

*Planning and Environment Act 1987*

# Panel Report

Darebin Planning Scheme  
Amendments C122 and C127

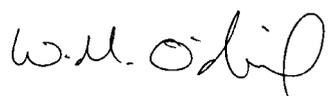
**6 August 2014**



*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Amendments C122 and C127 to the Darebin Planning Scheme

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William O'Neil, Chair

A handwritten signature in black ink, appearing to read 'M. Elliott'.

Mandy Elliott, Member

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## List of Abbreviations

Council	Darebin City Council
DEECD	Department of Education and Early Childhood Development
DTPLI	Department of Transport, Planning and Local Infrastructure
EAO	Environmental Audit Overlay
EPA	Environment Protection Authority
ESA	Environmental Site Assessment
GRZ	General Residential Zone
IN3Z	Industrial 3 Zone
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MSS	Municipal Strategic Statement
MW	Melbourne Water
NRZ	Neighbourhood Residential Zone
PAO	Public Acquisition Overlay
PUZ2	Public Use Zone 2
RGZ	Residential Growth Zone
the Committee	Merri Creek Management Committee
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions

## Amendment Summaries

### Amendment C122

<b>The Amendment</b>	Amendment C122 to the Darebin Planning Scheme.
<b>Subject Site</b>	Amendment C122 applies to land at 198 and 200 Beavers Road, Northcote.
<b>Purpose of Amendment</b>	The exhibited Amendment proposes the transition of the 'Beavers Road Industrial Precinct (north)' from an industrial area to a residential use through the application of the Residential Growth Zone, a Development Plan Overlay (Schedule 12), the application of the Environmental Audit Overlay and also the rezoning of a small parcel of land to the Public Use Zone (PUZ2).
<b>The Proponent</b>	The proponent for C122 is Hansen Partnership acting on behalf of the landowners of properties 198 (The First Stone Pty Ltd) and 200 Beavers Road (Codstream Pty Ltd), Northcote.
<b>Planning Authority</b>	Darebin City Council
<b>Exhibition</b>	31 October to 12 December 2013

### Amendment C127

<b>The Amendment</b>	Amendment C127 to the Darebin Planning Scheme
<b>Subject Site</b>	Amendment C127 applies to land south of Beavers Road, north of Arthurton Road and east of Merri Creek, being 167-177 Beavers Road, 148-170 Arthurton Road, and 2-6 Goldsmith Grove, Northcote.
<b>Purpose of Amendment</b>	The exhibited Amendment proposes the transition of the 'Beavers Road Industrial Precinct (south)' from an industrial area to a commercial and mixed-use precinct through the application of the Commercial 1 Zone, a Development Plan Overlay (Schedule 12), and the application of the Environmental Audit Overlay.
<b>The Proponent</b>	The proponent for C127 is Darebin City Council.
<b>Planning Authority</b>	Darebin City Council
<b>Exhibition</b>	31 October to 12 December 2013.

## Panel Process

<b>The Panel</b>	Mr William O'Neil, Chair and Ms Mandy Elliott, Member
<b>Directions Hearing</b>	13 May 2014
<b>Panel Hearing</b>	10, 11 and 12 June 2014
<b>Site Inspections</b>	The Panel inspected the Amendment areas prior to and following the Hearings.
<b>Appearances</b>	Those in attendance at the Panel Hearings are listed in Table 1.
<b>Joint Hearing Process</b>	Council, in consultation with DTPLI, determined to separate the Beavers Road Industrial Precinct into two (north and south) but run the two Amendments concurrently given the two precincts share common attributes in terms of interface, urban design issues, connectivity of the precincts, the Merri Creek and access.
<b>Submissions</b>	<p>A total of 18 submissions were received as follows:</p> <ul style="list-style-type: none"> <li>• 11 submissions relating to both Amendments C122 and C127;</li> <li>• 4 submissions relating to Amendment C122 only; and</li> <li>• 3 submissions relating to Amendment C127 only.</li> </ul> <p>A list of the submitters is included in Appendix A of this report.</p>
<b>Date of this Report</b>	6 August 2014

# 1 Introduction

## 1.1 The Amendments

Amendments C122 and C127 to the Darebin Planning Scheme (the Amendments) were prepared by the Darebin City Council as Planning Authority. The Amendments were authorised by the Department of Transport, Planning and Local Infrastructure (DTPLI) on 3 October 2013.

### Amendment C122

Amendment C122 was prepared at the request of Hansen Partnership Pty Ltd on behalf of The First Stone Pty Ltd (owners of 198 Beavers Road) and Codstream Pty Ltd (owners of 200 Beavers Road).

As exhibited, Amendment C122 proposes:

- Rezoning 196 Beavers Road, Northcote from Industrial 3 to Public Use 2;
- Rezoning 198 and 200 Beavers Road, Northcote from Industrial 3 to Residential Growth Zone;
- Applying the Environmental Audit Overlay to the land (except 196 Beavers Road);
- Applying the Development Plan Overlay 12 to the land (except 196 Beavers Road);
- Include a new Schedule 12 (Beavers Road and Arthurton Road area, Northcote) to the Development Plan Overlay into the Planning Scheme.

### Amendment C127

Amendment C127 was initiated by Darebin City Council. The Amendment applies to land south of Beavers Road, north of Arthurton Road and east of Merri Creek, being 167-177 Beavers Road, 148-170 Arthurton Road, and 2-6 Goldsmith Grove, Northcote.

As exhibited, Amendment C127 proposes:

- Rezoning of the land from Industrial 3 to Commercial 1;
- Applying the Environmental Audit Overlay to the land;
- Applying the Development Plan Overlay 12 to the land;
- Including a new Schedule 12 (Beavers Road and Arthurton Road area, Northcote) to the Development Plan Overlay into the Planning Scheme.

## 1.2 Exhibition

The Amendments were placed on public exhibition between 31 October and 12 December 2013, with a total of 18 submissions received as follows:

- 11 relating to both C122 and C127;
- 4 submissions relating to C122 only; and
- 3 submissions relating to C127.

Common Issues for both Amendments include:

- Traffic and car parking impacts;
- Building height, design controls and related issues to higher density development such as setback provisions, loss of amenity and overshadowing;

- Design controls relating to the interface of the precinct with the Merri Creek and opportunities for infrastructure and access improvements to/across the Creek; and
- Appropriateness of a single Development Plan Overlay across both amendment areas.

### Amendment C122

Of the submissions received for C122, three were supportive of the Amendment, nine expressed in principle support but mentioned concerns or requested changes relating to parts of the Amendment, and three submissions were generally opposing the Amendment.

Specific issues raised to Amendment C122 include:

- How north boundary height controls will work to manage amenity impacts on adjoining residential land, and scope for strengthening these further;
- The selection of the Residential Growth Zone in this location and appropriateness of four storey height limit as set in the zone and accompanying Development Plan Overlay requirements; and
- Right of passage over the proposed area to be rezoned PUZ2.

### Amendment C127

Of the submissions received for C127, two were supportive, 10 expressed general support but expressed concerns or requested changes relating to parts of the Amendment and two submissions are in opposition to the Amendment.

Specific issues raised to Amendment C127 include:

- Creek bank management and potential for public acquisition of creek side area; and
- EAO requirements should be specific rather than precinct wide.

## 1.3 The Panel

At its meeting of 3 March 2014, Council resolved to refer the submissions to a Panel. A Panel to consider both Amendments was appointed under delegation from the Minister for Planning pursuant to Sections 153 and 155 of the *Planning and Environment Act 1987* on 2 April 2014. The Panel comprised Mr William O'Neil (Chair) and Ms Mandy Elliott (Member).

### (i) Hearings and Inspections

A Directions Hearing was held in relation to the Amendments on 13 May 2014. The Panel undertook an inspection of the subject site and its surrounds prior to and after the main Hearings.

The Panel met in the offices of Planning Panels Victoria on 10, 11 and 12 June, 2014 to hear submissions in respect of the Amendments. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Darebin City Council	Ms Esther Oluyide (Strategic Planner, Darebin City Council), Ms Emily Hillebrand (Manager, Strategic Planning, Darebin City Council) and Mr Joerg Langeloh (Planner, Darebin City Council)

Melbourne Water	Mr Digby Richardson
Codstream Pty Ltd	Mr Peter O'Farrell of Counsel representing Codstream Pty Ltd who called the following expert witnesses: <ul style="list-style-type: none"><li>• David Barnes, Hansen Partnership</li></ul>
The First Stone Pty Ltd	Ms Teresa Bisucci, Best Hooper Solicitors
Wightons Pty Ltd and Computer Stationary Printers Pty Ltd	Mr Redmond McNamara of Hansen Partnership
Merri Creek Management Committee	Ms Luisa MacMillan
Friends of Merri Creek	Ms Ann McGregor and Mr David Redfearn OAM
Angela Hill	
Anthony O'Donnell	

In reaching its conclusions and recommendations, the Panel has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations. The following chapters of this report discuss the issues raised in submissions relating to the Amendments in further detail, with the Panel's conclusions and recommendations provided in Chapter 10.

#### **1.4 Declarations**

Both the Chairperson and Member declared at the Directions Hearing that they have no conflict of interest in the matters subject of the Hearings. The Chairperson also declared that in 2003 he was a member of the Amendment C10 Panel which considered the implementation of the City of Darebin Industrial Strategy, 2001. No party had concern or raised issue with this declaration.

## 2 The Proposal

### 2.1 The Amendments

The Amendments propose to rezone the area from the existing Industrial 3 Zone to the Residential Growth Zone north of Beavers Road (C122) and the Commercial 1 Zone to the land south of Beavers Road (C127). The Amendments also propose to apply an Environmental Audit Overlay (EAO) and a common Development Plan Overlay (DPO) (Schedule 12) over all of the land. The proposed Schedule 12 to the DPO will provide detailed guidance for the future development and use of the land, including assessment of potential land contamination, layout, servicing, access, building design and environmental protection.

#### Amendment C122

The exhibited Explanatory Report states that Amendment C122 proposes to facilitate the transition of a former industrial area to residential use that will:

- Provide for the transition of an area where the demand for industrial land and uses has fallen;
- Facilitates residential opportunities in an area that is more suited for residential purposes than former industrial purposes; and
- Meets Council and community goals for greater provision of housing opportunities that have good access and connectivity, as outlined in the *City of Darebin Integrated Housing Strategy (October 2002)*.

The rezoning of 196 Beavers Road, Northcote from IN3Z to Public Use 2 is also proposed as part of Amendment C122 and reflects the current occupation and use of the land (being a discontinued part of Leinster Grove) associated with the school to the east.

#### Amendment C127

The exhibited Explanatory Report states that Amendment C127 provides for:

- The transition of an area where the demand for industrial land and uses has fallen;
- Facilitates office (no planning permit required), business (eg shop which requires a planning permit), mixed and residential (requires a planning permit) opportunities;
- Meets Council and community's goals for greater provision of housing opportunities that have good access and connectivity, outlined in the *City of Darebin Integrated Housing Strategy (October 2002)*;
- Provides for higher environmental protection of the land and area;
- Enhances employment generation and for a more sustainable use and development of land.

The C127 Explanatory Report also states that the application of the EAO and DPO (Schedule 12) to the land:

- Provides for the sustainable redevelopment of the area for mixed uses that may include residential use;
- Guides the future subdivision layout, development and use of the land to meet specified requirements; and

- Ensures that the land, which is potentially contaminated from former industrial use, is suitable for residential use prior to the commencement of this sensitive use.

## 2.2 The subject site and surrounds

The land subject of Amendments C122 and C127, includes all land within the Beavers Road Industrial precinct. The Precinct as shown in Figures 1 and 2 below is on the western boundary of the municipality, bordered by Arthurton Road to the south, Woolhouse Street and residential development to the east, the Merri Creek to the west, and the Northcote Public Golf Course and residential development to the north.

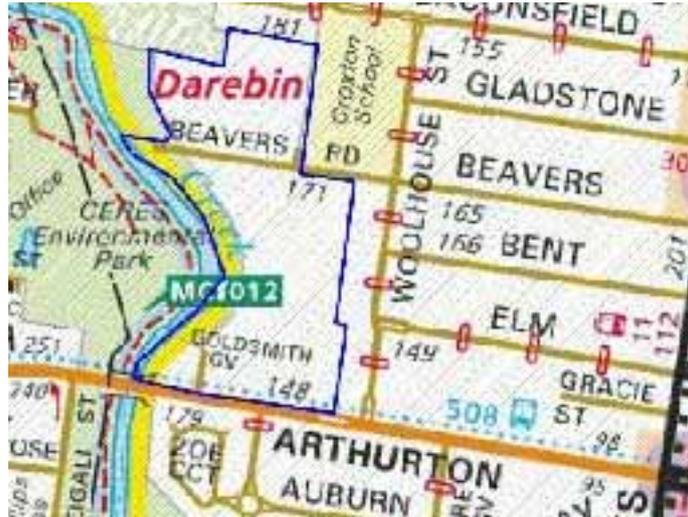


Figure 1: Site Location - Amendments C122 and C127



Figure 2: Amendments C122 and C127 Site Context

The Amendment C127 site (land south of Beavers Road) is located approximately 15 metres from the Merri Creek embankment and the land subject to Amendment C122 (land north of Beavers Road) is located approximately 65 metres from the Merri Creek embankment.

The subject sites (both Amendments) comprise eleven allotments with a total area of approximately six hectares. Numbers 198 and 200 Beavers Road (subject of C122) are the only two industrial lots on the north side of Beavers Road.

In the mid part of last century the subject sites (crossing over both Amendment areas) were used as a landfill following a previous use as a quarry.

### **2.3 Background to the proposal**

The Darebin City Council propose that Amendments C122 and C127 will facilitate the transition of an underutilised industrial area to an area suitable for a mix of commercial uses supplemented by residential uses that are partially prohibited under the current Industrial 3 Zone (IN3Z). The current zoning is in recognition of the area's past use rather than identification for an ongoing industrial node. Council submitted that the adoption by it of the *Darebin Green Business Attraction Strategy 2012* also provides guidance for new business activity in the area and the Council suggests that the rezoning will support a greater range of green business opportunities than the current industrial zone can.

The Council also submitted that rezoning of the sites will facilitate housing and services required to support the growing and diverse Darebin community.

The rezoning of 196 Beavers Road, Northcote from IN3Z to PUZ2 (Amendment C122) will reflect the actual occupation and use of the land (being a discontinued part of Leinster Grove) associated with the school to the east.

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

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Strategic Planning Context;
- Is the Application of the Residential Growth Zone appropriate via C122?;
- Is that Application of the PUZ2 appropriate via C122?;
- Is the Application of the Commercial 1 Zone appropriate via C127?;
- Content and structure of Schedule 12 to the DPO;
- Is the application of the Environmental Audit Overlay appropriate?; and
- Application of the Public Acquisition Overlay along the Merri Creek corridor.

### 3 Strategic Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

#### 3.1 Policy framework

##### (i) State Planning Policy Framework

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

- Clause 11.02 (Urban Growth), 11.03 (Open Space), 11.04-1 (Delivering jobs and investment; Liveable Communities and State of Cities);
- Clause 12.04-1 Significant Environments and Landscapes;
- Clause 13.03 Soil Degradation;
- Clause 16 Housing;
- Clause 17 Economic Development; and
- Clause 19.02 Community Infrastructure.

##### (ii) Municipal Strategic Statement

Darebin City Council's MSS has recently been revised (Amendment C138) and at the time of the C122 and C127 Panel Hearings, the Council were awaiting the outcomes of the MSS Review Panel for Amendment C138 regarding the implementation of the MSS.

##### (iii) Local Planning Policy Framework

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

- Clause 21.03 Key Influences and Issues
- Clause 21.04 Darebin Tomorrow
- Clause 21.05 Objectives – Strategies – Implementation
- Clause 21.05-1 Sustainability
- Clause 21.05-2 Element 2: Housing
- Clause 21.05-5 Element 5: Economic Activity
- Clause 21.05-6 Element 6: Activity centres
- Clause 22.07 Industrial and Commercial Activity.

More specifically, the principles and relevant objectives noted above can be summarised as:

- Clause 21.05-1 Sustainability  
Gives effect to Council's commitment to ecological, social and economic sustainability and applies an environmental management approach to activities that interact with the environment.
- Clause 21.05-2 Housing  
The Amendments provide for housing provision needs of the Darebin community and ensures that new housing protects and enhances the existing residential amenity of

Darebin and that housing contributes positively to the functioning of Darebin's retail and employment centres.

- Clause 21.05-3 Urban Design
- Clause 21.05-5 Economic Development  
Protect viable industrial and commercial uses in the city and facilitate appropriate reuse of industrial and commercial areas experiencing decline as well as support economic development that contributes to sustainability.
- Clause 21.05-7 Natural Environment  
Preserve and enhance remnant vegetation communities and flora and fauna habitats.
- Clause 22.07 Industrial and Commercial Activity.  
The Amendment responds to the Council's direction to facilitate the transition of under-utilised industrial sites to more suitable economic uses.

## 3.2 Planning scheme provisions

### (i) Zones

The following zoning controls currently apply to the subject sites (both Amendments C122 and C127):

- Industrial 3 Zone (IN3Z) – the purpose of the IN3Z is to provide for industrial uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict. The IN3Z also ensures that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

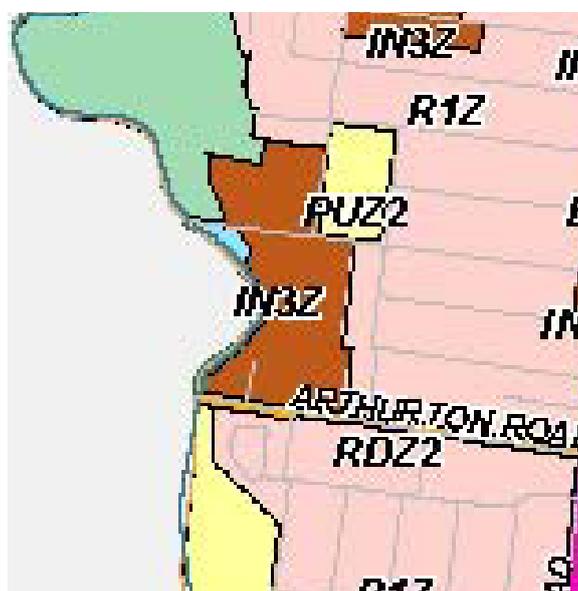


Figure 3: Existing Zoning Plan

Amendment C122 as exhibited proposes to rezone the land north of Beavers Road from Industrial 3 Zone to RGZ, except for a small strip of land to the east located at 196 Beavers Road which is proposed to be rezoned to a Public Use Zone 2, to reflect the public ownership of that section and correct the zoning anomaly. Council contacted the Department of Education and Early Childhood Development (DEECD) in December 2012 and January 2013 in regards to the rezoning of the proportion of disused Leinster Grove to a PUZ2 for comment but a response from the DEECD was not received.



Figure 4: Amendment C122 - Proposed RGZ and PUZ2

Amendment C122 also proposes to include the land in an Environmental Audit Overlay and apply a Development Plan Overlay (Schedule 12) to guide future development.

Amendment C127 covers the southern precinct and seeks to rezone the land from IN3Z to Commercial 1 zone, apply the DPO (Schedule 12) and Environmental Audit Overlay.



Figure 5: Amendment C127 – Proposed C1Z

## (ii) Overlays

The following overlay controls currently apply to the subject sites (both Amendments C122 and C127):

- Development Contribution Plan Overlay (Schedule 1).  
The purpose of this overlay is to identify areas that require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.
- Environmental Significance Overlay (Schedule 1).

The purpose of this overlay is:

- To identify areas where the development of land may be affected by environmental constraints and
- To ensure that development is compatible with identified environmental values.

The ESO contains a wide range of objectives to be achieved under the headings Natural Systems, Waterway Function, Recreation Use, Landscape Character and Heritage.

The Decision Guidelines, relevant in assessing planning permit applications, state that the responsible authority should consider, among other things the views of the Merri Creek Management Committee, Melbourne Water as deemed appropriate as well as *“the effect of the height, bulk and general appearance of any proposed buildings and works on the environmental values and visual character of the creek”*.

In addition to the zoning changes described previously, the Amendments propose to apply an Environmental Audit Overlay and Development Plan Overlay (Schedule 12) across both Amendment sites (with the exception of 196 Beavers Road, Northcote).



Figure 6: Amendment C122 - DPO12



Figure 7: Amendment C122 – EAO



Figure 8: Amendment C127 – DPO12



Figure 9: Amendment C127 – EAO

### (iii) Other planning strategies

Other key planning strategies relevant to both Darebin Amendments C122 and C127 include:

- **Industrial Land Use Strategy 2001.** This strategy identified Beavers Road Industrial area as one of four small industrial precincts performing a secondary role and it acknowledged the site's isolated creek side developments as a constraint however the strategy also stressed the importance of retaining the area for employment generation where feasible.
- **Integrated Housing Strategy 2002.** The Integrated Housing Strategy notes that the City of Darebin wishes to respond effectively and sensitively to the changing housing needs of the municipality. Key objectives of the strategy include encouraging medium density housing development in appropriate locations and encouraging the conversion of former or underutilised industrial land to mixed uses including residential development.
- **Darebin Green Business Attraction Strategy, 2012.** The Darebin Green Business Attraction Strategy includes an objective to ensure an adequate supply of

appropriately located and zoned land to accommodate green businesses is available. An identified supporting short term action includes:

*Developing a vision for the Beavers Road Industrial Precinct which incorporates the precinct acting as a green business hub with flexible commercial space and possible display and demonstration facilities.*

- **Darebin Economic Land Use Strategy (DELUS), April 2013.** The document provides an update of the Industrial Land Use Strategy 2001. The updated DELUS evaluated the key trends in retail, commercial and industrial activity within the City of Darebin, with a particular focus on the need for and the viability of industrial land uses in the municipality. It provides specific directions for the future. Of relevance to Amendment C122 and C127, the DELUS states:

*That the Beavers Road secondary industrial area is unlikely to perform an industrial role in the future and should be rezoned to provide for a mix of uses, with employment continuing to play a key role.*

Council advised the Panel that the above recommendation from DELUS has been translated into the revised Municipal Strategic Statement (MSS) through exhibited Amendment C138.

- **Darebin Housing Strategy 2013 – 2033.** The Strategy is an update of Council's 2002 Integrated Housing Strategy. It identifies the land subject of the Amendments as an Activity Area and also notes that the underperforming or vacated industrial sites could be rezoned for residential purposes thereby realising an opportunity for housing growth. It notes that this finding is consistent with the Darebin Economic Land Use Strategy.
- **Merri Creek Development Guidelines 2004.** The introduction to the 2004 Merri Creek Development Guidelines state that they replace the August 1999 guidelines. The 2004 version of the Guidelines have been adopted by the Merri Creek Management Committee Inc. however they are not referenced in the Darebin Planning Scheme. They contain a number of objectives and standards. The overarching Policy states:

*It is policy that applications are assessed against the following standards.*

*Proposals that do not meet these standards may still meet the objectives of this policy.*

Of note in respect of the current Amendments, under the heading Waterway Corridor, Standard MC8 *Shared pathway* states:

*Development should allow for the provision of a creek side path in the reaches where the path does not currently exist, noting that the path is intended for one side of the creek only.*

The path in proximity of the subject sites is on the other bank of the creek (the western bank).

Standard MC 4 encourages continuous open space and states:

- *Subdivision and development should create a continuous strip of public open space along both sides of the creek that includes all land within:*

- *The flood prone area (1 in 100 years)*
  - *30 metres of the bank of the creek*
  - *12 metres of the top of any escarpment where no path is intended*
  - *22 metres of the top of any escarpment where a path is intended*
  - *The open space strip next to the creek should be transferred at no cost to public ownership as part of any development application along the creek.*
- **Merri Creek and Environs Strategy, 2009-2014 (May 2009).** The Strategy is based on a review and revision of the 1999 Merri Creek and Environs Strategy. It is not referenced in the Darebin Planning Scheme. The Strategy notes in Part A, that Land at 168 Arthurton Road and at 177 Beavers Road Northcote is still privately owned to the Merri Creek bank. It states *“This must be a high priority for rezoning with acquisition and / or a land management agreement attached to the title via a Section 173 Agreement.”*

### 3.3 Ministerial Directions and Practice Notes

Ministerial Direction No 1 Potentially Contaminated Land is relevant to the assessment of these Amendments. The purpose of the Direction is to ensure that potentially contaminated land is suitable for the uses proposed as part of these Amendments.

Both Amendments C122 and C127 are consistent with the Ministerial Direction No 1 Potentially Contaminated Land. The owners of 198 Beavers Road (which is subject to C122) had an Environmental Site Assessment undertaken by Compass Environmental Pty Ltd in December 2010 and the owners of 200 Beavers Road (C122) had a similar assessment undertaken for their site in April 2011 by Alpha Environmental.

### 3.4 Strategic Assessment

Both Amendments C122 and C127 are consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the *Planning and Environment Act 1987* and with Ministerial Direction No 11 – Strategic Assessment of Amendments. The Amendments provide certainty and appropriate guidance for the future use and development of the land that is not provided by the current planning controls.

The Amendments will facilitate the future development of the land for residential and mixed use, which cannot be achieved under the current Industrial 3 Zone. The rezoning of the land will allow development to occur on the land including housing, commercial and mixed use development.

## 4 Is the application of the Residential Growth Zone appropriate via C122?

### 4.1 The issue

No party subject of the hearing opposed the rezoning of the northern part of the precinct to facilitate a transition from its current industrial land use to a residential outcome. The key question arising was which of the new suite of residential zones should be applied, the Residential Growth Zone (RGZ) as exhibited or whether the General Residential Zone (GRZ) or Neighbourhood Residential Zone (NRZ) would be more appropriate. The northern precinct includes land at numbers 196, 198 and 200 Beavers Road.

### 4.2 Evidence and submissions

Council reiterated in its submission to the Panel that the RGZ, as exhibited is the appropriate zone to apply and that its application will improve the amenity of the surrounding land. Council noted that the RGZ, as opposed to the NRZ or GRZ, is the appropriate zone as it allows for new housing growth and diversity whereas the NRZ seeks to restrict housing growth in areas identified for urban preservation.

A table attached to Council's submission (at tab 9) provides a zone comparison of each of the recently introduced residential zones. Council noted that the recently adopted *Darebin Economic Land Use Strategy, 2013* (DELUS) recommends rezoning of the area in order to rejuvenate it. Council acknowledges that the site is not an activity centre, however via the Commercial rezoning proposed via Amendment C127 it will be located across the road from an emerging commercial node, it will be within 260m of a bus stop and it connects well to Northcote and to Nicholson Street, Lygon Street and Sydney Road to the west. Council advised that the site is within 460m of the closest tram stop.

Council submitted that the use of the RGZ is also supported by Council's *Housing Strategy 2013* and the SPPF. It stated that the use of RGZ allows intensification more so than the GRZ and also allows for limited commercial uses across from the Commercial 1 Zone (C1Z) proposed south of the site.

Council submitted that Amendment C122 implements the objectives of Clause 11 (Settlement) as it provides for a diversity of choice. Through the DELUS, the Council has identified the Amendment site to be underperforming in its current role as an industrial site, already transforming into a commercial based precinct and is unlikely to realise the purpose of the IN3Z in the long term.

Council submitted that the *'northern precinct contains two large land parcels with adequate capacity for higher density development and will support the commercial precinct to the south whilst also providing the appropriate transition between the sensitive interface to the north and the proposed commercial precinct to the south of Beavers Road'*.

In reiterating its support for the application of the RGZ, Council submitted that the site has adequate capacity to cope with more intense development given its location, size and potential to adequately address any off-site impacts, particularly in relation to future built form, interface treatment, parking and access issues.

The Council also submitted that the State and local planning policies support locating new housing in existing areas where there is existing infrastructure to support population growth. Council considers that the land subject of Amendment C122 is appropriately located with opportunity to connect with existing services including public transport.

Mr Richardson of Melbourne Water (MW) stated that MW does not object in-principle to Amendment C122, as MW believe that this change in land use planning provides a significant opportunity to improve the environmental amenity and public access interface between the Creek and future development. MW suggest that *'residential development will have lower fraction imperviousness than industrial, and it will therefore produce lower peak flows, which is desirable'*; and further MW state that a *'residential zone is considered the ideal interface with Merri Creek to improve amenity'*.

Having noted the above, MW submitted that it:

*is not supportive of applying Residential Growth Zones to areas in proximity to waterways, such as is proposed for Amendment C122. The Residential Growth Zone offers the highest intensity of development and is often associated with town centres and public transport nodes, rather than waterway interfaces.*

*Instead, Melbourne Water recommends the use of the Neighbourhood Residential Zone (NRZ) for the subject area particularly at 200 Beavers Road.*

MW further submitted that the NRZ is appropriate because the NRZ restricts housing growth in areas identified for urban preservation and is the least intensive of the three new residential zones and would therefore be more complementary along waterways.

The town planning evidence statement of Mr Barnes, who was called jointly by Codstream Pty Ltd (the owner of No 200 Beavers Road) and The First Stone Ltd (the owner of 198 Beavers Road), notes that the strategic justification for the rezoning of the land from IN3Z to the RGZ is provided by *Darebin Economic Land Use Strategy*, the *Darebin Housing Strategy* and *Planning Practice Note 78 – Applying the Residential Zones (Dec 2013)*.

In response to the submission by MW, Mr Barnes stated:

*There is no basis in Melbourne Water's contention that the land should be included in a Neighbourhood Residential Zone.*

Mr Barnes noted that the Council considered the pros and cons of the new residential zones and recommended the land be included in the RGZ for the following reasons:

- *To provide additional housing to assist in easing housing pressures in the municipality and assist in supporting the evolution of employment uses to the south of Beavers Road.*
- *4 storey development (compared to 3) may assist in making development viable given the contamination issues that affect the land.*

- *It provides flexibility for some non-residential uses, which was considered appropriate given the proposed Commercial 1 zoning of land to the south.*

Mr Barnes supports the above conclusions. He reiterated that the application of the NRZ would be inappropriate. His witness statement noted that he is:

*of the firm view that a Neighbourhood Residential Zone would result in a significant underutilisation of an important strategic redevelopment site, that has the potential to make a significant contribution to future housing needs in the City of Darebin.*

Mr Barnes reiterated that Planning Practice Note 78 – Applying the Residential Zones states that the RGZ aims to “enable new housing growth and diversity” and is to be applied “in appropriate locations near activity areas, train stations and other areas suitable for increased housing activity”. Mr Barnes considers the Amendment C122 site responds well to these criteria.

The submission of Mr O’Farrell on behalf of Codstream (owners of 200 Beavers Road) advanced that the Amendment and rezoning to the RGZ, consistent with the evidence of Mr Barnes, is strategically justified ‘and follows a sequential strategic town planning exercise that has taken place.’ Mr O’Farrell highlighted that the rezoning is also consistent with the City of Darebin MSS review Amendment that recommends the following implementation actions in a revised Clause 21.04:

*Rezone land in the Beavers Road Industrial Precinct, with land south of Beavers Road to Commercial 1 Zone and land north of Beavers Road to Residential Growth Zone.*

*Rezone redundant Industrial 1 Zone and Industrial 3 Zone land to more appropriate business and residential zones, in accordance with the recommendations of the Darebin Economic Land Use Strategy (2013)*

In concluding remarks, Mr O’Farrell reiterated that the Council has followed an extensive strategic planning process, involving all relevant stakeholders in the preparation of the Amendment. He stated the Amendment is sound and Council should be congratulated for its rigorous sequential assessment ‘which looked under every stone’. Mr O’Farrell also urged the Panel to resist the submissions of MW which in effect represent a request of a ‘Public Acquisition Overlay in disguise’. In support of this submission Mr O’Farrell also observed that if MW want the land in question, then they have the power to acquire it. Mr O’Farrell noted that the Environmental and visual management of the creek frontage is already facilitated via the Environmental Significance Overlay and that there is at least 30 metre to the escarpment from the closest part of his clients land. Access both by foot and vehicle is afforded.

The submission by Ms Bisucci on behalf of The First Stone (owners of 198 Beavers Road) noted that there is extensive strategic support for the rezoning of the land from the IN3Z to the RGZ including that provided by the City of Darebin Integrated Housing Strategy, Oct 2002, the Darebin Housing Strategy 2013-2033, and the Darebin Economic Land Use Strategy 2013. The submission also states that the rezoning is entirely consistent with Plan

Melbourne, noting that Amendment C122 is consistent with housing choice and affordability, liveable communities and neighbourhoods and delivering better governance.

In relation to the submission by MW which questioned the merits of the application of the RGZ, Ms Bisucci submitted that 198 Beavers Road is substantially removed from the Merri Creek. Further Ms Bisucci stated:

*It appears from Melbourne's Water submissions that the proximity of the land comprised in C122 may affect the waterways. It is unclear on what basis that submission is made given that at a planning permit stage an assessment will need to be made in relation to issues pertaining to water quality and will be dealt with at that time. There is no environmental threat to the waterways which Melbourne Water can point to which supports its proposition that presumably lower density development is appropriate for the land comprised in C122. In our submissions, the use of the NRZ is contrary to the strategic work, including the strategy and the land use strategy which Council has undertaken and which will soon form part of the Planning Scheme.*

In respect of the C122 rezoning Ms Bisucci concluded:

*In our submissions, having regard to Council's recent strategic work and the need to fulfil housing demands in the future, the use of RGZ is appropriate and should be supported by the Panel.*

The submission by Ms MacMillan on behalf of the Merri Creek Management Committee (the Committee) reiterated that it is not opposed to the rezoning of the existing industrial land to allow both residential and commercial development. Ms MacMillan noted Melbourne Water's recommendation that 200 Beavers Road be rezoned to the NRZ rather than the RGZ and stated that the Committee "agree that a less intensive residential zone is more appropriate for an interface to Merri Creek".

The submission by Ms McGregor and Mr Redfearn on behalf of the Friends of the Merri Creek did not oppose the application of the RGZ in respect of Amendment C122. As noted in their presentation material to the Panel, their presentation refers to the section of the precinct adjoining Merri Creek, "and mainly to Amendment C127".

Ms Hill (submitter 7) who presented to the Panel on Day 3 of the Hearing, noted support for the proposed change of use however her support was contingent on safe public access being maintained between Beavers Road and Beaconsfield Parade (*Refer discussion in Chapter 7 of this Report*).

Mr O'Donnell (Submitter 3) who presented to the Panel on Day 3 of the Hearing, while questioning whether the RGZ was appropriate, did not oppose its application. His written submission (which was identical to submissions lodged by submitters 2 and 4 who did not appear) recognised "that allowing for a diversity of housing forms and densities is necessary for a sustainable and equitable metropolitan environment." While noting concerns about building heights and setbacks within the proposed RGZ and the DPO Schedule, the submissions sought modifications to the DPO controls to manage amenity issues rather than opposing the residential rezoning. This group of submitters noted that the current built

form is substantially set back from adjoining residential properties and includes a landscaping setback of 5.5 metres. The submitters believe that the proposed DPO should at least incorporate the already existing landscaping setback and be extended to require all buildings be set back at least 7 metres from the northern boundary of 198 Beavers Road, and that those buildings on this setback be restricted to two-storeys height. (*Refer discussion in Section 7 of this report*).

Other issues raised by submitters which did not appear at the hearing included the potential increase in traffic and the potential for congestion on surrounding streets. Submitter 5 opposes both Amendment C122 and C127 on these grounds while submitters 8, 9, 10 highlighted traffic related concerns and or sought assurances that traffic will be effectively managed.

Submitter 6 advised that *“we are very much in support of what appears to be proactive and sustainable planning by Darebin for this precinct”*. Submitter 15 supported the rezoning (and that proposed by C127) due to a belief that they will result in business, employment and economic benefits.

### **4.3 Discussion**

The Panel recognises that the subject land has a history of industrial land use that no longer is viable across the two Amendment sites because of a number of factors. As suggested by Hansen Partnership Pty Ltd (August 2013) in its report supporting Amendment C122, the current industrial zoning is largely a legacy of the past and would have been applied to reflect this existing use at the time. The report states that *‘the land is poorly located for ongoing industrial uses or for new industrial investment. The land is a small industrial pocket located in a primarily residential area. Other than for a small number of properties fronting Arthurton Road, access to properties is via narrow residential streets with houses on both sides’*, (p.26).

The Panel accepts that the rezoning of the northern precinct to facilitate residential development is supported by a number of Darebin Council’s strategies, such as the DELUS, as well as various State Planning Policies. No party to the main hearing advanced a case opposing the application of an appropriate residential zone. The Panel notes that MW submitted that the change in zoning from industrial to residential *“provides an significant opportunity to improve the environmental amenity and public access interface between the Creek and future development”* and that *“a residential zone is considered the ideal interface with Merri Creek to improve amenity”*.

The Panel has considered the respective merits of the RGZ compared to the NRZ, and the views of MW and the Merri Creek Management Committee which consider the NRZ would be more appropriate in context of the Amendment site’s proximity to the Merri Creek and its environs. The Panel notes that the key concern of MW and the Merri Creek Management Committee relates to the protection of the Merri Creek environs and that they consider development outcomes likely facilitated by the application of the RGZ will result in a greater impact on the Merri Creek compared to an outcome facilitated by the NRZ. The Panel was not convinced that this would be the case and notes that existing ESO as well as the proposed EAO and the DPO12 allows for mechanisms to be put in place to protect and enhance the significant environmental and aesthetic values of the locality. The Panel

accepts the submission by Ms Bisucci that detailed assessments will be undertaken at the Planning Permit application stage and controls applied that respond to the zone and various overlay requirements. Further, the Panel accepts Council's submission that:

*..the RGZ will ensure the land is utilised and maximised for residential development at a scale appropriate for the site. A rezoning of the land to NRZ will lead to under-utilisation and may discourage future remediation of the land for sensitive uses given the cost of such remediation.*

*Council submits that the RGZ is the best fit for the land.*

The Panel notes that in order to maximise development potential and to achieve a consistent and coordinated development outcome it is beneficial that both 196 and 200 Beavers Road be rezoned to the same residential zone. In this regard the Panel resists MW's submission that the NRZ should be applied to 200 Beavers Road and the RGZ to 196 Beavers Road. In forming this view the Panel reiterates that the decision guidelines and planning provisions contained in the existing ESO Schedule 1 provisions which contain an extensive suite of natural system, waterway function and landscape character objectives that must be achieved, together with the proposed controls contained in the new DPO and RGZ, will provide a suitable level guidance to future proponents and sufficient planning discretion at the Planning Permit Application stage for Council and referral authorities to ensure an appropriate development outcome is achieved.

The application of the EAO (discussed in Chapter 8) will ensure adequate consideration is given to contamination issues before a sensitive use could commence on the land in the future.

In response to submitters concerns regarding potential for increased traffic and associated increased congestion and parking demand, the Panel supports Council's response that future use and development will be required to provide for parking within any new development and will need to comply with the requirement of Clause 52.06. In regards to traffic congestion, a new provision is included in the revised DPO12 for a traffic and transport impact assessment to be considered as part of the development plan consideration.

The Panel acknowledges that the sites are currently underutilised and that there will be an increase in traffic associated with new development over time. However, the Panel is satisfied that traffic and parking impacts associated with the rezoning can be appropriately considered and managed.

#### **4.4 Findings and recommendations**

For the reasons discussed above, the Panel supports the application of the RGZ via Amendment C122 as exhibited. This finding is reflected in the Panel's Recommendation contained in Chapter 10 of this report.

## **5 Is the application of the PUZ2 appropriate via C122?**

### **5.1 The Issue**

The issue raised by a limited number of submitters relates to whether public access through Leinster Grove in the northern precinct area will remain with the proposed rezoning of land at 196 Beavers Road in Leinster Grove from Industrial 3 (IN3Z) to Public Use Zone 2 (PUZ2).

### **5.2 Submissions**

In its Council Meeting Minutes (Report of 2 April 2013), Council reported that according to title and Council's own records, Leinster Grove east of 198 Beavers Road was discontinued in the 1980s. The eastern section of the discontinuance was transferred to the Minister for Education. However, the zoning of the land (Industrial 3) was not changed at the time. Council submitted that the current proposed rezoning to Public Use 2 (PUZ2) will reflect the occupation and usage of that parcel of land appropriately.

The rezoning does not remove any existing right of way but seeks to correct the zoning anomaly. Council sought the Department of Education and Early Childhood Development's (DEECD) comment on the proposed rezoning however (at the time of Panel Hearings) the DEECD had not provided a response to Council, nor a submission to Amendment C122.

Ms Hill raised concerns in her submission that public access via this laneway will be changed, reducing the access currently enjoyed by local residents through the precincts. Ms Hill highlighted the importance of maintaining a public access through Leinster Grove which is a discontinued road and is now partly contained within the school and the 198 Beavers Road title boundaries. Ms Hill noted that although not a public road, Leinster Grove has been used as a pedestrian/cyclist thoroughfare for a number of years. Leinster Grove is fenced off with a small laneway left for public access.

Resident submitters also stated that those residents located on the western end of Beaconsfield Parade, Leinster Grove and surrounding streets use the discontinued portion of Leinster Grove to travel past the Baltara School grounds to the western end of Beavers Road and access Brunswick East Primary School, Merri Creek Primary School and CERES environmental park and the Nicholson Street tram.

Although welcoming the proposed zoning change to Leinster Grove at this location, some resident submitters raised concerns with the exhibited mapping and suggested it was unclear whether the proposed PUZ2 will in fact extend from Leinster Grove to the northern footpath of Beavers Road. The submitters suggest that at the south east corner of 198 Beavers road, the exhibited zoning map shows the RGZ extending beyond the perimeter fence to include a portion of land fronting Beavers Road and cutting off the proposed PUZ2 from Beavers Road.

The submission by Ms Bisucci for The First Stone Pty Ltd did not oppose the proposed PUZ2 rezoning and noted that the anomaly in the exhibited zoning plan just outlined required correction. Ms Bisucci noted however that there should be future discretion on how best to

provide north south access in a future development scenario which will include additional residential development.

### 5.3 Discussion

As noted in the summary of submissions above, there were minimal issues raised in respect to the rezoning of land from IN3Z to PUZ2. The issue of concern to submitters related to their desire to ensure continuation of north-south public access through both the northern precinct subject of Amendment C122, but also similar north south access to Arthurton Road via Amendment C127.

Council sought to assure Ms Hill and concerned submitters that the PUZ2 rezoning formalises the current arrangement of access, rather than hindering it. Council also noted that the revised and negotiated position regarding the wording of DPO12 in respect of the Northern Precinct access is that:

*The design and siting of any new development on any site not associated with existing industrial use should increase permeability through the site and surrounding area through the provision of proposed linkages between land north of Beavers Road and Leinster Grove (Panel Emphasis).*

Council reiterated that any future development plan prepared is therefore required to address the provision of a publicly accessible pathway through the Northern precinct. Further, in response to submissions, Council submitted that the rezoning to PUZ2 will reflect the current status and use of the land and does not remove any existing right of way that may exist.

The Panel agrees with Council's position in respect of these issues and notes the general acceptance of the revised wording to the exhibited Schedule to the DPO in respect of this issue by Ms Bisucci on behalf of The First Stone Pty Ltd, and by Ms Hill and Mr O'Donnell. *(This matter is further discussed in Chapter 7).*

In response to resident concerns regarding the apparent mapping anomaly relating to the application of the PUZ2, Council accepted that the exhibited zoning plans require correction to reflect in the far south-east corner of Amendment C122 site the application of the PUZ2 along the full width and length of the Leinster Grove alignment extending to the mid-point of Beavers Road, as opposed to the depicted application of the RGZ. The Panel accepts that this drafting error requires correction and recommends accordingly.

### 5.4 Findings and recommendations

For the reasons outlined above, the Panel supports the application of the PUZ2 to land within the Leinster Grove Road Reserve as exhibited and further modified to extend the application of the zone to the mid-point of Beavers Road.

The Panel Recommends:

- 1. Modify the Amendment C122 Zoning Plan to reflect in the far south east corner of the site along the alignment of the discontinued part of Leinster Grove the application of the PUZ2 to the mid-point of Beavers Road.**

## 6 Is the application of the Commercial 1 Zone appropriate via C127?

### 6.1 The issue

The land affected by Amendment C127 is the southern precinct of the Beavers Road Industrial Area which includes land south of Beavers Road, north of Arthurton Road and east of Merri Creek, Northcote, being 167-177 Beavers Road, 148-170 Arthurton Road and 2-6 Goldsmith Grove. A limited number of submissions raised issues of concern regarding rezoning the land from its existing IN3Z to the Commercial 1 Zone (C1Z) associated with business hours of operation, potential traffic congestion and car parking.

### 6.2 Submissions

Through its *Darebin Economic Land Use Strategy (DELUS) 2013*, the Council has identified that rezoning the land subject to Amendment C127 from the IN3Z for a commercial use will assist in supporting the municipality's economic development needs and the employment needs of rapidly growing population. The Explanatory Report for Amendment C127 states that the rezoning of the land will:

- Provide for the transition of an area where the demand for industrial land and uses has fallen, with many industrial vacancies in the area.
- Facilitates office (no planning permit required), business (eg shop which requires a planning permit), mixed and residential (requires a planning permit) opportunities in an area that is more suited for business and mixed uses than former industrial purposes.
- Meets Council and community goals for greater provision of housing opportunities that have good access and connectivity, outlined in the *City of Darebin Integrated Housing Strategy (Oct 2002)*.
- Provides for higher environmental protection of the land and area and results in greater amenity for the land and adjoining and nearby residential areas.
- Enhances employment generation and for a more sustainable use and development of land.

Council submit that the proposed C1Z will facilitate the transition of the area from industrial to office and other business and mixed use purposes to serve local community business and residential needs. They consider that the rezoning *'will not adversely impact on the ongoing operation of existing uses within the subject site, which may either legally occur under the zone or will have existing use rights to legally continue'*.

Mr McNamara, of the Hansen Partnership Pty Ltd (on behalf of the owners of 158 and 168 Arthurton Road being Wightons Pty Ltd and Computer Stationary Printers Pty Ltd) stated that his clients were fully supportive of the proposed zoning from IN3Z to C1Z. Section 3 of Mr McNamara's detailed submission provided a thorough overview of the strategic justification for the rezoning which he stated was framed around three key planks:

- Support within the Darebin Economic Land-Use Strategy (DELUS), 2013;
- Support with the provisions of the Darebin planning scheme; and

- Support under the Government's reformed commercial zones.

The Panel considers that the overview of the strategic basis of the rezoning provided by Mr McNamara is consistent with that detailed in the Explanatory Report and also with the submissions on behalf of the Council. While noting his client's unconditional support for the rezoning of land to the C1Z as exhibited, the submission of Mr McNamara raised some issues regarding the wording of the proposed Schedule to the DPO. These issues are discussed separately in Chapter 7.

The submission by Mr Richardson on behalf of MW states that MW has no 'in-principle' objection to the rezoning of land from the IN3Z to an appropriate residential and commercial zoning. The submission also states:

*...and that built form controls in the proposed Commercial 1 Zone fronting Merri Creek be written to limit visual amenity impacts when viewed from along the Creek corridor.*

The submission by Ms McGregor and Mr Redfearn on behalf of the Friends of the Merri Creek did not oppose the application of the C1Z. The submission sought the application of a PAO on the Merri Creek frontage and modifications to the DPO. These issues are discussed in Chapters 7 and 8 of this report.

As already discussed in Chapter 4 of this report a limited number of joint submissions to both Amendments expressed concern regarding the potential increase in traffic and the potential for congestion on surrounding streets. Submitter 5 opposes both Amendment C122 and C127 on these grounds while submitters 8, 9, 10 highlighted traffic related concerns and or sought assurances that traffic will be effectively managed.

Submitter 18, part owner of no's 4-6 Goldsmith Grove states that they support the rezoning of land within Amendment C127 as it will provide flexibility with regard to future development.

### **6.3 Discussion**

As noted in the above summary, there were minimal issues raised in respect to the rezoning of land from industrial to commercial for the land subject to Amendment C127. The issues raised were more about the exhibited DPO (Schedule 12), which covers both Amendment C122 and C127 and is discussed in the following chapter.

The Panel has considered the merits of the rezoning from IN3Z to C1Z and agrees with Council, and the tenor of submissions from Mr McNamara, that the rezoning will provide for the transition of an area where the demand for industrial land and uses has fallen in recent years and that the rezoning will enhance employment generation and encourage a more sustainable use and development of land in this southern precinct.

The Panel dismisses MW's submission that "*additional built form controls in the proposed Commercial 1 Zone*" need to be written. In reaching this position, the Panel reiterates that there are already a suite of "*Landscape Character*" (and numerous other) objectives in Schedule 1 to the ESO that will continue to apply to the Amendment area. One such objective is:

*To ensure that the scenic qualities and visual character of the waterway corridor area not compromised by the inappropriate siting of buildings, the placement of fill, or lack of screening vegetation.*

The above objective is supported by the following decision guideline in Schedule 1 to the ESO which the responsible authority is obliged to assess future development proposal's compliance with:

*The effect of the height, bulk, and general appearance of any proposed buildings and works on the environmental values and visual character of the creek corridor.*

The Panel considers the above controls provide sufficient guidance to the Council in its discretionary permit application decision making.

As noted in Chapter 4, the Panel accepts Council's submission that traffic and parking impacts associated with the rezoning can be appropriately considered and managed.

The Panel also notes that application of the EAO (discussed in Chapter 8) will ensure adequate consideration is given to contamination issues before a sensitive use could commence on the land in the future.

#### **6.4 Findings**

For the reasons discussed above, the Panel supports the application of the Commercial 1 Zone via Amendment C127 as exhibited. This finding is reflected in the Panel's Recommendation contained in Chapter 10 of this report.

## 7 Content and structure of Schedule 12 to the DPO

### 7.1 The issue

Submissions to the exhibited Amendments identified a number of issues relating to the form and content of the proposed DPO12. In response, Council convened, both prior to and during the hearing, a number of sessions with submitters to discuss issues and possible changes to the wording and structure of DPO12 in an attempt to narrow issues in dispute. On the afternoon of the last day of the Hearing a consolidated revised version of the Schedule was tabled and discussed. The version reflected the constructive discussions had between parties. Closing submissions identified only a few issues that remained unresolved and requiring resolution. The outstanding issues relate to:

- Merri Creek interface issues including whether prescription regarding provision of a 12 metre waterway corridor should be included;
- What consideration should be afforded to the *Merri Creek Development Guidelines (2004)* and the *Merri Creek and Environs Strategy (2009-2014)*;
- The degree of prescription contained within the Beavers/Arthurton Roads Design Guidelines (BARD Guidelines);
- Building height and setback provisions including whether height limits in the northern residential precinct should be worded as mandatory or discretionary;
- Whether it is appropriate to include measures to offset potential impacts arising from proximity to the Northcote Golf Course; and
- Wording of guidelines to facilitate access through the precincts.

Following a brief overview, each of the above matters are addressed in turn below.

### 7.2 Evidence and submissions

Council submitted that the purpose of DPO12 is to facilitate the orderly development of the area and to ensure that future development in the DPO area is appropriately managed and coordinated. This is consistent with the specified purpose of the DPO, *“to identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.”* The Schedule outlines a range of matters that should be provided for and addressed to the satisfaction of the Responsible Authority including: general and precinct specific use, built form and design guidelines, matters relating to site contamination, interface treatment particularly to the existing residential areas and the Merri Creek, as well as vehicle and pedestrian connections and access through the DPO area.

The Panel notes that no party to the hearing opposed the application of DPO12. Submissions primarily focused on the wording of guidelines within the Schedule.

The issues that the Panel has determined that require resolution are now outlined.

#### **Merri Creek interface issues including whether prescription regarding provision of a 12 metre waterway corridor should be included**

The submission by MW noted the Merri Creek is a large catchment that flows from the foothills of the Great Dividing Range, north of Wallan, running through the basalt plains

north of Melbourne and joins the Yarra River at Fairfield. The two Amendment areas make up approximately 460 metres of continuous creek frontage.

The main access trail along the Merri Creek is on the western side of the creek (outside of Amendment C122 and C127 areas).

For the site subject to Amendment C122, MW provided plans that indicate the property at 200 Beavers Road has primary frontage to Merri Creek, with the lot boundary ranging between 23 - 33 metres from the 1 in 100 ARI flood line and 40 - 65 metres from the waterway channel. According to MW, this part of the Merri Creek contains a series of floodplain terraces interspersed with established vegetation and informal walking tracks leading into the golf course. A maintenance track exists as a mown strip at the top of the escarpment running parallel with the western boundary of 200 Beavers Road.

The land subject to Amendment C127 has a primary frontage to Merri Creek of approximately 300 metres with property boundaries extending to the waterway channel. This part of the Merri Creek is described by MW as a steep escarpment with variable vegetation cover, punctuated towards the top of the slope by a high chainmesh fence and sealed roadway.

An easement was created in favour of MW over parts of the Creek but with no public reserve. The land along the creek corridor is still in private ownership and according to MW, access for land management and recreation is constrained.

MW suggested that improving the future development setback from the top of the escarpment will provide the 'missing link' to connect residential communities living in the north and south of the site, and retain options for future possible links along the eastern side of Merri Creek.

MW state that the corridor prescriptions contained in the *Development Guidelines for the Merri Creek* (2004) should be used as a minimum setback requirement within DPO12. They submitted that the setback should be designed to contain the floodplain, protect the waterway corridor and to protect development from future erosion issues. Specifically, MW suggest the following standard from the *Development Guidelines for the Merri Creek* is relevant:

*“Standard MC 4 Continuous Open Space*

*Subdivision and development should create a continuous strip of public open space along both sides of the creek that includes all land within:*

- *The flood prone area (1 in 100 years)*
- *30 metres of the bank of the creek*
- *12 metres of the top of any escarpment where no path is intended*
- *22 metres of the top of any escarpment where a path is intended.”*

MW suggest that to improve amenity, public interface opportunities and maintenance access to Merri Creek, a 12 metre minimum setback from the top of the bank to any future residential and commercial lot frontages to the east is important for both the northern and southern precincts of the Beavers Road Industrial area.

More specifically MW submitted that more prescriptive planning controls in the proposed DPO Schedule should be applied to ensure the following objectives are met:

- widening the waterway corridor for public amenity and land management purposes;
- making provisions to enable the waterway corridor to become a dedicated public reserve in future;
- providing an improved interface between the Creek and any future development;
- a continuous active edge along the waterway corridor in the form of a north-south public access road, or at the least a public access-way that enables safe vehicular access and egress; and
- stormwater quality treatment prior to discharge into Merri Creek.

The submission listed a number of additional information requirements that they consider should be required in any Development Plan including: *“setback of any proposed development from the top of the bank and escarpment of Merri Creek in accordance with the built form and corridor prescriptions contained in the Development Guidelines for the Merri Creek (2004), in consultation with Melbourne Water (12 metres); a geotechnical report as necessary to inform any works adjacent to the waterway embankment; and the location and size of any water sensitive urban design features within the Development plan area.”*

They also proposed a number of detailed edits to the Schedule including:

- Specifying that the development plan must be to the satisfaction of MW;
- Specifying in a number of places within the Schedule design guideline requirements to include a minimum 12 metre waterway corridor east of the top of the escarpment and future development lot boundary;
- Including a reference to Water Sensitive Urban Design; and
- Specifying a requirement for a 5 metre landscape strip from the top of the escarpment.

The Merri Creek Management Committee generally supports the intent of Amendments C122 and C127 including the use of DPO12. The Committee believe that the Council’s own strategic documents indicate a clear intent for the frontage in this precinct to become public open space. It is also the Committee’s view that ultimately the Creek frontage should be zoned Public Conservation and Resource Zone. The Committee’s submission supports MW’s recommendation for the Schedule to include a requirement for a setback of at least 12 metres from the top of the escarpment.

The Friends of the Merri Creek raised concerns in regards to the lack of any future management strategy for the land fronting Merri Creek. The Friends of the Merri Creek requested that a Public Acquisition Overlay (PAO) be applied to the Merri Creek frontage on land that is still in private ownership (*Refer Chapter 9 of this Report*). The main concern of the Friends of the Merri Creek is the ongoing management and protection of the Creek. The submission recommended that at DPO12 should *“refer to the intention to transfer the Creek frontage to public ownership, or at the very least, require the frontage to be revegetated and managed as part of the Merri Creek habitat corridor”*.

The Planning Evidence of Mr Barnes for Codstream and The First Stone expressed major concern and criticism in relation to the submissions advanced by MW regarding the specification of a 12 metre waterway corridor along the creek frontage. Mr Barnes noted

that the Merri Creek Strategy and Development Guidelines referred to by MW are subject of review (as noted in the proposed revision to Clause 21.02 via Amendment 138), and are not reference documents in the Scheme. Given this, Mr Barnes considers it would be highly inappropriate to specify or include prescriptive standards from such sources in DPO12.

The submission by Mr O'Farrell for Codstream Pty Ltd was also particularly critical of MW's proposed prescriptive additions to the Schedule including the suggestion that a design guideline be included specifying a minimum 12 metre waterway corridor east of the top of the escarpment. Inclusion of such a provision was characterised by Mr O'Farrell as MW seeking to achieve a "*Public Acquisition Overlay in disguise*". Mr O'Farrell was also critical that MW's representative did not more actively participate in the hearing noting that no planning evidence was called in support of their propositions, and that MW chose not to cross examine Mr Barnes. Mr O'Farrell stressed that not only would it be inappropriate to include such prescriptions as proposed by MW, they were also just not necessary given the extensive guidance already provided in the scheme that informs both environmental and visual management of issues at the Merri Creek interface including those contained within ESO1.

The submission by Mr McNamara for Computer Stationary Printers Pty Ltd and Wightons Pty Ltd was also highly critical and strong in opposition to MW's proposed modifications to the Schedule. Mr McNamara submitted that the proposed inclusions were unnecessary and that "*the existing provisions of the scheme are effective in ensuring built form outcomes respect the creek environs*". Provisions cited included:

- Environmental Significance Overlay – Schedule 1 (ESO1);
- Land Subject to Inundation Overlay (LSIO);
- Clause 22.07: 'Industrial and Commercial Activity'; and
- Clause 22.09: 'Residential and Mixed Use Development of Less than Four Storeys in Business 1, Business 2 and priority Development Zones 1 & 2'.

The submissions by Mr O'Farrell and Mr McNamara accepted that the Merri Guideline documents from which MW's suggested additions originate, were appropriate to be listed as reference documents in the Schedule as proposed.

In regard to the issue of private ownership of the Creek frontage, Council confirmed the Creek frontage is not in public ownership. Council also advised that there is an easement in place in favour of Council and MW which allows access to the Merri Creek frontage to carry out maintenance activities, such as weed control. Council believe that the existing ESO1 provisions provide the appropriate mechanism to protect the Creek environs.

Council submitted that the matter of providing a formalised public access cannot be resolved as part of Amendments C122 and C127, however Council acknowledge that the current arrangement may not provide the best approach to managing the area that some members of the community are seeking. Council also advised that they are not in a position to acquire the land. Council noted that this Amendment process is not the appropriate vehicle to transfer the land into public ownership.

As evidenced in the 12 June 2014 revised version of the Schedule recommended by Council, Council does not support the raft of changes proposed by MW.

**What consideration should be afforded to the Merri Creek Development Guidelines (2004) and the Merri Creek and Environs Strategy (2009-2014)**

Council supports a post exhibition change to the wording of the introduction to the *Merri Creek Interface Treatment* Guideline in response to the evidence of Mr Barnes and a number of submissions, including those on behalf of The First Stone and Codstream. The change supported by Council as reflected below, is the use the words “*after consideration*” as opposed to “*in accordance with*”, as reflected below.

*Merri Creek Interface Treatment*

- *Recognition, enhancement and protection of the integrity of the Merri Creek landscape, environment and recreation functions after consideration of the Merri Creek Development Guidelines 2004 and the Merri Creek and Environs Strategy 2009-2014, including: ... (Panel Emphasis)*

MW opposes the change and the Merri Creek Management Committee stated that “*they prefer*” the use of the words “*in accordance with*”.

The planning evidence of Mr Barnes stated that he would be concerned if the wording of DPO12 resulted in a possible interpretation that development at 200 Beavers Road “*must*” comply with the Merri Creek Development Guidelines, and particularly with the standards. His evidence was that:

*In my view such a prescriptive approach would be completely inappropriate. I find the standards contained in the document one dimensional...*

*In my opinion it is important that Schedule 12 is worded so as to avoid any suggestion that application of the prescriptive elements of the Development Guidelines are mandatory....*

It was reiterated that both of these documents are guidelines that sit outside of the Scheme and that the proposed standards are not described / written as mandatory controls but rather guidelines or objectives that “*should*” be considered and assessed.

**The degree of prescription contained within the Beavers/Arthurton Roads Design Guidelines (BARD Guidelines)**

A number of post exhibition changes have been agreed by parties to the hearing regarding the wording of the BARD Guidelines. Having noted this, the submission by Mr McNamara for Wightons and Computer Stationery Pty Ltd still questions the level of detail and prescription regarding the development outcomes envisaged for the Southern Precinct. Mr McNamara considers the detail provided is unnecessary.

**Building height and setback provisions including whether height limits in the northern residential precinct should be worded as mandatory or discretionary**

As noted in Chapter 4 of this report, a number of local resident submitters raised issues in their submissions about building heights and setbacks within the proposed RGZ and DPO. Submitters with properties that back onto the existing industrial uses at 196 Beavers Road

noted that the current built form is substantially set back from their residential properties and a landscaping setback of approximately 5.5 metres exists. The submitters believe that the proposed DPO should at least require the retention of the existing landscaping setback and also require all buildings be set back at least 7 metres from the northern boundary of 198 Beavers Road. Further the submitters requested that future buildings on this setback be restricted to two-storeys in height.

Council does not support the 5.5 metre setback and height restriction requested by the submitters backing onto 196 Beavers Road. Council considers the proposed provisions within the Schedule are adequate to protect the amenity of existing dwellings. The Provision states that: *“the built form should gradually rise and should not be more than 8 metres above existing ground level where within 5 metres of an abutting lot boundary of existing residential land that is outside of the DPO area”*. Council submitted that the RGZ provision requires any development to comply with Standard B17 of ResCode.

Council also submitted that the inclusion of a height restriction of 8 metres (2 storey) within 5 metres of common boundary sets a higher standard above the building height of 9 metres allowed under Clause 55. The adjoining residential properties are proposed to be included in a NRZ where a maximum height of 8 metres is prescribed under that zone. The 8 metre height limit along the residential interface will align with the future zone provision and will ensure appropriate future development respects the existing neighbourhood and preferred character.

The expert evidence statement of Mr Barnes notes that the Schedule also requires a graduated building height for the rest of the Northern Precinct where the overall maximum building height should not exceed 13.5 metres above natural ground level and a mandatory maximum of four storeys. Mr Barnes observes that this height is included in the provisions of the RGZ, as a discretionary limit. His evidence was:

*In my opinion a maximum building height of 13.5 metres (4 storeys) is generally appropriate for the land. However I believe that it should be clear that the height should be a discretionary height rather than a maximum height, to provide flexibility for site specific design responses, feature elements on buildings and in response to contamination issues.*

*Further I do not believe it is appropriate to state a height requirement in both the zone control and in the DPO Schedule. Accordingly I suggest that the maximum height be removed from Schedule 12. This means the height as expressed in the Residential Growth Zone would be relied upon to control the height of development on the two properties north of Beavers Road.*

*My reasons for forming this view are as follows:*

- *Both of the properties to the north of Beavers Road are large properties, are regularly shaped and provide relatively few constraints to future residential development.*
- *The land is gently sloping, has been excavated in part and requires some remediation. Discretionary maximum building*

*heights provide flexibility to manage and determine building heights that respond these site constraints.*

- *The Development Guidelines for the Merri Creek do not specify a numerical maximum building height for development adjacent to the creek.*
- *The default provisions for both the Residential Growth Zone and also the Residential General Zone are based on discretionary heights, as a principle.*

In regards to the inclusion of a mandatory building height limit of 13.5 metres or 4 storeys for the rest of the Northern Precinct, Council submitted that the site's subject to Amendment C122 are not identified for high rise high density development and the proposed height limits put forward by Council in the Amendment documentation aligns with Council's intention to accommodate medium density development in this area. Council concluded by noting:

*In order to ensure that future development on land north of Beavers Road does not overwhelm the abutting single dwellings to the north, the inclusion of a mandatory height of 13.5 meters is applied for the rest of the site, to provide certainty to existing residents."*

Ms Bisucci's submission on behalf of The First Stone noted that her client's primary submission on this issue is that "reference to building height should not be included in DPO-12 particularly, when the amendment is contemplating the introduction of a new zone which clearly sets out height controls". The submission quoted the reference to height limits within the RGZ:

*The maximum height of a building used for the purpose of a dwelling or residential building must not exceed the building height specified in a schedule to this zone.*

*This does not apply to:*

*...*

*If no building height is specified in a schedule to this zone, the maximum building height should not exceed 13.5 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 height of the building should not exceed 14.5 metres...*

Ms Bisucci submitted having regard to the zone provisions, "one must ask what value is there in including building heights in the schedule to a DPO? It is unnecessary and superfluous and could lead to confusion." Ms Bisucci also submitted that if the height guidelines were to remain in the Schedule, they should be discretionary (as per the wording utilised in the RGZ. The submission also suggested that that the phrase "natural ground level" in the Schedule be replaced with "existing site level" as given the land has been filled and capped it would be difficult to determine what "natural ground level" is.

### **Whether it is appropriate to include measures to offset potential impacts arising from proximity to the Northcote Golf Course**

The revised BARD guidelines for the Northern Precinct contained within 12 June 2014 version of the Schedule includes the following provision:

- *Separation of residential uses on the land from the adjoining Northcote Golf Course to the north, including provision of fencing and landscaping to prevent offsite impacts to residences from golfing activities on the golf course.*

Both Codstream and First Stone strongly oppose the provision on the basis that the onus to prevent offsite impacts is both reasonably and lawfully the responsibility of the golf course.

### **Wording of guideline to facilitate access through the precincts**

As noted in Chapters 4 and 5 of this report a number of submissions raised concerns regarding future provision of pedestrian and bicycle access through the precincts. Submissions sought to maintain the public access/walkway through the unmarked road of Leinster Grove or an equally convenient, proximate and publicly accessible north-south route.

The submission by Ms Bisucci for The First Stone reiterated that there should be future discretion on how best to provide north-south access in a future development scenario which will include additional residential development.

Ms Hill's support for residential rezoning was contingent on safe public access being maintained between Beavers Road and Beaconsfield Parade. In response to issues raised by Ms Bisucci and questions from the Panel, Ms Hill confirmed that while she considered it logical that such access be continued to be provided via Leinster Grove, as long as it was close by and publicly accessible her concern would be addressed.

In respect of the southern precinct, the proposed wording in the Schedule now requires an increase in *"permeability through the site and surrounding area through the provision of a publicly accessible north-south route connecting Artherton Road to Beavers Road which incorporates a two-way vehicle carriageway, pedestrian and cycle route and landscaping"*.

In respect of the southern precinct, the proposed revised wording of the DPO states *"The design and siting of any new development on any site not associated with existing industrial use should increase permeability through the site and surrounding area through the provision of proposed linkages between land north of Beavers Road and Leinster Grove"* (Panel emphasis).

## **7.3 Discussion**

### **Merri Creek interface issues including whether prescription regarding provision of a 12 metre waterway corridor should be included**

The Panel notes the submissions by MW, the Friends of the Merri Creek and the Merri Creek Management Committee in regards to private land interface and access issues with the Merri Creek. The Panel highlights that issues are substantially and thoroughly dealt with

within the existing ESO Schedule 1. The ESO Schedule notes the values of the Creek as follows:

*The Merri Creek is an environmental, heritage and recreation corridor that draws its significance from its role as a continuous corridor as it does from the qualities of individual reaches. All areas of the Creek are important because they contribute to the linking of area of environmental, heritage and recreational value along the Creek’.*

The Panel also acknowledges that the Development Guidelines for the Merri Creek are listed in the decision guidelines of the ESO1 and require consideration by Council prior to deciding on an application. The Schedule also requires that the views of MW are taken into consideration by Council before deciding on an application.

The Panel is sympathetic to the views advanced by the Merri Creek Management Committee, Friends of the Merri Creek, some individual submitters and MW that there would some broad community benefit in maintaining a level of public access along the top of the escarpment of the Merri Creek for pedestrians to enjoy the amenity that such an environment offers as well as it creating a buffer between any future development. While noting this, the land is in private ownership and at this point in time, neither Council nor MW propose to acquire part of the land for such purposes.

Having considered the submissions before it, Panel considers that it would be inappropriate to further modify the Schedule to mandate / specify that a minimum 12 metre waterway corridor / setback from the Merri Creek environs be provided from east of the top of the escarpment and a future development lot boundary. The Panel accepts submissions advanced by Council and evidence and submissions advanced by Codstream, The First Stone, Computers Stationary Printers Pty Ltd and Wightons Pty Ltd that the *MC4 Continuous Open Space* Standard contained in the *Development Guidelines for the Merri Creek* and guidance provided by the *Merri Creek Environs Strategy 2009-2014* should not be elevated to prescriptive controls via inclusion of the DPO schedule. The Panel also notes that the MC4 Standard is worded as a “should”, not a must.

The Panel is satisfied that the proposed wording of the DPO Schedule, combined with the existing provisions of the ESO Schedule provide the appropriate mechanism to protect the Creek environs as well as maintain access. The Panel considers that the following wording within the DPO Schedule provides appropriate direction that future development plans should protect and enhance the Merri Creek environs and include appropriate setbacks from the creek and provision of public thoroughfares:

*Merri Creek Interface Treatment*

- *Recognition, enhancement and protection of the integrity of the Merri Creek landscape, environment and recreation functions after consideration of the Merri Creek Development Guidelines 2004 and the Merri Creek and Environs Strategy 2009-2014, including:*
  - *Provision of development setbacks from the Merri Creek environs which respond appropriately to topographical conditions and provision of public thoroughfares in the public and private domain adjacent to the creek, as appropriate.*

The Panel also does not consider the additional modifications sought to the DPO Schedule by MW are warranted or add value to the proposed control.

**What regard should the Schedule have to the *Merri Creek Development Guidelines (2004)* and the *Merri Creek and Environs Strategy (2009-2014)*.**

As inferred previously the Panel is concerned to avoid an inappropriate elevation in status of the Merri Creek Development Guidelines and the Environs Strategy and the standards or guidelines contained therein. The Panel supports the submissions by Council and Codstream, The First Stone, Computers Stationary Printers Pty Ltd and Wightons Pty Ltd that future planning and development along the Merri Creek Corridor should consider and have regard to the documents rather than prescriptively be 'in accordance' with them. Accordingly, the Panel supports the proposed 12 June 2014 modifications of the guidelines to read as follows:

*Merri Creek Interface Treatment*

- *Recognition, enhancement and protection of the integrity of the Merri Creek landscape, environment and recreation functions after consideration of the Merri Creek Development Guidelines 2004 and the Merri Creek and Environs Strategy 2009-2014, including: ..*
- *...*
- *Appropriate development design and interface treatment to respond to and complement the Merri Creek environs, after consideration of the Merri Creek Development Guidelines 2004 and other land uses nearby.*

**The degree of prescription contained within the Beavers/Arthurton Roads Design Guidelines (BARD Guidelines)**

The provision of guidance on preferred built form outcomes, such as those outlined for the southern precinct, is considered by the Panel to be a valid and core function and purpose of the DPO. The Panel accepts Council's submission that Arthurton Road is a key road within the Municipality and as such it is appropriate to provide guidelines on how future development should present and interface with the road. The revised 12 June 2014 provisions for the southern precinct include:

*Southern Precinct:*

- *Creating a strong sense of place and vibrancy of commercial and mixed uses, accessibility and community safety.*
- *Active frontages at ground level adjoining Arthurton Road, Beavers Road, Goldsmith Grove and any new public carriageway, path or road. Residential frontages should be avoided.*
- *Development fronting Arthurton Road which:*

- *Promotes multi-level development with high site coverage to maximise the commercial opportunity and employment generating potential.*
- *Encourages zero or minimum frontage setbacks from Arthurton Road for new buildings. This may be varied where it can be demonstrated the setback provides for an enhanced public realm and net community benefit (e.g. public footpath widening or provision for a bus stop).*
- *Provides for car parking to be adequately concealed from public views, e.g. through siting to the rear of buildings or within a basement.*

The Panel considers that above the provisions are not overly prescriptive and are appropriately couched as matters that either “*should be*” considered or “*encouraged*”. The Panel accepts the 12 June 2014 modifications and considers that the provisions should be retained.

#### **Building height and setback provisions including whether height limits in the northern residential precinct should be worded as mandatory or discretionary**

In relation to submissions that requested the DPO be modified to require a 5.5 metre landscaped buffer and a requirement that buildings be set back at least 7 metres from the northern boundary interface in Amendment C122, the Panel agrees with the submissions by the Council and evidence and submissions on behalf of Codstream and The First Stone that such an outcome is not desirable and would be inconsistent with the both the RGZ and ResCode provisions. The Panel supports the modified 12 June 2014 version of BARD General Guidelines that states “*the built form should gradually rise and should not be more than 8 metres above existing ground level where within 5 metres of an abutting lot boundary...*”. This outcome, in the opinion of the Panel will afford neighbouring properties sufficient separation from future development.

The Panel does not oppose the inclusion of a building height guideline in the DPO as proposed in Council’s drafting of the Schedule. The Panel considers it valid for the DPO to include guidance on the built form outcomes, including height of buildings, however the Panel does not consider there is strategic justification to ‘*mandate*’ an outcome.

Accordingly, the Panel’s recommended wording of the Northern Precinct building height guideline, as reflected in Appendix B of this report is as follows:

##### *Northern Precinct:*

- *Graduated building heights **with** where the overall height should not exceed 13.5 metres above existing ground level and a **mandatory** maximum of four storeys.*

### **Whether it is appropriate to include measures to offset potential impacts arising from proximity to the Northcote Golf Course**

The Panel accepts the submissions on behalf of Codstream and The First Stone that it is highly unreasonable to include in the Schedule a requirement which in-effect represents a reverse amenity provision. In reaching this conclusion the Panel has had regard to the findings of the *Chapman v Plenty Views Pty Ltd* [2009] VCC 1271 County Court case. The Panel considers the following provision should be deleted from the Schedule:

- *Separation of residential uses on the land from the adjoining Northcote Golf Course to the north, including provision of fencing and landscaping to prevent offsite impacts to residences from golfing activities on the golf course.*

### **Wording of guideline to facilitate access through the Precincts**

The Panel considers it appropriate to include the words ‘publicly accessible’ following the word ‘proposed’ in the revised accessibility guideline for the Northern Precinct. This addition would achieve consistency with the wording of the provision applicable to the Southern Precinct and it also provides clarity that it is not sufficient to provide internal ‘private access’. The Panel notes that the Leinster Grove reference in the sentence appears to have been inappropriately inserted. The road to the north that should be referenced in the Guideline is Beaconsfield Parade, consistent with resident submissions. The Panel also considers the word ‘proposed’ should be deleted. Accordingly, the Panel’s recommended wording of the guideline, as reflected in Appendix B of this report is as follows:

#### *Northern Precinct*

- *The design and siting of any new development on any site not associated with existing industrial use should increase permeability through the site and surrounding area through the provision of **publicly accessible** ~~proposed~~ linkages between land north of Beavers Road and ~~Leinster Grove~~ **Beaconsfield Parade**.*

## **7.4 Findings and Recommendations**

For the reasons discussed above, the Panel supports a number of modifications to the exhibited DPO12 schedule which is to apply to land subject of both Amendment C122 and C127. The Panel’s recommended changes are reflected in Appendix B of this report. The base document of Appendix B is the 12 June 2014 modified Schedule that was tabled and discussed on the last day of the hearing.

The Panel recommends:

- 2. Modify the exhibited Schedule 12 to the Development Plan Overlay to reflect the Panel endorsed version provided in Appendix B of this Report.**

## 8 Is the application of the Environmental Audit Overlay appropriate?

### 8.1 The issue

The issue is whether the introduction of an EAO provides adequate protection for future sensitive uses from potential contamination caused by historical uses of the subject sites (both Amendments C122 and C127).

### 8.2 Submissions

The Explanatory Report states that the application of an EAO ensures that the land, which is potentially contaminated land from its former industrial use, is suitable for residential use prior to the commencement of a sensitive use which could be significantly adversely affected by contamination.

The Panel was advised that several meetings were held between the Council and the Environment Protection Authority (EPA) during the course of preparing the Amendments in regards to how to best manage the potential contamination on the land within the two precincts (north and south). The EPA originally suggested (letter dated 21 May 2012) that an environmental audit of the entire site be undertaken before rezoning to a more sensitive use (i.e. residential). However due to the number of lots and multiple land ownership the EPA concurred with the Council that the application of an EAO is an appropriate mechanism to address potential contamination over the site.

The EPA also recommended that Council develop a suitable method for managing potential landfill gas migration, particularly in regards to non-sensitive uses and development not captured through a Section 53X assessment (under the *Environment Protection Act 1970*), either through the DPO Schedule or a Schedule to the EAO. The Council decided to provide a provision in the DPO (Schedule 12) to incorporate EPA's request. The EPA is supportive of the approaches Council has taken.

Council's submission explains that the effect of the EAO is simple and unambiguous in that, in terms of the subject land, before residential use or construction of any buildings or works commences, either:

- *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- *An environmental auditor under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*

Council submitted that the EAO *'is the safeguard to ensure all necessary investigations and subsequent actions are completed prior to development of land for residential purposes on potentially contaminated land.'*

Although the EPA did not provide a submission to the Amendments, in a letter of 28 June 2012 to DLA Piper regarding the proposed Amendments, the EPA stated that it has no objections to the proposed Amendments *'provided that it will assist Council in satisfying itself that sites are suitable for use where sensitive uses are proposed. The EAO will provide*

*clarity for current owners and protection for potential buyers of affected sites in relation to assessments and possible remediation that may be required in future’.*

The submission by Mr O’Farrell on behalf of Codstream (Amendment C122) noted that his client supports the use of the EAO to address issues associated with sensitive uses. Neither Ms Bisucci for the First Stone Pty Ltd (Amendment C122) nor Mr McNamara for Computers Stationary Printers Pty Ltd and Wightons Pty Ltd, oppose the application of the EAO to their client’s land. A minor modification to the DPO Schedule was supported by the above parties to clarify that the provision in the DPO Schedule relates to non-sensitive uses.

### **8.3 Discussion**

The owners of 198 Beavers Road (which is subject to C122) had an Environmental Site Assessment (ESA) undertaken by Compass Environmental Pty Ltd in December 2010 and the owners of 200 Beavers Road (C122) had a similar assessment undertaken for their site in April 2011 by Alpha Environmental. Having reviewed these background reports provided by Council as part of the Amendment C122, the Panel is satisfied that, based upon the material presented to it, the owners of sites that are part of C122 have undertaken the required environmental site assessments that the EPA suggested to Council are required.

The Panel understands that this does not mean there is no contamination across the sites, but rather a preliminary investigation to assist Council in understanding the potential risk(s). Indeed, these reports both found areas of the site that contained some form of potential contaminants from the former use as a landfill such as heavy metals, polycyclic aromatic hydrocarbons (PAHs) and slightly elevated concentrations of petroleum hydrocarbons at *‘levels that could cause potential adverse effects to human health and ecological receptors under a residential use scenario’* (p6, Compass Environmental).

The implementation of the EAO, as well as the additional provision in the DPO12 to incorporate EPA’s request to develop a suitable method for managing potential landfill gas migration, particularly in regards to non-sensitive uses and development not captured through a Section 53X assessment (under the *Environment Protection Act 1970*), provides a level of comfort to the Panel, and no doubt the community and regulators, that there are adequate measures and tools in place to minimise the risk of potential contamination from past activities for any future sensitive uses.

The Panel agrees with both the Council and the EPA that the application of an EAO is an appropriate mechanism to address potential contamination that may exist within the area covered by both Amendments C122 and C127 due to the sites past uses as a quarry and then as a landfill.

The Panel also notes that there are no outstanding matters related to the introduction of an EAO by submitters.

### **8.4 Recommendations**

For the reasons discussed above, the Panel supports the application of the EAO via Amendments C122 and C127 as exhibited. This finding is reflected in the Panel’s Recommendation contained in Chapter 10 of this report.

## **9 Application of the Public Acquisition Overlay along the Merri Creek corridor**

### **9.1 The issue**

The issue is whether it is appropriate to apply a Public Acquisition Overlay to land along the Merri Creek corridor via Amendment C127.

### **9.2 Submissions**

The Friends of the Merri Creek Inc. seek the application of a PAO via Amendment C127, to land *“on the Merri Creek frontage from the top of the escarpment to the western edge of the private property boundaries”*. The submission suggests that ultimately the frontage should be zoned Public Conservation and Resource Zone. Further, the submission states that a PAO would clearly signal Council’s intent, and protect Council’s interests until the opportunity for acquisition arises.

### **9.3 Discussion**

Council’s submission noted that it currently does not have the funds to acquire the land identified by the Friends of the Merri Creek Inc, and further it is unlikely that this position will change in the future. Council noted that it determined in previous negotiations that a carriage-way easement over the land would be satisfactory. This issue is also discussed in chapter 7.2 of this report.

MW have the ability to seek the application of a PAO but have not done so.

### **9.4 Findings**

The Panel accepts that there may be community benefit in negotiating the transfer of the Merri Creek frontage subject of Amendment C127 into public ownership, however it is beyond the scope of this Amendment process to advocate or recommend this outcome. Council has made it clear that it is not in a position to fund such an initiative and MW have chosen not to exercise its powers in this regard.

## **10 Conclusions and recommendations**

### **10.1 Conclusions**

Having heard submissions and evidence arising from the exhibition of Planning Scheme Amendments C122 and C127 to the Darebin Planning Scheme, the Panel is satisfied that the Amendments are consistent with both State Planning Policy and Local Planning Policy. In forming this view the Panel notes that the Amendments advance outcomes sought by numerous recently adopted strategic planning studies.

The Panel acknowledges the contribution to the Amendment process by submitters and congratulates the Council Officers in their thoroughness and diligence in progressing and facilitating negotiations with parties that resulted in the narrowing of issues in dispute.

### **10.2 Recommendations**

#### **(i) Amendment C122**

For the reasons outlined in this report, in relation to Amendment C122 the Panel recommends:

- 1. Amendment C122 to the Darebin Planning Scheme should be adopted as exhibited subject to the following changes:**
  - a) Modify the Amendment C122 Zoning Plan to reflect, in the far south east corner of the site along the alignment of the discontinued part of Leinster Grove, the application of the PUZ2 to the mid-point of Beavers Road.**
  - b) Modify the exhibited Schedule 12 to the Development Plan Overlay to reflect the Panel endorsed version provided in Appendix B of this Report.**

#### **(ii) Amendment C127**

For the reasons outlined in this report, in relation to Amendment C127 the Panel recommends:

- 1. Amendments C122 and C127 to the Darebin Planning Scheme should be adopted as exhibited subject to the following changes.**
  - a) Modify the exhibited Schedule 12 to the Development Plan Overlay to reflect the Panel endorsed version provided in Appendix B of this Report.**

## Appendix A: List of Submitters

No	Submitter
1	Michael Pearse
2	John McKay and Karin Derkley
3	Anthony O'Donnell and Belinda Robson
4	Tracey and Jyotendra Greenwold
5	Christine Papas
6	Tania O'Hanlon
7	Angela Hill
8	Daniel Matthews
9	The First Stone and Codstream Pty Ltd
10	Public Transport Victoria
11	Merri Creek Management Committee
12	Melbourne Water
13	Reach Community Church
14	Unknown
15	Inskip Art Services
16	Computer Stationary Printers Pty Ltd and Wightons Pty Ltd.
17	Friends of Merri Creek Inc.
18	Rob and Paul Furst

## Appendix B: Panel Recommended Version of Schedule 12 to the Development Plan Overlay

The attached version of Schedule 12 to the DPO is the Panel Recommended Version as discussed in Chapter 7 of this report. The base document is the 12 June 2014 version tabled at the Hearing (Hearing Document 31).

### Note:

- Panel recommended insertions are highlighted in yellow and underlined.
- Panel recommended deletions are highlighted ~~in red with strikethrough applied~~.

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C122

## SCHEDULE 12 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO12**

### Beavers Road and Arthurton Road area, Northcote

This schedule applies to:

- 198 and 200 Beavers Road, Northcote, being land on the northern side of Beavers Road zoned Residential Growth Zone (also referred to as Northern Precinct).
- Land to the south of Beavers Road, north of Arthurton Road and east of Merri Creek zoned Commercial 1 Zone (also referred to as Southern Precinct).

#### 1.0 Requirement before a permit is granted

--/20--  
C122

A permit may be granted before a development plan has been approved for the following:

- To use an existing building.
- Minor buildings and works to existing buildings provided the buildings or works do not prejudice the preparation and approval of the Development Plan and the long term vision for the overlay area.
- Subdivision of land, provided that the subdivision is the result of a consolidation of all or parts of the site or the re-subdivision of the land and the number of lots is not increased.
- Removal or creation of easements or restrictions.
- Buildings or works associated with the remediation of the land in accordance with or for the purpose of obtaining a Certificate or Statement of Environmental Audit under the *Environment Protection Act 1970*.

Before any planning permit is granted for any use or development of land to which the overlay applies, the responsible authority must consider the requirements for a development plan as outlined on section 3 of this schedule.

#### 2.0 Conditions and requirements for permits

--/20--  
C122

An application for use, subdivision or to construct or carry out minor works (before a development plan has been approved) must be accompanied by a report demonstrating that the proposal will not prejudice the long-term future use and development of the land in accordance with the development plan requirements specified in this schedule.

An application to construct or carry out works for the purposes of a non-sensitive use comprising subsurface excavation must be accompanied by an assessment of landfill gas risk associated with historical land filling activities, in accordance with the Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills (EPA Victoria, Publication 788.1, September 2010), to the satisfaction of the responsible authority, in conjunction with the Environmental Protection Authority.

#### 3.0 Requirements for development plan

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C122

A development plan must meet the matters set out in clause 3.0 as relevant.

Before approving a development plan, the Responsible Authority may advise PTV, Melbourne Water and EPA of the proposed development plan. If the Responsible Authority does so advise any of these bodies of a proposed development plan, it must provide no less than 21 days for these bodies to provide any comments. The Responsible Authority should take any comments received within 21 days into account prior to approving a development plan.

The Responsible Authority may consider separate development plans within the precincts. Where a separate development plan is prepared, the plan should show how the plan relates to the other land within the overlay.

A **Development Plan** should provide for and address the following matters as appropriate to the satisfaction of the Responsible Authority:

### *Use, Built Form and Design*

#### General

- An existing condition plan showing natural features, topography, orientation, views, existing uses and buildings, open space, existing vehicle and pedestrian/cycle connection, vegetation and landscaping in the nearby area.
- The relationship of the uses and the proposed built form to the existing or proposed use on adjoining land.
- Details of the proposed land use of each part of the land within the overlay.
- Extent of active frontages at ground level and street frontages.
- Design and siting of building that will maximise passive surveillance of public and communal areas and nearby creek environs.
- A mix of dwelling sizes to provide for a diversity of housing.
- Minimisation of potential conflict (e.g. noise, odours, hours of operation) between a proposed use and or development and existing uses and developments on adjoining and nearby land.
- Proposed streetscape treatments including landscaping to complement the existing surrounding streetscapes and to satisfaction of the Responsible Authority.

#### Southern Precinct:

- Provision of the transition from former industrial uses to mixed uses (preferably 'green businesses' businesses as per *Darebin Green Business Attraction Strategy 2012*), with residential use to complement predominant commercial uses.
- A mix of commercial spaces to provide for a diversity of uses. Land use in the southern precinct should promote mixed-use activities with minimal ground floor residential uses. Residential use should be located on upper level and provides for a range of dwelling types and sizes.
- Provision of dwellings on the upper levels. For any extent of dwelling use at ground floor level it must be demonstrated that there will be no adverse viability and economic impact on businesses and no potential adverse amenity impacts from residential use on commercial uses.
- The design and siting of any new development on any site not associated with existing industrial use should increase permeability through the site and surrounding area through the provision of a publicly accessible north-south route connecting Arthurton Road to Beavers Road which incorporates a two-way vehicle carriageway, pedestrian and cycle route and landscaping, as appropriate.

#### Northern precinct:

- The design and siting of any new development on any site not associated with existing industrial use should increase permeability through the site and surrounding area through the provision of publicly accessible proposed linkages between land north of Beavers Road and Leinster Grove Beaconsfield Parade.
- Development in the northern precinct should seek to reinforce the residential purpose of the land with limited commercial use at the ground level, where appropriate.

### ***Beavers/Arthurton Roads Design Guidelines (BARD Guidelines)***

The development plan should include BARD Guidelines to provide detail regarding amongst other matters, the scale, form, setbacks, height and anticipated materials and colour of buildings and the landscaping of sites to the satisfaction of the Responsible Authority. Amongst other things, the development plan must consider the following:

#### General

- The built form should gradually rise and should not be more than 8 metres above existing ground level where within 5 metres of an abutting lot boundary of existing residential land that is outside of the DPO area.
- The design of the built form towards any access ways should reflect a fine grain pattern of nearby streets, floors should be distinguishable from each other through punctured facades (e.g. balconies, windows, façade articulation) and be located to provide a comfortable

pedestrian scale.

- Details of design measures to maximise passive surveillance and activation of streetscapes and the public realm Provision of environmental sustainable design principles including maximising opportunities for northern orientation and natural lighting, reduction of impervious surfaces and stormwater reduction and management to the satisfaction of the Responsible Authority.

Southern Precinct:

- Creating a strong sense of place and vibrancy of commercial and mixed uses, accessibility and community safety.
- Active frontages at ground level adjoining Arthurton Road, Beavers Road, Goldsmith Grove and any new public carriageway, path or road. Residential frontages should be avoided.
- Development fronting Arthurton Road which:
  - Promotes multi-level development with high site coverage to maximise the commercial opportunity and employment generating potential.
  - Encourages zero or minimum frontage setbacks from Arthurton Road for new buildings. This may be varied where it can be demonstrated the setback provides for an enhanced public realm and net community benefit (e.g. public footpath widening or provision for a bus stop).
  - Provides for car parking to be adequately concealed from public views, e.g. through siting to the rear of buildings or within a basement.

Northern Precinct:

- Graduated building heights with where the overall height should not exceed 13.5 metres above existing ground level and a mandatory maximum of four storeys.
- Limited commercial uses that may be considered under the applicable zone should be located to front Beavers Road.
- Separation of residential uses on the land from the adjoining Northcote Golf Course to the north, including provision of fencing and landscaping to prevent offsite impacts to residences from golfing activities on the golf course.

#### ***Merri Creek Interface Treatment***

- Recognition, enhancement and protection of the integrity of the Merri Creek landscape, environment and recreation functions after consideration of the *Merri Creek Development Guidelines 2004* and the *Merri Creek and Environs Strategy 2009-2014*, including:
  - Provision of development setbacks from the Merri Creek environs which respond appropriately to topographical conditions and provision of public thoroughfares in the public and private domain adjacent to the creek, as appropriate.
  - Design and siting of buildings to minimise visual and landscape impacts experienced from the Merri Creek environs and adjoining pedestrian paths, including the transition of building heights to reduce height and mass nearby the Merri Creek environs. The built form should gradually rise and should not be more than 8 metres (above existing ground level) or a maximum two storeys within 5 metres where a lot boundary abuts creek or park environs.
  - Buildings adjacent and nearby the Merri Creek corridor being constructed of materials and colours that reflect the natural setting of the creek environment and in finished in muted tones.
  - Appropriate development design and interface treatment to respond to and complement the Merri Creek environs, after consideration of the Merri Creek Development Guidelines 2004 and other land uses nearby.
  - Urban design treatment at the western section of the area to address and protect the gateway approach from the west across Merri Creek into Darebin City.
  - Environment/landscaping – Appropriate landscaping buffer and treatments along Merri Creek to be provided. Consideration of the provision of appropriate linkages between new developments and areas of existing open space.
  - Vegetation protection and enhancement (if relevant), and proposed landscaping.
  - Minimisation of light spill into the Merri Creek valley.

*An Integrated Transport and Traffic Management Plan that provides for, but not limited to the following:*

- An existing condition assessment.
- Internal road layout, car parking location, the expected traffic generation and management, bicycle and pedestrian movement and their connections to the external movement network including public transport to meet any relevant road standards.
- Works necessary to existing and proposed intersections to accommodate traffic increases and safe pedestrian movement.
- Proposed traffic management and control works on site and on adjoining roads.

#### **Reference Documents**

*Development Guidelines for the Merri Creek 2004*

*Merri Creek and Environs Strategy 2009-2014*

*Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills*

*Darebin Green Business Attraction Strategy 2012*

## Appendix C: Panel Hearing Document List

Document No	Date	Description	Presented by
1	10/06/14	City of Darebin Submission	Ms Esther Oluyide (Strategic Planner), Mr Joerg Langeloh (Planner) and Ms Emily Hillebrand (Manager, Planning), City of Darebin
2	10/06/14	City of Darebin PowerPoint presentation	Ms Oluyide
3	10/06/14	Waterway setback requirements plan prepared by Council	Mr Langeloh
4	11/06/14	Schedule 12 to the DPO – Base document	Mr Peter O'Farrell of Counsel, (representing Codstream Pty Ltd)
5	11/06/14	Schedule 12 to the DPO – post Hearing Day 1 version	Mr O'Farrell
6	11/06/14	Clause 43.04 DPO	Mr O'Farrell
7	11/06/14	Melbourne Water Submission	Mr Digby Richardson, Melbourne Water
8	11/06/14	Revised Schedule 12 to the DPO	Mr O'Farrell
9	11/06/14	Survey Count	Ms Oluyide
10	11/06/14	Aerial photograph of the subject land circa 1945	Ms Oluyide
11	11/06/14	Darebin C144 Housing and Population report (April 2014)	Mr Langeloh
12	11/06/14	Titles – 196 Beavers Road,	Mr Langeloh
13	11/06/14	Titles – 168-170 Beavers Road, 177 Beavers Road, 198 Beavers Road, 200 Beavers Road	Mr Langeloh
14	11/06/14	Codstream Pty Ltd submission	Mr O'Farrell
15	11/06/14	Clause 42.01 ESO	Mr O'Farrell
16	11/06/14	Schedule 1 to the ESO	Mr O'Farrell
17	11/06/14	<i>Morrison v Darebin City Council</i> [2007] VCAT 506	Mr O'Farrell

<b>Document No</b>	<b>Date</b>	<b>Description</b>	<b>Presented by</b>
18	11/06/14	<i>Chapman v Plenty Views Pty Ltd, Di Carlo and Di Carlo</i> [2009] VCC 1271	Mr O'Farrell
19	11/06/14	The First Stone Pty Ltd Submissions	Ms Teresa Bisucci of Best Hooper Solicitors, (representing The First Stone Pty Ltd)
20	11/06/14	<i>Ruby v Greater Geelong CC</i> [2008] VCAT 2337	Ms Bisucci
21	11/06/14	<i>Architype Australia Pty Ltd v Yarra CC</i> (includes Summary) (Red Dot) [2010] VCAT 497	Ms Bisucci
22	11/06/14	Hansen Partnership Pty Ltd submission to Darebin Amendment C138	Ms Bisucci
23	11/06/14	Schedule 1 to Clause 32.09 Neighbourhood Residential Zone.	Ms Oluyide
24	11/06/14	A3 plan – Proposed Darebin Amendment C144 Residential Zones	Ms Oluyide
25	11/06/14	Submission - 158 and 168 Arthurton Road	Mr Redmond McNamara, Hansen Partnership Pty Ltd (representing the owners of 158 and 168 Arthurton Road)
26	11/06/14	C122 and C127 strategic context plan	Mr McNamara
27	12/06/14	The Merri Creek Management Committee Submission	Ms Luisa MacMillan
28	12/06/14	<i>Stevens v Darebin CC</i> [2011] VCAT 651	Ms MacMillan
29	12/06/14	Friends of the Merri Creek Submission	Ms Ann McGregor and Mr David Redfearn
30	12/06/14	Submission - PowerPoint presentation	Ms Angela Hill
31	12/06/14	Schedule 12 to the DPO - Council's preferred version	Emily Hillebrand