

**Whitehorse Planning Scheme Amendment C231whse  
Moore Road, Vermont**

**Panel Report**

*Planning and Environment Act 1987*

**17 February 2022**

**How will this report be used?**

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.  
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31(1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Whitehorse Planning Scheme Amendment C231whse

Moore Road, Vermont

**17 February 2022**

A handwritten signature in black ink, appearing to read 'Tim Hellsten', with a long horizontal stroke extending to the right.

Tim Hellsten, Chair

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## Glossary and abbreviations

the Amendment	Whitehorse Planning Scheme Amendment C231whse
BS9 Precinct	Bush Suburban Precinct 9
Character Study	<i>Whitehorse Neighbourhood Character Study 2014</i>
Council	Whitehorse City Council
DELWP	Department of Environment, Land, Water and Planning
GRZ5	General Residential Zone (Schedule 5)
Housing Strategy	<i>Whitehorse Housing Strategy 2014</i>
Metropolitan Open Space Strategy	<i>Open Space Strategy for Metropolitan Melbourne 2021: Open Space for everyone</i> , Victorian State Government
MSS	Municipal Strategic Statement
NRZ3	Neighbourhood Residential Zone Schedule 3
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PPN46	<i>Planning Practice Note 46 Strategic Assessment Guidelines</i> , August 2018
PPN90	<i>Planning Practice Note 90 Planning for housing</i> , December 2019
PPN91	<i>Planning Practice Note 91 Using the residential zones</i> , December 2019
PPRZ	Public Park and Recreation Zone
PPTN	Principal Public Transport Network
SLO9	Significant Landscape Overlay Schedule 9 – Neighbourhood Character Areas

## Overview

### Amendment summary

The Amendment	Whitehorse Planning Scheme Amendment C231whse
Common name	Moore Road, Vermont
Brief description	Rezone the subject land Neighbourhood Residential Zone Schedule 3 and make associated changes to Clause 21.06 (Housing) and Clause 22.03 (Residential Development)
Subject land	34-40, 37-43 and 42-50 Moore Road, Vermont
Planning Authority	Whitehorse City Council
Authorisation	6 July 2021 (conditional)
Exhibition	19 August to 20 September 2021
Submissions	<p>Submissions:</p> <ol style="list-style-type: none"> <li>Jennifer Downes (supporting submission)</li> <li>Department of Transport (supporting submission)</li> <li>Marita Evans</li> <li>Jane Martin</li> <li>Ming Chen and Jenny He (opposed)</li> <li>Moore Residence Pty Ltd and Morack Residence Pty Ltd (opposed)</li> </ol>

### Panel process

The Panel	Tim Hellsten
Directions Hearing	By videoconference, 17 December 2021
Panel Hearing	By videoconference, 8 and 9 February 2022
Site inspections	Unaccompanied, 12 January 2022
Parties to the Hearing	Whitehorse City Council (Council) represented by Tessa Bond, Strategic Planner and Allison Egan, Coordinator Strategic Planning, who called planning evidence from Sandra Rigo of Hansen Partnership Moore Residence Pty Ltd, Morack Residence Pty Ltd and Ming Chen and Jenny He represented by Reto Hofmann of Rigby Cooke Lawyers, who called planning evidence from Rob Milner of Kinetica
Citation	Whitehorse C231whse PSA [2022] PPV
Date of this report	17 February 2022

## Executive summary

Whitehorse Planning Scheme Amendment C231whse (the Amendment) seeks to rezone three large residential lots in Moore Road, Vermont from General Residential Zone Schedule 5 (GRZ5) to Neighbourhood Residential Zone Schedule 3 (NRZ3) which is the prevailing residential zone in the surrounding neighbourhoods of Vermont. The Amendment makes a number of related changes to the Whitehorse Planning Scheme including:

- amending Clause 21.06 (Housing) by adjusting the 'Housing Framework Plan' to include the entire subject land as a Limited Change Area
- amending Clause 22.03 (Residential Development) by adjusting 'Map 1: Neighbourhood Character Precincts' to include the entire subject land within the Bush Suburban 9 Precinct.

The subject land (34-40, 37-43 and 42-50 Moore Road) is located within an area formerly part of the Healesville Freeway Reservation and acquired for that purpose. The corridor reservation was declared surplus to road network requirements in 2009. The subject land and adjoining former freeway corridor parcels were included in the GRZ5 while adjoining residential areas were zoned NRZ in 2014. The subject land was disposed of by VicRoads in 2017 (34-40 Moore Road) and in 2020 (the balance).

The Amendment has been prepared by the Whitehorse City Council (Council) which has been advocating for almost a decade to apply the same zoning to the subject land as the adjoining residential areas and to have remaining corridor parcels zoned Public Park and Recreation Zone to facilitate an open space corridor linking Boronia Road with Morack Road. Council has identified that the Amendment applies the NRZ3 consistent with the *Whitehorse Housing Strategy 2014* (Housing Strategy), *Whitehorse Neighbourhood Character Study 2014* (Character Study) and the Housing Framework Plan contained in Clause 21.06 (Housing) of the Whitehorse Planning Scheme.

The key issues raised in the submissions opposing the Amendment and articulated at the Hearing by the landowners of the three subject sites were that:

- there was no strategic justification for the change of zoning
- the existing controls are adequate for managing future development
- the Amendment was neither a fair nor orderly planning outcome.

The key issues raised in the submissions opposing the Amendment by two Moore Road residents related to the potential impacts of the future development of the subject land on:

- neighbourhood character and amenity
- the environment, including on vegetation and habitat values
- traffic volumes and access for emergency vehicles and garbage trucks.

In reaching its conclusions about whether the Amendment was strategically justified the Panel considered:

- the relevant policy considerations
- the role and directions of the Housing Strategy and Character Study
- whether the physical characteristics and the locational attributes of the subject land reflect land reflect those of NRZ3
- whether the application of the NRZ3 provides for the fair, orderly, economic and sustainable use, and development of land.

The Panel concluded that:

- The Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework including Plan Melbourne, the Municipal Strategic Statement and local planning policies.
- The Amendment is appropriately underpinned by Council's Housing Strategy and Character Study.
- The subject land's landscape characteristics and setting is consistent with the Bush Suburban Precinct 9 that extends over Moore Road and the adjoining neighbourhood.
- The application of the NRZ3 best reflects the character, heritage values and context and locational attributes of the subject land consistent with *Planning Practice Note 90 Planning for housing*, and *Planning Practice Note 91 Using the residential zones*.
- The application of the NRZ3 retains opportunities for medium density housing outcomes in a manner which respects neighbourhood and landscape character and heritage values and will provide for net community benefit, orderly planning and sustainable development outcomes.
- Council has been consistent in its planning, advocacy and communications regarding its position on zoning of the subject land for almost a decade.

In terms of the issues relating to the impacts of future development of the subject land, the Panel concluded that this was not relevant to the Amendment and was properly the considerations of the planning permit process, regardless of zoning.

### **Recommendations**

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

- 1. Whitehorse Planning Scheme Amendment C231whse be adopted as exhibited.**



# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

Whitehorse Planning Scheme Amendment C231whse (the Amendment) proposes to rezone three land parcels at 34-40, 37-43 and 42-50 Moore Road, Vermont (the subject land) from the General Residential Zone Schedule 5 (GRZ5) to the Neighbourhood Residential Zone Schedule 3 (NRZ3).

The purpose of the Amendment is to align the zoning with the *Whitehorse Housing Strategy 2014* (Housing Strategy), *Whitehorse Neighbourhood Character Study 2014* (Character Study) and the Housing Framework Plan contained in Clause 21.06 (Housing) of the Whitehorse Planning Scheme.

Specifically, the Amendment proposes to:

- rezone the subject land
- amend Clause 21.06 (Housing) by adjusting the 'Housing Framework Plan' to include the entire subject land as a Limited Change Area
- amend Clause 22.03 (Residential Development) by adjusting 'Map 1: Neighbourhood Character Precincts' to include the entire subject land within the Bush Suburban Precinct 9 (BS9 Precinct).

### (ii) The subject land

The Amendment applies to the subject land shown in Figure 1.

**Figure 1** Subject land



Source: Discussion Paper and Strategic Justification, City of Whitehorse, March 2021

The subject land (collectively 2.7 hectares) comprises three land parcels located at the southern end of Moore Road, Vermont (refer Figure 2) and which, along with the corridor of land to the south and east, previously formed part of the former Healesville Freeway Reservation.

The subject land is approximately 1.25 kilometres walking distance from the nearest activity centre (Vermont Village Shopping Centre). The Vermont Secondary College is located to the west and adjoins the rear boundaries of 34-40 and 42-50 Moore Road, Vermont. To the southeast lies the Morack Public Golf Course and Livermore Close Reserve separated by several larger parcels of land proposed to be included in a future linear public open space corridor extending from existing open space in Morack Road eastwards to Boronia Road.

**Figure 2** Aerial image of subject land



Source: Council's Part B submission

### **34-40 Moore Road, Vermont**

This site (Figure 3) is located on the west side of Moore Road, with an area of approximately 8,905 square metres. It contains a single storey dwelling (Mirrabooka) situated in the rear portion of the site which was constructed in 1958 to a design by architectural firm, Grounds, Romberg and Boyd. The site is included in the Heritage Overlay (HO63). The site contains clusters of canopy vegetation along the frontage to Moore Road, adjacent to the north boundary and surrounding the dwelling with the rest of the site open grassland.

The site is adjoined to the secondary college to the west and to the north by residential lots accessed off Beleura Avenue comprising two storey dwellings and limited established vegetation and a larger lot (26 Moore Road) which contains a dwelling set among established gardens and trees. The site is located opposite 37-43 Moore Street.



**Figure 3** 34-40 Moore Road



Source: Panel's site inspection photographs

**37-43 Moore Road, Vermont**

The site (Figure 4) is located on the east side of Moore Road, with an area of approximately 9,303 square metres. It contains a single storey vacant partly derelict dwelling located towards the centre of the site and includes substantial vegetation cover, including numerous canopy trees along the perimeter of the site, within the front setback of the dwelling and rear garden. It is adjoined to the north by a large residential property known as 'Willowbank' (29 Moore Road) which contains extensive areas of canopy vegetation and is within the Heritage Overlay (HO62). To the east the site adjoins a large, vegetated site known as 'Greenways' (142 Boronia Road) which is partially included in the Heritage Overlay (HO107) and in the GRZ5.

**Figure 4** 37-43 Moore Road



Source: Panel's site inspection photographs

### 42-50 Moore Road, Vermont

The site (Figure 5) is located on the west side of Moore Road, with an area of approximately 8,860 square metres. It contains a single dwelling situated in the rear (west) part of the site. The site contains canopy vegetation adjacent to the north boundary and surrounding the dwelling but is otherwise largely open including a grassed strip along the site's driveway which is unfenced and contains power supply poles.

Figure 5 42-50 Moore Road



Source: Panel's site inspection photographs

### Neighbourhood character

Moore Road transitions (Figure 6) from its intersection with Boronia Road as a sealed road with kerb and channel and footpath on one side and street tree planting (image 1), to a narrow gravel standard south of 24 Moore Road (image 2) with informal roadside vegetation (image 3) and which terminates at the driveway to 42-50 Moore Road (image 4) with the unconstructed grassed road reserve and vegetation extending south to its juncture with Livermore Close (image 5).



Figure 6 Moore Road transition images



Source: Panel's site inspection photographs

The residential lots along the sealed section of Moore Road (and adjacent streets of Beleura Avenue and Carlinga Drive) include the following characteristics:

- a mix of single, split level and two storey dwellings of mixed styles located on undulating topography set within established landscaped gardens, including established canopy trees in front setbacks, backyards or with a backdrop of canopy trees. Limited front fencing and setbacks of 6 to 10 metres in depth provide a setting where the landscape is a strong visual presence and in part screens dwellings from the street (refer Figure 7)
- two larger medium density housing sites (13-17 and 19-23 Moore Road) comprising denser housing product made up predominantly of detached and semi-attached two storey dwellings (38 dwellings collectively) and which contain less established landscaping areas and few canopy trees (refer Figure 8).

More consistent residential building form occurs to the south along Winswood Close which features flatter topography and does not possess a strong landscape character of canopy trees.

Between the subject land and the residential areas along Winswood Close are a number of parcels comprising part of the former Healesville Freeway Reserve and which are proposed to be included in a future open space corridor. These parcels are undeveloped, largely open with some scattered canopy trees and offer open vistas to the subject land to the north and residential areas to the south.

Figure 7 East side of Moore Road



Source: Panel's site inspection photographs

Figure 8 Medium density housing at 13-17 and 19-27 Moore Road



Source: Panel's site inspection photographs

### Zoning

The subject land is zoned GRZ5 as are the adjoining former Healesville Freeway Reserve lots (extending to Boronia Road). Nearby and adjoining residential areas to the north are zoned NRZ3. Residential areas to the south of the former Freeway Reserve are zoned NRZ5. Nearby open space areas are within the Public Park and Recreation Zone (PPRZ) as shown in Figure 9.

Figure 9 Current zoning of subject land and surrounds



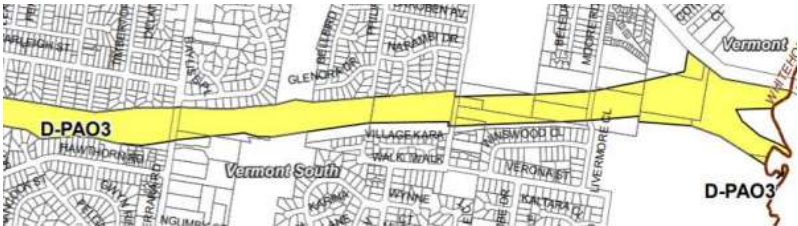
## 1.2 Background

The background to the Amendment is summarised in Table 1 based on content from Council's Part A submission, and Council's exhibited *Discussion Paper and Strategic Justification* (March 2021) report.

**Table 1** Chronology of events

Date	Event
1969	Subject land included in the Healesville Freeway Reservation with Public Acquisition Overlay (PAO3) applied to reservation between Riversdale/Station Street, Box Hill and Healesville
1980s	The western part of the Healesville Freeway Reservation between Riversdale Road/Station Street to Springvale Road was removed from the corridor and subsequently developed for a variety of uses
2009	VicRoads identified the Healesville Freeway Reservation between Springvale Road and Boronia Road as surplus to road network requirements
2012	VicRoads commenced a structure planning process - Healesville Freeway Reserve Renewal Project. This process assumed substantial housing provision within parts of the Healesville Freeway Reservation
25 November 2013	VicRoads releases Healesville Freeway Reservation Draft Concept which included three concepts, all of which included housing development for the subject land and adjoining southern parcels and identified recommended residential zones (" <i>Neighbourhood Residential Zone to the east of Terrara Road and a Development Plan Overlay across all residential areas</i> ") and design guidelines for medium density housing location, maximum heights and site coverage, minimum setbacks and open space provision. A final concept or Structure Plan was not issued
25 March 2014	Council adopts a preferred vision for the Freeway Reserve, informed by its draft Housing Strategy and Character Study, and provides it to VicRoads to inform the Healesville Freeway Reservation Draft Concept
28 April 2014	Council adopts the Housing Strategy and Character Study. These studies excluded the Healesville Freeway Reservation given they were being examined through the VicRoads structure planning process
14 October 2014	Subject sites and Healesville Freeway Reservation rezoned from Residential 1 Zone to GRZ5 by the Minister as part of the residential zone reforms while adjoining residential areas were zoned NRZ7 (Whitehorse Planning Scheme Amendment C160)
27 November 2014	PPRZ applied to sections of the Healesville Freeway corridor through Amendment C200 but excluded adjoining parcels to the south and east of the subject land
12 November 2015	Amendment C174 gazetted introducing Schedules 1 to 5 of the NRZ and applying the NRZ3 to the north of the subject land and NRZ5 to residential areas to the south of the Healesville Freeway Reservation
2017	34-40 Moore Road sold by VicRoads



Date	Event
13 April 2018	VicRoads advises Council that it proposed to seek removal of the PAO3 over 37 and 42-50 Moore Road through an expedited amendment process under section 20(4) of the Planning and Environment Act 1987 (PE Act)
26 July 2019	PAO3 extending from Springvale to Boronia Road deleted by Amendment C244 through the section 20(4) process
	
25 May 2020	<p>Council resolves to request the Minister to remove 37-43 and 42-50 Moore Road from sale until the zoning of the land is resolved, include 42-50 Moore Road as a future park or alternatively rezone the three Moore Road sites to NRZ under section 20(4) of the PE Act.</p> <p>Minister declines the request on 6 September 2020 noting 37-43 and 42-50 Moore Road had already been sold by VicRoads in June 2020 and a proposed amendment was under preparation to rezone the other GRZ5 sites to the PPRZ</p>
5 March 2021	Council seeks authorisation to prepare and exhibit Amendment C231whse
April 2021	Council advised that DELWP, on behalf of the Minister for Energy, Environment and Climate Change intended to write to the Minister for Planning seeking his intervention through an amendment under section 20(4) of the PE Act to rezone a number of parcels in the Healesville Freeway Reservation from GRZ5 to PPRZ (refer Figure 10)
6 July 2021	<p>Amendment authorised subject to the following condition:</p> <ol style="list-style-type: none"> <li>1. Revise Planning Scheme Map 6 to ensure that the NRZ zoning covers the full width of Moore Road adjacent to the site.</li> </ol> <p>Council advised this condition was met by the exhibited version of the Amendment</p>
19 August - 20 September 2021	Exhibition of Amendment C231whse
September 2021	Parks Victoria was appointed as the land manager for the Healesville Freeway Reserve open space project
22 November 2021	Council consideration of submissions on the Amendment
25 November 2021	Submissions referred to Planning Panels Victoria
27 January 2022	Council met with Parks Victoria to discuss a future planning scheme amendment and advised that Parks Victoria is making enquiries with DELWP about progressing an amendment for the balance Healesville Freeway Reservation land currently zoned GRZ5





The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a range of materials and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Impacts of future development.

## 2 Planning context

### 2.1 Planning policy framework

Council submitted that the Amendment is supported by the PE Act, the Planning Policy Framework (PPF), the Municipal Strategic Statement (MSS) and Local Planning Policies which the Panel has summarised below.

#### Victorian planning objectives

The Amendment will assist in implementing the following State policy objectives set out in section 4 of the PE Act:

- a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- ...
- c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- ...
- f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
- g) to balance the present and future interest of all Victorians.

by:

- applying the appropriate residential zone to a Limited Change Area
- designating the heritage property at 34 – 40 Moore Road as limited change consistent with the principles in Council’s Housing Strategy 2014
- assist in the protection of a valued neighbourhood character area by ensuring that future development has the highest regard to the built form, vegetation-dominated landscape and heritage elements of the area
- securing a pleasant living environment and ensuring development conserves and enhances the area’s aesthetic qualities and historical interest.

#### Clause 11 (Settlement)

The Amendment supports Clause 11 by:

- ensuring sufficient supply of residential land and facilitating development that responds to the established character and valued character attributes of the area
- not affecting the municipality’s ability to meet the forecast demand for housing as set out in the Housing Strategy and accommodating the majority of new housing in areas identified for substantial and natural change - Clause 11.02-1S (Supply of urban land).

#### Clause 12 (Environmental and Landscape values)

The Amendment supports Clause 12 as it achieves the right balance between facilitating development in a residential neighbourhood, while protecting the highly valued natural features of the sites and broader neighbourhood – Clause 12.05-2S (Landscapes).

#### Clause 15 (Built Environment and Heritage)

The Amendment supports Clause 15 by providing an appropriate setting and context for a place of heritage significance (Mirrabooka) – Clause 15.03-1S (Heritage conservation).

**Clause 16 (Housing)**

The Amendment supports Clause 16 by achieving a balance between protecting valued areas of neighbourhood character and heritage while also enabling redevelopment in accordance with the purpose of the NRZ - Clause 16.01-1R (Housing supply – Metropolitan Melbourne).

**Clause 21 (the Municipal Strategic Statement)**

The Amendment supports the MSS:

- Clause 21.01 (Municipal profile) by responding to the importance of trees to neighbourhood character and the need to accommodate housing growth and diversity while managing the impacts of change to respect the character of established neighbourhoods
- Clause 21.05 (Environment) by emphasising the importance of protecting and enhancing the tree canopy to neighbourhood character, amenity, wildlife, local climate, and health and wellbeing and ensuring new development is of a high quality that is compatible with the character and appearance of the locality
- Clause 21.06 (Housing) by:
  - protecting amenity and character through the application of residential zones to areas of housing change (Substantial Change, Natural Change and Limited Change – refer Figure 11) and preferred character (Garden Suburban, Bush Suburban and Bush Environment) consistent with the Housing Strategy
  - preserving areas of valued character and vegetation or landscape significance
  - limiting residential growth in areas of valued landscape or built form character
  - applying the NRZ to areas identified for limited growth, noting the GRZ is applied to Natural Change Areas.

Within Clause 21.06 the objectives for Limited Change Areas are:

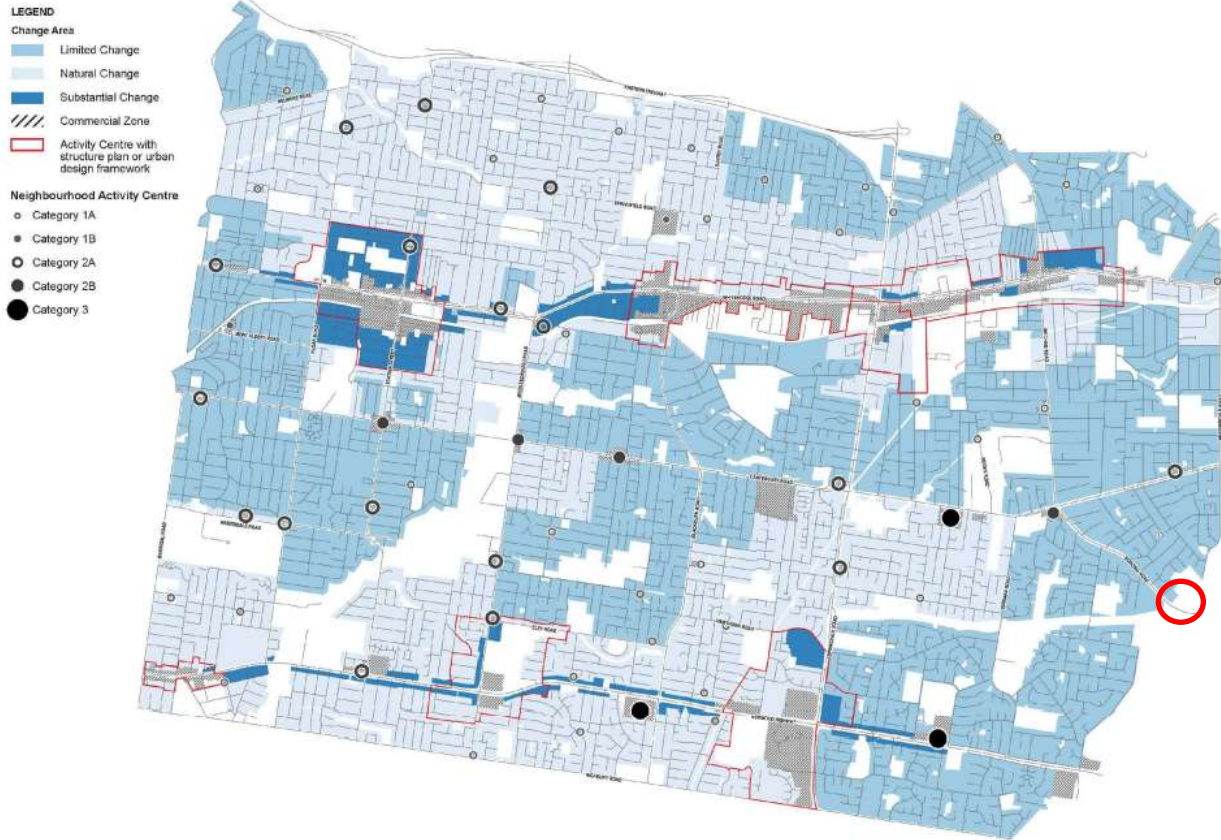
- Conserve and enhance those elements which contribute to the valued environmental, heritage and neighbourhood character of the place.
- Ensure new development protects and reinforces the environmental, heritage values and/or preferred future neighbourhood character of the area.
- Ensure new development mainly takes the form of renovations to existing houses, replacement of single dwellings with new dwellings and some limited medium density development.

The objectives for Natural Change Areas are:

- Support increased housing choice by allowing for a diversity of dwelling types, sizes and tenures.
- Ensure new development contributes to the preferred neighbourhood character of the precinct.
- Encourage new development applications to include landscape guidelines that show how the enhancement or retention of existing vegetation where possible will be achieved, at the outset of the design process.

**Figure 11 Housing Framework Plan**

**HOUSING FRAMEWORK PLAN**



The Amendment proposes to change the Housing Framework Plan to include the subject sites fully within the Limited Change area (as shown in Figure 12).

**Figure 12 Amended Housing Framework Plan detail**



**Clause 22 Local Planning Policies**

The Amendment supports:

- Clause 22.01 (Heritage Buildings and Precincts) by ensuring the development of land within and adjacent to a Heritage Overlay preserves and maintains buildings and features of historical significance and setting and that adjacent development is sympathetic to significance in terms of character, scale, design, setbacks and form
- Clause 22.03 (Residential Development) by:
  - assessing development against Preferred Character Statements (Clause 22.03-5) for identified Neighbourhood Character Precincts (excerpt included from Map 1 to the



Schedule in Figure 13, noting subject land is within Bush Suburban Precinct 9), and the precinct guidelines of the Character Study

- supporting development consistent with the strategies for Limited Change Areas which include ensuring residential development is of a scale, form and character consistent with the surrounding area and is predominantly detached and semi-detached housing that *“respects the appearance of surrounding development and the environmental, heritage, and neighbourhood character values of the area”* and *“retention of older dwellings in areas where these buildings dominate, and limit new development to two dwellings per lot”*.
- ensuring development is consistent with the Preferred Character Statement for the BS9 Precinct:

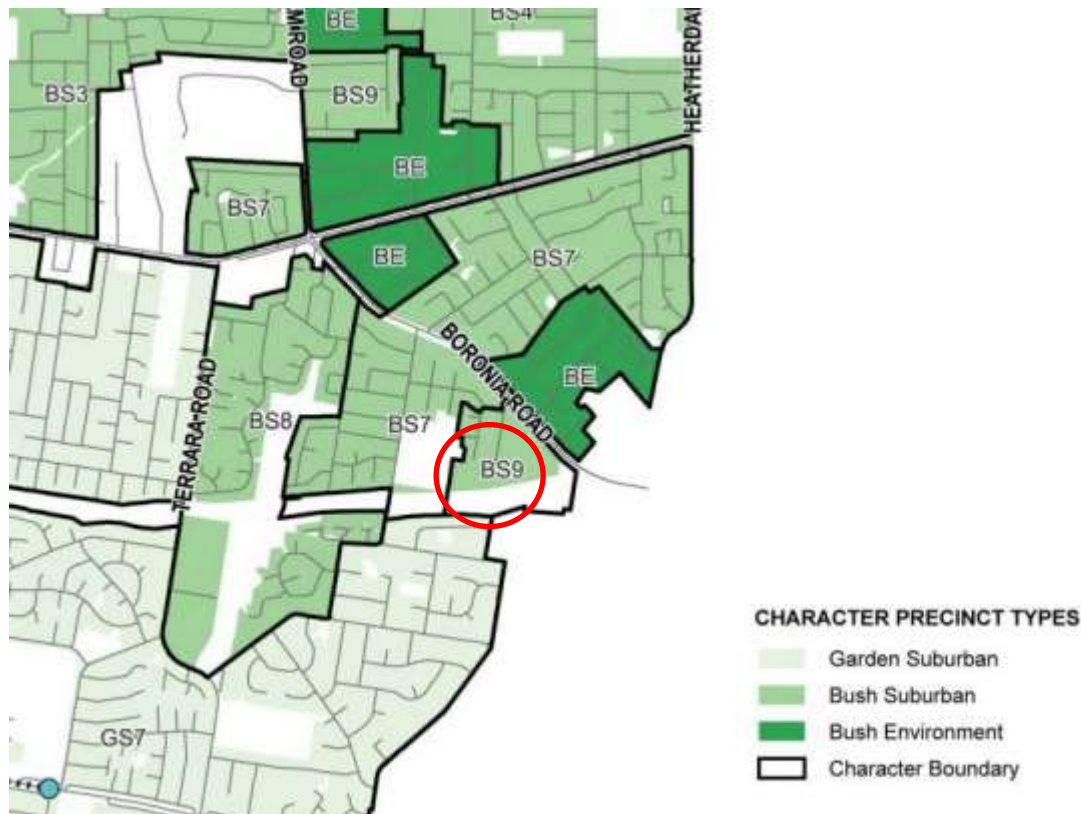
The bushy landscape character afforded by substantial native shrubs and tall canopy trees will remain a key characteristic of the area. Modest dwellings will continue to be partially hidden behind vegetation, and adhere to the regular setback patterns of the street. Buildings will be absorbed into the vegetation-dominated landscape and reflect the topography by being designed to step down the site and follow the contours.

The streetscape will retain an informal character due to the lack of front fencing and dominant landscape surroundings. The tall, native eucalypts in streets and private gardens will continue to provide a significant contribution to the tree canopy across the precinct. Properties abutting and close to the Dandenong Creek corridor will contribute to the bushy landscape character of the public realm, incorporating large canopy trees and native vegetation.

The openness of the streetscape will be enhanced by the absence of front fencing, or low open style front fences, allowing views into private gardens.

The areas within this Precinct will be investigated for possible inclusion in the Bush Environment character type.

Figure 13 Excerpt of Map 1: Neighbourhood Character Precincts Clause 22.03



Strategies in Clause 22.03 for Natural Change Areas by contrast include:

- encouraging low and medium density housing including detached house, semi-detached dwellings, townhouses, row or terrace houses, units or townhouses
- supporting medium density developments that contribute to the preferred neighbourhood character for the location, provide a sensitive and appropriate interface with adjoining streetscapes, buildings and residential areas
- providing a range of dwelling types, sizes and tenures, including affordable housing, in larger developments
- locating medium density housing close to transport, activity centres and community infrastructure
- ensuring that the siting and design of new dwellings is respectful of surrounding development and provide appropriate scale and massing interfaces to sensitive areas and uses in natural change areas and consider the retention of older dwellings where they dominate.

The Garden Suburban character precinct type is typically applied to GRZ/Natural Change Areas.

The Amendment proposes to change Map 1: Neighbourhood Character Precincts to include the subject sites fully within the BS9 Precinct as shown in Figure 14.

**Figure 14** Amended Map 1: Neighbourhood Character Precincts detail



The Amendment supports Clause 22.04 (Tree Conservation) by ensuring trees remain an integral element of the neighbourhood character and are retained with sufficient space for new planting and regeneration.

## 2.2 Other relevant planning strategies and policies

### (i) Plan Melbourne

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 2.

**Table 2** Relevant parts of Plan Melbourne

Outcome	Directions	Policies
2: Melbourne provides housing choice in locations close to jobs and services	2.1 (Manage the supply of housing in the right locations to meet population growth and create a sustainable city)	2.1.3 Plan for and define expected housing needs across Melbourne's regions 2.1.4 Provide certainty about the role of growth in suburbs
5: Inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20-minute neighbourhoods	5.1.1 Create mixed-use neighbourhoods at varying densities 3.3.1 Create pedestrian friendly neighbourhoods

The Plan Melbourne 2017 – 2050 Addendum (2019) updates Plan Melbourne with the most recent population and employment projections. It also seeks to embed the 20-minute neighbourhood concept into major infrastructure projects, helping to create and connect neighbourhoods that enable people to meet most of their everyday needs within 20-minutes of their home.

Council indicated that the Amendment supports the outcomes, directions and policies of Plan Melbourne by aligning the zone with the preferred housing outcome for the area. Further, it considered the Amendment provides certainty for the community about the scale of development that can be anticipated on each site.

## **(ii) Whitehorse Housing Strategy**

The Housing Strategy provides a 20 year framework to guide the provision of housing throughout the municipality and was adopted by Council on 28 April 2014. It was prepared as a review of an earlier 2003 Housing Strategy and in the context of forecast population growth to 2036 and related housing demand and changing needs for diversity and housing choice, and current planning policy (including the then Draft Plan Melbourne).

The Housing Strategy sets out the methodology for the identification and application of the Limited Change, Natural Change and Substantial Change Areas which included consideration of extent of Heritage and Significant Landscape Overlays, development constraints, neighbourhood character, landscape and vegetation and location of open space and proximity to public transport including stations and activity centres. The Housing Strategy informed the basis for Council's application of the GRZ, NRZ and Residential Growth Zones across the municipality. It is referenced at Clause 21.06 and Clause 22.03.

Council advised that at the time the Housing Strategy was being prepared, the Department of Transport (formerly VicRoads) still owned the Healesville Freeway Reserve between Springvale Road and Boronia Road and a Public Acquisition Overlay (PAO) still applied to the reserve. Given a Structure Plan was being prepared by State Government for the future use of the land, the corridor land was excluded from the Housing Strategy and Character Study. This approach was consistent with the designation of public land across the municipality.



### (iii) Whitehorse Neighbourhood Character Study

The Character Study provides direction for future development in residential areas by defining character types and precincts. Each precinct has a preferred character statement and set of guidelines that address character elements such as gardens and landscaping, siting, lot size, building height and form, and materials and design detail. The Character Study was adopted by Council on 28 April 2014 and is referenced under Clauses 21.06 and Clause 22.03.

The subject sites are located within the identified BS9 Precinct. The reservation land contained within the PAO3 was identified as non-residential land.

The existing characteristics of the BS9 Precinct were identified as:

- Architectural style is a mix of post-war 1950s through to 1980s dwellings, with some contemporary infill.
- Materials are a mix of brown brick and timber, with tiled roofs.
- There is a mix of dwelling heights, including double storey and split level dwellings.
- Dwellings are predominantly detached with some semi-detached infill (units and townhouses).
- Front setbacks are 4-8m, with 1-4m side setbacks from both side boundaries. Some areas have larger front setbacks of 9m or above. Rear setbacks vary from 6-16m. Some new developments have smaller rear setbacks.
- Garages and carports are generally located behind the dwelling, along the side boundary with a single crossover.
- Front fences are predominantly non-existent or planted with vegetation. Where front fences exist, they are generally low (up to 1.2m) and constructed of timber or masonry.
- Gardens are established and well-planted comprising shrubs, lawn areas and mature canopy trees, including many tall, native gums that provide a significant contribution to the bush canopy of the area.
- Roads are sealed with upstanding kerbs and footpaths on both sides.
- Street trees are predominantly mixed species with regular spacing and of mixed sizes.
- The topography of the area is predominantly rolling but with hilly areas to the east.

The preferred character statement for the BS9 Precinct identifies:

- key elements:
  - the dominance of tall canopy trees will remain a key characteristic of the bushy landscape
  - dwellings will be modest in size and partially obscured by vegetation
  - tall, native trees within streets and private gardens will enhance the bushy character
  - regular setback patterns will be maintained
- Guidelines:
  - site coverage should not exceed 40 per cent
  - permeable surface coverage should achieve a 40 per cent minimum
  - buildings should not exceed two storeys (8 metres) in height
  - side setbacks should be at least 1 metre from one side boundary and at least 3 metres from the other side boundary
  - a separation of at least 3 to 4 metres should be provided between dwellings on the site
  - buildings should be set back a minimum distance of 5 metres from the rear boundary
  - private open space that is at least 5 metres by 5 metres should be provided to each dwelling

- buildings should be setback from a park interface
- the minimum subdivision area should be 320 square metres
- at least two canopy trees with a mature height of 12 metres should be planted.

The Character Study identified two precincts for further investigation, including the BS9 Precinct, for potential inclusion in the Bush Environment character type and potential for additional landscape overlay controls. Council advised that this recommendation had not been pursued because of the subsequent application of the Significant Landscape Overlay Schedule 9 – Neighbourhood Character Areas (SLO9) in 2018 on an interim basis (to June 2022), but would be following an anticipated State-wide review of the SLO.

## 2.3 Planning scheme provisions

A common zone and overlay purpose is to implement the MSS and the PPF.

### (i) Zones

The land is in the GRZ. The purposes of the Zone are:

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

The land is proposed to be included in the NRZ. The purposes of the Zone are:

- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

The NRZ Schedule 3 (Traditional Bush Suburban Areas) does not identify neighbourhood character objectives, a minimum subdivision area or height. It identifies variations to the following requirements of Clause 54 (One Dwelling on a Lot) and Clause 55 (Two or more Dwellings on a Lot and Residential Buildings):

- Site coverage (A5 and B8)
- Landscaping (Standard B13)
- Side and rear setbacks (Standards A10 and B17)
- Walls on boundaries (A11 and B18)
- Private open space (Standard A17 and B28)
- Front fence height (Standards A20 and B32).

THE GRZ5 schedule contains no variations to Clause 54 or Clause 55 standard requirements unlike GRZ1, GRZ2, GRZ3 and GRZ4. The GRZ5 only applies to the former Freeway Reserve lots.

Table 3 includes a summary of the key difference in requirements between the GRZ5 and NRZ3 with the identified standards for single dwellings on a lot (Clause 54 standards identified by an 'A') and multiple dwellings on a lot (Clause 55 standards identified by a 'B').

**Table 3 Summary of key standard requirement differences between GRZ5 and NRZ3**

Requirements	GRZ5	NRZ3
Subdivision minimum	400 - 500 sqm 25%	No change
Garden area requirement	Above 500 - 650 sqm 30% Above 650 sqm 35%	
Height	11 metres (3 storeys)	9 metres (2 storeys)
Minimum street setback	As per A3 and B6	No change
Site coverage (A5 and B8)	60% maximum as per A5 and B8	Maximum 40%
Permeability	20% minimum as per A6 and B9	Minimum 40%
Landscaping	As per B13	Minimum of at least 2 canopy trees per dwelling with potential to reach minimum mature height of 12 metres
Side and rear setbacks	Building not on or within 200mm of a side or rear boundary as per A10 and B17:  - 1 metre, 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	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
Walls on boundaries	New wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of lot should not abut the boundary as per A11 and B18 for a length of 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot	No walls to be constructed on boundaries
Private open space	A17 - 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 sqm. At least one part should consist of secluded private open space with a minimum area of 25 sqm and a minimum dimension of 3 metres at the side or rear of the dwelling  B28 - an area of 40 sqm, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building	A dwelling should have private open space consisting of an area of 80 sqm or 20 per cent of the area of the lot, whichever is the lesser, but not less than 40 sqm. At least one part of should consist of secluded private open space with a minimum area of 35 sqm and a minimum dimension of 5 metres and convenient access from a living room. It cannot include a balcony or roof top terrace  A dwelling or residential building should have private open space consisting of an area of 40 sqm, with one part at the side or rear of the dwelling or residential building with a

Requirements	GRZ5	NRZ3
	with a minimum area of 25 square metres, a minimum dimension of 3 metres plus balcony and rooftop minimum areas and dimensions	minimum area of 35 sqm, a minimum dimension of 5 metres accessible from a living room. It cannot include a balcony or roof top terrace
Front fence height	As per A20 and B32: - Streets in a Road Zone Category 1 maximum 2.0 metres - Other streets 1.5 metres	Streets in a Road Zone Category 1 or 2 should not exceed 1.8 metres A front fence within 3 metres of a street should not exceed 1 metre in 'other streets'

## (ii) Overlays

34-40 Moore Road is affected by the Heritage Overlay (HO63) applying to the 'Mirrabooka' residence. The Heritage Overlay requires a planning permit to subdivide the land, demolish or remove a building or to construct a building. The Schedule to the Heritage Overlay does not nominate any vegetation on the site that requires a permit for its removal. The Amendment does not propose any changes to HO63. A Heritage Overlay (HO62) also applies to 'Willowbank' (29 Moore Road) to the north of 37-43 Moore Road.

All three sites (and the adjoining land and surrounding residential neighbourhood) are affected by the SLO9 which seeks to retain and enhance the canopy tree cover of the Garden and Bush Suburban Character Areas and ensure that development is compatible with the landscape character of the area.

SLO9 identifies the Bush Suburban Neighbourhood Character Area as generally having:

... a mix of formal and informal streetscapes with wide nature strips and streets are dominated by vegetation with buildings partially hidden behind tall trees and established planting.

Gardens are less formal, consisting of many canopy trees and property boundary definition can be non-existent or fenced. Buildings appear detached along the street and generally comprise pitched rooftops, with simple forms and articulated facades.

SLO9 seeks to achieve the following landscape character objectives:

To retain and enhance the canopy tree cover of the Garden and Bush Suburban Neighbourhood Character Areas.

To encourage the retention of established and mature trees.

To provide for the planting of new and replacement canopy trees.

To ensure that development is compatible with the landscape character of the area.

A planning permit is required under SLO9 to construct a building, undertake works and to remove, destroy or lop any vegetation. Vegetation not requiring a permit for removal or lopping includes trees less than five metres and a trunk circumference of less than one metre at a height of one metre above ground level, a tree within 3 metres of an existing dwelling or swimming pool, an identified environmental weed, for pruning, dead, dying or dangerous trees, and for the protection of utilities. The SLO9 is not affected by the Amendment.

Council advised that the SLO9 exists as an interim control pending a wider state review of the SLO.

## 2.4 Planning Policy Framework translation

Council advised that the transition of the Whitehorse Planning Scheme MSS and Local Planning Policies to the PPF format introduced by Amendment VC148 is currently in progress following a series of drafts and officer workshops with DELWP. It anticipates the project will be finished in the next few months and that a policy neutral translation process will be implemented using an expedited planning scheme amendment process under section 20(4) of the PE Act. Council noted that this translation would result in the removal of the two dwelling limitation referred to in Clause 22.03 consistent with the removal of that limitation in the NRZ through Amendment VC110 in 2017.

## 2.5 Ministerial Directions and Practice Notes

### Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments). That discussion is not repeated here.

The Amendment complies with the requirements of the Ministerial Direction on the Form and Content of Planning Schemes. The Amendment is consistent with Ministerial Direction No. 9 – Metropolitan Planning Strategy, and with Plan Melbourne 2017-2050 being the relevant Metropolitan Planning Strategy.

### Planning Practice Notes

Council identified that the application of the NRZ3 was consistent with the strategic considerations set out in *Planning Practice Note 46 Strategic Assessment Guidelines, August 2018* (PPN46) and was underpinned by its Housing Strategy and Character Study by applying the NRZ to a minimum change area consistent with *Planning Practice Note 90 Planning for housing, December 2019* (PPN90) and *Planning Practice Note 91 Using the residential zones, December 2019* (PPN91). These Practice Notes are discussed in more detail in Chapter 3.

## 3 Strategic justification

### 3.1 The issues

The issues are whether the application of the NRZ3 to the subject land:

- is consistent with its physical attributes, character and location
- is consistent with the Housing Strategy and Character Study, MSS and Local Planning Policy
- is supported by the objectives of planning in Victoria, the broader PPF, relevant Planning Practice Notes and other strategic documents
- is strategically justified.

### 3.2 Evidence and submissions

#### Supporting submission

Submission 1 supported the Amendment considering that there were “*plenty of areas in Whitehorse zoned for increased development*” and that Limited Change Areas were under threat of development that impacted neighbourhood character and the environment.

#### Opposing submissions

Submitters 5 and 6 were represented by Mr Hofmann of Rigby Cooke Lawyers who provided a joint written submission to the Hearing which expanded on the original submissions, and who called the planning evidence of Mr Milner.

Mr Milner considered the GRZ was the appropriate zone to apply to the subject land and the Amendment was not strategically justified and should be abandoned. Central to his opinion was the view that:

- the subject land contained typical constraints but also enjoyed access to a range of services including a major secondary school, golf course and open space, was within walking distance of a bus service that could access the closest activity centres and Knox medical precinct, in addition to wider access to employment nodes accessible via the nearby East Link, and would have a boundary with the future open space corridor
- the size and open nature of the lots was unique and provided a scarce opportunity to provide more innovative and diverse housing outcomes given the dominance of the single dwelling typology in the area
- housing policy had evolved significantly since 2014 and the sites now provided an opportunity to contribute to housing supply and diversity of choice and provide for 20-minute neighbourhoods consistent with the PPF and Plan Melbourne - outcomes which would be enabled by the GRZ but diminished by the NRZ
- the sites had not been fully considered in the Housing Strategy or Character Study which were silent about their housing role or landscape typology because they were in the Freeway Reservation. This was despite the land being within the Residential 1 Zone since 1999
- the sites were at the edge of Moore Road and did not replicate the character of the balance of Moore Road
- Council’s 2021 Discussion Paper had taken a narrow and retrospective view rather than a municipal or wider policy view including considering the implications for underutilisation

and optimisation of land with access to a significant future open space corridor and new centre of community consistent with principles of the *Open Space Strategy for Metropolitan Melbourne 2021: Open Space for everyone*, Victoria State Government (Metropolitan Open Space Strategy) and precinct structure planning guidelines

- PPN90 and PPN91 are intended to apply from 2019 and not retrospectively to a Housing Strategy undertaken in 2014
- it would be unfair for the role, opportunities and value of the land to be changed ('back zoned') and diminished so soon after disposal, and therefore inconsistent with the objectives of the PE Act to deliver fair and orderly outcomes
- future use and development of the land, including heritage, vegetation and character considerations could be adequately managed and respected through the planning permit process. This included options for land consolidation or directing more intense development to less sensitive site areas and addressing a major open space corridor.

Mr Hofmann adopted the evidence of Mr Milner and considered that the Amendment raised three key questions:

- was there strategic justification for the change in zoning?
- are the existing controls adequate for future development?
- what is a fair planning outcome?

Mr Hofmann submitted that the Amendment was not strategically justified, and the subject land should remain in the GRZ. The submission considered that the subject land was in a suitable location to accommodate growth given its proximity to a range of services and facilities and the surrounding context had limited sensitivity. The submission identified that the surrounding context was variable and included the strong visual presence of large medium density development sites (numerically twice as many medium density dwellings to single detached dwellings in Moore Road), two storey contemporary dwelling forms and the school campus. He submitted that much of the landscape context surrounding the sites does not meet the Bush Suburban criteria. Given this context, he submitted that the application of the NRZ was not supported by State policy or PPN90/PPN91 and not sufficiently supported by the Housing Strategy or Character Study as the land was out of scope of these strategic documents.

Mr Hofmann said the Housing Strategy was out of date in terms of forecasts of population growth (underestimated by a factor of 100 per cent based on Council's recent published forecast estimates). He considered Council's Discussion Paper had failed to undertake a proper strategic analysis to support the Amendment including consideration of affordability, housing diversity and 'ageing in place' opportunities, changes in growth projections, the concept of 20-minute neighbourhoods, the limitation of garden area requirements in areas with significant proximate open space, or strategies such as the Metropolitan Open Space Strategy. In terms of the principles of 20-minute neighbourhoods he submitted such a concept should be applied as a guide with capacity for variability and a focus on having 'reasonable' access to services (which Mr Hofmann considered it did) rather than being applied as a checklist.

In terms of site yield Mr Hofmann submitted the subject land was unlikely to be used for single dwellings given their aspect and high amenity. While no detailed site examination had been undertaken or development proposals were under preparation given ongoing uncertainty relating to the land zoning, it was estimated that the sites could collectively yield up to 90 dwellings or 75 dwellings allowing for heritage considerations (rather than the 45 dwellings cautiously advanced by Ms Rigo in her evidence for Council). While Mr Hofmann acknowledged these figures were

'back of the envelope' estimates, he submitted that for such a location, lots of around 320 square metres were still generous for medium density housing lots. Regardless of Council's acknowledgement of some medium density housing potential, local policy for Limited Change Areas still focused on the primacy of single dwelling or house extension typologies and "*some limited medium density development*".

In terms of fairness, Mr Hofmann submitted that Council had had ample opportunity to review the strategic direction of the land before its private sale, while previous 2020 correspondence from the Minister identified that Council should work with the new owners to ensure appropriate levels of development within the parameters of the GRZ. It submitted that the GRZ was consistent with the process used in the preparation of the site for sale by public process (*Victorian Government Land Transactions Policy and Guidelines 2016*) which was to apply the most appropriate zoning reflecting its 'highest and best use'. This concept was considered important as it would result in the delivery of a major open space asset for the benefit of the community. The land was therefore purchased on the reasonable expectation of residential development consistent with the GRZ. It was submitted that the imposition of stricter planning controls (under the NRZ3) represented an overly restrictive planning outcome or a "*retrograde*" step which would unreasonably prejudice the delivery of development on the subject land an outcome it considered neither fair nor orderly planning.

The submission considered that the existing zone and overlay controls could balance neighbourhood character, heritage and landscape outcomes sufficiently through a suitably designed residential development proposal.

Mr Hofmann submitted that while the retention of the GRZ5 was preferred and the topography of the site and vegetation characteristics could accommodate three storey heights, this was not critical to the choice of appropriate zone. He suggested that the GRZ1 or NRZ5 could be possible alternatives (policy provisions aside). While these include 50 per cent site coverage and 30 per cent permeability requirements, they are less restrictive than the NRZ3.

### **Council position**

The planning evidence of Ms Rigo supported the application of the NRZ3 to the subject land. She considered the Amendment strategically justified, logical and a largely administrative corrective change that will bring the subject land into a zoning consistent with the prevailing adjoining NRZ areas which is the 'best fit' zone for it. She formed this opinion because:

- the application of the NRZ was supported by the Housing Strategy and Neighbourhood Character Study, both of which are municipal wide and which are already embedded in the MSS and local policy, consistent with PPN90, PPN91 and PPN46
- the Housing Strategy still had currency, was relatively recent with little having changed in the area since it was completed in 2014 (noting the existing medium density housing developments in Moore and Boronia Road were in place or approved before it was finalised)
- there was no strategic assessment to establish the basis for applying the GRZ
- the physical attributes of the subject land (undulating topography, strong presence of vegetation) were consistent with the BS9 Precinct character elements and have the capacity to contribute to that character
- the subject land was not so significantly different from the surrounding land, or sufficient housing change taken place in the area to warrant a different residential zoning



- the subject lots are either fully located or partly located within the Limited Change Area or BS9 Precinct
- unsympathetic development of the subject land would be of detriment to the character of the area and the application of the NRZ3 will provide for controls that respond to the precinct's character to which the subject land is visually connected
- the NRZ3 is the most appropriate tool to apply as it is consistent with local and state policy, the purpose of the zone and the area's existing and preferred neighbourhood, landscape and heritage character and designation as an area of minimal or limited change
- the NRZ3 would still allow for medium density housing and housing diversity outcomes within the local policy framework and allow for heritage and landscape considerations
- the application of the GRZ was not consistent with the zone purpose to encourage housing diversity and growth in areas with good access to services and transport given the limited services and facilities available within an 800-metre radius of the subject land (aside from the school and open space).

Council considered the current GRZ was a straightforward proposition, particularly in the context of the remaining Freeway Reserve lots to be rezoned to PPRZ by a future amendment. It submitted that this Amendment applied its Housing Strategy and Character Study directions and made proper use of the Victorian Planning Provisions and was consistent with PPN90 and PPN91. It submitted these Practice Notes while prepared at a later date than the Housing Strategy remained relevant in assessing strategic justification.

Council considered the Housing Strategy was still current and highly relevant to the application of residential zones despite current population forecasts considerably exceeding those identified in 2014. While it had not yet reviewed the Housing Strategy, Council did monitor population projections and is comfortable that there is sufficient capacity built in to accommodate additional housing supply needs within existing residential areas (particularly with the removal of the two dwelling NRZ limit). Substantial housing development activity is also occurring or provided for within its housing growth locations including Box Hill and areas along the Principle Public Transport Network (PPTN).

Council submitted that the broader principles of building on open space assets and 20-minute neighbourhoods were embedded in the Housing Strategy's approach to zone application. It did not ascribe to Mr Milner's view that the Metropolitan Open Space Strategy and Precinct Structure Plan Guidelines provided an explicit imperative to maximise density outcomes at the interface, or to apply a more intensive residential zone. Rather it considered such documents provided high level guidance.

Council submitted that the exclusion of Healesville Freeway Reserve land from the Housing Strategy and Character Study was deliberate given the timing and status of VicRoads' ongoing strategic work at the time. By contrast to its strategic approach reflected in this Amendment, Council submitted that the application of the GRZ by Amendment C160 was the result of the then direct translation of the Residential 1 Zone to the GRZ following the residential zone reforms introduced in 2014 rather than any strategic analysis including consideration of Council's consistent advice about the application of the NRZ to this land. Council reaffirmed that earlier strategic work undertaken but not completed by VicRoads in 2013 supported the use of the NRZ in this locality, contrasting the proposed application of the GRZ west of Terrara Road.

While Council noted the presence of the existing large medium density development sites in Moore Road, it submitted this form of development was not prevalent in the wider precinct and that the precinct should be considered in the broad rather than focusing on particular pockets. It identified that the subject land contains substantial vegetation including numerous canopy trees, a topography that relates to the existing character of Moore Road, one of the sites is within a Heritage Overlay and another adjacent to a Heritage Overlay, and generally reflects the BS9 Precinct characteristics.

In terms of locational attributes, Council noted the close proximity of the secondary school and open space but noted that there are few other services to meet daily needs within an 800 metre (20-minute return trip) walkable catchment, such as activity centres (1.4 kilometres or 2.5 kilometres to a centre with a supermarket), medical services, primary schools or employment areas. Access to services is made more challenging with topography and limited local bus services (30-minute peak frequency) and distance from the PPTN. Such locational and character attributes align with the Housing Strategy's application of the NRZ and PPN90 and PPN91, and are not areas to focus affordable housing activity.

Council acknowledged while the Amendment proposes to apply a more restrictive zoning than the GRZ5, such an approach was not unusual where strategically justified. It considered the Amendment addresses a zoning anomaly that would be intensified by the proposed rezoning of the adjacent GRZ zoned Freeway Reserve land parcels to PPRZ.

Council acknowledged the subject land parcels were larger than conventional lots and could "*accommodate multiple dwellings subject to an adequate design*". In support of this it reproduced heritage advisor advice provided to the owners of 34-40 Moore Road that contemplated some multiple dwelling two storey development on the site. Council identified that any future development on the subject land would need to respond to the landscape context which included retaining established trees, planting new trees, maintaining vegetated setbacks between buildings and providing articulated second floors, sensitively respond to the future open space interface and respond to the heritage significance on adjoining heritage places.

Council did not support the application of an alternate NRZ or GRZ schedule because they would not reinforce the BS9 Precinct characteristics, reflect the Housing Strategy or Council's strategic intent for the area, and are not a logical solution.

In terms of fairness, Council advised:

- it had been consistent and active in its interactions and advocacy with the State Government and agencies about its position on zoning of the Freeway Reserve land including the subject land and the open space corridor creation since 2013
- VicRoads/the Department of Transport had advised prospective purchasers through the second tender process of Council's position regarding zoning
- it was not Council's role through the various zoning and overlay changes to the Healesville Freeway Reserve to prepare amendments while that land remained State owned
- it had had pre-application meetings with the owners of the land as to potential development outcomes
- fairness and orderly planning need to be considered in a broader context that considers community benefit and not just the interests of specific property owners.

### 3.3 Discussion

The Panel agrees with the evidence of Mr Milner and the submission of Mr Hofmann that the application of the NRZ3 to the subject land is not a straightforward technical exercise based purely on the Housing Strategy and Character Study.

While the Housing Strategy and Character Study provide a strong foundation for the application of the NRZ to the subject land, since the completion of those documents there has been a shift in housing policy across the state and particularly in metropolitan Melbourne in response to the pressures of strong population growth and housing demand and associated challenges in delivering housing diversity, choice, adaptability and affordability. This is demonstrated in the current growth rates and forecasts considerably exceeding those forecast in the Housing Strategy.

That said, the Panel is comfortable that the Housing Strategy remains robust given the growth capacity built into it. However, the Panel observes that the Strategy also contemplates the challenges associated with providing housing diversity within an established municipality with constraints including strong landscape values, topography and a strongly car-based transport network.

The Panel agrees with Council that at its simplest the subject land is only a small pocket of GRZ that is anomalous with the prevailing NRZ in this part of Vermont, particularly with the remaining Freeway Reserve lots to be rezoned and included in an open space corridor. However, the application of the more restrictive NRZ3 will result in a reduction of potential yield, particularly on lots that are large, and in themselves quite rare in this setting. It requires careful consideration. In this context it is important to balance the wider strategic housing directions for Whitehorse with those for Melbourne as a whole and to consider whether the Amendment will result in an appropriate planning outcome.

In reaching its conclusions about whether the Amendment is strategically justified the Panel has considered the following:

- the relevant policy considerations
- the role and directions of the Housing Strategy and Character Study
- whether the physical characteristics and the locational attributes of the subject land reflect land reflect those of NRZ3
- whether the application of the NRZ3 provides for the fair, orderly, economic and sustainable use and development of land.

#### Relevant policy considerations

The key PPF policies include Clause 11 which supports the role of the Housing Strategy and Clause 16 which introduces the importance of addressing housing supply and provision of housing choice, diversity and affordability. Plan Melbourne is a key strategy and seeks to optimise housing choice and affordability in locations close to jobs, services and public transport. It also introduces the concept of 20-minute neighbourhoods.

These policies point to the need to balance the housing needs of a growing population, and to build on the capacity of existing infrastructure to deliver diversity, liveable communities and access employment while managing the environment, landscape and established heritage and neighbourhood character and values of the area.

At the local level, Clauses 21.06 and 22.03 provide a clear role for the Housing Strategy and Character Study and align the designation of Limited Change and Natural Change Areas with the

application of the NRZ and GRZ. While Council and Ms Rigo's evidence considered that scope exists for medium density housing outcomes on the subject land, the Panel shares the concerns of Submitters 5 and 6 that Clauses 21.06 and 22.03 point to a very limited range of housing outcomes for the NRZ. This includes specific policy to *"limit new development to two dwellings per lot"* and the Limited Change objectives to *"ensure new development mainly takes the form of renovations to existing houses, replacement of single dwellings with new dwellings and some limited medium density development"*. It would be a reasonable reading of these policy positions in isolation to conclude that the subject land could deliver few additional dwellings or lots. In the Panel's opinion such a reading would not deliver an orderly or reasonable planning outcome for the subject land. This issue is further explored below.

### **Role of the Housing Strategy and Character Study**

There was some criticism that the Housing Strategy was out of date and Council had applied it too narrowly. While the population forecasts contained in the Housing Strategy may be out of date and Council has not undertaken the identified 5-year review, the Panel notes that Council regularly monitors population forecasts. The Panel is comfortable based on Council's closing submission explanation, that the current growth predictions and housing demand can be accommodated within the capacity analysis built into the Strategy. In addition to growth in key activity centres and along the PPTN, the removal of the two dwelling limit in the NRZ and inclusion of yields from the Freeway Reserve parcels not previously accounted for in the Housing Strategy add further potential capacity.

The Panel considers that the Housing Strategy remains robust and valid, underpinned by the Character Study consistent with PPN90 and PPN91. While PPN90 and PPN91 were introduced after the Housing Strategy was implemented, the guidance provided to the application of the NRZ and GRZ remains broadly similar to the considerations applied in the Housing Strategy and relevant guidance at the time. While it is not the role of the Panel to review the Housing Strategy, it considers that it is comprehensive and has contemplated a broad range of issues including transport access, infrastructure capacity, the location of services and facilities and character.

It is not intended however that such strategies remain static, and Council is encouraged to undertake a review of the Housing Strategy in the near future to ensure the nuances of zoning schedules and policy remain relevant and consistent with municipal housing needs and evolving metropolitan and state-wide housing policy.

In the absence of any other strategic assessment including the uncompleted Structure Plan commenced by VicRoads in 2013, the Housing Strategy remains the only clear strategic document in place for the application of residential zones across Whitehorse. It is not possible for the Panel to surmise the strategic basis for the application of the GRZ5 to the subject land, aside from the logic of a neutral translation of the Residential 1 Zone in 2014 pending the implementation of the Housing Strategy. Whatever the reason, it is largely inconsequential to the question of whether the NRZ3 should now be applied to the subject land.

The Housing Strategy is consistent in how it responds to land in public ownership by excluding it from housing change designation. This is entirely appropriate and not a basis for excluding consideration of different residential zone options for the land once it is no longer publicly owned. While the Freeway Reserve land (within the PAO) was excluded from the Housing Strategy, portions of the subject land were not. The Housing Strategy includes all of 34-40 Moore Road, approximately half of 37-43 Moore Road and small portion of 42-50 Moore Road within the

Limited Change area which applies to neighbourhoods to the north and south. There is a clear and logical basis to spatially apply the NRZ to the subject land, based on a range of characteristics of the subject land and surrounding area, including landscape character values and level of access to services.

The Panel notes that sections of the former Freeway Reserve west of Terrara Road that were also not identified in the Housing Strategy or Character Study remain in the GRZ5. This land shares a zone (and character type) consistent with the adjoining residential areas to the north.

The Panel has not relied on the built form elements of the Character Study in the consideration of the Amendment given that each site only contains a single dwelling that is well set back from Moore Road. That said, the Character Study provides context to the application of the character precincts and informs the Housing Strategy's application of residential zones. The Panel accepts Council's explanation that the approval of the two large medium density developments in Moore Road were known at the time of the Study's development. It accepts the evidence of Ms Rigo that not much has fundamentally changed in the BS9 Precinct in the interim.

The Study notes the potential review of the BS9 Precinct for inclusion in the Bush Environment character type. Given this exercise has not occurred and is not on Council's current work radar, the Panel has given no weight to it.

The Panel has also placed little weight on Council's 2021 Discussion Paper in forming its view, although found it useful in setting out the background and strategic context for the subject land.

### **Urban and landscape character of the subject land**

While some of the subject land parcels contain open areas, they are characterised by the remaining vegetation including tree canopy extent and sloping topography. Despite having a stronger visual connection with the remaining open Freeway Reserve lots, Livermore Close Park and Morack Golf Course and residential areas to the south (within the Garden Suburban Precinct 7) than the rest of Moore Road to the north, the subject land does not demonstrate the landscape characteristics of that area. Instead, its landscape attributes are much more consistent with those in the remainder of the BS9 Precinct and the NRZ3.

While it is acknowledged that the two large medium density housing developments contrast with the otherwise single dwelling and landscaped setting of Moore Street, the visual impact of the building form and height of these developments is partially ameliorated by their location within a dip in the street, with a significant portion of built form occurring below street level. The prevailing urban character of the street and dwellings along it are as described in the Character Study.

While the subject land parcels contain only single dwellings, future development of them has the potential to have a far greater impact on the character of Moore Road (particularly areas to the immediate north) if they were treated in isolation to the rest of Moore Road or in manner more consistent with the Garden Suburban character to the south.

### **Locational attributes**

There was a difference in opinion between Council, submitters and experts about how well the subject land was located to access services and facilities to meet daily needs. This was central to the argument about the application of the NRZ or GRZ in terms of zone purpose and the guidance in PPN90 and PPN91. For example, the purpose of the GRZ includes encouraging housing diversity and growth in areas "*offering good access to services and transport*" [Panel's emphasis].

Council's submission and the evidence of Ms Rigo focused on the limited range of services and facilities to fulfill daily convenience needs within an 800-metre walkable distance, also noting the challenges of localised topography and distance from the PPTN. Mr Milner took a broader view that the subject land was still very much proximate to other services and employment opportunities.

The Panel agrees with Mr Milner that while accessibility to services and facilities is an important consideration in the application of residential zones, it should not be relied on in isolation or applied in a manner that denies opportunities to increase housing diversity.

The issue of accessibility was explored by all parties through the principles underpinning the 20-minute neighbourhood concept. These were interpreted and applied somewhat differently between Council and Mr Milner, including whether some, most or all of the features of the concept needed to be met, and whether those features should be accessible within 20 minutes on foot or using other active transport modes. Both Council and Mr Milner acknowledged the concept is evolving, being further refined, and that it should not be applied as a checklist.

The 20-minute neighbourhood concept is an important one in the planning of new communities. In established urban areas it is useful in understanding the sorts of services and facilities that are desirably accessible where housing density is to be increased, but it is not practical to apply it slavishly.

The Panel notes that PPN91 identifies that *"it is no longer appropriate to limit housing growth in existing urban areas just because an area is perceived to be remote from jobs, services and public transport"*. In the Panel's view, the subject land is not so remote from basic services as to render medium density housing outcomes inappropriate. Indeed, on its face, the opportunity to interface with a new open space corridor and utilise a unique 2.7 hectare area that has access to a wide range of services within a short drive presents a reasonable opportunity for a more diverse housing outcome.

Similarly, while the PPF encourages leveraging infrastructure including services and open space assets, these strategies do not in themselves suggest that yields should be maximised where such assets and services exist.

In this case, however, it is the landscape, built form and heritage character considerations and the policy settings that are more determinative. The less intensive development contemplated under the NRZ is more consistent with the landscape, built form and heritage character of the area and the housing change considerations reflected in the policy framework. The Panel considers that it is the more appropriate zone.

### **Planning Practice Note 91**

PPN91 identifies that the:

- GRZ is *"applied to areas where housing development of three storeys exists or is planned for in locations offering good access to services and transport"*
- NRZ is *"applied to areas where there is no anticipated change to the predominantly single and double storey character. Also to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area"*.

While there are some limited examples of three storey development on the medium density housing developments in Moore Road, they are not prevalent. The prevailing and preferred height

in the adjoining precincts is one and two storeys, with single dwellings on larger lots. The Panel accepts that the subject land could potentially absorb some limited three storey development provided it was appropriately sited and allowed for retention of canopy vegetation. However the subject land is not so well located to public transport, or sufficiently large or free of constraints, to be considered an appropriate or strategically justified location to encourage increased height or density.

The Panel considers that the subject land is not so very different from the Bush Suburban Precinct 9 to support a different zoning approach. Consistent with PPN91 it contains:

- heritage values, specifically to 34-40 Moore Road, while remaining two parcels require consideration of adjoining heritage place values through the application of Clause 22.01
- the identified character and landscape values of the precinct.

In this context, the use of the NRZ is more appropriate, and is strategically the best fit for the subject land. It is consistent with the zoning regime encouraged under Council's Housing Strategy, which has been consistently applied across Whitehorse.

### **Fair, orderly, economic and sustainable use, and development of land**

The remaining question for the Panel is whether the Amendment provides for a fair and orderly planning outcome given the size and locational attributes of the subject land and the site development based policy constraints.

The evidence of Mr Milner and submission of Mr Hofmann suggested that the Amendment was neither fair (given the timing, lack of justification and resultant economic impacts based on land purchase expectations and loss of potential yield) nor orderly planning (lost opportunity).

The NRZ is more restrictive in terms of housing outcomes than the GRZ. As identified in Table 3 the NRZ3 contains several ResCode standard variations that exceed those of the GRZ5 including requirements for canopy tree planting, additional side setbacks, building on boundaries and open space dimensions. The most significant differences relate to:

- site coverage maximums - 60 per cent (GRZ5) and 40 per cent (NRZ3)
- permeability minimums - 20 per cent (GRZ5) and 40 per cent (NRZ3).

The Amendment will result in a substantial reduction of potential site lot/dwelling yields. The estimates for potential yield ranged from 45 dwellings/lots in the NRZ3 (Rigo) to 75-100 dwellings/lots under the GRZ5 (Hofmann).

It is difficult for the Panel to speculate about the real yield impacts without any party presenting a more considered analysis. Regardless of the zone in place, the Panel notes that the starting position for Clause 55 or Clause 56 applications should be a site analysis and design response before considering the particular standards of ResCode, Zone provisions and planning policy. However, based on site coverage maximums alone the impact could be in the order of a 30 to 50 per cent reduction in yield.

The Panel is aware of the implications of applying a more restrictive zone, and has not approached the matter lightly. However, the reduction in yield does not alter the Panel's conclusion that the NRZ3 is the right zone fit for the subject land. While the provisions of the NRZ3 are more restrictive, they align with the Limited Change designation and character attributes being sought for the precinct including retention and planting of canopy vegetation and landscaped setting.

The Panel agrees with Council that a more orderly planning outcome is to ensure that the subject land is zoned consistently with the precinct it is part of. The Panel notes that with the proposed

rezoning of the balance GRZ5 Freeway Reserve lots to PPRZ the subject land will be the only lots within the Whitehorse Planning Scheme with the GRZ5 zoning. Schedule 5 to GRZ, unlike the other schedules (1 to 4) that apply to the GRZ across the municipality to Natural Change Areas and reflect particular character outcomes sought in the Character Study, contains no ResCode standard variations. This outcome reinforces the anomalous situation associated with the retention of the GRZ5. The suggestion that an alternative schedule be used matching either that of GRZ1 or NRZ7 (50 per cent site coverage and 30 per cent permeability) however lacks any real strategic merit or logical basis and would maintain a situation where there is an anomalous zoning regime in place located within a relatively isolated part of a wider precinct.

The Panel has grappled with the issue of how local policy in Clauses 21.06 and 22.03 may impact upon the realisation of a reasonable density of housing for the subject land. The Panel considers that allowing only one or two dwellings on each of the lots would not be a reasonable planning outcome given their size and locational attributes (including proximity to a future open space corridor). However Clauses 21.06 and 22.03 are policy, and as such, decision makers have the discretion to consider a more intensive development, taking a broader and holistic policy view and acknowledging the large size and locational attributes of the individual parcels.

The Panel welcomes the evidence of Ms Rigo that a reasonable yield could be anticipated and Council's acknowledgement of medium density housing outcome potential. The Panel is generally satisfied that with this approach, and is satisfied that the application of the NRZ3 will provide for an orderly planning outcome.

The Panel observes that the concept of 'fair' under the PE Act should be viewed in context, along with the other objectives in section 4. In this context, fairness has a broader meaning than fairness to an individual landowner. In any event, the Panel notes that Council has been consistent in its communication with landowners and through its advocacy for rezoning and application of its Housing Strategy for almost a decade. It is apparent that potential purchasers of two of the lots in 2020 were advised of Council's position regarding zoning. The Amendment cannot therefore be said to have been unanticipated or coming from 'left field'.

The Panel considers that the Amendment will result in a wider net community benefit through the application of a zone consistent with adjoining land and the retention of established landscape and built form character.

### 3.4 Conclusions and recommendations

The Panel concludes:

- The Amendment is supported by, and implements, the relevant sections of the PPF, MSS, Local Planning Policy Framework and Council's Housing Strategy and Character Study.
- The Amendment is supported by, and implements the relevant Ministerial Directions and Practice Notes.
- The Amendment is well founded and strategically justified.
- The Amendment delivers net community benefit and sustainable development as required by Clause 71.02-3.

The Panel recommends:

1. **Whitehorse Planning Scheme Amendment C231whse be adopted as exhibited.**



## 4 Impacts of future development

### (i) The issue

The issue is whether the future impacts of development of the subject land are relevant to the Amendment.

### (ii) Evidence and submissions

Submissions 3 and 4 were concerned about the impacts of the future development of the subject land. These concerns included the impact on:

- neighbourhood character and amenity
- the environment, including on vegetation and habitat values
- traffic volumes and access for emergency vehicles and garbage trucks.

Submission 3 was concerned that development of the subject land would increase traffic flows in Moore Road and impact on the “*peace and tranquillity*”. It sought the termination of Moore Road (and its designation as a No Through Road) at 26 Moore Road and access to the subject land via Livermore Close. The submission considered Moore Street was already too narrow to accommodate garbage collections and emergency vehicles, particularly when cars were parked on street opposite each other.

The submission further considered that the Amendment would impact vegetation (native trees) and fauna and called for an environmental study to be undertaken.

Submission 4 raised similar concerns to submission 3, identifying the impact further medium density housing would have on traffic and street congestion including resulting emergency vehicle delays, peace and quiet and disturbance of wildlife.

As identified in Chapter 3, Mr Hofmann’s submission and Mr Milner’s evidence considered that that the existing planning controls were adequate to guide the future development of the land.

Council submitted that the Amendment did not affect the road access to the subject land and any decisions regarding the upgrading of the Moore Road or new connections would be determined through the planning permit phase for development of the subject land. It advised that it had no current intentions to construct the remaining section of the road reserve to connect Moore Road to Livermore Close.

Council further submitted that any future planning permit process would enable amenity and neighbourhood character impacts to be considered. It acknowledged the submitter concerns about potential development impacts on native flora and fauna and noted that the trees on the subject and adjoining land including the road reserve and open space areas “*created a dominant tree canopy tree presence that provides habitat and habitat links for native wildlife*”. While future development would require a planning permit including assessment under SLO9, the retention and enhancement of canopy vegetation was consistent with SLO9, the BS9 character classification and the NRZ3.

### (iii) Discussion

The concerns of submitters 3 and 4 arise from the development of the subject land and not from the rezoning. The subject land is already in a residential zone and able to be developed subject to a planning permit. The planning permit process allows for the consideration and assessment of

subdivision and development (including medium density housing proposals) under the provisions of the zone, the SLO9, the Heritage Overlay (where it applies) and relevant particular provisions (such as 'Clause 55 Two or more Dwellings on a lot and Residential Buildings' and 'Clause 56 Residential Subdivision' or 'Clause 52.17 Native vegetation' for lots greater than 0.4 hectares). Any development proposal would need to be assessed against relevant planning policy including the PPF and Clauses 21.06, 22.01, 22.03 and 22.04.

The permit process provides for the consideration of amenity, built form, traffic and parking and canopy tree or native vegetation removal in the context of a particular proposal. This applies regardless of the Amendment and the residential zone that applies (albeit that the residential zones have different purposes and schedule provisions). The permit process is the appropriate stage to consider these potential impacts, noting that the application of the NRZ3 would likely result in a lower development yield and therefore less potential for impact than the GRZ5.

**(iv) Conclusion**

The Panel conclude that the impact of future development of the subject land is not relevant to the Amendment and are properly the considerations of the planning permit process.

## Appendix A Document list

No.	Date	Description	Provided by
1	31 Jan 22	Council Part A submission	Council
2	1 Feb 22	Expert evidence of Sandra Rigo, Hansen Partnership	"
3	"	Expert evidence of Rob Milner, Kinetica	Rigby Cooke Lawyers
4	7 Feb 22	Council Part B submission	Council
5	"	Council Part B submission PowerPoint slides	"
6	"	Submission of Moore Residence Pty Ltd and Morack Residence Pty Ltd; Ming Chen and Jenny He	Rigby Cooke Lawyers
7	"	Victorian Government Land Transactions Policy and Guidelines 2016	"
8	8 Feb 22	Email from Department of Transport to Council dated 7 February 2022 relating to land sales documentation	Council
9	"	Council meeting minutes of 23 April 2018 relating to Council Report item '9.4.3 Surplus Government Land First Right of Refusal'	"
10	"	Council website link to Forecast Mapping tool – Forecast dwellings and development map	"
11	9 Feb 22	<i>O'Connell Street Developments Pty Ltd v Yarra CC</i> VCAT decision	Rigby Cooke Lawyers
12	"	Open Space Strategy for Metropolitan Melbourne 2021	"
13	"	Department of Transport correspondence to tenderers for purchase of 37-43 and 42-50 Moore Road including updated Vendor Statement	"
14	"	Email advising no formal notice provided to purchasers of 34-40 Moore Road by Department of Transport regarding Council's position on zoning	"
15	"	Council closing submission	Council