



*Planning and Environment Act 1987*

# Panel Report

Glen Eira Planning Scheme  
Amendment C124

**30 January 2015**

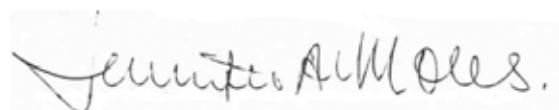


*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Glen Eira Planning Scheme Amendment C124

30 January 2015

A handwritten signature in black ink, appearing to read "Jenny Moles".

Jenny Moles, Chair

## Contents

	Page
<b>1</b> <b>Background.....</b>	<b>1</b>
1.1 Issues dealt with in this report.....	3
<b>2</b> <b>Strategic planning context .....</b>	<b>4</b>
2.1 State Planning Policy Framework.....	4
2.2 Local Planning Policy Framework.....	4
2.3 Strategic Assessment.....	5
<b>3</b> <b>Which residential zone should be applied ? .....</b>	<b>6</b>
3.1 The issue .....	6
3.2 Submissions .....	6
3.3 Discussion .....	7
3.4 Conclusion .....	8
<b>4</b> <b>The extent of traffic and parking pressures.....</b>	<b>9</b>
4.1 The issue .....	9
4.2 Submissions .....	9
4.3 Discussion .....	10
4.4 Conclusion .....	10
<b>5</b> <b>Summary of Conclusions and Recommendation .....</b>	<b>11</b>
5.1 Summary of conclusions.....	11
5.2 Recommendation .....	11

### Appendix A List of Submitters

## List of Figures

	Page
Figure 1: Subject site and surrounds.....	2

## Amendment Summary

<b>The Amendment</b>	Glen Eira Planning Scheme Amendment C124.
<b>Subject Site</b>	16-20 Clairmont Avenue, Bentleigh.
<b>Purpose of Amendment</b>	Rezoning from industrial to residential with Environmental Audit Overlay.
<b>The Proponent</b>	CS Town Planning Pty Ltd on behalf of AGA Australia Pty Ltd.
<b>Planning Authority</b>	Glen Eira City Council.
<b>Authorisation</b>	A02879, 22 August 2014.
<b>Exhibition</b>	18 September to 20 October 2014.

## Panel Process

<b>The Panel</b>	Ms Jenny Moles.
<b>Directions Hearing</b>	11 December 2014 at Caulfield.
<b>Panel Hearing</b>	20 January 2015 at Caulfield.
<b>Site Inspections</b>	Unaccompanied, 10 December 2014.
<b>Appearances</b>	Ms Hanna Pascoe represented the Planning Authority. She was assisted by Ms Tracey Mihalos. There was no appearance by any submitter. Mr Paul O'Shea of CS Town Planning Pty Ltd was in attendance at the Hearing on behalf of the Amendment proponent but did not make a submission.
<b>Submissions</b>	Three written submissions were received: two opposed the Amendment and one (signed by six persons) supported the Amendment.
<b>Recommendation</b>	The Amendment be adopted as exhibited.
<b>Date of this Report</b>	30 January 2015

## 1 Background

Glen Eira Planning Scheme Amendment C124 (the Amendment) was prepared by the Glen Eira City Council as Planning Authority. As exhibited, the Amendment proposes to:

- Rezone the land at 16-20 Clairmont Avenue, Bentleigh from Industrial 3 Zone (INZ3) to General Residential (Schedule 3) Zone (GRZ3).
- Apply the Environmental Audit Overlay (EAO) to the land.

The officer report to the Council meeting of 25 November 2014 concerning the Amendment described the subject site and surrounds as follows:

*The subject site is approximately 2,400<sup>1</sup> square metres in area. Land to the north and east is zoned Neighbourhood Residential Zone. Land to the south is within a Residential Growth Zone. Land to the west (fronting Nepean Highway) is zoned Commercial 2 and is occupied by car dealerships.*

*The subject land was occupied by the Apprenticeships Group Australia (AGA) until December 2013. The company provided apprenticeship training to young people.*

*AGA has been consolidating its sites across Melbourne and has recently closed the Bentleigh site.*

*The proposal seeks to rezone this industrial parcel of land to a residential zone (General Residential Zone - Schedule 3).*

*Schedule 3 implies infill development. Mechanically it is identical to GRZ Schedule 2 (transition zone). GRZ3 only applies in one other site, namely the former Alma Club. (In the Alma Club site Council requested a NRZ but the Minister created the GRZ3 zone and labelled it appropriate for infill sites).*

*A residential use is prohibited under the current industrial zoning. The rezoning will allow residential use of the site subject to the normal application process which has full public consultation and VCAT rights.*

*The proposed Environmental Audit Overlay (EAO) will ensure the land is appropriate for a sensitive residential land use.*

Figure 1 shows the location of the Amendment site in relation to surrounding land uses.

The Amendment was prepared at the request of CS Town Planning Pty Ltd on behalf of AGA Australia Pty Ltd. (the proponent) and was authorised by the Department of Transport, Planning and Local Infrastructure (DTPLI)<sup>2</sup> on 22 August 2014.

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<sup>1</sup> Actually 2475 square metres.

<sup>2</sup> Now Department of Environment, Land, Water and Planning.

Figure 1: Subject site and surrounds



The Amendment was placed on public exhibition between 18 September and 20 October 2014, with two opposing submissions received. The officer report to Council on the submissions summarised the objections as follows:

- *Support the proposal to rezone the land from industrial to residential, but disagree with the proposal to rezone to Schedule 3 of the General Residential Zone (GRZ3).*
- *The subject site is located within a Minimal Change Area and: Ormond, McKinnon and Bentleigh are interwar garden suburbs.*
- *The proposed rezoning does not achieve the appropriate fit within the established character of the street, and does not protect the low rise character of the neighbourhood.*
- *The proposed zoning to GRZ3 would allow for a 3 storey building which is in direct contradiction with the neighbourhood residential character of the established street.*
- *The zoning would allow for a higher residential density which could lead to traffic congestion, noise and overlooking.*
- *Council should rezone land to the Neighbourhood Residential Zone (NRZ1) to align with the current zoning of the established street and its neighbourhood residential character.*
- *Council should rezone the land to only allow for townhouses to be built.*

A petition signed by six persons supporting the Amendment was also received in response to exhibition. The grounds of support were:

- *Currently there are ongoing issues from the current use operating from the site:*
  - *Lack of on-street parking due to employees parking on the street all day.*

- *Heavy trucks dropping off vehicles outside of business hours.*
- *Noise from the building vents.*
- *Rezoning the land to residential would vastly improve the situation.*

At its meeting of 25 November 2014, the Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation by the Minister for Planning. Mr Trevor McCullough was initially appointed as the Panel on 27 November 2014. The Panel was reconstituted as Ms Jenny Moles on 11 December 2014.

## **1.1 Issues dealt with in this report**

The Panel has considered all written submissions, as well as Council presentation at the Hearing. It is clear that all submitters, the Council and the proponent support the rezoning of the land from industrial to residential.

The Panel has identified the following as the principal matters as requiring consideration and advice:

- The strategic planning context including policy support for the rezoning.
- Whether the GRZ3 rather than the Neighbourhood Residential Zone (Schedule 1) (NRZ1) is the appropriate zone having regard to the character of the area.
- Do the traffic movement and parking demands on the street recommend against a zone which would potentially allow a higher density residential development on the land and how might increased on street parking pressures be avoided or managed in the context of more intensive residential use of the land.

This report deals with the above issues in the following chapters. The Panel's recommendation follows.

## 2 Strategic planning context

The Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. At the Panel Hearing, Ms Pascoe also identified the key planning policies relating to the proposed residential rezoning.

In summary they were:

### 2.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

- Clause 11 – Settlement.
- Clause 13.03-1 - Use of Contaminated and Potentially Contaminated Land.
- Clause 16 - Housing.

The Council also submitted that the Amendment is supported by the following aspects of the Metropolitan Planning Strategy – *Plan Melbourne*:

- Direction 2.1 Understand and plan for expected housing needs.
- **Direction 2.2 Reduce the cost of living by increasing housing supply near services and public transport.**
- Initiative 2.2.5 Facilitate the remediation of contaminated land particularly on sites in developed areas of Melbourne with potential for residential development.
- Direction 4.1 Create a city of 20 Minute neighbourhoods.

### 2.2 Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.04 - Housing and Residential Development.
- **Clause 21.12 – Transport.**
- **Clause 22.08 – Minimal Change Area Policy.**

With respect to the latter policy in particular, it was the Council's submission that the site, by virtue of its size, met one of those characteristics which the policy identifies as making a lot suitable for more than two dwellings.

The following policy components are particularly pertinent:

*It is policy to:*

- *Enable new residential development whilst protecting existing neighbourhood character.*
- *Encourage the development of new single dwellings, extensions to existing dwellings and primarily allow only two dwelling developments on conventional sized lots.*
- ***Consider developments of more than two dwellings provided it is clearly demonstrated that the standards for site coverage, rear setback and private open space in the Schedule to the General Residential Zone have been met. Circumstances where more than two dwellings may be achieved could include any of the following:***

- *Where the site is in an area characterised by larger than conventional lots.*
- *Where the site is significantly larger than the majority of properties immediately abutting the title boundary and the properties directly opposite.*
- *Where the prevailing development in the street and neighbouring streets is predominantly characterised by multi-unit development.*
- ....
- *Recognise that key pre-existing development sites over 2000m2, including transitional sites (eg sites once used for industry or other redundant uses) and existing residential sites, may be rezoned and developed in minimal change areas:*
  - *With a higher development yield than would normally apply in minimal change areas.*
  - *Incorporating a range of multi-unit developments.*
  - *Ensuring that any multi-unit residential development is consistent with the prevailing streetscape scale, especially along the perimeter of sites.*

## 2.3 Strategic Assessment

The Panel has reviewed the strategic planning policies and agrees with the Council that the Amendment is supported by, and implements, the pertinent sections of the State and Local Planning Policy Frameworks.

### 3 Which residential zone should be applied?

#### 3.1 The issue

The two opposing submissions argued that it was inappropriate to apply GRZ3, and the NRZ1 should instead be applied to the land.

#### 3.2 Submissions

One of the written submissions argued that the application of the NRZ was appropriate, (being the most restrictive or low density residential zone) on the basis that the site is located in an identified Minimal Change Area and in Character Area 13: Ormond, McKinnon and Bentleigh which are described as interwar garden suburbs with modern overbuilding. It was also said that the GRZ3 would not achieve the appropriate fit within the established character of the street nor protect the low rise character of the neighbourhood. In particular there was concern that the GRZ3 would allow for three storey development which, it was said, would be inconsistent with the character of dwellings in the street. It was said that this could lead to traffic congestion as discussed below, as well as additional noise and overlooking.

The second objecting submission acknowledged that his concerns are really matters to be dealt with in relation to a future permit application. While acknowledging also that rezoning to a zone (NRZ1) which would permit only two residences on this large lot would not be appropriate, he nevertheless expressed concern that:

*... the owner/future developer of the site will attempt to build apartments and put as many as they can on the block as possible without regard for the effect that it will have on the street.*

The submitter wrote that the street has '*already passed breaking point in terms of traffic and lack of parking*'. It was suggested that the street is overly busy and '*almost unliveable*' and that people are moving out.

The officer's report to Council on the rezoning noted the Planning Conference discussions with the submitters had included that residential use is appropriate but there was opposition to a further aged care facility in the area.

That report also noted that the provisions of the NRZ do not enable large sites to be developed more intensely as was previously allowed under the Minimal Change Area Policy (in combination with the Residential 1 Zone). It was said that the NRZ1 would allow only two dwellings on this 2400 square metre site which would not be a suitable planning outcome. The report also included that applications in the GRZ3 would have to have regard to neighbourhood character while enabling moderate housing growth. Further, while three storey development would be permissible, it could not be more than 10.5 metres in height.

It was noted that the processing of any development application has built-in public consultation opportunities and appeal rights.

The Panel specifically asked that the Council address it on the operation of the NRZ1 zone in relation to large sites such as this one.

At the Hearing, Ms Pascoe advised that, if the land were zoned NRZ, only two dwellings would be permitted unless the lot was further subdivided. If the land were subdivided, she said, it would nevertheless be constrained by a two storey or eight metre maximum height limit under the NRZ, when a three storey building might be accommodated without detrimentally impacting on adjoining dwellings.

She advised that the only other property in Glen Eira that is zoned GRZ3 is also a large property previously used for non-residential purposes and proposed for residential redevelopment. It is similarly in a former Minimal Change Area and had been proposed by the Council to be included in the NRZ at the time the new residential zones were introduced. This was on the basis that this would represent a policy neutral change for the site. However, the Minister instead rezoned the property to GRZ, introducing the new Schedule 3 to be applied to 'infill residential sites'.

### 3.3 Discussion

The objecting submissions correctly identify that the prevailing residential zone in this locality is the NRZ and that Clairmont Avenue is characterised by one and two storey residential developments which date from the inter-war period to the present day. The Panel agrees that the application of the NRZ would be largely appropriate if it were not for the fact that that zone makes no proper allowance for development of redundant larger sites such as the subject site.

A key difficulty with application of the NRZ is that one requirement that would apply to the land would be that at Clause 32.09-3. It provides:

*The number of dwellings on a lot must not exceed the number specified in a schedule to this zone. If no number is specified, the number of dwellings on a lot must not exceed two.*

There is no other number of allowable dwellings in the schedule to the zone.

While it might be possible for a multi-unit development to be developed on the subject site by subdividing the land in advance of construction<sup>3</sup>, in my view this would not be a practical approach to development of the site, especially if the development involved dwellings on more than one level. The provisions of the NRZ may well be have been designed to place stringent limits on the intensification of housing on prevailing standard sized house lots, but the absence of any provisions recognising the possible presence of larger sites within that zone with potential for redevelopment is a strange omission.

Accordingly, I agree with the Council that it is not reasonable in terms of making efficient use of the land for residential purposes to include the land in the NRZ. The GRZ3 is an appropriate choice – a zone specifically designed for in-fill sites.

I also agree with the Council that it would be possible to accommodate three storey development on this large site (or at least part of it) without detrimentally affecting either the amenity of the neighbours or significantly altering neighbourhood character. The site

<sup>3</sup> The NRZ does contemplate multi unit development occurring within that zone: Clause 31.09-5 refers to 'construction or extension of two or more dwellings on a lot' (Panel emphasis).

backs onto commercial uses along Nepean Highway and substantial building form is presented to this rear access street. A third level might be designed to be visually recessive when viewed from Clairmont Avenue. As noted above, the NRZ does not allow three storey development but the GRZ3 does.

Further, I agree with the Council submission and the submitter acknowledgement that the amenity issues of concern to the objecting submitters are matters that will be addressed in detail when any multi-dwelling development would be proposed under the GRZ3.

### **3.4 Conclusion**

The Panel concludes that, for the above reasons, and subject to the reasons in the following chapter, the General Residential Zone (Schedule 3) is to be preferred to the Neighbourhood Residential Zone for this site.

## 4 The extent of traffic and parking pressures

### 4.1 The issue

The issue which is raised in the objecting submissions is the already congested nature of the street in terms of traffic and parking and whether this recommends against the more intensive GRZ3 rather than the NRZ.

### 4.2 Submissions

It was said in one submission that the traffic and parking congestion is a product of school parking pressures (the school is located across the T-intersection at the northern end of the street), overflow from the Mitsubishi car yard (on Nepean Highway which has rear access to Clairmont Avenue) and movements associated with the aged care facilities in the street.

The second objecting submission said that higher residential density on the site:

*... could lead to further traffic congestion on an already congested street with the current build up (cars parking on street in both directions leaving only a single lane for traffic coming through).*

The submitters supporting the Amendment also made reference to the motor repair and panel beating activities currently taking place on the site, with consequent on-street parking pressures and large trucks accessing the site out of business hours to deliver vehicles for repair.

The Panel noted the reasonably large amount on street parking occurring in the street at 4:15pm on the day of its inspection (more than 17 spaces were occupied) and that vehicles were being driven away around that time by persons apparently leaving work for the day. The Panel requested that Council particularly address this issue raised by submitters.

At the Hearing, Ms Pascoe advised that the Council's engineers were aware of the parking and traffic issues in the street. She said that they were partly caused by the panel beating and motor repair businesses now operating on the site which have no planning permission. Enforcement proceedings have been initiated. She further said that the amount of off-street parking to be provided in association with any multi-unit development on the site would be considered as part of the application having regard to on-street pressures.

Ms Pascoe provided comments from the Council's Transport Planning Department at the Panel Hearing. The Department acknowledged that traffic and parking material had been supplied by the proponent but was critical of the relevance of the comparative sites used in that material; and noted the quite high on-street parking usage, of 70 per cent occupancy, even on a Thursday before a long weekend. Ms Pascoe also advised that the Council was aware of staff from the Nepean Highway commercial uses parking in the street and had imposed parking restrictions on the southern side of the street to regulate this. The Council engineers did not consider that application of the parking standards in ResCode at the time a permit application would be lodged would be inadequate to manage the parking issues.

#### **4.3 Discussion**

The Panel has considered the submitters' concerns and the Council reply. To the extent that the existing pressures reflect the legitimate demands of uses in the area, they are not in my view a reason to reject adoption of the GRZ3.

It is clear that parking pressures, and to some extent traffic pressures, are already not inconsiderable in this street, but I accept that this is in some measure due to the unregulated uses on the subject site.

I also consider that the existing pressures might be mitigated by the introduction of further traffic engineering measures irrespective of this Amendment and any changed zoning.

As the Council submitted, parking and traffic issues would be considered as part of the assessment of any permit application. The Council engineers are clearly well aware of the pressures on Clairmont Avenue and it can be expected that this would be a factor employed during assessment of the appropriateness of the scale of any proposed development on the subject site and any accompanying parking reduction which might be sought. This consideration would occur under the GRZ just as it would under the NRZ.

I note the opposition to further aged care facilities in the street. This is a permit required use and development and again parking and traffic considerations might be considered.

#### **4.4 Conclusion**

The Panel considers that the parking and traffic pressures in Clairmont Avenue referred to by submitters and recognised by the Council are not a reason to preclude adoption of the GRZ3 as part of the Amendment.

## **5 Summary of Conclusions and Recommendation**

### **5.1 Summary of conclusions**

For the reasons set out in the preceding chapters, the Panel considers that the Amendment appropriately proposes the application of the General Residential Zone (Schedule 3).

There was no opposition to the application of the Environmental Audit Overlay and it is clearly required having regard to the past usage of the land as set out in material supporting the proponent's Amendment request.

### **5.2 Recommendation**

**For the reasons outlined in this report, the Panel recommends that Glen Eira Planning Scheme Amendment C124 should be adopted as exhibited.**

## Appendix A List of Submitters

No	Submitter
1	Fridrich Housa and Andrea Turcinova
2	Nick Karp
3	Petition in support by: Mariti (Gomez) Weiss Olga Baltikalis Mercia Schultz Carmen Quigley Barry Johnson Kirsty Hardy

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