

**Item 9.1**

**236-262 EAST BOUNDARY ROAD,  
BENTLEIGH EAST  
PLANNING SCHEME AMENDMENT C126  
VIRGINIA PARK ESTATE**

**Enquiries: Rocky Camera  
Co-ordinator Strategic Planning**

**1. Community Plan**

Development and Planning

**2. Details of the Amendment**

The amendment proposes to:

- Rezone the entire Virginia Park Estate to Commercial 1 Zone (it is currently a combination of Commercial 1 and Commercial 2); and
- Amend the existing Development Plan Overlay (DPO) applying to the land to reflect changes to the intended future land uses

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The amendment does not propose a development. It is only a proposal to change the zone on the periphery of the site.

If a development proposal is submitted in the future, it will be subject to a 'development plan' process which will involve community consultation. Any development will need to comply with the long-established building heights and building envelopes for the site.

**3. Recommendation**

**That Council:**

- a) Notes the 445 submissions received (at the time of writing this report); and
- b) Requests the Minister for Planning to refer Amendment C126 to an Independent Panel to consider submissions.

**4. Background**Amendment C75

Virginia Park Estate was traditionally used for industry and was known as 'Virginia Park Industrial Estate.' Due to changes in the manufacturing sector, the owner of Virginia Park lodged a planning scheme amendment in 2011 (Amendment C75) which sought to rezone the land to both Business 2 and Business 3. This was to allow for the proponent's proposed change from an industrial estate to an 'office park' or 'business centre'.

The purpose of the former Business 2 zone was "*to encourage the development of offices and associated commercial uses*". Whilst 'residential' was allowed in this zone, any future development proposal for residential was subject to the discretion and approval of the Responsible Authority.

The purpose of the former Business 3 zone was "*to encourage the integrated development of offices and manufacturing industries and associated commercial and industrial uses*".

Amendment C75 also introduced maximum building heights and building envelopes across the Virginia Park Estate under a Development Plan Overlay (Appendix 1). These building heights and envelopes went through an extensive public consultation and Independent Panel review under Amendment C75.

Reformed Commercial Zones (State Government)

As a consequence of the introduction of reformed State Government commercial zones in 2013, Virginia Park now has a Commercial 1 Zone in the centre and Commercial 2 Zone on the periphery (Appendix 2).

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The original zoning mix of Business 2 and Business 3 resulting from Amendment C75 allowed for offices, bulky goods, and light industrial uses.

When the State Government implemented its new commercial zones, consolidating Business zones to new the Commercial 1 and 2 zones, the Estate immediately gained the potential for retail uses. That is, under the current framework, a supermarket or other large retail store can be established.

With the introduction of reformed commercial zones, the State Government stated:

*"Reformed commercial zones for Victoria have been approved to better respond to present-day requirements.*

*New commercial zones will provide greater flexibility and growth opportunities for Victoria's commercial and business centres. The new zones respond to changing retail, commercial and housing markets by allowing for a wider range of uses that will support more mixed use employment."*

**Development Plan Overlay (DPO)**

The DPO controls future buildings heights and uses.

The amendment does not propose any changes to the existing heights set out in the DPO. Any future residential and commercial development will be constrained by the existing height controls applying to the land. The heights range from 3-10 storeys with the taller buildings centrally located.

The proposed changes to the DPO reflect the future proposed land uses. The current DPO seeks to achieve 'office uses' on the land, in line with the superseded Business 2 and 3 zones. The revised DPO seeks to achieve a mixed use development additionally incorporating both retail and residential land uses, in line with the Commercial 1 zone.

Council must approve a 'development plan' before construction can commence. Before deciding to approve a development plan, Council is required to display the development plan for public comment for 28 days.

The 'development plan' actually comprises a number of more detailed plans. These are:

- an Integrated Transport Plan;
- a Traffic, Parking and Access Report;
- an Infrastructure Plan;
- an Overall Layout Plan;
- a Site Analysis Plan;
- a Landscape Concept Plan;
- Building Plans; and
- Environmentally Sustainable Development Report.

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At this stage any detailed information about the likely development for the estate should be regarded as indicative. It seems clear however that significant development is envisaged. Likely or possible developments are a shopping centre including a supermarket, office development and up to 4,400 dwellings.

**5. Public Notice**

The amendment was exhibited from 7 May – 9 June 2015.

It consisted of:

- 678 notices posted to owners and occupiers.  
(A map showing the extent of notices sent is provided in Appendix 5).
- 1 notice in the Caulfield Glen Eira Leader (Appendix 6)
- 1 notice in the Moorabbin Glen Eira Leader (Appendix 7)
- Notice in the Government Gazette; and
- Notice on Council's website.

A total of 445 total submissions have been received at the time of writing this report.

The submissions can be grouped as follows:

- 412 submissions object to the amendment. Of this total 19 were unique, with the remaining 393 objecting submissions using a template.
- 33 submissions support the amendment. Of this total 12 were unique, with the remaining 21 supporting submissions using a template.

The submissions can be summarised as follows:

Opposing Submissions

- Rezoning will result in a future overdevelopment of the land;
- Longer working hours will affect residents' amenity;
- Traffic, parking and noise issues;
- Inadequate services in the locality (particularly schools) to cater for this influx in population;
- Lack of public transport –no bus along East Boundary Road;
- Changing character of the suburb and creation of a 'ghetto';
- Concern with future vehicular access onto minor streets (Curtin & Barrington Streets);
- Proposal for 4-10 storeys does not respect the intention of the surrounding Neighbourhood Residential Zone;
- Public Transport Victoria (PTV) opposes the installation of traffic lights at North Avenue;
- PTV requests the provision of bus stop infrastructure;
- VicRoads concerned that the wider area is not being looked at holistically to ensure safety and efficiency of the road network;
- Inadequate open space – A 20 metre wide link plus 5.7% cash contribution is not enough for a development of this size;
- Setback to East Boundary Road should not be reduced;

- Site could be rezoned to General Residential Zone instead of Commercial to cater for dwellings;
- Lack of strategic justification for the amendment;
- Negative effects of proposed development on nearby shopping centres.

#### Supporting Submissions

- Aldi & Woolworths supermarkets support the proposed amendment and are looking to develop at the Virginia Park Estate in the future;
- Baptcare and Japara Healthcare (both aged care providers) support the amendment and are looking to develop at Virginia Park Estate in the future;
- The rezoning will provide for increased local employment and housing opportunities;
- The amendment will provide for increased open space and accessibility to existing open space;
- The rezoning will provide for new retail space and services in an area that is currently undersupplied;
- The future use and development of Virginia Park as a result of the amendment have been carefully considered.
- The capabilities of the land and transport network, and the changing commercial, employment and housing needs in this locality support the need for the proposed amendment;
- The delivery of a connected, expanded, activated, high quality open space network in and around the site as a result of the amendment will have significant benefits for both Virginia Park and the broader community in Bentleigh East.

#### **6. Planning Conference**

A planning conference was chaired by Councillor Pilling and attended by 80 submitters, the proponent and two Council officers.

The key points raised at the conference include:

#### Submitters

- The proposed amendment will impact on the economic viability of the East Bentleigh, Bentleigh and Carnegie shopping centres. Reports suggest 9.1% impact, traders believe this figure would be closer to 20-25%;
- The amendment will result in increased traffic congestion and car parking issues in the surrounding area;
- The future development will result in too many traffic lights along East Boundary Road;
- The amendment will result in an overdevelopment of the land;
- Lack of public transport to accommodate a development of this size;
- The development will not provide for sufficient open space for the potential workers and residents that will come in to the area;
- Existing infrastructure will not cope with the proposed future development;
- Notification of the amendment was inadequate and unclear;
- Existing schools in the area are already at capacity. Development on this land will exacerbate the problem;
- The amendment lacks strategic justification;
- The amendment does not accord with Council's Municipal Strategic Statement;

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- Future development will result in increased pollution;
- Concern about noise and construction impacts;
- The '20 minute city' concept of Plan Melbourne is not sufficient to support this amendment;
- Most Councils would fight to keep employment land and jobs within their City;
- Council should undertake its own traffic and economic analysis; and
- Council should be asking for greater than 5.7% open space levy.

Proponent

- Change will happen at Virginia Park irrespective of this amendment;
- There has been a shift in type of land uses within Virginia Park over time;
- Virginia Park is currently an employment centre for many people including local residents;
- The question is what change is appropriate;
- The Gillon Group hand delivered 12,000 notices inviting people to two meetings;
- The overall future development on the land will not be 4,000 dwellings. This figure that has been quoted was from an infrastructure report that was based on a maximum;
- The correct figure is approximately 1,250 dwellings;
- The rezoning will provide greater opportunities for a diversity of housing stock;
- Concerns have been made in relation to the economic impacts. Carnegie brought in 2 large supermarkets which in the end has helped the centre to thrive;
- The Gillon Group will work with VicRoads and Public Transport Victoria to address their concerns;
- Future development on the land will provide an opportunity to fix the existing issues associated with water flows into Barrington Street;
- The future redevelopment of the Virginia Park Estate will allow an opportunity for people to walk to convenience shops and will supplement the services that already exist.

**7. Assessment**Overdevelopment of the land

Submitters have raised concerns that the proposed rezoning will result in an overdevelopment of the land. The amendment solely seeks a rezoning of the land. No development approvals are sought at this stage. Documents submitted as part of the amendment indicate that a significant residential and commercial development will likely follow if the amendment is ultimately approved. This could include some 4,400 dwellings and 12,000m<sup>2</sup> of retail floor space. These details can only be treated as indicative at this stage.

It is also possible that the larger sized parcel of Commercial 1 area may change the nature of future developments that could be considered on the site including to intensive large commercial or retail use.

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Any future development on the land will be subject to a development plan process which will be advertised to the community. The development plan process will require the submission of, amongst others, detailed architectural drawings. It is during this stage that Council will know the precise details of the proposed development on the land.

**It is considered that the development plan process is the appropriate time for Council to make a detailed and informed assessment on future development of the land. The applicant has the ability to challenge a decision on the development plan at VCAT.**

**Proposed heights don't respect the neighbourhood**

Numerous submitters raised concerns with respect the proposed heights not respecting the low scale character of the area. Amendment C75 approved by the Minister for Planning in 2011 introduced maximum building heights across the Virginia Park Estate under the DPO (Appendix 1). **No change is sought to the existing heights. Regardless of whether this amendment is ultimately approved or refused, the developer still has the ability to apply to Council for buildings of up to 10 storeys.**

**Traffic and car parking**

**Traffic and car parking issues within the surrounding neighbourhood will need to be assessed as part of a future development plan process once the precise details of the proposed development are known.** At the development plan process stage both Council and VicRoads will all be in a position to undertake an informed and comprehensive assessment on the likely traffic and car parking implications associated with future development.

**Lack of public transport**

It is acknowledged that the land is not located within close proximity to a train station or tram route. The proponent has indicated that bus services could be provided along East Boundary Road. Public Transport Victoria (PTV) has not yet provided any commitment to providing a bus route along East Boundary Road. PTV has, however requested that if this amendment is approved, changes to the DPO should be made to **include the requirement to provide bus stop infrastructure.**

**Rezoning the current Commercial 2 area to Commercial 1 would be expected to increase the density of residential development and/or intensity of commercial development that could occur in Virginia Park. Council's Strategic Land Use Framework Plan or Sustainable Transport Strategy prioritise higher densities near transport hubs. Arising from these strategies, Council has traditionally sought to channel retail, commercial and higher density residential development in locations well serviced by public transport -railway stations, and tram routes which service walkable neighbourhoods.**

**Item 9.1 (cont'd)**Inadequate infrastructure services in the area

Concerns were raised in relation to the existing infrastructure not being able to accommodate the future development on the land. As part of the development plan process, the developer is required to submit an 'Infrastructure Plan' to Council which lists infrastructure items such as roads, traffic management works and drainage. The Infrastructure Plan must be approved by Council.

In addition, the developer will be required through a Section 173 Agreement to pay for all the required infrastructure works that are needed.

Inadequate schools

Local Government is not responsible for the provision of schools throughout Victoria.

Submitters have raised concerns that the local primary and secondary schools in close proximity are at or nearing capacity. Any increase in the population will likely result in a further strain onto existing schools.

This issue is one for Metropolitan Melbourne as its population increases; it is not unique to Glen Eira. The State Government forecasts a population of 7.7 million in Metropolitan Melbourne by the year 2051.

Pollution and Noise issues

Any pollution and noise impacts associated with future development will be required to meet the State Government's Environmental Protection Authority (EPA) requirements.

Economic impacts onto nearby shopping centres

Traders have raised concerns with the potential economic impacts that the future commercial development at Virginia Park will have on nearby shopping centres; in particular at the Bentleigh East centre.

The proponent provided a retail impact assessment report about the likely effects that future development would have on nearby shopping centres. This report concludes that any future commercial development at Virginia Park will not have an unreasonable impact on Glen Eira's nearby commercial centres. However, the supermarket in the Bentleigh East shopping centre provided a "peer review" of the proponent's report. The "peer review" by Essential Economics, disagrees with the proponent's report.

Should the amendment proceed to an independent panel hearing, Council officers intend to obtain independent economic advice from a suitably qualified professional to inform Council's submission on the potential impacts that the future commercial development at Virginia Park will have onto nearby shopping centres within Virginia Park.

**Item 9.1 (cont'd)**Open space

Submitters have argued that Council should be asking for more public open space considering the significant development that could occur on the land.

The amended DPO will require that the developer must make a monetary public open space contribution of 5.7% of the land value at the subdivision stage.

In addition, the amendment requires the developer to provide a 20 metre wide open space link within the Virginia Park Estate to connect Virginia Park Reserve and Marlborough Street Reserve. This link also includes the property at 1 Barrington Street which is owned by the developer. (Appendix 4)

Concern with future vehicular access onto minor streets

As a consequence of the future open space link, a portion of the Virginia Park Estate currently containing a childcare centre will become disconnected from the main Estate.

Setbacks to East Boundary Road should not be reduced

The amendment proposes that the setback to East Boundary Road be reduced to six metres. The current DPO requires an eight metre setback.

The proposed reduction is considered acceptable given that there are examples of buildings along East Boundary Road which are located within 6 metres of the street frontage. A 6 metre wide setback will still allow sufficient landscape opportunities.

Notification of the amendment

Numerous submitters have raised concerns with respect to the lack of public notice given for the amendment.

A total of 678 owners and occupiers were notified of the amendment. Appendix 5 shows the extent of notices sent. This map correlates with the properties that were notified of Amendment C75 in 2010.

A notice was also placed in both the Moorabbin Glen Eira Leader and the Caulfield Glen Eira Leader (see Appendix 6 and 7) and the Government Gazette.

Notification of the amendment complied with the requirements of the Planning and Environment Act 1987.

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It is considered appropriate to further test this amendment by referring the submissions to an Independent Panel. All submitters will have the chance to be heard by the Panel.

The Panel process will provide an opportunity to test the opposing conclusions of each economic expert report on the impacts of nearby shopping centres.

Following a panel hearing, the panel will report its findings to Council in the form of a recommendation. Council is not bound by the recommendation.

Following the Panel hearing, Council can decide to:

- adopt the amendment with or without changes based on the panel's recommendations, or
- abandon the amendment.

There is no statutory ability for the proponent to challenge Council's decision.

**9. Planning Scheme Amendment Process**

A planning scheme amendment must go through the following fixed statutory steps:

1. The Minister for Planning must firstly authorise preparation of the amendment before exhibition can occur. Following this, notice (exhibition) of the amendment will commence, inviting public submissions. If Council agrees to exhibit an amendment, it does not necessarily follow that Council supports the proposal. Placing an amendment on public exhibition has an element of "testing the water".
2. If there are no submissions Council can 'adopt' or 'abandon' the amendment and forward it to the Minister for approval. It only becomes law if it is formally approved and gazetted.
3. If there are submissions opposed to the amendment, the Council has three options – abandon the amendment, change the amendment in accordance with the submitters' request, or request the Minister to appoint an Independent Panel to hear the submissions.
4. If a Panel is appointed, submissions are heard and the panel reports its findings in the form of a recommendation to Council.

The Panel may make a recommendation to:

- adopt the amendment
- abandon the amendment
- modify the amendment

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5. Council then considers the panel report and makes its own decision. Council is not bound by the panel's findings. Again Council's options are to either abandon or adopt the amendment (with or without modifications).
6. If Council adopts the amendment, it is then referred to the Minister for Planning for approval.

The process required to amend the Glen Eira Planning Scheme is lengthy and provides opportunities for public input from interested parties. With regard to the current proposal, Council is at Step 3.