WHITEHORSE PLANNING SCHEME

AMENDMENT C41

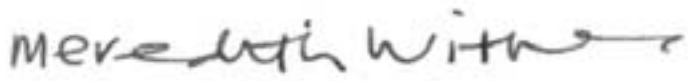
PANEL REPORT

June 2003

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AMENDMENT C41

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Meredith Withers, Chair



Pat Meehan, Member

June 2003

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1 Combined list of submitters

1 INTRODUCTION

This Panel report addresses Amendment C41 to the Whitehorse Planning Scheme and the related draft permit WH/12727. Amendment C41 proposes to rezone the former Box Hill quarry and land fill site at 14 Federation Street, Box Hill from the Industrial 1 Zone to the Residential 1 Zone. Draft permit WH/12727 proposes to develop the north and west part of the land for 79 dwellings and to provide a carriageway easement across land owned by the City of Whitehorse to connect to Surrey Drive.

Phileo Australia Ltd (Phileo) owns the subject land. Phileo is the proponent for the amendment and the applicant for the permit application WH/12727.

The amendment to the Whitehorse Planning Scheme and the application for the residential development of part of the land were considered concurrently under Division 5 (Combined permit and amendment process) of Part 4 (Permits) of the *Planning and Environment Act 1987*.

The Panel's task is to make a recommendation to the City of Whitehorse in response to the following three questions:

1. Is it appropriate to rezone the land from the Industrial 1 Zone to the Residential 1 Zone?

2. Is it appropriate to approve draft permit WH/12727?

3. What conditions should be included in permit WH/12727, if the Panel recommends that a permit be granted?

1.1 THE PANEL

The Panel appointed under the provisions of Sections 153 and 155 of the *Planning and Environment Act 1987* to consider submissions in respect of Amendment C41 to the Whitehorse Planning Scheme and draft permit WH/12727 consisted of:

- Ms Meredith Withers, Chair

- Mr Pat Meehan, Member

Ms Withers is a qualified and experienced town planner. Mr Meehan is a qualified civil engineer and experienced in traffic, transport and land use planning.

1.2 SUBMISSIONS

The City of Whitehorse advised Panels Victoria that it had received 184 submissions in response to the proposed amendment and the draft permit. There were also a number of additional submissions received following an invitation from the City of Whitehorse for further submissions, following the Directions Hearing in December

2002. Many of the additional submissions were from people who had already lodged submissions during the exhibition period.

Many of the submitters are local residents living in the streets surrounding the former Box Hill quarry and land fill. Some submitters lodged more than one submission and others lodged a submission concerning either draft permit WH/12727 or the proposed amendment or both.

Many of the submissions concerned traffic impacts associated with an application to use and develop the southern part of the site for a Place of worship and an Education centre. This application and a related application to subdivide the subject land into two lots are able to be considered under the current Industrial 1 Zone. Both of these applications are subject to review at VCAT. While consideration of these applications fell outside the Panel's jurisdiction, many of the submissions made to the Panel concerned the combined impact of the residential development and Place of worship/Education centre application on the traffic in the local streets and access to the arterial road network.

The Panel was provided with a copy of all written submissions received by the City of Whitehorse with respect to Amendment C41 and draft permit WH/12727 (the residential development application). The Panel has considered all written and oral submissions in making its recommendation on these matters to the City of Whitehorse.

1.3 APPLICATIONS ON THE SUBJECT LAND

The planning processes for considering the future zoning and development of the Box Hill quarry and land fill site appeared confusing to some submitters who had little or no experience with planning processes. This was because there were two separate processes affecting the use and development of the land under way at the same time in different "planning" jurisdictions. The Panel's jurisdiction concerned Amendment C41 and draft permit WH/12727 (residential development of the land).

In addition to Amendment C41 and draft permit WH/12727, two other planning permit applications affecting the subject land had been lodged with the City of Whitehorse at the same time. These planning permit applications can be considered under the Industrial 1 Zone that currently applies to the land. The applications sought a planning permit to:

- Subdivide the land into two lots and provide a carriageway easement and a service easement across part of the land (WH/12874)
- Use and develop the southern part of the land for a Place of worship and an Education centre and provide a carriageway easement across land owned by Whitehorse City Council to enable a connection to Surrey Drive (WH/12879) in the south east part of the land.

These two planning permit applications are the subject of review at VCAT. The VCAT process is completely separate from the Panel process although in this instance the applications affect the same land.

Many submitters were concerned about the combined impact on the local road network if both the residential development and the Place of worship proceed.

Many of the submissions made to the Panel concerned the traffic impacts on local streets and difficulties accessing the arterial road network associated with:

- The residential development and the associated carriageway easement to Surrey Drive
- The Place of worship/Education centre and the associated carriageway easement to Surrey Drive
- The combined effect of the residential development and the Place of worship/Education centre, with or without a carriageway easement to Surrey Drive in the event that planning permits were issued for both developments.

The City of Whitehorse issued a Notice of Decision to Grant a Planning Permit (subject to conditions) for the Place of Worship/Education centre application and the two-lot subdivision application. When considering the applications, the City of Whitehorse decided to delete the proposed carriageway easement to Surrey Drive from the Place of worship car park. All access to/from this development will be to/from Federation Street. This outcome will be achieved by a condition in the permit for the Place of Worship (in the event that one is issued) requiring amended plans that delete the carriageway easement to Surrey Drive in the south east corner of the subject land.

The City of Whitehorse's decision divided the submitters into two groups:

- The Federation Fighters Group on the west side of the Box Hill Quarry/land fill who support the carriageway easement to Surrey Drive because it would distribute the traffic onto Surrey Drive and onto Federation Street, so the effect on Federation Street would be less compared to the no easement/no access option.
- The Eastern Residents Group who oppose the carriageway easement onto Surrey Drive because of the impact of traffic on local streets further to the east and south. This group wants all traffic associated with the Place of worship/ Education centre development to use Federation Street only.

A further complication was that some submitters had not objected to the Place of worship application as originally proposed because it provided for the carriageway easement to Surrey Drive. They felt "caught out" when the City of Whitehorse decided to support the grant of a permit subject to the deletion of the carriageway easement.

However, the planning merits of this decision, the way it was communicated to residents who were not objectors and the parties to the VCAT hearing are outside this Panel's jurisdiction.

The Place of worship/ Education centre and the two lot subdivision applications are subject to review at VCAT. The Panel was advised that the VCAT hearings are likely to be deferred pending the Panel's report on Amendment C41.

While the applications that are subject to an assessment and review process through VCAT are outside this Panel's jurisdiction, the Panel acknowledges that a decision to grant a permit for the Place of worship and Education centre with or without the carriageway easement to Surrey Drive will affect traffic conditions on local streets surrounding the subject land. The impact of traffic on the local street network and access to the arterial road network were key issues identified by the Panel and submitters.

Several authorities also made submissions about the amendment and draft permit WH/12727 including:

- The Environment Protection Authority (EPA)
- VicRoads
- Heritage Victoria
- DNRE
- Yarra Valley Water
- Melbourne Water

The EPA and VicRoads presented submissions at the Hearing.

A list of submitters provided by the City of Whitehorse is at Appendix 1.

1.4 HEARINGS AND INSPECTIONS

The Panel held a Directions Hearing on December 17 2002. At the Directions Hearing the Panel made a number of directions about arrangements for the full Hearing. The arrangements were outlined in a City of Whitehorse letter to all submitters dated 16 January 2003.

In summary the Panel directed:

- Appropriate arrangements for the exchange of expert witness statements in advance of the Hearing.
- Traffic experts to meet in advance of the Hearing to prepare a Statement of Agreed Facts.
- Environmental experts to meet in advance of the Hearing to prepare a Statement of Agreed Facts.
- The traffic issues to be addressed by submitters and experts on the one day. (Due to a later unavoidable change to the timetable, traffic issues were spread over the afternoon and morning of consecutive days of the Hearing).

The Panel also directed Phileo Australia Ltd to provide an independent Environmental Auditor's report for the land subject to Amendment C41 in advance of the Hearing. The Panel had been advised that this report was nearing completion.

The Panel was subsequently advised that it was not possible to provide this report. An Environmental Auditor had been appointed to prepare an environmental report for

the north and west part of the land only and not for all of the land subject to the amendment. Furthermore, the report had not been completed.

The traffic experts produced a Statement of Agreed Facts. However, the environmental experts were unable to produce a Statement of Agreed Facts.

The Panel hearings were held in the Matsudo Room, Box Hill Town Hall, 1022 Whitehorse Road, Box Hill on 11,12,13,17 and 18 March 2003.

The following people appeared at the Panel Hearing.

Submitter	Represented by:
Whitehorse City Council	Mr I Lonie, Partner of Clayton Utz Lawyers. He called as expert witnesses: ▪ Mr R Symons, Traffic Engineering Consultant, Ratio Consultants Pty Ltd ▪ Mr T Biles, Town Planner/Director , Contour Consultants Aust Pty Ltd ▪ Mr F Watt, Environmental Engineer, GHD Pty Ltd
Phileo Australia Ltd and the Planning Group Pty Ltd	Mr I Pitt SC of Best Hooper Solicitors. He called as expert witnesses: ▪ Mr H Turnbull, Director, Traffix Group Pty Ltd, Traffic Engineers and Transport Planners ▪ Ms J Katz , Town Planner/Managing Director, The Planning Group Pty Ltd ▪ Mr R Parker, Principal, Golder Associates Pty Ltd ▪ Mr A Wyatt, Principal Landscape Architect, ERM Pty Ltd Mr Pitt also made available Mr Phil Sinclair, of Coffey Geosciences Pty Ltd, the appointed Environmental Auditor for part of the site. Mr Sinclair provided a briefing to the Panel.
Environment Protection Authority	Stuart McConnell, Principal Environmental Auditor EPA Fergal Grahame , Client Manager, EPA
The Eastern Residents	Nigel Ashton, Traffic Planner
Federation Fighter Group M & L Sevior S Pither G Saldaneri L Hunt R Paykel P Dellagatta V & S Mennilli T & J Roberts G & S Younger R Hamilton	Mr R Traficante. He called as an expert witness ▪ Ms D Donald, Associate, Andrew O'Brien and Associates Pty Ltd

VicRoads	Mr T Robinson, Senior Statutory Planning Officer, Vic Roads
James Noelker	
Mr D Scully (on behalf of Eastern side residents) B Danby M & K Best	Mr D Scully
Ms J Dixon & Mr S Dixon	
Ms L Hunt	
Mr P Ward	
Mr S Collins and Ms B Knight	
West of Elgar Residents' Association Inc	Ms E Meredith (Secretary) Ms J Kavanagh
Box Hill Historical Society Inc	Mr W Orange

The Panel inspected the site on 18 March following conclusion of the Hearing. However, the Panel had viewed the site from outside the boundary fence in early March before the Hearing commenced.

2 PRELIMINARY MATTERS

During the course of the Panel Hearing there were a number of matters raised that require the Panel's comment.

2.1 DISTINCTION BETWEEN SUBMITTERS, ADVOCATES AND EXPERT WITNESSES

At the Directions Hearing and the full Hearing, the Panel Chair explained the differences between submitters, advocates and expert witnesses.

Submitters are those who have an opinion about a particular proposal and who wish to express that opinion to the Panel. Only the Panel may ask questions of submitters.

Advocates are professionals who are acting on behalf of a client. They present a view about the proposal. Only the Panel may ask questions of advocates.

Expert witnesses are qualified either academically or by experience to give evidence in a particular area of expertise eg traffic, planning, urban design, and heritage. Submitters, advocates and the Panel can question expert witnesses.

Questions of clarification can be directed to submitters and advocates at the discretion of the Chair to assist the Panel's understanding of relevant issues.

2.2 THE STATUS OF MR R TRAFICANTE

During the course of the Hearing, the Panel Chair received a letter from Mr S Dixon, a submitter, concerning the status of Mr Traficante in relation to his professional engagement in the matter before the Panel and his employment by the Master Builders Association.

Mr Traficante confirmed that he was engaged as an advocate on behalf of a group of residents living on the west side of the Box Hill quarry and land fill site. These residents had made submissions about Amendment C41.

He also explained to the Panel that he is employed by the Master Builders Association. The Association provided consulting planning services to its members and to other clients outside the building industry.

The Panel appreciated Mr Traficante's clarification and advised it would not be responding in writing to Mr Dixon's letter.

2.3 ALLEGED FAILURE TO NOTIFY

In his submission, Mr Traficante suggested that Mr P Dellagatta, the owner of land adjoining the Box Hill quarry had not been notified about Amendment C41. However, Mr Lonie, on behalf of the City of Whitehorse demonstrated with the reference to the Council's records that this was not the case.

2.4 A FLAWED DECISION MAKING PROCESS

Many of the submitters and submissions received in response to the proposed Amendment C41 and draft permit WH/12727 (the residential development of part of the land) addressed the consequences of the Council's Notice of Decision to Grant a Planning Permit WH/12879 (The Place of worship/Education centre and carriageway easement to Surrey Drive).

The City of Whitehorse's decision in relation to the Place of worship application included conditions:

- Requiring revised plans deleting the proposed carriageway easement in the south east corner of the land over Council land to Surrey Drive.
- Requiring a revised layout for the proposed car park to provide connection through the car park to enable vehicles to enter and exit from Federation Street only.

The effect of the decision was to direct all traffic associated with the Place of worship/Education centre to the streets to the west of the subject land because there would be no connection to Surrey Drive and the streets to the east of the subject land.

This decision divided the submitters of the surrounding neighbourhood into two general groups. Submitters living in streets to the west (Federation Street, Standard Avenue and the Mont Albert Road extension) opposed the decision to delete the connection to Surrey Drive and those submitters in streets to the east (James Street, Kent Road, Alexander Street, and Parkside Avenue etc) supported the decision to delete the connection.

The Panel was advised that some submitters and other residents had not objected to the application for the Place of worship as originally proposed because it included the connection to Surrey Drive. The application as originally lodged provided for some of the traffic associated with the Place of worship to exit the site onto Surrey Drive across a Council owned reserve along the west side of Surrey Drive. The burden of additional traffic on local streets would therefore be shared amongst the wider local street network. However, these "would be" objectors were "caught out" by the City of Whitehorse's decision because they had not lodged an objection. The failure to object to this application affected their appeal rights to VCAT.

The merits of the decision made by the City of Whitehorse falls outside the jurisdiction of this Panel.

However, the Panel considers that the Traffic Management Plan prepared for the land must take into account the combined effect of decisions concerning the future use and development of the land as a whole and address the traffic impacts in an integrated and comprehensive manner.

People who did not object to the application and who may be affected by the City of Whitehorse's decision can request to become a party to the application for review to

VCAT. The planning merits of the decision to delete the connection to Surrey Drive will be examined through the VCAT process.

2.5 FAILURE TO ADDRESS THE WHOLE SITE IN ONE PLANNING PROCESS

Following completion of the land fill operation in 1999, the City of Whitehorse encouraged the owner of the land (Phileo Australia Ltd) to develop a comprehensive plan for the whole site that addressed the key environmental, heritage, planning and design issues. The Council considered that the site had a number of major constraints that needed to be addressed in a comprehensive manner to achieve an appropriate planning outcome for the owner, the Council and the surrounding community in the short term and the long term. The objectives of each of these stakeholders may be different. The site constraints are:

- The land fill operation ceased relatively recently (1999) and therefore it is "early days" with respect to the possible environmental problems associated with the land as the land fill matures and settles.
- Most of the filled land was filled to a depth of 30m. The fill included green waste that is now decomposing and will continue to decompose for at least 10 years. Phileo acknowledges that green waste was deposited in the land fill.
- The filled area could be regarded as hazardous because of land fill gas and leachate.
- Phileo acknowledges that the fill was not compacted appropriately during the land fill operation. Potential buildings and uses are limited because of uncertain ground conditions, subsidence over time, presence of land fill gas etc.
- The site contains former brick making buildings of State heritage significance that are included in the Victorian Heritage Register. The Panel's inspection confirms that these buildings, while impressive, appear to be poorly maintained with limited adaptive re-use potential.
- Vehicle access to the site is currently restricted to Federation Street. A Council reserve along the west side of Surrey Drive prevents vehicle access across it.
- The capping over the land fill area has to be maintained by a responsible party well into the future in order to prevent rain water infiltration and the uncontrolled escaping of land fill gas. This party must have the funds to monitor and repair the cap if and when required.
- There may be other problems associated with the land fill "rehabilitation" over time (eg subsidence, land fill gas generation and migration etc) that could affect other parts of the land. The party responsible for managing these problems should be clearly identified and have the funds to carry out regular monitoring, investigation of problems and prompt remediation, if required.
- An independent Environmental Auditor's report for all or part of the land was not available.
- The land has a residential context with a direct residential interface to the north and west and a common boundary with Surrey Park to the south.

The Panel considers that the future of the land should be considered *as a whole* to ensure that the full affect of the site's constraints are understood and influence the appropriate planning outcome.

Whilst the Panel appreciates that planning permit applications can be made under the Industrial 1 Zone, we consider an appropriate integrated planning outcome for the whole site was more likely to be achieved if the three applications and the proposed amendment were considered in the one forum at the same time. The only option to achieve this would have required the Minister for Planning's intervention to refer the applications at VCAT to the Panel. However, this did not happen. The current piecemeal approach to the future planning of this complex site has the potential to undermine an appropriate planning outcome for the whole site and to threaten its appropriate on-going management well into the future.

However, this Panel has inherited the situation and accepts that the Place of worship/Education centre application and the two-lot subdivision application are outside the Panel's jurisdiction.

Despite these separate processes, the Panel notes that Amendment C41, draft permit WH/12727, planning permit application WH/12879 and planning permit application WH/12874 were all available for inspection at the one time in the consultation phase of the planning process. This provided a comprehensive understanding of how the Box Hill quarry and land fill would be developed if all the applications were approved.

The Panel considers that this was a genuine effort by the City of Whitehorse to convey the "comprehensive" plan for the integrated use and development of the land within the existing statutory framework.

2.6 ALLEGED BREACH OF PERMIT CONDITIONS

The land fill operation was subject to a planning permit BH/89/4507 dated 8/6/1990. The permit allowed "to backfill the existing quarry land with *solid inert fill* in accordance with the attached endorsed plans and technical reports".

Various submitters claimed that the land fill was not operated in accordance with the permit conditions. Mr Traficante alleged that various conditions in the permit, in particular the conditions relating to the type of fill placed in the land fill and the landscaping conditions, had not been complied with.

Mr Parker, Principal, Golder Associates Pty Ltd, advised the Panel that "green waste" was not included in the technical definition of putrescible waste in the past. Green waste had been deposited in the land fill and was now decomposing.

The fill was not closely monitored and it was not compacted to provide a suitable foundation for buildings once the land fill operation was completed, as originally intended. The poor management practices must have created problems for neighbours during the land fill operation. They have also created an enduring legacy that influence the potential uses of the land now that the land fill operation has finished.

The alleged breaches of the permit conditions are of little concern to the Panel in relation to the matters that are before it except to the extent that the nature of the fill deposited and the poor compaction during the land fill operation have an enduring influence over the potential use and development of the land. Now that the land fill operation has ceased, there is some uncertainty about the environmental condition of the land and the potential for on-going management problems resulting from the failure to comply with the conditions on the permit and the inherent problems associated with a former land fill site.

However the Panel does not condone the failure of an applicant to comply with planning permit conditions. Failure to comply with a permit condition is a serious offence. For a land fill operation in particular, strict compliance with the permit conditions is essential to avoid unreasonable impacts on neighbours and to enable site rehabilitation to be carried out with confidence once the land fill has ceased.

2.7 EXPLANATORY REPORT

There was some criticism of the Explanatory Report for Amendment C41 because it did not set out the reasons why the City of Whitehorse did not require a certificate or statement of environmental audit under Part 1XD of the Environment Protection Act 1970 before deciding to prepare and exhibit the amendment.

Having examined the Explanatory Report, the Panel considered that it provided a comprehensive description of the proposed Amendment and the three planning permit applications associated with the development and subdivision of the land. It advises that the Environmental Audit Overlay that affects the land will continue to apply and that an appropriate condition will be included in the proposed planning permit.

The Minister's Direction No. 1 Potentially Contaminated Land is discussed in the Explanatory Report. The text includes reference to the environmental auditor's responsibilities including an auditor's report to be prepared to address the land's suitability for a sensitive use.

The Panel is satisfied that the Explanatory Report provided relevant and helpful information about the amendment and the planning permit applications affecting the land. In our view, it was not necessary for the Explanatory Report to set out the reasons why the Council agreed to prepare and exhibit the amendment and consider the planning permit application WH/12727 in the absence of a report by an environmental auditor.

3 SETTING THE SCENE

3.1 WHITEHORSE PLANNING SCHEME

The subject land is zoned Industrial 1. This zoning reflects its previous use as a quarry, land fill operation and brick making works. The land to the north and west of the subject land is zoned Residential 1. Land to the east is zoned Public Park and Recreation. This land forms part of a former railway reserve that ran along Surrey Drive. This land is now owned by the City of Whitehorse. The land to the south is zoned Public Park and Recreation and has been developed as Surrey Park. It contains the Whitehorse Aquatic and Leisure Centre and a range of other recreation facilities.

All of the land subject to Amendment C41 is also subject to an Environmental Audit Overlay. The Environmental Audit Overlay requires that:

"Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:

- *A certificate of environmental audit must be issued for the land in accordance with Part 1XD of the Environment Protection Act 1970, or*
- *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part 1XD of that Act that the environmental conditions of the land are suitable for the sensitive use".*

The amendment does not remove or change the Environmental Audit Overlay (EAO). The EAO requirements are usually given effect through a planning permit condition.

The south west part of the land is subject to the Heritage Overlay (HO3) that identifies the former Hoffman brick kiln as a Heritage Place. This building is also included in the Victorian Heritage Register.

3.2 STRATEGIC JUSTIFICATION

The Panel is required to be satisfied that the proposed amendment and draft permit WH/12727 are strategically justified.

3.2.1 The Local Planning Policy Framework

The amendment and draft permit WH/12727 achieves at least three key objectives of the Municipal Strategic Statement, namely:

- To protect residential amenity
- To ensure that development respects and enhances the character of the surrounding area
- To encourage the consolidation of urban areas by encouraging medium density housing to accommodate an increasing population.

The Local Planning Policy Framework in the Whitehorse Planning Scheme recognises the subject land as one of the three Key Redevelopment sites in the City which offers substantial redevelopment opportunities.

"*Such sites provide potential locations for large scale commercial and residential development in a municipality where vacant land is in short supply. It is therefore essential that an appropriate investigation be undertaken to ensure that such scarce resources are used to fulfil the demand for specific use and development that cannot be catered for within existing areas"*

In their evidence to the Panel, Ms Katz and Mr Biles considered the rezoning of the land to the Residential 1 Zone and draft permit WH/12727 to be consistent with the strategic direction expressed in the Whitehorse Planning Scheme. The Panel agrees with this conclusion.

3.2.2 Melbourne 2030

The Minister's Direction No. 9 directs consideration of Melbourne 2030 and draft Clause 12 of the State Planning Policy Framework. The Panel considers that the amendment and draft permit WH/12727 are consistent with the directions and policies in Melbourne 2030. They will contribute to the outcomes envisaged in the following directions in particular:

- A more compact city
- Better management of metropolitan growth
- A more prosperous city
- A great place to be
- A fairer city
- Better transport links

The amendment involves the rezoning of a former quarry/land fill to the Residential 1 Zone and development of part of the land for residential use. The land is very well located with respect to existing residential development and facilities including the Box Hill Business District, Box Hill TAFE and Box Hill Hospital. Box Hill is identified as a Principal Activity Centre in Melbourne 2030. Medium density housing is encouraged around these centres to support their growth and development and public transport.

In their evidence to the Panel, Ms Katz and Mr Biles considered the rezoning of the land to the Residential 1 Zone and draft permit WH/12727 to be consistent with Melbourne 2030. The Panel agrees with this conclusion.

3.2.3 The State Planning Policy Framework

The State planning policies that are directly relevant to a strategic assessment of the amendment and application relate to:

- Settlement
- Environment, in particular soil contamination and a direct reference to Minister's Direction No.1 Potentially Contaminated Land
- Energy efficiency and minimising green house gas emissions
- Housing, in particular medium density housing to improve housing choice and make better use of existing infrastructure
- Design and built form

In their evidence to the Panel, Ms Katz and Mr Biles considered the rezoning of the land to the Residential 1 Zone and draft permit WH/12727 to be consistent with the State Planning Policy Framework. The Panel agrees with this conclusion.

The Panel's overall conclusion is that there is a clear strategic basis for the amendment and the use of the land for residential purposes. The policy directions and objectives clearly encourage the planning outcome proposed by the amendment and draft permit WH/12727.

3.2.4 Strategic Assessment Guidelines

The Panel is required to assess the strategic basis of a proposed amendment using the Strategic Assessment Guidelines. The guidelines set out the following questions to assist the Panel form its conclusions.

Is an amendment necessary?

Yes, an amendment is necessary to allow the use and development of the land for residential purposes. This outcome is not possible under the Industrial 1 Zone.

Is the amendment justified having regard to current policies?

Yes, refer to previous discussion about the LPPF, SPPF and Melbourne 2030. The Panel considers that the amendment is consistent with the current policy framework.

Have the requirements of the *Planning and Environment Act 1987* been addressed?

Yes. The planning authority has taken into account all relevant matters as set out in the Act and has had regard to the Minister's Direction No. 1 Potentially Contaminated Land.

The Environmental Audit Overlay applies to the land and will continue to apply to the land. Draft permit WH/12727 includes the following condition:

"2. Prior to the commencement of a residential use or the construction or carrying out of buildings and works in association with a residential use, either:

A certificate of environmental audit must be issued for the use of the land for residential purposes in accordance with Section 57AA of the Environment Protection Act 1970,
or
An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Section 57AA (5) (a) of that Act that the environmental conditions of the land are suitable for residential use."

If condition 2 is not satisfied, the land can not be used and developed for residential purposes.

The Panel considers that this condition (updated to reflect changes in the legislation) is essential to give effect to the Environmental Audit Overlay. An independent environmental auditor's report and the related statement or certificate that follows are essential information for the responsible authority to be satisfied that the land is suitable to be used and developed for residential purposes.

State Planning Policy Framework (SPPF)

For the reasons outlined in an earlier section of this report, the Panel considers that the amendment and the draft permit WH/12727 support and implement the SPPF.

Local Planning Policy Framework (LPPF)

For the reasons outlined in an earlier section of this report, the Panel considers that the amendment and the draft permit WH/12727 support and implement the LPPF.

Does the amendment use the most appropriate Victoria Planning Provision tool?

Yes, the Panel considers that the Residential 1 Zone is the most appropriate tool to achieve the strategic objectives and policies for the subject land.

Referral Authorities

The amendment does not contain new referral authority requirements.

Outcome of the amendment

The amendment will achieve a planning outcome that is consistent with the strategic directions of the Whitehorse Planning Scheme.

The Panel's evaluation of the amendment and the draft permit WH/12727 against the principles of the Strategic Assessment Guidelines demonstrates that the amendment and the draft permit WH/12727 are consistent with the strategic directions of the Whitehorse Planning Scheme.

3.3 LAND USE HISTORY

The land is known as 14 Federation Street, Box Hill. It has a total area of about 7 ha. Federation Street provides the only vehicle access point to the land, although it also abuts the Mont Albert Road extension and could obtain access from this road frontage. A Council reserve along the eastern boundary of the land prevents vehicle access between the land and Surrey Drive.

The land was used as quarry between 1884 and 1988 in association with the Standard Brickworks. The quarry hole was about 30m deep in parts.

The Hoffman kiln and other buildings associated with the brickworks are located on the southern part of the land. The buildings include an impressive brick chimney which is a local landmark. These buildings are included in the Victorian Heritage Register. This part of the land is also included in the Heritage Overlay in the Whitehorse Planning Scheme. These buildings are proposed to be retained, restored and re-used as a Place of worship and an Education centre in accordance with planning permit application no WH/12879.

The land was used as land fill operation between 1990 and 1999. All vehicle access for the land fill was from Federation Street.

The land fill operation ceased in 1999 when the quarry hole reached capacity. The land fill area was capped in accordance with usual practice and since then the environmental condition of the land has been monitored in accordance with EPA and the City of Whitehorse's requirements. A site rehabilitation plan and a site management plan have been prepared and approved for the land.

The current owner (Phileo Australia Ltd) has responsibility for the on-going site rehabilitation plan and the site management plan. These responsibilities include monitoring the environmental effects including:

- Land fill gas production and migration
- Leachate production

The condition of the ground water is currently not monitored, however there are no plans to use it for any purpose. While this issue was disputed in the submissions, the appointed environmental auditor advised the Panel that ground water monitoring was not necessary. This matter would be addressed in his report.

The quarry hole and land fill operation affected the central part of the land, but the area along the north and west boundaries was apparently not affected by excavation and fill. This area formed the buffer between the quarry /land fill and the abutting dwellings to the north and west. Land in the southern part of the site on which some of the brickwork buildings remain was also not subject to excavation and fill.

A planning permit BH/89/4507 was issued in June 1990 to "backfill the existing quarry with solid inert fill in accordance with the attached endorsed plans and technical reports". Relevant works approval and a discharge licence for the land fill operation were also obtained from the EPA.

The planning permit included various conditions that affected the operation and management of the land fill.

3.4 ENVIRONMENTAL CONSEQUENCES OF THE LAND FILL

The Panel was advised that the land fill was not managed as well as it should have been. In particular, the type of fill deposited was not controlled as expected and the fill was not compacted as required in order to provide suitable conditions for the footings of buildings in the filled area following completion of the land fill. Both these aspects of the operation and management of the land fill are major constraints that have affected the possible land uses now that the land fill has ceased.

As with all land fill sites that have ceased operation, there are a number of environmental issues that require on-going monitoring and management. These relate to:

- Settlement of the land fill
- Potential gas emissions- odour and safety
- Leachate- odour and ground water contamination
- Stormwater and drainage
- Construction considerations
- Safety
- Landscaping limitations

A second planning permit WH/9038J for the land fill operation was issued on 6 November 1997. Mr Lonie advised that this permit was an extension of the earlier permit and it continued to authorise the development and use of the quarry by *backfilling with solid inert waste* in accordance with conditions. A permit condition required a site rehabilitation plan to be approved by Whitehorse Council in the event that fill was placed above a level equivalent to 2m below the natural surface level of the land surrounding the quarry hole.

The EPA's Waste Discharge Licence EX 0286/2 for the land fill was updated on 21 October 1998 and requires (in summary) a rehabilitation plan to be prepared to the satisfaction of the EPA. The plan had to address (among several things):

- The estimated rate and timeframe of settlement
- Details of on-going leachate/drainage and ground water management and monitoring , including checklists and responsibilities
- Methane gas collection and disposal system
- Anticipated period of after care
- On-going maintenance and inspection program

Golder Associates Pty Ltd prepared a report on the Completion and Rehabilitation Plan for the Box Hill Land Fill May 1999.

The Plan states (p 3) that:

"*Development options for closed land fill sites are limited by the poor geotechnical properties of the waste, hazards posed by land fill gas, the need for management of health and environmental risks and general amenity concerns. …Building development on or around land fill sites must take account of issues including:*

- *Settlement of the waste can lead to excessive movement of building foundations which results in structural damage*
- *Settlement of the waste can result in damage to pavements and services*
- *Land fill gas includes methane which is highly flammable and must be carefully managed to avoid hazards from fire or explosion. Escaping land fill gas may also result in unacceptable odours".*

The City of Whitehorse and the EPA have accepted the report prepared by Golder Associates as satisfying the requirements for the preparation of a rehabilitation plan for the land fill.

In accordance with usual practice, the EPA has issued a Pollution Abatement Notice for the land.

Given the past land use history of a large part of the land as a land fill, the potential for ongoing environmental problems and the potential for these problems to affect other parts of the site that were not subject to the land fill operation, the Panel considers that it has a responsibility to be as confident as it can be that the land is suitable for residential use and the amendment can be recommended for adoption and approval. **The Panel is reluctant to rely on the operation of the Environmental Audit Overlay *after the land is rezoned to residential* to be confident that the land is suitable for residential purposes.**

3.5 A COMPREHENSIVE APPROACH

The Panel considers that the draft permit WH/12727 applies to *all the land* known as 14 Federation Street, Box Hill and described with the following Title particulars – Certificate of Title Volume 6520 Folio 967. In our view, it is necessary to consider the planning merits of the draft permit in the context of *the whole of the land* and the use of part of it as a land fill operation. We consider that this is necessary because of the environmental condition of the land fill, the potential problems for the land fill area and the potential for the land fill to affect other parts of the site. These problems are significant and potentially dangerous and include settlement, gas migration etc.

The Panel is aware of examples of environmental and other problems that can occur as a result of the redevelopment of former land fill operations especially when land affected by them is used for residential development. Innocent parties who purchased land and built homes, adjoining land owners, the Council and the EPA are just some of the parties who will be affected if there are environmental problems associated with

the use and development of the land after the land fill. These problems, if they do occur, may not become apparent until well after the land fill has ceased operation.

Responsibility for addressing any environmental problems associated with the land fill must be clearly established. **The Panel would be concerned if the land owners who purchased residential lots on part of the land following subdivision became responsible for the maintenance and management of the land fill area through a Body Corporate and Common Property or some other mechanism.** In our view this would place an unreasonable burden on these land owners and would make any remediation works required more difficult to implement. It would seriously diminish the effectiveness of the current arrangement where one owner, presumably with resources, is responsible for the on-going maintenance and management of the land and the land fill area.

The planning permit for the use and development of the land is one of the tools available to the City of Whitehorse under the proposed Residential 1 Zone to set out the appropriate conditions for the use and development of the land and its on-going management. However, it is limited by the principles that apply to assess the validity of permit conditions.

The planning application form describes the address of the land as 14 Federation Street, Box Hill. The site plan submitted with the application applies to *all the land* and shows the following features:

- The part of the land proposed to be developed for residential purposes along the north and west boundaries
- A controlled through site link for emergency vehicles only between the extension of Mont Albert Road and Surrey Drive
- A proposed vehicle connection in the north east corner of the site across the City of Whitehorse's land to Surrey Drive
- A proposed bicycle circulation route through the residential part of the site
- The extension of Federation Street and the Mont Albert Road into the site for vehicle access
- The "footprints" of the Kiln Building and the Mill House in the south west corner of the land
- The proposed works associated with the use and development of the southern part of the land for a Place of worship /Education centre including access and the car parking layout.

The Panel acknowledges that the Environmental Audit Overlay also applies to the land and its provisions must also be satisfied and included in the planning permit conditions.

3.6 POTENTIAL FOR PUBLIC OPEN SPACE

The former land fill area is described as "*communal* open space" in various documents provided to the Panel. This suggests to the Panel that this land is intended to be placed under the control of a Body Corporate as Common Property for the benefit of the future owners following subdivision of the land.

In these circumstances it may be more difficult for the City of Whitehorse to secure ownership of the former land fill for *public* open space, if indeed that objective continues to be the City of Whitehorse's longer term objective.

The Panel understands the City of Whitehorse's planning objective, on the one hand, to secure the land fill area as public open space. On the other hand, we also understand the City's reluctance to accept responsibility for the land fill area so soon after the land fill operation has ceased and potential environmental problems in the longer term are uncertain. There is a risk that there may be significant costs associated with the on-going maintenance and management of the land fill area that may fall to the City of Whitehorse as owner of the land and become a financial burden to ratepayers.

The Panel considers that open space is likely to be the most appropriate use of the land fill area once the EPA (and the independent environmental auditor) is satisfied that it is no longer hazardous and is suitable for this purpose. It may never be suitable for any other use. The EPA advised the Panel that the land should be regarded as hazardous and the Panel accepts this advice.

The land fill area may continue to be privately owned. However, there is an opportunity to develop it as public open space linked to Surrey Park and the Box Hill District centre via the City of Whitehorse's land on the west side of Surrey Drive. This outcome would require an appropriate agreement between the owner and the City of Whitehorse.

The Panel however has to consider the merits of Amendment C41 which proposes to include the land fill area in the Residential 1 Zone. Amendment C41 would not preclude another amendment in the future to include the land fill area in a Public Acquisition Overlay/Public Park and Recreation Zone if the owner and City of Whitehorse supported this planning outcome. Such an amendment might be necessary to give effect to an agreement between the Council and the owner some time in the future when the City of Whitehorse can be more confident about the environmental condition of the land and its suitability for open space.

The Panel notes that recreational/open space, consisting of general open space and public recreation areas and parks and reserves are identified as *beneficial uses* in the SEPP (Prevention and Management of Contamination of Land). These uses are distinct from *sensitive uses* identified in Minister's Direction No 1 and the Environmental Audit Overlay. Nonetheless the Panel considers that it would be prudent for the City of Whitehorse to satisfy itself that the land fill area was suitable for open space purposes through an independent environmental audit of the land.

3.7 POTENTIAL FOR RESIDENTIAL USE

Amendment C41 proposes to include all of the land, including the former land fill area and the land occupied by the former brick work buildings in the Residential 1 Zone. This is not to say that all of the land subject to the amendment is suitable for residential development at this point in time. Indeed the ground conditions and other environmental conditions associated with the former land fill confirm that this part of the site is not suitable for residential use and may never be suitable for uses other than open space.

This amendment however, is proposed to achieve *strategic* outcomes that will:

- Avoid the development of the land for industrial uses that would be incompatible with adjoining residential uses.
- Encourage residential uses on those parts of the site demonstrated to be suitable for this purpose.
- Encourage residential uses that are compatible with adjoining uses.
- Facilitate the repair, restoration and re-use of the heritage buildings for community uses.
- Encourage the option of the land fill area for public open space in the future, subject to an appropriate agreement between the land owner and the City of Whitehorse.

The Panel supports these objectives as desirable planning outcomes.

Draft permit WH/12727 allows the residential development of the north and west parts of the subject land comprising 79 dwellings.

The Panel was advised that the area of the land abutting the north and west site boundaries had not been subject to excavation and fill and was "outside" the edge of the former quarry. One submitter disputed this, based on anecdotal evidence. However, the Panel was provided with expert evidence from Mr Parker that ground conditions in this area were suitable for residential development.

An area shown as "deep fill" and "compacted fill" on various plans submitted to the Panel is also proposed to be developed for residential purposes. This area was a deep gully that was filled with clay, bricks, and wood. The Panel was provided with expert evidence from Mr Parker that ground conditions in this area of the subject land were also suitable for residential development because the material comprised compacted clean fill.

There were many submissions put to the Panel concerning the environmental condition of the land to be developed for residential purposes in accordance with draft permit WH/12727. The Panel also had the benefit of expert evidence in relation to this matter and a briefing from Mr Phil Sinclair, from Coffey Geosciences Pty Ltd, the appointed Environmental Auditor for the proposed residential part of the land. Mr Sinclair had not completed his report at the time of the Hearing. In a written statement to the proponent dated 25 February 2003, he advised that:

"*Based on the reviews of the information that have been conducted to date, it is my view that there appears to be no foreseeable reason why I should not be able to issue a Statement of Environmental Audit that would allow the range of uses that are anticipated for the redeveloped site (Area 1- land bordering the quarry to the north and west) to be protected… However it is my view that any contamination arising from the land fill site should be managed such that there is no unacceptable impact on the uses proposed in Area 1 eg arising from land fill gas, leachate, odour or waste etc".*

While the Panel appreciates Mr Sinclair's advice to the proponent, the Panel would have been more confident if the environmental report had been completed and was available to support the rezoning and draft permit WH/12727 and the views expressed in Mr Sinclair's statement.

In his evidence, Mr Watt advocated a more conservative approach requiring the independent environmental auditor's report and the Statement of environmental audit to be available before the amendment and planning permit application are approved.

On the other hand, the Panel was not presented with any direct evidence that the part of the land proposed to be developed for residential purposes in accordance with draft permit WH/12727 was not suitable for residential use.

At the Directions Hearing, the Panel had foreshadowed its concern about the absence of the independent environmental auditor's report for the area subject to the amendment. This remains a concern to the Panel. The past use of part of the land subject to the amendment as a land fill encourage the Panel to take a more conservative approach and to err on the side of caution with respect to the rezoning of the land.

The Panel was presented with expert evidence that there is a possibility that the environmental problems associated with the land fill area may affect the land outside the land fill. This is of particular concern to the Panel in the context of the rezoning of the land to allow residential development. Any Statement of Environmental Audit may impose conditions restricting future land use and placing requirements on the nature of site development. The condition relating to the venting system in dwellings is an example of such a condition. These conditions in any Statement of Environmental Audit need to be understood and will probably have to be implemented through an appropriate planning permit conditions.

The Panel is firmly of the view that the independent Environmental Auditor's Report for the whole of the land subject to the amendment is essential information for any decision maker to be as confident as it can be that the environmental condition of the land is suitable for the types of uses contemplated in the residential zone. This information is required to support Amendment C41.

The Panel considers that the Environmental Auditor's report for the whole of the land subject to the amendment and the Statement of Environmental Audit for the land subject to draft permit WH/12727 are required before the

Amendment can be approved and permit WH/12727 can be granted. This will ensure that the permit includes conditions identified in the Statement.

3.8 CLAUSE 55 ASSESSMENT

Draft permit WH/12727 involves 79 dwellings comprising 71 two-storey dwellings and 8 three-storey dwellings on part of the subject land. The dwellings have a mix of floor plans to provide accommodation for a range of household types. Access to the housing will be from Federation Street and Mont Albert Road with a controlled link to Surrey Drive for traffic generated by 12 of the dwellings only. This link requires the creation of a carriageway easement across the City of Whitehorse's land. The City has agreed to create this easement for the 12 dwellings only.

The Whitehorse Planning Scheme, if amended as proposed in Amendment C41, will require a planning permit to construct two or more dwellings on the land. The Environmental Audit Overlay provisions are triggered by the use of the land for residential purposes and would also have to be met.

In summary, the proposed residential development has the following features:

- A limited interface with existing residential development. The interface is generally a utility area used for vehicle access and garaging; an appropriate acoustic wall and screening will be provided along the boundary fence with existing residential uses to the north and west.
- The dwellings address either the land fill site (identified as *communal* open space) or the new internal streets.
- Mainly two-storey, but with 8 three- storey dwellings in key locations to create visual interest and to break up the uniform two-storey built form.
- Dwelling size of between 100 sqm and 200 sqm and are mainly 2 (59) & 3 (8) bedroom dwellings with some 4 (12) bedrooms (including study) dwellings.
- Materials include face brickwork with Harditex panel above brickwork.
- Rear yards providing secluded private open space and carefully designed and located balconies at the upper level where appropriate.
- A landscape buffer of appropriate width along the northern and western site boundary.
- 2.3 ha of *communal* open space, comprising the land fill area.

The Panel was presented with assessments of the proposed residential development against the provisions of Clause 55 prepared by Ms Katz on behalf of Phileo and by Mr Biles on behalf of the City of Whitehorse. The assessments were consistent.

Both assessments concluded that the proposed development met the objectives of Clause 55. However, there were a few instances where the applicable standard was not met. For example, the set back from the street frontage for dwellings 59, 60 and 61 was less that the setback required in accordance with the standard. However, the Panel accepts that the proposed set back is acceptable because of the dwellings' distance from existing dwellings combined with the wide road reserve road.

The three-storey dwellings proposed in the development have a height of 9.6m, 0.6 above the 9m standard. In the context of the total development, the additional height achieves a desirable built form outcome. Some dwellings (9, 12, 20, 39, 42 and 55) have less private secluded open space compared to the standard. However, proximity to Surrey Park is a compensating factor.

In his oral evidence to the Panel, Mr Wyatt, Landscape Architect, said that a 1m wide area along the site boundary provided adequate width for an effective landscape buffer to be achieved. It was also possible to protect the roots of trees on abutting land with appropriate techniques used for excavation and laying of service lines etc subject to an arborist's advice. The Panel accepts Mr Wyatt's evidence in relation to landscaping.

The Panel accepts the analysis and conclusions provided by Ms Katz and Mr Biles in relation to the development's compliance with the objectives of Clause 55.

The Panel also accepts that the design of the dwellings will be required to include an appropriate gas venting system to enable land fill gas that migrates from the land fill area to be released safely into the air. However, the Panel will need to address the precise wording of the condition proposed in the draft permit because there were differences between the City of Whitehorse and the applicant about the wording of the condition.

It follows from the above comments that the Panel is generally satisfied with the proposed layout and design of the residential development proposed in draft permit WH/12727. However, there are some matters of detail that need to be addressed in the draft permit conditions. These are matters that the Panel discusses in the "conditions" part of this report.

3.9 MAINTENANCE AND MANAGEMENT OF THE LAND FILL

The current owner of the land (Phileo Australia Ltd) is responsible for the on-going maintenance and management of the former land fill area. Phileo has indicated that it accepts responsibility for the land until 2017.

If parts of the land are developed and sold, there is the potential for fragmented ownership and possibly a lack of commitment or resources to continue the on-going maintenance and management of the former land fill area.

The Panel considers that fragmented ownership may diminish the effectiveness of the on-going maintenance and management of the former land fill area particularly into the future when unexpected environmental problems may occur. These may be expensive to investigate and rectify.

There is a genuine potential for serious environmental problems to be encountered as the land fill area "matures". Settlement, leachate and land fill gas generation can be expected. The cap that seals the land fill area and prevents rain water infiltration must also be maintained. Gas migration beyond the land fill may also be encountered.

The Panel considers that appropriate management arrangements must be carefully considered in the context of the development of part of the site. The Panel would be concerned if the owners of the 79 residential lots became legally responsible for the on-going maintenance and management of the land fill through a Body Corporate responsible for Common Property or some other mechanism.

3.10 REGULATORY REGIME FOR ENVIRONMENTAL ISSUES

Because the land subject to the amendment and draft permit WH/12727 have been used as a quarry and land fill operation or potentially affected by these uses, there are several regulatory requirements addressing the environmental condition of the land that must be considered by the Panel. These are discussed in the material that follows. These requirements and regulations impose obligations on the owner of the land.

3.10.1 The Environmental Audit Overlay

The Environmental Audit Overlay (EAO) applies to all of the land subject to the amendment. Essentially, this statutory planning tool requires a Statement or Certificate of Environmental Audit to be issued by an Environmental Auditor stating that the land is suitable for a *sensitive* use. The statement or certificate would follow the completion of the Environmental Auditor's report. A residential use is a sensitive use and the Environmental Audit Overlay provisions *must be* complied with. All submitters accepted that the requirements of the EAO must be satisfied before the land can be developed for residential purposes in accordance with draft permit WH/12727. It was also appropriate to include this requirement as a condition in the draft permit.

However, there were different views put to the Panel about the area of the land to be covered by the Environmental Auditor's report and the related Statement or Certificate of environmental audit and the timing of this documentation in the amendment and permit decision making process. The key issue was whether it was necessary or desirable for the Environmental Auditor's report to be provided *before* the Amendment C41 was adopted, and whether it should apply to all of the land or just that part of the land subject to the draft permit WH/12727.

The alternative approach was to proceed with the rezoning of the land and rely on the EAO to trigger a requirement for the necessary Statement or Certificate of Environmental Audit to be provided with a development application or as a condition in the permit.

3.10.2 Minister's Direction No 1 –Potentially Contaminated Land

The stated purpose of the Direction is 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.

Amendment C41 involves rezoning land from the Industrial 1 Zone to the Residential 1 Zone. The previous land fill operation that occurred on part of the land can be described as hazardous.

The Panel considers that *all the land* subject to the amendment must be regarded as potentially contaminated land and the Panel is required to take Minister's Direction No 1 into consideration in deciding its recommendation about the future of the amendment.

The issue for the Panel is to decide if it can be satisfied on the basis of the information available to it at the time of the Panel Hearing that the environmental conditions of the land *are or will be suitable for residential use.* Residential uses are defined as sensitive uses in the Direction.

In satisfying itself in relation to an amendment allowing *a sensitive use, the planning authority* has two options.

Under option 1, it must:

- Ensure that a certificate of environmental audit has been issued for the land in accordance with Part 1XD of the Environment Protection Act 1970, or
- If the amendment allows a sensitive use only in accordance with plans included or referred to in the amendment an environmental auditor appointed under the Environment Protection Act 1970 has made a statement in accordance with Part 1XD of that Act that the environmental conditions are suitable for the sensitive use in accordance with those plans.

Under option 2, it must:

Include in the amendment a requirement to the effect that before a sensitive use commences or before the construction or carrying out of buildings and works in association with a sensitive use commences:

- A certificate of environmental audit must be issued for the land in accordance with part 1XD of the Environment Protection Act 1970, or
- An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part 1XD of that Act that the environmental condition of that land is suitable for the sensitive use.

In this instance, the planning authority proceeded in good faith under option 2 on the basis that the subject land is already subject to the Environmental Audit Overlay in the Whitehorse Planning Scheme. The Panel considers that this course of action was clearly open to the City of Whitehorse.

3.10.3 State Environment Protection Policy (Prevention and Management of Contamination of Land)

This goal of the SEPP is to maintain and where appropriate and practicable improve the condition of the land environment sufficient to protect current and future *beneficial* uses of land from the detrimental effects of contamination by:

- Preventing contamination of land; and
- Where pollution has occurred, adopting management practices that will ensure:
  - Unacceptable risk to human health and the environment are prevented, and
  - Pollution is cleaned up or otherwise managed to protect beneficial uses.

Section 14 of the SEPP outlines the specific obligations for a planning authority when preparing an amendment to the planning scheme.

In completing an Environmental Audit, an Auditor must have regard to the relevant SEPP in making a total assessment of the nature and extent of any harm or detriment that may be caused to any *beneficial use* made of the site. Beneficial uses include sensitive uses. Sensitive uses may occur in high density areas where there is minimal access to soil or in other lower density areas where there is generally substantial access to soil. Land used for residential use, child care centre, pre-schools centre or primary school are sensitive uses.

These provisions were addressed in detail in the EPA's submission.

3.10.4 Environmental Auditor's Report

An Environmental Auditor's report addressing the suitability of the land for a particular use or uses was not provided, despite the Panel having made a direction at the Directions Hearing that such a report was required before the Hearing.

At the hearing, Mr Pitt advised that Mr Phil Sinclair, from Coffey Geosciences Pty Ltd had been appointed by Phileo Australia Ltd to undertake a Statutory Environmental Audit of the former Box Hill land fill. Mr Sinclair is an EPA appointed Environmental auditor.

In December 2002, Mr Sinclair was engaged to conduct the Statutory Audit for the area proposed to be developed for medium density housing on the subject land and subject to draft permit WH/12727. In a letter dated 25 February 2003 addressed to Mr Sung of Phileo, Mr Sinclair outlined the progress made to date including "*drafting of a significant portion of the Statutory Environmental Audit Report*". He expected to complete the Audit (and comply with the Environmental Audit Overlay requirements in the Whitehorse Planning Scheme) within 6 weeks from the date of the Hearing. He further stated that:

"*It is my view that any contamination arising from the land fill site should be managed such that there is no unacceptable impact on the uses proposed for Area 1 (Residential) eg arising from land fill gas, leachate, odour or waste".*

Mr Sinclair advised that Panel that he had recently been appointed to undertake the audit for Area 2 (the land fill area). The primary use proposed for this area is open space.

The Panel appreciated Mr Pitt making Mr Sinclair available for a briefing about his experience and responsibilities with respect to the subject land.

The main points of difference in the evidence concerning the Environmental Audit were:

- Whether ground water monitoring is required as part of the site rehabilitation plan and site management plan.
- Whether the Environmental Auditor's report and related Statement or Certificate of Environmental Audit should *be prepared for all or part of the land.*
- Whether the Environmental Auditor's report and related Statement or Certificate of Environmental Audit should *be available* before the Amendment C41 is adopted by the City of Whitehorse and draft permit WH/12727 is approved.

The Panel would have been more confident about Amendment C41 had the independent Environmental Auditor's report been available to support the Amendment. The Panel had some difficulty understanding why the Auditor's Report was not available at the time of the Hearing. The Auditor's report would have greatly assisted the Panel in coming to the conclusion that Amendment C41 is appropriate and should be supported.

Furthermore, draft permit WH/12727 presents a definite development proposal that also could have been subject to an Environmental Auditor's assessment/report and the issuing of a Statement or Certificate of Environmental Audit. This would have given the Panel and the City of Whitehorse a higher level of confidence about the suitability of the land for the proposed use and development.

3.11 TRAFFIC IMPACTS

The proposed amendment and associated residential development will have impacts on the current traffic conditions in the local streets surrounding the land. For reasons outlined elsewhere in this Report, the Panel has confined its comments to those matters that fall with in its jurisdiction ie Amendment C41 and draft permit WH/12727. However, the Panel considers that an effective Traffic Management Plan for the whole site will need to take into account all the "approved" uses and developments on the land.

The rezoning of the land does not in its own right generate traffic movements. It is the development that follows that brings impacts with it. Furthermore, the land fill area (2.3 ha) of the land to be rezoned is unlikely to be suitable for residential development because of its environmental condition. It is more likely to remain

undeveloped and be used eventually as open space either exclusively by residents of the 79 dwellings if it remains in private ownership or by the public as public open space.

The traffic impacts that fall within the Panel's jurisdiction are those associated with the 79 dwellings proposed in draft permit WH/12727. This development will generate additional traffic movements on the local street network. However, through site access between the extension of Mont Albert Road and Surrey Drive will only be available for emergency vehicles. Access onto Surrey Drive is limited to 12 of the 79 dwellings. This traffic management solution is given effect through the draft permit WH/12727 and is intended to restrict traffic movements associated with the residential development along Surrey Drive and local streets further to the east and south.

Traffic movements will be distributed along the local street network with most trips distributed along Federation Street, Standard Avenue and the Mont Albert Road extension. There will also be a relatively small number of additional movements along Surrey Drive generated by the proposed 12 dwellings at the eastern end on the development. These traffic movements will use a private road constructed in the easement over the City of Whitehorse's land created by draft permit WH/12727.

The additional traffic movements on the local street network associated with planning permit application WH/12879 for the Place of worship/Education centre were of much greater concern to submitters from the streets surrounding the subject land compared to the residential development. As discussed elsewhere in this report, The City of Whitehorse's decision in relation to traffic access associated with approval of the Place of worship application divided the submitters generally into groups - those who supported the Council's decision and those opposed it.

4 THE ISSUES

4.1 APPROPRIATE ZONE

There was only one submitter who considered that the industrial zone should be retained and directly opposed the rezoning of the land to residential. However, all other submitters who addressed the appropriate rezoning, considered that the industrial zone was no longer appropriate and should be replaced with the Residential 1 Zone.

While it is acknowledged that parts of the land have limited potential for residential development because of the land fill operation, a combination of residential, open space and community uses with managed off-site impacts provides a better planning outcome for residents surrounding the land compared to industrial development in accordance with the current zoning. The Residential 1 Zone is the appropriate strategic planning tool to achieve this desirable planning outcome. The application of the residential zone does not mean that all of the land is suitable for residential development. This is contingent upon the independent Environmental Auditor's report and Statement or Certificate of Environmental Audit confirming the land's suitability for residential or other uses.

Industrial activities on this site are not appropriate because of the abutting residential uses to the north and west. It is not possible to establish appropriate buffer areas within the site to address potential off-site effects. Industrial traffic would use the local street network to access the site. Industrial uses will have undesirable impacts of the amenity of residential neighbours and will create traffic, noise and on- going problems that reflect the inherent incompatibility between industrial uses and a developed residential context.

The Industrial 1 Zone applied to previous land uses that have now ceased and will not be re-established.

4.2 PANEL RESPONSE

The Panel considers the Industrial 1 Zone is not appropriate and should be replaced with the Residential 1 Zone. The Panel therefore supports Amendment C41 to the Whitehorse Planning Scheme and considers that it will encourage a suitable mix of uses compatible with the residential context of the site.

However, for the reasons discussed in the material that follows, the Panel considers that the adoption of Amendment C41 by the City of Whitehorse should be conditional upon the availability of the independent Environmental Auditor's report confirming that the land is suitable for residential and related uses.

4.3 DRAFT PERMIT WH/12727

Draft permit WH/12727 is discussed in the "setting the scene" parts of this report.

The Panel is generally satisfied with the proposed layout and design of the residential development in draft permit WH/12727 and is satisfied that it meets the objectives of Clause 55 in the Whitehorse Planning Scheme. However, there are some matters of detail that need to be addressed in the draft permit conditions. These are matters that the Panel discusses in the "conditions" part of this report.

The Panel has expressed concern that the Environmental Auditor's report and Statement of Environmental Audit are not available to support the granting of the permit.

4.4 PANEL RESPONSE

The Panel considers that some changes to the proposed conditions are appropriate and these are discussed under the "conditions" section of this report.

The Panel considers that the granting of permit WH/12727 should be deferred until the independent Environmental Auditor's report and Statement of Environmental Audit is available. The permit can not be granted until Amendment C41 has been gazetted.

4.5 ENVIRONMENTAL AUDITOR'S REPORT TO SUPPORT THE AMENDMENT

The Panel accepts that several reports from recognised environmental consultants have been prepared to assist decision making in relation to the future use and development of the former Box Hill Quarry and the appropriate site management plan. The reports and the Statements of Evidence on environmental issues presented to the Panel identify the likely environmental problems associated with the land fill over time and the potential for impacts from the land fill on the area to be developed for residential purposes. The potential for land fill gas migration and the need for an appropriate venting system for the houses to be constructed on part of the land is an example of this inter–connection between uses on different parts of the site.

The Panel accepts that the Environmental Audit Overlay applies to the land. The EAO is usually implemented by way of a condition in a planning permit to develop the land for a sensitive use. The standard condition requires an Environmental Auditor's Statement or Certificate to be provided before the permit can be acted upon. Draft permit WH/12727 contains such a condition in line with accepted practice. The Panel supports inclusion of this condition in the draft permit.

However the Panel considers that there is a distinction to be made about the level of information required to support a decision to amend the planning scheme to change the way land can be used and developed and a subsequent planning permit for a use that the change of zoning allows. These are two quite different processes and decisions in the planning system. The rezoning fundamentally changes the land uses

that can be established on land and a permit sets out the conditions that a use must comply with.

When a rezoning from industrial to residential is proposed and the previous land use is known to be industrial with potentially hazardous and uncertain environmental problems that may manifest themselves over the longer term, the Panel has a responsibility to be as confident as it can be, that the rezoning is appropriate and the land is suitable for residential and related purposes. In these circumstances, the Panel considers that an independent Environmental Auditor's report is required to confirm the suitability of land for residential purposes *before it is rezoned*.

On this issue, the Panel is persuaded by the EPA's submission to the extent that while the Minister's Direction No 1 provides options in relation to the timing of the Environmental Auditor's report and Statement or Certificate of Environmental Audit in the decision making process, we consider that this discretion should be influenced by the type of uses known to have occurred on the land to be rezoned and the likely environmental problems. For example, we consider a distinction can be made between a site where underground fuel tanks have leaked a small amount of fuel and contaminated the surrounding soil and a site that has been used for explosives manufacturing or a land fill. In the former case, the planning authority may be confident to proceed with a rezoning in the absence of the Environmental Auditor's Report provided the EAO applies to the land. However, in the latter cases, *we consider it would be prudent to have the benefit of the Environmental Auditor's report before adopting an amendment that rezones the land to residential* even if the EAO applies to the land in question.

The EPA submitted that an Environmental Auditor's report for *the whole site* was required before the amendment to rezone the land to residential should be further considered and approved. The EPA described the land fill area as "hazardous". It acknowledged that for other sites with a history of uses that are less hazardous or less likely to cause environmental problems in the future, it may be appropriate to approve a rezoning *before the Environmental Auditor's report was available.* However, this was not the case for the land subject to Amendment C41.

The land subject to the amendment was used (in part) for a land fill. The Panel was advised that the nature of fill was not controlled to the extent expected. The environmental evidence confirmed that monitoring of settlement, land fill gas and leachate will be required to be continued into the future. Remedial action may also be required.

In these circumstances, the Panel is reluctant to rely on the operation of the Environmental Audit Overlay *after the amendment has been approved,* to be satisfied that the amendment is appropriate and the land is suitable for residential use. The Panel considered that the independent Environmental Auditor's report is essential information in order for the Panel to be as confident as it can be that the land is suitable for residential and related uses.

The Panel appreciated the briefing provided by Mr Phil Sinclair, who had been appointed the Environmental Auditor for that part of the site to be developed for residential use. He said that he had completed drafting of a significant portion of the

statutory environmental report. However, the report, even in draft form, was not made available to the Panel, despite the Panel having made a direction at the Directions Hearing that such a report be prepared and circulated before the Hearing.

Despite expert evidence put to it, the Panel is very cautious about the impact of filled areas on abutting land in the absence of an environmental auditor's report for the *whole site.* This is especially so, when it is acknowledged that the site was not managed properly and the fill was not controlled as expected.

The Panel is less concerned about the lack of an environmental auditor's report for the southern part of the site that contains the Kiln and Mill House buildings because this part of the site is not proposed to be used for residential purposes.

4.6 PANEL RESPONSE

The Panel's conclusion is that the Environmental Auditor's report should be prepared for all the land subject to Amendment C41 before the amendment is further considered.

4.7 THE ON-GOING MANAGEMENT OF THE LAND FILL

One of the City of Whitehorse's key objectives for the land is to ensure that it is rehabilitated satisfactorily and that eventually the land fill area may be suitable for *public open space*.

The Panel considers that this is a desirable planning objective. However, it requires the on-going monitoring and management of the site as the expected subsidence, land fill gas generation, leachate etc described in the site rehabilitation plan prepared by Golder Associates occurs over time. It also requires a party with funds to be responsible for the on-going management of the site and any remedial works required.

Mr Pitt, on behalf of Phileo Australia Ltd advised the Panel that Phileo accepted responsibility for monitoring and remediation until 2017.

4.8 PANEL RESPONSE

The Panel considers that fragmented ownership would undermine the effectiveness of the site management plan. The Panel would also be concerned if the land fill area was identified as Common Property on a Plan of Subdivision for the residential development of the land as this arrangement would make the Body Corporate responsible for the on-going maintenance and management of the land.

4.9 TRAFFIC AND TRANSPORT

The impact of traffic on local streets and the arterial road network associated with the residential development (draft permit WH/12727) and the application for Place of worship/Education centre (application WH/12879) were key issues for many submitters. The Panel came to the view that the traffic impacts associated with application WH/12879 were outside its jurisdiction, but we also acknowledge that the

combined effect of both applications had to be considered. The Traffic Management Plan for the whole site should take into account the combined effect of the approved use and development of the whole site. The Panel also considers that residents in the surrounding area should have a reasonable opportunity to comment on the draft Traffic Management Plan before it is approved and implemented.

4.9.1 Current access to the site

The land subject to the amendment and proposed development could be serviced by the following arterial roads:

- Canterbury Road to the south.
- Station Street to the east.
- Elgar Road to the west.

The current access to the land is from Federation Street. Draft permit WH/12727 provides access to the residential development from Federation Street, the Mont Albert Road extension and Surrey Drive (limited).

The Panel has noted that Federation Street was used as the only access during both the operations of the brickworks and the land fill. Improvements were carried out to this road to accommodate the truck traffic associated with the land fill operations and compensation was paid to abutting landowners for noise attenuation treatments. In addition VicRoads had no objection to the land fill proposal and access arrangements (letter dated 10 August 1989), but recognised that there may be sight distance problems caused by the Elgar Road alignment. A suggested course of action was proposed if difficulties occurred.

4.9.2 Consultants agreement on traffic issues

At the Directions Hearing, the Panel directed that the traffic expert witnesses (being Messrs. Russell Symons of Ratio Consultants P/L for the City of Whitehorse, Henry Turnbull of Traffix Group for Phileo Australia Ltd, Nigel Ashton for the Eastern Residents, and Ms Debra Donald of Andrew O'Brien & Associates for the Federation Fighter Group) to meet in advance of the Panel Hearing to prepare a Statement of Agreed Facts on traffic engineering issues. The following Statement was tabled to the Panel:

"*The local street along the eastern edge of the site, north of Alexander Street is called Surrey Road, not Thurston Street as shown in the 2002 Melway (Note: This should be Surrey Drive).*

The access road off Canterbury Road into Surrey Park is also known as Surrey Road (Surrey Drive), but the two parts of the road of that name are not connected.

The residential and Place of worship proposals, which are the subject of the Panel and possibly VCAT consideration, are best portrayed on the July 2001 plan SK01B. This was one of the "application" plans, and is the one on which local resident and VicRoads comments are based.

The plan shows:

- *79 townhouses, with 67 accessed via Elgar Road and 12 accessed via Surrey Road (Surrey Drive);*
- *219 parking spaces for the Place of worship, with 32 accessed via Federation Street and 187 accessed via Surrey Road (Surrey Drive).*

Council's suggested condition for the Place of worship, requiring all car park access to be via Federation Street, would produce significantly different traffic impacts from the access envisaged in the "application" plan.

Interested residents and VicRoads should have an opportunity to assess, and comment on the implications of the conditions.

Appropriate weekday vehicular traffic generation rates for the townhouses are:

A.M. Peak Hour

- *0.2 vehicles arrivals per household*
- *0.6 vehicle departures per household*

P.M. Peak Hour

- *0.5 vehicles arrivals per household*
- *0.3 vehicles departures per household*

Public transport accessibility, proposed provision of pedestrian facilities and parking for townhouse owner/occupants are agreed to be suitable (however the location and amount of visitor parking are not necessarily agreed to be suitable).

It is not realistic to assume that all Place of worship access to/ from Elgar Road can be so controlled as to use only Federation Street. It is more realistic to assume such access will use all three available streets: that is Mont Albert Road and Standard Avenue as well as Federation Street."

In addition to the Statement of Agreed Facts, the traffic experts agreed that a trip generation rate of 8 trips/household/day for the townhouse development was appropriate.

The Panel concurs with the Statement of Agreed Facts prepared by the traffic consultants.

4.9.3 Traffic impacts

In assessing the traffic issues and associated impacts of the proposed rezoning, the Panel is considering the impact of residential development for the whole site (excluding the actual main land fill area) and draft permit WH/12727. The Panel is not considering the proposed Place of Worship/Education centre application. This application is subject to an application for review at VCAT and is therefore outside the jurisdiction of this Panel. However, the Panel considers that the traffic impact of

this latter possible development on residents' amenity and local traffic movements may be more significant compared to the residential development application.

While the applications will be considered separately, the Traffic Management Plan should address the combined effect of all approved uses and development on the subject land. The draft Traffic Management Plan should be available to residents for comment before it is approved and implemented.

4.9.4 Proposed site access

To the East

Whitehorse Council, as owners of the strip of land between the subject land and Surrey Drive, has decided that no access to Surrey Drive is to be provided at the south-east corner of the land (as proposed in the Place of worship/Education centre application). However, limited access at the north-east corner of the site (for 12 dwellings) is permitted for part of the proposed residential development. The major access should be to Elgar Road. This decision has been supported in the submissions of Mr. Symons. However, Mr Turnbull believes that the existing street system to the east of the subject land could cope with the anticipated traffic volumes.

The decision to prevent access to Surrey Drive for the Place of worship/Education centre, is also strongly supported by the submissions of the eastern residents due to the current traffic impacts and problems being experienced in the residential streets to the east of the site, particularly Alexander and Kent Streets. These concerns were highlighted in the verbal and written submissions to the Panel of Nigel Ashton, Des Scully, and Jane & Stephen Dixon, and numerous written submissions to the Council prior to the Hearing.

Alexander Street is used by traffic to access the Whitehorse Aquatic and Leisure Centre, Box Hill District Centre, and "rat running" from Station Street to Elgar and Mont Albert Roads during peak periods. The intersection of Alexander Street and Station Street has a high accident record over the last 5 years (source: VicRoads Crash Statistics).

The Panel has noted that traffic management measures have been undertaken by the Council (as a result of the Surrey Drive Local Traffic Area Traffic Management Strategy) to both restrict and slow traffic down in Alexander Street. The traffic volumes of up to 2000vpd, which is considered to be at the upper limit for a residential street of 7.6m pavement width with parking on both sides, have remained fairly static over the last 10 years. The Panel has also noted that the former Box Hill Council in 1991 made a commitment to residents that there would be no extra traffic from the expanded Recreation Centre in the local street system. As a result, access was directed through a signalised intersection on Canterbury Road at Surrey Drive.

To the South

Mr. Ashton, the Federation Fighter Group (via Mr. Traficante), and WERA suggested that if it was possible to provide access from the south-east of the site to the above signalised intersection then this would appear to be the best traffic solution for all developments.

A brief assessment by the Panel has shown that, due to physical constraints caused by the Surrey Park developments (eg the recreational lake, sporting field, and associated recreational buildings), such a connection is not possible without significant impacts and high costs of any relocations and road construction. This access option is therefore not considered further.

To the West

The access options to the west of the site are Mont Albert Road, Federation Street, and Standard Avenue. All of these roads service the existing residential area (comprising of 56 dwellings), and have minimal traffic volumes in terms of capacity for the 7.5m pavement widths.

As pointed out by Mr. Traficante all these streets experience car parking problems because of their proximity to Box Hill TAFE which is of concern to residents. These matters can be addressed by the Council as part of a Traffic Management Plan for the area.

The key issue for any rezoning and subsequent development(s) on the site is any limitation to access to and from Elgar Road via the streets on the west side of the subject land. Mont Albert Road can be accessed at the intersection with Elgar Road only by left in/out turn movements from Elgar Road and eastbound from the western leg of Mont Albert Road. Thus, based upon current operating conditions, this street could not be a primary access to the site.

Federation Street has been, and still is, the main access to the subject land (for both the previous brickworks and land fill operations with between 80-300 truck movements / day) and also for the existing 7 dwellings.

Standard Avenue provides access to traffic associated with recreational activities on Surrey Park (e.g., recreational lake, playground, barbecues, baseball, etc). Limited sight distance is available to the north of the Elgar Road intersection-even though it meets the requirements for 60 kph speed limit. At the T-Intersections of Standard Avenue and Federation Street with Elgar Road, the available pavement widths mean that there is only sufficient space for one vehicle in each direction, so simultaneous turn left and right turns are not possible.

From the traffic generation scenarios for the subject land, (both with the currently proposed residential development and possible residential use of the southern portion-say for a maximum of 50 townhouses/apartments) the capacity of these streets to accommodate both the daily and peak hour traffic volumes has not been raised as an issue by any of the expert witnesses on traffic matters. In fact Ms. Donald stated that the current residents generate fewer trips than would normally be expected for such a

residential area. Even with the proposed Place of worship/Education centre development, the projected traffic volumes are still within the acceptable limits for local residential streets. The concern of all parties is access of traffic onto and from Elgar Road during the peak periods, with possible long delays and frustration to motorists.

Mr. Traficante, Ms. Donald, and other submitters, advised the Panel that currently many residents are forced to turn left onto Elgar Road rather than right in the a.m. peak to exit the area. The Panel has also noted the concerns of WERA on the traffic impacts on streets west of Elgar Road. Every effort should be made to discourage traffic from the proposed development(s) entering these streets. The proposed Traffic Management Plan should address this potential problem.

Mr. Turnbull presented to the Panel the results of a headway gap analysis study on Elgar Road which showed that sufficient potential is available in the a.m. peak to cater for all right turning vehicles from the subject land to enter Elgar Road safely from Federation Street (and also Standard Avenue). Whilst this is theoretically possible, there could be reluctance on the part of some drivers to enter into these gaps due to sight distance and behavioural issues. No problems exist for left turning vehicles.

Mr. Symons presented to the Panel the results of a queue length study undertaken in the a.m. peak period, which showed that the length of the northbound traffic queue extended from Mont Albert Road to beyond Federation Street, and even down to Standard Avenue between 8.15 a.m. and 9.00 a.m. This means that the right turning traffic from either street may not be able to physically enter the traffic stream (without other drivers giving way or the provision of "keep clear" signage). This is also supported by Ms. Donald's submission.

The Panel has also noted that there is not a significant accident record (from VicRoads Crash Statistics) on Elgar Road associated with the right turning traffic.

The Panel considers that the real issue is of gap acceptance and stand up capacity of the intersections to enable vehicles to turn and disperse the queue length in the residential streets quickly.

The Panel considers that some measures are required to improve the current situation, and particularly when the proposed developments(s) are completed. Some additional measures for consideration for the safe entry of vehicles into Elgar Road could include:

- Signals at Federation Street (not favoured by VicRoads)-but could be in the form of vehicle actuated pedestrian signals south of the intersection,
- Restricted right turns in the a.m. peak period (as suggested by Mr. Symons),
- Enhanced right and left turns at Standard Avenue (and possibly Federation Street) - with possible widening for a left turn lane to provide 2 stand up lanes at the intersection,
- Further examination of the Mont Albert Road/Elgar Road intersection signals for possible further use of Mont Albert Road (east) for additional traffic movements (although the Panel has noted the comments of Mr. Turnbull and Ms. Donald).

4.10 PANEL RESPONSE

The Panel has concluded that for the proposed rezoning of the site and the proposed residential development, and associated use of the balance of the site, sufficient road capacity exists such that the primary access should be via Federation Street with Standard Avenue and Mont Albert Road providing the secondary access roles only (particularly given the previous history of the site and the traffic issues associated with any access to the east).

The traffic impacts on the local street network associated with the development of the subject land for residential purposes are within acceptable limits and do not provide a reason to reconsider Amendment C41 or the decision with respect to draft permit WH/12727.

All submitters accepted that access for 12 dwellings to the east onto Surrey Drive was reasonable provided a through access was not possible for other than emergency vehicles.

The Panel recognises that some measures will be required from a traffic operations perspective to cater for right turn traffic in the a.m. peak onto Elgar Road. Appropriate solutions should be further considered by all parties (including consultation with the existing residents) in the proposed Traffic Management Plan to be prepared under draft permit WH/12727. The Traffic Management Plan should be completed before development of the site commences.

The Panel would like to acknowledge the quality of the traffic expert witnesses' submissions and presentations.

The Panel also appreciates the concerns of residents in relation to protecting the safety and amenity of their local residential streets.

4.11 VICROADS' SUBMISSION

The Panel noted the views and concerns expressed by Messrs. Lonie and Pitt in their closing submissions in response to the VicRoads' submission. VicRoads has powers as a referral authority under the relevant planning scheme and the Planning & Environment Act 1987 in relation to access from a development *directly* onto a Declared Road. However, this is not the case for this particular amendment and associated application(s).

Originally VicRoads advised the City of Whitehorse (letter of 30 July 2002) that it had no objection to the rezoning of the land and the three planning permit applications under consideration. With the changed access arrangements now proposed in the Notice of Determination to Grant a Permit with respect to planning permit application WH/12879, VicRoads now requires the preparation of a Traffic Management Plan for the whole of the land prior to approval of the amendment and the granting of the permits. VicRoads is concerned that traffic egress could prejudice the operation safety and service of Elgar Road.

The Panel has noted that VicRoads has not provided any specific comments on the traffic and capacity analyses or views put by way of expert evidence to the Panel. VicRoads officers have not discussed the changed views about the proposals with any parties prior to the Hearing.

The Panel shares the concerns and supports the views of Messrs. Lonie and Pitt that a Traffic Management Plan can only be prepared following the rezoning and approval of the relevant permits. Following these approvals, the use or development is confirmed and the applicable traffic generation can be established. With this information, the relevant traffic volumes and capacity analyses can then be undertaken.

Currently the site could be developed for industrial uses without referral to VicRoads.

The Panel concludes that the preparation of the Traffic Management Plan should remain as a condition on draft permit WH/12727. The issues raised by VicRoads in relation to access to Elgar Road can be considered as part of the plan.

The Panel is also concerned that the view implied by VicRoads was that development should not proceed on large tracts of vacant in the metropolitan area (unless high quality traffic management treatments and /or other "release valves" are provided), particularly off the declared road network. This is certainly not the case in Melbourne's outer suburbs for residential developments requiring access to 2 lane 2 way arterial roads. In addition this view and approach does not support Melbourne 2030 and its implementation in established suburban areas.

4.12 PUBLIC TRANSPORT

The amendment and draft permit WH/12727 authorising a medium density housing development in close proximity to the Principal Activity Centre at Box Hill, is consistent with Melbourne 2030 and the associated draft Implementation Plans (particularly Transport).

In terms of public transport, the subject land is located within walking distance of the Box Hill Railway Station and the associated Transport Interchange. The interchange is a terminal for many bus routes servicing the Metropolitan Area-particularly the north-eastern and southern suburbs. The proposed extension to the Route 109 tram service from Mont Albert to Box Hill along Whitehorse Road is currently under construction. In addition, 2 bus services (Routes Nos. 700 & 735) operate along Elgar Road.

4.13 INTERNAL ROAD STANDARDS

The Panel was advised that the internal roads within the residential development will be private roads. Nonetheless we examined the application plans for the residential development of part of the subject land. The Panel considers that:

- The widths of the internal private roads proposed for Federation Drive (7.0m.) and Mont Albert Road Extension and Surrey Close (both 5.5m.) are adequate.
- The parking and access arrangements for the residents and visitors are adequate.
- The widths of the rear access lanes, garages, car ports and for turning vehicles are generally in accordance with Clause 55 of the Whitehorse Planning Scheme.
- The garbage collection arrangements from the smaller courts are adequate.

The Panel supports the restriction of through traffic to emergency vehicles only and the limited traffic impact on Surrey Drive generated by the 12 dwellings at the eastern end of the residential development.

With regard to the provision of visitor parking, the Panel notes that on-street parallel kerb side parking is proposed on one side of the streets only (located to avoid vehicles reversing from properties). For roads of 5.5m pavement widths, it is suggested that consideration be given to line marking these parking spaces clearly on the road pavement, and where possible, providing partial or full indented parking spaces to allow for easier access for emergency vehicles and their equipment. Relevant agencies have expressed concerns about 5.5m roads and parking in new residential subdivisions in the outer suburbs where similar road widths are found.

5 CONCLUSIONS

5.1 AMENDMENT C41

The Panel supports Amendment C41 and recommends that it be approved *subject to a satisfactory independent Environmental Auditor's report for the whole of the land subject to the amendment.*

We consider that this is appropriate given the land use history of the site and the environmental problems associated with land fill uses. Our clear preference is to err on the side of caution and not rely on the operation of the Environmental Audit Overlay once the land is rezoned to residential. The amendment decision needs to be supported by the independent Environmental Auditor's Report that confirms that the land is suitable for the uses possible under the residential zone, or that it could be made suitable.

While we support the City of Whitehorse's strategic objectives to avoid the development of the land for industrial purposes and to encourage a range of residential and related uses through Amendment C41, we consider that the City of Whitehorse should be as confident as it can be that the rezoning to residential is appropriate. In our view, the Environmental Auditor's report is essential to support the rezoning.

We would be disappointed if the Panel's conclusions discouraged Phileo from continuing to support the proposed amendment and proceeding with the residential development of part of the land in due course. However, the Panel and the City of Whitehorse have a responsibility to the community and prospective purchasers to ensure that the proposed amendment and ultimate use of the land is appropriate and does not create a different set of problems that are difficult to address.

5.2 DRAFT PERMIT WH/12727

The Panel supports draft permit WH/12727 and has concluded that a planning permit should be granted generally in accordance with the proposed plans and subject to the conditions recommended by the Panel. However, we recommend that the independent Environmental Auditor's Report and Statement of Environmental audit be prepared *prior to the granting of this permit.* We have come to this conclusion because part of the site was used as a land fill and this type of use has on-going environmental problems. The granting of the permit can not proceed until Amendment C41 is gazetted.

We would have been more confident about the residential development had we been provided with the independent Environmental Auditor's report that confirmed that the land was suitable for residential use. Draft permit WH/12727 contemplates a defined residential proposal that could be assessed under the provisions of the Environmental Audit Overlay. Frankly, we were surprised that the Environmental Auditor's Report and Statement of Environmental Audit had not been completed for this proposed development. We were also concerned that some of the conditions in the Statement

may have to be given effect through the permit conditions. The venting of the dwellings is an obvious condition where there is a direct link between the Environmental Auditor's recommendation and the permit condition.

5.2.1 Conditions

The City of Whitehorse and Phileo Australia Ltd and other submitters had different views about some of the conditions proposed in draft permit WH/12727.

Mr Lonie of behalf of Whitehorse Council and Mr Pitt on behalf of Phileo identified those conditions that were contested and those that were not. This was very helpful to the Panel. These conditions "in dispute" were referred to the Panel for a recommendation. In forming its view about the conditions, the Panel has also considered comments from other submitters. The Panel did not confine its review to only those conditions "in dispute" identified by Mr Pitt and Mr Lonie.

The Panel has modified an electronic version of the draft permit WH/12727 provided by the City of Whitehorse that incorporated the changes agreed to by Mr Lonie and Mr Pitt and identified the conditions in dispute where direction from the Panel was required. This caused some problems with the numbering of the conditions in the Panel's recommended version and earlier versions of the permit. However, we consider that the text will make our views clear about the conditions.

The Panel considers that permit conditions provide the opportunity for the Whitehorse City Council to achieve its legitimate objectives in relation to the management of the environmental issues associated with the land. However, there are some limitations on the types of conditions that a planning permit may include. For example, the Panel does not consider that a planning permit condition can require that part of the land be transferred at no cost to the responsible authority for public open space, no matter how desirable this planning outcome might be. There are other mechanisms available to achieve this desirable planning outcome.

Likewise there are other mechanisms available to ensure the on-going management and monitoring of the land, if the land is owned by Phileo or some other entity. The Panel appreciates the City of Whitehorse's legitimate concern to ensure that the management and monitoring of the land continues and that an identified entity with appropriate resources is responsible for the site remediation if required. These obligations will "run with the land" and fall to the owner through previous permit conditions, the Pollution Abatement Notice issued by the EPA and possibly the conditions on the Statement of Environmental Audit issued for the land under the Environmental Audit Overlay provisions. The Panel shares the City of Whitehorse's concern that that these obligations and financial responsibilities must not fall, by default or for any other reason, to the ratepayers of the City of Whitehorse. However, the Panel accepts the limitations of planning permit conditions and their prime purpose to control the use and development of land. They can not be imposed for other purposes, no mater how desirable that purpose might be.

In reviewing the draft permit conditions the Panel is mindful of the basic principles established for the validity of permit conditions. Each condition must:

- Be reasonable
- Relate to the planning permission being granted
- Fulfil a planning purpose
- Accurately convey its intended effect and avoid uncertainty and vagueness.

The Panel has been mindful of these principles in drafting revised conditions.

The Panel's recommended version of Permit WH/12727 is set out below.

THE PERMIT ALLOWS

The development of the land for the purpose of seventy-nine (79) dwellings, comprising 71 two storey and 8 three storey dwellings, and the creation of a carriageway easement, subject to the following conditions.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. Before the development starts, or any trees or vegetation removed, amended plans (three copies) shall be submitted to and approved by the Responsible Authority. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans submitted with the application but modified to show:

    a) The layout of the development (including ground & first floor plans, and landscape concept plans) being in accordance with the Site Layout Plan SK 00 E. All plans must show detailed setbacks, visitor spaces, bike paths and footpaths, acoustic fencing, lighting and roller doors to the satisfaction of the Responsible Authority.

    b) No vehicular connection between the T-heads in front of Dwellings 47-49 except for access for bicycles and pedestrians and emergency vehicles, with the provision of suitable bollards to prevent vehicle access to the satisfaction of the Responsible Authority.

    Insert new condition 1(c): Provision of at least six visitor parking spaces as indented parking bays not intruding into the pavement width with a minimum distance of 10 m from intersecting roads in accordance with Standard B16 of Clause 55 to the satisfaction of the Responsible Authority. Such spaces to be oriented to provide views into the land fill/ open space area.

    Panel comment: The Panel agrees with Mr Symons and considers this arrangement for some of the visitor parking provides opportunity for casual surveillance of the land fill/open space area.

    c) Provision of appropriate line marking and give way signage for the intersecting internal roads and the installation of speed attenuation devices on the internal road connecting with Mont Albert Road extension, to the satisfaction of the Responsible Authority.

    Insert new condition (e): The footpath to be continued along the north side of the internal road in front of dwellings 62 to 64 to provide a connection to Federation Street.

    Panel comment: The Panel agrees with Mr Lonie that whilst this section of private road is presently a cul de sac it will in the future provide access to the open space area and any future use of the southern part of the site. Pedestrians and vehicles should be separated in this section of road.

d) The buildings being provided with a land fill gas venting system and appropriate arrangements for sewerage and other service connections that take account of the condition of the land, its proximity to the land fill and the conditions of the Statement of Environmental Audit for the land to be developed pursuant to this permit and to the satisfaction of the Responsible Authority.

Panel comment: Condition wording revised provide other options for building and servicing to address the consequences of the land fill.

g) Street lighting to be designed in accordance with Conditions 34 and 35.

h) Details of bin collection areas for all dwellings facing the smaller access roads to enable collection of refuse on the wider access roads, to the satisfaction of the Responsible Authority.

i) The location of existing and proposed drainage easements (including drainage easements associated with the proposed retarding basins), existing Council drains and proposed floodway alignment, to the satisfaction of the Responsible Authority.

j) A detailed Landscape Plan in accordance with Condition 13**, including identifying the mature trees on adjacent land to be protected during construction in accordance with condition 5(b) j.**

k) The north-west facing upper floor window in Dwelling 21 be designed to prevent overlooking to the satisfaction of the Responsible Authority.

Panel comment: Insert new condition (k) to respond to concerns about loss of privacy to the front garden of the existing residence to the west of the dwelling 21.

Once approved by the Responsible Authority these plans become the endorsed plans of this permit.

2. Prior to the commencement of a residential use or the construction or carrying out of buildings and works in association with a residential use, either:

i) A certificate of environmental audit must be issued for the use of the land for residential purposes in accordance with Section 53Y of the Environment Protection Act 1970;

Or

ii) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Section 53Z of that Act that the environmental conditions of the land are suitable for the residential use.

Panel comment: Condition changed to reflect changed legislation.

3. Prior to the commencement of any buildings and works, a Site Management Plan for the whole of the land included in Certificate of Title Volume 6520 Folio 967 generally in accordance with the Site Management Plan prepared by Golder Associates Pty Ltd dated 6 August 2002 but modified to the extent necessary to meet the terms and conditions of a Statement of Environmental Audit in respect of the land to be developed pursuant to this permit, must be approved by both the Responsible Authority and the Environment Protection Authority ("EPA"). The Site Management Plan shall address the following to the satisfaction of the Responsible Authority and the EPA:

a) rehabilitation of the land fill area so as to make the area suitable for use and development in accordance with the endorsed plans;

b) the ongoing management and monitoring of environmental issues associated with the land fill site and its proposed use and development, including issues relating to land subsidence, methane gas emissions, leachate, underground fire, maintenance of the capping of the land fill and prevention of stormwater infiltration into the land fill;

Panel comment: The Panel accepts Mr R Parker's evidence that the threat of underground fire is extremely remote. However, its inclusion is consistent with the Panel's view that a cautious approach is necessary given the past history of the site. Reference to ground water has been deleted on the basis that the appointed Environmental Auditor (Mr P Sinclair) advised the Panel that ground water monitoring was not necessary in this instance because there was no proposal to use the ground water for a beneficial use. This initial advice can be confirmed or otherwise in his report and Statement of Environmental Audit and the condition adjusted accordingly.

c) maintenance of the structural integrity of the infrastructure to be provided including sewer reticulation, drainage, retarding basins, roads, pavements, and other services;

d) maintenance of the structural integrity of other buildings and works proposed to be constructed or carried out on the land to be developed for residential purposes and on or adjacent to filled land;

e) measures to minimise any impacts on the heritage buildings located in the south west part of the land;

f) maintenance of landscaping provided in accordance with the endorsed landscape plans pursuant to a landscape maintenance program;

g) identification of all potential environmental scenarios including infrastructure failure and the failure of any buildings and works on the land the subject of this permit constructed on or adjacent to filled land and with appropriate contingency response plans and procedures to manage each possible scenario and minimise associated impacts;

h) provision of regular monitoring reports to both the Responsible Authority and the EPA on environmental issues associated with the land and its proposed use and development, including the issues referred to in paragraph (b);

i) ongoing ownership, maintenance and management of the land fill/open space area;

j) the conditions of a Statement issued under Section 53Z of the *Environment Protection Act* 1970 in respect of the land.

4. Use and development of the land shall at all times comply with the approved Site Management Plan to be implemented to the satisfaction of the Responsible Authority.

5. Prior to the commencement of any buildings and works (including roads and services), a Construction Management Plan must be submitted to and approved by both the Responsible Authority and the Environment Protection Authority ("EPA"). The Construction Management Plan shall provide details as to how the construction of the development will address the following:

a) the relevant sections of the Site Management Plan approved by the Responsible Authority and the EPA under Condition 3 including:

(i) maintenance during construction of the structural integrity of the development carried out on or adjacent to filled land;

(ii) management of any environmental issues associated with the site during construction including land subsidence, methane gas, leachate, underground fire,

maintenance of the capping of the land fill and the prevention of stormwater infiltration into the land fill;

b) in respect of the:
   (i) road pavements;
   (ii) underground services; and
   (iii) car parks;

   the following:

   1. The measures to be put in place to address the differential settlement that may occur over different portions of the land fill area, particularly having regard to that which will occur in respect of the shallow and deep fill areas.
   2. Full details of the compaction methods and compaction equipment, which is to be used to compact filled areas prior to construction to reduce the amount of settlement. Impact rollers must not be used. Vibrating sheep's foot rollers or other means to the satisfaction of the responsible authority may be used.
   3. The steps to be taken to avoid any damage to the existing heritage buildings on the land subject to Heritage Overlay 3.
   4. The measures to be put in place to stabilise subgrade moisture.
   5. The measures to be put in place to address the differential settlement that will occur between the dwellings, paved areas and underground services.
   6. The measures to be taken in respect of the construction of underground services including stormwater pipes, sewerage pipes, gas, water, electricity and telephone services to maintain their integrity if settlement occurs and to maintain flexible connections to the dwellings.

c) compliance with the Environment Protection Authority publications "Environmental Guidelines for Major Construction-sites" (EPA Publication 480) and "Construction Techniques for Sediment Pollution Control" (EPA Publication 275);

d) identification of all potential environmental and on-site construction scenarios and appropriate contingency response plans and procedures to manage each possible scenario and minimise associated impacts;

e) minimisation and monitoring of noise emissions during construction;

f) implementation of dust mitigation measures during construction;

g) the manner in which construction plant, machinery and vehicles are to be used and stored on-site so as to minimise any potential for adverse impacts associated with their use on the land fill site or on the amenity of adjoining or nearby areas;

h) provision of adequate notice to the public about the timing and progress of works associated with the development;

i) Techniques for the protection of mature trees on adjoining land during construction

6. All buildings and works shall be constructed and carried out in accordance with the approved Construction Management Plan to the satisfaction of the Responsible Authority.

7. Prior to the commencement of any buildings and works on the land, a Traffic Management Plan must be submitted to and approved by the Responsible Authority. The preparation of the plan must provide the opportunity for the surrounding community to comment on the draft plan. The approved plan must in provide for suitable traffic and access arrangements for all the land, all to the satisfaction of the Responsible Authority. When the plan is approved it shall form part of the planning permit.

   The Traffic Management Plan must address or include provision of suitable treatment to manage the safe entry of vehicles into Elgar Road including possibly

(a) a road widening at the intersection of Standard Avenue and Elgar Road and/or banning right hand turns between 8.00 am and 9.00 am on weekdays from one or both of Federation Street and Standard Avenue at their intersections with Elgar Road and the provision of a Keep Clear line marking on the eastern carriageway of Elgar Road at the intersection of Standard Avenue to facilitate safe and convenient traffic movements at the intersections of Elgar Road with Federation Street and Standard Avenue. However, other solutions may be possible.

The Traffic Management Plan shall be implemented and complied with to the satisfaction of the responsible authority.

8. Prior to the commencement of the development, carriageway rights shall be established over the City of Whitehorse's land adjacent to the north- east corner of the land to Surrey Drive to formalise the proposed access arrangements for the residential development of the land. This access shall only be available for pedestrians, bicyclists, emergency vehicles and residents and visitors of dwellings nos 50 to 61.

9. Prior to the commencement of any buildings and works, detailed plans of the road pavement shall be submitted to the satisfaction of the Responsible Authority. The construction techniques for the roads, footpaths and services and ongoing maintenance program shall be undertaken to the satisfaction of the Responsible Authority.

10. Prior to the commencement of the development or any associated building and works allowed under this permit, the owner shall enter into an Agreement with the Responsible Authority, in a form satisfactory to the Responsible Authority, pursuant to the provisions of Section 173 of the *Planning and Environment Act 1987.* The Agreement must be registered on the Title to the land pursuant to Section 181 of the Planning and Environment Act 1987.

Panel Comment: The Panel recommends that the Agreement is registered on the title of the land so all subsequent land owners are aware of the obligations in the event the land is sold or becomes part of common property owned by a body corporate. The Panel has expressed its concerns about fragmented ownership and lack of resources to manage, monitor and maintain the land fill/open space.

The agreement will provide for the following obligations:

a) The owner will grant to the Whitehorse City Council the right of first refusal until 14 October 2007 to take a transfer or lease of the land fill area/ open space*;*

Panel comment: This condition as recommended by the Panel reflects the "offer" put to the City of Whitehorse by Mr Pitt on behalf of the owner of the land**.** The Panel has come to the view that applying the basic principles established about the validity of conditions in planning permits means that it would not be appropriate to place an obligation on the owner to transfer land *at no cost* to the Council unless the owner agreed to do so. It would be appropriate for such an agreement to be subject to an alternative arrangement and not given effect to by way of a condition in the planning permit.

However, the arrangements for the future ownership, maintenance and use of the land fill/open space part of the site were contested between the Council and the applicant. The Council believed it had reached an understanding with the owner that the land fill area would be transferred to it at no cost for public open space after 5 years when the Council could be reasonably confident about the environmental conditions of the land and any costs associated with its on-going maintenance or remediation that might be borne by the City's ratepayers as a consequence of the purchase.

The Council proposed to include a condition in the permit to facilitate this "agreement". At the Hearing, the owner (Phileo) through Mr Pitt, indicated that

it was not prepared to transfer the land at no cost. However the owner was prepared to agree to a condition and obligation in the Section 173 Agreement that granted the Council the right of first refusal until 14 October 2007 to take a transfer or lease of the open space. The condition as drafted by the Panel reflects Phileo's offer.

b) the owner will implement and comply with the Site Management Plan approved under Condition 3, to the satisfaction of the Responsible Authority;

c) the owner will maintain the landscaping provided on-site in accordance with the endorsed landscape plans and the Landscape Maintenance Program approved by the responsible authority;

d) prior to the construction of any building or the carrying out of any works, the owner will provide to the responsible authority a Bank Guarantee or other financial security for an amount which in addition to any amount of financial assurance required by the EPA is sufficient to the satisfaction of the responsible authority to reasonably secure the costs of carrying out the works required to be carried out under the approved Site Management Plan and the approved landscape plan. The financial security shall be in a form approved by the responsible authority.

Panel comment: The Panel considers that the bond should include the installation of the landscaping in accordance with the landscape plan required in accordance with Condition 13. The on-going maintenance of the landscaping is covered in the Site Management Plan (refer to condition 3f).

e) private roads in the future common property area will be constructed to specifications approved by the Responsible Authority and will remain as private roads;

Insert new condition 10(f): The owner will be responsible for the construction of the private roads.

f) the owner will be responsible for the management, maintenance, repair and reinstatement of all utilities and other works and services provided on the land the subject of this permit on or adjacent to filled land;

g) the owner will install and maintain adequate fencing to prevent public access to the land fill/ open space area whilst it remains in private ownership;

h) Phileo Australia Limited will maintain ownership of the land fill / open space area until 14 October 2007;

Panel comment: This condition reflects Phileo's offer to the City of Whitehorse and is consistent with Condition 10 (a). Mr Pitt did not object to inclusion of this condition.

i) Phileo Australia Limited will retain responsibility for the ongoing management and monitoring of the environmental issues associated with the landfill site and its proposed use and development, including issues relating to land subsidence, methane gas emissions, leachate, maintenance of the land fill capping, underground fire, and prevention of stormwater infiltration into the land fill area;

Panel comment: The Panel accepts Mr R Parker's evidence that the threat of underground fire is extremely remote. However, its inclusion is consistent with the Panel's cautious approach given the past land use history of the site. Reference to ground water has been deleted on the basis that the Environmental Auditor advised the Panel that monitoring was not necessary because there was no proposal to use the ground water for a beneficial use. This initial advice can be confirmed or otherwise in his report and Statement of Environmental Audit and the condition adjusted accordingly.

j) the owner shall pay the reasonable legal costs incurred by the Responsible Authority in respect of the preparation and registration of the Agreement.

10A. **Panel Comment:** The Panel does not support the condition 10A proposed by Mr Lonie and recommends that it be deleted from the permit. The Panel's reasons are outlined in its comments in response to condition 10 (a) above.

11. Prior to the commencement of the development or any associated buildings and works allowed under this permit, the owner of the land must enter into an agreement with the Responsible Authority in a form satisfactory to the Responsible Authority under Section 173 of the *Planning and Environment Act 1987* which:

i) In connection with the common property (the "private roads") shown on any proposed plan of subdivision, the owner covenants that:

a) private roads in the common property area will remain as private roads and are not to be designated for public use and that signs will be erected and maintained in appropriate locations discouraging use of the roads by the general public or persons who are not owners, occupiers or visitors to the land;

b) the owner will be responsible for the construction, care and management of the private roads;

c) the owner will indemnify the Council, its employees and contractors against any loss or damage suffered as a consequence of any property damage, personal injury or damage to roads, pavements, kerbs, channels or other services within the private roads or adjacent to the private road;

c) the obligations of the body corporate (on registration of the plan of subdivision) in relation to the common property and deals with the effect of the Section 173 Agreement on the share of any future owner in the common property;

d) the rights of the Whitehorse City Council and its employees and contractors to enter the land for purposes of providing municipal services to the land;

e) the obligation of the owner to pay the Responsible Authority's costs of negotiating, preparing, executing and registering the Section 173 Agreement.

(ii) Allows the Whitehorse City Council to withdraw the provision of municipal services to or from the land if the private roads in its opinion become unsafe for vehicular traffic.

12. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plans and must not be altered or modified without the further written consent of the Responsible Authority.

Landscaping

13. No building or works shall be commenced (and no trees or vegetation shall be removed) until a detailed landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and endorsed by the Responsible Authority.

(i) This plan will generally be in accordance with the proposed landscape concept plans prepared by Environmental Resources and Management Australia Pty Ltd (ERM) dated April 2002 – Drawing No's Ls1a, Ls2, Ls3 & Ls4 but modified if necessary to comply with the terms and conditions of a Statement of Environmental Audit under Section 53Z of the Environment Protection Act 1970 and when endorsed shall form part of this permit. This plan shall show -

* Existing vegetation on the abutting land, abutting street trees, and other natural features that would affect the landscape design.

* Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.

* Planting within and around the perimeter of the site comprising trees and shrubs generally of advanced native plantings capable of:

  - providing a complete garden scheme, with suitable tree species and understorey planting,
  - softening the building bulk,
  - providing some upper canopy for landscape perspective,
  - minimising the potential of any overlooking between habitable rooms of adjacent dwellings.

* A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed.

* The proposed design features such as mounding, paths, paving, lawn and mulch.

* A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant.

* Mature trees on adjacent land to be protected during construction in accordance with condition 5(b) (i).

(ii) The plan shall take into account the Completion and Rehabilitation Plan, prepared by Golders Associates dated May 1999, the Geotechnical Investigation Report prepared by AS James Pty Ltd dated 18 January 2002, and the Site Management Plan prepared by Golders and Associates dated 6 August 2002, which includes the following:

- Appropriate tree species with shallow root systems on the landfill part of the site.
- Details of the proposed mounding for the trees on the remainder of landfill area to the east and south.
- The height of proposed mounding and sections of mounding for the street trees along the internal private roads.
- Details of suitable indigenous lower storey and understorey planting of shrubs and grasses on the site.
- Details of landscaping along the Federation Street extension between the dwellings to the north and the existing kiln building to the south, with minimal lower storey planting to retain the industrial appearance of this landscape buffer.
- Suitable planting of the retarding basins to include moisture tolerant species.

(iii) A Statement from the Environmental Auditor shall be provided to the Responsible Authority prior to the endorsement of the landscape plan stating that the Landscape Plan, including species, mounding and maintenance will meet the land management techniques specified for the site.

(iv) Landscaping in accordance with this approved plan and schedule shall be completed before the buildings are occupied.

(v) The landscaping shall after completion be maintained to the satisfaction of the Responsible Authority.

14. The advanced native plantings required by Condition 13 (i) shall be of plants produced by a specialist supplier of advanced stock grown to produce a sound and well maintained root system so as to allow the development of a well structured plant. Upon planting, both the planting hole and soil shall be properly prepared and the plant shall be staked for a period of

12 months in accordance with recommended horticultural practice. Mulch shall also be provided to minimise weed growth and reduce moisture loss.

The Council's Planning Inspector shall be notified at the time of planting to enable inspection of the plants.

15. The existing street trees shall not be removed or damaged.

16. The garden areas shown on the endorsed plan and schedule shall only be used as gardens and shall be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it may be required by the Responsible Authority to be replaced by a tree or shrub of similar size and variety.

The Council's Planning Inspector shall be advised of the completion of the landscaping so that a site inspection can be carried out. A further inspection will be carried out 6 months after the completion of the landscaping to ensure that plants have been adequately maintained.

Drainage

17. Discharge of stormwater from the land will be required by means of an underground pipe drainage system designed on the basis of a 10 year average storm recurrence interval and discharging into an approved outlet in a street or an underground pipe drain to the satisfaction of the Responsible Authority. In this regard no water shall be discharged from any pipe or paved area onto the surface of any adjacent land.

18. All stormwater drainage associated with the residential building(s) must be completed to the satisfaction of the relevant building surveyor prior to the occupation of the building(s).

19. All stormwater drains shall be connected to a legal point of discharge as approved by the Responsible Authority.

Prior to the commencement of any works on the subject land a site development layout plan together with detailed design plans and specifications for outfall drainage external to the site shall be approved by the Responsible Authority. All outfall drainage works must be completed to the satisfaction of the Responsible Authority prior to the occupation of buildings.

20. No building or works shall be constructed over any easement without the written consent of the relevant authority(s).

21. All stormwater discharge associated with the development site and upstream catchments, with flows impacting on the development site, is to be restricted to the requirements of the Responsible Authority and Melbourne Water.

22. Proposed floor levels are to be approved by the Responsible Authority prior to the issue of the Building Permit in relation to flood areas as defined in Regulation 6.2 of the Building Regulations 1994 (as amended).

23. Soil erosion control measures must be adopted at all times to the satisfaction of the Responsible Authority during the construction stages of the development. Site controls and erosion minimisation techniques are to be in accordance with Soil Conservation Authority guidelines 'Control of Erosion on Construction Sites'. The application must ensure compliance with the above guidelines and in potentially high erosion areas it may be required that a plan be prepared indicating proposed measures and methodology.

24. Prior to the issue of the building permit, design plans and specifications are to be prepared by a registered Consulting Engineer detailing civil engineering works within the site in accordance with the endorsed plans. Certification by the Consulting Engineer that the civil works have been completed in accordance with the design plans and specifications is to be provided to the Responsible Authority subsequent to the completion of all the works.

25. A drainage floodway to be provided through the site for upstream catchments with flows impacting on the development site. The floodway is to cater for overland flows associated with the 100-year Average Recurrence Interval (ARI) storm event to the satisfaction of the Responsible Authority.

26. Drainage easements in favour of the Whitehorse City Council are to be created to cover all retarding basins and drains associated with flows from external catchments to the satisfaction of the Responsible Authority.

27. All stormwater drainage required to service upstream catchments, with flows impacting on the development site, are to be constructed to the satisfaction of the Responsible Authority and in this regard detailed plans and specifications are to be approved by the Responsible Authority prior to the commencement of works.

28. Phileo Australia Limited is to enter into an agreement with Council to accept liability for the ongoing maintenance of all stormwater drains and retarding basins located in easements across landfill areas whilst in private ownership to the satisfaction of the Responsible Authority.

Asset Protection

29. The Applicant/Owner shall be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets necessary as a result of the development. The Applicant/Owner shall be responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.

30. Bluestone kerb and channelling shall be retained in Mont Albert Road extension and Surrey Drive to the satisfaction of the Responsible Authority. Any reconstruction should be to the satisfaction of the Responsible Authority.

31. Any new power and telephone connection between the dwellings on the land and the point of connection within the road reserve shall be concealed and designed to the satisfaction of the Responsible Authority and United Energy.

Other Services and Facilities

32. The common party walls between the dwellings shall be constructed in 270 mm brickwork or other material with equal or greater sound proofing effectiveness to the satisfaction of the Responsible Authority.

33. The development shall be provided with external lighting capable of illuminating access to each garage and car parking space. Lighting shall be located, directed and shielded and of limited intensity that no nuisance or loss of amenity is caused to any person within and beyond the site.

34. Street lighting to be designed so that the conduits formed by electrical services and installation do not become land fill gas migration pathways, to the satisfaction of the Responsible Authority.

35. Street lighting to not include capacitator starters or other systems that might ignite land fill gas, to the satisfaction of the Responsible Authority.

36. A retractable or folding linear type clothes line shall be provided in the private courtyard appurtenant to each dwelling; no other type of clothes line shall be permitted except with the approval of the Responsible Authority.

Panel comment: Recommend deletion of this condition, residents should be free to choose the type of clothesline provided in their private courtyard areas.

37. All piping and ducting except for downpipes and land fill gas vents above the ground floor storey of the dwelling shall be concealed to the satisfaction of the Responsible Authority.

38. An acoustic fence shall be erected along the northern and western boundaries in accordance with the recommendations of Burton Acoustic Group dated 11 June 2002, to minimise noise impacts from vehicles and to prevent overlooking into the adjoining residential properties. These works shall be carried out to the satisfaction of the Responsible Authority.

39. The car parking areas and accessways as shown on the endorsed plans shall be formed to such levels so that they may be used in accordance with the plan, and shall be properly constructed, surfaced, drained and line-marked (where applicable). The car park and driveways shall be maintained to the satisfaction of the Responsible Authority.

40. The garages and carports shall be provided with automatic doors with remote control devices, to the satisfaction of the Responsible Authority.

Panel comment: Recommend deletion of this condition, Panel is not convinced that it fulfils a planning purpose.

Waste Management

41. The provision of bin collection areas shall be in suitable locations on the site to the satisfaction of the Responsible Authority.

42. On-street parking along the internal access roads shall be discouraged on garbage collection days to enable sufficient clearance and unrestricted movement by large garbage trucks.

43. Suitable bollards shall be provided to prevent general vehicular access between Mont Albert Road and Surrey Drive, except for access for emergency vehicles when required.

44, 45 and 46: These conditions were included at the request of DNRE now DSE. They relate to vegetation protection and the selection of suitable plant species for new planting on the land.

Panel comment: Panel recommends deletion of these conditions and reliance on the landscape condition 13 to identify suitable plant species.

Time

44 This permit will expire if one of the following circumstances applies:

* the development is not commenced within two (2) years from the date of issue of this permit;

* the development is not completed within four (4) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

Permit Notes

Drainage

1. Discharge to existing Melbourne Water drain in Howard Street to Melbourne Water requirements.

2. Outfall drainage required to service the site and upstream catchments with flows impacting on the development site, to the requirements of the Responsible Authority and Melbourne Water.

3. On-site detention by way of retarding basins required for all stormwater associated with the development site and upstream catchments with flows impacting on the development site, to the requirements of the Responsible Authority and Melbourne Water.

4. Estimated flood levels for land liable to flooding within the site and associated minimum floor levels to be determined by Council.

5. Minimum floor levels to be determined prior to the issue of permit or indicated as subject to variation as a result of minimum floor levels being determined.

Melbourne Water

Water Sensitive Urban Design

1. It would be beneficial to consider applying Water Sensitive Urban Design (WSUD) elements to treat local stormwater. WSUD can remove pollutants in stormwater and help improve the health of our waterways and complement the developments natural aspects of the site. WSUD is consistent with the State Planning Policy Framework with reference to sustainable use of water and the Best Practice Environmental Management Guidelines. This approach can add value to the development by creating improved streetscapes and natural features while minimising drainage infrastructure cost.

2. Stormwater runoff from residential areas (parking areas, pavements, roof tops and roadways) contribute high levels of pollutants to the environment. WSUD is ideal to treat such areas and can add value to the development whilst minimising the drainage infrastructure costs.

3. Surface run-off from pavements/driveways and roadways should be directed into local treatment points where buffer strips, infiltration trenches and grassed swale drains can be utilised as a cost effective solution to help manage stormwater. The potential exists to modify the proposed swale drain so that low flows are directed towards the swale drain and allowed to infiltrate to the drainage pipe below. WSUD can help to create very attractive landscaping features and can help minimise the cost of drainage infrastructure. Landscaped buffers can improve the aesthetics of the area and can help screen the site from sensitive areas such as residential neighbourhoods.

4. The Best Practice Environmental Management Guidelines for Urban Stormwater may be used as a guide when developing site controls to minimise sediment laden runoff and stormwater pollution during construction. Section 6.3, titled Construction Activity, of these guidelines provides a useful checklist to develop a site management plan.

The Panel recommends that Whitehorse City Council includes these conditions in planning permit WH/12727. The conditions will provide an appropriate framework for the:

- Development of part of the land for residential use with minimal impact on the amenity of neighbours and in a way that takes account of the potential environmental problems associated with the previous use of part of the site for a land fill.
- Preparation and implementation of a site management plan with identified obligations and responsibilities.
- On-going maintenance, monitoring and management of the land by Phileo Australia Ltd.
- Whitehorse City Council to have the right of first refusal to purchase or lease the land fill area for open space within a reasonable time frame.

The Panel notes that the conditions relating to the opportunity for the Council to obtain ownership of the former land fill site for open space in the future are necessarily constrained by the limits on the way planning permit conditions can be applied to particular uses and development that require a planning permit. However, there are other mechanisms outside the planning permit process that are available to the City of Whitehorse to negotiate an agreement about securing the land fill area for open space in the future.

6 OVERALL CONCLUSIONS

In coming to its overall conclusions, the Panel is aware that the issues raised in relation to the Amendment and draft permit WH/12727 are complex. The solutions presented have taken considerable effort and resources over an extensive period of time to develop an appropriate planning outcome that balances the interests of the community, the land owner and the City of Whitehorse and provides a safe and attractive environment for new residents. The Panel would like to see the momentum continue to achieve the rezoning and the development of part of the land for residential purposes with the support of the community as a positive planning outcome compared to the status quo. The Panel would also encourage the owner and the City of Whitehorse to negotiate an appropriate agreement for the eventual transfer of the land fill area to the City of Whitehorse as an area of public open space. The surrounding community can reasonably expect some benefit to offset the unpleasant effects of the quarry and land fill operation that it endured over many years.

However, within this context, the Panel has a responsibility to ensure that the land is suitable for residential purposes. On the basis of the information available, the Panel cannot come to that conclusion with confidence. Furthermore, the Panel is not prepared to rely on the operation of Environmental Audit Overlay given that about one third of the land has been used as a land fill site. The Panel is firmly of the view that the independent Environmental Auditor's report is necessary in order for Amendment C41 to be adopted, approved and gazetted.

The Panel concludes that the rezoning of the land to the Residential 1 Zone is appropriate, subject to a satisfactory report by an independent Environmental Auditor for the whole of the land subject to the amendment.

The Panel concludes that the rezoning of the land to the Residential 1 Zone is consistent with State and Local Planning Policies and is strategically justified.

The Panel concludes that the traffic impacts on the local street network associated with the residential development of part of the land are acceptable, provided access onto Surrey Drive is limited as proposed in draft permit WH/12727.

The Panel concludes that the impacts associated with the residential development on the access to and the operation of the arterial road network through the local street network are acceptable. The Traffic Management Plan required in accordance with a condition in draft permit WH/12727 will address the impacts associated with the development of the land on surrounding streets. The Panel recommends that the surrounding community is consulted with respect to the development of the Traffic Management Plan.

The Panel considers that the best planning outcome for the land fill area is for its use as open space in the future when the "post" land fill processes (settlement, land fill gas generation etc) have run their course. The Panel considers that this should preferably be *public* open space to form a connection to Surrey Park via the narrow

strip of Council owned land along the west side of Surrey Drive. This outcome would enable the wider community to have access to this open space area.

The Panel appreciates that the Whitehorse City Council is cautious and has legitimate concerns about the environmental condition of the land. It has a responsibility to its ratepayers to be certain that ownership of the land does not bring with it responsibility for site rehabilitation in the future.

The owner of the land is prepared to offer the Council the right of first refusal to take a transfer or lease of the land fill area. The Panel was advised that the transfer at no cost option was not acceptable to the owner. While the Panel supports the use of the land fill for open space in the longer term, we are not prepared to recommend that a condition be included in permit WH/12727 to give effect to the sale or transfer of the land *with terms that are unacceptable to the owner*. However, to assist the future negotiations, we have recommended that the owner's offer of the first right of refusal be included as part of a 173 Agreement between the owner and the City of Whitehorse. We have recommended this a condition on the basis that the owner does not object to the inclusion of the condition in the permit.

The Panel considers that appropriate arrangements for the maintenance, monitoring and management of the land fill area are essential and are the owner's responsibility in accordance with current legislative and regulatory requirements. The owner must accept these responsibilities and recognise that *they arise in the context of the past use of the land* and not in the context of supporting the Amendment C41. In other words, the satisfactory maintenance, monitoring and management of the land fill area will continue to be required even if Amendment C41 is not approved and the land remains in the Industrial 1 Zone.

The effectiveness of the on-going management relies on the owner's commitment and funds. The Panel shares the Whitehorse City Council's concern that the effectiveness of the management and rehabilitation of the land fill would be diminished if the responsibility was passed onto more than one owner with limited or no funds. The Panel recommends that the City of Whitehorse discuss this potential problem with the EPA to identify other options outside the planning permit process that could be appropriate to address this issue.

The Panel would be particularly concerned, for example, if the on-going responsibility and financial liability for the maintenance of the land fill area passed onto the potentially 79 owners of lots 1 to 79 through a plan of subdivision that included the land fill area in Common Property owned by a Body Corporate. The owners/ Body Corporate may not fully appreciate the consequences of this arrangement and the success of the on-going maintenance regime would be jeopardised.

The Panel noted that the EPA only became involved in the proposed amendment relatively late in the process. The Panel considers that the amendment raises issues of general policy for the EPA in relation to the responsibility for on-going management of land fill sites and funding for monitoring, remediation etc that are essential for the success of the management and rehabilitation of land fill sites generally. The EPA's contribution to the resolution of these issues early in the planning process would have been of assistance to Whitehorse City Council.

The Panel would also have been assisted if the EPA had provided a response in relation to the witness reports on environmental issues, the options for ensuring financial arrangements are in place to support the on-going monitoring and management arrangements for the land fill and the related conditions in draft permit WH/12727. However, the Panel accepts that many of these issues are the responsibility of the appointed Environmental Auditor.

The Panel considers that the *whole* of the former Box Hill Quarry and land fill land at no. 14 Federation Street, Box Hill must be regarded as a potentially hazardous site because of the previous land fill operation on the central part of the land and the potential for this use to affect other parts of the site.

The environmental problems associated with the land fill area are not confined to the land fill area. Other parts of the site adjacent to the land fill could be affected by land fill gas migration, for example, as the land fill settles and matures.

Migration of land fill gas is a dangerous problem. The combination of land fill gas and residential development proposed on part of the land is a major concern to the Panel because of the risk of fire and explosion. The Panel considered that the seriousness of this issue was somewhat under-estimated in some of the submissions put to the Panel. The Whitehorse City Council must be as satisfied as it can be, that the land and buildings are *safe* for residents and visitors and that the environmental conditions of the land are appropriate for the range of land uses possible, once the land is rezoned to the Residential 1 Zone.

The regulatory regime established to address environmental issues associated with contaminated land has an over-arching objective and that is to ensure that land known to be contaminated is made *safe* for its intended use, be it sensitive, beneficial or a use otherwise categorised. Where land is known to have been used over an extensive period for a land fill, this objective is a prime consideration. The Panel concludes that the Whitehorse City Council must be confident that the land is *safe* in order to adopt Amendment C41.

While it may be possible for a decision maker to rely on the Environmental Audit Overlay to prevent land being used for a sensitive use until the provisions of Part 1XD of the Environment Protection Act are satisfied, the Panel is strongly of the view that reliance on the EAO in this instance does not provide the level of confidence necessary to recommend that Amendment C41 be approved.

Furthermore the Panel does not consider that the information about the environmental condition of the land available *at this point in time* provides the level of confidence necessary to support the rezoning of the land to residential.

The Panel considers that the rezoning of land from Industrial 1 to Residential 1 has major consequences in terms of the types of uses that could be established on the land, the number of people using the land, etc. The Panel and the Whitehorse City Council must be as confident as they can be that this change in the land use regime is appropriate and the land is suitable for the uses proposed under the new zone or has a reasonable prospect of being made suitable for the uses.

The Panel is therefore strongly of the view that the independent Environmental Auditor's report is required to be prepared for the whole of the land known as 14 Federation Street, Box Hill that is subject to the amendment. We have prepared our recommendations accordingly.

7 RECOMMENDATIONS

The Panel recommends that:

- An independent Environmental Auditor's report is prepared for the whole of the land known as 14 Federation Street, Box Hill.
- The further consideration of Amendment C41 to the Whitehorse Planning Scheme is deferred pending completion of the independent Environmental Auditor's report.
- Subject to a satisfactory Environmental Auditor's report, Whitehorse City Council adopts Amendment C41.
- Subject to a satisfactory Environmental Auditor's report and a Statement of Environmental Audit, that permit WH/12727 is issued with the conditions recommended by the Panel, including additional conditions if any, arising from the Environmental Auditor's report and Statement. The granting of this permit is contingent upon the adoption, approval and gazettal of Amendment C41.

APPENDIX 1

COMBINED LIST OF SUBMITTERS

Name

The Occupier

The Occupier

The Occupier

A Millane

A W M & E M Ahles

A Wilson

A Yap

Alan Robertson

Albert Hau

Andrew Junor

Andrew Robinson

Andy Spry

Angie Mc Gowan

Anne Bell

Anne Bradford

Annette Ainsworth

Annie Maller

B Cook

B Kirwan

B Ward

Barbara Glaser

Barry Doherty

Beth Dun

Brian & Carole Bethune

Bronwyn Knight & Shane Collins

C & M Robinson

C R Fisher

Candy Chan

Carole Hutchinson

Catherine Anna Farrington

Catherine Walliker

Cathie Chilton

Celeste Baer

Charlie Luu

Chris Nicolas

Christine N Gales

Colleen Van Summeren

Craig Smith

D Brierley

D Kirwan

Danny Wu

Darren Roach

David Andrews

Dawn Kinda

Denise Anderson

Des Scully

Diane Goh

Donald (The Occupier)

Elizabeth Meredith (Secretary),
West of Elgar Residents Association

Fiona & John Madden

Fred Cumming

G & M A D'Alessandro

Gary & Anita

Geoff Flowers & Angie Bardis

Geoff Tampling

Graham Ainsworth

Graham Hutchinson

Greg McGowan

Harvinder Singh

Heid & Brett Hose

Helen Kane

Helen Mill

Henry Tsai

I Urlish (The Occupier)

Ian & Lois Shaw

Ian Dun

Ian Jennings

Ian McLean

Ian Morgan

Jane Anderson

J & H Riess

J Anderson

J Chamberlain

J Gillespie & L Mcleod

J H Hellriegel

J K O'Donoghue

J L Congdon

J R Affleck

J S McBride & L J Mc Bride

Jacque Hellriegel

Jacqueline Unalia (The Occupier)

James Noelker

James Scott

Jan Angus

Jane B S Simpson

Jane Dixon

Jeff Van Summeren

Jennifer & Warren Pye

Jody Spry

John Brabonder

Julian Guess

Julie-Anne Adams

Karlie Stewart

Katherine Francis

Kaye Wycherley & Paul Dart

Kerrie Mc Mahon

L E Woodward

Laiwei Tang

Leanne & Ron Crawford

Lei Yong Jae

Lianyi (The Occupier)

M A Newing

M Hunt

M Ward

Margaret J Hindi (The Occupier)

Marie-Anne Rusticheli

Martin and Lynne Sevior

Marty Lord

Matthew Freeman

Matthew Webster & Kim Phillips

Meris Zheng

MG Bell

Michael & Kathy Best

Michael Tan

Mike Davies

Miles Jackson

Mr & Mrs Emerson

Mr & Mrs Peter Danby

Mr C C Farrington

Mr D Zikas

Mr David J Coddington &
Ms Debra J Coddington

Mr J Soesanto

Mr Kevin & Ms Maria Merry

Mr M Serch

Mr Paul Eckholdt

Mr Rodney Nash

Mrs E L Thompson

Mrs I Ceichi

Mrs Rosemarie Wadelton

Neil Metcher

Ngau Yip

Nicolas Hemow

Norman Buckmaster

O & L Boyle

P E Davis

P Phommasone

Paul Cussen

Paul Edwards

Paul Ransom

Paul Taylor

Paula Chitty

Peter Kaminski

Peter R Thomas & Jodie Thomas

Rachel Chee

Ray Mac Gilt

Richard William

Rishi Waua

Rob Hunwick

Robert Chu

Robert Roep

Rod & Heather Smith

Rohan Storey, Campaigns Manager, National Trust of Australia (Victoria)

Rose Lee & Patrick Holt

Rosemary Tibballs

Roy Main

Sandra M Gay

Sandra Robertson

Sarah Mayberry

Sarah Van Den Berg

Sean Kirwan

Serena Lim

Serse DiVirgils (The Occupier)

Sheryl Newman

Shihua Yang

Shona Grimmer

Sienhon G Huang

SJ Bell

Stella Wu (owner)

Stephen Dixon

Stephen Dixon c/- Sims Lockwood

Stephen Foster

Steven Prasad

Steven Thomas

Sybil Chong

Tamsyn Hutchinson

Tan Huyn (The Occupier)

The Occupier

Tracey Boulton

Tulia Seniloli & Penaia Seniloli

Veronica Stanis Zewska

W C & H I Evans

W Lindsay

W R Orange

Wengi Song

Y Yang & Y Y Li

Zhong Cheng Wang