

**WHITEHORSE PLANNING SCHEME  
AMENDMENT C142**

**PANEL REPORT**

**15 MAY 2012**

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A handwritten signature in cursive script, reading "Cathie McRobert". The signature is written in black ink on a white background.

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Cathie McRobert, Chair

**15 MAY 2012**

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# Contents

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<b>SUMMARY, OVERALL CONCLUSIONS AND CONSOLIDATED RECOMMENDATIONS .....</b>	<b>3</b>
Overall Conclusions.....	4
Consolidated Recommendations .....	6
<b>1. INTRODUCTION.....</b>	<b>8</b>
1.1 What is Proposed?.....	8
1.1.1 Details of the Amendment.....	8
1.1.2 Post-exhibition Changes Supported by Council.....	9
1.2 Procedural Issue .....	9
1.3 The Retail Strategy Review .....	10
1.4 Policy Framework .....	13
1.5 The Issues .....	15
<b>2. SHOULD THE RETAIL STRATEGY REVIEW INFORM FUTURE DECISIONS?.....</b>	<b>16</b>
2.1 Guidance on the Role and Function of Centres .....	16
2.1.1 Discussion .....	16
2.2 'Required Retail Floorspace' .....	18
2.2.1 Discussion .....	19
2.3 Forest Hill MAC Development Potential.....	22
2.3.1 Discussion .....	23
2.4 Should the Retail Strategy Review be a Reference Document? .....	24
2.4.1 Discussion .....	24
<b>3. THE REQUIREMENT FOR RETAIL SUSTAINABILITY ASSESSMENTS.....</b>	<b>26</b>
3.1 Discussion.....	28
<b>4. SHOULD SHOP USE REQUIRE A PERMIT TO ENABLE A REQUIREMENT FOR AN RSA?.....</b>	<b>32</b>
4.1 Discussion.....	33
<b>5. RETAIL STRATEGY REVIEW IMPLICATIONS FOR BLACKBURN STATION VILLAGE .....</b>	<b>36</b>
5.1 Discussion.....	36

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# Appendices

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<b>APPENDIX A: ECONOMIC EXPERTS STATEMENT OF MATTERS OF AGREEMENT AND DISAGREEMENT .....</b>	<b>38</b>
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## Abbreviations

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The following abbreviations are used in this report:

B1Z	Business 1 Zone
CAA	Central Activities Area
CAD	Central Activities District
CFSGAM	Colonial First State Global Asset Management
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MUZ	Mixed Use Zone
NAC	Neighbourhood Activity Centre
PDZ	Priority Development Zone
RSA	Retail Sustainability Assessment
Retail Strategy Review	<i>City of Whitehorse Retail Strategy Review October 2010</i>
SPPF	State Planning Policy Framework
The Act	<i>Planning and Environment Act 1987</i>

## Summary, Overall Conclusions and Consolidated Recommendations

<b>Purpose of Amendment C142</b>	<p>Amendment C142 proposes to implement the recommendations of the <i>City of Whitehorse Retail Strategy Review October 2010</i> (the Retail Strategy Review) through the following changes to the planning scheme:</p> <ul style="list-style-type: none"><li>▪ Additional objectives relating to activity centre development in Clauses 21.07 Economic Development, 22.06 Activity Centres and 22.07 Box Hill Central Activities District.</li><li>▪ A new requirement in Clause 22.06 to prepare a Retail Sustainability Assessment (RSA) for significant extensions to retail floorspace in Major and Neighbourhood Activity Centres, with reference to the requirement in Clause 22.07.</li><li>▪ Adding the Retail Strategy Review as a reference document.</li><li>▪ References to Box Hill Central Activities District are changed to the new designation of Central Activities Area (CAA).</li></ul>
<b>Planning Authority and Proponent</b>	Whitehorse City Council (the Council).
<b>Exhibition</b>	<p>17 November 2011 to 19 December 2011.</p> <p>Notification of the Amendment was sent to all trader associations, centre managers and key community groups. Advertisements were placed in Government Gazette, the Age Newspaper and the local Leader newspaper on 14 November 2011.</p>
<b>Submissions</b>	<p>In response to exhibition three written submissions were received from:</p> <ul style="list-style-type: none"><li>▪ The Department of Sustainability and Environment which raised no objection.</li><li>▪ Blackburn Village Residents Group which raised concerns about the impact of retail centre development on adjoining residential areas.</li><li>▪ Colonial First State Global Asset Management (CFSGAM), which owns the Forest Hill Chase Shopping Centre, sought the removal of the Retail Strategy Review as a reference document and changes to the proposed Clause 22 provisions.</li></ul>

<b>The Panel</b>	The Panel appointed under Section 153 of the <i>Planning and Environment Act 1987</i> (the Act) to consider Amendment C142 to the Whitehorse Planning Scheme comprised Cathie McRobert (Chair).
<b>Panel Hearings</b>	Directions Hearing: 5 March 2012 at Nunawading. Hearing: 16 April 2012 at Nunawading.
<b>Appearances</b>	<p><b>The Council</b> was represented by Nigel Smuts and Allison Egan who called evidence from:</p> <ul style="list-style-type: none"> <li>▪ Justin Malkiewicz of MacroPlan Dimasi – Economics.</li> </ul> <p><b>Blackburn Village Residents Group</b> represented by Michael Taff.</p> <p><b>CFSGAM</b> was represented<sup>1</sup> by Nick Tweedie of Counsel instructed by Rigby Cook Lawyers who called evidence from:</p> <ul style="list-style-type: none"> <li>▪ Brendan Rogers of Urbis – Planning.</li> <li>▪ Rhys Quick of Urbis – Economics.</li> </ul>
<b>Inspections</b>	The Panel did not inspect activity centres as part of the Panel process but is familiar with many of the larger activity centres in Whitehorse.

## Overall Conclusions

There was consensus at the Hearing that Amendment C142 does not establish the mechanism necessary to trigger the preparation of RSAs as intended. This is because, with the exception of the Forest Hill Major Activity Centre (MAC), the Business 1 Zone (B1Z) in Whitehorse does not specify maximum combined leasable floor area for shop and therefore shop use is as of right. In these circumstances consideration of matters addressed within an RSA, which are ‘use related’, would be irrelevant and probably unlawful.

The Panel does not support the post-exhibition specification of 1000 sq.m as the maximum combined leasable floor space across all activity centre B1 zones, as suggested in Council’s submission. The Panel is conscious that the B1Z is the zone intended to accommodate intensive retailing. It is not appropriate to regulate the amount of shop floorspace in the zone except to serve a clear strategic purpose to protect the role and function of the network of activity centres. Such a low threshold for a new permit requirement has not been justified and the implications have not been canvassed. Further, such a requirement has not been formally considered by Council or

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<sup>1</sup> CFSGAM was represented by Rhodie Anderson of Rigby Cooke Lawyers at the Directions Hearing.

authorised by the Minister. Nor have those who may be affected by such a substantial change had an opportunity to present their views.

Consideration could be given to relating the maximum combined floor area specified in the schedule to the B1Z to the existing or planned floor area of the MAC or Neighbourhood Activity Centre (NAC) so that a use permit for shop only is only required where significant retail expansion has potential to jeopardise the retail hierarchy. However, the panel is not in a position to recommend specific floor areas that could be nominated. This issue was not addressed in the Retail Strategy Review and the Panel does not have the detailed knowledge of the Whitehorse activity centres necessary to make recommendations on the issue. Further consideration and consultation is clearly required. If Council wishes to pursue such a change, it would be for the Minister (or his delegate) to determine whether the change should be authorised, and whether the necessary further notice occurs as part of the current Amendment pursuant to sections 32-34 of the Act or a new Amendment.

The Panel considers the proposed Amendment C142 provisions relating to RSAs would still serve a useful purpose where an Amendment to the planning scheme or a change to an approved plan proposes a significant expansion of retail floorspace. However, it considers a threshold of 1000 sq.m for individual retail premises in a NAC is too low. A number of refinements to the new Clause 22.06 provisions are also recommended.

The Panel considers the Retail Strategy Review provides useful background for planning decisions. However, the Panel considers that a forward should be included in the proposed reference document in order to make its limited role in decision making explicit and highlight aspects that were either successfully challenged during the Panel process or could not be verified. These qualifications relate to the Forest Hill MAC in particular but are also relevant to other centres.

The Panel agrees with Council that the planning framework for the consideration of planning permit applications in the Blackburn Station Village NAC is multi-faceted and changes to the exhibited Amendment provisions are not needed to address the Blackburn Village Residents Group concerns.

## Consolidated Recommendations

Based on the reasons set out in this Report, the Panel recommends that Amendment C142 to the Whitehorse Planning Scheme should be adopted subject to the following recommended changes:

1. Revise the objective in Clauses 21.07 to the following effect:

*To ensure ~~a sustainable distribution of~~ additional retail floorspace ~~throughout Whitehorse and allows~~ for improved access to retail goods and services by ~~all~~ members of the community and supports the planned role and function of the activity centre and its place in the retail hierarchy.*
2. Change Clause 22.06 as follows:
  - Change the objective to the following effect:

*To ensure that new retail floorspace reflects retail demand and considers impacts on the retail hierarchy and the planned role and function of other activity centres.*
  - Change references to 'Net Leasable Floor Area' to 'Leasable floor area'.
  - Revise the 'trigger' point for an RSA to the following effect:

*An ~~Planning Permit Application or an~~ Amendment to the Planning Scheme or change to an approved plan to facilitate expansion in shop floorspace above 3,000m<sup>2</sup> ~~NLA~~ leasable floor area ~~expand~~ in a Major Activity Centre (MAC) or 2,000m<sup>2</sup> leasable floor area in a Neighbourhood Activity Centre (NAC) must be accompanied by a Retail Sustainability Assessment (RSA). ~~where the proposed expansion exceeds the following thresholds:~~*

    - ~~Any expansion in shop floorspace above 3,000m<sup>2</sup> NLA leasable floor area for MACs.~~
    - ✗ ~~Any expansions above 2,000m<sup>2</sup> or 1,000m<sup>2</sup> leasable floor area for an individual shop if an approved Structure Plan is not in place or does not provide guidance on requirements for additional retail floorspace for NACs.~~
  - *The Responsible Authority may waive the requirement for the preparation of a Retail Sustainability Assessment where the Responsible Authority is satisfied that the proposal will achieve development outcomes consistent with an approved Structure Pplan.*
3. Include a forward to the Retail Strategy Review to indicate that:
  - *This Whitehorse Planning Scheme Reference document provides background information to assist in understanding the context within which retail policy has been framed. It has only a limited role in decision-making.*
  - *The assumed level of market growth is conservative and therefore projections of retail floorspace that would be supported may be understated.*

- *The basis for the assumed future market share for activity centres and the definition of the trade area for the Forest Hills MAC have not been verified.*
- *'Future retail floorspace requirements' relate to theoretical projections of possible future market demand for a set of standard commercial activities that are common. They are not floorspace caps or targets for future expansion within centres but do offer insights about what commercial growth demand might exist in the future.*
- *Provisions of the applicable zone, overlay, an approved activity centre Structure Plan or an approved Development Plan should be read in conjunction with this document.*
- *Commentary relating to the development potential of the Forest Hill MAC does not acknowledge the provisions of the schedule to the B1Z and the endorsed Development Plan.*

### **Other Recommendations**

4. Council consider the merits of:
  - Introducing new permit requirements for shop uses in the B1Z to allow consideration of the matters addressed in RSAs.
  - Specifying a maximum combined leasable floor space for shop use in the schedule to the B1Z that relates to the existing or planned floor area of the MAC or NAC (Any floor area specified should only require a use permit for shop where the extent of retail expansion has potential to jeopardise the retail hierarchy).
5. If Council resolves to support the introduction of maximum combined leasable floor areas for shops in the B1Z, the Minister (or his delegate) determine whether:
  - Such a change should be authorised.
  - A new amendment is required or provisions of Sections 32-34 of the Act would be adequate to enable those who are affected to present their views.

# 1. Introduction

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## 1.1 What is Proposed?

### 1.1.1 Details of the Amendment

Amendment C142 proposes to:

- Delete the policy *'The existing role of the East Burwood Plaza at the corner of Burwood Highway and Blackburn Road in the activity centre hierarchy will be maintained and enhanced'* as the subsequent policy relating to NACs more appropriately reflects Council's policy position in relation to all large neighbourhood centres, including East Burwood Plaza (Clause 22.06-3).
- Require the preparation of an RSA for an extension to MACs above 3,000m<sup>2</sup> net lease area (NLA), 2,000m<sup>2</sup> NLA for a NAC or 1,000m<sup>2</sup> NLA for an individual retail premises. The requirement for an RSA may be waived where the Responsible Authority is satisfied that the proposal will achieve land use and development outcomes consistent with an approved Structure Plan (Clause 22.06).
- Add the following objective *'To ensure that new retail floorspace reflects retail demand and considers the impact on other activity centres.'* (Clause 22.06).
- Add the following to the Box Hill Central Activities Area Policy (Clause 22.07):
  - *The City of Whitehorse Retail Strategy Review further recognises the role that the Box Hill Central Activities Area has as a location for future retail and commercial development, and the key role of the centre in providing opportunities for employment growth to benefit the municipality (Policy Basis).*
  - *To ensure that the Box Hill Central Activities Area can continue to expand in line with market demand (Objective).*
  - *To ensure that future development within the Box Hill Central Activities Area seeks to maximise employment growth for Whitehorse. (Objective)*
  - The responsible authority will encourage use and development that:
    - ✧ *Provides for the expansion of the Central Activities Area in line with market need.*
    - ✧ *Seeks to maximise growth in employment for the City of Whitehorse (Policy).*
- Include the Retail Strategy Review as a reference document (Clauses 21.07, 22.06 and 22.07).

References to Box Hill as the new designation of Central Activities Area have been approved under Amendment C144. Therefore Amendment C142 no longer incorporates this change.

### 1.1.2 Post-exhibition Changes Supported by Council

After considering submissions Council supported the following changes to the exhibited Amendment:

- Change references to Net Leasable Floor Area to "Leasable floor area" for consistency with defined terms in the planning scheme.
- Exempt proposals in accordance with an approved plan from the requirement to prepare an RSA, rather than limiting the exemption to structure plans. This change was a direct response to the CFSGAM submission. It endorsed the view that the extent of development approved in plans other than Structure Plans, such as the approved development plan for the Forest Hill Activity Centre, should not be required to provide further justification for that level of development.

These changes were not contentious and are endorsed by the Panel as appropriate.

#### Panel Recommendation

**Revise Clause 22.06 as follows:**

- **Change references to 'Net Leasable Floor Area' to "Leasable floor area".**
- *The Responsible Authority may waive the requirement for the preparation of a Retail Sustainability Assessment where the Responsible Authority is satisfied that the proposal will achieve development outcomes consistent with an approved Structure Plan.*

## 1.2 Procedural Issue

Council advised that review in the week leading up to the Hearing indicated that the Amendment has not established the mechanism necessary to trigger the preparation of RSAs as envisaged by the new Clause 22.06. This is because shop use is as of right in Business 1 Zone (B1Z) in Whitehorse<sup>2</sup>. Council submitted the most effective way to address this issue is for the schedule to the B1Z to be amended to specify a maximum combined leasable

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<sup>2</sup> The Forest Hill MAC is an exception; a permit for shop use in that centre would only be required if a proposal exceeded the maximum combined leasable floor areas specified in the schedule to the B1Z of 64,000 sq.m for shop and 20,000 sq.m for restricted retail premises.

floor area (1,000 sq.m) for shop for all activity centres, beyond which a permit would be required.

Council acknowledged that the change now proposed is significant but submitted that the intention to trigger an RSA for shop development of the nominated scale has been clear throughout the Amendment process. Council suggested that further notice of the change could allow the matter to be addressed as part of Amendment C142. Council sought advice from the Panel on the most appropriate method to introduce this proposed change at this time.

Mr Tweedie argued that such a significant change would transform the Amendment, the introduction of a permit requirement for shop use across the municipality has not been authorised by the Minister, and such a change runs counter to purpose of the B1Z. He submitted that the Hearing should not proceed, the Amendment should be abandoned, and if such a change is pursued it should be via a new amendment with appropriate authorisation.

At the Hearing the Panel agreed that such a substantial change cannot be made without providing those who may be affected with an opportunity to present their views. However, the Panel considered the Hearing should proceed on the basis that:

- Evidence and submissions had been prepared addressing significant issues, such as the merits of the RSA requirement and the role of the Retail Strategy Review in future planning decisions;
- The Panel Hearing and report may progress the determination of issues in contention; and
- Further processes will be required to allow those who may be affected to present their views. It will be for the Minister (or his delegate) to determine whether such a change should be authorised and the process that should apply.

The Panel returns to this question in Chapter 4 after considering the issues raised in the conditions of authorisation and submissions.

### **1.3 The Retail Strategy Review**

Amendment C142 is proposed to implement the planning related recommendations of the Retail Strategy Review 2010 which was prepared by MacroPlan. The Retail Strategy Review included an examination of strategic and statutory planning mechanisms; the Whitehorse LGA future population and employment projections; journey to work modelling, current levels of retail supply and demand; centre catchment and retail expenditure modelling, and the competitiveness of key retail centres *'according to a triple*

*bottom line framework*'. The analysis drew on input from primary market research including business consultation and shopper surveys.

Future retail floorspace requirements were derived from:

- Population and employment in each centre catchment with consideration of incomes.
- Comparing the amount and form of retail floor space supply, focussing on the four key centres.
- Centre retailers' ability to retain retail expenditure/likely market share.
- Development constraints and land availability.

The Retail Strategy Review stated:

*'It is important to note that this demand/supply analysis is based on the retail expenditure pool available to the LGA and does not consider the individual catchments and expansion opportunities in each centre.'*

The Retail Strategy Review recognised and reinforced the strategic importance of the Box Hill CAA to Whitehorse. There was also a particular focus on the designated MACs (Nunawading/MegaMile; Forest Hill, Burwood Heights) and on expansion of the Kmart / East Burwood Plaza Activity Centre to become a MAC. Table 1 sets out the 'floorspace requirements' for the key centres.

Retail format type (Growth 2008 - 2031)	Box Hill	N'wading/MegaMile	Forest Hill	E.Burwood Plaza	Total
<b>Food retailing</b>					
Supermarket	1,346	567	1,684	451	4,047
Food retail specialties	887	144	469	311	1,812
Restaurants and cafés	3,652	747	1,510	766	6,676
<b>Total food-based</b>	<b>5,885</b>	<b>1,459</b>	<b>3,663</b>	<b>1,528</b>	<b>12,535</b>
<b>Non-Food retailing</b>					
Dept. Stores / DDS	600	3,908	1,010	1,172	6,690
Non-food specialties	451	2,853	671	834	4,809
Bulky goods	128	14,117	373	434	15,052
<b>Total Non-food based</b>	<b>1,179</b>	<b>20,878</b>	<b>2,054</b>	<b>2,441</b>	<b>26,551</b>
<b>Retail services</b>					
Retail services specialties	319	618	570	258	1,765
<b>Total retail</b>	<b>7,383</b>	<b>22,954</b>	<b>6,288</b>	<b>4,227</b>	<b>40,852</b>

**Table 1 Comparison of Projected Growth in Retail Floorspace (2009 – 2031)**

Source: Retail Strategy Review Figure 60

The Retail Strategy Review highlighted the importance of neighbourhood and local level retail development, commenting:

*'... floor space allocation is slightly concentrated at the CAD and MAC level which can have negative impacts of requiring consumers to travel further to access some retail formats. This increases traffic, environmental externalities, and may be particularly problematic for*

*older and low income persons who may not have access to a motor vehicle.....Going forward, it will be important to encourage development at the neighbourhood and local level to ensure both high-end and amenity retailing meets the needs of the defined local catchments, with specific attention to the food versus non-food mix.'*

The Retail Strategy Review recommended:

- No restriction on retail floorspace in the Box Hill CAA or non-retail floorspace (i.e. office) at the Box Hill CAA or MACs.
- An RSA should be submitted for:
  - In MACs for any additional shop floorspace above 3,000 sq.m Net Leasable Area (NLA). However, expansions in retail floorspace at MACs co-located to principal public transport infrastructure (particularly rail) could be supported without a RSA 'if Council has a policy objective to activate the centre as a Transit Oriented Development'.
  - In NACs expansions above 2,000 sq.m or 1,000 sq.m for an individual shop if a Centre Structure Plan is not in place or does not provide guidance on requirements for additional retail floorspace.
- An RSA should not be required for proposals that are consistent with an approved structure plan.

These recommendations are reflected in Amendment C142.

### **Retail Sustainability Assessment (RSA)**

The Retail Strategy Review indicated that trigger points for the preparation of an RSA were identified to provide greater developer certainty and a smoother development assessment process. These triggers are intended to apply to centre expansion within its designated retail hierarchy and also where it is proposed to elevate a centre's role to a new level in the centre hierarchy through a new format or volume of retail floorspace. However, the Retail Strategy (page 16) stated:

*An RSA should not be required for a centre that is developing within the boundaries of an endorsed Centre Structure Plan and should only be required for centres that plan to deliver a significant variation in retail floorspace above the volume endorsed within the Centre Structure Plan.*

The recommended scope of RSAs (see Chapter 3) is reflected in Amendment C142.

## 1.4 Policy Framework

The State Planning Policy Framework (SPPF) establishes a network of activity centres comprising Central Activity Districts, Principal Activity Centres, MACs, Specialised Activity Centres and NACs. Activity centres are intended to provide a focus for a range of uses, including shopping. State policy encourages the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments in activity centres.<sup>3</sup>

Of particular relevance to Amendment C142 is the designation of Box Hill as a Central Activities District (CAD) in both the State and local policy frameworks. These activity centres are intended as the primary business, retail and entertainment hubs for the metropolitan area<sup>4</sup>. In recognition of this role for Box Hill, Amendment C142 does not propose to require an RSA for expansion of shop uses. The Amendment and Retail Strategy Review treatment of the Box Hill centre were not contentious.

The guidance specifically relating to retailing in the State and local planning policy does not go beyond quite general support for focussing retailing (along with other uses trip generating uses) in activity centres. A retail hierarchy can be inferred to align with the activity centre hierarchy from CADs being primary retails for the metropolitan region through to NACs which are to provide convenient access to meet for local convenience needs.

The following commentary in the Municipal Strategic Statement relating to activity centres provides an overview of themes reflected elsewhere in the LPPF objectives and strategies:

*The Burwood Heights Major Activity Centre includes a large vacant strategic development site. It offers a potential to be developed into an activity centre of a form envisaged by Melbourne 2030. A structure plan has been prepared to guide future development and improvement of Burwood Heights.*

*Megamile is the preferred location for bulky goods retailing, and development of bulky goods/facilities elsewhere will need to demonstrate net community benefit and it will not detract from the Megamile centre<sup>5</sup>.*

*Melbourne 2030 identifies Burwood Heights, Tally Ho, and Forest Hill Chase as Major Activity Centres. These centres are generally expected to become the preferred locations for further retail, commercial and cultural*

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<sup>3</sup> Clause 11.01-2 Activity centre planning

<sup>4</sup> Clause 11.04-2

<sup>5</sup> This policy does not recognise the changes made in relation restricted retail uses in Amendment VC88.

*activities, and accommodate a significant proportion of the new dwellings that may be developed in the City. Council recognises that each these centres has special circumstances and opportunities, and will complete Structure Plans to provide a detailed framework for each centre.*

*The City contains about eighty neighbourhood centres, each of which fulfils various needs within the community. Large centres, such as Kmart Plaza play an important role in the economic activity of the municipality. This role should be further enhanced.*

*Small neighbourhood centres play an important social and community role. They should be the focus of social interaction and provide for community facilities and spaces.*

*There will, however, be small neighbourhood centres that may no longer be viable....<sup>6</sup>*

Local policy specifically recognises the contribution of ‘*the one billion dollar turnover*’ that the MegaMile makes to the local economy and promotes its bulky goods retail focus. It is also policy to facilitate enhancement of the Burwood Heights, Forest Hill Chase and Tally Ho MACs and the Kmart Plaza NAC.

There is some reliance on approved structure plans and zoning mechanisms to guide decisions relating to retail expansion in activity centres. For example, the planning framework for the Burwood Heights MAC comprises a mix of Priority Development Zone (PDZ), Mixed Use Zone (MUZ) and B1Z. A Structure Plan has been approved for the MAC. The Structure Plan does not foreshadow significant retail development in the B1Z, notes scope for a small supermarket, queries the potential impact if a DDS were to be proposed, and identifies potential for retail uses ‘*that promote lifestyle and leisure based retail experiences in a mixed use development*’. Maximum floorspace for shops are specified in the schedule MUZ and are identified in the PDZ as an element of the Development Plan to be approved.

The Panel was provided with copies of the following approved plans:

- *Box Hill Transit City Activity Centre Structure Plan June 2007;*
- *Burwood Heights Activity Centre Structure Plan, June 2006;*
- *Burwood Village Neighbourhood Activity Framework Plan, May 2008;*
- *Nunawading/MegaMile Major Activity Centre and Mitcham Neighbourhood Activity Centre Structure Plan, April 2008; and*
- *Megamile (west) and Blackburn Activity Centres Urban Design Framework.*

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<sup>6</sup> See Clauses 21.07

## 1.5 The Issues

This report deals with the issues under the following headings:

- Should the retail strategy review inform future decisions?
- The requirement for retail sustainability assessments.
- Should shop use require a permit to enable a requirement for an RSA ?
- Retail strategy review implications for Blackburn Station Village.

## 2. Should the Retail Strategy Review Inform Future Decisions?

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### 2.1 Guidance on the Role and Function of Centres

#### The Issues

CFSGAM argued that the Retail Strategy Review (and the Amendment) does not identify a current or desired retail hierarchy or address the fundamental issue of the level of desired growth in various activity centres. It was submitted *'This is so notwithstanding that:*

- some large NAC's currently have far more retail than, for example, the Tally-Ho MAC2 (which is excluded from the Review altogether) and which is apparently intended to have no retail offer in the future;*
- the CAD has roughly the same amount of retail floorspace as Forest Hill Activity Centre, but that this is not identified as a problem; and*
- the future floorspace requirements in the Review are said to be merely a "theoretical projection of market growth" which provides a "framework of understanding what the various sector demands may be in the future".'*

#### 2.1.1 Discussion

The planning policy framework establishes a hierarchy of activity centres, as distinct from a retail hierarchy. It is State policy to build up and support the role and function of the activity centre network, with MACs accommodating a mix of activities that generate high number of trips (including retail uses), whereas NACs are intended to serve local convenience needs<sup>7</sup>. Box Hill is identified as a CAD whilst the LPPF reinforce the MAC designation of Burwood Heights, Forest Hill Chase, Mega Mile/Nunawading and Tally Ho.

As noted in Chapter 1.4, there is discussion throughout the LPPF of the intended place in the hierarchy of these centres, and broad guidance is provided in relation to retail uses. However, the activity centre designations do not directly align with the current place of centres in the retail hierarchy. For example, more comparison shopping is offered at the Forest Hill MAC than Box Hill, some large NACs (such as K Mart East Burwood East) have a

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<sup>7</sup> 11.01-1 Activity centre network, 11.04-2 Activity Centre hierarchy, 21.01 Municipal Profile, 21.04 Strategic Framework Plan identifies the location activity centres and their designation in the hierarchy, 21.07 ECONOMIC DEVELOPMENT.

higher order retail offer than Burwood Heights and the schedule to the B2Z limits shop use to 240 sq.m in the Tally Ho MAC.

To interpret the planning intentions for retail uses it is necessary to read the planning scheme as a whole, including zone and approved plan provisions in addition to the SPPF and LPPF.

The Panel agrees with CFSGAM that the Retail Strategy Review does not articulate more nuanced guidance relating to retail policy or advance the retail elements of structure plans. For example:

- As discussed in Chapter 2.2, the Retail Strategy Review assumes that the major centres will have a declining share of retail floorspace but the reasons are not presented. Similarly commentary<sup>8</sup> suggests that additional supermarket floorspace should strengthen some underperforming NACs but the opportunities and/or centres that should be strengthened are not discussed.
- There was consensus at the Hearing that the Nunawading centre is effectively a NAC attached to the specialised bulky goods retailing function of the Mega Mile. This is not reflected in either the Retail Strategy Review or the proposed policy framework. The structure plan for this MAC indicates support for a small supermarket (the scale of which is not defined) in the Nunawading component of the activity centre and that consideration could be given to consolidating the role of the centre through expansion to the east (Mitcham) but the Retail Strategy Review does not advance either of these strategic issues.
- The analysis in the Retail Strategy Review suggested that the approved expansion of the East Burwood Plaza NAC to 30,000 sq.m would exceed the long term requirement by almost 5,000 sq.m and recommended that the East Burwood Plaza be upgraded to a MAC. This change has not been advanced in the Amendment.
- According to the Retail Strategy Review, approved development at the former brickworks site includes cinema and recreational facilities, 36,600 sq.m of retail floor space (including a discount department store) but construction was not expected to commence in the short term. The Retail Strategy Review comments in relation to the Burwood Heights MAC that *'Future expansion of the centre across the northern side of Burwood Highway has potential to add a large amount of retail floor space to the area at the large brickworks site'* but does not amplify this view. The Retail Strategy Review does not acknowledge the planning framework provisions for the area in question which include:

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<sup>8</sup> Page 11 Retail Strategy Review.

- The MUZ establishes a cap of 2500 sq.m on shop floorspace on the northern side of Burwood Highway.
- The structure plan rejected food based retailing and DDS retail development options and states '*Retail and commercial uses based on a cinema/entertainment role and lifestyle retail activities are considered to complement the current retail role of the existing shopping centre on the opposite side of Burwood Highway*'.

While it may have been desirable to integrate and build on other strategic planning work relating to specific centres, the Panel does not see the limited policy or strategic guidance emanating from the Retail Strategy Review as a fatal flaw. Centre specific policy, zone and overlay provisions, together with other planning scheme reference documents, provide more specific guidance and the Retail Strategy Review must be read alongside these documents.

## 2.2 'Required Retail Floorspace'

### The Issues

CFSGAM is concerned that the Retail Strategy Review floorspace projections are too specific for a strategic planning document, that they understate the floorspace that is likely to be sustainable, and that these flaws may influence future planning decisions. CFSGAM and Mr Quick's evidence challenged the validity of aspects of the Retail Strategy Review, including:

- The analysis of the Nunawading/MegaMile MAC fails to distinguish between the different functions of Nunawading as a small NAC and the specific bulky goods retailing function of the MegaMile. Supermarket, department store/DDS and non-food specialty floorspace should be expressly shown to be allocated for the Nunawading component of the centre only as the MegaMile is a restricted retail/bulky goods precinct and shop uses along Whitehorse Road would be contrary to the retail hierarchy.
- The implied 0.5% real growth/capita in all retail spending for all categories other than bulky goods and 1% for bulky goods are too low and this results in an underestimation of future floorspace requirements.
- The trade area defined for the Forrest Hill MAC was too small and MacroPlan advised Mr Quick during the expert consultation that the small trade area was the main reason for the low allocation of future floorspace to the centre.
- The information provided did not allow full assessment of the Retail Strategy Review methodology used to distribute the future floorspace between centres.
- Some floorspace requirements do not accord with reality or the practicalities of retail development. Mr Quick cited:

- Nunawading/MegaMile where there are no department stores/DDSs but this category is estimated at 38,400 sq.m and to increase to 42,300 sq.m by 2031; and
- Insufficient floorspace provision to allow the development of a full-line supermarket in any of the key centres over the next 20 years.

There was agreement between the economic expert witnesses that, unlike assumptions relating to growth in retail spending, queries raised relating to population growth and trade area definition were unlikely to have a major influence on the floor space projections (See Appendix A).

The Council responded to these concerns as follows:

*'Whilst CFSGAM does not agree with the methodology used by MacroPlan to calculate the retail floor space projections this has no relevance to this amendment. These projections are simply a theoretical indicator of possible future demands across different sectors within the activity centres reviewed.*

*They do not set policy limits on growth...'*

## **2.2.1 Discussion**

### **Market Growth**

Mr Malkiewicz emphasised that the Retail Strategy Review, which was prepared at the height of the global financial crisis, explicitly adopted conservative real growth rates for per capita spending. He was of the view that a growth rate above 1.5% would be very high. It was Mr Quick's view that the real growth/capita in all retail spending adopted is substantially below the observed level in Victoria. He confirmed during the Hearing that real growth has averaged 3.1%/annum over the last 20 years and highlighted that this factor has a crucial impact on the floorspace assessment. For example, even if the annual real rate of growth was increased from 0.5% to 1%, results in additional retail demand of to 2031 of 70,000 sq.m.

Both experts acknowledged that the growth in spending may not translate directly to additional floorspace requirements as some additional spending may be captured by existing shops which could trade above the implied levels. Mr Quick acknowledged that this may offset some but not all of the low growth assumption.

The Panel finds that historical trends suggest that the level of market growth assumed in the Retail Strategy Review are likely to be low and therefore projections of retail floorspace that would be supported may prove to be understated.

## **Forrest Hill Chase Trade Area**

Mr Malkiewicz considered the Forest Hill trade area identified was appropriate, and this was supported by the in-centre surveys<sup>9</sup>. He was of the view that improvements in the centre offer and tenant mix could lead to higher market penetration into the existing trade area or an increase in the trade area boundary. He saw both these outcomes as consistent with the Strategy.

On the other hand, Mr Quick did not consider the information provided was sufficient to conclude that this factor had not influenced what he saw as a low floorspace allocation to Forest Hill. He queried the number of respondents in the vicinity of Forest Hill MAC in the resident survey referred to by Mr Malkiewicz but the information was not available at the Hearing. Mr Quick referred to an exit survey<sup>10</sup> which indicated that the trade area for Forrest Hill closely matches the Whitehorse LGA boundaries and more than 1/3 of customers live beyond the trade area defined in the Retail Strategy Review. He attributed the wider drawing power to the centre's combination of discount department stores and entertainment.

The Panel records that the extent of the trade area for Forest Hill MAC has been challenged but is not in a position to form a view on the appropriateness of the trade area for the Forest Hill MAC defined in the Retail Strategy Review. However, given the role of the proposed Retail Strategy Review in providing background to planning scheme provisions, this is not a critical flaw. Further analysis would be provided if expansion beyond that allowed under the approved development plan and zone provisions is proposed.

## **Market Share and Floorspace Allocations**

The experts agreed that the Retail Strategy Review allocated a declining share of the City's retail floorspace to major centres and other centres were assessed as capturing an increasing share. For example, between 2010 and 2031 Forest Hill's share would reduce from 7.4% to 6.8% and Box Hill's share would reduce from 8.8% to 8.0%.

The factors contributing to this outcome remained unclear to the Panel. The Retail Strategy Review executive summary indicated that in addition to the influence of population changes and incomes in centre catchments

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<sup>9</sup> An in centre survey conducted at nine shopping centres in Whitehorse throughout June 2010, collecting the view of 350 respondents. 300 respondents to a phone survey of residents of Whitehorse in May and June 2010 answered 14 questions relating to shopping in the area, including their shopping preferences.

<sup>10</sup> A survey of 800 Forrest Hill Chase customers undertaken before the upgrade of the cinema complex.

consideration was given to *'the ability of the centres retailers to retain retail expenditure pools (i.e. what is the centres likely market share)'*. It is also stated that *'Policy recommendations are also considered based on any constraints a centre may face in regard to development feasibility, building restrictions; land availability, policy directions etc.'* These factors may have influenced the assumptions adopted relating to the future market share of centres.

The Panel recognises that judgement is often necessary in formulating projections but the rationale for the departures from existing market shares was not explicit in the Retail Strategy Review. Concerns identified below relating to the assessment of the development potential of the Forest Hills MAC, the centre subject to the most scrutiny at the Hearing, suggest that there should be some caution in accepting the future market shares presented in the Retail Strategy Review. The Panel considers that the isolation of the Whitehorse municipality from changes elsewhere in the retail network was a pragmatic methodological decision that reinforces the need for caution.

From a strategic policy perspective, it is significant that a rationale from departing from a policy position to reinforce higher order centres was not presented.

With regard to Mr Quick's observations that the floorspace allocations do not provide for an additional supermarket in the main centres, the Panel endorses the view expressed by Council and the expert witnesses that these allocations should not be treated as prescriptions. Retail development can be 'lumpy', shop formats change and new formats may well emerge. The development of online shopping may well also have significant implications for retailing and the form of shops developed. The analysis in the Retail Strategy Review should not stifle innovation or the delivery of retail services that benefit the community.

The Panel's reading of the Retail Strategy Review and Amendment C142 support Council's view that the intent of the 'Future retail floorspace requirements' is to provide insights about rather than determine floorspace provision. It can be inferred from the proposed RSA requirements for analysis for a centre that is current at the time a proposal is submitted that it is not intended to impose the Retail Strategy Review floorspace projections.

As discussed at the hearing, it appears to the Panel that the use of the term *'Future retail floorspace requirements'* throughout the Retail Strategy Review and the specification of precise 'requirements' could be interpreted as indicating a more definitive planning expectation than is warranted. The analysis provides an understanding of the distribution of existing retail floorspace and demands for additional space that may eventuate but the role

and reliability of projections, particularly over an extended planning timeframe, should not be overstated.

### Recommendation

**Include a forward to the Retail Strategy Review to indicate that:**

- **The assumed level of market growth is conservative and therefore projections of retail floorspace that would be supported may be understated.**
- **The basis for the assumed future market share for activity centres and the definition of the trade area for the Forest Hills MAC have not been verified.**
- **'Future retail floorspace requirements' relate to theoretical projections of possible future market demand for a set of standard commercial activities that are common. They are not floorspace caps or targets for future expansion within centres but do offer insights about what commercial growth demand might exist in the future.**
- **Provisions of the applicable zone, overlay, an approved Activity Centre structure plan or an approved Development Plan should be read in conjunction with this document.**

## 2.3 Forest Hill MAC Development Potential

### The Issues

The Retail Strategy Review stated in relation to the Forest Hills MAC:

*'The requirements for the centre going forward are not estimated to grow substantially, with only an estimated 6,300 sq.m of additional floor space required in the future 20 years.*

*MacroPlan does not believe this will be an issue for such a centre, as the centre is constrained in many ways by the land mass and has little potential for expansion.'*

CFSGAM argued that the Retail Strategy Review projections understate the development potential at the Forest Hill MAC and fail to recognise the extent of retail development approved for the centre. They are concerned that Forest Hill Chase may be held to the floorspace projections in the future.

CFSGAM contended that the Retail Strategy Review assessment of the development potential for Forest Hill MAC was flawed as it did not recognise zone and Development Plan provisions, understated the trade area for the centre (see above) and appears to have adjusted the assessment of demand on the basis of supply side issues.

It was submitted that the Retail Strategy Review failed to recognise the current development potential of Forest Hill Chase provided for by:

- The maximum combined leasable floor areas specified in the schedule to the B1Z of 64,000 sq.m for shop and 20,000 sq.m for restricted retail premises and a development plan may also allow for maximum total floor area of 84,000 sq.m.
- Mr Rogers' evidence indicated that, with the addition of the recently approved ALDI supermarket and additional specialty shop floorspace, the centre will have a total leasable floorspace of 62,428 sq.m, which is 11,782 sqm below the floorspace currently allowed for the shopping centre (as detailed in the endorsed Development Plan).

Further, Mr Quick did not consider supply-side constraints should influence the determination of the level of demand for a particular centre.

### 2.3.1 Discussion

The absence of any acknowledgement of the extent of the endorsed shop floor area for the Forest Hill MAC in the Retail Strategy Review is a significant omission. Comment in the Retail Strategy Review that the centre has little potential for expansion due to land mass constraints does not appear to have recognised that endorsed plans provide for additional retail floorspace in excess of the projected 'requirement'. While the form of development necessary may add to costs, the endorsed Development Plan illustrates that there are options for expansion.

The Panel agrees with Mr Quick that demand analysis should be independent of supply side constraints. However, it is entirely appropriate for a strategic planning analysis to identify where constraints, such as land availability, may limit the development of a centre. Where there are supply-side constraints strategic planning could then take account of whether alternative opportunities should be facilitated. It is not clear whether the floorspace 'requirement' was adjusted due to perceived constraints on the potential to expand the centre.

#### Recommendation

**Include a forward to the Retail Strategy Review to indicate that:**

- **Commentary relating to the development potential of the Forest Hill MAC do not acknowledge the provisions of the schedule to the B1Z and the endorsed Development Plan.**

## 2.4 Should the Retail Strategy Review be a Reference Document?

### The Issue

Amendment C142 proposes to include the Retail Strategy Review as a reference document in Clauses 21.07, 22.06 and 22.07.

CFSGAM acknowledged that reference documents are intended to provide background about the basis for planning provisions. However, CFSGAM and Mr Rogers were concerned that in practice reference documents are also often used to guide or substantiate planning decisions. Mr Rogers was of the view that *'As currently drafted the amendment, with the combination of policy changes and the included reference document, is likely to be interpreted as seeking to install a demand-based limit on the growth of centres.'* He noted issues raised relating to the economic analysis (discussed above) and considered the Retail Strategy Review nominates retail floorspace figures that appear to contradict existing entitlements at Forest Hill Chase. Mr Rogers did not support inclusion of the Retail Strategy Review, in its current form, as a reference document.

### 2.4.1 Discussion

It is important to distinguish between the influence of content included in the LPPF and a reference document. A document must be incorporated if, amongst other purposes, it *'will be used to guide the exercise of discretion by the responsible authority'* but a reference document has the following much more limited role:

*'Reference documents provide background information to assist in understanding the context within which a particular policy or provision has been framed... Reference documents have only a limited role in decision-making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight.'*<sup>11</sup>

Amendment C142 does not purport to elevate the role of the Retail Strategy Review above a reference document<sup>12</sup>. Nevertheless, the Panel does appreciate that at times there is a temptation to elevate the influence of a reference document, particularly where the planning scheme guidance is generic.

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<sup>11</sup> PN13 VPP Practice Note: *Incorporated and Reference Documents August 2000*.

<sup>12</sup> There are examples in various Amendments and planning schemes where references to documents that are not incorporated in objectives, strategies and/or decision guidelines could be interpreted as elevating the role of those documents in decision making.

Where it is demonstrated that analysis or recommendations are unsound, the inclusion as a reference document may confuse rather than clarify the understanding of the basis for planning scheme provisions.

Despite the issues identified in preceding chapters, the Panel considers that the Retail Strategy Review provides useful analysis as background to planning scheme provisions. A statement relating to the purpose of the reference document in a forward to the Retail Strategy Review (together with qualifications already noted in preceding chapters) would minimise the risk of it being misused in decision making.

### **Recommendation**

**Include a forward to the Retail Strategy Review to indicate that:**

- *This Whitehorse Planning Scheme Reference document provides background information to assist in understanding the context within which retail policy has been framed. It has only a limited role in decision-making.*

### 3. The Requirement for Retail Sustainability Assessments

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#### The Issues

The Authorisation of Amendment C142 required revision of the Explanatory Report to explain why the RSA is required and how it will be used by Council in assessing planning permit applications; the inclusion of an objective indicating what the RSA will achieve; the addition of a decision guideline relating to how RSAs will be used; and clarification of whether the requirement for an RSA relates to a permit application or extension of the activity centre. The following content was included in the exhibited documentation:

- The Explanatory Report included:
  - The requirement to prepare an RSA reinforces Council's commitment to sustainable economic development within the municipality and triple bottom line consideration of development applications.*
  - The preparation of an RSA will allow Council to consider the economic impacts on other activity centres and confirm the demand for retail floorspace within a defined catchment when assessing planning permit applications.*
- Included the following objectives in Clauses 21.07 and 22.06 respectively:
  - *To ensure a sustainable distribution of retail floorspace throughout Whitehorse and allow for improved access to retail goods and services by all members of the community.*
  - *To ensure that new retail floorspace reflects retail demand and considers the impact on other activity centres.*
- Clause 22.06 included a decision guideline:
  - *The impact of new retail floorspace on the hierarchy and role of activity centres within the City of Whitehorse, and the findings of the Retail Sustainability Assessment if applicable.*

Clause 22.06 sets out the following minimum RSA requirements where an application for permit proposes additional shop floorspace above 3,000 m<sup>2</sup> NLA for MACs, 2,000 m<sup>2</sup> NLA for a NAC, or 1,000 m<sup>2</sup> NLA for an individual retail premises in a NAC:

- Definition of a Main, Primary and Secondary Trade Areas.

- Calculation of the total retail expenditure pool generated by the catchment and the retained expenditure that is expected 'pre' and 'post' development.
- Assessment of whether the volume of retail expenditure that is expected to be retained in the catchment 'post' development is consistent with the centres position in the retail hierarchy.
- Clear justification for the expected retail turnover per sq.m for a proposed retail format and compare it to State and National benchmarks, with explanation of variations in performance between the proposed retail tenancies and benchmark standards.
- Expected market shares for floorspace across key retail categories in the Primary and Secondary trade areas.
- The source of expected additional trade (i.e. from existing centres, future planned centres and escape expenditure from centres outside the defined catchment).
- Expected trading impacts (in % and \$ terms) on existing and proposed centres for each stage of the development.
- Employment impacts in the region.

The CFSGAM and expert witnesses acknowledged that an RSA is an appropriate tool to consider the effect of significant proposals on the retail hierarchy. However, after the revisions were incorporated in the exhibited Amendment they raised similar issues to those raised at the authorisation stage, submitting that:

- The application of the RSA requirement to proposals to expand the retail offer in a MAC has not been justified and runs counter to the role for such centres articulated in State (and local) policy as locations where development is sought to be encouraged.
- It is not clear what the required RSA is meant to demonstrate. Nowhere does the Review (or the Amendment) identify a current or desired retail hierarchy (as distinct from the activity centre hierarchy).
- An RSA would be required for an expansion of shop floorspace but it is the unchecked expansion of other retail uses which are more likely to affect the existing centres.
- CFSGAM and Mr Rogers considered trigger points for an RSA are too low, especially with regard to MAC's. It was argued there is limited potential for shop proposals to disrupt the role and function of centres in the hierarchy in Whitehorse.
- Mr Rogers was of the view that it should be Amendments proposing rezoning or an increase in the shop floorspace allowed under the zone, rather than an application for permit, that trigger an RSA.

Council argued that the requirement for an RSA is not onerous as proponents are likely to undertake the analysis anyway for large proposals. Mr Rogers acknowledged that aspects of the RSA would be undertaken irrespective of a requirement in the planning scheme but an RSA would add to costs. Concerns related to how the RSA analysis would be used by Council in the decision making process.

Blackburn Village Residents Group queried whether the expertise would be available to Council to evaluate the veracity of RSAs.

### 3.1 Discussion

#### Purpose of an RSA

Firstly, the Panel agrees with submissions from Mr Tweedie that it is established planning law that impacts of proposals on the profitability of individual businesses due to new competition is not a relevant consideration in planning decisions<sup>13</sup>. Rather, the focus of the assessment should relate to whether the composition and scale of a proposed retail expansion would impact on the function of other centres to such an extent that the existing or planned role of the centre in the retail hierarchy would be jeopardised and/or that there would be an overall adverse effect on the range of goods or facilities offered to consumers<sup>14</sup>. Further, policy predispositions in favour of locating comparison shopping at higher order centres and facilitating consumer accessibility to convenience retail services also need to be taken into account.

The Amendment C142 provisions, and the decision guideline referred to above in particular, are not inconsistent with this approach. However, there is a risk that the consideration of 'floor space sustainability' could be directed at a business level rather than a more strategic consideration of impacts on the hierarchy of centres. The Panel considers that the exhibited objective references to '*a sustainable distribution of retail floorspace*' and '*new retail floorspace reflects retail demand and considers the impact on other activity centres*' could be refined to focus more specifically on supporting the planned role and function of the centre in the retail hierarchy. Further, the Panel does not consider the consideration of impacts on centres should be limited to those in Whitehorse.

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<sup>13</sup> See *Kentucky Fried Chicken Pty Ltd v Gantidis* 140 CLR 675 at 687 by Stephen J (with whom Gibbs, Mason and Aikin JJ agreed), *Mossdale Investments Pty Ltd v City of Horsham* (1989) 38 APA 143; *Glenwaye Pty Ltd v Glen Eira CC* [2006] VCAT 300; *Hammond Royce Corporation Pty Ltd v Mornington Peninsula SC* [2006] VCAT 1706.

<sup>14</sup> See for example Panel Reports relating to Amendment C88 to the Bass Coast Planning Scheme, Amendment C22 to the Nillumbik Planning Scheme, and Amendment C96 to the Greater Geelong Planning Scheme.

## Application of RSA Requirement and 'Thresholds' in Practice

Putting aside the question of whether an RSA can be required where consent for shop use is not required, the thresholds nominated in Amendment C142 to trigger an RSA were challenged on the basis that they are too low and should apply only where the proposal is inconsistent with the established planning framework for the land, i.e. where an amendment to the planning scheme or change to an approved plan is required.

Council made it clear at the Hearing, and through its support for post exhibition changes to the Amendment, that it is not intended to require an RSA where a proposal is consistent with an approved structure plan or development plan (or an approved plan with a different tile such as an incorporated plan or a plan associated with an Activity Centre Zone).

Firstly, it is not proposed to require an RSA for retail proposals in the Box Hill CAA. This was not contentious and recognises policy to strengthen the role of CAAs, including the retail offer, in Box Hill which has limited retail floorspace for a centre of this status.

The planning frameworks for the MACs<sup>15</sup> establish the expectations for retail expansion along the following lines:

- The schedule to the B1Z and Forest Hill development plan provide for shop development up to 84,000 sq.m.
- The Burwood Height MAC zoning (B1Z, MUZ and PDZ) and structure plan support limited retail expansion on B1Z land for weekly shopping needs and retail uses focusing on entertainment and lifestyle uses to a maximum of 2500 sq.m in the MUZ.
- Much of the MegaMile/Nunawading MAC is zoned B4Z where recent changes to zone provisions have remove limits on restricted retail uses (which are as of right in the zone). The structure plan for the MAC identifies the need for a 'small' supermarket at Nunawading. The meaning of 'small' supermarket is not explicit but may well be below the proposed 3000 sq.m trigger for an RSA.

It appears to the Panel that, with the exception of the Forest Hill MAC, retail proposals exceeding 3000 sq.m would be unlikely to be consistent with approved plans for the MACs and the preparation of an RSA would be both required and appropriate.

It is noted that the role of the East Burwood Plaza NAC is ambiguous. It was designated as a MAC in Melbourne 2030 but is defined as a NAC in the LPPF

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<sup>15</sup> The Tally Ho MAC does not have a retail function. It is zoned Business 2 which establishes a maximum floorspace for shop of 240 sq.m.

and expansion has been approved for development which reinforces a role more akin to a MAC. The Retail Strategy Review suggested that this centre should be elevated to a MAC but also highlighted that the recent expansion more than meets anticipated retail floor space requirements.

With regard to other NACs, the Panel agrees with submissions from CFSGAM that it is difficult to envisage a shop proposal providing less than 2000 sq.m additional shop floorspace elevating a centre to a MAC or jeopardising the role and function of other activity centres or the retail hierarchy. Most NACs are of a small scale and, while the Panel has not undertaken a detailed review of the zoning of all NACs, it notes submissions suggesting that the land currently zoned B1Z would rarely facilitate significant retail expansion that would upset or jeopardise the role of centres in the retail hierarchy.

The Panel concludes that a requirement for an RSA for proposals providing less than 2000 sq.m additional shop floorspace is onerous. However, a proposal providing for significant additional supermarket floorspace, for example, may warrant more rigorous examination as a threat to an anchor of another centre could affect the functioning of that centre and consumers' access to retail services.

The Panel considers proposals for substantial increases in shop floorspace via an Amendment process or change to an approved plan should be supported by an RSA. This may well be a more common avenue for significant floor space expansion than the permit process. While shop use in the B1Z does not require permission (see discussion in Chapter 3.2), the requirement should apply to Amendments proposing rezonings or increases in retail floorspace via changes to either zone schedules or approved plans.

### **Panel Recommendation**

**Revise the objectives in Clauses 21.07 and 22.06 respectively to the following effect:**

- *To ensure ~~a sustainable distribution of additional~~ retail floorspace throughout Whitehorse and allows for improved access to retail goods and services by all members of the community and supports the planned role and function of the activity centre and its place in the retail hierarchy (Clause 21.07).*
- *To ensure that new retail floorspace reflects retail demand and considers impacts on the retail hierarchy and the planned role and function of other activity centres (Clause 22.06).*

**Revise the 'trigger' point for an RSA in Clause 22.06 to the following effect:**

- *An Planning Permit Application or an Amendment to the Planning Scheme or change to an approved plan to facilitate expansion in shop floorspace above 3,000 m<sup>2</sup> NLA leasable floor area expand in a Major Activity Centre (MAC) or 2,000m<sup>2</sup> leasable floor area in a Neighbourhood Activity Centre (NAC) must be accompanied by a Retail Sustainability Assessment (RSA), where the proposed expansion exceeds the following thresholds:*
  - ✱ ~~Any expansion in shop floorspace above 3,000m<sup>2</sup> NLA leasable floor area for MACs.~~
  - ✱ ~~Any expansions above 2,000m<sup>2</sup> or 1,000m<sup>2</sup> leasable floor area for an individual shop if an approved Structure Plan is not in place or does not provide guidance on requirements for additional retail floorspace for NACs.~~

## 4. Should Shop Use Require a Permit to Enable a Requirement for an RSA?

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### The Issues

The issue in contention related to whether permit requirements for should be introduced for shop uses to allow consideration of the matters addressed in RSAs.

Council acknowledged in its submission that the Amendment has not established the mechanism necessary to trigger the preparation of RSAs as intended because shop use is as of right in Business 1 Zone (B1Z) in Whitehorse. As Mr Tweedie emphasised, in the vast majority cases no permission is required to use the land for shop and only permission for buildings and works is necessary. In these circumstances consideration of matters addressed within an RSA, which are 'use related', would be irrelevant and probably unlawful<sup>16</sup>.

Council submitted that the most effective way to address this issue is for the schedule to the B1Z to be amended to specify a maximum leasable floor area for shop for all activity centres, beyond which a permit would be required. It suggested that the proposed policy threshold for the preparation of an RSA of 1000 sq.m be specified as the maximum leasable floor area in the schedule to the B1Z. Council submitted that by setting the limit at 1000 sq.m this would allow the majority of new shop proposals in neighbourhood centres to not require permits for use as the trend for such retail proposals, other than supermarkets, is to be well below this floor area. In MACS, whilst a permit would be triggered by the 1000 sq.m threshold, the policy would only require an RSA for expansions over 3000 sq.m. Council suggested that further notice of the change could allow the matter to be addressed as part of Amendment C143. It sought advice from the Panel on the most appropriate method to introduce this proposed change at this time.

Mr Tweedie argued that such a significant change would transform the Amendment and the introduction of a permit requirement for shop use across the municipality has not been authorised by the Minister. Further, he contended that such a change runs counter to purpose of the B1Z 'to encourage intensive development of business centres for retailing' and the

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<sup>16</sup> Mr Tweedie referred the Panel to following cases as examples: *Victorian National Parks Association Inc v Iluka Resources Ltd [2004] VCAT 20*, *National Trust of Australia (Victoria) v Australian Temperance and General Mutual Life Assurance Society Limited [1976] VR 592*, *Burns Bridge Services Pty Ltd v Greater Bendigo City Council & Ors [2005] VSC 422*.

associated as of right status of shop use that normally applies in the B1Z. Mr Tweedie submitted that the Hearing should not proceed, the Amendment should be abandoned, and if such a change is pursued it should be via a new amendment with appropriate authorisation.

## 4.1 Discussion

In many cases significant expansion of retail floorspace will involve an Amendment to the planning scheme and, as noted in Chapter 2.4, the Panel agrees with Mr Rogers that an RSA will often be justified in those circumstances.

The Panel is conscious that the B1Z is the zone intended to accommodate intensive retailing and there should be a clear strategic purpose to justify the introduction of planning regulation of shop uses in the zone. This Panel agrees with the conclusion of the Panel that considered Amendment C88 to the Bass Coast Planning Scheme that:

*The purpose of the schedule to the B1 Zone to limit the amount of shop floorspace in a nominated area is to protect the role and function of the network of activity centres across a municipality or region, and not to restrict the amount of shop floorspace that may be appropriate for retailing businesses within any activity centre, unless there is a specific strategic objective to be achieved (page 74).*

The introduction of a 1000 sq.m permit trigger as put forward by Council would mean shop use would be subject to a permit in the B1Z in all MACs and all but 3 of the NACs<sup>17</sup>. While an RSA would not be required except where the trigger nominated in the policy is reached and a development permit would be required where for expansion of floorspace is proposed, additional permit requirements would apply for proposals to convert uses such as offices or places of assembly to a shop use. Further, there would be little guidance in the zone provisions and policy about the basis for assessment of use permits below the threshold for the preparation of an RSA.

The Panel considers the specification of 1000 sq.m as the maximum combined leasable floor space across all activity centre B1 zones is too low and the introduction of new permit requirements has not been justified. While an addition of 1000 sq.m floorspace may be strategically significant in the smallest NACs (e.g. 35 NACs with less than 2500 sq.m existing floorspace) it would be unlikely to be significant in the larger NACs and MACs (e.g. 8 MACs and NACs have more than 15,000 sq.m).

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<sup>17</sup> See Figures 26 and 27 of the Retail Strategy Review which indicate 12 NACs have retail floor space in excess of 10,000 sq.m, 8 NACs have retail floor space of 5-9,999 sq.m, 6 have retail floor space of NACs 3-4999, and 32 NACs have less than 3000 sq.m retail floor space.

An alternative would be to relate the floor area specified in the schedule to the B1Z to the existing or planned floor area of the MAC or NAC to require a use permit for shop only where significant retail expansion has potential to jeopardise the retail hierarchy. However, this issue was not addressed in the Retail Strategy Review, the Panel does not have the detailed knowledge of the Whitehorse activity centres necessary to make recommendations on the issue, and the issue has not been formally considered by the Planning Authority or canvassed with those who may be affected.

A new Amendment could be initiated with a fresh authorisation and exhibition process.

Alternatively, Section 33 of the Act provides that:

- (1) *The Minister may direct the planning authority to give notice of any changes to the amendment which—*
  - (a) *the planning authority has made under section 29; or*
  - (b) *the Minister proposes to make.*
- (2) *The direction may specify the manner and form in which the notice is to be given.*

The Act then provides for the Minister may allow submissions to the Minister on the change and referral of submissions to a panel appointed under Part 8.

The Panel notes that the further notice of the change would need to be extensive as all B1Z land except the Forest Hill MAC would be affected by new permit requirements. Further, there may be little practical difference between proceeding under the current amendment or a new Amendment.

There will need to be specific consideration of whether the new permit requirements for shop use in the B1Z as proposed in Council's submission at the Hearing should be authorised. It will be for the Minister (or his delegate) to determine whether such a change should be authorised and the process that should apply to allow those who may be affected to present their views.

### **Panel Recommendations**

#### **Council consider the merits of:**

- **Introducing new permit requirements for shop uses in the B1Z to allow consideration of the matters addressed in RSAs.**
- **Specifying a maximum combined leasable floor space for shop use in the schedule to the B1Z that relates to the existing or planned floor area of the MAC or NAC (Any floor area specified**

**should only require a use permit for shop where the extent of retail expansion has potential to jeopardise the retail hierarchy).**

**If Council resolves to support the introduction of maximum combined leasable floor areas for shops in the B1Z, the Minister (or his delegate) determine whether:**

- **Such a change should be authorised; and**
- **A new amendment is required or provisions of Sections 32-34 of the Act would be adequate to enable those who are affected to present their views.**

## 5. Retail Strategy Review Implications for Blackburn Station Village

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### What is the Issue

Blackburn Village Residents Group generally supports the thrust of the amendment but wants to ensure that any future development of this NAC does not have an adverse impact on the amenity of the centre and its residential hinterland. At the Hearing Mr Taff highlighted that more intensive development in the locality is contributing to parking and traffic problems and additional retail development could exacerbate problems. He emphasised the importance of recognising interests of residents, not just the interests of retailers in planning decisions.

Council responded that the focus of Amendment C142 is *'on the commercial viability of activity centres across the city. However, this is only one policy in a matrix of considerations that relate to use and development proposals. The potential amenity impacts identified in this submission are valid considerations in the context of assessing applications.'* Council considered that impacts on surrounding residents are already appropriately managed through the planning scheme, including the Clause 22.12 – Blackburn Station Shopping Centre policy, which addresses parking, land use and built form. Further, an amendment is about to be exhibited to introduce a Design and Development Overlay to reinforce planning controls relating to the preferred future built form and urban design in Blackburn Station Village.

### 5.1 Discussion

The Retail Strategy Review does not foreshadow substantial retail development in Blackburn Station Village. It did not nominate specific retail floorspace requirements for the centre but did state:

*Blackburn Neighbourhood Activity Centre will strengthen its role as an urban village focussed around the railway station. The plans vision includes a focus on a mix of retail, office, community and higher density residential.*

The Retail Strategy Review also recorded the draft NAC study 'Action' that there may be *'Potential for further business zoning in eastern section of centre and better connection of the centre north of the station to southern section via Blackburn Road'*. Any such rezoning would be assessed through the Amendment process and those who may be affected would have an opportunity to present their views.

The Panel notes that the policy specifically relating to the Blackburn Station Shopping Centre (Clause 22.12) includes the following planning intentions: the function of the neighbourhood level centre is identified as local *'shopping and socialising'*; to *'most efficiently use the limited retail space within the centre'*; to address car parking issues, and to ensure that development does not *'overwhelm the existing buildings, and any development on the boundaries of the precinct is a similar scale to the residential properties it abuts.*

The Panel agrees with Council that the planning framework for the consideration of planning permit applications in the Blackburn Station Village NAC is multi-faceted and changes to the exhibited Amendment provisions are not needed to address the Blackburn Village Residents Group concerns.

## **Appendix A: Economic Experts Statement of Matters of Agreement and Disagreement**

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### **City of Whitehorse Planning Scheme Amendment C142 Statement of Matters of Agreement and Disagreement Economic Experts**

*Prepared by Rhys Quick (Urbis) and Justin Malkiewicz (MacroPlan Dimasi)  
April 13, 2012*

As instructed by the Panel, this statement details the matters on which the economic experts agree and the matters that are still disputed following our consultative process.

#### *Matters of Agreement*

- **Population** - The population level and forecast growth within the City of Whitehorse is likely to be of the order detailed in the Retail Strategy Review, growing at around 0.2%-0.3% per annum to 2031.
- **Current Per Capita Spending** – The current level of retail spending per capita estimated by each expert is comparable and any difference does not have a material effect on the analysis.
- **Need for Flexibility** - In developing a robust retail hierarchy that is responsive to the needs of the community and changing retail concepts, flexibility is critical, and as such, strict floorspace caps are an inappropriate means of allowing the efficient development retail facilities in a municipality.
- **Application of Retail Demand Estimates** - Retail demand estimates and the floorspace allocation approach adopted by MacroPlan in the Retail Strategy Review are intended to provide an indication of possible future development outcomes, based on current market shares. As the floorspace estimates are nominally based on current market shares, they represent a point in time estimate of demand. The Review did not undertake analysis of potential competitive changes to a centre in the desire to capture a greater level of market share. Should particular centres develop to adapt to their competitive environment, their future market share may change, and the floorspace estimates will not necessarily represent true demand at that time in the future. Hence the estimates in the Review are not intended to be strictly adhered to as a basis for future decision making.
- **RSA** – It is agreed that a Retail Sustainability Assessment is an appropriate requirement beyond certain trigger points, but should not be required for a centre that is developing within the boundaries of any endorsed plan (not only a structure plan).
- **Implied Market Shares** – The allocation of floorspace to centres within the review results in Forest Hill's share of the City's total floorspace requirement fall from 7.4% in 2010 (48,184/650,421) to 6.8% in 2031 (54,470/802,147). Similarly,

Box Hill's share is implied to fall from 8.8% to 8.0% over the same time, while the other two key centres (Nunawading/MegaMile, East Burwood) are also allocated a declining share of future floorspace requirements in the City. This implies other centres outside of the key centres are assessed as capturing an increasing share.

### *Matters in Dispute*

#### **Trade Area Definition**

- Mr Quick believes the trade area for Forest Hill defined in the Strategy Review is smaller than the centre's true catchment. While both experts agree that the definition of the trade area alone does not necessarily influence the results of the analysis, Mr Quick believes that the level of information provided in the Retail Strategy Review does not allow him to conclude there is not an influence on the outcome, given what he sees as a low floorspace allocation to Forest Hill.
- Mr Malkiewicz considers the trade area identified for Forest Hill to be appropriate, and this was re-enforced given the in-centre survey undertaken at Forest Hill at part of this Strategy. However, given the competitive environment that Forest Hill operates, it may be considered appropriate for the centre to continue to monitor and improve the centre offer and tenant mix, which may lead to higher market penetration into the existing trade area, or an increase in the trade area boundary. Both these outcomes are seen as consistent with the Strategy.
- **Real per capita spending growth rates** – The real per capita spending growth rates adopted in the Retail Strategy Review (0.5% per annum for all categories excluding bulky goods) are assessed by Mr Quick to be too low given historical trends, and that this appears to lead to an underestimation of future floorspace demand requirements across the City of Whitehorse. The strategy identified the real growth figures as conservative, particularly given the global financial crisis and economic climate when the strategy was prepared in 2010, and the continued weakening of retailing. A stronger real growth would lead to existing retail centres trading above implied levels and may result in a centre proposing to expand, which may or may not trigger the requirements for an RSA.

#### **Treatment of Constraints**

- There is disagreement that perceived planning or physical constraints on the development of a centre should influence and form part of a retail demand assessment. Mr Quick believes these issues are supply-side issues that do not in fact influence the level of demand for a particular centre.
- Mr Malkiewicz considers the strategy has generally considered constraints on development from a hierarchal viewpoint, and in particular for Major and Principal Activity Centres which were provided for a more flexible approach. Supply side issues, such as land constraints, would be considered from a developer's perspective for future development intentions, which would then be tested from a demand side if a trigger for an RSA is reached.

### **Practicalities of outcomes for floorspace requirements**

- Mr Quick believes that some of the floorspace requirements for individual centres do not accord with reality or the practicalities of retail development. For example, the requirement for department stores/DDSs in Nunawading/MegaMile which is estimated at 38,400 sq.m and is to increase to 42,300 sq.m by 2031 when there are no such stores currently. Or the future supermarket requirement in each key centre which is not sufficient to allow the development of a full-line supermarket over the next 20 years.
- Mr Malkiewicz considers the floorspace demand is primarily based on population change within each trade area and does not consider competitive behaviours between each centre (i.e. impact).
- Both experts agree that, given the maturity of the Whitehorse retail market and retail centres, further development of a retail centre will in part serve future residents within the trade area, and may also result in a slightly lower turnover for existing retailers. Conversely, if no development is to occur, existing retailers would likely trade above prevailing levels. Mr Malkiewicz highlights there is flexibility embedded within the strategy which acknowledges the dynamic nature of the retail industry, and considers the wider community benefit of a proposed retail development to be of higher importance than specific floorspace limits. Mr Quick agrees with this sentiment of community benefit over strict floorspace limits.