

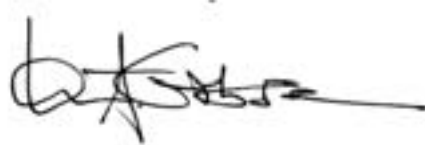
**BAYSIDE PLANNING SCHEME
AMENDMENT C46**

PANEL REPORT

NOVEMBER 2005

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PANEL REPORT

A handwritten signature in black ink, appearing to read 'Ian Gibson', written in a cursive style.

Ian Gibson, Chair

A handwritten signature in black ink, appearing to read 'Ian Wight', written in a cursive style.

Ian Wight, Member

NOVEMBER 2005

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THE PANEL

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1. SUMMARY

Highett is located partly within Bayside City and partly within Kingston City. At present, much of the Highett shopping centre is located on the section of Highett Road to the east of the railway line, within Kingston City. There is a smaller retail and services area in the Bayside City end of Highett Road, while the bulk of Highett's population is located in Bayside.

The Highett Structure Plan has been developed as a joint planning and consultation exercise by Bayside and Kingston City Councils. It covers the Highett shopping centre and surrounding residential areas. Importantly, it includes a number of major sites earmarked for future redevelopment, including the CSIRO site on Graham Road, 284-286 Highett Road and 329 Bay Road in Bayside, and the former Gas and Fuel Corporation site in Kingston.

Amendment C46 covers the translation of the Highett Structure Plan into the Bayside Planning Scheme. The amendment proposes a number of modifications to the Municipal Strategic Statement, and the introduction of a new Local Policy 22.08: Highett Neighbourhood Activity Centre.

It proposes several zone changes, particularly a rezoning of Residential 1 land to Residential 3 Zone. It introduces two Design and Development Overlays (DDOs), to identify areas that have specific requirements relating to the design and built form of new development. Design and Development Overlay 4 (DDO4) proposes a three-storey height limit to commercial areas west of the railway line in the Highett Neighbourhood Activity Centre within Bayside City. Design and Development Overlay 5 (DDO5) encourages consolidation of lots to promote apartment-style development to a maximum of three-storey or nine-metre height in the residential areas adjoining the Highett Neighbourhood Activity Centre. An Environmental Audit Overlay (EAO) is proposed to be applied to all industrial land to be rezoned Residential 3.

The Panel has reached the following conclusions:

- Highett is an important opportunity for Bayside to meet the housing needs of the future population, and the opportunity should not be missed. Further, Amendment C46 does provide for significant intensification of activity. Amendment C46 is consistent with the need to achieve housing and population needs in Bayside City;
- The Panel has accepted that a neighbourhood activity centre is not the same as a major activity centre, even though the two types of centres have common features. The implication is that the Panel has considered the Amendment in terms of meeting all of the objectives of *Melbourne 2030*, but has been less willing to forgo the quality of neighbourhood character in the interests of intensification than it would be in a major activity centre;

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- The analysis, planning, design and consultation processes adopted by Bayside Council (and Kingston Council) and the consultants in preparing the Highett Structure Plan were all satisfactory;
 - A clearer statement of quantified objectives in the Highett Structure Plan would have provided greater clarity to all stakeholders about the potential for development in each precinct, ameliorating future conflicts about the expectations relating to development throughout Highett;
 - Modifications to the Municipal Strategic Statement and Local Policies as proposed in Amendment C46 are justified, with some minor modifications;
 - The exhibited change in zoning from Residential 1 to Residential 3 is flawed, and Residential 1 should be retained with some modifications to associated Schedules;
 - The exhibited Design and Development Overlays are basically sound, but DDO4 requires some modification to better reflect the intent of the Highett Structure Plan; and
 - The future development of the CSIRO site is of critical significance to the future of Highett. Its planning should take account of the protection of the Highett Grassy Woodland, while its future planning should be integrated with planning for the former Telstra site at 329 Bay Road, Cheltenham.

In summary, the Panel has concluded that the Highett Structure Plan is of major significance for the future development of Highett. Further, Amendment C46 provides a sound basis for the planning of the area, subject to some modifications.

2. WHAT IS PROPOSED?

2.1 THE SUBJECT SITE AND SURROUNDS

Highbury straddles the boundary between Bayside City and Kingston City. At present, much of the Highbury shopping centre is located on the section of Highbury Road to the east of the railway line, within Kingston City. There is a smaller retail and services area in the Bayside City end of Highbury Road, while the bulk of Highbury's population is located in Bayside.

The Highbury Structure Plan has been developed as a joint planning and consultation exercise by Bayside and Kingston City Councils. It covers the Highbury shopping centre and surrounding residential areas. Importantly, it includes a number of major sites earmarked for future redevelopment, including the CSIRO site on Graham Road, 284-286 Highbury Road and 329 Bay Road in Bayside, and the former Gas and Fuel Corporation site in Kingston.



Figure 1: Area of the Highbury Structure Plan
Source: Highbury Structure Plan (November 2004), p. 3

The Amendment is focused around the Bayside City Council part of the Highett Neighbourhood Activity Centre. The study area is bounded by Wickham Road to the north, the Frankston Railway line to the west, Bay Road to the south, Beaumaris Parade and Herbert Street to the east.



Figure 2: Area of Bayside Amendment C46
Source: Bayside City Council

2.2 THE AMENDMENT

2.2.1 EXHIBITION

On 6 December 2004, Bayside City Council resolved that an amendment to the Bayside Planning Scheme for the purposes of implementing the key recommendations of the Highett Structure Plan (Draft November 2004) be prepared and exhibited generally in accordance with the draft except that:

- existing planning controls are to be retained in the precinct located to the north side of Bay Road between Graham Road and the railway line; and
- the amendment and the final version of the Highett Structure Plan are to include references to the Bayside Bicycle Strategy (2004).

The amendment was exhibited from 17 March until 22 April 2005.

The method of exhibition included:

- Notification by letter to all owners and occupiers affected by a zoning or overlay change;
- Notification in the Bayside Leader – 15 March 2005;
- Notification in The Age – 16 March 2005;
- Notification in the Victoria Government Gazette – 17 March 2005;
- Notification by letter to relevant referral authorities; and
- Copies available for inspection at Department of Sustainability and Environment, Planning Information Centre, Melbourne; Bayside City Council Corporate Centre in Sandringham; and Hampton, Brighton, Sandringham, and the temporary Beaumaris Libraries.

2.2.2 SUMMARY OF AMENDMENT C46

The amendment proposes a number of modifications to the Municipal Strategic Statement, and the introduction of a new Local Policy 22.08: Highett Neighbourhood Activity Centre.

It also proposes several zone changes, particularly a rezoning of Residential 1 land to Residential 3 Zone. It introduces two Design and Development Overlays (DDOs), to identify areas that have specific requirements relating to the design and built form of new development. Design and Development Overlay 4 (DDO4) proposes a three-storey height limit to commercial areas west of the railway line in the Highett Neighbourhood Activity Centre within Bayside City. Design and Development Overlay 5 (DDO5) encourages consolidation of lots to promote apartment-style development to a maximum of three-storey or nine-metre height in the residential areas adjoining the Highett Neighbourhood Activity Centre. An Environmental Audit Overlay (EAO) is to be applied to all industrial land to be rezoned Residential 3.

2.2.3 MUNICIPAL STRATEGIC STATEMENT

Amendment C46 proposes the following modifications of the Municipal Strategic Statement:

- Clause 21.04-3: Vision and Overarching Goals - Strategic Framework Plan:
 - List the Highett Structure Plan 2004 as a reference document; and
 - Modify 'Residential Opportunity Area' surrounding Highett in the Strategic Framework Plan to reflect the recommendations of the Highett Structure Plan 2004.
- Clause 21.05-3: Housing – Objectives, Strategies and Implementation:
 - Make reference to the CSIRO site;
 - List the Residential 3 Zone and Design and Development Overlay as implementation measures; and
 - List the Highett Structure Plan 2004 as a reference document.
- Clause 21.06-1: Activity Centres-Overview:
 - Modify the clause to reflect the Melbourne 2030 hierarchy of activity centres.
- Clause 21.06-2: Activity Centres - Key Issues:
 - Make reference to Melbourne 2030; and
 - Outline the hierarchy of activity centres and the strengths and weaknesses affecting the main activity centres in Bayside.
- Clause 21.06-3: Activity Centres - Objectives, strategies and implementation
 - Make reference to key elements of Highett Structure Plan;
 - List the Design and Development Overlay as implementation measures; and
 - List the Highett Structure Plan 2004 as a reference document.
- Clause 21.11-1: Open Space – Overview:
 - Make reference to Highett Grassy Woodland (CSIRO site) and the Lyle Anderson Reserve.
- Clause 21.11-3: Open Space - Objectives, strategies and implementation:
 - Make reference to the Lyle Anderson Reserve;
 - Make reference to the key elements of Highett Structure Plan;
 - List the Public Conservation and Resource Zone; and
 - List the Highett Structure Plan 2004 as a reference document.
- Clause 21.12-1 Infrastructure – Key Issues:
 - Include reference to Bayside City Council Bicycle Strategy 2003 and *Melbourne 2030* Principal Public Transport Network.
- Clause 21.12-3 Infrastructure - Objectives, strategies and implementation
 - Make reference to Graham Road options and traffic control measures;
 - Make reference to safety improvements on Highett Road;
 - Make reference to pedestrian linkages across the railway line south of Highett Road;
 - The potential for a new Southland Station;
 - The potential upgrade of Highett Station;
 - The potential for the CSIRO site to be redeveloped for educational purposes;

-
- List the Highett Structure Plan as a reference document;
 - List the Graham Road, Highett: Traffic Management Plan 2004 as a reference document; and
 - List the Bayside City Council Bicycle Strategy 2003 as a reference document.

2.2.4 LOCAL PLANNING POLICIES

A new local policy titled 'Highett Neighbourhood Activity Centre' is proposed to be included in Local Planning Policy Framework section of the Bayside Planning Scheme under Clause 22.08.

Further, the new local policy referred to in Amendment C39 (Clause 22.05 Business Employment Area Policy) is proposed to be altered to include the proposed Mixed Use Zone north of Bay Road. The Building Envelope Key Map is proposed to be altered to include the relevant properties detailed in the Highett Structure Plan. The local policy is to be applied to the subject land to ensure consistency with surrounding mixed use areas.

2.2.5 ZONING

Amendment C46 proposes to:

- Rezone properties in 'Medium Density Residential' area to Residential 3;
- Rezone industrial sites in the study area to Residential 3;
- Rezone land in the Bay Road corridor not affected by Amendment C39 to Mixed Use;
- Rezone all Business 2 areas to Business 1; and
- Rezone one property currently within the shopping centre from Residential 1 to Business 1.

2.2.6 OVERLAY CONTROLS

- Design and Development Overlay

The amendment proposes to introduce two Design and Development Overlay Schedules, identifying areas that have specific requirements relating to the design and built form of new developments.

- Application of a three storey height limit to the commercial area west of the railway line in the Highett Activity Centre within Bayside City.
- In the "Preferred Medium Density Residential Areas" in Highett, encouragement to consolidate lots to promote apartment-style development to a maximum height of 3 storeys or 9.0 metres.
- Environmental Audit Overlay

An Environmental Audit Overlay is to be applied to all industrial land to be rezoned to Residential 3 zone within the amendment area in order to ensure that an environmental audit is undertaken prior to future redevelopment of such land.

2.2.7 COUNCIL RESOLUTION

Following consideration of the Amendment at the Bayside City General Committee meeting of 20 June 2005 (subsequently confirmed at the Ordinary Council meeting of 27 June 2005), the Council proposed the following modifications:

- Delete reference made to the extension of Graham Road through the CSIRO site. (These references are found at 21.12-3 in Objective 1 and in Clause 22.08 as the last bullet point under the heading CSIRO Site.); and
- Modify the amendment to make reference to the Highett Grassy Woodland in the policy basis at Clause 22.08. The following paragraph should be added at 22.08-1:

“The key principles underlying the Structure Plan include:

Recognising the Highett Grassy Woodland as making a substantial contribution to biodiversity on a local and regional level.”

3. STRATEGIC CONTEXT

3.1 STRATEGIC PLANNING FRAMEWORK

This section identifies the existing strategic context within which issues associated with Bayside Amendment C46 must be considered.

The relevant documents that provide the context for considering Bayside Amendment C46 are as follows:

- The State Planning Policy Framework (SPPF);
- Metropolitan Strategy – Melbourne 2030; and
- Bayside Planning Scheme – Local Planning Policy Framework (LPPF).

3.1.1 STATE PLANNING POLICY FRAMEWORK

The relevant **SPPF** clauses are:

- Clause 11 – *Introduction, Goal and Principles* aims to balance competing land use and development policies which integrate environmental, social and economic factors in favour of net community benefit and sustainable development;
- Clause 12 – *Metropolitan Development* aims to implement the directions in *Melbourne 2030*. Clause 12.01 – *A more compact city* describes the development of activity centres as a central strategy, and the intensification of housing “in or close to activity centres and other strategic redevelopment sites”. Clause 12.05 – *A great place to be* covers strategies including good urban design; cultural identity and neighbourhood character; and neighbourhood design;
- Clause 14 – *Settlement*. Clause 14.01 – *Planning for urban settlement* aims to ensure a sufficient supply of land is available for residential, commercial, industrial, recreational, institutional and other public purposes and to facilitate the orderly development of urban areas;
- Clause 15 – *Environment*. Clause 15.12 – *Energy efficiency* aims to promote energy efficient building and subdivision design; consolidation of urban development and transport integration, and retention of existing vegetation, or revegetation as part of subdivision and development proposals;
- Clause 16 – *Housing*. Clause 16.01 - *Medium Density Housing* aims to encourage well designed housing which respects the neighbourhood character and makes better use of existing infrastructure;
- Clause 17 – *Economic Development*. Clause 17.01-1 – *Activity centres* aims to encourage the concentration of major retail, commercial, administrative, entertainment and other cultural developments into activity centres (including strip shopping centres) which provide a variety of land uses and are highly accessible to the community;

- Clause 17.02-1 – *Business* aims to encourage developments which meet the community’s need for retail, entertainment, office and other commercial services and provide net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities;
- Clause 18 – *Infrastructure*. Clause 18.01 – *Declared highways, railways and tramways* aims for higher land use densities near railway stations, major bus terminals, transport interchanges, tramways and principal bus routes; and
- Clause 19 – *Particular Uses and Development*. Clause 19.01 – *Design and built form* aims to ensure new development achieves high quality urban design and architecture which “reflects the particular characteristics, aspirations and cultural identity of the community”.

3.1.2 LOCAL PLANNING POLICY FRAMEWORK

The relevant **LPPF** clauses are:

The key elements of the MSS which are particularly relevant include:

- Clause 21.05 – Housing;
- Clause 21.06 – Activity Centres; and
- Clause 21.10 – Streetscape Design.

The expert evidence provided by Mr Govenlock of UrbisJHD Pty Ltd noted that several key policy directions emerge from these policies:

- *The housing preferences for residents within the municipality is changing which is in turn influencing the number and type of dwellings being produced;*
- *The residential areas within the municipality are experiencing pressure for redevelopment which is eroding the urban character and quality of some residential areas;*
- *Council is encouraging the development of higher density housing within and around commercial and community facilities, particularly those located close to good public transport networks;*
- *More diversity is required in the range of housing choices available within the municipality to meet the diverse needs of the community;*
- *The renovation and restoration of shop top housing is to be promoted.*
- *Council will facilitate quality design outcomes which make a positive contribution to the character of the area;*
- *The Hihett Road strip centre is identified as a small community based centre providing community services to a local population. Its strength is noted as being its community role and it has been identified as having the potential to fulfil a community and niche markets role; and*
- *Of the key issues identified within Clause 21.06 (Activity Centres), of specific relevance include:*

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- *The viability of shopping centres and the potential for tourism is strongly linked to functionality and the physical appearance of buildings and the streetscape;*
 - *Maintaining core retail functions and an appropriate retail mix in face of competition from larger centres and new forms of retailing (such as the Internet and new forms of peripheral sales, direct sales, bulky goods retailing etc); and*
 - *The need to ensure that adequate vehicle parking and appropriate traffic management practices are introduced into centres so as to improve vehicle access, circulation, parking, loading/unloading and pedestrian movement/safety.*

Mr Govenlock also noted that:

Council has also identified as an objective the facilitation of attractive well-designed centres that are in keeping with the neighbourhood character. The identified strategies for achievement of this objective, includes:

- *Provide design guidelines for each of the main centres; and*
- *Ensure that the interface between commercial centres and adjacent areas is appropriate in terms of built form and amenity issues.*

The Panel considered that this was an accurate summary of the main issues in the Local Planning Policy Framework relevant to Amendment C46.

3.1.3 AMENDMENT C47

Two recent amendments to the Bayside Planning Scheme are also relevant to Amendment C46 – Amendments C47 and C39.

The Minister for Planning approved Amendment C47 to the Bayside Planning Scheme on 28 April 2005. Amendment C47 introduced and applied Schedule 3 to the Design and Development Overlay (DDO), on an interim basis, to the Highett Neighbourhood Activity Centre.

Schedule 3 of the DDO states:

The maximum building height must not exceed 9 metres, unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the maximum building height must not exceed 10 metres.

The Explanatory Report notes that the maximum building height is required to protect the built form and scale of the area while Council exhibits a comprehensive amendment to pursue its long-term strategic objectives for the centre. The controls will be in place until 31 December 2007.

Schedule 3 to the DDO allows a planning permit to be granted to construct a building or construct or carry out works above the specified height in DDO3. Therefore the building heights specified in DDO3 are considered discretionary. The Department of

Sustainability and Environment's Manager of Planning and Development, Port Phillip Region, has confirmed the interpretation of this interim control.

3.1.4 AMENDMENT C39

Amendment C39 applies to an area south of Bay Road which is known as the Bayside Business Employment Area. This land is the majority of land presently zoned Industrial 1 and Industrial 3 within the City of Bayside concentrated in the Bay Road / Reserve Road area of Sandringham, Highett and Cheltenham. The only Industrial zoned land within the City of Bayside not covered by this amendment is located at 32-40 Graham Road Highett.

The objective of Amendment C39 was to maintain and invigorate the industrial area as Bayside City's primary business employment area. The Business 3 Zone was determined to be the most appropriate land use zone for that area.

Following exhibition of C39 in April 2004, Council referred the amendment to a Panel hearing without any suggested changes.

The Panel was supportive of the overall direction and objectives of Amendment C39 and was of the opinion that 'the Amendment is based on sound strategic principles' and 'the local policy and selection of zones are supportable'. It was the opinion of the Panel that shifting from an industrial to broader business form of use as a result of the amendment will encourage businesses to establish, consolidate and strengthen the employment and economic base.

Relevant to the C46 Amendment, the C39 Panel specifically discussed 329 Bay Road, Cheltenham.

The Panel made the following comments:

The land at 329 Bay Road is owned by Intrapac Pty Ltd and the large building on the site was previously owned and occupied by Telstra. The Panel was advised that the existing building on the site is occupied as a factory outlet for furniture manufactured by this company.

Neighbouring uses in the block (Graham Road and Middleton Street) include a car wash, garden supplies, a knitwear company and importer of outdoor goods. The Telstra site has a wide frontage to a busy road (Bay Road), and in the Panel's opinion this provides an opportunity for business uses, including offices and restricted retailing, that require a more prominent street address. The site's abuttal, at the rear, to the CSIRO site also presents the opportunity for higher density residential development, on at least that part of the site.

Panel Conclusion:

Given there were no submissions lodged by owners of other properties in this strip and the fact that the future of the CSIRO land has yet to be finalised, the Panel believes it would be premature to include the Telstra site in a Mixed Use Zone at this time. It does however believe there will

be the opportunity to reconsider this proposition at the time the CSIRO land is 'zoned'.

Recommendation:

The Panel recommends that:

- *The Business 3 Zone be adopted (as exhibited) for the Telstra site; and*
- *The Planning Authority review the zoning of land between Graham Road and Middleton Street, in association with the zoning of the CSIRO site.*

In its submission to the C46 Panel, Bayside City Council noted that it had not yet formally adopted Amendment C39, but anticipated that a report will be considered by the General Committee of Council on 17 October 2005.

3.2 STATUTORY PLANNING FRAMEWORK

3.2.1 ZONES

A range of Residential, Business and Industrial Zones are relevant to Amendment C46.

Residential 1 Zone and its associated Schedule in the Bayside Planning Scheme are of particular relevance. The schedule provides a range of controls on setbacks, which have the effect of limiting development. With regard to minimum street setbacks, the Schedule includes the following requirement:

Where there is an existing building on both the abutting allotments facing the same street, and the site is not on a corner, the following minimum setback from the front street applies:

- *The greater distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.*

Where there is no existing building on either of the abutting allotments facing the same street, and the site is not on a corner, the following minimum setback from the front street applies:

- *9 metres.*

All other minimum setbacks from front streets and side streets as specified in the Tables to Standard A3 and Standard B6 continue to apply

The requirement for site coverage Standard A5 in the Schedule is 50 per cent.

Side and rear setbacks have the following requirements:

A new building not on or within 150mm of a boundary should be set back 2 metres from the side boundary and 3 metres from the rear boundary, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 2 metres for every metre of height over 6.9 metres.

The effect of the Schedule (combined with the limits imposed by Schedule 2 to the Design and Development Overlay) is that residential development in the Residential 1 Zone in Bayside has a higher hurdle than in a Residential 3 Zone, even though the intent of the Residential 3 Zone is to provide stronger controls on height than is normally the case in a Residential 1 Zone. This is of particular significance to Amendment C46, because the proposal to rezone land from the Residential 1 Zone to the Residential 3 Zone in the “preferred medium density housing” areas of Highett was aimed at easing the constraints imposed by the Schedule to the Zone (and of DDO2), thus encouraging medium density residential development around the Highett Neighbourhood Activity Centre.

3.2.2 OVERLAYS

Design and Development Overlay (Schedule 3)

Amendment C47 to the Bayside Planning Scheme covers Highett as an “Interim Neighbourhood Centre Height Limit Area”. It introduced Design and Development Overlay 3 on the area on 28 April 2005, providing interim height controls over the area. It included the following design objective:

To ensure that the height of new development is compatible with the character of the neighbourhood centre and adjacent areas.

It included the following requirement relating to Buildings and Works:

The maximum building height must not exceed 9 metres, unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the maximum building height must not exceed 10 metres.

Pursuant to the provisions of Clause 43.02-2 of the Bayside Planning Scheme, a permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in the schedule to the overlay, unless the schedule specifies otherwise.

Design and Development Overlay (Schedule 2)

Schedule 2 of the Design and Development Overlay in the Bayside Planning Scheme covers Building Height Control - Inland Areas in Bayside City, and imposes a nine-metre height limit on residential development, unless a permit is obtained.

The Design objectives are:

- *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties;*
- *To preserve the existing character and amenity of the areas as low rise (up to two storeys) suburban areas with a strong garden character;*
- *To maintain the prevailing streetscape rhythm, building scale and height of neighbourhoods; and*

-
- *To maintain a strong landscape character with buildings set within vegetated surrounds.*

Of particular significance is the fact that a permit is not required to construct a building or construct or carry out works for:

...a building with a building height of not more than 2 storeys and not more than:

- *9 metres, or*
- *10 metres where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.*
- *Where building height is expressed in storeys, it excludes a basement as defined, but an attic, mezzanine and built over car parking area are each considered to be a storey.*

As noted above, DDO2 in association with the Schedule to the Residential 1 Zone imposes significant constraints on height and density of residential development within Bayside City.

4. ISSUES

4.1 NATURE OF SUBMISSIONS

In its submission to the Panel, the planning authority supported the amendment, on the basis that it provided a clear future direction for the Highett Neighbourhood Activity Centre, respected the character of Highett, responded to the objectives of most stakeholders in Highett, and was consistent with the principles of *Melbourne 2030*. As noted above, Council proposed two changes to the exhibited amendment, including deletion of the reference to extending Graham Road through the CSIRO site and amending the reference to further recognise the Highett Grassy Woodland on the CSIRO site.

Following exhibition of the Amendment, 20 submissions were lodged. Of these submissions:

- Three expressed support or did not object to the amendment; and
- Seventeen expressed objection to elements of C46.

Submissions in support of the amendment referred to the following matters:

- Recognition of the Highett Grassy Woodland.

Submissions opposing the amendment referred to the following matters:

- Residential amenity, built form, overdevelopment and neighbourhood character;
- Capacity of existing infrastructure;
- Traffic and Parking;
- Community and social infrastructure;
- Open Space;
- Developer Contributions;
- Residential 3 Zone;
- Highett Grassy Woodland (CSIRO Site);
- Graham Road re-alignment; and
- Height controls.

A submission on the Amendment was presented by UrbisJHD Pty Ltd on behalf of the Gillon Group of Companies, who own property of about 11,000 square metres on two titles at 284-286 Highett Road. The submission argued that Highett was an important activity centre which could strongly support achieving the housing and other objectives of *Melbourne 2030*, and that the proposed Amendment C46 could result in lost opportunities through excessively onerous height limits.

4.2 ISSUES IDENTIFIED BY THE PANEL

The Panel identified the following key issues:

- Strategic issues, including:
 - population and housing;
 - the nature of neighbourhood activity centres; and
 - the status of the Highett Structure Plan.
- Modifications to the Local Planning Policy Framework, including:
 - the Municipal Strategic Statement; and
 - introduction of a new Local Policy 22.08: Highett.
- Built form, including:
 - height controls;
 - Residential 1 or Residential 3 Zoning;
 - the proposed DDO4 and DDO5; and
 - the proposal for 284-286 Highett Road.
- Future development of the CSIRO site, including:
 - The strategic significance of the site;
 - Planning for future development; and
 - Integration with the 329 Bay Road site.

5. STRATEGIC ISSUES

5.1 POPULATION AND HOUSING

Threshold issues for the Panel are the role of the subject area within Highett in meeting the future housing requirements of Bayside City, and whether or not Amendment C46 enables these requirements to be fulfilled in a way which is consistent with *Melbourne 2030*.

The Bayside Planning Scheme is clear in its support for the provision of diverse housing to meet changing population characteristics of the municipality in the future, and the Panel therefore has sought to assess whether the tools proposed in Amendment C46 are an appropriate method to achieve this result.

Also, *Melbourne 2030* seeks intensification of residential densities around activity centres (including neighbourhood activity centres), on the basis that the activity centres have access to goods and services, including public transport. Further, it supports development which respects the character of neighbouring areas, especially if structure plans have been developed to guide future development.

In its submission to the Panel, Bayside City Council accepted that increased density was appropriate at Highett:

It has been forecasted that Melbourne will need some 627,000 new households in the next 30 years in Melbourne 2030, and it is suggested that most of this growth should occur in Activity Centres. The Highett Road Shopping Centre is not a designated activity centre under Melbourne 2030. Therefore, the centre is a Neighbourhood Activity Centre. The Highett Railway Station (part of the Principal Public Transport Network (PPTN)) is an important feature of the centre, resulting in a good opportunity for increased mixed use and residential activities that are in proximity to public transport.

Council identified where its contribution to Melbourne's future housing requirements may be located:

Bayside City Council has been included in the Southern Regional Housing area, where it is anticipated that 29% of the metropolitan growth, or 180,000 households, will be accommodated.

Preliminary work carried out by Council indicates that a growth of 6100 dwellings can be accommodated in Bayside by 2030. These estimates are reflected in the Southern Regional Housing Statement released by the Department of Sustainability and Environment in August 2005.

It is anticipated that 2,600 dwellings could be accommodated through redevelopment in activity centres by 2030. Melbourne 2030 has identified four major activity centres in Bayside; Brighton – Bay Street,

Brighton – Church Street, Hampton and Sandringham, which are anticipated to accommodate a large proportion of the expected growth. Neighbourhood Activity Centres such as Highett, Black Rock, Gardenvale, Brighton Beach and Beaumaris are expected to accommodate increased housing, but at a reduced rate.

The balance of 3,200 dwellings will need to be accommodated throughout the remainder of the municipality. There are parts of the municipality which are subject to the Heritage Overlay. They will generally offer very limited if any scope for additional housing. However, the Heritage Overlay does not cover large parts of the municipality. Equally, the foreshore DDO while it limits the height of buildings to two storeys, does not limit the type of infill housing which is most common to Bayside. Other parts of the municipality are affected by DDO2 which seeks a 2 storey maximum height. However, that area is subject to the grant of a permit for development over 2 storeys given that the area is so broad an area.

The CSIRO has an area of approximately 9.2 hectares (ha) and the proposed Preferred Medium Density Residential Areas (DDO5) have a combined area of approximately 6 ha.

Council concluded:

Therefore, it is reasonable to assume that the majority of housing will, therefore, be accommodated:

- *in the four major activity centres in Bayside;*
- *around the four major activity centres in Bayside;*
- *on major development sites as they are identified or become available from time to time; and*
- *in the suburban areas consistent with neighbourhood character.*

Council is therefore, fairly confident that it will achieve its urban growth targets.

In his Expert Witness Statement, Mr Govenlock of UrbisJHD Pty Ltd noted that he supported the thrust of the Structure Plan and Amendment C46, but considered that the use of stringent and mandatory height controls would lead to excessive constraints on development which could limit the capacity of Highett to contribute to housing targets (particularly relating to the site at 284-86 Highett Road). He argued that:

The Urban Development Program 2004 projects a total of 107,309 dwellings to the year 2019 will need to be provided in broad hectare and established areas in the southern metropolitan region, of which the City of Bayside forms part. Of this figure, it is projected 3,455 new dwellings are to be required within Bayside, at a rate of 230 new dwellings per year. However within existing residential zoned land, these opportunities are limited to smaller lot consolidation with limited existing vacant land to deliver any major residential redevelopment. Given there are no broad hectare sites available for redevelopment in Bayside and that

Council have applied a 2 storey building height restriction over all residential land (DDO2), these housing numbers will need to be principally accommodated within activity centres...

I note that the UDP identifies 11-12 sites within the Municipality that could accommodate major residential development, which includes the review site, to be developed in 3 to 5 years... However, only three of these sites are located in Activity Centres, including the subject site, which is a more appropriate location to increase densities. The largest parcel of land identified for major residential redevelopment is the CSIRO site, directly adjoining the review site to the south. Based on the development options within the Highett Structure Plan, the CSIRO site may be able to accommodate up to 280 dwellings, or in others words just over 1 year of the projected dwellings required by the UDP.

Unless more land becomes available for residential development within the municipality, located in proximity to activity centres or height controls are relaxed in existing urban areas, Bayside is unlikely to achieve housing targets over the long term. In my view, the review site presents a major opportunity to deliver a substantial portion of new housing within an existing Activity Centre and contribute to achieving Bayside's housing targets within the UDP and consistent Council's MSS.

Council's MSS in relation to housing (Clause 21.05), activity centres (Cluse 21.06) and streetscape design (Clause 21.10) recognises the changing population trends within Bayside to smaller household sizes and the ramifications of an aging population. These policy directions identify the need to provide a diversity of new housing stock, ensure that new housing respects the character and amenity of residential areas, and to direct the major portion of new housing in appropriate locations within and around activity centres.

In my view, the subject land is ideally positioned to deliver the key directions of Melbourne 2030, State Planning Policy, and local planning policy. Given the location and size of the subject land it is considered that these policy directions could be met by redevelopment specifically through the provision of a range of commercial/retail services, to support the long term viability of the Highett Activity Centre and provision of a substantial portion of new housing within the heart of an Activity Centre, to assist in meeting the goals of the UDP.

During his presentation to the Panel, Mr Govenlock stressed the need to avoid losing an invaluable opportunity to increase Highett's capacity to increase population density beyond that proposed by Amendment C46.

Mr Montebello (for Bayside City Council) submitted that the lost opportunity was not significant:

..If one is arguing about the difference between 3 and 4 levels... then the difference between having or not having apartments at the uppermost level on a development site is hardly going to make a significant difference to whether housing targets are achieved over a 25 year period.

The Panel has considered Amendment C46 in terms of whether or not the controls it proposes may preclude Bayside City Council from meeting future housing needs (irrespective of whether these are considered “targets” under Melbourne 2030 or meeting future housing needs identified by Bayside City Council).

All stakeholders agree that Highett offers an opportunity for residential development, including increased density and greater diversity of housing types. The central issue is whether the emphasis on retaining the character of the Highett activity centre and surrounding residential areas may unreasonably impinge upon the residential development potential of the area.

The Panel considered whether the extent of intensification of residential density has achieved a minimum level consistent with the *Melbourne 2030* vision for neighbourhood activity centres. It has concluded that there is no numerical benchmark, given the *Melbourne 2030* emphasis on development which is appropriate for the context of each area. It has also concluded that intensification does not necessarily equate to maximum feasible development within a neighbourhood activity centre.

There is, however, a need to ensure that the function of neighbourhood activity centres in supporting increased housing and population around services and transport is not undermined by inappropriate planning controls. It is possible for local political processes to inadvertently generate solutions that are not always consistent with the State Policy Planning Framework, so a rigorous test must be applied.

The Panel noted that the Highett Structure Plan identified several major redevelopment sites, including the CSIRO site and 284-86 Highett Road in Bayside, and the former Gas and Fuel Corporation site in Kingston City Council. Further, the potential for some shop-top redevelopment in Highett, and increased opportunity for medium density development in the “preferred medium density” areas of Bayside, provide significant potential for increased and more diverse housing in Highett.

The Panel has therefore concluded that Highett is an important opportunity for Bayside to meet the housing needs of the future population, and the opportunity should not be missed. Further, Amendment C46 does provide for significant intensification of activity, while there are also opportunities in Bayside for housing expansion on other development sites (especially around major activity centres) and continuing incremental growth in the suburbs. The achievement of increased diversity of housing will require ongoing commitment of Bayside City Council, but there remains potential for significant growth in Highett, even with limits included in Amendment C46.

The Panel has concluded that Amendment C46, with some adjustment, is consistent with the need to achieve housing and population needs in Bayside City.

5.2 THE SIGNIFICANCE OF THE NEIGHBOURHOOD ACTIVITY CENTRE

Highett does not have the status of a Major Activity Centre in *Melbourne 2030*, and all submitters have accepted that it is designated as a Neighbourhood Activity Centre.

Precisely what that means in terms of the balancing the priorities between realising the potential for redevelopment and maintaining respect for the character of the existing centre is a fundamental issue for the Panel. The planning system aims to establish parameters which achieve a balance, while maximising the chances of encouraging quality design.

In its Primary Submission to the Panel, Bayside City Council argued that there is a clear difference between Neighbourhood Activity Centres and Principal Activity Centres under Melbourne 2030. Mr Montebello submitted that:

...the Government has been at pains since the Tribunal's decision in the Golden Ridge decision (the Mitcham Towers case) to draw a distinction between the built form outcomes anticipated for Neighbourhood Activity Centres and other larger centres. Thus, for example:

- *The Government immediately made a process of interim controls available for neighbourhood activity centres provided structure planning was at an advanced stage. In the course of introducing the changes, the Minister's press release noted that:*
 - *The Government is determined to protect Melbourne's suburbs and provide more planning certainty in residential areas and neighbourhood centres. We expect much future growth will be taken up in the 120 major and principal activity centres and brownfield sites across Melbourne.*
- *The Frequently Asked Questions published by DSE draws a distinction between PAC and MAC and NAC where in the later centres, some development is possible in neighbourhood centres, consistent with neighbourhood character.*
- *In the pamphlet "Melbourne 2030 Protecting Our Suburbs", the difference between the three centres is again highlighted noting that in Neighbourhood centres, 'some development is possible, consistent with neighbourhood character'. In relation to Major and principal centres, it identifies that 'more significant changes will occur to provide for population growth'.*
- *On the DSE website the distinction is noted again in the document headed: 'Interim Height Controls offered to Councils'.*

Further, Mr Montebello argued that Highett should not be treated as though it was a Major Activity Centre:

No doubt, the Highett Centre is a larger Neighbourhood Centre. But, for example, Black Rock and Beaumaris are larger still but under Melbourne 2030 are still Neighbourhood Activity Centres. Even with the increase in

floor space that may result from permit applications under consideration by VCAT, the centre will still be a Neighbourhood Activity Centre. Any other conclusion would be wrong. Designations under Melbourne 2030 are made on more than merely floor space... Council would be disturbed if this centre were treated as if it were a Major Activity Centre notwithstanding that Melbourne 2030 did not identify it as such. Council has undertaken a long detailed and expensive planning programme on the basis of its current classification.

The alternative view was expressed by Mr Govenlock in his expert evidence:

...with the approved retail development (2003 permit) and/or the proposed development on the subject site, the floor area of the shopping centre would more than exceed 10,000 sqm, which would elevate its status to a Major Activity Centre in the future.

State Planning Policy and Melbourne 2030 seeks to build up Activity Centres through the provision of a major portion of housing and the establishment of range of commercial activities to meet the needs of the incoming population. Furthermore these policies seek to maximise development opportunities of redundant or underutilised land in strategic locations, whilst balancing competing policies which seek to ensure building design responds to the physical context and respects neighbourhood character.

The Panel considered the issue in the context of the range of documents on *Melbourne 2030*, and particularly Clause 12 of the Planning Scheme.

Clause 12.01-2: Metropolitan Strategy – A More Compact City: Strategies includes reference to building up activity centres by:

- *Developing a network of activity centres that:*
 - *Comprises a range of centres that differ in size and function...*
- *Defining the role and function of activity centres, preferred uses, scale of development and links to the public transport system based on five classifications of activity centres comprising the Central Activities District, Principal Activities Centres, Major Activity Centres, Specialised Activity Centres and Neighbourhood Activity Centres.*

The Panel concluded that the existence of the classification implies that there is some difference between the categories. However, it was more difficult to identify exactly what are the difference between major activity centres and neighbourhood activity centres.

The Panel looked to the DSE General Practice Note, *Structure Planning for Activity Centres*, December 2003 for guidance. While the prime purpose of the Panel was to use the document to ensure that Bayside City Council (and Kingston City Council) had achieved the aims of the structure planning process, and adequately followed the “process” steps outlines in the Practice Note. The Panel also looked to the document to provide further clues about the differences between neighbourhood and major activity centres.

The Practice Note refers to Principal and Major Activity Centres as “likely to experience significant change over time”, while “other activity centres are likely to emerge as Melbourne develops a more compact form” (p. 1). It refers to the key *Melbourne 2030* objectives relating to all activity centres, and states that they:

...must be planned and developed to maximise their potential and to create opportunities for growth based on their capacity. Each council has a responsibility to provide for population and economic growth.

This must be balanced with careful consideration of the existing conditions of the centre and what is valued by the community (p. 2).

Structure Plans should achieve a number of aims, including “support the roles and functions for the centre that will result from its classification, housing intensification and the development of the public transport network (p. 2).” Again, the Practice Note flags the classification of an Activity Centre as an issue, but otherwise treats all activity centres similarly with regard to the process of structure planning.

The Panel has not been able to find any clearer description of the implications of the classification of neighbourhood or major activity centres.

Melbourne 2030 certainly provides clarity about the common features of major and neighbourhood activity centres relating to intensification and mix of activities, enhancement of public spaces and focus on walking, cycling and public transport. The central issue is whether the balance between intensification and meeting the desired urban character as identified by local residents, traders and councils should be tipped more towards intensification in major activity centres than in neighbourhood activity centres. In other words, should the Panel have a less stringent test relating to intensification of activities - and therefore be more open to accepting controls which may limit future development - in Highett than in a major activity centre?

The Panel has concluded that a rigorous series of tests should apply to neighbourhood activity centres like Highett, because of the common features of all activity centres described throughout *Melbourne 2030* documentation. Nevertheless, it has also accepted the argument that there is a difference between major activity centres and neighbourhood activity centres – otherwise, there is no point in the classification at all. It has concluded that consistency with neighbourhood character can have a higher weighting in neighbourhood activity centres, and therefore the extent of intensification of activity may meet a slightly lower standard than in a major activity centre. Of course, this does not mean that there should be any less rigour in analysing the consistency of a neighbourhood activity centre with *Melbourne 2030* principles – just that the balance of the weightings may be different.

The Highett Structure Plan and Amendment C46 have therefore been assessed by the Panel according to their contribution to meeting State and local policy, within the context of accepting that a neighbourhood activity centre is not the same as a major activity centre, even though the two types of centres have common features. The implication is that the Panel has considered the Amendment in terms of meeting all of the objectives of *Melbourne 2030*, but has been less willing to forgo the quality of neighbourhood character in the interests of intensification than it would be in a major activity centre.

5.3 THE STATUS OF THE HIGHETT STRUCTURE PLAN

5.3.1 THE STRUCTURE PLANNING PROCESS

Amendment C46 is based on translation of the outcomes of the Highett Structure Plan (November 2004) into the Bayside Planning Scheme. The Panel therefore considered that it was essential to be satisfied that the Structure Plan itself was not fundamentally flawed, either in the processes used to develop the plan (including the consultation process), or in the content of the Structure Plan itself.

The essentials of the structure planning process are described in the DSE General Practice Note, *Structure Planning for Activity Centres* (December 2003). The Practice Note describes “What does *Melbourne 2030* expect for activity centres?”, “What are the aims of the structure planning process?”, and “What is the process for structure planning?”

The Panel has considered the preparation of the Highett Structure Plan against all three questions.

With regard to what *Melbourne 2030* expects for activity centres, there is a series of key objectives, covering broadening the mix of uses appropriate to the type of centre; encouragement of economic activity; improved access by walking, cycling and public transport; provision of a focal point for the community at different geographic scales; support for the Principal Public Transport Network; and reduced car dependency. The Panel was satisfied that the Highett Structure Plan was consistent with these key objectives, which appeared to have general support during the structure planning process. Further, none of the key objectives were issues of debate during the Amendment C46 process.

With regard to the aims of the structure planning process, the key task of structure plans is “to articulate the type and quantity of change in the centre and how the impacts of that change will be managed” (p. 2). Structure plans should set strategic frameworks; support the role and functions of centres; outline the scale and direction of development; support greater transport choice; identify new street and pedestrian connections; enhance the public environment; promote environmentally sustainable development; reflect *Melbourne 2030* performance criteria, policies and objectives for activity centres; and provide greater certainty for developments. The Panel considered that the Highett Structure Plan was consistent with these aims.

The process for structure planning is described in detail in the Practice Note. It includes “preparing to plan”; analysing the centre and its context; establishing a vision and objectives statement; developing and testing options; preparing a framework plan; an implementation program; and monitoring and review.

Amendment C46 is part of the implementation process, while monitoring and review is premature at this stage. However, the Panel concluded that the processes adopted by Bayside Council (and Kingston Council) and the consultants were generally consistent with the Practice Note. The analysis, planning, design and consultation processes were all satisfactory. The fact that there is widespread support for the general thrust of the Highett Structure Plan (November 2004) from major

stakeholders is a positive sign, despite the community concern and scepticism about increased densities and heights of development, apprehension about the need for careful future planning of the CSIRO site in Bayside and the former Gas and Fuel Corporation site in Kingston, and objections from those arguing that height limits are too restrictive.

The Panel has identified one exception regarding the integrity of the process for structure planning. The Practice Note states that:

Measurable objectives should be included for all the major changes that will be needed in the centre (such as increased housing, employment or retailing provision or changes in road, parking and public transport provision). For example, objectives could specify:

- *how many additional dwellings are needed*
- *how much retail will be needed for local and regional functions*
- *what service and facility upgrades will be needed*
- *what new access routes will be required (pp. 4-5).*

The Highett Structure Plan outlines the potential for additional retail floorspace (p. 45) and for shop top residential development (p. 42), but is vague on objectives for residential development in the “preferred medium density residential areas”, the major redevelopment sites and the “incremental change residential areas”. The Structure Plan refers to an assumption of “an additional 3,000 people can be accommodated throughout the area” (pp. 45, 75), but this is not presented as a clear objective, nor is the potential contribution from each of the precincts within Highett. A clearer statement of quantified objectives would have greatly assisted the Panel in its consideration of the adequacy of Amendment C46 in translating the Structure Plan consistent with *Melbourne 2030*. Further, it would have provided greater clarity to all stakeholders about the potential for development in each precinct, ameliorating future conflicts about the expectations relating to development throughout Highett.

Like all plans, the Highett Structure Plan should be the subject of review in several years. There may be possibility for review in the shorter term, when modifications being mooted by Kingston City Council may be included in a new draft. The Panel considers that more rigorous and measurable residential and retail targets be included when the Structure Plan is modified.

The Panel therefore recommends that:

Clear and measurable residential and retail targets be included when the Highett Structure Plan is modified.

5.3.2 CONSISTENCY WITH DESIGN GUIDELINES

The Panel considered DSE’s *Activity Centre Design Guidelines*, April 2005 to assess whether or not the Highett Structure Plan and Amendment C46 met the design guidelines, as a check on the integrity of the final plan.

The *Activity Centre Design Guidelines* cover generic guidelines for all activity centres, relating to urban structure, stations and interchanges, street design, public spaces, building design, malls and large stores, higher density housing and car parking. While many of these will be considered at later phases of the planning process, the Highett Structure Plan and Amendment C46 established a framework for them in Bayside City.

Examples include:

- the design of the street network;
- the integration of the activity centre streets into the local street network;
- diversity of uses;
- active street frontages;
- connection of the surrounding neighbourhoods to the activity centre;
- encouragement of walking, cycling and public transport;
- minimising the dividing effect of railway corridors;
- providing a focus for the local community;
- minimising water and energy consumption;
- maximising higher density housing opportunities, such as “amalgamation of small lots into larger sites to facilitate better and more efficient design results” (p. 40);
- ensuring the scale and form of higher density housing in activity centres are appropriate;
- integrating the activity centre into the surrounding neighbourhoods; and
- ensuring that higher density housing sensitively responds to the surrounding neighbourhoods, such as “articulate built form to complement the scale and appearance of surrounding residential areas and the identified preferred character” (p. 41), and “provide a gradual transition from existing frontage setbacks of surrounding residential buildings” (p. 41).

These were all issues within the scope of the Highett Structure Plan and Amendment C46, and which generated considerable debate.

The Panel considered whether any of the elements of Amendment C46 may have precluded or discouraged the achievement of the Design Objectives, or even the “Design Suggestions” within the *Activity Centre Design Guidelines*.

The Panel concluded that all could be met within the framework of Amendment C46. The only issue was whether the Amendment achieved objective 7.1: “To maximise higher density housing opportunities”; however, there is clearly intention in the Guidelines to balance maximisation of higher density housing with the next objective 7.2: “To ensure the scale and form of higher density housing in activity centres are appropriate”.

The Panel has therefore concluded that Amendment C46 is consistent with *Activity Centre Design Guidelines*.

6. MODIFICATIONS TO THE LPPF

6.1 MODIFICATIONS TO THE MSS

Amendment C46 proposed a number of changes to Bayside's Municipal Strategic Statement, covering:

- Clause 21.04: Vision and Overarching Goals:
 - Clause 21.04-3 Strategic framework plan;
- Clause 21.05 Housing:
 - Clause 21.05 – 3 Objectives Strategies and Implementation;
- Clause 21.06 Activity Centres:
 - Clause 21.06-1 Overview;
 - Clause 21.06-2 Key Issues; and
 - Clause 21.06-3 Objectives, strategies and implementation;
- Clause 21.11 Open Space;
- Clause 21.11-1 Overview:
 - Clause 21.11-3 Objectives, strategies and implementation; and
- Clause 21.12 Infrastructure:
 - Clause 21.12-1 Key Issues; and
 - Clause 21.12-3 Objectives, strategies and implementation.

There were few comments on the proposed modifications to the MSS during the exhibition process.

The Panel accepted that the thrust of the modifications was sound, incorporating the changes necessary as a result of the preparation and adoption of the Highett Structure Plan, and updating terminology and reference documents.

The Panel proposed a number of refinements at the beginning of the hearings, such as retention of a paragraph on sustainability principles in Clause 21.06-1 Major Activity Centres – Overview, clarification of a number of points under Clause 21.12-1 Infrastructure – Overview, updating of reference to the Bayside Bicycle Strategy, and correction of a number of typographical errors.

Council provided a revised version of the modifications to the MSS during the hearings, and the Panel was satisfied that the new version did not change the intent of the exhibited version in any way.

One outstanding matter raised by the Panel was the need to update the Strategic Framework Plan in Clause 21.04-3 Vision – Strategic Framework Plan, to take account of *Melbourne 2030* terminology relating to activity centres. Given that there would be no change to the hierarchy listed in the current Strategic Framework Plan,

the Panel concluded that it was appropriate to update it in accordance with the terminology of *Melbourne 2030* (and of the remainder of Amendment C46).

It therefore recommends that:

Amendments to the Municipal Strategic Statement be adopted as exhibited, including modifications provided during the Panel Hearings, together with updating of the Strategic Framework Plan to incorporate activity centre terminology consistent with Melbourne 2030.

6.2 LOCAL POLICY 22.08

6.2.1 CLAUSE 22.08: HIGHETT NEIGHBOURHOOD ACTIVITY CENTRE

The Amendment proposed a new Local Policy titled 'Highett Neighbourhood Activity Centre' under Clause 22.08.

There were several submissions to the exhibited amendment requesting deletion of a reference to extending Graham Road through the CSIRO site, and modifying the policy to further recognise the Highett Grassy Woodland on the CSIRO site.

In its primary submission to the Panel, Council noted that, following the exhibition process, the amendment was considered at the Bayside City General Committee meeting of 20 June 2005 and subsequently confirmed at the Ordinary Council meeting of 27 June 2005. The amendment was adopted for referral to a panel with two changes taking account of these submissions.

The Panel accepted that these changes were appropriate and uncontroversial, and that no stakeholder would be disadvantaged by them. It accepted that this section of the amendment could proceed with the modifications proposed by the Council.

The Panel reviewed the new Local Policy in terms of whether or not it faithfully reflected the content of the Highett Structure Plan. It was satisfied that this was the generally the case.

It therefore recommends that:

The new local policy at Clause 22.08: Highett Neighbourhood Activity Centre be adopted as exhibited, but including a deletion of a reference to extending Graham Road through the CSIRO site, and modifying the policy to further recognise the Highett Grassy Woodland on the CSIRO site.

As discussed in Chapter 7, the Panel found that a new dot point appears to have been added to the 'key principles underlying the Structure Plan' quoted in the Highett Neighbourhood Activity Centre Policy:

Establishing a built form that respects the existing one and two storey character of the Highett Shopping centre, while providing some limited opportunity for a higher built form to increase the intensity of activity in

the centre and to achieve a mix of uses at upper levels of buildings and at the rear of shops.

This could be corrected by simply deleting this paragraph from the quotation. However the Panel has found the Structure Plan somewhat lacking in clear statements about the intention of the proposed urban form and would therefore prefer to see the Structure Plan amended to include it.

It recommends that:

The Structure Plan be amended to include the following dot point quoted in the Highett Neighbourhood Activity Centre Policy:

Establishing a built form that respects the existing one and two storey character of the Highett Shopping centre, while providing some limited opportunity for a higher built form to increase the intensity of activity in the centre and to achieve a mix of uses at upper levels of buildings and at the rear of shops.

6.2.2 CLAUSE 22.05: BUSINESS EMPLOYMENT AREA POLICY

Amendment C46 addressed the new local policy referred to in Amendment C39, and planned to alter it to include the proposed Mixed Use Zone north of Bay Road. The Building Envelope Key Map is proposed to be altered to include properties in the Highett Structure Plan. The local policy is to be applied to the subject land to ensure consistency with surrounding mixed use areas.

The Panel accepted the validity of the change, and recommends that:

The modifications to the local policy at Clause 22.05: Business Employment Area Policy as proposed in Amendment C39 be adopted as exhibited.

7. BUILT FORM

7.1 HEIGHT CONTROLS

A central feature of Amendment C46 is its inclusion of height controls on built form in the areas covered by DDO4 and DDO5. The DDOs propose to impose mandatory height controls on future developments.

A considerable portion of the panel hearings comprised references to a range of VCAT decisions relevant to Highett. These included decisions covering 284 and 286 Highett Road, 487 Highett Road and 66 Graham Road in Highett, while the implications of the Golden Ridge Investments Pty Ltd case relating to 1-19 Colombo Street, Mitcham were cited by submitters.

At the hearing, the Panel was presented with plans for the development at 284-286 Highett Road, comprising a supermarket and specialty shops with car parking below and with apartments and associated car parking above. The development covered five levels and reached a height of just over 18 metres at the lowest points of the site. It was subject to review by VCAT. On the day the hearings closed, Bayside City Council received and forwarded to the Panel by email the VCAT decision to allow the review.

A central issue in each of these cases was the height of the built form (although other issues relating to the fine grain of development were also significant). The VCAT decisions supported applications for buildings with heights which would not be consistent with Amendment C46. Of course, the applications were heard within the context of the Bayside Planning Scheme prior to adoption of the Highett Structure Plan and its translation into the proposed Amendment C46.

The Panel considered that the fact that virtually all the recent decisions relating to significant developments in Highett had been resolved at appeal is indicative of shortcomings in the planning framework or process. There is an apparent absence in clarity for developers, the community and Council, which the Highett Structure Plan and Amendment C46 have attempted to address.

The Panel therefore concluded that a planning scheme amendment to increase certainty relating to development in Highett is desirable. However, that does not mean that the Structure Plan has necessarily provided appropriate direction relating to built form, or that its translation into Amendment C46 is the best way to achieve desirable outcomes.

It was put to the Panel that mandatory height controls were against the spirit of the Victorian Planning Provisions and against good practice in the formulation of planning schemes. While the submissions on this topic focused on the commercial area of the Highett Activity Centre, this issue is equally relevant to the proposed

Residential 3 areas where a mandatory height of three storeys would be applied as a requirement of that zone.

The fundamental objection to mandatory controls of any kind is that they are likely to be arbitrary and apply in all cases regardless of variations in circumstance. Development is therefore unreasonably restricted on some sites where the objectives of the control can be achieved where the mandatory control is not met. It was suggested by Mr Govenlock in his expert evidence and Mr Scally in his submission on behalf of the owners that the land at 284-286 Highett Road (the Gillon site, discussed below in Section 7.2.3) was a perfect example of this. They argued that sizeable industrial sites had been amalgamated providing a large site which allowed flexibility in planning that could meet all the objectives of the Structure Plan and provide a satisfactory interface with adjoining properties even if the proposed mandatory height limits are exceeded. Performance based controls would therefore be more appropriate in this case.

The advantage of mandatory controls is the certainty they provide to all parties: the intending developer, the adjoining property owners, the community and council. These are not inconsiderable advantages. Mandatory controls are therefore worth pursuing, provided planning has been undertaken in sufficient detail to take account of all the strategic objectives at both the local and metropolitan levels and develop an urban form that most satisfactorily meets these objectives.

The Panel believes a central part of the structure planning process for activity centres is to demonstrate in physical form how potentially conflicting objectives should be resolved. This is where the objectives of urban consolidation and particularly the need to focus development in and around activity centres will be considered in the local context and an urban form developed to provide the best fit. If this has been at a level of detail that can justifiably specify building heights and setbacks, then mandatory controls would be appropriate.

Not every part of a Structure Plan will necessarily be prepared to that level of detail. In the case of the Highett Structure Plan, for example, no particular building envelopes are provided for the Preferred Medium Density Residential Areas, and the illustrated development options for the CSIRO site are only conceptual.

In the main shopping strip east of the railway, however, quite detailed proposals for building massing and setbacks are provided. This provides for three storey development on the corners and at the rear, but with the upper storey set back along the mid block frontages. In his expert evidence, Mr Czarny noted that this is:

...designed to encourage shop top style housing along the primary spine with new medium density housing in back blocks over existing car parking areas (p. 6).

And while the Structure Plan does not elaborate on the intentions of the built form, its designer did. Mr Czarny noted that:

The emphasis of the Structure Plan was to protect the intimate look and feel of the Centre, while allowing for subtle projection and consolidation behind the primary street wall.

The proposed Highett Neighbourhood Activity Centre policy at Clause 22.08-1 quotes one of the key principles of the Structure Plan as:

Establishing a built form that respects the existing one and two storey character of the Highett Shopping Centre, while providing some limited opportunity for a higher built form to increase the intensity of activity in the centre and to achieve a mix of uses at upper levels of buildings and the rear of shops.

Likewise, four storey high buildings are recommended at the Nepean Highway end of the centre in order to provide a presence or awareness of the centre through an emphatic change in built form.

Noting the instances quoted above, the Panel believes that, where planning has been taken to this level of detail and an attempt is being made to realise a collective vision which is to apply over multiple ownerships, mandatory controls (and in this case mandatory height limits) are justified.

The question remains however whether mandatory height limits are equally justified on the area west of the railway and if so what limit that should be.

7.2 BUILT FORM WITHIN THE HIGHETT ACTIVITY CENTRE

7.2.1 CONTROLS ON BUILT FORM IN THE HIGHETT ACTIVITY CENTRE

The issue of built form in Highett was highlighted by the Highett Residents' Group in its submission to the Panel. The Group criticised "individual disconnected developments without reference to a cohesive plan", arguing that urban amenity was consequently needlessly diminished. It supported the process and content of the Highett Structure Plan, which "recognises the importance of context-sensitive development in the C46 Amendment... The proposed C46 Amendment is critical in supporting urban space development in a manner that complements the needs of the community." The Panel accepted the arguments of the Highett Residents' Group that a structure plan is essential to protect amenity, and that a Planning Scheme Amendment is necessary to implement the plan. However, the Panel has not agreed that Amendment C46 should proceed without modification.

The Highett Structure Plan covers a range of issues including indicative built form, infrastructure provision, the role of traders, and funding. Amendment C46 covers the translation of the proposals relating to built form into the Bayside Planning Scheme.

The Structure Plan covers a number of segments of the Highett Activity Centre, integrating them in an "Illustrative Concept" (Figure 8, p. 12). The Illustrative Concept outlines proposed maximum building heights which differ across the centre according to their context.

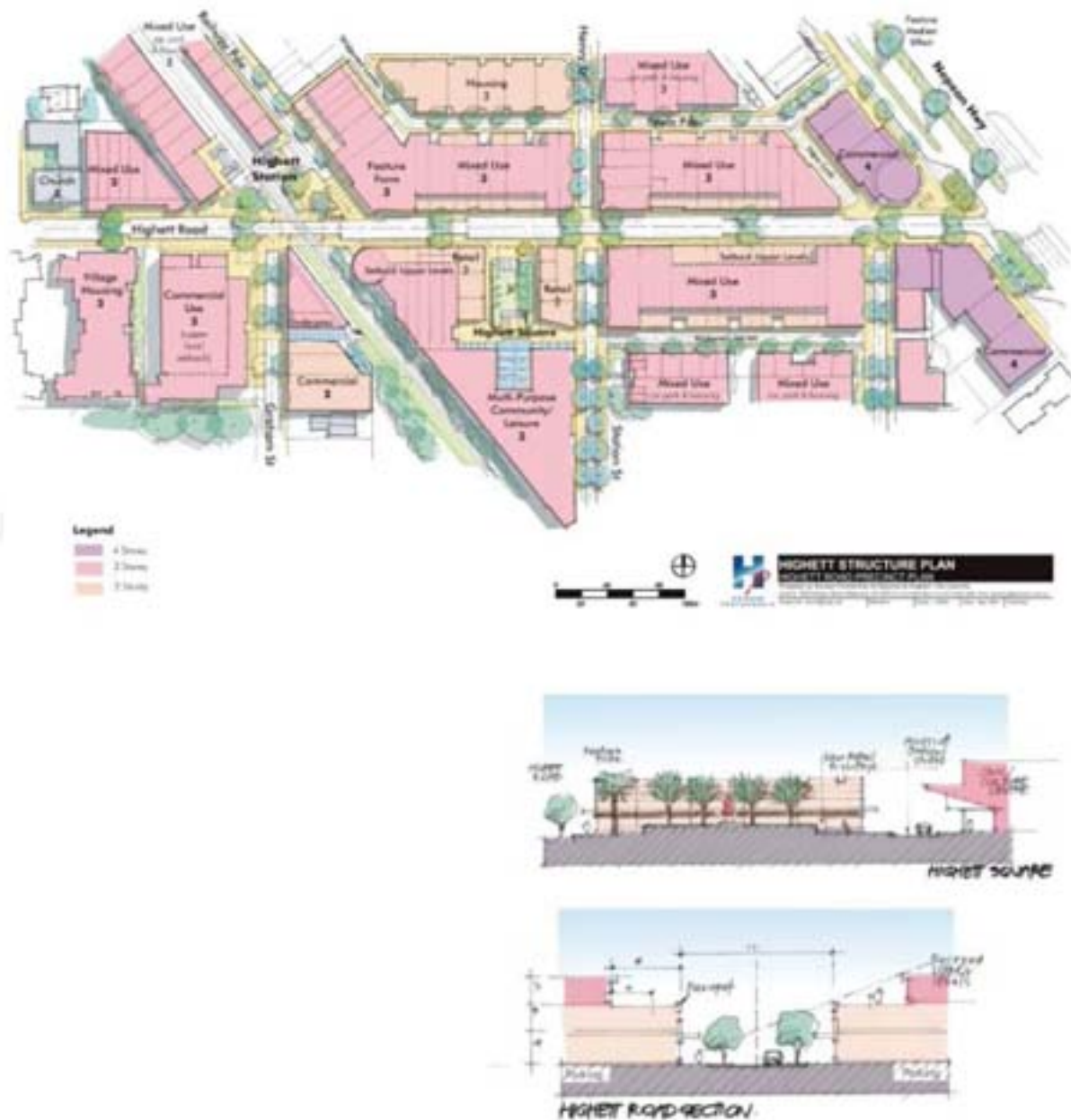


Figure 3: Illustrative Concept: Highett Activity Centre
Source: Highett Structure Plan (November 2004), p. 12

An issue raised during the hearings was the variation in maximum building heights proposed for the large site at 284-286 Highett Road. In his expert witness statement, Mr Govenlock stated:

I also note, the previous draft of the Structure Plan, dated August 2003, made a number of recommendations in relation to the subject site and area's identified for preferred medium density housing, that development of three to four storeys (particularly on large lots) would be appropriate. I note these recommendations have now been deleted from the November 2004 draft of the Structure Plan (p. 6).

The Panel noted the change that took place between the August 2003 and November 2004 versions of the Structure Plan, and concluded that no weight should be given to the earlier version. Any plan which proceeds through consultation and decision-making processes is likely to move through a series of iterations. Initial drafts are of interest in shedding light on the history of the decision-making process, but the adopted plan is the only one which has formal status.

The real issue for the Panel is whether or not Amendment C46 accurately reflects the intent of the adopted Highett Structure Plan. The Structure Plan flags a number of planning policies and controls in each of the precincts within the Study Area, covering matters such as building heights and setbacks. It also refers to Clause 22 and notes that:

it is appropriate to insert a policy in that section of each planning scheme that specifically relates to the Highett structure plan area... [I]t should include a statement of the key objectives derived from this report and clearly state that the findings and recommendations of the report will be taken into account by Council in relation to all applications for planning permits and all requests for rezonings, within the precinct (p. 52).

The new Local Policy 22.08: Highett Neighbourhood Activity Centre has been discussed in Section 6.2.1 above. The translation of the detail of the desired outcomes for built form within the Highett Activity Centre and in surrounding residential areas is covered in sections 7.2.2 and 7.3 below.

7.2.2 DDO4

The Structure Plan as quoted by Mr. Czarny in his expert evidence says:

To be consistent with the intended scale and quality of Highett Road east, having regard to the natural fall of the land to the west of the railway and the height of the other development proposal to the west, the development should present as three storeys to the Highett Road frontage.

However the proposed DDO4 which is specifically designed to implement the Highett Structure Plan has the following permit requirement:

Buildings and works must not exceed a maximum height of 7.5 metres (comprising 2 storeys) for that part of the building within 8 metres of the frontage of Highett Road and within 4 metres of a Residential 1 Zone (R1Z).

DDO4 then sets a mandatory height limit of 10.5 metres (comprising 3 storeys).

This places the Panel in a certain difficulty. The exhibited DDO requires the third floor to be set back by 8 metres but this is not underpinned by the Structure Plan and is not supported by the Council's expert witness.

Figure 3: Key Elements of the Structure Plan shows 'shop top housing set back behind façade' along the north side of Highett Road west, but this is not carried

through to Figure 8: 'Illustrative Concept' (which appears in Mr Czarny's evidence as Figure 2: 'Hihett Road Precinct Plan'). While the two storey elements are clearly illustrated east of the railway, the north side of Hihett Road west of the railway is simply designated Mixed Use (3 storeys). The built form plan, Figure 4, simply designates the area on both sides of Hihett Road west as '2-3 storey'.

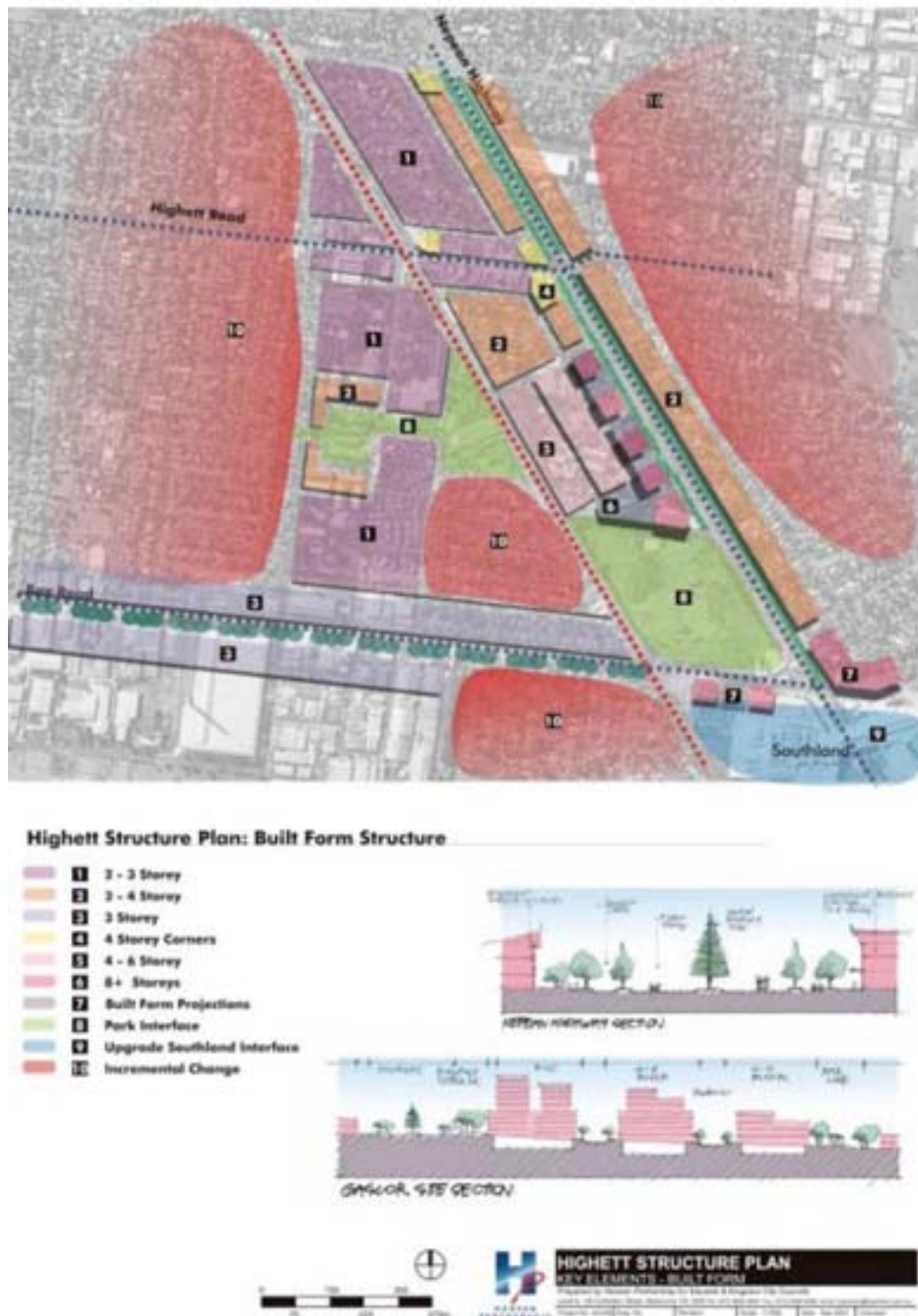


Figure 4: Hihett Structure Plan – Built Form
Source: Hihett Structure Plan (November 2004), p. 8

There are further anomalies in the concept plan depiction of the area south of Highett Road west.

This shows a three storey building on the corner of Graham Road and Highett Road with a dotted line possibly 8-10 metres inside the north, east and south faces of the building. The building carries the words 'Commercial Use 3 (upper level set back)'. At first glance this appears to represent what DDO 4 requires – that is, three storeys set back 8 metres. But there are other anomalies. The DDO only requires the setback to the Highett Road frontages, not to three faces of the building, and the plan does not use the orange colour for the setback area as is used elsewhere in the plan to denote two storeys. The whole building is coloured pink indicating 3 storeys.

This was explained by Mr Czarny as follows:

An earlier draft of the Highett Structure Plan report dated August 03 articulated a 3 storey form on the western corner of Highett and Graham Roads with a 4th setback upper level. This was inserted at the time to reflect a VCAT approved development on the land. Finalisation of the draft report for November 2004 and further detailed design examination of a 4 storey form on the corner site determined that 3 storeys was most suitable to the street frontage of both Highett and Graham Roads in this instance. I do not believe that a 4 storey form is warranted at the corner, but accept that such could be incorporated through substantial upper level setbacks so that it would not be visible (p. 31).

At the hearing Mr. Czarny further qualified his opinion by saying that he was not convinced that a four storey form could be satisfactorily accommodated on the site due to the potential visibility of the fourth floor from the surrounding land.

These anomalies suggest that the same level of design consideration that was given to the eastern part of the centre was not applied to the western part. Indeed, the Panel was informed that in the August 2003 version of the plan, the proposed built form for the south side of Highett Road was based on existing permits. In other words, they were taken as 'givens'. The subsequent review of the plan does seem to lack an exploration of design alternatives that would provide the basis for the mandatory controls in DDO4. This means that while the Panel strongly supports the use of mandatory height controls to implement activity centre structures plans, there is real doubt as to whether they can be fully justified in this case.

A further issue raised at Panel hearings was the 10.5 metre height limit in DDO4. Even if the intention is to limit development to three storeys, it was argued that 10.5 metres may constrain the quality of design, and that a small increase to 11 metres would provide an opportunity for higher quality design. The Panel concurs with this view.

7.2.3 284-286 HIGHETT ROAD

The plans for the development at 284-286 Highett Road were presented to the Panel, and were extensively debated throughout the hearings. The development covered five levels and reached a height of just over 18 metres at the lowest points of the site, in contrast to the proposed DDO4 in Amendment C46 which proposes a mandatory height limit of three storeys or 10.5 metres and a maximum of 2 storeys or 7.5 metres within 8 metres of the Highett Road frontage.

As noted above, there had been a permit application for the site, and the Council's refusal was subject to review by VCAT. The VCAT decision to allow the review was received on the final day of the Panel hearings.

The Panel noted the decision, and other decisions that were provided at the hearing, but took the view that these decisions were all made prior to the adoption of the Highett Structure Plan. Therefore, while the reasons for these decisions are of interest, the Panel has solely addressed the question of whether the amendment as proposed is appropriate, or whether it should be varied or abandoned.

The Panel took the view that permits have a limited life and there is no guarantee that the development will proceed. In any case, the Panel has considered the amendment on its merits, on the basis that the Planning Scheme should provide direction for other proposals which may be considered for the site at a future date.

Submissions on behalf of the Gillon Group suggested that mandatory height controls were inappropriate for the land at 284-286 Highett Road, as they failed to recognise the potential of the site to make a major contribution to the concentration of activities and housing in an activity centre without detracting from amenity or the character of the area. Performance based controls were advocated as an appropriate alternative. Mr. Govenlock, expert planning witness for the Gillon Group, provided the Panel with an alternative draft Design and Development Overlay which contained permit requirements that were expressed in terms of performance requirements.

The Panel was not convinced that the suggested performance requirements would be either effective or useful. To take just two examples:

Be site responsive to the existing and preferred neighbourhood character...

Provide a high quality architectural response and appropriate materials...

The problem with such undefined requirements is that they provide little guidance for the designer or the responsible authority, and indeed Mr. Govenlock agreed under cross examination that these requirements were already expressed in other parts of the planning scheme. At this level of planning, the Panel believes that performance-based controls should be much more specific if they are going to be useful. We would need to know what it is about the existing or preferred neighbourhood character that needs to be responded to. Is it for instance the low rise, intimate and fine grained character of the existing shopping strip? Should the architectural

response perhaps avoid overwhelming Highett Road and ‘be consistent with the intended scale and quality of Highett Road East’? What are the appropriate materials? Rendered masonry? Reflective metal? Polished granite?

The Panel believes that if performance controls are to be effective they must be sufficiently clear about what performance is to be achieved.

The Panel does not consider that the Structure Plan provides an answer. It is clear from Mr. Czarny’s evidence that maintaining and continuing the intimate look and feel of the centre is considered important. This is also implicit in the detailed modelling for future development in Highett Road east. However, this is not made explicit in the key principles to the Structure Plan. To determine the principles that underpin the proposed controls, it is necessary to go the amendment itself.

A new dot point has been added to the ‘key principles underlying the Structure Plan’ quoted in the Highett Neighbourhood Activity Centre Policy:

Establishing a built form that respects the existing one and two storey character of the Highett Shopping centre, while providing some limited opportunity for a higher built form to increase the intensity of activity in the centre and to achieve a mix of uses at upper levels of buildings and at the rear of shops.

Schedule 4 to the Design and Development Overlay is more explicit. The design objectives include:

To retain the low rise, neighbourhood character of the Highett Activity Centre by respecting the scale of the predominantly one and two storey built form that exists along Highett Road, whilst providing the opportunity for marginally higher buildings where setback from the street frontage and from residential zoned land.

The decision guidelines include:

The visibility of the building from Highett Road, and whether it will unreasonably impact on the openness and existing built form character of what is a relatively narrow and visually confined road.

The Panel supports the use of mandatory height controls where the planning process has considered the entire strategic context and has been undertaken in sufficient detail to demonstrate how they will achieve the desired objectives.

This has been achieved for the eastern part of the centre but the Panel is not satisfied that it has been achieved in the area west of the railway that is subject to Amendment C46.

The Panel generally supports the intentions of the amendment which appear to be to:

- Retain the low rise neighbourhood character of the centre;
- Maintain the openness and existing built form character of what is a relatively narrow and visually confined road (or avoid Highett Road west becoming a narrow canyon between development rising to several storeys on the street boundary to the north and south); and

- Respect the existing one and two storey character of the centre, while providing some limited opportunity for a higher built form.

However it is unclear if these cannot be achieved with some limited development to four storeys in the centre of 284-286 Highett Road. There is also the question as to whether three storeys to the street boundary would not be appropriate on the southern side of Highett Road as proposed by Mr Czarny. It is arguable that a more prominent building on the corner of Graham Road would be a more effective visual link between the eastern and western parts of the centre and help overcome the visual gap created by the railway.

However if Mr. Czarny's interpretation of the structure plan is to be adopted, this may imply a similar approach for the north side of Highett Road. The one metre contour plan for the area indicates that the frontage of properties on the north side are approximately one metre higher than those on the south, and there is the obvious overshadowing effect of buildings on the north side. Has this been taken into account?

The Panel is reluctant to either introduce new urban design concepts or recommend radical changes to the amendment, and thus to stall the structure planning process. On the other hand it is difficult to find a solution that satisfactorily resolves the various views and concepts put to it by the Council, the Council's expert witness and promoted by the Structure Plan, let alone the views put to the Panel on behalf of the owners of the site at 284-286 Highett Road.

The Panel accepts the Council's concern about the height of development immediately abutting Highett Road west, but at the same time is concerned that the opportunity to make the best use of the site could be curtailed by arbitrary height limits that have not been fully justified.

Much has been made of the notion of extending the character of Highett Road east across the railway to Highett Road west. Would one solution be to adopt a similar built form solution; namely promote 3 storey development at the end of each block and require the third storey to be set back between these 'book ends'? This would have the advantage of higher floors on the corner of Graham Road to bridge the visual gap, while avoiding the canyon effect along most of the street frontages. This form might also accommodate more comfortably the four storey development currently under construction at 487 Highett Road. The council might also wish to consider whether it would be appropriate to apply this 'bookend' technique by permitting three storeys at the street frontage at other junctions in Highett Road west, namely at Train Street and Middleton Road.

The Panel also believes that mandatory controls would be justified to achieve this built form as the rationale has already been established for the other side of the railway line.

With respect to the question of a three storey limit across the whole of 284-286 Highett Road, perhaps this might be resolved by reference to Mr. Czarny's evidence, where he suggests that a four storey form could be incorporated through substantial upper level setbacks so that it would not be visible. At the hearing there was some discussion as to whether it was possible to mix mandatory controls with performance

based controls in the same DDO and it was generally agreed that this was possible. This seems to an area where a performance based control based on visibility would determine whether a part fourth floor on the site could be accommodated without being visible and thus maintaining the 'low rise neighbourhood character of the centre'.

The Panel accepts that mandatory controls are justified where planning has taken account of all the strategic issues and has been undertaken in sufficient detail to show a built form that best accommodates all of the objectives. However, while these conditions appear to have been met for the eastern part of the centre we are not satisfied that this has been done for the western half.

The Panel considers that at least some development to three storeys on the frontage to Highett Road should be permitted. However this should not apply to all of the commercial frontages along Highett Road for the same reason as the structure plan does not envisage 3 storeys along both frontages in the eastern part of the centre.

The issue might best be resolved by adopting a similar approach to urban form as has been proposed by the Structure Plan for the eastern part of the centre, where 3 storey development at the corner frames two storey development over the first 8 metres in the mid block area.

Some four storey development might be acceptable at 284-286 Highett Road where this is not visible from key points around the site.

7.2.4 CONCLUSION

The Panel has therefore concluded that the Structure Plan is generally sound (but with some inconsistencies relating to preferred building heights), and that the thrust of Amendment C46 has merit. However, it does not consider that the amendment has fully reflected the Structure Plan in its translation to DDO4.

It therefore recommends that:

DDO4 be adopted as exhibited, with the following modifications:

- **Under 2.0 Buildings and Works, the first dot point be modified to include reference to the potential for three storey development to the frontage of Highett Road near the corner of Graham Road, and possibly the corners of Train Street and Highett Road and Middleton Street and Highett Road.**
- **Under 2.0 Buildings and Works, the second dot point be modified to read "Buildings and works should not exceed a maximum overall height of 11 metres (comprising three storeys), except if a fourth storey can be accommodated without being visible from any part of Highett Road."**

7.3 BUILT FORM IN THE RESIDENTIAL AREAS

7.3.1 CONTROLS ON BUILT FORM IN HIGHETT RESIDENTIAL AREAS

The Structure Plan proposes the encouragement of medium density housing north and south of the Highett Shopping Centre. In Bayside this relates to land south of Dart Street between Worthing Road and north of Highett Grove between Graham Road and the railway. Amendment C46 proposes to implement this proposal by replacing the Residential 1 Zone with a Residential 3 Zone and applying DDO5 which introduces particular height and setback requirements.

7.3.2 RESIDENTIAL 1 OR RESIDENTIAL 3 ZONING

The Council's submissions indicated that the Residential 3 Zone had been employed on the advice of the Department of Sustainability and Environment. The use of a separate zone was seen as the only way of overcoming the limitations on development in the Schedule to the Residential 1 Zone.

In his expert evidence, Mr Czarny expressed concern at the use of a zone which is generally regarded as having been developed to limit development for an area where the intention is to encourage an intensification of development. The Panel concurred with this point – it is incongruous to be proposing a Zone that aims to achieve the opposite objectives to those being proposed for Highett.

In its final submission to the Panel, the Council suggested that, notwithstanding the advice of the Department, it was possible to modify the application of the Schedule to Residential 1 Zone through the use of an overlay like DDO5.

This would require some modification to the exhibited drafting of DDO5. The Council suggested that:

It should be modified to read as follows:

- *The standards set out in Clause 55 (as modified by any Schedule to a zone) are modified in the following respect:*
 - *Setbacks – The requirement contained in this Schedule will apply in relation to Standards B6 and B17;*

The 4th bullet point in Part 2.0 of DDO5 can be redrafted and divided into two bullet points to express the intent more clearly. A preferred form of drafting is as follows:

- *Buildings should be setback from side and rear boundaries:*
 - *In accordance with Standard B17 of Clause 55; except that*
 - *The lower level of the building should be setback to a distance which is the same as the setback required by Clause 55 for the highest point of any wall above that lower level.*
- *High walls should be landscaped by utilizing the increased setback at ground level along a significant proportion of the length of any high walls.*

The Council suggested that:

In all other respects, the drafting of DDO5 does not require any modification.

The Panel would prefer this solution for the reasons stated above. There are the advantages of transparency in introducing a distinctly new zone to draw attention to the fact that the Schedule does not apply to areas of preferred medium density development. However, this advantage is largely negated by applying a zone that is intended to restrict rather than encourage new development. Furthermore, the change in controls should be evident from the overlay maps. In the current situation any intending developer would need to be aware of the provisions of DDO2. The change from DDO2 to DDO5 would immediately alert the owner or developer to the fact that different provisions apply.

The Panel therefore recommends that:

The Residential 1 Zone be retained within the subject area (rather than a change to Residential 3 Zone), subject to appropriate modifications to the Schedule to DDO5.

7.3.3 DDO5

A key feature of Amendment C46 is DDO5, which introduces height and setback requirements in residential areas.

A key housing strategy at Clause 12.01-2 is to:

Encourage higher density housing development on sites that are well located in relation to activity centres and public transport.

The proposed preferred medium density areas are certainly well located in relation to activity centres and public transport. On the other hand DDO5 introduces controls which are substantially more onerous than Clause 55. The question needs to be asked 'if this is intended to be an area of increased density and change, why does Clause 55 need to be varied?'

In essence DDO5:

- Limits development to 7.5 metres and two storeys on sites of less than 1,000 m²;
- Limits development to 9 metres and three storeys on sites over 1,000 m²;
- Sets a minimum front setback of 6 metres;
- Sets a minimum side and rear setback of 4.1 metres for three storey development; and
- Requires car parking to be primarily within buildings (probably underground).

These requirements are designed to encourage amalgamation of allotments and development of apartment style development set within landscaped areas.

The major impact on development opportunities between these limits and those of Clause 55 appear likely to be:

- The 7.5 metre (two storey) height limit for standard sized allotments; and
- The loss of opportunity to ‘step’ development down at the side and rear and build closer to boundaries.

Impacts of probably a lesser degree are likely to be:

- The requirement to setback 6m rather than to the average setback of adjoining buildings, even for two storey development; and
- The limitation to three storeys and nine metres.

These latter provisions may have less impact as front setbacks are likely to be close to 6 metres in any case, while the market for development over three storeys may well be limited.

However the proposed requirements need to be seen in the present context where Schedule to the Residential 1 Zone and DDO2 applies.

The following table provides a summary comparison between the requirements of Clause 55, of the Schedule to the R1Z combined with DDO2 and the proposed requirements of DDO5.

	Clause 55	Schedule to R1Z plus DDO2	DDO5
Front Setback	Average of adjoining setbacks up to 9m. Where no adjoining buildings: 4m	Same as largest adjoining setback or 9m. Where no adjoining buildings: 9m	6 m
Side and rear Setbacks at 9m height	4.1m	8.2 m	4.1m
Height	Not applicable over 3 storeys	Not more than two storeys and not more than 9m (10m for sloping sites)	7.5 (comprising 2 storeys) or 9 metres (comprising three storeys) for lots greater than 1,000 sqm.
Site Coverage	60%	50%.	60%

Seen in this light the proposal makes some substantial changes. The side and rear setback requirements, which are currently double those of Clause 55, are eased and numbers of storeys for amalgamated sites increased from two to three.

Curiously however the height limit is more restrictive. Nine metres remains the maximum height, two storeys are limited to 7.5m and no allowance is made for an increase in limit for sloping sites. The Panel can see no reason why the allowance of an extra metre for sloping sites should not be perpetuated.

But are these changes enough? Could these controls have the effect of discouraging development in an area that is intended to be an area change and intensification?

It is probably true that the controls will inhibit piecemeal intensification of development to a degree but they do seem to be a genuine attempt to encourage a much more dramatic change in the character of the area. Apartment style development is to be favoured by allowing more development on amalgamated lots. At the same time the amenity of residents continuing to live in single storey houses is to be protected through landscaping on side and rear boundaries replacing building at lower levels. This might prove a successful means of achieving a genuine transformation of these areas while minimising resident concern, particularly while the area is undergoing a protracted transition. In this sense the proposal appears quite innovative and is worth supporting.

There are currently few lots which are greater than 1,000 square metres, and it is unlikely that there would be rapid increase in consolidation of lots in the short term. However, the objective is consistent with local policy and with *Melbourne 2030*, and is likely to encourage desirable consolidation over the longer term.

The Panel is also encouraged by the possibility that the application of the residential 3 Zone can be avoided.

The Panel therefore believes that DDO5 generally accords with housing strategy at Clause 12. It recommends that:

DDO5 be adopted with the following modification:

The second dot point under 2.0 be amended to include the following words after the word '9 metres':

'..., or 10 metres where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.'

8. OTHER CHANGES IN ZONES

In addition to the proposed change of zone from Residential 1 to Residential 3, the following changes were exhibited in Amendment C46:

- Rezone industrial sites in the study area to Residential 3;
- Rezone land in the Bay Road corridor not affected by Amendment C39 to Mixed Use;
- Rezone all Business 2 areas to Business 1; and
- Rezone one property currently within the shopping centre from Residential 1 to Business 1.

The Panel concluded that all of these are appropriate, with the exception that the rezoning of industrial land should be to Residential 1 rather than Residential 3. It therefore recommends that:

The rezoning of industrial sites in the study area be to Residential 1 rather than Residential 3, and the following rezonings be adopted as exhibited:

- **Rezone land in the Bay Road corridor not affected by Amendment C39 to Mixed Use.**
- **Rezone all Business 2 areas to Business 1.**
- **Rezone one property currently within the shopping centre from Residential 1 to Business 1.**

9. FUTURE DEVELOPMENT OF THE CSIRO SITE

9.1 STRATEGIC SIGNIFICANCE OF THE CSIRO SITE

The CSIRO site currently accessed from Graham Road is a major feature of the Highett Structure Plan. However, its designation as Commonwealth land and the likelihood that redevelopment of the site will not occur for some years precluded close consideration in Amendment C46.

The Panel conducted an inspection of the site during the hearings, because of its significance for the Highett Structure Plan. It inspected the layout of the site, including the buildings, open space and potential conservation areas.

The site encompasses about 9.5 hectares. Two options for development are presented in the Highett Structure Plan, one focusing on medium density residential development, and the second including an educational campus with student accommodation.

The Panel considers that the CSIRO site does present a major opportunity for redevelopment, consistent with Bayside Planning Scheme and *Melbourne 2030* objectives. Its size, accessibility, location and conservation values make it ideal for a high quality major development when CSIRO quits the site.

The Panel has concluded that planning and redevelopment of the site should not be constrained by the limits of the adjacent DDO4 and DDO5, when future amendments are being considered. A more flexible approach is required to ensure that heights and densities are appropriate to the scale and potential of the site, while at the same time ensuring that interfaces with surrounding residential and business areas are handled sensitively.

9.2 FUTURE PLANNING OF THE SITE

Amendment C46 flags a number of future planning issues relating to the redevelopment of the CSIRO site:

- Modification of the MSS under Clause 21.05: Housing to include reference to the site as “the most significant remaining development site” in the municipality;
- Reference to the Highett Grassy Woodland on the site in Clause 21.11 Open Space;
- Reference in Clause 21.11 Open Space to enhancing views and access to the attractive but relatively inaccessible Lyle Anderson Reserve by creating a new open space link from the CSIRO site, and the creation of a new open space area on the CSIRO site “in the event that it is developed for residential uses in the future”; and

- Reference to the potential for the site to be redeveloped for educational purposes in Clause 22.12-3: Infrastructure – Objectives, Strategies and Implementation.

These establish the beginnings of a framework for future planning, and are supported by the Panel, as noted in Section 6 above.

As noted in Section 6.2.1 above, the Panel also supports Council modifications to the exhibited amendment regarding protection of the grassy woodland and retention of the present location of Graham Road.

Future changes of land use at the CSIRO site will require significant planning and consultation effort leading to an eventual rezoning. The processes followed in the development of the Highett Structure Plan and Amendment C46 give the Panel confidence that Bayside City Council and the future developers of the site will pursue an open and comprehensive consultation, planning and amendment process. However, there will be additional pressures to be creative in involving all key stakeholders in the early phases of planning, given the significance of the site for *Melbourne 2030*, and its historical, conservation and redevelopment importance.

9.3 THE HIGHETT GRASSY WOODLAND

Many of the submissions to Amendment C46 addressed the need to protect the Highett Grassy Woodland located on the CSIRO site. In particular, the Panel was impressed with the presentations made by Mr Norris on behalf of the Friends of the Highett Grassy Woodlands, Mr Rendell on behalf of Beaumaris Conservation Society Inc., and Mr Allan for the Highett Residents' Group, all of whom strongly supported protection of the area.

The modifications to Amendment C46 proposed by Bayside City Council included reference to protection of the Highett Grassy Woodland. The Panel accepted the findings of a Biosis report by Jeff Yugovic and Sally Koehler, *Flora and Fauna Assessment of CSIRO Land, Highett, Victoria* (March 2004), reinforced by its own inspections of the site, which clearly identified the conservation significance of the Grassy Woodland.

The Panel therefore recommends that:

The protection of the Highett Grassy Woodland on the CSIRO site be a high priority when future planning of the site takes place.

9.4 FORMER TELSTRA SITE

The Panel considered a submission from UrbisJHD Pty Ltd and an "Outline of Issues" (as noted in Appendix A below) from Mr Scally of Best Hooper on behalf of Intrapac Pty Ltd and Strine Properties Pty Ltd, owners of land at 329 Bay Road, Cheltenham. Mr Scally provided a further submission at the Panel hearings.

The submissions reiterated the preference of the owners for a Mixed Use rather than Business 3 zoning for the site, but accepted that this was not part of the considerations of Amendment C46. They requested that the C46 Panel "should

comment on the C39 recommendation and confirm that MUZ and not B3Z would be appropriate future rezoning of the Telstra land in light of the strategic direction earmarked for the CSIRO site in Amendment C46”.

The C46 Panel has considered the matter, and has concluded that the recommendations of the C39 Panel remain sound. These are that:

- *The Business 3 Zone be adopted (as exhibited) for the Telstra site; and*
- *The Planning Authority review the zoning of land between Graham Road and Middleton Street, in association with the zoning of the CSIRO site.*

The C46 Panel also agrees that there will be the opportunity to reconsider this proposition at the time the CSIRO land is ‘zoned’.

The submissions also sought to ensure that future planning for the CSIRO site be integrated with planning for the former Telstra site, when a future planning and amendment process are being contemplated. This is reinforced by the Highett Structure Plan, which shows some encroachment onto the Telstra land in one of the scenarios for future redevelopment of the CSIRO site.

The Panel supports this proposition. Integration of planning will maximise the benefits for all stakeholders, providing greatest opportunity for development which produces the best land use, design, conservation and open space outcomes.

In its submission to the Panel, The Friends of the Highett Grassy Woodland expressed concern that integration of the planning for the former Telstra site in Bay Road with the planning for the CSIRO site could compromise the protection of the Highett Grassy Woodland on the CSIRO site. On behalf of the group, Mr Norris expressed concern that “integration” may automatically mean planning and construction of an inappropriate road through the centre of the Grassy Woodland.

The Panel understood the concern expressed by Mr Norris. However, it concluded that integration of planning for the two sites is more likely to result in a positive outcome for the protection of the Grassy Woodland than planning for each site in isolation, particularly if the conservation value of the Grassy Woodland area is central to the planning process.

It therefore recommends:

Future planning for the CSIRO site be integrated with planning for the former Telstra site at 329 Bay Road, Cheltenham, when future planning and amendment processes are being contemplated.

10. CONCLUSIONS & RECOMMENDATIONS

10.1 CONCLUSIONS

The Panel has considered all the submissions referred to it and all the material presented at the hearings and has reached the following conclusions:

- Highett is an extremely important opportunity for Bayside to meet the housing needs of the future population, and the opportunity should not be missed. Further, Amendment C46 does provide for significant intensification of activity. Amendment C46 is consistent with the need to achieve housing and population needs in Bayside City;
- The Panel has accepted that a neighbourhood activity centre is not the same as a major activity centre, even though the two types of centres have common features. The implication is that the Panel has considered the Amendment in terms of meeting all of the objectives of *Melbourne 2030*, but has been less willing to forgo the quality of neighbourhood character in the interests of intensification than it would be in a major activity centre;
- The analysis, planning, design and consultation processes adopted by Bayside Council (and Kingston Council) and the consultants in preparing the Highett Structure Plan were all satisfactory;
- A clearer statement of quantified objectives in the Highett Structure Plan would have provided greater clarity to all stakeholders about the potential for development in each precinct, ameliorating future conflicts about the expectations relating to development throughout Highett;
- Modifications to the Municipal Strategic Statement and Local Policies as proposed in Amendment C46 are justified, with some minor modifications;
- The exhibited change in zoning from Residential 1 to Residential 3 is flawed, and Residential 1 should be retained with some modifications to associated Schedules;
- The exhibited Design and Development Overlays are basically sound, but DDO4 requires some modification to better reflect the intent of the Highett Structure Plan; and
- The future development of the CSIRO site is of critical significance to the future of Highett. Its planning should take account of the protection of the Highett Grassy Woodland, while its future planning should be integrated with planning for the former Telstra site at 329 Bay Road, Cheltenham.

10.2 RECOMMENDATIONS

Based on the reasons set out in this report, the Panel makes the following recommendation to the planning authority:

Amendment C46 to the Bayside Planning Scheme should be adopted subject to the following changes:

- 1. Amendments to the Municipal Strategic Statement be adopted as exhibited, including modifications provided during the Panel Hearings, together with up-dating of the Strategic Framework Plan to incorporate activity centre terminology consistent with Melbourne 2030.**
- 2. The new local policy at Clause 22.08: Highett Neighbourhood Activity Centre be adopted as exhibited, but including a deletion of a reference to extending Graham Road through the CSIRO site, and modifying the policy to further recognise the Highett Grassy Woodland on the CSIRO site.**
- 3. The modifications to the local policy at Clause 22.05: Business Employment Area Policy as proposed in Amendment C39 be adopted as exhibited.**
- 4. DDO4 be adopted as exhibited, with the following modifications:**
 - Under 2.0 Buildings and Works, the first dot point be modified to include reference to the potential for three storey development to the frontage of Highett Road near the corner of Graham Road, and possibly the corners of Train Street and Highett Road and Middleton Street and Highett Road.**
 - Under 2.0 Buildings and Works, the second dot point be modified to read “Buildings and works should not exceed a maximum overall height of 11 metres (comprising three storeys), except if a fourth storey can be accommodated without being visible from any part of Highett Road.”**
- 5. The Residential 1 Zone be retained within the subject area (rather than a change to Residential 3 Zone), subject to appropriate modifications to the Schedule to DDO5.**
- 6. DDO5 be adopted with the following modification:**

The second dot point under 2.0 be amended to include the following words after the word ‘9 metres’:

‘..., or 10 metres where the slope of the natural ground level at any cross section of the site of the building wider than 8 metres is 2.5 degrees or more.’

-
7. **The rezoning of industrial sites in the study area be to Residential 1 rather than Residential 3, and the following rezonings be adopted as exhibited:**
- **Rezone land in the Bay Road corridor not affected by Amendment C39 to Mixed Use.**
 - **Rezone all Business 2 areas to Business 1.**
 - **Rezone one property currently within the shopping centre from Residential 1 to Business 1.**

In addition, the Panel makes the following recommendation to regarding future versions of the Highett Structure Plan:

1. **Clear and measurable residential and retail targets be included when the Highett Structure Plan is modified.**
2. **The Structure Plan be amended to include the following dot point quoted in the Highett Neighbourhood Activity Centre Policy:**

Establishing a built form that respects the existing one and two storey character of the Highett Shopping centre, while providing some limited opportunity for a higher built form to increase the intensity of activity in the centre and to achieve a mix of uses at upper levels of buildings and at the rear of shops.

The following recommendations are also made with regard to future development of the CSIRO site:

1. **The protection of the Highett Grassy Woodland on the CSIRO site be a high priority when future planning of the site takes place.**
2. **Future planning for the CSIRO site be integrated with planning for the former Telstra site at 329 Bay Road, Cheltenham, when future planning and amendment processes are being contemplated.**

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A. THE PANEL PROCESS

THE PANEL

This Panel was appointed under delegation on 4 August 2005 pursuant to Sections 153 and 155 of the Planning and Environment Act 1987 to hear and consider submissions in respect of Amendment C46 to the Bayside Planning Scheme. The amendment aims to implement the outcomes of the Highett Structure Plan by modifying the Local Policy Planning Framework, proposing a number of zone changes, introducing two Design and Development Overlays mainly aimed at respecting the character of the Highett neighbourhood through establishment of height controls on new buildings, and introduction of an Environmental Audit Overlay to be applied to all industrial land to be rezoned Residential.

The planning authority is Bayside City Council.

The Panel consisted of:

- Chairperson: Ian Gibson
- Member: Ian Wight.

HEARINGS, DIRECTIONS AND INSPECTIONS

A Directions Hearing was held on 26 August 2005 at Bayside City Council Offices, Sandringham. A number of directions were made, covering the dates and location of the hearings, exchange of expert witness statements, site inspections, documents requested from the planning authority, and the requirement for Bayside City Council to consider the Strategic Assessment Guidelines and *Melbourne 2030* in its submission to the Panel.

A letter from UrbisJHD on behalf of Intrapac Pty Ltd and Strine Properties Pty Ltd was tabled and discussed at the Directions Hearing. UrbisJHD requested the right to appear at the panel hearing, on the basis that the client had not been notified of Amendment C46, but considered that the Highett Structure Plan and its implementation in the amendment may impinge on its property. The Panel agreed to hear a submission, but requested UrbisJHD to provide an outline of the issues relating to the 329 Bay Road, Cheltenham property and Amendment C46 by close of business on Monday, 3 October 2005.

All directions of the Panel were complied with.

The Panel Hearings were held on 12, 13 and 14 October 2005 at Bayside City Council Chambers in Brighton.

The Panel members inspected the site and surrounding areas, making several unaccompanied visits to Highett prior to and during the hearings. In addition, an

inspection of the CSIRO site and surrounding areas was conducted on 13 October 2005.

SUBMISSIONS

The Panel has considered all written and oral submissions and all material presented to it in connection with this matter.

A list of all written submissions to Amendment C46 is included in Table A.1 below.

Table A.1: List of Submitters

Submitter	Organisation (if any)
Peter Mondy	
Ann Lazzarro	
Valerie Rae	
Mr Paul Jarman	Regional Manager, Port Phillip Region, Department of Sustainability and Environment
R J Leech	
Pat Salkin	
Garry Allan	President, Highett Residents' Group (supported by 70 individuals or households)
Mark Dugay-Grist	Manager – Statewide Heritage Programs, Aboriginal Affairs Victoria, Department for Victorian Communities
Pat Carden	
Fran and Peter Dedrick	
Mary Rimington	Secretary, Mordialloc Beaumaris Conservation League Inc.
Bob Whiteway	Convenor, Marine Care, Ricketts Point Inc and Secretary, Black Rock and Sandringham Conservation Association Inc.
R G Morris	Hon Secretary, Beaumaris Conservation Society Inc.
Janet Ablitt	President, Black Rock and Sandringham Conservation Association Inc.
Lesley Falloon	
Greg Marriner	

Submitter	Organisation (if any)
Michael Norris	Friends of the Highett Grassy Woodland
Terry Dalglish	Manager Property Development, South East Water
David Firgaira	Planning Engineer, VicRoads, Metropolitan South East Region
Jonathon Fetterplace	Senior Urban Planner, UrbisJHD Pty Ltd on behalf of the Gillon Group of Companies
Sarah Opperman	Director, UrbisJHD Pty Ltd on behalf of Intrapac Pty Ltd and Strine Properties Pty Ltd

The Panel heard the parties listed in Table A.2 below.

Table A.2: List of Parties Heard at Hearings

Submitter	Represented By
Bayside City Council	Mr Terry Montebello, of the firm Maddocks. He called the following witness: <ul style="list-style-type: none"> - Craig Czarny, Urban Designer, Hansen Partnership Mr Montebello was supported by: <ul style="list-style-type: none"> - Ms Julie Reid, Manager Urban Strategy and Culture, and - Ms Jessica Cutting, Strategic Planner, Bayside City Council
UrbisJHD on behalf of the Gillon Group of Companies	Mr Dominic Scally, of the firm Best Hooper. He called the following witness: <ul style="list-style-type: none"> - Mr Jamie Govenlock, Planner, UrbisJHD Pty Ltd
UrbisJHD on behalf of Intrapac Pty Ltd and Strine Properties Pty Ltd	Mr Dominic Scally, of the firm Best Hooper.
Friends of the Highett Grassy Woodland	Michael Norris
Beaumaris Conservation Society Inc	Ken Rendell
Highett Residents' Group	Garry Allan, Rachel Zarabska and Stephen Henry

B. STRATEGIC ASSESSMENT GUIDELINES

The Panel has considered the response to the Strategic Assessment Guidelines included in the exhibited Explanatory Report for the amendment, together with submissions on the guidelines from the planning authority. It endorses the planning authority's response and considers that the amendment complies with the guidelines.

In particular, the Panel accepts the Bayside City Council argument that “the amendment is required to implement the recommendations of the Highett Structure Plan a joint project involving Bayside and Kingston City Councils. Without an amendment, the structure plan will languish and be either ignored by the VCAT or be given little weight...Similarly, the DSE expects Council to amend the Scheme consistent with the Explanatory Report to Amendment C47.”

The Panel has also considered the consistency of Amendment C46 with *Melbourne 2030*, as described in this report. It has concluded that the Amendment is consistent with *Melbourne 2030*.