

Planning and Environment Act 1987

Panel Report

Whitehorse Planning Scheme Amendment C167

35 Hay Street, Box Hill South

9 July 2015

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Panel Report pursuant to Section 25 of the Act
Whitehorse Planning Scheme Amendment C167
35 Hay Street, Box Hill South

9 July 2015

A handwritten signature in black ink, appearing to read 'Con Tsotsoros', written in a cursive style.

Con Tsotsoros, Chair

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List of Abbreviations

EPA	Environment Protection Authority
GRZ6	General Residential Zone Schedule 6

Overview

Amendment Summary

The Amendment	Whitehorse Planning Scheme Amendment C167
Subject Site	35 Hay Street, Box Hill South
Planning Authority	Whitehorse City Council
Authorisation	23 December 2013, by the Department of Environment, Land, Water and Planning under delegation from the Minister for Planning
Exhibition	5 February to 6 March 2015
Submissions	<ol style="list-style-type: none"> 1. Chris Hanson 2. Karen Powell 3. Department of Land, Environment, Water and Planning on behalf of the Minister for Planning. 4. VicRoads 5. Jodee Kelly 6. Hay Street Public Open Space Action Group 7. Alan and Ruth Smithson 8. Pamela Mills 9. Kerry Jory 10. Helen and Chris Forge 11. Jane Moulin 12. Lucy Race and Andrew Coldrey 13. Carolyn and Russell Magilton 14. Trish Bourke 15. Public Transport Victoria
Resolution for Panel	Council resolved to request the appointment of a Panel at its meeting of 20 April 2015

Panel Process

The Panel	Con Tsotsoros (Chair)
Directions Hearing	Whitehorse Civic Centre, Nunawading, 27 May 2015
Panel Hearing	23 June 2015
Site Inspections	Unaccompanied, 27 May 2015
Appearances	<ul style="list-style-type: none"> - Whitehorse City Council represented by Ms Vanessa Mogg, Strategic Planner - Visconti Investments Pty Ltd represented by Ms Nicola McGowan of James Livingston Town Planning - Ms Jane Moulin
Date of this Report	9 July 2015

Executive Summary

(i) Summary

Whitehorse Planning Scheme Amendment C167 applies to 35 Hay Street in Box Hill South which is located west of Middleborough Road, south of Canterbury Road and adjacent to the Gardiners Creek corridor. Over the years, the subject site was considered redundant by Parks Victoria and the Box Hill Golf Club. As part of the sale from the club, Council acquired some of the land for the Gardiners Creek Shared Trail extension. The land was purchased by Visconti Investments Pty Ltd, who is the Proponent for the Amendment.

The Amendment proposes to rezone the subject site from the Special Use Zone Schedule 2 to a new General Residential Zone Schedule 6. General Residential Zone Schedule 6 includes a mandatory 9 metre maximum building height.

Submitters raised issues about the proposed planning provisions and the impact of future development of the subject site on traffic, parking, infrastructure, neighbourhood character and the environment including flora and fauna.

From the one perspective, the subject site is ideally located along the picturesque Gardiners Creek corridor in a quiet residential area within close proximity to transport, employment and services. From another, its discreet location at the end of Hay Street and adjacent to Gardiners Creek means that any development should be of a scale that respects the existing neighbourhood character.

Having carefully considered all submissions, the Panel concludes that residential development should occur on the subject site and General Residential Zone Schedule 6 is appropriate to achieve this. A mandatory maximum 9 metre building height provision will provide certainty to surrounding residents. This height is consistent with surrounding building form and will respect existing neighbourhood character.

The proposed provisions will not allow development of the scale that will adversely impact on the existing residential area and Gardiners Creek corridor. However, issues such as neighbourhood character, built form and traffic are valid concerns that are addressed in permit applications when specific development plans with actual heights, setbacks, entrances and other details are available. Residents will then be in a better position to express their views on specific plans.

Several submitters were concerned with the scale and nature of future development on the properties north of the subject site. Resident concerns for these properties were considered by the Amendment C153 Planning Panel and do not form part of Amendment C167.

(ii) Recommendation

Based on reasons set out in this Report, the Panel recommends that Whitehorse Planning Scheme Amendment C167 be adopted as exhibited.

1 Introduction

1.1 Background to the proposal

The subject site is located at 35 Hay Street in Box Hill South, west of Middleborough Road, south of Canterbury Road and adjacent to the Gardiners Creek corridor.

As exhibited, the Amendment proposes to introduce General Residential Zone Schedule 6 (GRZ6) into the Whitehorse Planning Scheme and rezone the subject site from the Special Use Zone Schedule 2 to GRZ6. The subject site is zone with the red boundary in Figure 1.

Figure 1 Subject site



The subject site is approximately 2,500 square metres and has a predominantly asphalt surface, as shown in Figure 2. It formed part of a former college to the north and part of a larger site that Parks Victoria owned. Parks Victoria sold the site to the Box Hill Golf Club and Council acquired part of the land for the Gardiners Creek Shared Trail extension during this process. The trail extension separated the subject site from the Box Hill Golf Club and was no longer required. The site was subsequently subdivided and sold to Visconti Investments Pty Ltd.

Figure 2 Subject site



Source: Ms N McGowan, Document 4

1.2 The Proposal

GRZ6 proposes to introduce a mandatory maximum 9 metre building height for a dwelling or residential building and a mandatory maximum 10 metre building height where there is a slope greater than 2.5 degrees over an 8 metre cross section. It does not propose to vary any standards found in Clauses 54 and 55 of the Whitehorse Planning Scheme.

Built form details about the ultimate development will be included in a future planning permit application. Members of the community will be provided notice of this application with the opportunity to submit their comment.

1.3 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report has generally adopted Council's submission structure and deals with the issues under the following headings:

- Planning Context
- Key issues
 - General Residential Zone Schedule 6
 - Traffic, parking and infrastructure

- Neighbourhood character, built form and heritage
- Environmental considerations
- Other comments
- Recommendation

GRZ6 proposes a mandatory maximum building height which was agreed to by Council and the Proponent. No submission raised this mandatory provision as an issue.

2 Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant provisions and other relevant planning strategies.

Table 1 Policy Framework

State Planning Policy Framework	
Clauses	
11	Settlement
	<p>11.02 Urban growth</p> <p>To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.</p> <p>To locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create benefits for sustainability while protecting primary production, major sources of raw materials and valued environmental areas.</p> <p>To facilitate the orderly development of urban areas.</p> <p>To manage the sequence of development in growth areas so that services are available from early in the life of new communities.</p>
	<p>11.04 Metropolitan Melbourne</p>
	<p>11.04-1 Delivering jobs and investment</p> <p>To create a city structure that drives productivity, supports investment through certainty and creates more jobs.</p>
15	Built environment and heritage
	<p>Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value.</p>
	<p>15.01 Urban development</p> <p>Strategy</p> <p>Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.</p>
16	Housing
	<p>Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.</p> <p>New housing should have access to services and be planned for long term sustainability, including walkability to activity centres, public transport, schools and open space.</p> <p>Planning for housing should include providing land for affordable housing.</p>
18	Transport
	<p>18.01 Integrated transport</p> <p>To create a safe and sustainable transport system by integrating land-use and transport.</p>
	<p>18.02 Movement networks</p> <p>To integrate planning for cycling with land use and development planning and encourage as alternative modes of travel.</p> <p>Strategy</p> <p>Ensure development provides opportunities to create more sustainable transport options such as walking, cycling and public transport.</p>
19	Infrastructure
	<p>Strategic planning should facilitate efficient use of existing infrastructure and human services. Providers of infrastructure, whether public or private bodies, are to be guided by planning policies and should assist strategic land use planning</p>

Local Planning Policy Framework

Clauses

21 Municipal Strategic Statement

21.06 Housing

Sustainable and well-designed housing can improve affordability over the long term, and contribute to the preferred neighbourhood character of residential areas.

21.06-4 Housing diversity

Encouraging a broader range of housing types to meet the differing needs of the future population through the lifecycle.

21.07 Economic development

To create and manage sensitive interfaces between our key industrial precincts and adjoining residential areas and facilitate high quality, attractive development that is environmentally sustainable and enhances the appearance of the area.

22 Local planning policies

22.03 Residential development

To ensure development contributes to the preferred neighbourhood character where specified.

Council submitted that the Amendment is consistent with the Planning Policy Framework. The Panel has consolidated Council's appraisal of the Amendment:

- *This rezoning is appropriate for the area and responds to State policy.*
- *Redevelopment of an infill site such as this supports the key directions of the Melbourne Metropolitan Planning Strategy.*
- *The subject site is within walking distance of a number of bus routes that provide access to the Box Hill Central Activities Area and Burwood Heights, Forest Hill and Nunawading Activity Centres and has access to the Gardiners Creek trail.*
- *There are a series of bus routes in the vicinity including the 765 and 767 buses running along Canterbury Road.*
- *This Amendment will allow for the future development of an appropriately located site for housing growth.*
- *It is considered that any development on the subject land will not impact on the continued operation of the existing Middleborough/Clarice Road Industrial Precinct.*

2.1 Planning scheme zones

(i) Special Use Zone Schedule 2

Special Use Zone Schedule 2 (Private sport and recreation facilities) currently applies to the subject site. The purposes of Special Use Zone Schedule 2 are:

To provide for areas in private ownership to be used for a minor sports and recreation facility.

To ensure that the use and development of these facilities takes place in an orderly and proper manner and does not cause loss of amenity to the neighbourhood.

(ii) General Residential Zone

The Amendment proposes to apply GRZ6 to the subject site. The purposes of the General Residential Zone are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To encourage development that respects the neighbourhood character of the area.

To implement neighbourhood character policy and adopted neighbourhood character guidelines.

To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

2.2 Ministerial Directions and Practice Notes

Applying the Residential Zones (Planning Practice Note 78), December 2013

Planning Practice Note 78 sets out objectives and criteria for applying the reformed residential zones and default provisions. It states that the sort of housing that can be expected from the General Residential Zone is single dwellings and some medium density housing. It adds that Clause 54 and 55 (ResCode) apply to developments up to 4 storeys and Council can set a mandatory building height in the schedule to the zone.

The Practice Note states that the General Residential Zones is likely to be applied:

In most residential areas where moderate growth and diversity of housing that is consistent with existing neighbourhood character is to be provided.

Principles for considering where the General Residential Zone should be applied are:

- *Areas with a diversity of housing stock, diversity of lot sizes and a more varied neighbourhood character*
- *Areas where moderate housing growth and housing diversity is encouraged*

Table 2 (Criteria for applying NRZ, GRZ and RGZ) shows that there is minimal difference between criteria for applying the Neighbourhood Residential Zone and General Residential Zone. Table 2 shows criteria that differs between the two zones.

Table 2 Criteria for applying the Neighbourhood Residential Zone and General Residential Zone

Criteria	Applicable to:	
	NRZ	GRZ
Strategic		
Adopted housing and development strategy (not required for conversion only to GRZ)	Yes	No
Commercial or industrial land for redevelopment not in Activities Area (strategic justification for rezoning required)	No	Yes
Character		
Level of development activity (existing and desired)	Low	Low/ moderate
Constraints		
Risk associated with known hazard (evidenced through BMO, LSIO or EMO for fire, flood and landslip or other constraints identified through EPA hazard buffers or similar)	High	Low

This practice note was revised in June 2015. The Panel has relied on the December 2013 version because it was referred to by submitters and available at the time of the Hearing. There are no substantive changes between the two versions.

2.3 Discussion

The Panel adopts Council's appraisal of the Amendment with the Planning Policy Framework. Based on criteria found in Planning Practice Note 78, the General Residential Zone is an appropriate zone for the subject site. Whether GRZ6 is suitable for the site is discussed in Chapter 3.2. The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

3 Key issues

3.1 The issues

Issues raised in submissions related to:

- General Residential Zone Schedule 6
- Traffic, parking and infrastructure
- Neighbourhood character, built form and heritage
- Environmental considerations
- Other comments

3.2 General Residential Zone Schedule 6

(i) The issue

Several residents submitted that the subject site should have the same zone as the area west of Hay Street.

Through Amendment C160, Council proposed to rezone the area west of Hay Street to Neighbourhood Residential Zone 3 with restrictions including minimum subdivision lot sizes. The, then, Minister for Planning sought advice from the Residential Zones Standing Advisory Committee before considering Council's schedules to that zone. As an interim measure, a schedule without any modified provisions (Neighbourhood Residential Zone Schedule 7) was applied to all areas nominated for the Neighbourhood Residential Zone. The Advisory Committee provided its report to the Minister for Planning in May 2015 and it was not publicly available at the time of this Hearing.

The issue is whether the GRZ6 is suitable for the subject site.

(ii) Submissions

To justify using GRZ6, Council referred to the following purposes of the General Residential Zone:

To encourage development that respects the neighbourhood character of the area.

To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.

Council stated the subject site aligns with these purposes because it is well located to existing infrastructure, major roads, public transport, shops and services. Council did not consider that GRZ6 would allow a major new development that would house hundreds of people; a figure asserted by a submitter. Ms McGowan, for the Proponent, Visconti Investments Pty Ltd, submitted that the subject site would more likely accommodate between 8 to 10 dwellings and therefore the General Residential Zone is the most appropriate zone.

Ms McGowan added that the subject land was not required for 'private sport and recreation facility' purposes therefore the Special Use Zone is inappropriate. Ms McGowan added:

Given the surrounding area, the most appropriate use for this land is residential.

The General Residential Zone is the most appropriate zone to apply to this land, as it will best provide achievement of the strategic principles of urban consolidation with Plan Melbourne and the SPPF and LPPF.

The General Residential Zone, Schedule 6, will allow for a development on the subject site that respects the opportunities and constraints of the surrounding area.

The application of the Neighbourhood Residential Zone would be inappropriate in that it would provide an inappropriate strategic outcome of density ratio or subdivision pattern.

Mr Hanson submitted that Council sought to apply the Neighbourhood Residential Zone as part of Amendment C160 and now it seeks to ‘allow a massive change’.

Ms Moulin opposed GRZ6 being applied to the subject site and referred to a number of relevant documents including Planning Practice Notes 43 (Understanding Neighbourhood Character) and 78 (Applying the Residential Zones) to support her submission.

Ms Moulin stated that the nearest dwellings to the west of 35 Hay Street are in Beaver Street which is in the Neighbourhood Residential Zone. She referenced the following sections of Planning Practice Note 78:

Neighbourhood Residential Zone (NRZ) restricts housing growth in areas identified for urban preservation

...

Neighbourhood Residential Zone: In areas where single dwellings prevail and change is not identified, such as areas of recognised neighbourhood character or environmental or landscape significance.

(iii) Discussion

The Panel agrees with Council and Ms McGowan that the second purpose of the General Residential Zone ensures that any future development will respect the existing surrounding neighbourhood. This is important considering the subject site’s location on a local street and adjacent to Gardiners Creek and trail.

The Panel understands how submissions found GRZ6 proposed for the subject site to be at odds with the more restrictive Neighbourhood Residential Zone on properties west of Hay Street. The GRZ6 allows an extra metre of building height and does not restrict two dwellings to each lot.

Like Ms Moulin, the Panel referred to Planning Practice Note 78 for further guidance on the suitability of GRZ6 for the subject site. It took into account that the subject site was not identified for urban preservation or recognised for its environmental or landscape significance. Having reviewed the criteria for applying the zones in this practice note, the Panel finds that the subject site met more criteria for the Residential Growth Zone than the other two residential zones. It met very few of the criteria for applying the Neighbourhood

Residential Zone. However, when taking into account that residents sought built form that respects existing neighbourhood character and that both Council and the Proponent support GRZ6, the Panel finds that the General Residential Zone is, on balance, appropriate for the subject site.

The Panel agrees with Ms McGowan that the site is likely to accommodate no more than 8 to 10 dwellings with a height of 9 metres. The Panel finds no strategic basis to limit residential development beyond what is proposed by GRZ6.

(iv) Conclusion

The Panel concludes that GRZ6 is suitable for the subject site and notes that any future development will be required to respect the neighbourhood character of the area.

3.3 Traffic, parking and infrastructure

(i) The issue

The subject site is located at the southern end of Hay Street. Traffic can turn into the street from Canterbury Road in either direction but can only turn left when exiting Hay Street.

The issue is whether the Amendment has adequately considered traffic, parking and infrastructure impacts.

(ii) Submissions

Council submitted that rezoning the land itself will not generate traffic or car parking requirements and acknowledged that future development may generate traffic. It added that traffic and parking related issues will be considered when a planning permit application to develop the land is lodged.

VicRoads and Public Transport Victoria submitted that they did not object to the Amendment.

At the Hearing, Ms McGowan submitted:

- Developing the road reserve and using the easement splay will improve traffic conditions at this end of Hay Street
- The surrounding street network can accommodate local traffic movements
- The C153 Panel concluded that a larger scale development at 15-31 Hay Street would not result in '*a perceivable difference to traffic volumes on the local street network*'
- The provision of on-site parking, bicycle parking visitor parking ratios will be better assessed in conjunction with a planning permit application.

There were several submitters concerned about traffic impacts resulting from future development of the subject site. Mr Hanson submitted:

Firstly the simple fact that this rezoning is for a major new development that will house hundreds of people and create a traffic nightmare within the local community...

Like other submitters, Mr Hanson outlined existing traffic conditions including people using Hay Street as a 'rat run'.

At the Hearing, Ms Moulin submitted:

...allowing a medium density development at 35 Hay Street will just exacerbate these traffic horrors particularly with vehicles trying to enter Canterbury Road from our feeder streets to this principal arterial road including entering from Hay Street.

The Panel asked Ms Moulin whether constructing 8 to 10 dwellings on the site would result in the extent of traffic impacts outlined in her submission. Ms Moulin considered that it would.

The Canterbury Mews Owners Corporation, Mr and Ms Forge and Mr and Ms Smithson submitted that the existing road capacity is already 'stressed'. The Canterbury Mews Owners Corporation added that it can take up to 10 minutes to turn right into Canterbury Road from Peppermint Grove. It suggested that existing road capacity should be investigated before developing the subject site. Box Hill South Neighbourhood House was concerned that increased traffic would affect the safety of young families in the area.

In relation to infrastructure, Box Hill South Neighbourhood House was concerned about the impact of future development on '*already stressed local infrastructure - gas, electricity, water, storm water runoff, etc*'. In their submission, Ms Jory and Mr Wright questioned who would pay for connecting a road, water and electricity to the subject site.

(iii) Discussion

There was no information provided to the Panel to support claims that surrounding streets were at capacity and cannot cope with additional traffic movements.

Taking into account the proposed mandatory 9 metre maximum building height and Clause 55 requirements, any future development of the subject site will not result in traffic and parking impacts of a scale to warrant abandoning the Amendment or adding specific provisions. Therefore, the Panel agrees with Council and Ms McGowan that specific traffic and parking issues can be adequately addressed at the permit stage when details, such as vehicular access points, will be available.

No infrastructure or service provider expressed concern about the impact of future development on their assets. There was no information to support claims that existing infrastructure is already stressed or would not be able to cope with additional dwellings in the area.

(iv) Conclusion

The Panel concludes that the Amendment will not result in adverse traffic, parking or infrastructure impacts on the surrounding neighbourhood.

3.4 Neighbourhood character, built form and heritage

(i) Submissions

Council submitted that GRZ6 will require future development to cover no more than 60% of the subject site and not exceed 9 metres in height (10 metres over certain slopes). Council added that there would be no to little overlooking from any future development because there is 15 metres between the rear fences of Beaver Street properties and the western boundary of the subject site. Council noted that the subject site does not have a Heritage Overlay but may require a Cultural Heritage Management Plan.

At the Hearing, Ms McGowan noted that some Beaver Street properties have been subdivided to allow a second rear property with yards to the pathway. Ms McGowan agreed with Council that developing the subject site will not impact the amenity of existing properties because of the 15 metre separation between the two.

In their submission, Mr and Mrs Magilton considered that a multi-level development on the subject site would overlook their Beaver Street property and impact on their privacy.

The Hay Street Public Open Space Action Group submitted that the proposed land use is inconsistent with the character and amenity of the site and area. It added that the subject site creates an important buffer between Hays International College and the strategic development site north of the subject site.

At the Hearing, Ms Moulin said that she believed that the subject site was suitable for residential development, however, the built form should align with the Neighbourhood Residential Zone Schedule 3 (Bush Suburban) requirements. This zone schedule was originally proposed by Council through Amendment C160 and subsequently considered by the Residential Zones Standing Advisory Committee through draft Amendment C174. The Committee's report was not publicly available at the time of the Hearing.

(ii) Discussion and conclusion

The Panel understands that existing residents have become accustomed to the amenity associated with a vacant site adjoining Gardiners Creek corridor. However, the proposed land use is entirely consistent with the existing character of the surrounding area, which is predominantly residential. Residential and educational land uses can be harmoniously located adjacent to each other without the need for any buffers. Buffers are generally applied between offensive industries and sensitive land uses. Gardiners Creek corridor will buffer any future sensitive land uses on the subject site from the industrial land to the east.

In relation to built form, the mandatory maximum 9 metre height for a dwelling or residential building represents an absolute limit. The ultimate building heights and setbacks, in context with the trail and existing dwellings, can be assessed when detailed plans and elevations are available. These are generally prepared for the planning permit application. Council is required to notify affected residents of the permit application and provide the opportunity to comment on the specific development proposal.

The Panel concludes that the GRZ6 and Clause 55 provisions provide the appropriate parameters for built form outcomes that respect the surrounding neighbourhood character.

3.5 Environmental considerations

(i) The issue

Several submitters were concerned with the impact that future development on the subject site will have on Gardiners Creek. They were also concerned that future development would be prone to flooding. The issue is whether these environmental issues have been adequately considered.

(ii) Submissions

At the Hearing, Council noted that the subject site is not located in a Land Subject to Inundation Overlay or a Special Building Overlay so it is not considered to be flood prone. Council submitted that the Melbourne Water and the Minister for Environment did not object to the Amendment and added:

Any future development would need to be aware of existing vegetation on, and in close proximity, to the subject site, particularly the pine trees adjacent to the subject site. This is both to protect valuable wild life habitat and preserve the existing neighbourhood character.

Whilst noise during the construction phase of any development is a legitimate concern in a residential area, this could be dealt with through conditions on a planning permit. Any permit issued for future development on the subject site may contain conditions to mitigate or eliminate noise, run-off, dust suppression, animal and waste management, amongst other things, during any construction works and eventual use of the subject site.

The Panel notes that Melbourne Water was not a submitter to the Amendment.

At the Hearing, Ms McGowan submitted:

The subject site is not subject to flooding, is void of vegetation and has no heritage overlay. A cultural heritage management plan (CHMP) will be done as a part of any development application.

Ms McGowan provided to the Panel a series of photographs including the environmental conditions surrounding the subject site. Figure 3 shows existing tall trees separating the creek corridor from the subject site, and land elevating away from Gardiners Creek and towards the site.

Figure 3 Looking towards subject site from the creek trail



Source: Ms N McGowan, Document 4

Ms McGowan added that any proposed development is likely to remove existing asphalt and include permeable land which will complement the evolving nature of the creek environs.

Ms Moulin, Ms Mills, Ms Race and Mr Coldrey submitted that the local community enjoyed recreating in Gardiners Creek corridor among the native flora and fauna. Mr and Ms Forge and Mr and Ms Smithson, who had almost identical submissions, agreed.

Ms Moulin noted that Gardiners Creek corridor is an area of Aboriginal cultural heritage sensitivity and was once used by key Australian impressionist artists. Ms Moulin submitted:

If you combine the 35 Hay St. rezoning proposal with the high density development proposed for the adjacent site at 15 to 31 Hay Street if it is approved in its current scale and density this will clearly diminish the amenity and enjoyment of utilising this walking trail as a pedestrian.

The Box Hill South Neighbourhood House considered that the Amendment would destroy local flora and fauna and increase noise and air pollution. Ms Bourke was also concerned about noise, specifically during construction.

The Canterbury Mews Owners Corporation and Ms Moulin submitted that Gardiners Creek has previously flooded. Ms Moulin said there were three to five floods in the past 10 years and they were more severe before barrel drains were installed. In response to a question from the Panel, Ms Moulin said that she was not aware of water levels reaching the subject site.

(iii) Discussion

The Panel is satisfied that Council has exercised the appropriate process to seek comment on flooding and environmental issues from the relevant statutory referral authority and the relevant Minister. Both responded with no objection. From an environmental and amenity perspective, the community benefitted from Council acquiring land for the Gardiners Creek Shared Trail extension. This land acts as a setback between the subject site and Gardiners Creek.

Although the subject site is located adjacent to Gardiners Creek and associated lineal open space, no planning scheme overlays apply to the site. When questioned by the Panel, Council stated that this was not an oversight. The environmental considerations raised by submitters are valid, however there is no basis to support claims that residential development on an asphalted site will adversely impact flora and fauna in and around Gardiners Creek corridor. The environment is likely to improve after the asphalt has been removed and after new development covers no more than 60% of the subject site.

The subject site is elevated above Gardiners Creek and is not subject to the Urban Floodway Zone, Special Building Overlay, Floodway Overlay or Land Subject to Inundation Overlay. The Department of Environment, Land, Water and Planning, on behalf of the Minister for Environment, is responsible for such matters and did not object to the Amendment. There is no evidence to suggest that the subject site would be affected if Gardiners Creek flooded.

There was insufficient information to show that the cumulative development impact of 15 to 31 Hay Street and 35 Hay Street will diminish the amenity of the area. The visual impact of any future development will be minimised by existing large trees along the Gardiners Creek corridor that appear to exceed 9 metres. The grade separation between the subject site and the corridor will also minimise impact. Other factors such as building setbacks from the site boundary along the corridor will be known when detailed plans are prepared.

In relation to the subject site being in an Aboriginal cultural heritage sensitivity area, the *Aboriginal Heritage Act 2006* requires Council not to issue a permit to develop the land until the necessary work has been completed and signed off. This may include the need for a Cultural Heritage Management Plan. The Panel is satisfied that there is an existing process to ensure that future development appropriately responds to the area's significance.

Construction issues such as noise, dust and runoff can be adequately addressed through planning permit conditions.

(iv) Conclusion

The Panel concludes that there are no environmental issues that need to be addressed at this stage of the planning process. Any potential environmental impacts will be considered at the planning permit stage when details of the proposed development are known.

3.6 Other comments

(i) The issue

Submitters commented about land ownership, historic uses, accuracy of the amendment documentation and process transparency.

(ii) Submissions

Council submitted:

Whilst it is acknowledged that the subject site has been used by local residents for recreational purposes such as riding bikes and walking dogs, the subject site is privately owned and not public open space and the site's owners are entitled to develop it in accordance with the planning controls.

As residents using the subject site, Mr and Mrs Smithson opposed the rezoning because they did not wish to lose the opportunity to recreate and walk through the site. The Hay Street Public Open Space Action Group submitted the following in relation to the Amendment:

...fails to recognise the rights that have accrued to local residents since before 1958.

...

The Council does not appear to have taken steps to ensure that any amendment that would facilitate the removal or variation of the restrictive covenant, would take into account the rights and interests of affected people (defined at law to include owners and occupiers of land who enjoyed the benefit of the covenant).

...

The Explanatory Report fails to properly account for the impact of the massive development arising out of Amendment C153.

...

This process continues to suffer from a significant lack of transparency and appears to be prioritising commercial interests over those of residents and those with legitimate interest in the land.

(iii) Discussion

The Panel is sympathetic to residents who have used the subject site over a number of years. However, the subject site has been privately owned since the Parks Victoria land was made redundant and sold. The subject site appears like public open space so it is understandable why some residents have been accessing and enjoying, what is in fact, private property. It is not the Panel's role to consider whether the subject site should be public open space because this has already been determined. The Panel's role is to consider the most appropriate provisions to guide the subject site's future development.

In relation to the Amendment process, Council met its obligations under the *Planning and Environment Act 1987*. These include publicly exhibiting the Amendment, providing members of the community the opportunity to have a say and requesting an independent Panel after issues could not be resolved. The Panel concludes that the Amendment process was transparent and accountable. The Hay Street Public Open Space Action Group raised transparency issues about matters that are beyond the planning scheme amendment process.

Council has taken into account the social and economic impacts of this Amendment. Council and the Proponent have, whether intended or otherwise, taken into account community interest when proposing the mandatory 9 metre maximum building height provision. The Panel regards any claims to the contrary to be unfounded.

Unlike a planning permit, a planning scheme amendment can propose changes that do not align with a restrictive covenant. However, the subject site does not have a covenant so this matter is not discussed further.

(iv) Conclusion

The Panel concludes that there are no relevant issues about land ownership, historic uses, amendment documentation accuracy or process transparency.

3.7 Recommendation

The Panel recommends:

Based on reasons set out in this Report, the Panel recommends that Whitehorse Planning Scheme Amendment C167 be adopted as exhibited.

Appendix A Hearing Document list

No	Description	Presented by
1	Submission	Council
2	Set of maps and aerial photo	Council
3	Submission - Visconti Investments Pty Ltd	Ms N McGowan
4	Photos - site and surrounds	Ms N McGowan
5	Map - Neighbourhood Activity Centres	Ms N McGowan
6	Property title - Lot 2 on Plan of Subdivision 508073R	Ms N McGowan
7	Submission	Ms J Moulin
