Planning Provisions?

The State and Local Planning Policies along with *Melbourne 2030* are seeking to make appropriate use of strategic sites, particularly those close to significant activity centres. In this situation it is appropriate and consistent with the policies within the planning scheme to include part of the site in a Residential 1 Zone and allow for its development for 79 dwellings. This zone being the most effective to recognise that the site is within a residential area and not suitable for further industrial use.

However, a different tool from the Victoria Planning Provisions is required to recognise that the balance of the site is inappropriate for use and development for sensitive residential activities. Accordingly the Special Use Zone is considered to be the mechanism to recognise the possible long-term future use of the site for residential purposes dependent on resolution of environmental issues. This is consistent with the Practice Note on 'Applying the Special Use Zone' in that other zones, including retention of an industrial zone or inclusion in a business or residential zone is unsuitable. Accordingly, to achieve the required protection of the site from inappropriate development and use the application of the Special Use Zone is warranted.

The inclusion of a new local planning policy also provides an appropriate link between the MSS and the two zones. Both the policy and Special Use Zone schedule are in a form that is accordance with the relevant Practice Notes.

- How does the amendment address the views of any relevant agency?

The amendment and associated planning permit do not create any additional referral requirements. However, extensive consultation was undertaken with the Environment Protection Authority (EPA) and Department of Sustainability and Environment in the review and consideration of the Environmental Audits and associated Statements of Audit. This was to ensure that the audits and statements achieved appropriate linkages between the environmental audit and planning systems.

These discussions have resulted in the final outcome, which includes the provision of a Special Use Zone on part of the land with a limited range of uses and developments and which does not raise new issues of concern or potential impacts for surrounding residents.

The EPA will have an ongoing role in the monitoring of the PAN, SMP and EIP for the site.

- What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

The changes to the Planning Scheme will not generate additional costs in the administration of the Whitehorse Planning Scheme.

Based on the Panel recommendations and the Environmental Audits which have now been completed, it is appropriate to rezone the Stage 1 area to Residential 1 at this time and to support permit WH/12727 for development of 79 dwellings in the north and north-west portions of the site.

Amendment C41 includes the Stage 2 and Stage 3 areas within a 'Special Use Zone Schedule 3, with a new Local Policy in recognition of the environmental issues associated with the land and its future potential.

Where you may inspect this Amendment.

The amendment is available for public inspection, free of charge, during office hours at the following places.

Department of Sustainability and Environment
Planning Information Centre
Ground Floor
8 Nicholson Street
East Melbourne

City of Whitehorse
Planning Department
Nunawading Civic Centre
379-397 Whitehorse Road
Nunawading