



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

1 Spring Street  
Melbourne Victoria 3000  
GPO Box 2392  
Melbourne, Victoria 3001  
Telephone (03) 8392 6397  
Facsimile (03) 8392 6381

17 May 2016

Ms Vanessa Mogg  
Strategic Planner  
Whitehorse City Council  
Locked Bag 2  
NUNAWADING 3131

Dear Ms Mogg

## **Whitehorse Planning Scheme Amendment C182 Burwood Highway rezoning to Mixed Use Zone**

Please find enclosed the report of the Panel appointed to consider Amendment C182 to the Whitehorse Planning Scheme, together with a copy of the report on CD in Word and PDF formats.

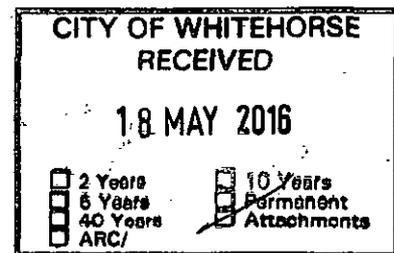
*Once Council has formally considered this Amendment it would be appreciated if a copy of the Council Report (or a link to it) be emailed to Planning Panels Victoria.*

If you have any queries please contact Planning Panels Victoria on (03) 8392 6396 or [planning.panels@delwp.vic.gov.au](mailto:planning.panels@delwp.vic.gov.au).

Yours sincerely

Ian Gibson  
Panel Chair

Enc.



### Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002



*Planning and Environment Act 1987*

**Panel Report**

# Whitehorse Planning Scheme Amendment C182 Burwood Highway Rezoning to Mixed Use Zone

**17 May 2016**

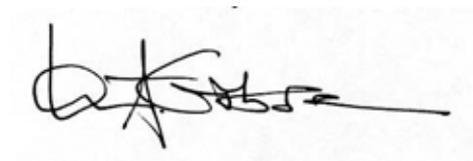
*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Whitehorse Whitehorse Planning Scheme Amendment C182

Burwood Highway Rezoning to Mixed Use Zone

17 May 2016

A handwritten signature in black ink, appearing to read 'Ian Gibson', written over a light-colored rectangular background.

Ian Gibson, Chair

# Contents

	Page
<b>Executive Summary .....</b>	<b>1</b>
<b>1 Introduction.....</b>	<b>2</b>
1.1 The Amendment.....	2
1.2 Background to the proposal.....	3
1.3 Issues dealt with in this report.....	5
<b>2 Planning context.....</b>	<b>6</b>
2.1 Policy framework.....	6
2.2 Planning scheme provisions .....	9
2.3 Ministerial Directions .....	10
2.4 Discussion .....	10
<b>3 Strategic justification of the Amendment .....</b>	<b>11</b>
3.1 Future use of the subject land .....	11
3.2 Relationship to Burwood One Neighbourhood Activity Centre.....	14
3.3 The Mixed Use Zone.....	16
3.4 Environmental Audit Overlay .....	18
3.5 Recommendation .....	18
<b>4 Amenity and access .....</b>	<b>19</b>
4.1 Visual impact .....	19
4.2 Advertising signage .....	21
4.3 Noise.....	23
4.4 Traffic and parking.....	24
<b>Appendix A Submitters to the Amendment</b>	
<b>Appendix B Document list</b>	

## List of Figures

	Page
Figure 1 Area of Amendment C182.....	2
Figure 2 Aerial image of the subject land.....	3

## List of Abbreviations

DDO	Design and Development Overlay
EAO	Environmental Audit Overlay
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NAC	Neighbourhood Activity Centre
RGZ	Residential Growth Zone
RGZ2	Residential Growth Zone Schedule 2
SPPF	State Planning Policy Framework
VCAT	Victorian Civil and Administrative Tribunal

## Overview

### Amendment Summary

<b>The Amendment</b>	Whitehorse Planning Scheme Amendment C182
<b>Common Name</b>	Burwood Highway Rezoning to Mixed Use Zone
<b>Subject Sites</b>	217 and 219-223 Burwood Highway, Burwood East
<b>The Proponent</b>	217 Burwood Highway: Kennelly Planning and Development on behalf of the owners, Carwoode Pty Ltd 219-223 Burwood Highway: White Park Consulting (originally JMPlanning) on behalf of Bob Jane Corporation Pty Ltd, who lease from the owners, 694-696 High Street Pty Ltd ( for whom Mogpprop Management Pty Ltd <sup>1</sup> acts as property manager)
<b>Planning Authority</b>	Whitehorse City Council
<b>Authorisation</b>	14 October 2015
<b>Exhibition</b>	19 November to 21 December 2015
<b>Submissions</b>	17 (15 opposed, one supportive and one agency with no concern)
<b>Council decision on submissions</b>	1 February 2016

### Panel Process

<b>The Panel</b>	Ian Gibson (Chair)
<b>Directions Hearing</b>	21 March 2016, Whitehorse City Council, Nunawading,
<b>Panel Hearing</b>	21 and 22 April 2016, Box Hill Town Hall,
<b>Site Inspections</b>	Unaccompanied, 21 March and 21 April 2016
<b>Appearances</b>	Whitehorse City Council, represented by Vanessa Mogg, Strategic Planner Mogpprop Management Pty Ltd and Carwoode Pty Ltd, represented by Paul Chiappi, who called the following expert witnesses: - Andrew Clarke, Matrix Planning, town planning - Michael O'Brien, TTM, traffic Bridie Freund, represented by Tania Cincotta, Best Hooper Lawyers Anne FitzGerald Michael Challenger
<b>Date of this Report</b>	17 May 2016

<sup>1</sup> In some documents, the organisation is described as 'Mogpprop Management Pty Ltd'

## Executive Summary

Whitehorse Planning Scheme Amendment C182 (the Amendment) seeks to rezone two sites at the north-west and north-east corners of the intersection of Burwood Highway and Blackburn Road, Burwood East, from the Residential Growth Zone Schedule 2 to Mixed Use Zone and apply an Environmental Audit Overlay to both sites. The sites include a petrol station at 217 Burwood Highway and a vacant site at 219-223 Burwood Highway, which was formerly the site of a petrol station until a few years ago.

The Amendment was preceded by a combined application for an amendment and planning permit, which sought a Bob Jane T-mart tyre service centre and retail outlet on the land at 219-223 Burwood Highway (and no change to the service station at 217 Burwood Highway). The application was withdrawn in June 2015 in response to Council officer concerns that the permit application was perceived as an under-development of a prominent site.

Following exhibition of the Amendment in November and December 2015, 17 submissions were received, most of which were late submissions that Whitehorse City Council accepted and forwarded to the Panel. Many of these were from local residents who objected to the establishment of a Bob Jane T-mart at 219-223 Burwood Highway, expressing concerns about the impact on amenity (particularly visual impact and noise), and about impacts on traffic and parking in the area. A particular concern of the submitters was advertising signage, with several expressing concern that signage at the site would be similar to that recently erected at a Bob Jane T-mart at the corner of Maroondah Highway and Springvale Road in Nunawading.

Other issues raised by submitters included the lack of strategic justification of the Amendment, its impact on the availability of residential development in Whitehorse City, and its potential negative impact on Burwood One Neighbourhood Activity Centre, on the south-west corner of the intersection.

The Panel has considered these concerns, but concludes that the Mixed Use Zone is appropriate for the two sites. They are in a highly prominent location in a precinct undergoing significant transition, and the range of land uses that would be possible under the Mixed Use Zone in this location are all reasonable. The concerns of local residents about impacts on amenity are valid, but can be addressed during the planning permit process.

The Panel concludes that the Amendment is consistent with the State and Local Planning Policy Frameworks, is strategically justified, and will not negatively impact on the Burwood One Neighbourhood Activity Centre. Further, it concludes that any potential amenity and traffic impacts on local residential areas can be managed through the planning permit process.

Based on the reasons set out in this Report, the Panel recommends:

**Whitehorse Planning Scheme Amendment C182 be adopted as exhibited.**

# 1 Introduction

## 1.1 The Amendment

Whitehorse Planning Scheme Amendment C182 (the Amendment) was prepared by the Whitehorse City Council as Planning Authority. As exhibited, it proposed to:

- Rezone 217 Burwood Highway and 219-223 Burwood Highway, Burwood East, from the Residential Growth Zone Schedule 2 (RGZ2) to the Mixed Use Zone (MUZ).
- Apply an Environmental Audit Overlay (EAO) to 217 Burwood Highway and 219-223 Burwood Highway, Burwood East.
- Amend Planning Scheme Maps 5ZN and 5EAO.

The Amendment applies to land shown in Figure 1.



Figure 1 Area of Amendment C182

An aerial image showing the context of the site, including its proximity to the Burwood One Neighbourhood Activity Centre and nearby residential areas, is shown in Figure 2:



Figure 2 Aerial image of the subject land  
Source: Expert Witness Statement of Andrew Clarke, p. 2

The history of land use on the two sites was explored during the Hearing, assisted by a series of aerial images provided by Whitehorse City Council. An image from 1963/64 showed a residence at 217 Burwood Highway and a petrol station at 219-223 Burwood Highway. A 1975 image showed petrol stations on both sites, continuing through to an image from 2010. The latest image shows the current BP service station at 217 Burwood Highway and the vacant site at 219-223 Burwood Highway.

The Panel heard reference to planning permits issued for the sites, commencing with permits initially issued by the Melbourne and Metropolitan Board of Works for the use of the land as petrol station at 217 Burwood Highway (1961) and 219-223 Burwood Highway (1966). While the dates appear inconsistent with the aerial images, it is clear that the two sites were used as petrol stations for many years, while the site at 219-223 Burwood Highway has been vacant for the last few years.

## 1.2 Background to the proposal

The Explanatory Report provides details of the background to the Amendment:

*The applicant seeks to rezone the sites from the RGZ to MUZ to allow the purpose-built development of one of the sites (219-223 Burwood Highway) to be used for a service industry use (Bob Jane T-Mart tyre service centre) and retail premises.*

*The rezoning is sought given the RGZ prohibits the use of the property for service industry use and retail premises and the MUZ permits these land uses subject to a permit and related assessment.*

*The MUZ responds to the proposed land use and its history and respects the existing land use (petrol station with car wash) on the land at 217 Burwood Highway. The MUZ facilitates the desired land use for the sites and also allows for future commercial and residential opportunities, particularly as they abut a major intersection and are located directly opposite a designated Neighbourhood Activity Centre. The MUZ provides an effective land use buffer for surrounding residential properties and the Commercial 1 Zone to the Burwood One Neighbourhood Activity Centre.*

*Given the historical use of the subject land as approved, past and present, and acknowledging the surrounding residential land; it is also proposed to apply an EAO as per Clause 45.03 of the Planning Scheme to ensure any future development and use of the land and surrounding residential properties are effectively protected.<sup>2</sup>*

The Amendment was preceded by a combined application for an amendment and planning permit. This was lodged with Whitehorse City Council in March 2014, and sought a Bob Jane T-mart tyre service centre and retail outlet on the land at 219-223 Burwood Highway (and no change to the service station at 217 Burwood Highway). The application was withdrawn in June 2015 as a result of Council officer concerns with the permit application. At the hearing, these concerns were described as a perceived under-development of a prominent site.

An issue raised by submitters at the Directions Hearing was the reference to the specific development of a Bob Jane T-mart tyre service at 219-223 Burwood Highway, despite the fact that the Amendment only covers rezoning to MUZ and application of an EAO to the sites.

In particular, under 'Why is the Amendment required?', the Explanatory Report states:

*The applicant seeks to rezone the sites from RGZ to MUZ to allow the purpose-built development of one of the sites (219-223 Burwood Highway) to be used for a service industry use (Bob Jane T-Mart tyre service) and retail premises.<sup>3</sup>*

Many of the objecting submissions expressed concern about a range of amenity and traffic issues relating to the specific proposal, which would be the subject of a subsequent planning permit process if Amendment C182 proceeds.

At the Hearing, there was discussion on whether the reference to the Bob Jane T-mart in the Explanatory Report may have assisted potential submitters by being transparent in clarifying the catalyst for the Amendment and a likely future use of the site, or whether it may have diverted attention towards the requirements of a future planning permit. On balance, there was support for the view that transparency about the intentions for the site was desirable.

---

<sup>2</sup> Whitehorse Amendment C182 Explanatory Report, p1

<sup>3</sup> Ibid, p1

The Panel supports this view. However, it was unfortunate that the initial statement in the Explanatory Report was so specific in its reference to the tyre service, rather than describe it as the catalyst for the Amendment and an example of one of the uses that may occur if the rezoning proceeds. Later references in the Explanatory Report are appropriate:

*...Rezoning the sites to MUZ would allow the current use to continue and also facilitate the future development of the site for commercial, retail or residential uses.*

*The rezoning to MUZ would also mean that the immediate desired use of the land as a Bob Jane T-Mart service centre would be a permissible land use in the Planning scheme under the MUZ.<sup>4</sup>*

### **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 the sites.

This report deals with the issues under the following headings:

- Planning context
- Strategic justification of the Amendment
- Amenity and access.

---

<sup>4</sup> Ibid, p2

## 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 zone and overlay controls and other relevant planning strategies.

### 2.1 Policy framework

#### (i) State Planning Policy Framework

The following clauses of the State Planning Policy Framework (SPPF) are relevant to the Amendment:

**Clause 11.01-2: Activity Centre Planning**, which has the objective to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community. Strategies include:

- *Undertake strategic planning for the use and development of land in and around the activity centres.*
- *Give clear direction in relation to preferred locations for investment.*
- *Encourage a diversity of housing types at higher densities in and around activity centres...*
- *Broaden the mix of uses in activity centres to include a range of services over longer hours appropriate to the type of centre and needs of the population served.*
- *Provide a focus for business, shopping, working, leisure and community facilities.*

**Clause 11.02-1: Urban growth - Supply of urban land**, which has the objective to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses. Strategies include:

- *Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.*
- *Ensure that sufficient land is available to meet forecast demand...*

**Clause 13.04-1: Noise abatement**, which has the objective to assist the control of noise effects on sensitive land uses. The strategy is:

- *Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.*

**Clause 13.04-2: Air quality**, which has the objective to assist the protection and improvement of air quality. Strategies include:

- *Ensure, wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses.*

**Clause 15.01-1: Urban design**, which has the objective to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

**Clause 16.01-2: Location of Residential Development**, which has the objective to locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport. Strategies include:

- *Increase the proportion of housing in Metropolitan Melbourne to be developed within the established urban area, particularly at activity centres, employment corridors and at other strategic sites, and reduce the share of new dwellings in greenfield and dispersed development areas.*
- *Encourage higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport.*
- *Ensure an adequate supply of redevelopment opportunities within the established urban area to reduce the pressure for fringe development.*
- *Facilitate residential development that is cost-effective in infrastructure provision and use, energy efficient, incorporates water efficient design principles and encourages public transport use.*

**Clause 16.01-3: Strategic Development Sites**, which has the objective to identify strategic redevelopment sites for large residential development in Metropolitan Melbourne, and strategies that include identification of strategic redevelopment sites that are:

- *...In or beside Neighbourhood Activity Centres that are served by public transport.*
- *On or abutting tram, train, light rail and bus routes that are part of the Principal Public Transport Network and close to employment corridors, Central Activities Districts, Principal or Major Activity Centres.*
- *Able to provide 10 or more dwelling units, close to activity centres and well served by public transport.*

**Clause 17.01-1: Economic Development – Business** has the objective to encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities. Strategies include:

- *Locate commercial facilities in existing or planned activity centres.*
- *Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.*
- *Provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations...*

**Clause 17.01-2: Economic Development - Out of Centre Development for Metropolitan Melbourne** has the objective to manage out of centre development in Metropolitan Melbourne. Strategies include:

- *Ensure that proposals or expansion of single use retail, commercial and recreational facilities outside activity centres are discouraged by giving preference to locations in or on the border of an activity centre.*
- *Ensure that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations...*

**Clause 18.01-1: Integrated transport – land use and transport planning** has the objective to create a safe and sustainable transport system by integrating land-use and transport.

Council submitted that the Amendment is supported by these clauses in the SPPF because the rezoning to MUZ...

*...directly responds to and furthers these strategies. The subject sites, which have longstanding commercial uses, are located adjacent to a NAC and front the intersection of two main roads which perform as the gateway to the adjoining activity centre. It is preferred that any development of the land at 219-223 Burwood Highway is orientated to the intersection with adequate on-site parking and interface treatment and provides opportunity for further commercial and/or residential development into the future.*

*The proposed development and use of the land for service industry and retail premises (typically automotive/trade related supplies) permitted pursuant to the MUZ and complementing the existing petrol station with car wash use will provide on-going net benefit to the surrounding community, local residents and workers.*

*...The subject sites are strategically located at the intersection of two major roads and also located adjacent to the Number 75 Tram Route between Vermont South and Docklands and the Number 703 Smartbus Route between Blackburn and Middle Brighton. This allows for access to the sites by private vehicle, public transport and active transport and integrates the land uses on the subject sites with the surrounding uses and transport modes.<sup>5</sup>*

## **(ii) Local Planning Policy Framework**

Council submitted that the Amendment supports the following clauses of the Local Planning Policy Framework (LPPF):

*The Municipal Strategic Statement (MSS) recognises that large NACs, such as Kmart Plaza (now Burwood One), play an important role in the economic activity of the municipality and that this role should be further enhanced.*

*The MSS also recognises the important contribution the industrial sector plays in the City's economy, considered relevant to the proposed service industry use of the land. Clause 21.07-3 provides the key objectives to the MSS seeking to*

<sup>5</sup> Whitehorse City Council, Part A submission, 21 April 2016, p8

*strengthen the manufacturing sector, attract new investment, manage sensitive interfaces with adjoining residential areas, facilitate high quality, attractive and environmentally sustainable development and to facilitate the continued enhancement of the Kmart Plaza (now Burwood One) NAC.*

*The rezoning will facilitate development and uses commensurate to the site specific 'attributes' afforded to the land such as the location at the intersection of two arterial roads, is responsive to the existing use as a petrol station and adjoining NAC, whilst also respecting and providing a suitable land use and transition to adjoining residential areas. In doing so, the proposed Amendment directly complements the implementation of these objectives.*

*The local planning policy at Clause 22.05 Non Residential Uses in Residential Areas is considered partially relevant to the current amendment request given the existing residential zoning to the land and existing and proposed land uses. To this effect, Clause 22.05-2 provides key objectives including the need to avoid the concentration of non-residential uses where it would create a defacto commercial area.*

*The preparation of the Amendment assists the implementation of this objective by recognizing the ongoing commercial potential of the site and allowing a mix of potential uses, including commercial and residential.<sup>6</sup>*

An additional local policy relevant to the Amendment is Clause 22.02: Visual Amenity and Advertising Signs, which aims to ensure that the scale and nature of signage is appropriate to the role and character of its surrounds. It includes policies on advertising signage in residential areas, the first of which is 'The quantity of signs is encouraged to be kept to a practical minimum and be designed with regard to the character and amenity of the area'.

## **2.2 Planning scheme provisions**

### **(i) Zones**

The Amendment proposes replacement of RGZ2 with MUZ. Both are within the residential suite of zones.

The purposes of the RGZ include:

- *To provide housing at increased densities in buildings up to and including four storey buildings.*
- *To encourage a diversity of housing types in locations offering good access to services and transport including activities areas.*
- *To encourage a scale of development that provides a transition between areas of more intensive use and development and areas of restricted housing growth.*

Schedule 2 of the RGZ specifies requirements aimed at achieving appropriate built form transition to neighbouring residential properties, protecting vegetation in the street setback

---

<sup>6</sup> Ibid, p9

to contribute to the preferred neighbourhood character, and protecting potential impact on the amenity of existing adjoining residential dwellings.

Council described the application of the RGZ along Burwood Highway as encouraging a transition between Burwood Road and the residential areas surrounding it.

The purposes of the MUZ are described in Clause 32.04 of the Planning Scheme, and include:

- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
- *To provide for housing at higher densities.*
- *To encourage development that responds to the existing or preferred neighbourhood character of the area.*

Clause 32.04 describes the range of land uses permissible or prohibited under the MUZ, as well as matters such as the application of ResCode requirements; the need for a permit to construct a building or construct or carry out works for Section 2 use in Clause 32.04-2 – Table of Uses; application requirements; decision guidelines; and reference to advertising sign requirements at Clause 52.05 – Advertising Signs being in Category 3. These were all issues raised in evidence and submissions, and are discussed further in Chapters 3 and 4 of this report.

## **(ii) Overlays**

The Amendment proposes the application of an Environmental Audit Overlay (EAO) on both sites. This is based on the use of both sites as service stations for many years, the site at 217 Burwood Highway in current use and 219-223 Burwood Highway being a service station site until recent years.

No other overlays apply to the sites.

## **(iii) Particular provisions**

The issue of advertising signage at 219-223 Burwood Highway was raised by many of the submitters. The provisions of Clause 52.05 Advertising Signs were considered in detail during the hearing. This is discussed in Chapter 4.2 of this report.

## **2.3 Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

- Ministerial Direction 11 Strategic Assessment of Amendments
- Section 7 (5) The Form and Content of Planning Schemes.

## **2.4 Discussion**

The implications of the relevant sections of the Whitehorse Planning Scheme are considered in Chapters 3 and 4 of this report.

However, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the SPPF, the LPPF and Ministerial Directions.

## 3 Strategic justification of the Amendment

### 3.1 Future use of the subject land

#### (i) The issue

Council had not supported a previous section 96(a) application for a Bob Jane T-mart tyre service at 219-223 Burwood Highway because it considered that it represented an under-development of the site. The issue is the scale and nature of future development at this site, given its prominent location.

The Panel is not aware of any plans to change the land use at the service station at 217 Burwood Highway. There were no submissions relating to any change, and so it has been assumed that it will continue for the time being (although the principles relating to future development of 219-223 Burwood Highway would also apply to 217 Burwood Highway over the long term).

#### (ii) Evidence and submissions

On behalf of Bridie Freund (a local resident), Ms Tania Cincotta submitted that:

*In circumstances of this site specific amendment, it is submitted that the assessment of the appropriateness of the Amendment should not be considered solely as a rezoning of land to Mixed Use Zone but rather a rezoning with the express intention and desire to establish a Bob Jane T-mart store at 219 Burwood Highway. Whilst any future application for a Bob Jane T-mart store would be the subject of a planning permit application, the issue to be considered now for the Panel is whether it is appropriate to pave the way now for such an industrial and retail use of the site.<sup>7</sup>*

Ms Cincotta highlighted the importance of RGZ land in Whitehorse City, particularly because a significant amount of land in the municipality has been included in the Neighbourhood Residential Zone (thus limiting options for residential expansion elsewhere). Further, she noted that the rezoning is not required for either of the sites to continue or re-establish use as a service station. Also, she considered that the principal difference in the MUZ compared with the current RGZ is that it would allow industrial and retail uses on the subject land, with a greater focus on non-residential uses.

Peter Muir (Submission 5) argued that commercial development of the site was inappropriate, and represented the 'thin end of the wedge' for more commercial developments. He supported residential development, which he considered would 'blend in with the rest of the surrounds'. Similarly, Michael Challinger (Submission 9) opposed the 'degradation and commercialisation' that would occur if commercial and retail activity spread to the subject land. Ruth Randall (Submission 14) argued that the area should retain its residential status, while Simon Lieng (Submission 10) wished to maintain the peaceful and tranquil residential status of the land.

---

<sup>7</sup> Submissions on behalf of Ms Bridie Freund, pp. 3-4

Louise Harradine (Submission 8) questioned the need for another large tyre business in Burwood East, given the location of other Bob Jane T-Marts at Box Hill and Nunawading, as well as other tyre outlets in the vicinity.

On behalf of the proponents, Mr Chiappi argued that the characteristics of the site at 219-223 Burwood Highway meant that intensive and flexible land uses should be encouraged:

*In addition to permitted uses under the current zone such as medium to high density housing, medical centre and service station and car wash, the rezoning would allow uses such as display based retailing, office and service industry. This is a meaningful expansion of permitted uses.*

*Of course, failing to zone the land to allow the optimum use of the land has a negative impact – it limits the benefit that the community can derive from the co-location of services and from the significant infrastructure represented by the transport system and the activity centre. Ultimately the manner in which the sites are developed will be determined by the operation of the property market; the planning scheme settings for the sites should, however, allow the optimum use of the land consistent with policy.*

*The range of permissible uses under the MUZ is appropriate for these sites when considered with the various constraints and controls that will operate. The concern of some objectors as to the zone allowing industrial and commercial uses is misplaced. In practical terms, the use of the land will be limited to uses that can operate without adverse amenity impacts. Industry is prohibited if it is subject to a threshold distance requirement under clause 52.10. Other industry would need to demonstrate it provides an acceptable outcome in the context of the residential neighbourhood. That is a substantial barrier, and a sufficient one.*

*The contention that the MUZ will introduce incompatible uses to the site should be dismissed. The zone is designed to allow a mix of use. The exercise of discretion in granting a permit, as well as common sense, will appropriately regulate any mix of uses.<sup>8</sup>*

He concluded:

*The land is clear of improvements and is ripe for re-development, once the planning parameters for that development have been determined under this Amendment. Although the previous focus was on a T-Mart, the possible future development is a broader range than just that. The size and location of the site, amongst its other attributes and setting, will allow for a more intensive built form and, readily, a mix of uses on the land.<sup>9</sup>*

In his evidence, Mr Clarke outlined the uses that would be appropriate if MUZ applied to the land, some with conditions:

- *Medium-high density housing (currently permitted)*

---

<sup>8</sup> Submissions for Carwoode Pty Ltd & 694-696 High Street Pty Ltd, pp. 2-3

<sup>9</sup> Ibid, pp 1-2

- *Display based retailing (currently prohibited)*
- *Office (currently prohibited)*
- *Medical centre (currently permitted)*
- *Service industry, particularly automotive related (currently prohibited)*
- *Petrol station and car wash (currently permitted)*
- *A combination of the above.*

*I note that Non-Residential Uses in Residential Areas Policy discourages the development of restaurants, hotels, reception rooms and convenience restaurants. I have therefore not included them.<sup>10</sup>*

### **(iii) Discussion and conclusions**

The Panel considers that the location of the two sites on the north-west and north-east corners of Burwood Highway and Blackburn Roads means that substantial development is both inevitable and desirable. This may involve a residential component, but may include commercial uses that reflect the historical activities on sites (for decades being service stations on both corners). Expanding the options to include the range of uses permitted within the MUZ in the circumstances applying to the subject sites is appropriate.

The Whitehorse Housing Strategy, adopted by Council in April 2014, addresses the key challenges for housing location in the City:

- *Encouraging appropriate development within the municipality's established network of activity centres.*
- *Providing appropriate housing growth in locations with potential amenity considerations (eg. sensitive interfaces, rail corridors, tram lines, main roads)...*
- *Encouraging housing in locations with good access to public transport and services, which can minimise demand on the road network and better target the delivery of community and physical infrastructure and services.<sup>11</sup>*

While the Amendment may lead to a circumstance in which little or no residential development occurs on the sites as a result of the application of the MUZ, it also leaves open the possibility of residential development consistent with the Whitehorse Housing Strategy.

The Panel concludes that the likelihood of a negative impact of the Amendment on the supply of residential land in Whitehorse City is not consequential. The MUZ allows for the possibility of residential development on both sites over the long-term, and this could provide further housing options. However, even if little or no residential development occurred at the vacant site at 219-223 Burwood Highway over the next few years, the impact on the aggregate availability of housing in Whitehorse City would be negligible.

The Panel does not consider that the issue of whether there are other appropriate sites for a tyre servicing facility to be significant. It is considering the Amendment which has been

<sup>10</sup> Statement of Evidence by Andrew Clarke on Planning Issues, April 2016, p12

<sup>11</sup> Planisphere, Whitehorse Housing Strategy, adopted by Council 28 April 2014, p viii

exhibited, and that relates to rezoning to MUZ and application of an EAO to two specific sites on Burwood Highway.

Rezoning to MUZ has no impact on the continuing operation of the service station at 217 Burwood Highway. However, appropriate flexibility in future development of this site in the long-term will be facilitated by the Amendment.

### **3.2 Relationship to Burwood One Neighbourhood Activity Centre**

#### **(i) The issue**

The subject sites are located across Burwood Highway from the Burwood One Neighbourhood Activity Centre (NAC), with 217 Burwood Highway to the north of Burwood One, and 219-223 Burwood Highway diagonally across the intersection with Blackburn Road. The issue is whether potential development of the subject sites may diminish the role played by the NAC.

#### **(ii) Evidence and submissions**

Ms Cincotta submitted that the land does not form part of the Burwood One NAC, the boundaries of which were defined in Amendment C162 which introduced Design and Development Overlays (DDOs) to NACs. She argued that this is reinforced by the fact that Burwood Highway represents a physical barrier of about 75 metres from the NAC. She also expressed concern that no retail sustainability assessment or economic impact analysis had been prepared as part of the Amendment process, and that retailing at the site would compete with rather than complement Burwood One.

Mr Challenger (Submission 9) considered that the rezoning will disperse commercial activity and detract from the operation of the NAC. Similarly, Mrs Coughlan argued that there is enough commercial enterprise at Burwood One.

The alternative view was presented by Mr Clarke, who considered that the subject sites were a functional part of the Burwood One NAC (which he referred to as the 'K-Mart East Burwood Activity Centre'), and therefore any argument that developments at the sites would detract from the operation of the centre is irrelevant:

*I regard the subject sites as being part of the K-Mart East Burwood Activity Centre. In my view an activity centre is not just defined by zones such as the Commercial 1 Zone, but by land use and functional and physical linkages.*

*The subject sites have been in commercial use since about the 1960's (if not earlier) when planning permits were originally issued for both petrol station sites. Both have remained as petrol station uses to the present day or until about 2011 in the case of 219-223 Burwood Highway. It has been vacant since that time.*

*Each corner of the intersection is occupied by a predominantly non-residential use (although the Uniting Church site has a residential component at its rear). It is a key intersection of two significant arterial roads in the eastern metropolitan area. There are convenient pedestrian linkages between the subject sites and the K-Mart Plaza in the form of the footpath, steps and a*

*pedestrian ramp at the north-east corner of the plaza site leading up to the intersection. Tram and bus stops are provided at the intersection and easy pedestrian and vehicular access across both roads is afforded by traffic and pedestrian signals.*

*However, I understand that some others may take a narrower view of what constitutes the activity centre. In my view, it does not matter because of the close proximity and convenient access between both sites and the K-Mart Plaza site. If they are not in the activity centre, then the subject sites are on its periphery, and that still makes the sites suitable candidates for “activity centre” type activities.<sup>12</sup>*

In his reply at the Hearing, Mr Chiappi proposed that the definition of the NAC should not rely on the boundary of the DDO which aimed to control the built form at the commercial area of Burwood One (and similar to a DDO covering other NACs within Whitehorse City):

*It is unsafe to rely on DDO4 in support of the objector’s contention that the Burwood One Neighbourhood Activity Centre is solely the land contained within the Commercial 1 Zone. The overlay is written in general terms so as to apply to the large number of NACs in the municipality. The overlay appears to only deal with non-residentially zoned land – it provides for built form responses where the NAC adjoins residential land. The overlay does not specify the area that makes up the NAC in question.<sup>13</sup>*

In its submission, Council noted that it had not previously considered the sites to be part of the NAC, but acknowledged their location on its periphery. It argued that the sites are too small to undermine Burwood One. Further, the mixed use development could offer ‘complementary, lower scale retail uses than Burwood One’, as well as servicing the residential area to the north of Burwood Highway.

### **(iii) Discussion and conclusions**

The Panel considers that the location of the sites in relation to the NAC is a positive rather than a negative aspect of the Amendment. This is based on the following considerations:

- The fact that there is a DDO applying at Burwood One and not at these sites is not relevant to the way in which the NAC interacts with neighbouring land uses.
- The sites are immediately across Burwood Highway from the NAC, and so are effectively adjacent to it. The fact that they are across a relatively wide Burwood Highway does not detract from this proximity.
- The continued operation of the service station and church on two of the corners has complemented the NAC, and these land uses are likely to continue in the foreseeable future. The potential land uses at 219-223 Burwood Highway under the MUZ will also complement Burwood One’s operation.
- A retail sustainability assessment or economic impact analysis would not be useful in this case. The Amendment applies to two sites along Burwood Highway, with no negative

<sup>12</sup> Statement of Evidence by Andrew Clarke on Planning Issues, April 2016, pp 11-12

<sup>13</sup> Reply for Carwoode Pty Ltd & 694-696 High Street Pty Ltd, p2

impact on the NAC. Further, the nature of the MUZ is such that there can be no certainty about future economic activity on the sites, so an economic impact analysis will not provide any reliable assessment. There is already a service station operating at 217 Burwood Highway and a Bob Jane T-mart has been flagged for 219-223 Burwood Highway, and the change in economic activity as a result of the Amendment is therefore relatively small.

### **3.3 The Mixed Use Zone**

#### **(i) The issue**

The issue is whether the Mixed Use Zone is appropriate for the subject land.

#### **(ii) Evidence and submissions**

While many of the objecting submitters did not specifically address the relative merits of the MUZ, their expressions of concern about the potential commercialisation of the 219-223 Burwood Highway site imply opposition to the consequences of a rezoning to MUZ.

Ms Cincotta submitted that the MUZ had not been applied elsewhere in Whitehorse City on sites that exhibited the characteristics of the subject land – isolated sites, opposite NACs or abutting main roads. Further, she considered that the MUZ will not provide or facilitate consistent land uses on the land, and that it would enable industry uses to be permitted.

In its submission, Council stated that a Commercial Zone and continuation of the RGZ had been considered, but that the MUZ was more appropriate:

*The proponent has indicated in the amendment application that the rezoning will allow for a mix of retail, commercial, service industry and residential land uses to be developed on the land.*

*Notwithstanding the previous indications from the proponent for development of the land at 219-223 Burwood Highway, if such a range of uses (including a service industry use) is not developed on the land at 219-223 Burwood Highway, the MUZ will still allow for the suitable development of the land that reflects the location of the site and the surrounding land uses including higher density residential development subject to the satisfaction of the requirements of the EAO.<sup>14</sup>*

Council therefore supported the proposed rezoning:

*The rezoning of the subject sites to MUZ will allow them to be developed for commercial and retail uses that serve the immediate and broader area. Any future development of the subject sites will also need to be cognisant of the interfaces to the surrounding residential area and respect the character of the surrounding area.*

*The subject sites abut a major road intersection and the rezoning to MUZ will allow future development of a greater range of residential and / or*

---

<sup>14</sup> Whitehorse City Council, Part A submission, 21 April 2016, p11

*commercial uses that complements the site's location and surrounding land uses.*<sup>15</sup>

Similarly, the rezoning to MUZ was supported by the Proponent, as represented by Mr Chiappi at the hearing:

*The proposal is consistent with and implements relevant planning policy. The sites' locational and other attributes make them suitable for a Mixed Use Zone. It can reasonably be expected that any land use and built form impacts can be satisfactorily resolved at the permit application stage.*

In his evidence, Mr Clarke identified the range of uses likely under the MUZ:

*The Mixed Use Zone is characterised as a residential zone that also allows a wider range of uses than other residential zones.*

*Uses not requiring a permit include dwelling (although a permit is required to develop more than one dwelling on a lot), food and drink premises and shop (up to 150m<sup>2</sup> leasable floor area), medical centre and office (up to 250m<sup>2</sup> leasable floor area).*

*Prohibited uses are limited to adult sex bookshop, brothel, materials recycling, transfer station and stone extraction.*

*Uses such as food and drink premises (greater than 150m<sup>2</sup> leasable floor area), medical centre and office (greater than 250m<sup>2</sup> leasable floor area) and industry (including service industry) provided it is not a purpose listed in Clause 52.10 require a permit.*

*Clause 32.04-3 is a mandatory requirement that use of land for industry and warehouse must not adversely affect the amenity of the neighbourhood.*<sup>16</sup>

He concluded that 'the subject sites exhibit a number of physical and locational characteristics that make them suitable for a Mixed Use Zone', based on their size and location, generally flat topography, public transport access and history of commercial use of both sites.

### **(iii) Discussion and conclusions**

The Panel concludes that the Mixed Use Zone is appropriate for the subject land. The application of the RGZ along Burwood Highway reflects the transitional status of the land between the Highway and neighbouring residential areas, but the sites on the north-west and north-east corners of Burwood Highway represent significant opportunities for a wider range of uses and more creative development than would be envisaged in the RGZ.

The MUZ thus allows for appropriate land uses at both sites, while its status as a residential zone and the consequent planning requirements provide the capacity to protect the amenity of neighbouring residents.

---

<sup>15</sup> Ibid, p7

<sup>16</sup> Statement of Evidence by Andrew Clarke on Planning Issues, April 2016, p8

The Panel does not consider that the lack of application of the MUZ to other equivalent sites in Whitehorse City is a barrier. It concludes that the MUZ is appropriate for the subject land, and therefore supports the rezoning.

### **3.4 Environmental Audit Overlay**

#### **(i) The issue**

Is the application of the EAO appropriate, given the history of land use at the subject sites?

#### **(ii) Evidence and submissions**

In its submission, Council supported the application of the EAO:

*Given the historical use of the subject land as approved, the surrounding residential land as well as the potential for sensitive uses on the subject sites; it is also proposed to apply an EAO as per Clause 45.03 of the Planning Scheme to ensure any future development and use of the land and surrounding residential properties are effectively protected...*

*The land at 219-223 Burwood Highway has been cleared and the previous use of a petrol station has been decommissioned and remediated, including the removal of the underground petrol tanks. The application of an EAO will also ensure that the land is declared suitable for any sensitive land use.<sup>17</sup>*

In his evidence, Mr Clarke concurred with Council's view:

*It is proposed to include both sites in an Environmental Audit Overlay. I note that the rezoning does not alter the status of residential or other sensitive uses (that is they are already presently permitted). Nevertheless, it is appropriate to include the sites in an Environmental Audit Overlay given both sites are known to have been used as petrol stations. I would expect in the absence of the overlay there would be a permit condition for a residential or sensitive use or development requiring site clean-up.<sup>18</sup>*

#### **(iii) Discussion and conclusions**

Given the history of the sites as petrol stations and the range of potential future land uses (as well as the lack of submissions opposing the EAO), the Panel supports the application of the EAO to the subject land as part of the Amendment.

### **3.5 Recommendation**

The Panel recommends that:

- 1. The Amendment be adopted as exhibited.**

---

<sup>17</sup> Whitehorse City Council, Part A submission, 21 April 2016, pp 6, 7

<sup>18</sup> Statement of Evidence by Andrew Clarke on Planning Issues, April 2016, p9

## 4 Amenity and access

### 4.1 Visual impact

#### (i) The issue

Several submitters opposing the Amendment focused on the impact of the proposed Bob Jane T-mart at 219-223 Burwood Highway, arguing that its visual impact is sufficiently damaging to lead to the abandonment of the Amendment. The issue is whether visual impact at the subject sites is sufficient to undermine the Amendment, or whether this can be managed during the planning permit process.

#### (ii) Evidence and submissions

The submitters who expressed concern about the visual impact of the potential Bob Jane T-mart development variously described it as 'ugly' (Nick Moudios, Submission 6), a 'commercial monolith' (Fiona Kolitsis, Submission 7), a 'garish eyesore' (Louise Harradine, Submission 8, specifically referencing the Bob Jane T-Mart in Nunawading), 'a garish, trashy commercial strip' (Michael Challenger, Submission 9), and 'visual clutter' (Kalyan Banerjee, Submission 12). Albert Tuan-Mu (Submission 11) raised concerns about impacts on the residential streetscape, reductions in security in residential streets and negative impacts on property values.

A further issue relating to the protection of local amenity was raised by Mr Challenger at the Hearing. He cited the case of the Victorian Civil and Administrative Tribunal approval of signage at Nunawading, and expressed a lack of confidence in the implementation of planning controls by both Whitehorse City Council and VCAT.

Mr Clarke noted that both sites are bordered by residential uses along their side and rear boundaries, and addressed the planning tools available to ameliorate potential negative impacts on amenity:

- 1. Planning permission is required for an office or medical centre exceeding 150 m<sup>2</sup>, retail uses exceeding 150 m<sup>2</sup>, service industry and petrol station/car wash. There is no assurance that a permit would issue for any of these uses. Acceptable outcomes need to be demonstrated. Whether a permit issues will depend on the nature and details of the use(s) proposed. Depending on the nature of the use this provides the opportunity to include appropriate conditions relating to land use amenity, including such matters as hours and days of operation, lighting, acoustics and advertising signs;*
- 2. Use of land for service industry must not adversely affect the amenity of the neighbourhood (Clause 32.04-3). This is a mandatory requirement. Details of the use and its activities are required to be provided in a permit application (Clause 32.04-11). Specific decision guidelines are included for industry, including an assessment of off-site amenity impacts (Clause 32.04-13);*

3. *Development permission is required for more than one dwelling on a lot (Clause 32.04-6);*
4. *Development permission is required for all of the uses envisaged above that require use permission (Clause 32.04-8). Therefore both land use and development impacts are controllable;*
5. *All development must meet the ResCode standards for side and rear setbacks, walls on boundaries, daylight to existing windows, north facing windows, overshadowing and overlooking (Clause 32.04-9).*

*In addition, in determining an application a responsible authority must have regard to the Decision Guidelines of Clause 65.01, including “the effect on the amenity of the area”.*

*There are a number of planning policies that would also be considered as part of assessing a planning permit application, including:*

- *Clause 22.02: Visual Amenity and Advertising Signs (advertising signs)*
- *Clause 22.03: Residential Development (residential built form and character)*
- *Clause 22.04: Tree Conservation (tree retention)*
- *Clause 22.05: Non-Residential Uses in Residential Areas (use and development)*
- *Clause 22.06: Activity Centres (use and development).*

The Council believes that these matters can be managed through the permit process, citing similar provisions to those described by Mr Clarke.

### **(iii) Discussion and conclusions**

The Panel acknowledges the genuine commitment of local residents to ensure that any built form on the highly prominent site at 219-223 Burwood Highway makes a strong and positive contribution to Burwood East. While 217 Burwood Highway was not a focus of submissions, the same principles apply to it.

The central issue is the context of the sites - on a major intersection, across Burwood Highway from Burwood One NAC, within a residential area, but with that residential area playing a transition role between the mix of activities along Burwood Highway and the General Residential Zone land immediately to the north. In the case of 219-223 Burwood Highway, it is highly likely that there will be significant changes in built form from the previous service station and, in the last few years, a vacant site.

Irrespective of the Amendment, substantial built form is possible. As noted above, the purposes of the RGZ include the provision of housing at increased densities in buildings up to and including four storey buildings, and the encouragement of a scale of development that provides a transition between areas of more intensive use and development and areas of restricted housing growth. The purposes of the MUZ include the provision of a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality, and to provide for housing at higher densities. In either case, it is highly likely that significant development will occur on this prominent site.

The Panel considers that the tools are available to Council to manage the visual impact of buildings on this site. A wide range of uses require a planning permit in the MUZ, and Clause 32.04-8 requires permission for buildings and works associated with a Section 2 permit required use. Further, Clause 32.04-3 requires that:

*The use of land for an industry or warehouse must not adversely affect the amenity of the neighbourhood, including through:*

- *The transport of materials or goods to or from the land.*
- *The appearance of any stored materials or goods.*
- *Traffic generated by the use.*
- *Emissions from the land.*

Clause 32.04-9 applies to 'Buildings on lots that abut another residential zone', which would apply in this case. It requires any buildings or works constructed on a lot that abuts land which is in a Residential Growth Zone to meet the ResCode requirements of Clauses 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.

The Panel accepts that Mr Challenger lacks confidence that the planning system is capable of protecting amenity within neighbourhoods which are subject to significant developments. To some extent, this may relate to a difference in perception in what the Planning Scheme should say about particular sites or developments, rather than the implementation of what it does say. It may also relate to a preference for certainty, and to this extent a MUZ provides for a wider range of possibilities (and therefore a slightly lower level of certainty) than the current RGZ.

The key is to ensure that the most appropriate zone is applied, the right controls are in place, and the implementation of the controls ensure that amenity is protected as much as possible. Council has a significant role in ensuring that amenity issues are addressed in a rigorous way throughout the planning permit process.

## **4.2 Advertising signage**

### **(i) The issue**

In addition to the more general concern about visual impact, the amenity and safety impacts of signage at 219-223 Burwood Highway was a particular concern of submitters. Like the case of visual impact, a key issue is whether this impact can be managed during the planning permit process.

### **(ii) Evidence and submissions**

A number of submissions raised real concern about the likely impact of Bob Jane T-mart signs, with several referring to the negative visual impact of the recently-constructed sign at the Bob Jane T-mart at the corner of Springvale Road and Maroondah Highway, Nunawading. Relevant submissions include the following:

- Fiona Kolitsis, Submission 7:

*A commercial monolith (such as the prospective Bob Jane business) and its giant signage would create potential traffic and pedestrian hazards. This corner is a particularly busy one in Burwood East.*

- Michael Challinger, Submission 9:

*Bob Jane has recently built on a corner of Maroondah Highway and Springvale Roads Nunawading. Contrary to the city's long-term signage policy it has erected a "sky sign". Bob Jane has shown in Nunawading its disrespect for the character of the city and its disinclination to respect long-standing rules...*

*It is beyond doubt that if this rezoning is allowed Bob Jane will seek to erect a similar sign on the East Burwood site, relying on the precedent established in Nunawading. Nothing should be done to facilitate their doing so.*

- Albert Tuan-Mu, Submission 11:

*The rezoning is the first step in a commercial development enabling erection of mega billboard & advertising which will destroy the amenities of the neighbourhood.*

- John and Jenny Phillips, Submission 13:

*...can we be spared the huge (and dare we say ugly) advertising signs that are the hallmark of this corporation. It would detract overall from this intersection besides being an absolute eyesore.*

- Ruth Randall, Submission 14:

*The hoarding that would be erected on the re-zoning plan for the Bob Jane Business is ugly and imposing and is definitely not suitable for this residential area. It would be visually unappealing.*

- Justus H Lewis, Submission 15:

*This kind of advertising increases the height of buildings and obscures the sunlight. It creates unnecessary visual clutter.*

- Laurence and Elizabeth Rush, Submission 17:

*Our concern is that Whitehorse Council should consider height restrictions on advertising in order to prevent an eyesore similar to that which is presently being constructed at the Bob Jane site on the corner of Springvale and Whitehorse Roads.*

Council considered that the matter of signage was not significant for the Amendment:

*The amendment is for rezoning the subject sites from the RGZ2 to MUZ and applying an EAO. There is no current planning permit application for use and development of either site or for the construction of a sky sign.*

*Whilst the proponent has indicated their intention to develop the land at 219-223 Burwood Highway, the composition of any proposed development, including signage, is not known at this point in time and is outside the scope of this amendment.*

*Notwithstanding this, any application for a use and development of either of the subject site would be assessed by Council against the relevant planning*

*scheme controls including height restrictions and appearance of any building or sign from the neighbouring properties and Burwood Highway.<sup>19</sup>*

In his evidence, Mr Clarke proposed that signage could be controlled by appropriate conditions in any subsequent planning permit aiming to protect amenity. This would be based on the following policy framework:

- Advertising sign provisions in the MUZ are the same as in other residential zones (Category 3).
- Clause 22.02: Visual Amenity and Advertising Signs, which includes an advertising signs policy for residential areas.
- Decision Guidelines of Clause 65.01, including “the effect on the amenity of the area”.

### **(iii) Discussion and conclusions**

The Panel understands the disquiet of submitters regarding signage at 219-223 Burwood Highway, given the visual impact of signs in other localities and the perceived complexity of regulations relating to signage.

However, it concludes that there is a significant difference between this site and the one at the corner of Springvale Road and Maroondah Highway in Nunawading. This Amendment is proposing a rezoning from one residential zone to another, and both apply Category 3 controls for ‘High Amenity Areas’. These include ‘Medium limitation’, with the purpose ‘*To ensure that signs in high-amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area*’. In contrast, the signs at the Nunawading site are in a Category 1 commercial area (‘Minimum limitation’), with a purpose ‘*To provide for identification and promotion signs and signs that add vitality and colour to commercial areas*’.

If a Bob Jane T-mart does proceed at 219-223 Burwood Highway, it will have signage and livery that will identify the business. However, the planning system provides the tools to ensure that the amenity of neighbourhoods can be protected. This will be a matter for the planning permit process rather than the Amendment.

## **4.3 Noise**

### **(i) The issue**

The issue is whether any increase in noise attributable to the Amendment will be sufficient to undermine it.

### **(ii) Evidence and submissions**

Anne FitzGerald submitted that there is already significant noise in the precinct, exacerbated by extensions to Burwood One NAC. She was particularly concerned about different forms of traffic noise and vibration, and considered that the proposed rezoning would further increase the problem for local residents.

---

<sup>19</sup> Whitehorse City Council, Part A submission, 21 April 2016, p19

Council submitted that noise could be managed, and the issue was not central to the Amendment:

*Officers are satisfied that if a use and development application is lodged it will be assessed against the relevant zone requirements and that any future development of the subject site will need to be cognisant of the surrounding residential area and the prominence of the site. Assessment of potential adverse impacts such as noise, odour and lighting will be assessed if a planning permit application is lodged with Council.*

*If a permit is required under the Scheme for such development, surrounding neighbours will be notified of the application and given the opportunity to submit their views about the application to Council, as per the Planning and Environment Act 1987.*

*The subject sites are located on a major intersection in an established urban area and urban noise, including vehicle traffic is expected. The rezoning itself will not generate any traffic or car parking requirements. However, it is appreciated that any future development on the subject site may generate some additional traffic.<sup>20</sup>*

### **(iii) Discussion and conclusions**

The Panel accepts and understands the concerns of residents about noise. The subject land is located at the intersection of a very busy intersection, with tram and bus activity, and a substantial shopping complex on the south-western corner. There is already a service station operating on one of the sites.

However, the Panel concludes that there will be little, if any, additional noise generated by the rezoning to MUZ, compared with what may occur under the existing RGZ. In either case, development is likely to lead to some additional noise compared with the current vacant site at 219-223 Burwood Highway (although it may not be greater than that generated when a service station operated there). There are sufficient controls available to minimise or ameliorate noise issues when planning permits are assessed.

## **4.4 Traffic and parking**

### **(i) The issue**

Submitters expressed concern about the likely traffic congestion that could be generated on the subject land (focusing on 219-223 Burwood Highway), as well as access and parking issues. The issue is whether these are of sufficient concern to lead to a recommendation to abandon the Amendment.

### **(ii) Evidence and submissions**

Anne FitzGerald (Submission 3) stated that there were several concerns about traffic issues:

---

<sup>20</sup> Whitehorse City Council, Part A submission, 21 April 2016, p15

- *The level of noise, and the likelihood that it would be exacerbated (discussed in 4.3 above)*
- *There is currently danger in accessing the car park beside the church, because of the amount of traffic on Blackburn Road, and this will also be exacerbated by the Amendment*
- *There is a highly circuitous route for any vehicle leaving the car park to Blackburn Road, for any direction except south on Blackburn Road.*

Albert Tuan-Mu (Submission 11) expressed concern about parking problems along Bellevue Avenue.

Mr Michael O'Brien presented evidence on traffic impacts relating to the subject land, concluding:

*As a result of my investigation, it is concluded that the proposed amendment and resultant alternative land uses contemplated will substantially reduce the traffic generation associated with these sites as petrol filling stations and ancillary services.*

*The lower traffic generation and lesser dimension design service vehicle will facilitate a significant reduction in the number and width of driveway crossovers to the sites with consequent improvement in the safety of pedestrian movements adjacent to the sites.<sup>21</sup>*

As noted above, Council submitted that this is a busy intersection. It argued that the rezoning itself will not generate any traffic or car parking requirements, and that additional traffic and parking matters generated by future development may be addressed at the planning permit stage.

### **(iii) Discussion and conclusions**

The Panel concludes that the proposed rezoning from RGZ to MUZ will not generate additional traffic and parking problems that cannot be managed. There will certainly be increased traffic flows at the site at 219-223 Burwood Highway as a result of development compared with the current vacant site, but the difference from that which could be generated under the existing RGZ can be managed through the planning permit process.

---

<sup>21</sup> Michael O'Brien, TTM, Whitehorse Planning Scheme Amendment C182, 217 and 219-223 Burwood Highway, Burwood East: Traffic Engineering Assessment Statement of Evidence, April 2016, p6

## Appendix A Submitters to the Amendment

No.	Submitter
1	Best Hooper lawyers on behalf of Bridie Fruend
2	Kennelly Planning and Development on behalf of Carwoode Pty Ltd
3	Anne FitzGerald
4	Environment Protection Authority
5	Peter Muir
6	Nick Moudios
7	Fiona Kolitsis
8	Louise Harradine
9	Michael Challenger
10	Simon Lieng
11	Albert Tuan-Mu OAM
12	Kaylan Banerjee
13	John and Jenny Phillips
14	Ruth Randall
15	Mrs Justus Lewis
16	Mrs J Coughlan
17	Laurence and Elizabeth Rush

## Appendix B Document list

No.	Date	Description	Presented by
1	21/4/16	Council submission Parts A and B , with Appendices	Ms Vanessa Mogg
2	21/4/16	Endorsed plans relating to Bob Jane T-mart at corner of Maroondah Highway and Springvale Road, Nunawading	Ms Vanessa Mogg
3	21/4/16	Ms Anne FitzGerald submission to the Panel	Ms Anne FitzGerald
4	22/4/16	Submission to the Panel on behalf of Carwoode Pty Ltd and 694-696 High Street Pty Ltd	Mr Paul Chiappi
5	22/4/16	Whitehorse Housing Framework Plan, from Clause 21.06	Ms Tania Cincotta
6	22/4/16	Submissions on behalf of Bridie Fruend	Ms Tania Cincotta
7	22/4/16	Whitehorse Draft Residential Zones and Schedules 23/4/2014, from Amendment C160 documents	Ms Tania Cincotta
8	22/4/16	Schedule 4 to the Design and Development Overlay	Ms Tania Cincotta
9	22/4/16	Planning Property Report, 172-210 Burwood Highway, Burwood East	Ms Tania Cincotta
10	22/4/16	Set of zoning maps for Whitehorse City	Ms Tania Cincotta
11	22/4/16	Advertisement for apartments under construction at the corner of Burwood Highway and Middleborough Road, Nunawading	Ms Tania Cincotta