

# **Amendment C231**

## **Whitehorse Planning Scheme**

37-43 and 42-50 Moore Road, Vermont

Expert Planning Evidence

**Rob Milner**

January 2022

instructed by

Rigby Cooke Lawyers

on behalf of

Owners of the affected properties



# TABLE OF CONTENTS

|    |   |    |
|----|---|----|
| 1. | Introduction.....   | 3  |
| 2. | Summary of findings .....   | 9  |
| 3. | The distinction between GRZ5 and NRZ3 .....   | 11 |
| 4. | The absence of appropriate strategic justification.....                                 | 21 |
| 5. | The place for fairness.....   | 26 |
| 6. | The potential use and development of the land and the appropriate level of control..... | 28 |
| 7. | Conclusions.....  | 29 |
|    | Attachment 1 – Witness statement.....   | 30 |
|    | Attachment 2 – Curriculum vitae.....  | 34 |

# 1. INTRODUCTION

## 1.1. Purpose

- (1) This independent planning report has been sought by Rigby Cooke Lawyers on behalf of the owners of three lots land at 37-43, 34-40 and 42-50 Moore Road, Vermont in the City of Whitehorse (**the Sites**) (Figure 1).



Figure 1 – Location of the Sites (Melway 2021)

- (2) The three land holdings collectively comprise 27,068 square metres or approximately 2.7 ha of land.
- (3) My opinion and comment have been sought on the strategic planning merits and justification of Amendment C231 to the Whitehorse Planning Scheme (**C231whse**).
- (4) C231whse provides for the rezoning of the Sites on Planning Scheme Map 6ZN from the General Residential Zone Schedule 5 (**GRZ5**) to the Neighbourhood Residential Zone Schedule 3 (**NRZ3**) (Figure 2). The Amendment would adjust the *Housing Framework Plan* at Clause 21.06 and the associated *MAP 1: Neighbourhood Character Precincts* at Clause 22.03.

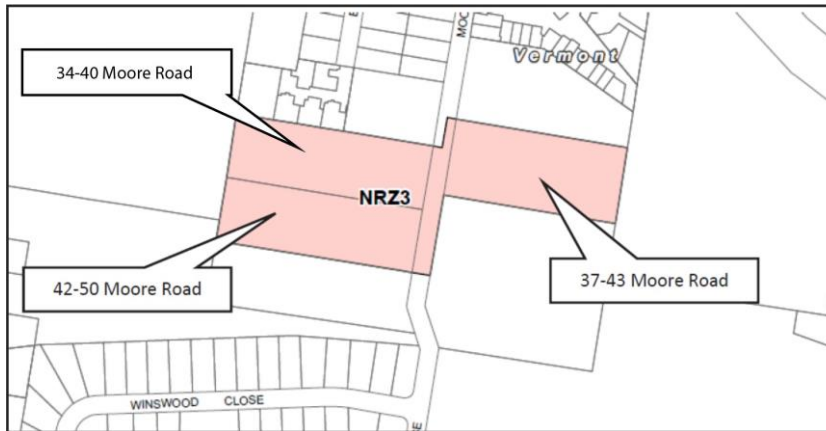


Figure 2 The sites

## 1.2. Background

- (5) The *Explanatory Report* states that C231whse addresses an inconsistency / irregularity of zoning arising from the disposal of surplus land formerly required for the abandoned Healesville Freeway.
- (6) The current zoning of the Sites is said<sup>1</sup> not to reflect the vision for housing in this part of the municipality and C231whse is required to ensure that future development of the Sites aligns with the surrounding residential area.
- (7) The State Government has committed to deliver a linear public open space area along the bulk of the Healesville Freeway corridor and large tracts of the linear park have been or are in the process of being rezoned to the Public Park and Recreation Zone, from the GRZ5.
- (8) The Sites are not required for the linear park and were zoned GRZ5 prior to their disposal by government to private interests between 2017 and 2020.
- (9) In 2014 as part of the residential zones reform the Minister for Planning rezoned the amendment land from the Residential Zone 1 to GRZ5 in what is said to have been a neutral translation.

---

<sup>1</sup> Refer Explanatory Report and accompanying Discussion Paper.

- (10) Whitehorse City Council (**Council**) has prepared and exhibited a *Discussion Paper* justifying the Amendment.
- (11) For the sake of brevity this evidence assumes the reader has familiarised themselves with the exhibited amendment documentation and has read that *Discussion Paper*.
- (12) Procedurally the Discussion Paper records a series of strategic planning initiatives, planning scheme amendments and other events relating to the relevant section of the Healesville Freeway, between 2012 and the present day, when the State government and Council might have coordinated and secured mutually acceptable rezoning of the Sites prior to their recent sale for private ownership.
- (13) As late as September 2020, the Minister for Planning advised that, Council would need to work with purchasers of the properties at the planning permit stage to ensure appropriate levels of development, within the parameters of the General Residential Zone.<sup>2</sup>
- (14) The strategic planning justification advanced in the *Discussion Paper* is confined to considerations of housing supply and growth policy, neighbourhood character and landscape considerations. This evidence concludes such justification is too tightly confined in its scope to be robust and sound.

5  
••

### 1.3. The Sites

- (15) I adopt as factually correct the description of the Sites and their surrounds as set out in section 2 of the *Discussion Paper* and make observations about the land use and development context in the commentary of this evidence.
- (16) The important site context considerations are:
- Collectively the Sites comprise a large area of 2.7 ha,

---

<sup>2</sup> C231whps Discussion Paper page 11.

- A heritage overlay affects the existing dwelling on the property at 34-40 Moore Road,
- To varying degrees all properties, support mature vegetation that may pose a constraint upon comprehensive site redevelopment given the controls of the applicable Significant Landscape Overlay.
- The opportunity exists to consolidate some of the Sites with each other or neighbouring land and manage the intensity of site development, to protect heritage and vegetation values.
- The Sites share limited boundaries with neighbouring residential uses and being located at a dead end are at the edge of an established urban area.
- The Sites falls towards the south-east offering an attractive outlook over the future regional park.
- The Sites offer excellent access to a secondary school, a golf course and the open regional open space and trail network, as well as proximity to a bus route.

6

• •

(17) The current residential zoning of the Sites and surrounding land is detailed in Figure 3.

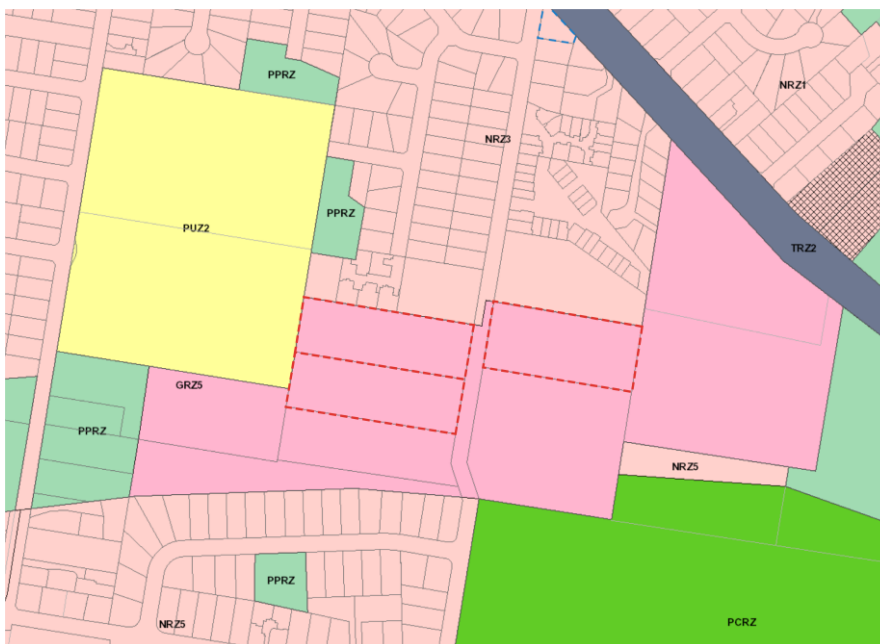


Figure 3 – Current zoning of the land



- (18) The applicable Heritage, and Landscape Significance Overlays are illustrated in Figures 4 and 5.

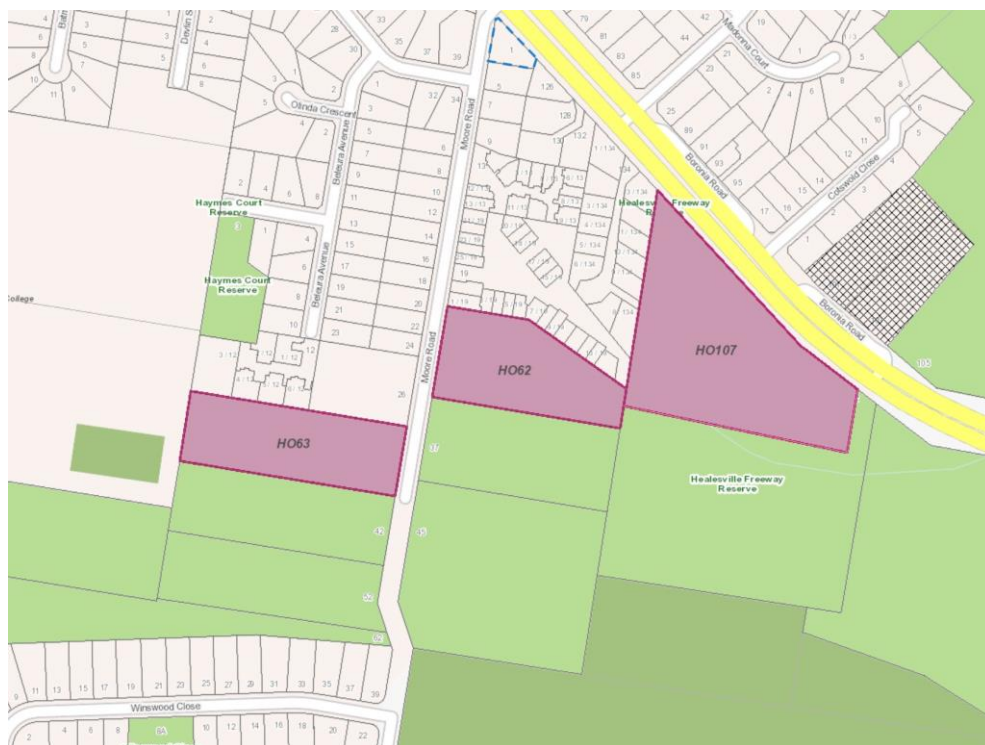


Figure 4 - Heritage overlay

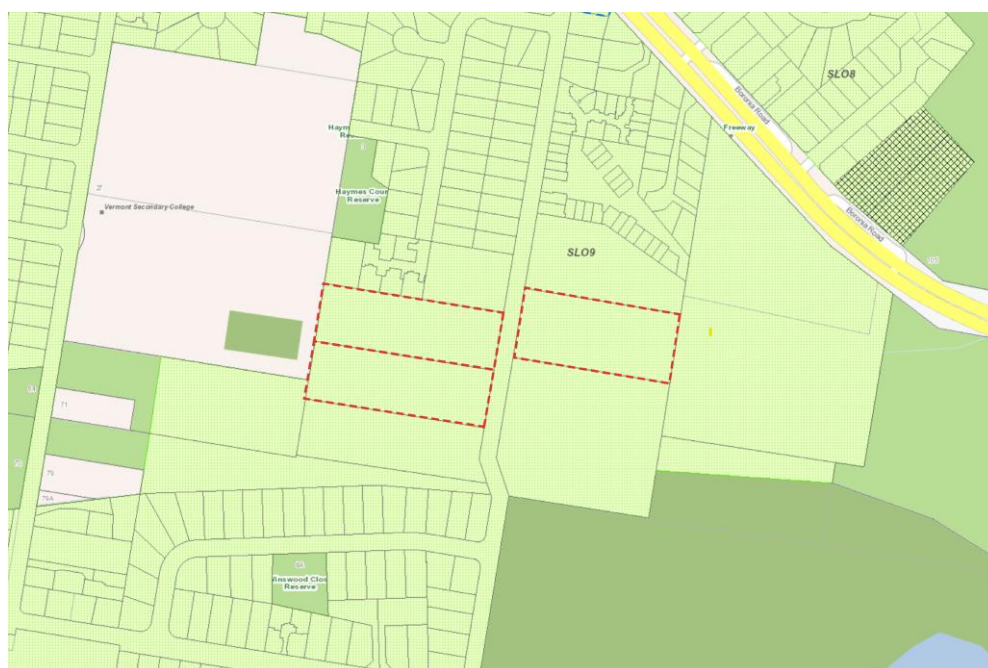


Figure 5 - Significant Landscape Overlay

## 1.4. Witness statement and curriculum vitae

- (19) **Attachments 1 and 2** include a witness statement and the required declarations as well as a copy of my curriculum vitae.
- (20) I visited the Site and inspected its surrounds on the 25<sup>th</sup> December 2021.
- (21) I have no prior personal or professional association with the Clients.
- (22) In preparing this report I have considered all the relevant provisions of the Whitehorse Planning Scheme (**WPS**) and other referenced documents in the body of this evidence and included as attachments to the *Discussion Paper*.



## 2. SUMMARY OF FINDINGS

(23) In this report I establish:

- There is no material evidence to demonstrate that the decision to abandon the Healesville Freeway reservation and establish it as a regional open space link has been integrated into the strategic planning outlined in the Whitehorse Planning Scheme for housing, neighbourhood character or open space planning.
- Planning for the uses and development of land around public open space has advanced considerably since the preparation of the Whitehorse Open Space Strategy (2007) and more recent development of settlement and open space planning guidelines and practice suggests to consideration of higher densities for land abutting high amenity areas and spaces.
- The Sites present a combination of limited heritage and typical landscape significant constraints addressed by planning scheme overlays, but they also enjoy access to a range of services as well as the long-term prospect of immediate frontage to a regional open space corridor.
- The change in standing and role of the Healesville Freeway and the undeveloped or underutilized nature of the Sites presents an unforeseen opportunity to positively contribute to housing supply and diversity policy<sup>3</sup>, planning and development at the interface of parkland and contribute to 20MNs.
- The proposed amendment has attributes of planning 'through the rear-view mirror', seeking to apply a rationale for the use and development of the Sites based upon the context of adjoining land that applied in 2014, rather than considering explicitly expressed and justified policy applicable to the Sites in 2022.

9  
• •

---

<sup>3</sup> Clause 16.01 and 21.06 WHPS

- Government has recently sold the land to private interests based on its General Residential zoning and presumably realised a value for that land based upon the expectations for use and development embedded by that zoning. The Planning and Environment Act advances among its objectives that the planning framework and objectives of planning in Victoria should deliver fair outcomes. As a matter of fairness, it would be inappropriate for the role, opportunities and value of the land to be changed and diminished so soon after disposal without explicit prior warning to the purchasers and proper consideration of the whole Planning Policy Framework.
- The appropriate use and development of the land can be controlled by permit under the existing zoning and overlays.
- Rezoning the Sites to the NRZ3 has not been strategically justified. The Sites should be retained in the General Residential Zone.

### 3. THE ABSENCE OF APPROPRIATE STRATEGIC JUSTIFICATION

- (24) Part of the stated justification for C231whse is that the current GRZ5 applying the Sites is inconsistent with the vision for the City of Whitehorse and more particularly Vermont.
- (25) That conclusion appears influenced by the Whitehorse Housing Strategy (2014), and Neighbourhood Character Study of the same year, their identification of change areas, and the distinction between precincts and sub-precincts of different neighbourhood character.
- (26) The land immediately adjacent to the Sites was included in a Limited Change Area, included in a Bush Suburb character precinct and subsequently zoned Neighbourhood Residential.
- (27) As discussed below there are several important short comings with the basis of the above conclusion.

11

• •

#### 3.1. The Sites have not been fully considered in housing and character strategy

- (28) The Sites were not appropriately addressed by either the Whitehorse Housing Strategy or the Whitehorse Neighbourhood Character Study (Figures 6 and 7) to be able to draw the conclusions relied upon in the Discussion Paper.

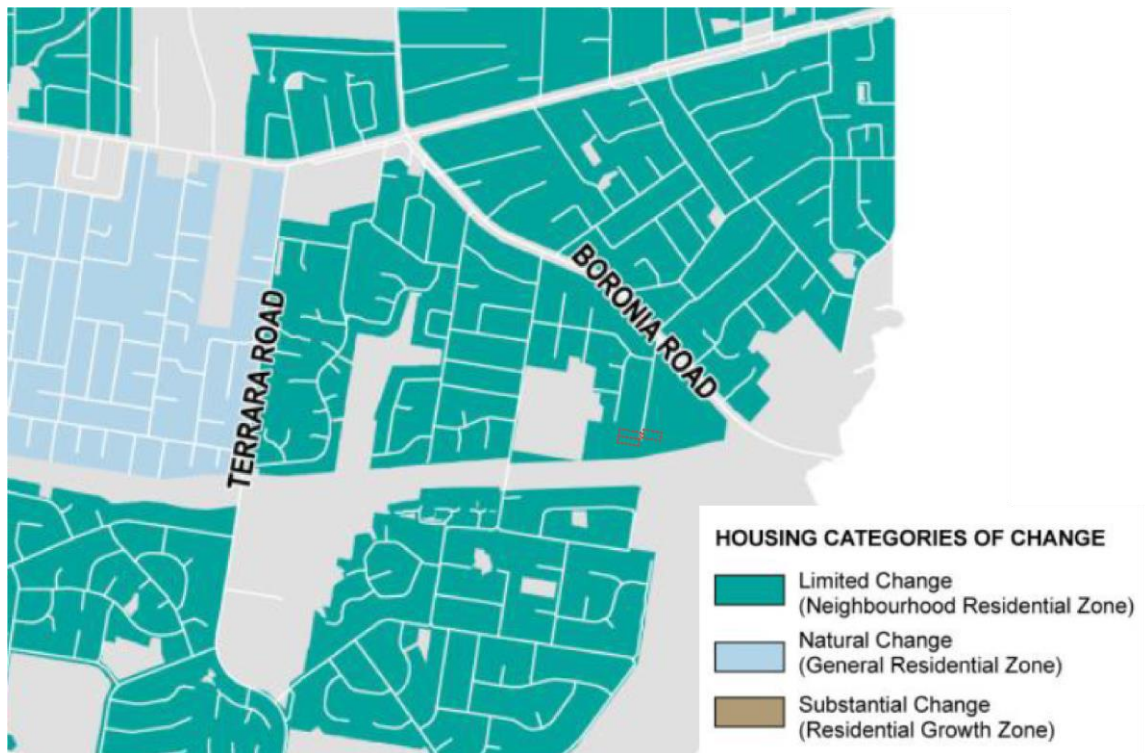


Figure 6 – Housing change areas – showing subject sites

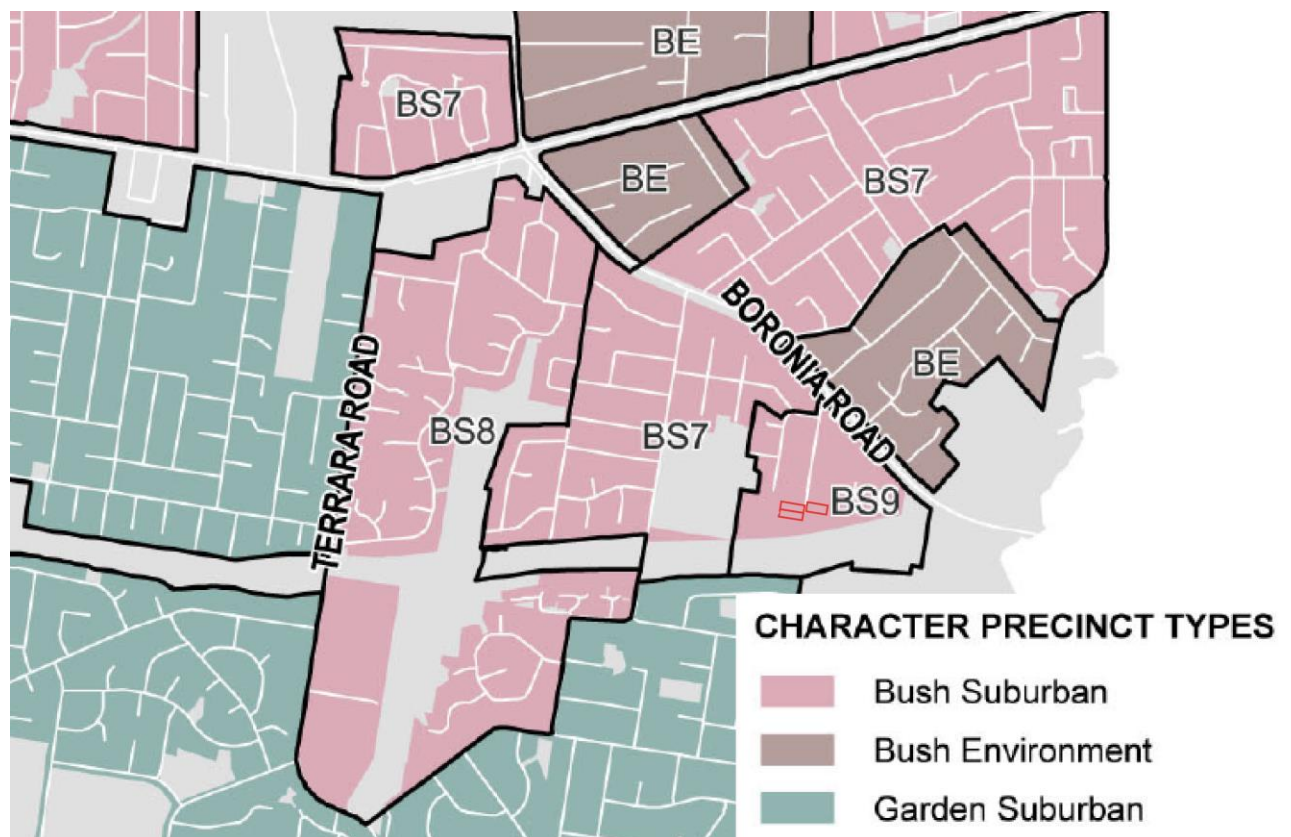


Figure 7 Neighbourhood character precinct types showing subject sites

- •



• •

• •



### 3.2. The Whitehorse Planning Scheme does not provide direction on the land use planning for land formerly covered by the PAO.

- (30) The City of Whitehorse Discussion Paper, accompanying C231whse, outlines an extended time frame during which the state government and Whitehorse City Council held differing views about the future role of the abandon freeway corridor.
- (31) While 2014 marked the date when the parties agreed to a public open space role the realisation of that outcome in strategic and statutory planning terms is incomplete as it applies to land formerly covered by the PAO.
- (32) There is no direct or complete reference to the future role of land in the PAO corridor in:
- Strategic Framework Plan (Figure 9)<sup>5</sup>
  - Local housing policy,<sup>6</sup>
  - Residential development policy<sup>7</sup>
  - Infrastructure policy (that addresses the transport network and open space<sup>8</sup>.
  - Public open space contribution policy.<sup>9</sup>
- (33) The Department of Environment, Land, Water and Planning (**DELWP**) has taken on responsibility for the planning and conversion of the corridor into parkland. Parks Victoria was appointed as land manager in September 2021 and a draft Park Layout Plan is foreshadowed by mid-2022 with the park to be completed in 2023.

14

• •

---

<sup>5</sup> Clause 21.04 WPS

<sup>6</sup> Clause 21.05 WPS

<sup>7</sup> Clause 22.03 WPS

<sup>8</sup> Clause 21.08-5 WPS

<sup>9</sup> Clause 22.15 WPS

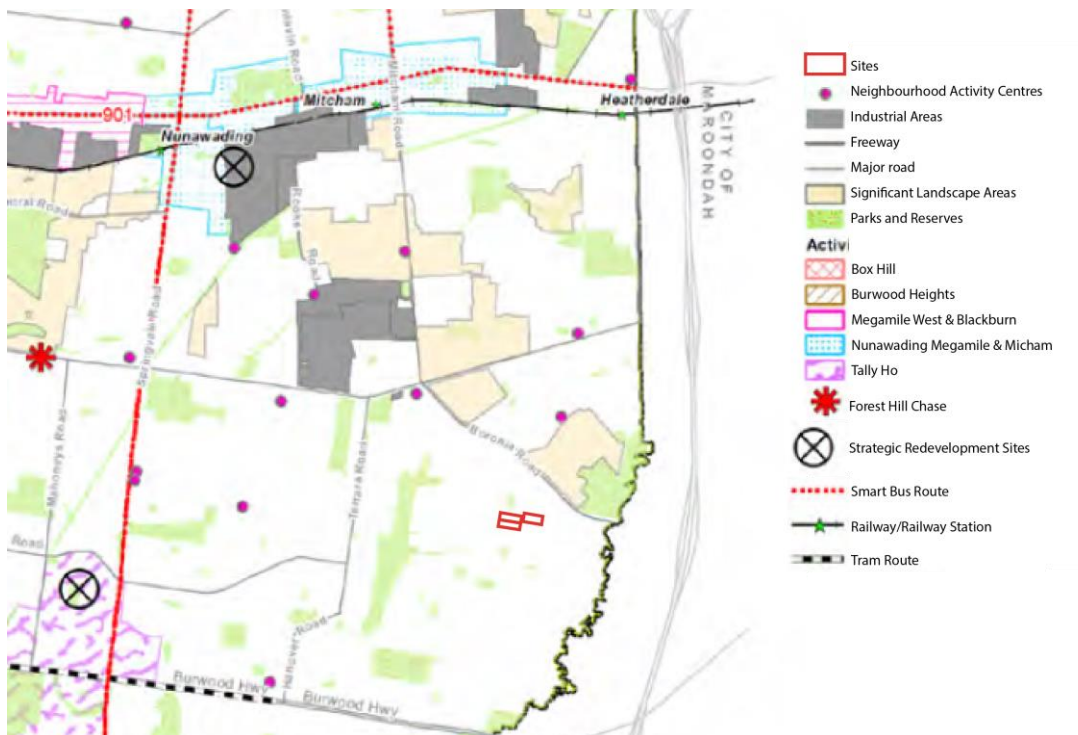


Figure 9 The Sites with the context of the Strategic Framework Plan

### 3.3. 20-minute neighbourhoods are the relevant planning framework

- (34) Since 2014 and the *Whitehorse Housing Strategy* and character studies there has been a subtle but significant shift in the principles of metropolitan development planning, future urban structure and the expression of housing policy with application to the circumstances of this matter.
- (35) As established in *Plan Melbourne* (2014) and further developed in the subsequent iterations of metropolitan development strategy, Melbourne is expected to restructure and be planned around 20-minute neighbourhoods (**20MN**) in which the community can access a broad range of most services, facilities, jobs and public transport within an 800 metre (or a 20-minute return) trip to and from their home.
- (36) The realisation of 20-minute neighbourhood program is a work in progress with municipalities reimagining and replanning the urban structure and planning of their neighbourhoods, with greater densities and consolidation being provided where appropriate.

(37) 2OMNs are an important referenced strategy in the realisation of *Housing Supply* policy in Metropolitan Melbourne<sup>10</sup>. The parent policy seeks to facilitate well-located, integrated and diverse housing that meets community needs and among other matters:

- Increases the proportion of housing in designated locations in established urban areas, including under-utilised urban land, and
- Identify opportunities for increased residential densities to help urban consolidation.
- Facilitating diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.

16

• •

(38) Some established neighbourhoods such as Vermont and the outer eastern suburbs which were established during a period when greater attention was placed upon delivering single detached housing and planning for the private car rather than public transport, present a greater challenge in realising the 2OMN principles and hallmarks. None the less older housing strategies and all established neighbourhoods need to be revisited and revised through the lens of 2OMNs to realise the metropolitan direction and its objectives, as opportunities arises.

(39) In my opinion clearly such an opportunity arises when and where a pocket of large, underutilised lots comprising approximately 2.7ha at an urban edge, shares a common boundary with the imminent establishment of a new regional open space corridor, in a location proximate to a major secondary school and golf course, within a comfortable walking distance of a public transport route, accessible to activity centres and where the housing stock is principally dominated by one typology.

---

<sup>10</sup> Clause 16.01-1R WPS

### 3.4. A new framework and approach apply to metropolitan and local open space planning.

- (40) The Whitehorse Open Space Strategy, that is referenced in the Whitehorse Planning Scheme was adopted in 2007. It did not contemplate or plan for the inclusion of the Healesville Freeway open space reserve or its integration into the abutting community.
- (41) Open space policy and planning has progressed considerably since that date and is now approached in the context of place making and public realm improvements.
- (42) Part of the emerging approach is to perceive quality regional and local open spaces as high amenity places in which localised increased densities are to be contemplated as a means of optimising community access to the amenity and well-being associated with open spaces.
- (43) Plan Melbourne 2017-2050 addresses the directive of *Melbourne as a distinctive and liveable city with quality design and amenity*.

*"The challenge ahead of this generation is to design a version of the city and state that while protecting the best aspects of the natural and built environment, supports social and cultural diversity and economic activity and creates a sense of place.*

- (44) Under *Direction 4.1*, the metropolitan development strategy seeking to create great public places and advocates for a place making approach to urban design for public places with a more focused approach to the interface between private development and the public domain.

*"Improvements to public spaces and more thoughtful integration of new development can make a measurable difference to the amenity, economic vitality and the cultural and social life of Melbourne."*

- (45) The liveability theme of policy has been more recently addressed through the adopted State government policy - Open Spaces for Everyone - Open Space Strategy for Metropolitan Melbourne 2021. (OSSMM).

- (46) The OSSMM sets the *Vision* that “*Melbourne is a city in nature with a flourishing and valued network of public open space that is equitably shared and accessible to everyone*”.

*“Access to open space is central to meeting most of our everyday needs in a city of 20-minute neighbourhoods This requires all open space landowners and managers to protect, optimise and grow the network”*

- (47) The OSSMM identifies the Healesville Freeway Park Reserve as part of the metropolitan program growing the open space network<sup>11</sup>.

- (48) In terms of optimising the use made of the expanded open space network the OSSMM advocates “*revitalising the quality, safety, amenity shared use, accessibility and programming of existing open space, including the repurposing underutilised existing and surplus public land and ensuring that open space planning is fully integrated into urban precinct planning*”.<sup>12</sup>

18

• •

- (49) An established land use and site development planning technique enhancing community access to public open space has been to enable higher densities of residential development on land immediately abutting or adjacent to the public open space.

- (50) This feature of established planning practice and the application of 20-minute neighbourhood principles has been embedded in the recently published *Precinct Structure Planning Guidelines: New Communities in Victoria* (October 2021) (**PSP guidelines**).

- (51) While acknowledging that Vermont, per se, is not a growth area the **amenity-based density model** advanced in the guidelines is a further advance in the practice of increased density adjacent to open space.

- (52) In the guidelines housing targets are to be implemented via an amenity-based density model, “*directing housing density to high amenity locations where communities will be*

---

<sup>11</sup> Page 36 OSSMM

<sup>12</sup> Page 29 OSSMM



*naturally supported by key features such as open space, activity centres, community facilities and access to public transport. This approach also complements the achievement of other targets related to walkability and access to activity centre, open space and public transport related to the 20minute neighbourhood policy.*<sup>13</sup>

- (53) The guidelines seek to encourage increased housing densities within 50 metres of both credited and encumbered open space, among other considerations.

### 3.5. Conclusions

- (54) The Discussion Paper justifying C231whse has taken a narrow and retrospective view towards the role and future zoning of the Sites. It has confined its discussion to older and established policy applying to neighbouring land and has not considered what if any implications arise for under-utilised land when a new regional park and open space corridor is established.
- (55) Similarly, I can find no reference to the directions, policy or implications of 20-minute neighbourhoods.
- (56) As illustrated above, the current and contemporary discussion on planning for the interface between private development and open space calls for a recalibration of historical and traditional thinking and seeks an exploration of the opportunities to optimise community access to large open spaces, created at some considerable cost to the public purse.
- (57) Applying a limited change framework and a Neighbourhood Residential Zone to interface land prematurely and inappropriately limits the open space / urban structure opportunities highlighted by Plan Melbourne, and the broader planning policy framework.
- (58) The Sites do not replicate the character of the balance of Moore Road.

19  
• •

---

<sup>13</sup> Page 43 – PSP Guidelines

- (59) The retention of the General Residential Zone provides a more responsive and responsible planning control to explore how to realise the potential of the land. The zoning of the land in association with the existing overlays provides a robust framework for both natural change and respect for neighbourhood and vegetation.

## 4. THE DISTINCTION BETWEEN GRZ5 AND NRZ3

### 4.1. Introduction

(60) The current and proposed zoning are distinguished by different strategic expectations, varied purposes, different height and density opportunities, and local schedules that manage matters of setbacks, site coverage, and provision of open space quite differently.

(61) Acceding to the request to rezone to the NRZ diminishes the potential to deliver more innovative, diverse housing types, varied heights and possibly higher densities of development adjacent to a high amenity area and future regional open space network.

21  
• •

### 4.2. Strategic Role

(62) In the Whitehorse Planning Scheme housing opportunities are distinguished between substantial, natural and limited change areas.

(63) The General Residential Zone is applied to Natural Change Areas.

(64) The Neighbourhood Residential Zone is applied to Limited Change Areas.

#### 4.2.1. Natural Change Areas:<sup>14</sup>

- *Support increased housing choice by allowing for a diversity of dwelling types, sizes and tenures.*
- *Ensure new development contributes to the preferred character of the precinct,*

---

<sup>14</sup> Cause 21.06-3 WPS

- *Encourage new development applications to include landscape guidelines that show how the enhanced retention or existing vegetation where possible will be achieved, at the outset of the design process.*

#### 4.2.2. Limited Change Areas<sup>15</sup>

*Conserve and enhance those elements which contribute to the valued environmental, heritage and neighbourhood character of the place.*

*Ensure new development protects and reinforces the environmental, heritage values and or the preferred neighbourhood character of the area.*

*Ensure that new development mainly takes the form of renovations to existing houses, replacement of single dwellings with new dwellings and some limited medium density development.*

22  
• •

### 4.3. Zone purposes and building height

- (65) The points of difference between the zone purposes are confined to the following, as the other purposes are common to the two zones.
- (66) The **General Residential Zone** seeks:
- *To encourage development that respects the neighbourhood character of the area.*
  - *To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*
- (67) In the GRZ the maximum building height is 11 metres and three storeys, although there may be sections of the Sites where an additional metre might be permitted in both the GRZ and NRZ because the slope of the land exceeds the specified criterion.

---

<sup>15</sup> Clause 21.06-3 WPS

(68) The **Neighbourhood Residential Zone** seeks:

- *To recognise areas of predominantly single and two storey residential development.*
- *To manage and ensure development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*

(69) In the zone building height is limited to 9 metres and two storeys with the same proviso as above regarding the potential for an additional metre.

#### 4.4. Local Schedules

23  
• •

(70) The schedule to the GRZ5 does not vary any of the nominated requirements of height or the provisions of Clause 54 and 55 (**Attachment 4**).

(71) In contrast the Schedule to NRZ3 varies every requirement to the nominated Clause 54 and 55 provisions with the overall effect of reducing the intensity of development on sites and protecting greater areas of site from development. In addition, it includes additional Application Requirements regarding plans of existing vegetation and proposed landscape works as well as additional Decision Guidelines (**Attachment 5**).

#### 4.5. Commentary

(72) It might be argued that because of:

- the extent of vegetation on some of the Sites,
- the application of the heritage overlay to one Site, and
- the application of the Neighbourhood Residential Zone in the residential precinct to the north

these attributes are sufficient grounds to apply the limited change area role and the purposes / schedules of the NRZ3 to the Sites.



- (73) Such a simplistic conclusion may have some initial attraction but omits consideration of some significant points of difference and opportunity which on balance indicate there is greater merit in retaining the existing zone.
- (74) I place weight on the following:
- The protection and consideration of trees and vegetation over vast area of the City of Whitehorse, including the Sites, has been addressed by the application of the Significant Landscape Overlay Schedule 9 which requires a planning permit for building and works proximate to specified vegetation and the removal of specified vegetation. As such the NRZ does not need to be applied to recognise and protect vegetation.
  - Similarly, the application of Schedule 63 to 34-40 Moore Road excuses the need to protect heritage via the zone control.
- (75) For the following reasons the Sites are relatively unique and a scarce opportunity to undertake a different form of use and development while being respectful of the neighbourhood character / heritage and vegetation. Those opportunities would be frustrated by the NRZ and enabled by the GRZ.
- (76) The lots are remnant of larger holdings and notably larger than the conventional development and lots in the adjoining precincts. Original opportunities exist to consolidate land, assemble more intense development on parts of the land not constrained by vegetation and heritage.
- (77) The commitment to the regional open space link on the former freeway alignment gives the Sites a rare opportunity to be used and developed in a manner that is responsive to the frontage and outlook to the regional park, optimising the accessibility and functionality of the open space to potentially a marginally greater number of residents on the Sites as well as enhancing safety by greater passive surveillance.
- (78) The development of the Sites at the termination of a cul-de-sac, and at the absolute periphery of the established residential precinct (on land that sits lower on the topography than established homes) enables consideration of different forms of

development that might be enabled in a GRZ without compromising the character, appearance or amenity of the established neighbourhood.

(79) The Sites may not be in or adjacent to an activity centre but to their considerable benefit they:

- share a common boundary with a substantial secondary school,
- are located opposite a regionally attractive golf course,
- will be located directly abutting a regional open space corridor that connects with the Dandenong Valley Parks and trails,
- are in a street where medium density development has previously occurred,
- are close to an intersection to the East Link and to jobs along that corridor and
- are approximately 250 metres from a local bus service that provides access to two proximate activity centres, one with excellent health facilities and convenience retail offers.

25

• •

(80) As previously explained, the strategic planning for this particular pocket of Vermont has not, to date, contemplated how the interface of the undeveloped nature of this edge of the established residential precinct and its interface to the regional open space, creates a new and different longer-term interpretation of the localised neighbourhood character and use and development opportunity.

(81) An NRZ limits the ability to realise this scare potential and for the Sites to be able to change naturally to the opportunities and constraints of the land.

## 5. THE PLACE FOR FAIRNESS

- (82) The Healesville Freeway Corridor has been residentially zoned for 23 years.
- (83) The subject Sites have been included in the General Residential Zone Schedule 5 for more than 7 years and the Residential 1 zone for longer.
- (84) The Sites have been in public ownership for most of that time and yet the Amendment which essentially seeks to 'back zone' the land and limit change, occurs almost immediately after the sites have been sold, without disclosure that a public authority would initiate the rezoning.
- (85) The objective and principle of fairness and orderly planning is the first broached by the objectives of planning in Victoria<sup>16</sup> where it states:
- To provide for the fair, orderly economic and sustainable use, and development of land.*
- (86) The principles of fair and orderly applied to use and development of land go to questions of just and appropriateness in the circumstances.
- (87) The planning framework and procedures are couched around providing users of the system with clarity of direction and a high degree of confidence about the outcomes they can expect.
- (88) Back zoning former government land, shortly after it has been publicly sold without prior notice and following an extended period when the relevant planning agencies and authorities have questioned the future role and planning controls, fails the planning 'pub test' of fairness let alone the conduct of an orderly process.

26

• •

---

<sup>16</sup> Section 4 – Planning and Environment Act 1987

- (89) In this matter the fairness and orderliness has been further compromised by the failure of the initiating planning authority to properly consider the full scope of relevant planning policy that should inform the amendment process as detailed earlier in this report.

## 6. THE POTENTIAL USE AND DEVELOPMENT OF THE LAND AND THE APPROPRIATE LEVEL OF CONTROL

- (90) It is neither the purpose of this report nor the amendment to stipulate how the subject Sites will be used and developed, although both assume that the outcome will be in accordance with purpose of the relevant zones and overlays.
- (91) The Panel and the Planning Authority can be confident that the planning permit process will provide for the appropriate level of control to protect the heritage, vegetation and neighbourhood character attributes of the Sites.
- (92) In either the existing or proposed zone, residential development comprising more than one dwelling will require a planning permit as will most alternative land uses and development.
- (93) As demonstrated previously, 20MNs and the regional park creates new and different opportunities that will be protected by the General Residential Zone.



## 7. CONCLUSIONS

- (94) C231 Whse has not been adequately or strategically justified, having not given sufficient weight to planning policy post 2014.
- (95) The more recent planning policy framework, particularly that addressing open space planning and 20MNs calls for considerations that the NRZ3 might frustrate.
- (96) The amendment lacks fairness and orderly planning in the disposal of public land to private interests or the application of current planning policy.
- (97) The appropriate use and development of the land can be managed adequately through the planning permit process. 29
- (98) C231Whse should be abandoned. • •

**Rob Milner**  
**January 2022**

## ATTACHMENT 1 – WITNESS STATEMENT

## EXPERT WITNESS STATEMENT

The following outlines the information requirements for expert evidence as set out in the Planning Panels procedures:

### a. Name and address of the expert

Robert Milner, Principal of Kinetica. Kinetica is located at Level 25/500 Collins Street, Melbourne.

### b. Expert's qualifications and experience

Robert Milner has an honours diploma in Town and Country Planning from Liverpool Polytechnic. He is a Life Fellow of the Planning Institute of Australia and a Fellow of the Victorian Planning and Environmental Law Association. Relevant experience includes:

- 8 years as a planner in local government undertaking statutory and strategic work;
- 39 years' experience in private practice with various planning and property related consultancies;
- State and National President of the Royal Australian Planning Institute; and
- A member of the Local Government and Planning Advisory Council.

Robert Milner is recognised as a leader and expert in the field of urban and regional planning. He has given evidence before the Victorian Civil and Administrative Tribunal, Planning Panels Victoria, and the Supreme Court on many occasions. A Curriculum Vitae is included at Attachment 2 to this report.

### c. Expert's expertise to make the report

Robert Milner has a broad range of expertise in planning and development matters enabling him to comment on a wide spectrum of urban and rural, statutory and strategic planning issues and processes.

### d. Private or business relationship between the expert and the party for whom the report is prepared

None

**e. Instructions that define the scope of the report**

Robert Milner has been instructed by Rigby Cooke Lawyers on behalf of affected landowners in Moore Road, Vermont.

**f. The facts, matters and all assumptions upon which the report proceeds**

There are no facts, matters or assumptions upon which the report relies other than those explicitly stated in the report.

**g. Documents and other materials the expert has been instructed to consider or take into account in preparing his or her report and the literature or other material used in making the report**

Robert Milner has considered the documents and material contained within his briefing material and has reviewed additional documents referenced in the body of this report.

**h. Identity of the person who carried out any tests or experiments upon which the expert relied in making the report and the qualifications of that person.**

Not Applicable.

**i. A statement summarising the opinion of the expert; any provisional opinions that are not fully researched for any reason; any questions falling outside the expert's expertise; and whether the report is incomplete or inaccurate in any respect.**

A summary of Robert Milner's opinion is set out in the body of the report. There are no provisional opinions contained within the report. Robert Milner has not been asked any questions which fall outside of his area of expertise. The report is complete.

**j. Signed declaration**

I have made all the enquiries that I believe are desirable and appropriate and that no matters of significance, which I regard as relevant, have to my knowledge been withheld from the Panel.



**Robert Milner**  
**January 2022**

AMENDMENT C231WHPS

34-40, 37-43 AND 42-50 MOORE ROAD, VERMONT

EXPERT PLANNING EVIDENCE/ ROB MILNER / JANUARY 2022

## ATTACHMENT 2 - CURRICULUM VITAE



# Robert Milner

## Principal

Rob Milner is a respected strategic and statutory planner and a recognised leader of the planning profession in Victoria. He has had a high profile career spanning more than 40 years with extended periods of experience working for local government and in private practice. His clients have included many State government agencies (including planning, community development, justice, roads, growth areas and regional development), municipalities throughout Victoria, as well as a broad range of corporate and other private sector interests. He has a reputation for integrity, objectivity, an original style of evidence and for providing clear and fearless advice to proponents and objectors; the responsible authority; claimants and government agencies. Particular expertise is in complex and controversial projects, gaming matters, acquisitions and restrictive covenants.

### Principal kinetica

Melbourne, Australia  
2019 - present

### Director

10 Consulting Group Pty Ltd  
Melbourne, Australia  
2010 - 2019

### General Manager - Planning

CPG Australia Pty Ltd  
1999 - 2010

### Director

Rob Milner Planning Pty Ltd &  
Savage Milner  
1994 - 1999

### Project Director

Collie Planning and Development  
1991 - 1994

### General Manager Town Planning

Jones Lang Wootton  
1988 - 1991

### City Planner

City of Box Hill  
1980 - 1988

### Planner

Perrott Lyon Mathieson Architects  
and Planners  
1977 - 1980

### Planner

Kirklees Metropolitan Borough  
Council, United Kingdom  
1976 - 1977

### Diploma in Town and Country Planning (First Class Honours)

Liverpool Polytechnic

### Areas of Expertise and Experience

- Strategic studies, policy development and statutory implementation
- Expert evidence and advocacy
- Rob is regularly retained to provide expert evidence to courts, panels and tribunals on the broadest range of land use and development planning issues. He is able to evaluate and form a robust opinion on complex matters quickly and has a capacity to manage a considerable body of work in an efficient and timely manner. Rob is also an acknowledged advocate and negotiator and is regularly engaged in development approval and rezoning projects where process and relationships need to be carefully nurtured to ensure a viable and timely outcome. Legislative and planning scheme reviews and amendments
- Gaming policy and applications
- Restrictive Covenants
- Acquisition and compensation
- Organisation audits and process reviews

Rob's ability to communicate effectively among a broad range of stakeholders means that he is regularly engaged to facilitate workshops, conferences, consultation and other situations

where leadership and engagement of groups is required.

He has committed to 'giving back' to a profession that has provided him with a rewarding career. As well as contributing to the development of the Planning Institute of Australia he has acted over the last two decades in the capacity of mentor for many younger planners. Additionally, he regularly attends and gives papers at professional development forums.

### Associations

- Life Fellow Planning Institute of Australia (PIA)
- Fellow of the Victoria Planning and Environmental Law Association (VPELA)
- Former State and National President of the Planning Institute of Australia (PIA)
- Member, Planning and Local Government Advisory Council (1994 - 1999)
- Deputy Chairman, Future Farming Expert Advisory Group (2009)



## ATTACHMENT 3 – SCHEDULE TO GRZ5

14/10/2014  
C160**SCHEDULE 5 TO CLAUSE 32.08 GENERAL RESIDENTIAL ZONE**Shown on the planning scheme map as **GRZ5**.**GENERAL RESIDENTIAL****1.0**14/10/2014  
C160**Permit requirement for the construction or extension of one dwelling on a lot**

**Is a permit required to construct or extend one dwelling on a lot of between 300 square metres and 500 square metres?**

None specified

**2.0**14/10/2014  
C160**Requirements of Clause 54 and Clause 55**

|                        | Standard    | Requirement    |
|------------------------|-------------|----------------|
| Minimum street setback | A3 and B6   | None specified |
| Site coverage          | A5 and B8   | None specified |
| Permeability           | A6 and B9   | None specified |
| Landscaping            | B13         | None specified |
| Side and rear setbacks | A10 and B17 | None specified |
| Walls on boundaries    | A11 and B18 | None specified |
| Private open space     | A17         | None specified |
|                        | B28         | None specified |
| Front fence height     | A20 and B32 | None specified |

**3.0**14/10/2014  
C160**Maximum building height requirement for a dwelling or residential building**

None specified

**4.0**14/10/2014  
C160**Application requirements**

None specified

**5.0**14/10/2014  
C160**Decision guidelines**

None specified

---

AMENDMENT C231WHPS

34-40, 37-43 AND 42-50 MOORE ROAD, VERMONT

EXPERT PLANNING EVIDENCE/ ROB MILNER / JANUARY 2022

## ATTACHMENT 4 – SCHEDULE TO NRZ3

12/11/2015  
C174**SCHEDULE 3 TO CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE**Shown on the planning scheme map as **NRZ3**.**TRADITIONAL BUSH SUBURBAN AREAS****1.0**12/11/2015  
C174**Minimum subdivision area**

None specified.

**2.0**12/11/2015  
C174**Permit requirement for the construction or extension of one dwelling on a lot**

|  | Requirement       |
|--|-------------------|
| Permit requirement for the construction or extension of one dwelling on a lot                | 500 square metres |
| Permit requirement to construct or extend a front fence within 3 metres of a street on a lot | 500 square metres |

**3.0**20/01/2022  
VC205**Requirements of Clause 54 and Clause 55**

|                               | Standard    | Requirement  |
|-------------------------------|-------------|--|
| <b>Minimum street setback</b> | A3 and B6   | None specified   |
| <b>Site coverage</b>          | A5 and B8   | Maximum 40%  |
| <b>Permeability</b>           | A6 and B9   | Minimum 40%  |
| <b>Landscaping</b>            | B13         | Provision of at least two canopy trees per dwelling that have the potential of reaching a minimum mature height of 12 metres. At least one of those trees should be in the secluded private open space of the dwelling. The species of canopy trees should be native, preferably indigenous.   |
| <b>Side and rear setbacks</b> | A10 and B17 | A new building not on or within 200mm of a boundary should be set back 1 metre from the side boundary, 3 metres on the other side boundary and 5 metres from the rear boundary, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.  |
| <b>Walls on boundaries</b>    | A11 and B18 | No walls to be constructed on boundaries.  |
| <b>Private open space</b>     | A17         | A dwelling should have private open space consisting of an area of 80 square metres or 20 per cent of the area of the lot, whichever is the lesser, but not less than 40 square metres. At least one part of the private open space should consist of secluded private open space with a minimum area of 35 square metres and a minimum dimension of 5 metres and convenient access from a living room. It cannot include a balcony or roof top terrace. |
|                               | B28         | A dwelling or residential building should have private open space consisting of an area of 40 square metres, with one part of the private open space at the side or rear of the dwelling or residential building within a minimum area of 35 square metres, a minimum dimension of 5 metres and convenient access from a living room. It cannot include a balcony or roof top terrace.   |
| <b>Front fence height</b>     | A20 and B32 | A front fence within 3 metres of a street should not exceed 1 metre in 'other streets'.<br><br>Front fence height in streets in a Transport Zone 2 or a Transport Zone 3 should not exceed 1.8 metres.   |

**4.0**

12/11/2015  
C174

**Number of dwellings on a lot**

None specified.

**5.0**

12/11/2015  
C174

**Maximum building height requirement for a dwelling or residential building**

None specified.

**6.0**

12/11/2015  
C174

**Application requirements**

The following application requirements apply to an application for a permit under clause 32.09, in addition to those specified in clause 32.09 and elsewhere in the scheme:

- Plans showing existing vegetation and any trees proposed to be removed.
- Plans showing proposed landscaping works and planting including tree species and mature height.

**7.0**

12/11/2015  
C174

**Decision guidelines**

The following decision guidelines apply to an application for a permit under clause 32.09, in addition to those specified in clause 32.09 and elsewhere in the scheme:

- Whether the vegetation in the street setback will contribute to the preferred neighbourhood character and the public realm.
- The potential for trees and vegetation to be provided between dwellings on the same site.
- Whether there is sufficient permeable space that is not encumbered by an easement to enable the planting of canopy trees.
- Development should provide for the retention and/or planting of trees, where these are part of the character of the neighbourhood.



Level 25 / 500 Collins Street  
Melbourne / 3000 / VIC / Australia  
03 9109 9400 / [kinetica.net.au](http://kinetica.net.au)

