

Planning and Environment Act 1987

Panel Report

**Hepburn Planning Scheme Amendment C80hepb
Planning Scheme Review**

17 February 2021

How will this report be used?

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

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

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

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

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

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Hepburn Planning Scheme Amendment C80hepb

Planning Scheme Review

17 February 2021



Lester Townsend, Chair



Gabby McMillan, Member

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Glossary and abbreviations

BMO	Bushfire Management Overlay
CFA	Country Fire Authority
Council	Hepburn Shire Council
DDO	Design and Development Overlay
DDWCAC	Dja Wurrung Clans Aboriginal Corporation
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
EAO	Environmental Audit Overlay
EMO	Environmental Management Overlay
EPA	Environment Protection Authority
EPBC	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
ESO	Environmental Significance Overlay
FFG	<i>Flora and Fauna Guarantee Act</i>
FZ	Farming Zone
GRZ	General Residential Zone
HO	Heritage Overlay
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
LSIO	Land Subject to Inundation Overlay
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NCO	Neighbourhood Character Overlay
NRZ	Neighbourhood Residential Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Hepburn Planning Scheme
PPF	Planning Policy Framework
PPRZ	Public Park and Recreation Zone
Practitioner's Guide	Practitioner's Guide to the Victoria Planning Scheme (April 2020)
RACV	Royal Automobile Club of Victoria
RCZ	Rural Conservation Zone
Review	Hepburn Planning Scheme Review, February 2020
RGZ	Residential Growth Zone
RLZ	Rural Living Zone

RO	Restructure Overlay
Shire	Hepburn Shire
SLO	Significant Landscape Overlay
SPPF	State Planning Policy Framework
SUZ	Special Use Zone
the Amendment	Hepburn Planning Scheme Amendment C80hepb
TZ	Township Zone
UGB	Urban Growth Boundary
VCAT	Victorian Civil and Administrative Tribunal
VFF	Victorian Farmers Federation
VPO	Vegetation Protection Overlay
VPP	Victoria Planning Provisions

Overview

Amendment summary	
The Amendment	Hepburn Planning Scheme Amendment C80hepb
Common name	Planning Scheme Review
Brief description	The Amendment proposes to translate the Local Planning Policy Framework (LPPF) including the Municipal Strategic Statement (MSS) into the new format Planning Policy Framework (PPF), implement the Hepburn Planning Scheme Review, February 2020, rezone land to the Neighbourhood Residential Zone and update schedules to zones, overlay and other provisions
Planning Authority	Hepburn Shire Council
Authorisation	6 July 2020 with conditions which were met on 9 July 2020
Exhibition	16 July to 28 August 2020
Submissions	276 (including eight late submissions). Of the 276 submissions received, there were 136 submissions to the DDO6 and 69 submissions to the SLO1 and SLO2 (205 submissions), leaving 71 submissions unresolved. The Halliday and Brey submissions were withdrawn
Changes to the Amendment	15 September 2020. Council abandon certain aspects of the Amendment, namely DDO6 and SLO 1 and SLO2, as well as making minor other changes

Panel process	
The Panel	Lester Townsend (Chair) and Gabby McMillan
Directions Hearing	Video conference, 26 October 2020
Panel Hearing	Video conference, 23, 24, 25, 26 and 27 November 2020
Site inspections	Unaccompanied, various dates
Parties to the Hearing	See Appendix B
Citation	Hepburn PSA C80hepb [2021] PPV
Date of this Report	17 February 2021

Executive summary

The Hepburn Planning Scheme (Planning Scheme) has been operating largely unchanged for over 20 years. Council has undertaken Planning Scheme reviews in 2003, 2008 and 2011 but none of these have been implemented. This means that apart from State-wide changes, several of the policy settings and underlying zoning controls in the Municipal Strategic Statement (MSS) and Local Planning Policy Framework (LPPF) do not reflect current State policy direction in relation to settlement patterns.

Hepburn Planning Scheme Amendment C80hepb (the Amendment) proposes to translate the LPPF including the MSS into the new format Planning Policy Framework (PPF). The Amendment is largely based on a review of the Planning Scheme that was initiated in 2019. Council submitted that:

The Review highlighted the many existing gaps in planning policy at the local level on topics such as heritage, urban design, rural land use, dwellings in rural areas and environmentally sustainable development, among other issues.

The Panel commends the Council on conducting the review to bring the Planning Scheme in line with the new format. The review is a large undertaking which requires significant resources. Council has drawn on previous studies and structure planning exercises to inform the Amendment. Unfortunately, some of these studies are outdated and were not prepared in the context of current State planning policy.

The Amendment is a largely policy neutral translation of the existing policy settings into the new PPF format. It does not address critical issues facing the Shire, but this was not its intention. Chapter 8 of the *Hepburn Planning Scheme Review, February 2020* (Review) summarised the planning issues facing the municipality, which included:

Ensuring the Shire has a contemporary planning scheme that responds to the issues that it is facing over the coming decades is essential to ensuring that improved outcomes are delivered through the planning process. The Review highlighted that the current planning scheme is not delivering the outcomes the community desires and that Council is aspiring to. It is also not set up to respond to current and emerging challenges such as climate change, bushfire risk and pressures for development.

The Shire is at a crossroads and at risk of losing those unique elements that are so highly valued by the community and are an essential underpinning of the local economy and environment. There are real challenges that the planning scheme can assist in achieving. The *Scheme* cannot solve all of these challenges, however there are a range of tools available that provide significant elements which help to complement or provide the required response. A lack of regular strategic work and adaption of the scheme has meant that the planning scheme is now very out of date.

The Panel accepts the principles behind a policy neutral review, but sees a danger that outdated policy might be seen as having been ‘refreshed’ because it has been part of a recent Amendment.

Planning schemes are structured so that policy is given effect through the selection of appropriate zone and overlay controls. The zones and overlays are the spatial representation of Council’s policy objectives. If there is a mismatch between the stated policy objectives and the zone applied to the land, it is unlikely that the policy objectives can ever be achieved.

Only limited changes are proposed to the underlying zoning and overlays as part of the Amendment. In a practical sense this means that the scope of development permitted under certain zones will be contrary to the local policy objectives and State policy.

The Panel considers that the key planning issues identified as part of the Review still need to be resolved.

Where zoning changes are proposed, many of these changes are based on structure planning work completed in 2006. The Panel considers that much of this work is out of date and prepared at a time when policy priorities were different from the current State policy. Consequently, the Panel does not support rezoning of land to the Neighbourhood Residential Zone as part of the Amendment.

The Amendment is a first step in dealing with many of the planning issues the municipality faces and detailing a range of possible improvements. The Council will need to make difficult choices in the future about the underlying zoning and overlay controls based on its values (which could be landscape, farming, cultural heritage or environmental values). There are areas affected by Restructure Overlays that have been in limbo for many years due to a lack of clear strategic direction.

The Municipal Planning Strategy (MPS) and PPF are an important foundation to be cemented into the Planning Scheme and need to identify further strategic work and engagement. The Panel is concerned that some aspects of the MPS and PPF proposed as part of the Amendment do not appear to provide a coherent basis for future strategic planning work. There is inconsistency between several of the stated policy objectives and maps included in the new provisions. Some of the rezoning proposals appear to pre-empt critical strategic work and may limit the Council's ability to deliver its stated policy objectives.

The Panel considers that it is critical that future strategic work is conducted in a timely manner and is appropriately resourced by Council.

This Amendment will not solve all of Council's planning problems; it is an important first step but it is only the first step.

Council has responded intelligently to submissions and proposed a number of post-exhibition changes. The Panel supports almost all of these changes.

Process issues

Concerns were raised about the notice and consultation process. The Panel concludes that the community was provided with adequate notice of the Amendment and has met its obligations under the *Planning and Environment Act 1987* (PE Act). This is evidenced by the number of submissions received and the level of engagement in the Panel process.

Recommendations

The Panel notes that parts of the exhibited Amendment have already been abandoned by Council. Based on the reasons set out in this Report, the Panel recommends that Hepburn Planning Scheme Amendment C80hepb be adopted as referred to the Panel subject to the following:

- 1. Make the post exhibition changes proposed by Council in Document 33 unless contradicted by a more specific recommendation below.**

2. In Clause 74.02, review the list of future strategic work and prioritise this list according to a logical sequence. First order priorities should include a municipal wide settlement strategy and the resolution of land in restructure overlays. The settlement strategy would need to:
 - be underpinned by a land use supply and demand analysis
 - be grounded in a realistic assessment of the constraints affecting existing 'settlements'
 - address the threats to the highly valued unique elements of the Shire and protect important landscape and heritage elements
 - address the tensions and potential synergies between farming, tourism and rural residential development
 - make recommendations on specific zone changes and minimum lot sizes in zones.
3. Review the Municipal Planning Strategy to ensure that the strategic direction, particularly as those relate to settlement planning, bushfire hazards, housing supply and economic development are consistent with State policy.
4. Review the Municipal Planning Strategy to:
 - clarify the distinction between 'established townships', 'main townships' and 'settlements'
 - delete any policy support directing growth to parts of settlements within the Low Density Residential Zone or Rural Living Zone where such development might run counter to State policy on bushfire and protection of natural values.
5. In Clause 02.01 delete the reference to 'alternative lifestyle communities'.
6. At Clause 02.03, redraft the Clause to more precisely define locations (or 'settlements') constrained by bushfire risk, including those areas which are currently affected by a Restructure Overlay (or should be considered for such an approach).
7. In Clause 11.01-L delete:
 - the reference to settlements in the objective
 - the strategy: 'Encourage limited development in settlements that are not identified for restructuring'
 - on the Hepburn map annotate the yellow rectangle in the centre of Hepburn to indicate 'Town centre activities'
 - on the Creswick map remove reference to two parcels of Crown land being (3~77\APP5211 in Bloomfield Road and 1~78\PP5211 in Pasco Street) as 'residential infill opportunity'.
8. Abandon the proposal to rezone land in Clunes, Daylesford, Hepburn Springs and Trentham to the Neighbourhood Residential Zone until a settlement strategy for the Shire has been completed.
9. Subject to further notice to affected properties, apply a minimum lot size of 40 hectares to land in Area 3 of the current Farming Zone Schedule.

10. **Rezone that part of the land at 6 Golf Links Road, Hepburn Springs currently within the designed Urban Growth Boundary for Hepburn Springs but within the Rural Conservation Zone to the residential zone applying to the balance of the land.**
11. **Subject to advice from the Environment Protection Authority on the constraint imposed by the Major Hazard Facility, rezone 6 Victoria Street, Trentham to Mixed Use Zone and apply an Environmental Audit Overlay.**
12. **Correct the minor zoning anomaly at the Trentham WTP on TP 760521 and the rezoning of Reserve 1 on PS530950 by rezoning the land from Farming Zone to Public Use Zone Schedule 1.**
13. **Rezone 217 Ascot Road, Creswick from Public Use Zone Schedule 1 to Rural Living Zone.**
14. **In the Schedules to Clause 42.01 Environmental Significance Overlay:**
 - **In Clause 3.0 of Schedule 1 and 2 delete the text and documents listed, after and including the following text '*A permit must meet the following requirements*'.**
 - **In Clause 3.0 of Schedule 1 delete the notice and review exemptions.**
15. **Adopt the exhibited version of Schedule 1 to the Significant Landscape Overlay but limit the requirement for a permit to remove vegetation to native vegetation.**
16. **Revise the application requirements in the Heritage Overlay Schedule relating to subdivision to ensure they relate to planning outcomes of the Heritage Overlay and do not duplicate other requirements in the Planning Scheme.**
17. **Retain Development Plan Overlay Schedule 3 over the Creswick Golf Course Resort and abandon any changes made in the exhibited version of the Special Use Zone Schedule 2 that duplicate the Development Plan Overlay Schedule 3 requirements.**
18. **Review whether listing property addresses in the Schedule to Clause 52.28 has the potential to create uncertainty if the areas do not meet the requirements for a strip centre in the Clause 52.28-5.**
19. **In consultation with the Country Fire Authority, review its referral status in the Bushfire Management Overlay, including whether it should be a recommending or determining referral authority.**

1 Background

1.1 The Amendment

The Hepburn Planning Scheme, including the MSS was gazetted on 8 June 2000 and has now been operating for over 20 years. It was prepared in accordance with the provisions of the PE Act and replaced the former Daylesford, Creswick and Glenlyon Planning Schemes and parts of the Talbot and Clunes Planning Scheme and Kyneton Planning Scheme.

Council submitted:

Council undertook planning scheme reviews in 2003, 2008 and 2011 but none were implemented. The last review in 2011 resulted in Amendment C58 but was abandoned by Council. The scheme has only had minor changes since this time mostly as a result of State-wide VC and GC amendments.

The Amendment proposes to:

- translate the LPPF including the MSS to the PPF
- strengthen the strategic framework, policies, zone and overlay schedules and particular provisions for the municipality by implementing the Review
- implementing recent reforms to the Victoria Planning Provisions (VPP)
- responding to changes to the *Ministerial Direction on Form and Content of Planning Schemes*.

1.2 Hepburn Shire and Hepburn Planning Scheme Context

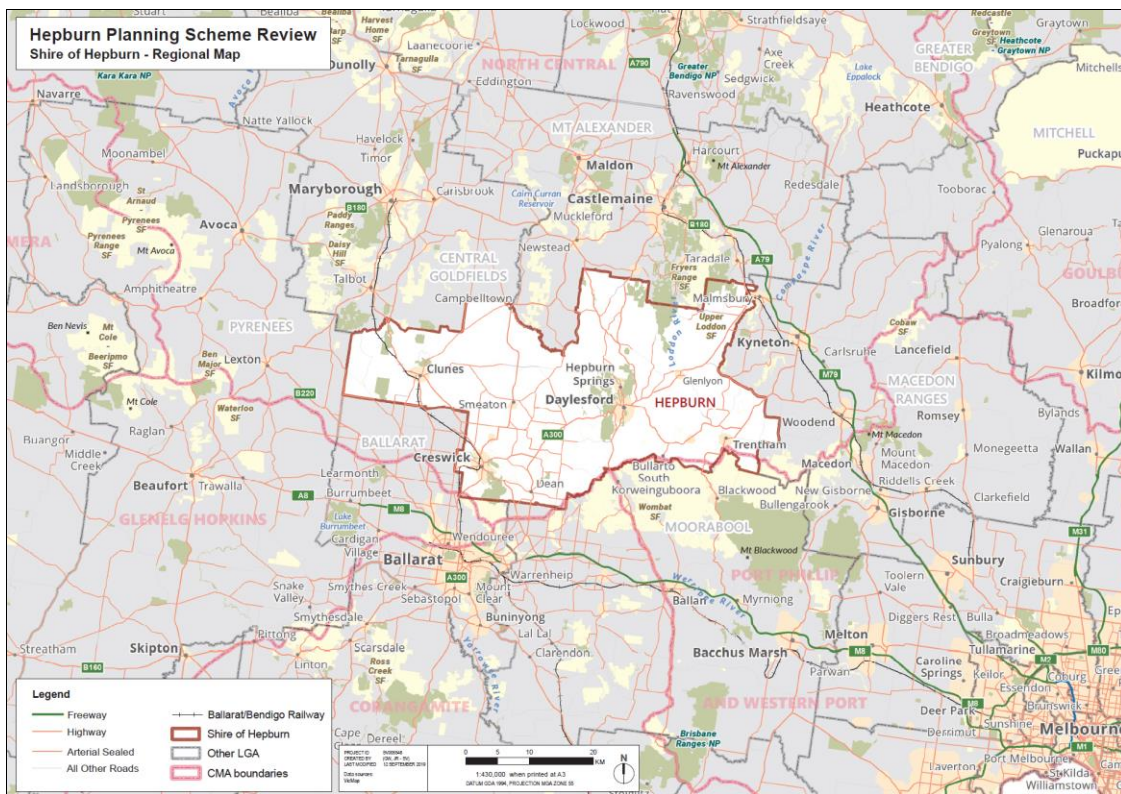
Hepburn Shire (Shire) is located in the Central Highlands region of Victoria, about 110 kilometres north-west of Melbourne (90 km by direct measurement) and is 1,470 square kilometres. It is bounded in the:

- north by Central Goldfields and Mount Alexander Shires
- east by Macedon Ranges Shire
- south by Moorabool Shire
- west by City of Ballarat and Pyrenees Shire.

Before European occupation, the area was home to the Dja Dja Wurrung people, the traditional custodians of the land.

The Shire extends 66 kilometres east to west and 38 kilometres north to south. It incorporates significant high value agricultural and farming land, National Parks and State Forest, mineral springs, extensive vegetation and tourist attractions.

Figure 1: Regional context



Predominantly rural, the main townships include Daylesford, Hepburn Springs, Creswick, Clunes, and Trentham and the settlement of Glenlyon.

Most land in the Shire is zoned rural (73 per cent), other public use areas, and low density residential areas and roads. National Parks or Reserves and State Forest make up 21.5 per cent and townships and settlements comprise the remaining 5.5%.

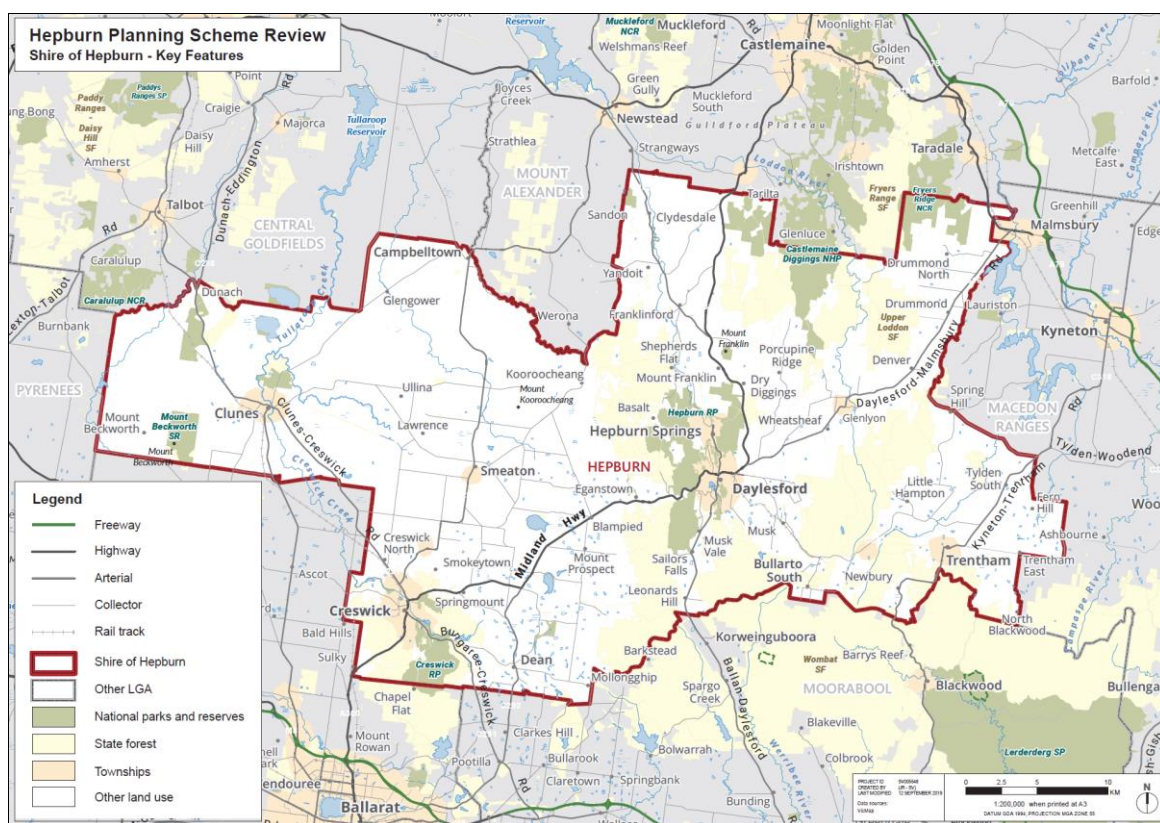
The Shire is served by the Midland Highway (A300) and the Ballarat–Maryborough railway line in the west which provides both passenger and freight services to the region. Bus services are provided between Ballarat and Creswick and Woodend and Daylesford.

The Loddon River flows through the eastern part of the municipality and other water courses, irrigation districts and water storages are provided for the catchments of the North Central and a small part of Port Phillip and Western Port areas.

The key features and regional context of the Hepburn Shire are shown in Figure 2.

Areas in townships such as commercial, industrial, residential and public use areas comprise approximately 2,712 hectares. Within townships there are approximately 630 vacant lots comprising over 256 hectares.

Figure 2: Key features



Significant areas are affected by overlays including the:

- Environment Significance Overlay – Schedule 1 (ESO1) applied to the entire municipality relating to the proclaimed water catchment.
- Environment Significance Overlay – Schedule 2 (ESO2) applied to mineral springs and aquifers and their surrounds.
- Vegetation Protection Overlay (VPO) – applied to identified areas of vegetation significance for protection (VPO1 protects remnant vegetation, VPO2 protects significant exotic and native vegetation).
- Significant Landscape Overlay (SLO) – applied to identified areas of landscape significance relating to volcanic peaks, ridges, escarpments and sites of geological significance.
- Heritage Overlay (HO) – applied to identified places of heritage significance in both townships and rural land.
- Design and Development Overlay (DDO) – applied to township entries and main roads for built form outcomes consistent with existing and anticipated development in Daylesford.
- Development Plan Overlay (DPO) – applied to three specific sites in the municipality to provide for particular development requirements and outcomes.
- Neighbourhood Character Overlay (NCO) – applied to residential neighbourhood character precincts for consistent built form and character outcomes in Daylesford.
- Erosion Management Overlay (EMO) – applied to areas prone to erosion and landslip.
- Land Subject to Inundation Overlay (LSIO) – applied to development on land within the identified floodplain and subject to a 1 in 100 year flood event.

- Bushfire Management Overlay (BMO) – applied to over half of the municipality identifying areas of higher bushfire risk.
- Environmental Audit Overlay (EAO) – applied to potentially contaminated land in the municipality.

1.3 Review Process and Chronology of Events

The Planning Scheme Review was commenced in July 2019 and approved by Council in February 2020. Preparation of the Amendment to implement the Review commenced in February 2020, was authorised by the Department of Land, Environment, Water and Planning (DELWP) in early July 2020 and exhibited for six weeks throughout July and August 2020. Council considered submissions and the exhibited Amendment in September 2020 and requested that a Panel be appointed to consider the Amendment and submissions received.

Table 1: Amendment chronology

Date	Event
July 2019	Project inception
September to October 2019	Data and evidence report
	Stakeholder and community consultation report
	Hepburn Planning Scheme Audit and Review Report
18 February 2020	Council decision on the Review
February to July 2020	Preparation of the Amendment
March to May 2020	Consultation
16 June 2020	Council consideration of the Amendment
	Council Decision to approve the Hepburn Heritage Strategy 2020-2030
6 July 2020	DELWP authorization
16 July to 28 August 2020	Exhibition
16 September 2020	Cancel consideration of submissions and panel request

Project inception

In mid 2019, Council commenced its review of the Planning Scheme and subsequently prepared the Amendment to implement the Review to guide the future of land use and development within the municipality over coming years. This work also coincided with a requirement to respond to the new PPF and translate it to the existing VPP.

Council submitted that:

The Review was prepared in accordance with the relevant requirements of the P&E Act. Section 12B of the P&E Act requires a planning authority to review the provisions of the planning scheme every four years and within a year of adopting the Council Plan.

The Planning Scheme Review

The Planning Scheme Review included a:

- Data and Evidence Report which provided a summary of background reports and data prepared since the adoption of the Planning Scheme on 8 June 2000 and the information guiding the preparation of a reviewed planning scheme.
- Stakeholder and Community Engagement Report which was based on consultation undertaken in September and October 2019 seeking the community's views and aspirations for the future of land use and development across the municipality.
- Planning Scheme Audit and Review Report (Review Report) which incorporated the findings of the two above reports and made recommendations for the planning scheme over the short, medium and long term for Council.

Planning Scheme audit

Council advised (Part A 1.6.4) that an audit of the Planning Scheme was conducted as part of the Review to assess the planning scheme from a technical planning systems architecture perspective (how well the scheme complies with current State guidelines and directions) and an outcomes perspective (is it achieving what Council and the community want it to). This included a technical assessment of the planning scheme against a range of factors including:

- consistency with the new PPF
- performance of revised VPP implementation tools including zones, overlays, schedules, particular provisions and general provisions
- relationships between planning measures and land use, social and environmental characteristics
- provisions and formats based on the updated *Ministerial Direction on the Form and Content of Planning Schemes*
- the impact of recent changes to the VPP (via Amendment VC148) and how this would change the planning scheme.

Authorisation by DELWP

Authorisation of the Amendment was granted by DELWP on the 6 July 2020. Authorisation was conditional, and Council advised that the conditions were satisfied on the 9 July 2020.

Council Consideration of Submissions

Council considered all submissions received to the Amendment on 15 September 2020 and enabled late submissions to be considered by Council's Manager, Development and Community Safety.

The decision by Council in considering the exhibited Amendment and submissions received was to:

- Support the Amendment as exhibited but subject to changes:
 - abandon the exhibited Design and Development Overlay – Schedule 6 (DDO6) on the basis of submissions received and the need for further strategic work and community and stakeholder consultation to be undertaken as included in Part 7 of the Council decision at Appendix Q.
 - abandon the exhibited Significant Landscape Overlay – Schedules 1 and 2 (SLO1 and SLO2) on the basis of submissions received and the need for further strategic work and community and stakeholder consultation to be undertaken as included in Part 7 of the Council decision at Appendix Q.
 - make other minor changes to the Amendment on the basis of submissions received to improve the drafting and intent of the Amendment.

Submissions

Council referred all submissions to the Panel. Of the 276 submissions received, there were 136 submissions to the DDO6 and 69 submissions to the SLO1 and SLO2 (205 submissions).

Given that Council has decided to abandon the DDO6, SLO1 and SLO2 parts of the Amendment, the 205 submissions that do not wish to proceed with those aspects of the Amendment can be considered resolved (on those aspects).

This leaves 71 submissions remaining unresolved about a range of issues or supporting the Amendment (in the case of many referral authorities and peak bodies). Some of these submitters (approximately one-third of remaining submitters) requested to be heard by the Panel.

The main matters raised in submissions related to the following:

- Objection to the introduction of the DDO6 around the transfer station.
- Objection to the expansion of the SLO1 and the introduction of the SLO2.
- Objection to the change in residential zones from General Residential Zone (GRZ) to Neighbourhood Residential Zone (NRZ).
- Request to remove the Restructure Overlay from Drummond and Sailors Falls.
- Request to rezone nominated land or lots and the relaxation of minimum subdivision areas in rural zones.
- Detailed changes to certain policies.

Submissions were also received from referral authorities and peak bodies and the issues raised are detailed below.

Scope of the Panel

The role of the Panel is to consider submissions that have been made to the exhibited Amendment. A number of these submissions requested additional planning scheme controls such as a Heritage Overlay or Significant Landscape Overlay around Mount Franklin. If the Panel were to consider such changes further notice would be required for the affected properties. Such changes would lack a complete strategic justification for the detail of the controls they would impose.

The Panel considers that broadly the scope for recommending changes is:

- changes to the text in the MPS or PPF
- recommending abandonment of proposed rezoning proposals if it forms the view that these were not justified
- changes to schedules for clarity and consistency.

The Panel has made a number of limited changes that go beyond the points listed above where it thinks there is clear existing policy support for a specific change and the scheme would not accord with State policy.

2 The Amendment in detail

2.1 Key finding of the Review

Council submitted that:

A key finding of the audit (and Review) was that the *Scheme* was not delivering a clear and effective land use and development planning framework for the municipality and that the planning scheme could be better targeted to key strategic directions, more streamlined and include less repetition with clearer requirements. [Part A 1.6.5]

The existing (outgoing) Planning Scheme consists of an MSS with 10 separate sections (or themes), 19 local policies, 13 zones with 14 zone schedules and 13 overlays with 21 overlay schedules that required review.

Council submitted that:

The Review highlighted the many existing gaps in planning policy at the local level on topics such as heritage, urban design, rural land use, dwellings in rural areas and environmentally sustainable development, among other issues. Specific changes to planning policies that better respond to the PPF were outlined in Section 1.6.6 and are included in Amendment C80hepb with changes to Clauses 10-19 of the *Scheme*.

...

The often complicated, duplicated and unclear content of the existing *Scheme* was a key focus of the Review. Greater clarity and conciseness of planning scheme requirements (such as including locally specific application requirements and decision guidelines into schedules without duplicating the parent provision) were utilised in the drafting of zone, overlay and other provision schedules.

Council submitted (Part A 1.11.3) that the approach of the Review to rezoning of land was that such proposals were generally not supported. This was because the Review did not seek to alter existing strategic settings, what could occur in particular zones (such as minimum lot size requirements in rural zones), the widespread application of zones, or alter existing township boundaries. These more transformative changes were considered to require further strategic work and a program of future strategic work was outlined through the Review.

2.2 Proposed Planning Scheme changes

Municipal Planning Strategy

The Amendment introduces a new Clause 02 MPS into the Planning Scheme with associated Clauses 02.01, 02.02, 02.03 and 02.04.

A general overview is provided of the municipal context, key planning issues and updated population and demographic data with a vision, strategic overview and strategic directions on key land use themes in the PPF drawn from the Review.

Council submitted (Part A 2.2.4) that this will ensure the Planning Scheme complies with the Act requirements, *A Practitioner's Guide to Victorian Planning Schemes*, April 2020 (Version 1.4) (Practitioner's Guide) and the *Ministerial Direction on the Form and Content of Planning Schemes*.

Planning Policy Framework changes

The Amendment replaces Clauses 20 to 23 with the MPS and new or revised policy in the relevant parts of the PPF Clauses 11 to 19.

Zoning changes

The Amendment proposes to make the following broad changes to zones and zone schedules:

- **Township Zone (Clause 32.05)**
Replacing, Schedule 1 with a new Schedule 1 that includes clear application requirements and decision guidelines applied to the municipality's settlements based on the *Hepburn Structure Plan Review, 2006*.
- **General Residential Zone (Clause 32.08)**
Replacing Schedule 1 with a new Schedule 1 that includes clear application requirements and decision guidelines to the Creswick township based on the *Hepburn Structure Plan Review, 2006*.
- **Neighbourhood Residential Zone (Clause 32.09)**
Rezoning Township Zone (TZ) in Trentham and Clunes applying to the Neighbourhood Residential Zone (NRZ) based on the Trentham and Clunes Structure Plans prepared in 2006.
Applying with new Schedules 1, 2, 3 and 4 respectively to existing General Residential Zone areas in the townships of Clunes, Daylesford, Hepburn Springs based on the Hepburn Structure Plan Review, 2006.
- **Rural Living Zone (Clause 35.03)**
Replacing the Schedule with a new Schedule 1 that applies to all land where the zone applies other than at 145 Trentham-Kyneton Road, Trentham and inserting a new Schedule 2 that applies to land at 145 Trentham-Kyneton Road, Trentham where a smaller lot size applies.
- **Rural Conservation Zone (Clause 35.06) and Farming Zone (Clause 35.07)**
Replacing the Schedule so that lots sizes which are currently specified by way of a map in the Schedule are specified by the Schedule number instead.

The Amendment also proposes to rezone the following sites:

- the Lost Children's Cairn Memorial Reserve at 4360 Midland Highway, Daylesford from General Residential Zone Schedule 1 to Public Park and Recreation Zone
- land zoned as Special Use Zone Schedule 1 at the Hepburn Mineral Springs Reserve to Public Park and Recreation Zone
- roads in and around Trentham to applying the correct mapping of Road Zones in based on designations under the *Road Management Act 2004*.

Overlay changes

As adopted the Amendment make the following changes to overlay schedules:

- **Environmental Significance Overlay (Clause 42.01)**
Amending Schedules 1 and 2 to be consistent with the style and format of the *Ministerial Direction on the Form and Content of Planning Schemes* and update content informed by catchment management authorities, the relevant water authority and DELWP.
- **Significant Landscape Overlay (Clause 42.03)**
Replacing Schedule 1 with a new Schedule and mapped areas to western parts of the municipality based on the *South West Victoria Landscape Assessment Study, 2013* (Note: this part of the Amendment has now been abandoned by the planning authority).

- **Heritage Overlay (Clause 43.01)**
Amending the Schedule to include clear application requirements and a new listing of HO988 for identified 'Potato Huts' in Little Hampton and Trentham.
- **Design and Development Overlay (Clause 43.02)**
Replacing Schedules 1, 2, 3, 4 and 5 with new Schedules 1, 2, 3, 4 and 5 to include clearer and more legible content.
Deleting mapped areas, Schedules 1, 2, 3 and 4 that overlap areas where the Neighbourhood Character Overlay is applied.
- **Development Plan Overlay (Clause 43.04)**
Deleting Schedules 1, 2 and 3 and associated mapping to remove the overlay from:
 - the former Daylesford Abattoir at 57 Leitches Creek Road, Daylesford
 - WD Seeds at Creswick-Newstead Road, Smeaton
 - Creswick Golf Course Resort at 1500 Midland Highway, Creswick.
- **Neighbourhood Character Overlay (Clause 43.05)**
Replacing Schedules 1 and 2 with Schedules 1, 2, 3, 4, 5 and 6 to apply respectively to existing Precincts 1, 2, 5, 9, 14 and 13 in the *Daylesford Neighbourhood Character Study, 2002*.

Two exhibited overlay changes were abandoned:

- **Significant Landscape Overlay (Clause 42.03)** – Inserting a new Schedule 2 and applying the overlay to land around Mount Beckworth based on the South-West Victoria Landscape Assessment Study, 2013.
- **Design and Development Overlay (Clause 43.02)** – Inserting a new Schedule 6 for the environs of the Daylesford Material Recovery Facility to protect the facility from residential impacts and encroachment.

Particular and general provisions

The Amendment proposes to make the following changes to particular and general provisions schedules:

- **Gaming (Clause 52.28)**
Replacing the Schedule with a new Schedule that includes clearer and more legible content.
- **Post Boxes and Dry Stone Walls (Clause 52.33)**
Amending the Schedule to apply to all land in the municipality to better protect the Shire's dry stone walls.
- **Referral of Permit Applications under Local Provisions (Clause 66.04)**
Amending the Schedule to include the Country Fire Authority (CFA) as a determining referral authority under Clause 44.06 (Bushfire Management Overlay), Schedules 1 and 2.

A number of changes are also proposed to administrative provisions:

- **What does this Scheme consist of? (Clause 72.03)**
Amending the Schedule to include new planning scheme maps introduced by the Amendment.
- **Documents Incorporated in this Planning Scheme (Clause 72.04)**
Amending the Schedule to include the Statement of Significance for HO988.
- **Background Documents (Clause 72.08)**
Amending the Schedule to include all relevant background documents from Clause

21 of the Local Planning Policy Framework and include new documents based on the Review.

- **Application of Zones, Overlays and Provisions (Clause 74.01)**

Amending the Schedule to provide an explanation of the relationship between the municipal objectives, strategies and controls on the use and development of land.

- **Further Strategic Work (Clause 74.02)**

Replacing the Schedule with a new Schedule that consolidates all further strategic work actions from the Review.

Other parts of the Planning Scheme the Amendment involved

Other proposed changes include:

- Updating clauses so that they are consistent with the style and format of the *Ministerial Direction on the Form and Content of Planning Schemes*.
- Amending schedules so that they are consistent with the style and format of the *Ministerial Direction on the Form and Content of Planning Schemes*.
- Removing references throughout the Planning Scheme (Clauses 42.01 – Schedule 1, 42.02 – Schedule 1, 42.03 – Schedule 1, 44.01 – Schedule 1, 51.01, 52.17 and 72.04) to projects which are either completed or no longer required, including:
 - the Goldfields Superpipe Project; Mildura – Geelong Rail Freight Upgrade Project 2007
 - Regional Fast Rail Project, Integrated Approval Requirements, December 2002
 - Unigrain Project: Incorporated document pursuant to section 6(2)(j) of the Planning and Environment Act 1987, September 2010.

These changes are not subject to submission and are not discussed further.

3 Process issue

(i) The issue

The issue is whether the community was provided with adequate notice of the Amendment and sufficient opportunity to participate in the review process.

(ii) Legislative requirements

Part 3 of the Act requires Council to give notice of an Amendment and consider submissions. The *Planning and Environment Regulations 2015* provide more detail about how notice should ordinarily be given, including making documentation available for inspection at Council offices.

Due to the COVID-19 restrictions, the State government introduced emergency legislation that temporarily altered some of the procedural requirements under the Act (and other Victorian legislation). Part 10A (Covid-19 temporary measures) of the Act contains different procedures for the exhibition of Amendment documentation and consideration by a Panel. This enables Councils to provide access to the Amendment documentation on its website and for Panel hearings to be conducted online.

(iii) Submissions

Concerns were expressed that any consultation method that relied on electronic means may not be appropriate in the Shire, particularly given the older population who may have limited computer literacy and poor internet access.

Ms Marshall, on behalf of the Yandoit, Clydesdale and Franklinford Community Planning Group pointed out data showing that about a fifth of people did not have adequate internet or computer access.

Ms Potter submitted that she did not have a computer and had to be mailed documentation, which was problematic and did not allow her to fully consider the practical implications of the Amendment.

Most resident submitters and community groups raised concerns regarding the reliance on electronic methods of communication. They submitted that the communication issues were exacerbated given the complexity of the Amendment and volume of documentation that needed to be reviewed. Resident submitters were concerned that they had been provided insufficient time to consider and meaningfully engage in the Amendment process. Submitters were concerned that the Amendment process had been rushed and should have been deferred to allow for face to face meetings and more traditional engagement with the community.

Council submitted that the Amendment was exhibited in line with the requirements of the Act and emergency provisions that were incorporated into the Act (Covid Omnibus (Emergency Measures) Act 2020) to deal with the COVID-19 situation. It submitted that:

Although extensive consultation was undertaken for the *Review* and the Amendment, it is acknowledged that planning information can at times be confusing for some people in the community and difficult to access via the online environment, rather than face to face settings. Access to the Amendment was at times not assisted by the, at times, difficult to access DELWP Amendment Tracking System platform as the single source

of information. This required Council to often send information directly to people so that they had access to the Amendment documentation rather than relying on the online environment.

...

The Planning Authority do not support submissions which request that the Amendment be abandoned or renotified and have more than met statutory requirements from the Act (sections 17, 18 and 19) for exhibition and availability of the Amendment.

Council submitted that it went above and beyond the minimum requirements in the Act and had a Council officer available to respond to all information requests. Council submitted that concerns over the usability of the DELWP website have been referred on to DELWP for their attention.

(iv) Discussion

Local community groups are an important resource that Council should draw on as it completes its strategic work.

The Planning Scheme Review process commenced in September 2019 and community meetings were held at that time. The information gathered at those meetings was used to inform the Review. It appears that there was an expectation in the community that further face to face meetings would occur over the next couple of months. Due to the COVID-19 situation, circumstances changed.

Council has an obligation to ensure that parties received sufficient notice of the Amendment and to consider submissions.

The Panel acknowledges the concerns of the community. In ordinary circumstances, it is usual practice for Councils to facilitate less formal engagement processes and meet with residents and community groups. Council would ordinarily be able to invite residents into the office to view and discuss documentation during the formal exhibition period. However, the restrictions imposed during the COVID-19 lockdown period removed those options and these matters were outside of Council's control.

Council as the Planning Authority extended the usual exhibition requirements to better inform its community and seek comment through submissions. During the Hearing and Panel process, the Council made arrangements to post hard copy material and accommodate submitters to the extent practicable. The Panel notes that 276 submissions were received by Council, indicating that the community was given notice of the Amendment and did engage in the process.

The Panel notes submissions calling for further time to consider the Amendment, however, Council must review its Planning Scheme in a timely manner given the requirement to meet the new PPF format.

The more controversial components of the Amendment have been deferred (that is, application of the SLO landscape controls and the DDO6 around the landfill site). This will enable residents and community groups further opportunity for engagement on these matters. Furthermore, as discussed in later sections of this report, the Amendment is largely

a translation exercise and does not alter many of the settlement patterns¹ or key policy settings.

(v) Conclusion

The Panel concludes that:

- The community was provided with adequate notice of the Amendment and has met its obligations under the Act. This is evidenced by the number of submissions received and the level of engagement in the Panel process.

The Panel acknowledges that the COVID-19 situation has limited the opportunities for more fulsome engagement in the process, particularly for those with limited internet access or computer literacy. However, the Panel notes that the current procedural requirements in the Act are temporary and there will be a greater opportunity for face to face meetings when the COVID-19 situation subsides.

¹ With the exception of zoning changes in several settlements.

4 Strategic issues

4.1 The scope of the Amendment

(i) The issue

The issue is whether the Amendment, in practical terms, achieves:

- the objectives of planning in Victoria
- makes effective use of State and local provisions to give effect to State and local planning policy objectives.

The threshold issues for the Panel are:

- whether it is sufficient to translate (and simplify) the existing policy wording with limited change to the underlying zoning or overlay controls
- whether the 'light touch' approach to the Amendment renders the Planning Scheme inconsistent with State policy and the purposes of the Act.

(ii) What is proposed

The Amendment focussed on translating existing local policy content into the new format, rather than a complete overhaul of policy settings or the underlying zones or overlays. There are some changes proposed to the zoning and overlay controls, but fundamental changes to settlement patterns were not addressed as part of the Amendment.

(iii) Relevant legislation and guidance

The Act sets out the key objectives of planning and how these must be reflected in the Planning Scheme. The Act is supplemented by other guidance which explains how Planning Schemes should be reviewed and how they should be structured to give effect to the objectives of planning.

Legislation

Section 6(1) of the Act states that:

A planning scheme for an area—

- (a) must seek to further the objectives of planning in Victoria within the area covered by the scheme; and
 - (aa) must contain a municipal strategic statement, if the scheme applies to the whole or part of a municipal district; and
- (b) may make any provision which relates to the use, development, protection or conservation of any land in the area.

Section 4(2) of the Act sets out the objectives of the planning framework, which include:

- (a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;
- (b) to establish a system of planning schemes based on municipal districts to be the principal way of setting out objectives, policies and controls for the use, development and protection of land.

Victoria Planning Provisions

The VPPs provide guidance on the operation of different parts of the Scheme, including the Planning Policy Framework, Municipal Strategy, zones, overlays and particular provisions.

Clause 71.02-1 sets out the purpose of the Planning Policy Framework:

The Planning Policy Framework provides a context for spatial planning and decision making by planning and responsible authorities. The Planning Policy Framework is dynamic and will be built upon as planning policy is developed and refined, and changed as the needs of the community change.

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 71.02-3 describes the principles of integrated decision making:

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

The first purpose of every zone and overlay control in the VPPs is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

Practice notes and guidance

Planning Practice Note 32 (2015) describes a planning scheme review and states that:

The purpose of the review is to enhance the effectiveness and efficiency of the planning scheme in achieving:

- the objectives of planning in Victoria
- the objectives and strategies of the planning scheme including the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF).

The review should assess whether the scheme provisions, such as local planning policies, zones, overlays and schedules have been effective and efficient in achieving the objectives and strategies of the planning scheme.

The Practitioner's Guide discusses the role of zones and overlay in more detail, including the process for selecting a zone.

Section 3 of the Practitioner's Guide sets out the purpose of the zone as follows:

Zones are the primary tool for guiding the fair and orderly use and development of land. A zone sets expectations about what land use and development activity is or may be acceptable. Each zone broadly deals with a particular predominant land use theme, such as residential, commercial, industrial or public land uses.

Zones are applied spatially and all land must be included in a zone, except Commonwealth land. The zone selected for any land is determined by the historic land use and the planning strategies set out in the planning scheme.

Section 5 of the Practitioner’s Guide explains how zones should be applied to land:

The zone is the primary tool for guiding the use and development of land. All land (except Commonwealth land) must be included in a zone. The application of a zone to land needs to carefully consider the outcomes sought for the land expressed in the MPS and local planning policies.

Before deciding which zone should be applied to land, consider:

- the land, including any particular physical characteristics, previous uses and the use and development of adjoining land, its ownership and management and the requirements of any other legislation that may apply to the land
- the intended planning outcomes for the land set out in the MPS and the PPF, as a consequence of a previous or current land use, or a particular physical characteristic of the land
- the purposes and provisions of the zone and the extent of local variation available in a schedule to the zone.

Summary of guidance

In practical terms, the relevant legislation and guidance requires the Planning Scheme to be structured as follows:

- State policy objectives should not be duplicated in local policy.
- The Municipal Planning Strategy and local policy provisions must be consistent with State policy objectives.
- The zones and overlays are applied spatially and are designed to give effect to the Municipal Planning Strategy and local policy.
- The zones are the primary control for guiding use and development of land – they should be selected based on the strategic direction in the MPS and having regard to the existing characteristics of the land.

(iv) Submissions

Council submitted that the Amendment was:

Guided by *Planning Practice Note 32 (Review of Planning Schemes, June 2015)* and the *Continuous Improvement Review Kit (February 2006)*, the purpose of the Review was to enhance the effectiveness and efficiency of the *Scheme* in achieving:

- the objectives of planning in Victoria
- its capacity to deliver the (albeit outgoing) Council Plan
- the objectives and strategies of the planning scheme including the State Planning Policy Framework (SPPF) and the LPPF.

The review considered:

- the effectiveness of local planning policies, zones, overlays and schedules
- the effectiveness of development controls
- what was working and what needed refinement.

The review also evaluated the *Scheme* to ensure that it:

- was (or made) consistent in its form and content with any directions or guidelines issued by the Minister under Section 7(5) of the P&E Act
- set out effectively the policy objectives for use and development of land in the area to which the planning scheme applies
- made effective use of State and local provisions to give effect to State and local planning policy objectives.

Council submitted that the Amendment represented 'step 1' in the review process and acknowledged that other strategic work would be required. It submitted that the purpose of the Amendment was to create a policy framework to guide future decisions about appropriate zoning and overlay controls. The proposed Clause 74.02 set out a list of future strategic work required. The list of future work did not necessarily assign a priority or logic around the roll out or integration of such work.

The exhibited Clause 74.02 lists an extensive work program:

- A municipality wide industrial, commercial and residential land demand study.
- An agricultural land study to determine the future agricultural needs and requirements in the municipality and ensure agricultural land is adequately protected.
- Structure plans for the townships of Clunes, Creswick, Daylesford, Hepburn Springs and Trentham and the settlement of Glenlyon.
- A waste management plan to:
 - guide the future land use and management of the municipality's waste management facilities
 - guide land use and development on and around the Daylesford Material Recovery Facility.
- Heritage studies across the Shire based on Council's thematic environmental history.
- Flora and fauna assessments across the municipality to update biodiversity controls.
- Restructure plans for Drummond North and Sailors Falls to underpin the application of Restructure Overlays in the scheme.
- A rural settlement strategy to better understand the risks and challenges posed in the Shire's settlements to guide development consistent with the municipality's inherent rural character and other attributes.

In submissions Council committed to expanding this list to include further work to protect significant landscapes such as Mt Franklin.

Council submitted that the rezoning changes proposed were consistent with structure planning work that had been completed. Council acknowledged that there were some areas where further strategic work would be required to 'refine' settlement structures but that this work would follow. Council submitted that some rezonings proposed (for example the TZ land in Trentham to NRZ) were an 'interim step' pending the completion of a settlement strategy.

Coliban Water submitted that the direct translation of the Schedule 2 in the Farming Zone (FZ) (to give effect to a minimum lot size of 20 hectares) was not consistent with State policy. Coliban Water acknowledged that the exhibited provisions represented a direct translation of the current controls. However, it submitted that this was not an appropriate response in the context of current policy, including:

- Clause 02.03-4 Natural resource management, which seeks to:
 - Minimise landscape and water quality impacts on the catchments through careful location and design of development and wastewater systems.
 - Protect streamsides, catchments, flood plains and wetlands from the impacts of development.
 - Protect water resources in the Shire through integrated water and catchment management including stormwater.
 - Protect high quality productive agricultural land for agricultural uses over the long term.

Protect rural land for agricultural uses and compatible rural uses.

- Clause 14.01-1L Protection of agricultural land, which seeks the objective:
To protect the Shire's high quality productive agricultural land from the encroachment of incompatible use and development.

Several submitters raised concerns about apparent inconsistencies between the written policy objectives and the underlying zoning and overlay controls:

- Ms Semple submitted that if there was no change to the underlying zoning or overlay controls then there would be limited change 'on the ground'. Ms Semple recognised that there were competing policy objectives that needed to be addressed, including the competing interests of farmers and tourist operators. Ms Semple questioned when these matters would be 'nuttled out' and reflected in the Planning Scheme maps.
- Ms Mok submitted that the site at 114 Main Road, Hepburn Springs was identified in the exhibited map at Clause 11.01 as a 'Town Centre Activity Precinct'. The exhibited Clause 15.01-1L sought to '*locate new community and commercial land uses and development in town centres to support their accessibility and ongoing viability*'. However, it was proposed to rezone that site from GRZ1 to NRZ3, a more restrictive control which would prohibit many commercial activities.
- Mr Tsourounakis made submissions on behalf of the owners of 15 King Street in Daylesford. He submitted that the structure plan which formed part of the basis for the Amendment did not contemplate the application of the NRZ to the land which is currently zoned GRZ1. Mr Tsourounakis submitted that the *Daylesford Character Study* (2002) was not a sufficient basis to apply a more restrictive control to the land.
- Mr Scarpaci made similar submissions in relation to the proposal to rezone Trentham to the NRZ. He submitted that such an approach lacked strategic justification.
- Mr Phillips and Mr Papapostolou identified that the existing Rural Living Zone (RLZ) land in Shepherds Flat was used in a manner more reflective of farming land (FZ land). This was not their primary submission, but they drew the comparison to illustrate some of the inconsistencies.
- Mr Sloyan submitted that even with a Restructure Overlay in place, Council had failed to prepare a restructure plan for Drummond. He submitted that Council's failure to develop a restructure plan for the township of Drummond created significant uncertainty. He submitted that, without a restructure plan in place, he could not apply for a permit for any purpose. Mr Sloyan submitted that he was concerned that this matter would drag on if it was not addressed as part of this current review.

(v) Discussion

Scope of the review

There have been several unsuccessful attempts at reviewing the Planning Scheme over the last 20 years. As a result, the policy settings and settlement patterns in the Planning Scheme have remained largely unchanged since the new format planning schemes were introduced in the late 1990s. Much of the local policy, zone and overlay controls in the Planning Scheme reflects legacy decisions and historic policy.

The Panel commends the Council on conducting the review to bring the Planning Scheme in line with the new format. The Panel recognises the review is a large undertaking which

requires significant resources. The Council has drawn on previous studies and structure planning exercises to inform the Amendment. Unfortunately, some of these studies are quite outdated (dating back to 2002) and were not prepared in the context of current State planning policy. Several of the studies were also prepared in isolation, without regard for interrelated consequences or competing policy considerations.

Many of the more significant and potentially controversial aspects of local policy were not tackled by this review, including the:

- decision to abandon the proposed SLO controls and DDO controls buffering the landfill site in Daylesford
- lack of investigation of areas earmarked for restructure in Drummond, Wheatsheaf and Sailors Falls
- lack of review of RLZ and Low Density Residential Zone (LDRZ) land across the municipality and the implications of current 'settlement area' policy
- limited consideration of agricultural land values and its role in the economy, having regard to interactions with landscape values, tourist demand and lifestyle properties.

As a consequence, there are several key policy issues raised in submissions that remain outstanding and have not been addressed through the Amendment, including:

- reconciling competing interests including: the protection of high quality agricultural land, demand for tourism, demand for lifestyle properties, environmental values, cultural heritage values, landscape and amenity values
- explaining how the settlement patterns (including the underlying zoning) in the municipality aligns with State policy direction, particularly in relation to environmental hazards, the protection of water catchments and the intensification of nominated urban settlements.

Inconsistencies raised in submissions

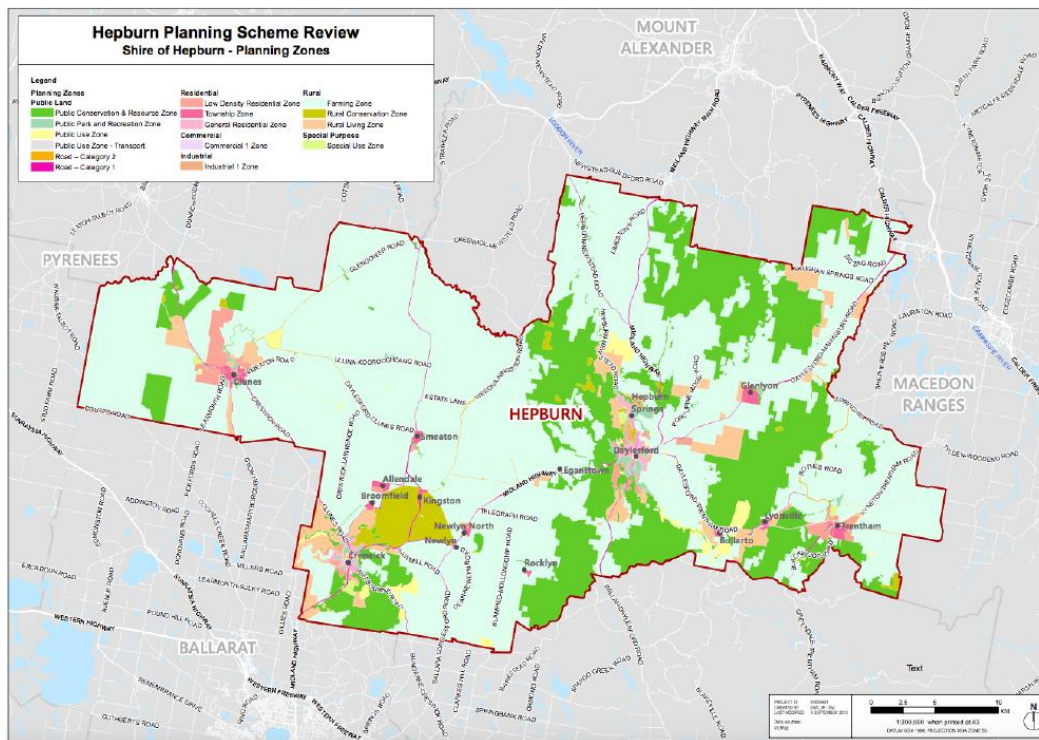
The Panel agrees that there are a number of inconsistencies between the proposed PPF and the operational aspects of the Planning Scheme. The Panel agrees with the submissions from Ms Semple who emphasised that policy issues needed to be 'nuttled out' and given effect through the zoning and overlay controls.

Unintended consequences

The Panel is concerned about the unintended consequences of altering the wording of the policy without a substantial overhaul of the underlying zoning and settlement patterns.

Firstly, the inconsistency between the zoning and overlay may lead to inappropriate development not in line with current policy. For example, the local policy encourages limited development in 'settlement areas' at Clause 11.01-L. On the face this seems reasonable to direct limited growth to 'settlement areas'. However, when reviewing what constitutes a settlement area, it includes land zoned LDRZ and RLZ which represents a large proportion of land in environmentally constrained areas, subject to bushfire hazard which are close to protected water catchments. Based on the breakdown provided in Council's Part B submission approximately 4.1 percent of the municipality is zoned LDRZ and RLZ land compared with 1.1 percent of the municipality in traditional urban zones (that is RGZ, TZ, INZ1 and C1Z).

Figure 3: Zoning



The Panel considers that directing growth to so called ‘settlement areas’ is inconsistent with many aspects of State policy. It seems that the practical effect of altering the words in the PPF, without altering the zones, overlays and schedules will render many aspects of the Planning Scheme inconsistent with State policy.

As another example, Council is proposing to introduce more restrictive zoning in many townships, including Trentham. While Council submitted that this would be an interim control pending other strategic work, this approach is incongruent with the objective of directing growth into townships such as Trentham. The Panel considers it would be premature to rezone existing townships to NRZ on the basis of structure planning work conducted in 2006. This work predated the existing residential zones, policy changes in relation to bushfire and peri-urban planning issues. It is not considered current. Furthermore, it would not be appropriate for Council to cherry pick some parts of the previous strategic work (for example, to justify the NRZ) while ignoring other parts of the same work (for example, to justify more intense zones in commercial areas).

The Strategic Framework Plan in the exhibited version of Clause 2.04 identifies Trentham as a township with industrial, commercial and tourism assets. To impose a more restrictive zoning (compared with the current zone) is inconsistent with the strategic direction in the new MPS.

Secondly, there may be a perception that because the Scheme was reviewed ‘recently’ that the whole of the Scheme is consistent with State policy. It may not be apparent to decision makers or the community that the zones and overlays do not reflect the preferred planning outcome for a particular site.

The Panel acknowledges Council’s submission that this review is ‘step 1’ however it is considered critical that key policy issues are addressed in the short term. While the zoning and overlay controls enable, or allow certain use and development as of right, there is a high chance that development will continue to progress in a manner not consistent with policy.

Many submitters referred to recent planning permits which have allowed tourist facilities in areas of high landscape value, high quality agricultural land or culturally significant landscapes. The Council may find it difficult to oppose such proposals in the absence of proper zoning and overlay selection.

(vi) Conclusions and recommendations

The Panel acknowledges the effort and resources dedicated by Council to preparing the Amendment and proposing changes in response to submissions.

The Council has described the proposed changes as ‘step 1’ in the journey and the Panel agrees that significantly more work is required to ensure the Planning Scheme reflects current State policy. The Practitioner’s Guide recognises that the zoning of land can be driven by historical circumstances, which is the case for much of the land in the municipality.

Without a more substantive review of policy direction and the underlying zoning it is expected that the demand for lifestyle properties in the Shire will continue to grow and potentially compromise future strategic planning priorities (or make them more difficult).

Council has viewed this Amendment as an ‘interim’ phase in the development of their Planning Scheme. The Panel can accept this, however it considers that specific timelines and budget allocation must be directed to further work. If this does not occur there will continue to be uncertainty for residents, such as the residents in Drummond where restructure overlay controls have been in place for many years.

The Panel recommends:

- 1. Make the post exhibition changes proposed by Council in Document 33 unless contradicted by a more specific recommendation below.**
- 2. In Clause 74.02, review the list of future strategic work and prioritise this list according to a logical sequence. First order priorities should include a municipal wide settlement strategy and the resolution of land in restructure overlays. The settlement strategy would need to:**
 - **be underpinned by a land use supply and demand analysis**
 - **be grounded in a realistic assessment of the constraints affecting existing ‘settlements’**
 - **address the threats to the highly valued unique elements of the Shire and protect important landscape and heritage elements**
 - **address the tensions and potential synergies between farming, tourism and rural residential development**
 - **make recommendations on specific zone changes and minimum lot sizes in zones.**

The Panel would expect that Council would allocate budget to the future strategic work on the basis of its priority in the list.

4.2 Municipal Planning Strategy

(i) The issue

The issue is whether the Municipal Planning Strategy:

- Is consistent with State planning policy.
- Provides a sufficient basis to guide future strategic work.
- Is consistent with *Ministerial Direction on Form and Content of Planning Schemes*.

(ii) What is proposed?

The introduction of the Municipal Planning Strategy is key aspect of the Amendment. The new Clause 2 will replace Clause 20 to 23 (Municipal Strategic Statement and Local Planning Policy Framework). The details of the proposed changes to planning policy as part of the Amendment are outlined in Chapter 2.

Clause 2.01 (Context) describes the municipality, including its history, current demographics and key values and attributes of the Shire. Some of the key themes picked up at Clause 2.01 include:

- diverse populations with differing needs, including traditional farming communities, long term residents in established townships, growing commuter population, alternative lifestyle communities and part time residents
- cultural heritage values
- limited public transport option
- protect catchments
- mineral springs
- high quality agricultural land
- tourist demand
- habitat, biodiversity and landscape values
- bushfire risk, including existing high risk townships.

Clause 2.02 sets of the vision for the municipality, which includes the following direction:

The key land use and development directions to deliver this mission as derived from the Hepburn Planning Scheme Review 2020 are to:

- Protect agricultural land as a valued resource to support jobs and opportunities into the future.
- Carefully manage the development of housing and services for residents in keeping with the heritage and rural feel of those areas.
- Preserve the heritage character and strong sense of place of the townships.
- Protect and manage the municipality's valued landscapes from unsympathetic development or major change.
- Manage the Shire's natural resources sustainably and protect them for future generations.
- Support tourism as an important industry based on the Shire's beautiful townships and countryside.
- Facilitate infrastructure across the Shire to meet the needs of the community.

Clause 2.03 sets the key strategic directions under the key themes of:

- Settlement
- Environment and landscape values
- Environmental risks and amenity
- Natural resource management
- Built environment and heritage
- Housing

- Economic development
- Infrastructure.

Clause 2.04 includes the strategic framework plans intended to reflect the strategic directions in Clause 2.03.

(iii) Policy and Guidance

Clause 71.01-1 sets out the purpose of the MPS:

The Municipal Planning Strategy at Clause 02 provides an overview of important local planning issues in an introductory context, sets out the vision for future use and development in the municipality and establishes strategic directions about how the municipality is expected to change through the implementation of planning policy and the planning scheme.

The MPS is a critical part of the Planning Scheme. It establishes the Shire's key strategic directions that then trickle down into all parts of the Planning Policy Framework and ultimately decision making.

Section 3 of the Practitioner's Guide explains how the MPS works with the PPF:

The PPF is the policy content of a planning scheme and provides a context for spatial planning and decision making by planning and responsible authorities.

The PPF comprises clauses 10 to 19 of the planning scheme and is a single integrated policy source that includes state content in the form of state and regional planning policy and local content in the form of local planning policy.

The policy content in the PPF is complemented by the MPS. The MPS outlines the planning outcomes the municipality seeks to achieve that will be implemented by the policies and requirements of the planning scheme.

The MPS sits outside the PPF at Clause 02 of the planning scheme. The PPF is at clauses 10 to 19 of the planning scheme. The PPF and the MPS together form the strategic foundation of the scheme.

A planning authority must take into account the MPS and the PPF when preparing an amendment to a planning scheme. A responsible authority must also take into account and give effect to the MPS and the PPF when it makes a decision.

Section 6.3 of the Practitioner's Guide explains how a Municipal Planning Strategy should be drafted:

The MPS is located at Clause 02 and sets the basis for the local content in the planning scheme. It does not form part of the VPP as it consists only of local content. The structure of the MPS is set out by the Ministerial Direction *The Form and Content of Planning Schemes* and includes:

- Context
- Vision
- Strategic directions
- Strategic framework plan.

The MPS must succinctly explain the context for a municipality and provide the overarching strategies for the major land use and development matters that affect it. Detailed policy belongs in clauses 10 to 19 of the planning scheme.

(iv) Submissions

Most submitters did not raise specific concerns with the drafting the MPS. Submitters mainly focussed on specific changes to the zones, schedules, specific clauses in the PPF or what they saw as contradictions between the written policy and spatial controls.

Ms Semple submitted that she supported the deletion of the reference to ‘new age and gay communities’ from the description of population demographics (as currently expressed in Clause 21.01-4 of the Planning Scheme), but was concerned that the translation of this description to ‘alternative lifestyle communities’ at Clause 02.01 (Context) may imply that sexual preference is a lifestyle choice.

Ms Semple submitted that infrastructure design, as referenced in Clause 2.03, should be reflective of the local area and not a standard city design.

The Victorian Farmers Federation, Mr Tom Toose, Mr David Toose and Ms Burns submitted that there needed to be greater recognition of farming as an economic driver in the Shire. These submissions are considered relevant for the content of the MPS, although this was not necessarily referenced by all submitters.

Coliban Water, through its submissions in relation to the FZ schedules, implicitly raised concerns regarding the minimum lot size and settlement strategy for land close to protected water catchments.

Mr Sloyan, through his submissions in relation to the Restructure Overlays, implicitly raised concerns about the lack of clarity in the Planning Scheme about the timing for restructure.

(v) Discussion

Scope of Panel’s consideration

The Panel has accepted that this review is ‘step 1’ in a longer process. Further strategic work will be required to change the policy settings across the municipality. In this section of the report the Panel has considered whether the MPS is sufficiently coherent as a springboard for future strategic work. Chapter 4.1. discussed inconsistencies between exhibited version of the Planning Scheme and the stated land use objectives in the MPS and PPF (and the consequence of this from a State policy perspective).

Key policy themes

Submitters raised general concerns about the policy settings in the MPS, and the Panel notes that in response to questions from the Panel the Council acknowledged that there was still some lack of clarity around some of the strategic directions in the MPS.

The Panel has reviewed the key strategic directions and structure of the MPS on the basis of these submissions. The Panel has identified key areas which need to be revisited.

The Panel acknowledges the resources required for such a comprehensive review of the Planning Scheme. The Panel understands it is challenging to alter policy settings, particularly around settlements without a strategic basis. However, there are some strategic directions in the MPS which appear inconsistent with State and regional policy (or earlier studies). It is considered these directions should be tightened up to ensure the MPS meets the *Ministerial Direction on the Form and Content of Planning Schemes*.

The Panel accepts the principles behind a policy neutral review, but sees a danger that outdated policy might be seen as having been ‘refreshed’ because it has been part of a recent Amendment.

Settlement

The strategic directions for settlement appear to mirror the current policy settings rather than addressing (or flagging an intention to address) key constraints influencing existing settlements.

Clause 2.03-1 describes the Shire’s settlement patterns as follows:

The Shire’s settlement pattern consists of a range of distinct townships and settlements set within the landscape. The townships are Clunes, Creswick, Daylesford, Hepburn Springs and Trentham. Settlements are scattered across the municipality including Allendale, Broomfield, Bullarto, Coomoora, Glenlyon, Muskvale, Newlyn and Smeaton. Other settlements exist in rural areas, many of which are former goldfields townships.

The term ‘settlement’ and ‘township’ are used in the MPS to reference residentially zoned land. In response to questions from the Panel, the Council explained that ‘settlements’ has a broad meaning and can include land in historical settlements and other ‘residentially zoned land’ such as zoned RLZ and LDRZ. The Panel considers that the terminology is problematic because it does not distinguish between rural living locations (where development is likely to be constrained²) and urbanised areas (where development is likely to be encouraged).

For example, one of the strategic directions for settlement at Clause 2.03-1 is to:

Support residential development in settlements within existing residentially zoned boundaries.

Based on the current zoning controls (which could take some time to review) this could include RLZ or LDRZ land in appropriate locations, further fragmenting the landscape.

The MPS needs to more clearly decouple legacy ‘rural living’ land (that is LDRZ and RLZ) from the term ‘settlement’. This will enable the MPS to include a specific strategic direction for these legacy locations.

The MPS should be more directive about legacy rural living areas. Clause 2.03-1 acknowledges LDRZ areas to an extent, however it does not address RLZ land or townships in the Restructure Overlay (RO):

There are extensive tracts of low-density zoned land between and around the edges of Clunes and Creswick. Development capacity within these settlements is limited due to servicing requirements, on site effluent disposal, and surface and groundwater quality and quantity concerns. A number of settlements have high risk of bushfire requiring restructuring and potentially abandonment to reduce the threats to life and property.

This part of the MPS also fails to more broadly identify other constraints that would influence settlement patterns, including flood risk, biodiversity values, high quality agricultural land, water catchment protection or cultural heritage values.

The MPS should be more explicit about the significant constraints affecting many legacy settlements in the Shire. The MPS should set Council’s vision for the future settlement strategy across the Shire. The Council could rely on previous regional studies such as the

² By factors such as bushfire risk, flood risk, biodiversity values, high quality agricultural land, water catchment protection or cultural heritage values

Regional Growth Plan and the Regional Bushfire Planning Assessments (2012) to inform the key strategic directions.

Environmental risks and amenity

Clause 2.03-3 described environmental risks facing the Shire, which are expected to be influenced by the effects of climate change. This part of the MPS does not address amenity and therefore the Panel considers that the heading could be simplified.

State bushfire policy at Clause 13.02 (Bushfire) is very explicit about how bushfire risks should be addressed as part of a planning scheme amendment. Clause 13.02 applies to all land within the BMO and to any decision made under the PE Act that may increase bushfire hazard. It states that:

Identify bushfire hazard and undertake appropriate risk assessment by:

- Ensuring that strategic planning documents, planning scheme amendments, planning permit applications and development plan approvals properly assess bushfire risk and include appropriate bushfire protection measures.

In relation to settlement planning, Clause 13.02 states:

Plan to strengthen the resilience of settlements and communities and prioritise protection of human life by:

- Directing population growth and development to low risk locations, being those locations assessed as having a radiant heat flux of less than 12.5 kilowatts/square metre under AS 3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).
- ...
- Not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of development in an area that has, or will on completion have, more than a BAL-12.5 rating under AS 3959-2009 Construction of Buildings in Bushfire-prone Areas (Standards Australia, 2009).

As outlined above, Council has indicated that the review is a 'policy neutral' translation of the Planning Scheme into the current format. As it relates to bushfire risk, Clause 13.02 is very explicit in that planning schemes should not be approved if they will allow the intensification of development in areas exposed to a radiant heat flux of more than 12.5 kilowatts/square metre under *AS 3959-2009 Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009).

Clause 2.03-3 explains that there is a bushfire risk however, it is quite vague about which areas are at greatest risk and what action is required:

Bushfire risk is exacerbated by topography, dispersed townships, ad-hoc development and lack of infrastructure in some locations. There are some locations where residential land uses have been allowed that with current knowledge are unsuitable for settlement and suggest the need for review of boundaries through structure planning. Potential development of existing small lots dispersed across rural landscapes and on the edges of towns are at highest risk from bushfires.

The strategic directions at Clause 2.03-3 includes:

Avoid development that through its location or design increases exposure to bushfires.

Limit development outside townships by minimising future subdivision of rural land to address bushfire risk.

The description of the risk and strategies in Clause 2.03-3 are incoherent when read with the strategic framework plan at Clause 2.04 and directions in Clause 2.03-2. The framework plans show extensive bushfire hazard around Creswick and many existing settlements. The strategic direction in the MPS is to 'facilitate growth in Creswick' and to support 'development in within existing residentially zoned boundaries' (for example, Bullarto, Coomoora, Glenlyon, Musk, Hepburn). In response to Panel questions, Council accepted that the Clause did not clearly articulate which particular areas were unsuitable for development.

The Panel considers that the MPS, when read as a whole, does not meet the objectives at Clause 13.02 of the Planning Scheme. The MPS needs to be more explicit about which townships are exposed to bushfire risk and revisit the settlement strategy (including some of the existing strategic directions) to ensure communities are resilient to bushfire.

Flooding and soil management risks are also described in general terms. As with the description of bushfire risk, when read with the framework plans at Clause 2.04 there is a lack of certainty about how to implement the strategic directions. For example, the framework plans identify flooding risk around Clunes but this is also identified as preferred location for development. The MPS needs to more clearly explain how these risks will inform the future settlement strategy.

Natural resource management

The strategic directions in Clause 02.03-4 generally seek to reduce the impacts of climate change, protect catchments and waterways (including mineral spring resources) and protect high quality agricultural land.

The Panel considers that the objectives are sound but there is quite significant repetition in the strategic directions. This may have the effect of watering down the core objectives.

The Panel considers that the strategic directions should acknowledge the existing settlement patterns represent a risk to catchment protection and agricultural pursuits if *ad hoc* development continues.

Built environment and heritage

Clause 2.03-5 includes strategic directions relating to cultural heritage, landscape value and built form objectives. The Panel notes that many submitters supported heritage policy objectives, particularly those relating to the protection of the landscape and cultural heritage values of Mt Franklin. Other submitters raised concerns, relevant for the MPS regarding the scope of landscape controls on agricultural activities.

Housing

Clause 2.03-3 acknowledges the changing housing needs within the Shire. There are two strategic directions proposed for housing:

Support infill housing development in townships that respects and complements neighbourhood character.

Promote and facilitate residential development and housing diversity in established townships to meet community needs, including affordable housing and aged care accommodation.

These directions appear sound and consistent with State housing policy. However, when read in conjunction with Council's decision to rezone land within existing settlements to from GRZ or TZ to NRZ there is a contradiction. The Panel considers that the introduction of more

restrictive zoning in the limited number of townships in the Shire that do not face other constraints, does not meet State policy objectives in relation to housing supply. These decisions pre-empt decisions that should be taken as part of a broader settlement strategy for the Shire, which takes account of different housing demand and supply.

The Panel supports the omission of references to 'settlements' in this Clause.

Economic development

Clause 2.03-7 identified key economic drivers for the Shire including rural enterprises, tourism, manufacturing and industry, retail and community services.

Some of the key strategic directions include avoid fragmentation of rural land, support economic stability in townships, locate tourist facilities in 'main townships' and facilitate a greater range of economic activity in townships and settlements. When these directions are read in conjunction with the rezoning proposed in the Amendment there is a degree of inconsistency. As with housing supply, on one hand the MPS encourages commercial activity in townships at the same time a more restrictive zoning is imposed in several townships. For example, if Trentham is rezoned from TZ to NRZ land uses such as office, industry (other than car wash) and many forms of retail would become prohibited.

Strategic framework plans

Clause 02.04 provides plans that are intended to spatially represent the strategic directions in other parts of the MPS. Council explained to the Panel that there have been no changes to the policy settings in terms of settlement patterns. As illustrated in the discussions above, this creates a disconnect with the written aspects of the MPS and the representation in the framework plans.

The Panel is concerned that decision makers would rely on the framework plans too heavily, assuming they had recently been reviewed and therefore consistent with current State and regional planning policy. The Panel considered that a settlement strategy needs to be prepared before the MPS provides clear direction on which locations are preferred for growth.

Other aspects

The Panel agrees with the submissions from Ms Semple that the implicit link between sexual preference and 'alternative lifestyle communities' is problematic at Clause 02.01.

(vi) Conclusions and recommendations

The Panel concludes that there are some aspects of the MPS which are inconsistent with State policy. There is also some inconsistency between different clauses in the MPS. These aspects should be revisited to ensure that the MPS provides a strategically sound springboard for future strategic work.

The Panel recommends that:

- 3. Review the Municipal Planning Strategy to ensure that the strategic direction, particularly as those relate to settlement planning, bushfire hazards, housing supply and economic development are consistent with State policy.**
- 4. Review the Municipal Planning Strategy to:**
 - **clarify the distinction between 'established townships', 'main townships' and 'settlements'**

- delete any policy support directing growth to parts of settlements within the Low Density Residential Zone or Rural Living Zone where such development might run counter to State policy on bushfire and protection of natural values.
5. In Clause 02.01 delete the reference to 'alternative lifestyle communities'.
 6. At Clause 02.03, redraft the Clause to more precisely define locations (or 'settlements') constrained by bushfire risk, including those areas which are currently affected by a Restructure Overlay (or should be considered for such an approach).

4.3 Native vegetation

Submission 13 from DELWP Environment supported the Amendment. It suggested several changes to a number of policies to support the retention of native vegetation and biodiversity. In particular a number of suggestions were made to bolster Clause 12.01-1L Native vegetation and habitat protection to ensure that both *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* and *Flora and Fauna (FFG) Act 1988* species were better protected.

Council advised:

As a result of this submission, a number of changes have been made to the following Clauses:

- Clause 02.03.9 of the MPS
- Clause 12.01-1L Native vegetation and habitat protection
- Clause 14.01-1L Protection of agricultural land
- Clause 19.02-6L Open space See Appendix V for these changes.

Changes were not made to 02.04 Strategic Framework Plan (which would reduce map are legibility), 02.03-8 Transport (covered in other clauses), Clause 72.04 Further Strategic Work and Clause 11.01-1 Trentham Township Plan as this will be investigated as part of future structure planning.

The Panel supports these changes.

5 Specific clauses

5.1 Introduction

The Amendment replaces Clauses 20 to 23 with the MPS and new or revised policy at:

- Clause 11.01-1L – Townships and settlements
- Clause 12.01-1L – Native vegetation and habitat protection
- Clause 12.05-2L – Landscape management
- Clause 14.01-1L – Protection of agricultural land
- Clause 14.01-2L – Sustainable agricultural enterprises
- Clause 14.02-1L – Catchment and land protection
- Clause 14.02-2L – Mineral springs and fresh water springs protection
- Clause 15.01-1L – Urban design
- Clause 15.01-3L – Subdivision
- Clause 15.01-5L – Neighbourhood character in Daylesford
- Clause 15.01-5L – Neighbourhood character in townships and settlements
- Clause 15.01-6L – Central Springs and Lake Daylesford, Hepburn Springs Reserve and Jubilee Lake Reserve Environs
- Clause 15.02-1L – Environmentally sustainable development
- Clause 15.03-1L – Heritage
- Clause 15.03-2L – Aboriginal cultural heritage
- Clause 16.01-4L – Affordable housing
- Clause 17.01-1L – Diversified economy
- Clause 19.02-6L – Open space
- Clause 19.03-2L – Infrastructure design and provision.

Many of the proposed changes are uncontroversial.

5.2 Townships and settlements

The issue

Clause 11.01-L ‘Township and settlements’ refers to growth in settlements where development in some of these settlements would appear contrary to broader state policy.

As discussed in Chapter 4 the Panel has concerns about the settlement strategy implied by the Amendment. In Chapter 4.2 the Panel made recommendations on changes to the MPS. Changes to Clause 11.01-L are also required.

Clause 11.01-L includes:

Objective

To achieve a sustainable urban form for townships and settlements by containing future development within the township boundaries shown on the township and settlement structure plans.

Strategies

Encourage limited development in settlements that are not identified for restructuring.

As discussed above ‘settlements’ in the Hepburn context could be taken to include areas of LDRZ and RLZ land. These may no longer be seen as suitable for further development given

changes in State policy and so a strictly policy neutral approach to translating policy into the PPF could support inappropriate planning outcomes.

Council pointed out that the 'Town centre activities' area in Hepburn has been included the structure plan in the scheme but without notation. The notation should be included.

DELWP pointed out that on the Creswick map to remove reference to two parcels of Crown land being (3~77\APP5211 in Bloomfield Road and 1~78\PP5211 in Pasco Street) should be removed from the 'residential infill opportunity'. Council supported this.

Recommendation

The Panel recommends:

7. In Clause 11.01-L delete:

- **the reference to settlements in the objective**
- **the strategy: 'Encourage limited development in settlements that are not identified for restructuring'**
- **on the Hepburn map annotate the yellow rectangle in the centre of Hepburn to indicate 'Town centre activities'**
- **on the Creswick map remove reference to two parcels of Crown land being (3~77\APP5211 in Bloomfield Road and 1~78\PP5211 in Pasco Street) as 'residential infill opportunity'.**

5.3 Significant Landscapes PPF

The issue

A number of submissions (178, 186, 192, 194, 205, 219, 221, 225, 268, 274) requested Council undertake further work on significant landscapes particularly around Mount Franklin, Lady Franklin and other key Aboriginal sites and the application of the HO or SLO to protect these sites. Submitters were concerned that the Amendment does not signal that these landscapes are important and should be protected. Landscape protection was a key message from the community and identified in the engagement undertaken in the Planning Scheme Review.

Submissions

Council submitted that it intends to commit funds at the 2020-21 mid – year budget with the intention of protecting additional sites of significance to the Dja Wurrung Clans Aboriginal Corporation including Lalgambook (Mt Franklin) and surrounds in 2021.

Council proposed a number of small changes to the MPS and local policy to reflect the importance of significant landscapes in additional areas highlighted in submissions. These were presented in Appendix V of Council's Part C submission.

Discussion

The Panel (as does Council) supports the intent of many of these submissions and supports the proposed changes to the Amendment presented by Council. The Panel has already recommended the adoption of Council's post exhibition changes.

5.4 Natural Resource Management

5.4.1 Clause 14.01-1L – Protection of agricultural land and Clause 14.01-2L – Sustainable agricultural enterprises

(i) The issue

A number of submissions (130, 173, 202, 209, 221) requested Council make some changes to the wording of local policies related to agriculture, respond to a desire to subdivide land, promote regenerative farming practices and exempt all agricultural buildings and works from ESO, VPO and SLO controls.

(ii) What is proposed

In relation to Clause 14.01-1L – Protection of agricultural land Council submitted:

This policy retains and supports agricultural and farming activities with strategies and policy guidelines (with complementary existing minimum subdivision areas in rural zones) to reduce amenity and operational conflicts. [Part A 2.6.1]

The policy provides a local response to complement State policy that seeks to protect productive agricultural land and is based on the existing policy titled “Rural Land” currently at Clause 22.04 and the current MSS (Clause 21.08) to ensure the Shire’s high quality agricultural land is not encroached upon by incompatible use and development. [Part A 2.6.2]

In relation to Clause 14.01-2L – Sustainable agricultural enterprises Council submitted:

This policy provides a local response to the Victorian government’s direction to respond to local ‘value adding’ and to continue to attract investment. New local policy content supports small agricultural enterprises in rural zones including the Rural Living Zone and provides a local response to complement State policy that supports agricultural enterprises. [Part A 2.7.1]

The policy is based on the existing policy titled ‘Rural Land’ currently at Clause 22.04 and the current MSS (Clauses 21.03, 21.07 and 21.08) to ensure agricultural land remains viable and supports businesses. [Part A 2.7.2]

Submitter 130 noted the changes that have occurred in the Shire:

As members of the Ullina Landcare Group, we have enjoyed since 1994 the interchange of information and assistance from neighbours and others, together with the Department of Agriculture, other land care groups and farming consultants. The landscape resulting from our activities is substantially changed and improved since that date in the hands of owners who care about their farming venture and its continuance.

Some submitters sought greater flexibility to further support innovation and diversification of agricultural enterprises suggesting that the policy to *“Discourage the use and development of rural land for accommodation, food and drink premises, place of assembly or shop”* should not apply to when these are directly related to an agricultural enterprise.

(iii) Submissions

Council advised that the Council Report on the Amendment recommended that Council officers work with peak bodies such as the VFF and farmers to refine planning scheme clauses and to ensure alignment with the Victorian Government’s Agricultural Land Review and the Planning Scheme Review recommendations.

Council is considering the potential establishment of an agriculture working group with the VFF, Agriculture Victoria and DELWP Planning (Agriculture). This could be pursued to establish a more collaborative working relationship between Council, the VFF and Agriculture Victoria.

Council supported the intent of many of these submissions and made a small number of post-exhibition changes to the Amendment as a result of submissions.

(iv) Discussion

The Panel broadly agrees with submitters that the policy basis around agricultural land needs to be reviewed. The Panel sees this as part of the need for broader settlement strategy that looks at how agriculture, peri-urban pressures and tourism can be managed in the Shire. This is a more extensive strategic piece work than this policy neutral planning scheme amendment.

The Panel has previously recommended that Council prepare a settlement strategy as a priority.

5.4.2 Clause 14.02-1L – Catchment and land protection

(i) What is the issue

Coliban Water requested minor revisions to Clause 14.02-1L of the Planning Scheme.

(ii) What is proposed

Council submitted:

This policy applies to all land within the municipality for the protection of soil and water quality within the special water supply catchment based on regional catchment management strategies. [Part A 2.8.1]

The existing policy titled “Catchment and Land Protection” currently at Clause 22.01 has been revised and updated following consultation with water and catchment management authorities, and to meet drafting requirements of the PPF translation.[Part A 2.8.2]

(iii) Submissions

Coliban Water acknowledged the post exhibition changes to Clause 14.02-1L and agreed with all proposed changes.

Coliban Water suggested the additional inclusion of the word ‘all’ after the words ‘To ensure that’ at the start of the Objective. Coliban Water’s suggestion would mean that the objective would read as follows (inclusions shown with underlying):

To ensure that all use and development in a special water supply catchment protects, restores and enhances the quality and quantity of the natural resources and environmental systems for the long term supply of quality water for future generations.

Coliban Water submitted that the inclusion of the word ‘all’ would act as a prompt to ensure that all use and development, regardless of whether a permit is required or not, considers the quality and quantity of the natural resources and environmental systems.

The Panel does not support the inclusion of ‘all’. The issue is not so much the impact on this Clause but on how other clauses that do not include ‘all’ might be read in the future. It may imply a lesser strength to those other strategies because they do not include ‘all’ as this strategy does. Having said that the Panel agrees that the protection of water supply

catchments is extremely important and potentially warrants controls that require permits for a greater range of activities than areas outside of catchments.

5.5 Built Environment and Heritage

5.5.1 Clause 15.03-1L – Heritage

(i) The issue

A number of submissions (41, 186, 192, 194, 205, 219, 230, 241, 274, 275) supported Council in preparing a Heritage Local Policy, providing greater clarity on application requirements in the Schedule to the Heritage Overlay. A number of submissions would have liked Council to provide further heritage protection to a number of sites and landscapes.

(ii) Submissions

Council submitted that:

- the new local policy aims to fill a substantial planning gap for heritage policy in Hepburn.
- builds on content from the current MSS (Clause 21.09), the *Hepburn Heritage Strategy 2020-2030* and new content that provides improved guidance for signs, demolition and relocation, gardens, trees and landscape features, subdivision and prohibited uses.

(iii) Discussion and conclusion

The Panel notes the submissions in support of heritage and the requests for further heritage protection. The Panel notes that the further work section includes further heritage work in the Shire. The Panel supports the proposed changes to the heritage policy in the Amendment.

5.5.2 Clause 15.03-2L Aboriginal cultural heritage

(i) The issue

A number of submissions (20, 194, 219, 225, 274) believed that the Amendment should make greater reference to the aboriginal cultural heritage of the Shire and the Dja Dja Wurrung as the first nations people.

(ii) What is proposed

A new local policy is proposed to specifically recognise and protect Aboriginal cultural heritage, building on Council's commitments in its *Reconciliation Action Plan, 2018*. This will help to fill identified planning gaps in Hepburn's indigenous cultural significance particularly for the Dja Dja Wurrung Clans Aboriginal Corporation (DDWCAC).

(iii) Submissions

The DDWCAC submission requested that the Schedule to the Heritage Overlay should note all aboriginal sites in the Shire in the Aboriginal heritage place column of the HO Schedule. In principle, Council supports the request but does not have the information to undertake the request at this time and hence does not support the request. Future strategic work identified will provide suitable justification for this to be included at a later date.

The DDWCAC provided a detailed submission on how the Planning Scheme can strengthen protection of significant sites and bring to the forefront the importance of the Dja Dja Wurrung in the history and the future of the shire. They provided a range of changes, the most important being the need to reflect the Dja Dja Wurrung in the Aboriginal Cultural Heritage local policy and undertake further work to support protection of cultural heritage.

Council supported these submissions and believed that some changes can be made to the MPS and Aboriginal Cultural Heritage Local Policy which were included in the post-exhibition version of the Amendment.

Council proposed:

Protect ~~and~~ conserve and enhance identified pre and post contact indigenous ~~cultural~~ heritage places ~~and values of cultural and spiritual value to the Dja Dja Wurrung Clans Aboriginal Corporation~~ as decided by in partnership with traditional owners in caring for Country ~~Aboriginal people~~.

Ensure pre and post contact tangible and intangible Aboriginal cultural heritage values are considered in land use and development and the management of ~~use and development of land~~ environment and water resources.

Ensure that new uses, development and works do not adversely impact on sites, vegetation, wetlands and features of the Aboriginal peoples' cultural and archaeological significance.

Policy guidelines

Consider as relevant:

- The ~~indigenous~~ Dja Dja Wurrung Clans Aboriginal Corporation traditional knowledge of the Aboriginal people in providing for the conservation and enhancement of places, sites, vegetation and objects of cultural value.
- Any Aboriginal cultural heritage study documents from the Dja Dja Wurrung ~~people~~ Clans Aboriginal Corporation and other relevant organisations when considering a planning scheme amendment or an application for use, buildings or works or subdivision of land.
- A land use activity agreement prepared for an application on existing or unalienated Crown land.

The Panel supports the proposed changes.

6 Broad zoning changes

6.1 Introduction

The Amendment does not seek to make broadscale zoning changes to address key issues around settlement patterns in the Shire. Rather it seeks to translate existing zones and schedules into the new PPF format and address specific urban design matters in several townships.

Where the rezoning of land or new schedules are proposed, this flows from:

- existing strategic planning work (for example, 2006 structure planning work)
- usability and translation (for example the Farming Zone schedule)
- identified mapping anomalies.

6.2 Issues

The issues for the Panel are whether the:

- Changes to zone schedule are appropriate.
- Site specific rezoning changes proposed as part of the Amendment are appropriate.
- Site specific rezoning changes requested by individual submitters are appropriate (dealt with in the next chapter).

The Panel has already discussed the threshold issues regarding the limited number of changes to the underlying zoning from a State policy perspective. In this section of the report the Panel addresses the more specific aspects of the proposed rezoning changes, and has made a distinction between the general changes (that affect townships more broadly) and the site specific rezoning proposals or requests.

6.3 Changes to zone schedules

The Amendment proposed to redraft Schedule 1 to the TZ to add character objectives, application requirements and decision guidelines. The revised Schedule will affect land that remains in the TZ.

The Panel supports these changes.

Schedule 1 to the GRZ is proposed to be redrafted to include clear application requirements and decision guideline.

In relation to the revised Schedule to the GRZ Council submitted that:

The Amendment amends Clause 32.08, Schedule 1 (General Residential Zone) with a new Schedule 1 that includes clear application requirements and decision guidelines to the Creswick township.

The Schedule content was drawn from the existing MSS (Clause 21.05) and the *Hepburn Structure Plan Review, 2006*.

The Panel supports these changes.

6.3.1 Neighbourhood Residential Zone

(i) The issue

The issue is whether rezoning land the NRZ is appropriate.

(ii) What is proposed?

The Amendment proposed to reduce the amount of GRZ land within the municipality. Daylesford and Hepburn Springs are proposed to be rezoned from GRZ to NRZ, but Creswick township is proposed to remain in the GRZ.

Residential areas in Clunes and Trentham are proposed to be rezoned from the TZ to NRZ.

Schedules are proposed which specify the preferred character in each precinct. The Schedules do not change the default requirements under the NRZ and will have the effect of:

- In TZ replacing a discretionary 9 metre building height with a mandatory 9 metres and 2 storeys limit
- In the GRZ replacing a mandatory 11 metres and 3 storeys height with a mandatory 9 metres and 2 storeys limit.

(iii) Submissions

Council explained that when the new residential zones were introduced in across the State in 2014, all residential zones in the Shire's townships were converted to the GRZ.

Council submitted:

New residential zones were introduced into the *Scheme* in 2014 based on the state-wide review conducted in 2012/13. All residential zones in townships were converted to the General Residential Zone. To reflect the low growth scenario identified for the townships of Clunes, Daylesford, Hepburn Springs and Trentham in the Regional Growth Plan, *Review* and the built form outcomes identified in the *Hepburn Structure Plan Review, 2006*, the Neighbourhood Residential Zone is deemed the most appropriate residential zone to be applied to residential areas within these townships.

Using the principles from PPN91, the application of the NRZ for the townships of Clunes, Daylesford, Hepburn Springs and Trentham better represents the guidance provided in PPN91, more accurately reflects existing development patterns and expectations, and better articulates and clarifies Council's position on 'low scale' development of between one and two storeys in residential areas.

In relation to the retention of the GRZ in Creswick, Council submitted that:

As Creswick is identified as a township for growth, the application of the General Residential Zone is deemed the most appropriate zone for residential areas within the township.

Meetings were also held with DELWP Planning Systems who provided advice on the application of the residential zones and neighbourhood character controls. Advice also pointed to considering the application of the Neighbourhood Residential Zone to townships given the existing structure plans, low growth settings and guidance included in the recently released Planning Practice Notes 91 – Using the residential zones.

Daylesford and Hepburn Springs

Several submitters supported the rezoning of GRZ land to the NRZ. However, a number of submissions (10, 90, 96, 134, 229, 262) opposed the introduction of NRZ or raised concerns regarding its impact on different sites. A number of other submissions supported the rezoning of residential land to the NRZ.

Ms Gervasoni submitted that:

I support the use of the Neighbourhood Residential Zone but I am reminded of my circa 1996 submission to the first 'Hepburn Planning Scheme' which was not recommended for approval. At that time when we still had the abattoirs and the timber industry

employing locals I raised the need to attempt to maintain diversity in the local economy (the area has been devastated by two long 'busts' in tourism) and to realise that the lifestyle, serenity, cultural heritage setting and key natural attractions were critical to the tourism economy – but that those elements needed to be protected.

Ms Mok, on behalf of Hyde Custodian Pty Ltd, submitted that the rezoning the site at 114 Main Road, Hepburn Springs to NRZ3 was inconsistent with the strategic direction identified in the maps in the exhibited version of Clause 11.01 and the policy at Clause 15.01-1L. Ms Mok submitted that it was not consistent with State policy to apply a more restrictive zone to a site in an existing commercial centre.

Mr Tsourounakis made submissions on behalf of the owners of 15 King Street in Daylesford. He submitted that the structure plan which formed part of the basis for the Amendment did not contemplate the application of the NRZ to the land which is currently zoned GRZ1. Mr Tsourounakis submitted that the Daylesford Character Study (2002) was not a sufficient basis to apply a more restrictive control to the land.

Mr Tsourounakis submitted that neither the *Daylesford Neighbourhood Character Study 2002* nor the *Daylesford Structure Plan 2006* recommended changes to the current residential zone for the land. He submitted that both studies were outdated and should not be relied upon for the application of the NRZ. He submitted that the rezoning of the township to the NRZ would impact on future housing supply and impact on the local economy.

Council acknowledged that both the *Daylesford Neighbourhood Character Study 2002* and the *Daylesford Structure Plan 2006* need to be updated, as well as a range of other studies. It submitted that structure planning is proposed for Daylesford in the near future as outlined in Clause 74.02 Future Strategic Work.

Trentham and Clunes

Several submissions raised general concerns regarding the consequences of applying a more restrictive zone in townships, compared with the existing TZ.

Council submitted that the rezoning of Trentham and Clunes was an interim measure, pending a more detailed settlement strategy and structure planning exercise.

Mr Scarpaci submitted that the proposal to rezone the Trentham to NRZ was inappropriate as a matter of principle. He submitted that the blanket application of the NRZ to the Shire's largest settlement was inappropriate:

... it is our view that the proposed blanket NRZ rezone in the municipality's largest activity centres (as proposed by Amendment C80hepb) is a blunt and unsophisticated measure that is not compatible with a number of strategies of the proposed Clause 11.01-L, including to provide for urban development and economic growth in the main townships based on the structure plans, to locate new dwellings and residential subdivisions within township boundaries, and to provide urban infill and consolidation opportunities in townships that utilise existing infrastructure.

17. The contradictory policy positions are compounded by a lack of proper strategic justification, and it is submitted that Council's reliance on Hepburn Structure Plan Review (2006) to support less intense zoning in existing settlements is clearly insufficient in the context of a planning scheme amendment that affects such a large and important part of the municipality.

(iv) Discussion

The decision to rezone land to the NRZ does not appear to have been informed by any assessment of land supply or a broader review of the settlement patterns in the Shire. Furthermore, the structure planning work conducted in the context of different State policy priorities. Mitigating the risk of bushfire was not afforded the same policy priorities as it was after 2013.

The Panel considers that applying the NRZ ahead of a proper consideration may inhibit strategic planning aims in the future. It is not considered that it is appropriate to apply the NRZ, even as an 'interim' measure.

The majority of submitters who opposed changes to the GRZ, did so on the basis that they opposed the implications of the NRZ on individual sites.

The Panel is concerned about Council's rationale for reducing the extent of GRZ. It is based on structure planning work dating back to 2006. This work predated the current residential zones as well as key policy changes in relation to bushfire risk and the preparation of Regional Growth Plans. The rezoning of Hepburn Springs and Daylesford does not appear to have been informed by any assessment of land supply or a broader review of the settlement patterns in the Shire.

As discussed in Chapter 4, the Panel considers further strategic work is required to confirm the new settlement patterns (including the extent of GRZ land required). Any changes to the GRZ needs to be consistent with the proposed MPS and State policy.

As a matter of principle, the Panel does not oppose the reduction in GRZ land, however the key issue is whether new zoning selected is strategically justified. The Panel considers that it is premature to rezone Hepburn Springs and Daylesford.

The Panel also has concerns with the application of the NRZ in township areas.

There are some practical differences between rezoning existing TZ to NRZ and rezoning existing GRZ to NRZ. The TZ is a more expansive zone which allows a range of commercial and residential activities. The GRZ is more restrictive and focuses on residential development. Therefore, there is a more significant difference between the conversion of TZ to NRZ compared to GRZ to NRZ.

Council's rationale for rezoning townships to NRZ is based on structure planning work dating back to 2006. The Panel agrees with the thrust of submissions that the strategic justification for the NRZ is limited, particularly in townships currently in the TZ.

The rezoning will alter the type of uses allowed within Trentham and Clunes, introduce minimum garden requirements for dwellings and new height limits. The most significant change is the reduction in the scope of commercial uses permitted within the township areas, when compared with the existing TZ.

The Panel considers that applying a more restrictive zone in townships designated for a mix of commercial and residential purposes would be inconsistent with Council's proposed MPS. As discussed in Chapter 4, there is an inconsistency between the written policy objectives and the proposed zoning controls.

(v) Conclusions and recommendation

The Panel concludes that it is acceptable, as a matter of principle to convert GRZ land to an alternative zone. However, the new zoning selected needs to be strategically justified.

Further strategic work is required to confirm the preferred settlement patterns in the Shire before NRZ is applied to residential areas in Clunes, Daylesford, Hepburn Springs and Trentham.

- 8. Abandon the proposal to rezone land in Clunes, Daylesford, Hepburn Springs and Trentham to the Neighbourhood Residential Zone until a settlement strategy for the Shire has been completed.**

6.3.2 Clause 35.03 Rural Living Zone**(i) What is proposed?**

The Amendment proposes changes to the Schedules to the RLZ:

- a new Schedule 1 is proposed to apply to all RLZ land in the Shire, other than the land at 145 Trentham- Kyneton Road, Trentham
- a new Schedule 2 is proposed to apply to land at 145 Trentham-Kyneton Road, Trentham and the three lots which resulted from Amendment C36.

(ii) Evidence and submissions

Council submitted that the changes to the Schedules would create clarity regarding the minimum subdivision areas in the RLZ and were consistent with the Ministerial Direction on Form and Content.

(iii) Discussion

The changes proposed to the Schedules in the RLZ are largely policy neutral and do not alter minimum lot sizes in the land zoned RLZ.

As discussed in Chapter 4 of this report, the decision to retain significant amounts of RLZ land across the municipality raised separate policy issues. However, the specific change to the Schedules is not considered to be of significant consequence.

(iv) Conclusion

The Panel concludes that the changes to the Schedule are relatively inconsequential.

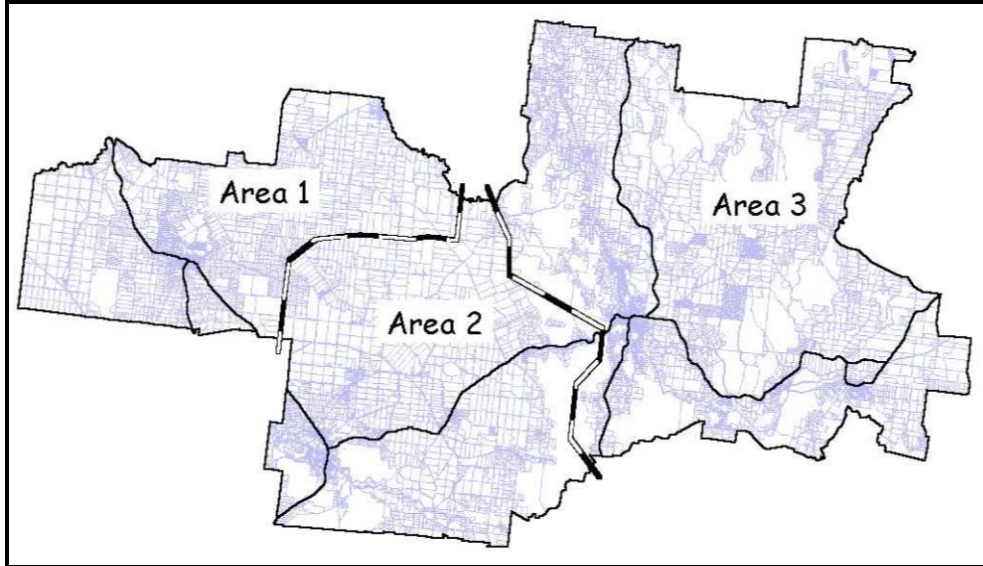
6.4 Clause 35.07 Farming Zone and Clause 35.06 Rural Conservation Zone**(i) What is proposed**

The Amendment replaces the existing FZ and Rural Conservation Zone (RCZ) Schedules with:

- A new Schedule 1 that applies to Areas 1 and 2 on the map to the existing Schedules which currently has a minimum lot size of 40 hectares. No permit is required to use land for a dwelling if the lot is greater than 40 hectares. This is consistent with the standard VPP requirement in the FZ.

- A new Schedule 2 that applies to Area 3 which currently has a minimum lot size of 20 hectares. No permit is required to use land for a dwelling if the lot is greater than 20 hectares. This is a smaller minimum than what exists in the VPPs.

Figure 4: Existing Farming Zone Schedule and Rural Conservation Zone Schedule map



(ii) Relevant policies, strategies and studies

State policy seeks to protect high value agricultural land and to protect water catchments. These are significant issues that are relevant for the Shire and are picked up in the MPS.

(iii) Submissions

Council submitted that providing one minimum subdivision area in each Schedule created clarity and was consistent with the Ministerial Direction on Form and Content. Council submitted that this was a policy neutral change. It submitted that the change did not alter the existing policy settings or minimum lots sizes in the FZ or RCZ.

Coliban Water submitted that Schedule 2 to the FZ, with a minimum lot size of 20 hectares, should be removed. It submitted that:

Coliban Water recognise the Council response that the schedule is a direct translation of existing controls to comply with Ministerial Direction 19 on the Form and Content of Planning Schemes which requires a new schedule for each minimum lot size.

However, it is Coliban Waters position that the current Schedule 2 to Clause 35.07 Farming Zone shown as on the planning scheme map as FZ2 would appear to be inconsistent with the general policy theme of the Planning Scheme, particularly:

- Clause 02.03-4 Natural resource management, which seeks to:
 - *Minimise landscape and water quality impacts on the catchments through careful location and design of development and wastewater systems.*
 - *Protect streamsides, catchments, flood plains and wetlands from the impacts of development.*
 - *Protect water resources in the Shire through integrated water and catchment management including stormwater.*
 - *Protect high quality productive agricultural land for agricultural uses over the long term.*
 - *Protect rural land for agricultural uses and compatible rural uses.*

- Clause 02.04 Strategic Framework Plan and Economic development plan which identifies High to Very High agricultural Land.
- Clause 14.01-1L Protection of agricultural land, which seeks the objective:
 - *To protect the Shire's high quality productive agricultural land from the encroachment of incompatible use and development.*

The removal of the schedule FZ2 would remove the minimum lot size of 20 hectares. This would provide greater consistency for the protection of agricultural land and water supply in the upper Coliban catchment by preventing the ability to create smaller allotments which could have a potential impact on the supply of quality drinking water.

Ms Gould submitted that the minimum lot size of 20 hectares should be increased to 40 hectares. Ms Gould referred to the minimum lots sizes in neighbouring municipalities which ranged from 40 hectares to 80 hectares. She submitted that:

In the western side of the shire the minimum subdivision in the rural area is already now 40 hectares, considered a minimum size to be viable for most farming. In the wooded eastern side it needs to be changed to 40 hectares also, because half of a farm might be un-farmable high biodiversity land on the forested rocky outcrops which you need to protect, and therefore you can't farm it.

History made it to be 20 hectares, but we're in a very different time now with bushfire and biodiversity loss, and the break up of viable farming land, and as I said, the neighbouring shires all have this minimum of 40 hectares.

The reason you have to protect the landscape is that the land is going out of agriculture because, from the outside it appears a size of 20 hectares is small enough for most people to cope. If it's double the size it's more daunting for people who are not seriously doing agriculture. It's a lot of work to manage land and what often is the result is that the land reverts to weeds, gorse, becomes scrubby, fire prone and a bushfire risk.

The Victorian Farmers Federation (VFF) submitted:

The '20 hectare' schedule should be removed as it is not an appropriate lot size to sustain modern agriculture and leads to a proliferation of 'rural living' style development in the farming zone

(iv) Discussion

The Panel agrees with the submissions of Coliban Water, Ms Gould and the VFF. The retention of a lower minimum lot size in the FZ is inconsistent with State policy and appears incongruous with other policy objectives relating to the protection of agricultural land, water catchments and biodiversity values. Submissions did not address the RCZ but similar issues would apply in respect of water catchments, but perhaps not agriculture.

The Panel acknowledged that the existing minimum lot sizes reflects historical circumstances, however this does not make it acceptable in the current State policy context. As discussed in Chapter 4 of this report, a comprehensive settlement strategy is required to determine the future of many rural areas. It is expected that the minimum lot sizes would be revisited as part of that process, for the Rural Conservation Zone land.

Because this change was not exhibited further notice to affected parties would be required. This could take place as part of the process for this Amendment, or as part of a separate Amendment. The critical issues is that this change is made sooner rather than later.

(v) Conclusions and recommendation

The Panel considers that the policy neutral approach of the Council in respect of the Farming Zone land raises broader policy questions. Given the policy settings of the scheme in relation

to Farming Zone land the Panel believes that the smaller lot size cannot continue to be justified.

The Panel recommends:

- 9. Subject to further notice to affected properties, apply a minimum lot size of 40 hectares to land in Area 3 of the current Farming Zone Schedule.**

7 Site specific zoning changes

7.1 Overview

There are a number of site specific rezonings proposed as part of the Amendment to tidy up existing zoning anomalies. No submitters opposed these changes.

Twelve submitters requested site specific rezonings. Two of these requests were supported by Council and nine were not supported.

Council submitted that site specific rezonings were not encouraged and that a more holistic process should inform rezoning proposals. Council submitted that rezonings in townships should be considered as part of structure plan for townships and that rural rezoning should await the outcomes of the Victorian Government's Agricultural Land Review and a potential Shire Rural Review.

7.2 Council initiated changes

Site specific rezoning the Lost Children's Cairn Memorial Reserve

The Amendment proposes to rezone the Lost Children's Cairn Memorial Reserve at 4360 Midland Highway, Daylesford from GRZ Schedule 1 to the Public Park and Recreation Zone (PPRZ).

Council submitted that this change was proposed to ensure that the zoning of the land reflects the existing land use and most appropriate zoning for land in public ownership.

The Panel supports this change.

Site specific rezoning at Hepburn Mineral Springs Reserve

The Amendment proposed to rezone land at the Hepburn Mineral Springs Reserve from SUZ Schedule 1 to the Public Park and Recreation Zone.

Council submitted that this change was proposed to ensure that the zoning of the land reflects the existing land use and most appropriate zoning for land in public ownership.

The Panel supports this change.

Site specific correcting mapping of Road Zones in and around Trentham

The Amendment proposes to correct the location of mapping of Road Zones in and around Trentham based on designations under the *Road Management Act 2004*.

The Department of Transport (DoT) provided advice on four sites in the municipality that were incorrectly zoned and evidence to support their inclusion. These sites were:

- Trentham Falls Road (Daylesford-Trentham Road) to be zoned RDZ1 from Glenlyon Little Hampton Road (Roths Road) to Kyneton-Trentham Road.
- Kyneton-Trentham Road to be zoned RDZ1 from Victoria Street, Trentham to Springhill Road, Tylden (Shire boundary).
- Cosmo Road/Blackwood Road (Myrniong-Trentham Road) to be zoned RDZ1 from High Street Trentham to Blue Moon Road.
- Blue Moon Road and High Street (west of Cosmo Road) to be rezoned appropriately to remove the RDZ1.

Submission (212) from Regional Roads Victoria supported the changes to the application of the Road Zone – Category 1.

The Panel supports this change.

7.3 Rezoning requests initiated by submitters

7.3.1 3535 Midland Highway, Blampied

Ms Howards (Submitter 216) requested that site be rezoned from FZ to RLZ.

Council did not support the proposed rezoning on the basis that the site is currently in a FZ with a minimum lot size of 40 hectares. Council submitted that the site was outside of any defined settlements and that there was inadequate justification for the rezoning. Council submitted that site had other constraints, such as the BMO which applied to approximately half of the site.

The Panel considers that this rezoning request lacks strategic justification to proceed as part of this Amendment. However, the Panel notes that the site is no less constrained by environmental risk than many other existing RLZ land in the Shire.

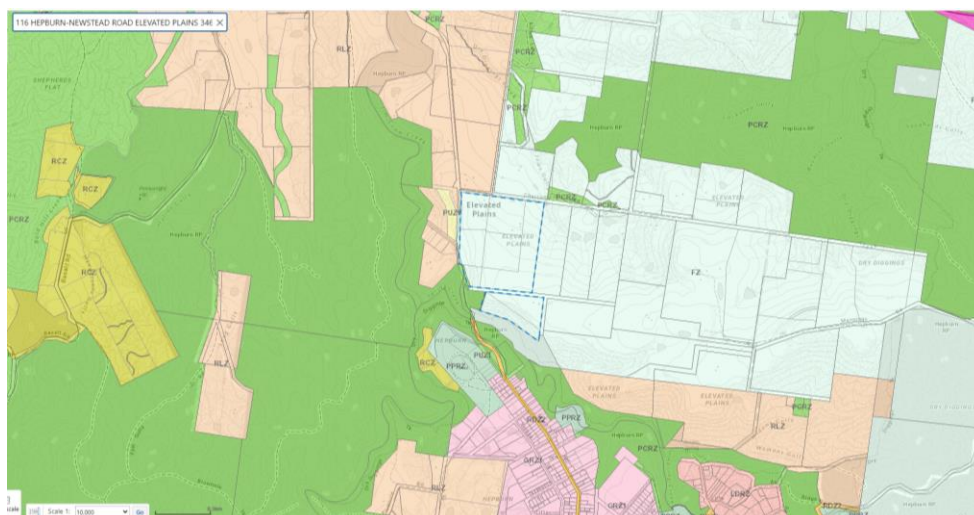
The Panel has previously recommended that Council prepare a settlement strategy as a priority.

7.3.2 116 Hepburn-Newstead Road, Elevated Plains

Mr Phillips and Mr Papapostolou requested that the site be rezoned from FZ to RLZ. They submitted that the site, which comprised 7 lots contained low quality agricultural land and that the RLZ would better reflect the site's context and character. They referred to a 2016 Tribunal decision (VCAT ref P285/2016) in which they had made significant investment. The Panel reviewed the decision and note the discussion on the agricultural values of the land.

Mr Phillips and Mr Papapostolou submitted that there was already RLZ land in Elevated Plains and Shephards Flat that had similar characteristics to the site at 116 Hepburn-Newstead Road. They submitted that an equivalent zoning should be applied to their site on the basis of its current conditions.

Figure 5: 116 Hepburn-Newstead Road, Elevated Plains



Council opposed the proposed rezoning on the basis that it lacked strategic justification. Council explained that the site was already constrained by the BMO and ESO.

The Panel considers that this rezoning request lacks strategic justification to proceed as part of this Amendment. However, the Panel notes the submissions of Mr Phillips and Mr Papapostolou which highlight some of the existing incoherence between the zoning, on-ground conditions and strategic intent in the MPS.

The Panel has previously recommended that Council prepare a settlement strategy as a priority.

7.3.3 36 Johns Road, Creswick

Ms Moyle (Submitter 131) sought to rezone the site at 36 Johns Road Creswick from RLZ to LDRZ.

Council submitted that it did not support the request on the basis that the site is subject to RLZ with a minimum lot size of 8 hectares. Council submitted that the site was outside the Creswick township boundary with inadequate strategic basis to justify rezoning to another zone but could be considered in future structure planning for the Creswick township.

The Panel considers that this rezoning request lacks strategic justification to proceed as part of this Amendment. However, the Panel notes that the site appears far less constrained than many other parts of the municipality which are currently zoned for residential purposes.

The Panel has previously recommended that Council prepare a settlement strategy as a priority.

7.3.4 Broomfield Rural Living Zone land

Ms Merritt (Submitter 141) sought to rezone a number of parcels of land surrounded by McMillan Road, Acacia Road and Carter Street in Broomfield from RLZ to LDRZ.

Council submitted that it did not support the request on the basis that the site is subject to RLZ with a minimum lot size of 8 hectares. Council submitted that there was inadequate strategic basis to justify rezoning and significant constraints from a bushfire perspective.

Ms Merritt submitted that she represented a group of residents in relation to the rezoning. She submitted that the site abuts the TZ and that most of the land contains mining tails and is therefore not suitable for agriculture. Ms Merritt submitted that there was insufficient data on vacant land to inform the future zoning of the land.

The Panel considers that this rezoning request lacks strategic justification to proceed as part of this Amendment. However, the Panel notes that the site appears far less constrained than many other parts of the municipality which are currently zoned for residential purposes.

The Panel considers that any Shire wide land demand and supply assessment would need to account for constraints on the land, such as any historical contamination.

The Panel has previously recommended that Council prepare a settlement strategy as a priority.

7.3.5 6 Golf Links Road, Hepburn Springs

Mr Monaghan (Submitter 98) sought to rezone part of the site at 6 Golf Links Road Hepburn Springs from RCZ to NRZ to ensure the zoning reflected the UGB for Hepburn Springs.

Mr Monaghan explained that there is an anomaly in the Planning Scheme where part of the site (which is located inside the UGB introduced in 2013) but is still zoned RCZ. He submitted that the RCZ boundary should have been re-aligned to mirror the UGB when the UGB was adopted in 2013.

Council initially did not support the rezoning request and indicated that the rezoning should be subject to a future structure planning process. However, during the Hearing process, Council submitted that it supported the proposed rezoning. This was partly due to information about access to the site.

The existing RCZ that applies to part of 6 Golf Links Road is inconsistent with the UGB designation over that part of the site. The Panel considers that proposed rezoning is consistent with the Council's policy direction for Hepburn Springs.

The Panel concludes that the rezoning is strategically justified.

The Panel recommends:

- 10. Rezone that part of the land at 6 Golf Links Road, Hepburn Springs currently within the designed Urban Growth Boundary for Hepburn Springs but within the Rural Conservation Zone to the residential zone applying to the balance of the land.**

7.3.6 Clunes should be zoned from LDRZ to RLZ

Mr Curzon-Siggers (Submitter 223) requested the rezoning of land in Clunes currently in LDRZ to RLZ. He submitted that the rezoning would maintain the historic subdivision pattern of the municipality and reduce subdivision potential the outskirts of the township:

I raised this concern at the consult in Clunes last year. My concern is that there are parts of the LDRZ precinct in Clunes which should be rezoned RLZ to make subdivision less likely. For example, LDRZ properties in the Roses Lane, Clunes precinct where I live are 8 acre [-3.25 hectare] plus blocks and are too easy to subdivide as LDRZ titles.

These blocks have been intact since the land was first surveyed and sold in the late 1850s and early 1860s. They should be retained, not subdivided indiscriminately, as they have proven their value and ongoing popularity for rural and semi-rural uses.

Council submitted that there was inadequate strategic justification to rezone existing LDRZ lots to RLZ within the Clunes township. Council submitted that any alternative zone could be considered as part of a future strategic planning process.

The exhibited version of Clause 11.01-L seeks to provide for urban development and economic growth in the townships of Clunes. However, other parts of the exhibited Planning Policy Framework identify a number of constraints, including a lack of servicing, flooding and bushfire.

As discussed in Chapter 4 of the report, the MPS needs to more clearly describe the strategic intention for Clunes. Until a clear strategic direction for Clunes has been resolved, the Panel considers that it would be premature to rezone LDRZ land within the settlement to a more restrictive zoning.

The Panel agrees that the future zoning of the LDRZ land should be confirmed once the settlement strategy and structure planning has been resolved.

The Panel concludes that the rezoning is not strategically justified at this time.

The Panel has previously recommended that Council prepare a settlement strategy as a priority.

7.3.7 128 Ajax Road, Hepburn Springs

Mr Tsourounakis submitted, on behalf of Alan Stevens and Dale Cherrie (Submitter 251) that the RLZ Schedule should be varied to enable a 4 lot subdivision at 128 Ajax Road, Hepburn Springs. The site is approximately 8 hectares in area and contains 6 self-contained units used for tourist accommodation. The Schedule to the RLZ currently has a minimum lot size of 8 hectares.

Council submitted that there was no justification to reduce the minimum lot size in RLZ at the site. It submitted that there is no strategic basis to all 4 smaller 2 hectare lots, particularly given the existing constraints on the land. Council submitted that the site could be considered as part of the future structure planning to be undertaken for the Hepburn Springs township.

The Panel agrees with Council. The site is located outside of the existing settlement of Hepburn Springs and is subject to several constraints, including bushfire risk. Given the broader strategic issues in the Shire regarding settlement patterns an intensification of the subdivision at this location is not strategically justified. To allow a more intense lot density at this location is likely to be inconsistent with current State policy relating to consolidation of settlements and environmental hazards. The future of the site would more appropriately be considered as part of a Shire wide settlement strategy.

The Panel concludes that that the RLZ Schedule should not be altered.

7.3.8 114 Main Street, Hepburn Springs

Ms Mok submitted (on behalf of Submitter 190) that 114 Main Street should be rezoned from GRZ to C1Z. Council is proposing to rezone the site from GRZ to NRZ as part of the Amendment, which the Panel does not support.

Submissions

Ms Mok submitted that the site is located with the Hepburn Springs main centre and has been identified for potential commercial expansion. Ms Mok submitted that rezoning of the site to NRZ was contrary to Council's stated strategic intent. She submitted that:

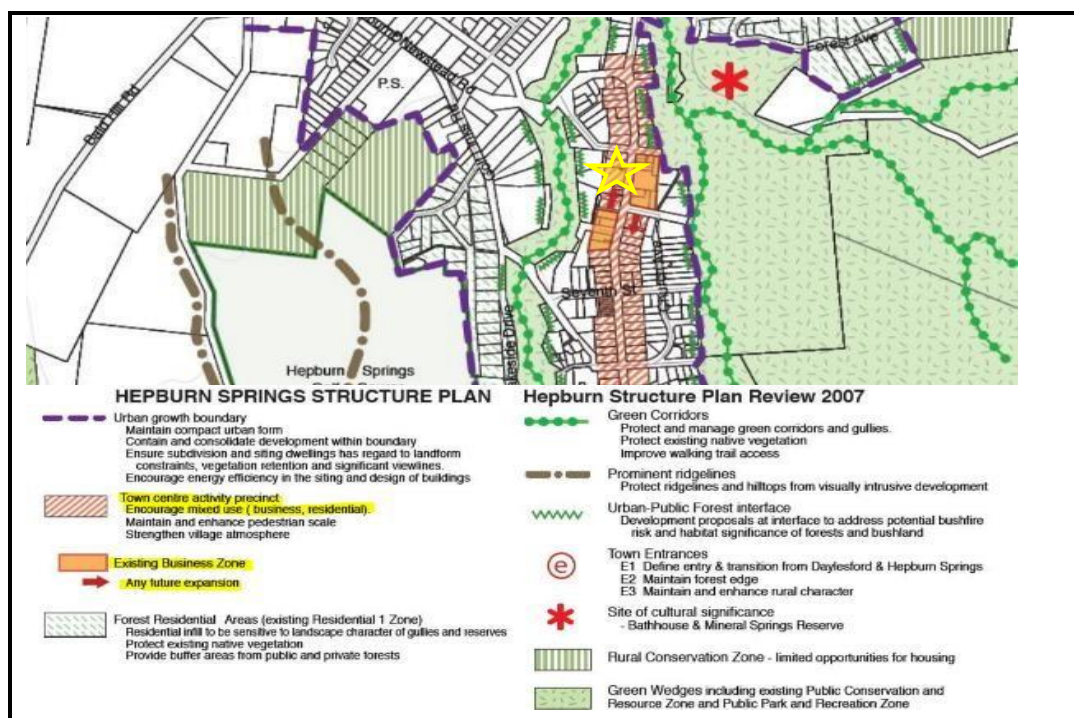
Hepburn Springs is identified as a service town within the Hepburn Structure Plan Review (2006).

Within this document, the role and function of Hepburn Springs is described as providing district level retail, business, employment and cultural facilities with limited comparison shopping. Hepburn Springs functions to strengthen the role of the Daylesford township. The 2006 Review recognised that the proximity to Daylesford means Hepburn Springs can sustain more tourism retailing than would be possible for other towns of its size.

The Hepburn Springs Structure Plan earmarks land abutting Main Road for future extension of the existing business zone to form a commercial spine. The structure plan outlines that mixed use (retail, commercial and residential) and active street frontage need to be encouraged in this proposed precinct, and that strategic work is required prior to any planning scheme amendment to rezone land.

Ms Mok provided an extract from the Structure Plan.

Figure 6: Hepburn Springs Structure Plan Review



Ms Mok took the Panel to the exhibited version of Clause 11.01-L which seeks to provide for urban development and economic growth in the townships of Clunes, Creswick, Daylesford, Hepburn Springs and Trentham. The Hepburn Township Map identifies 114 Main Street within the commercial area of the town centre activity precinct.

Ms Mok submitted that the rezoning of the site to C1Z was consistent with Council's more recently adopted Economic Development Strategy 2016-2021 in which Council sought to:

... attract and develop business opportunities in the area to further enhance the Hepburn Springs experience³

Ms Mok provided extracts from the Strategy that anticipated that rezonings in Hepburn Springs may be required to encourage economic activity.

Council submitted that there was inadequate strategic basis to currently justify rezoning to a C1Z at this stage. Council acknowledged that the site was in a commercial area but that rezoning should be considered once a municipal wide industrial, commercial and residential land demand study was undertaken. Council submitted that there are additional sites along Main Road, Hepburn Springs that should also be considered for a C1Z such as the Hepburn Springs Hotel and existing and former shops dotted along the road. Council submitted that this required a strategic approach for the township, rather than an ad-hoc approach.

Council submitted that any rezoning to NRZ would not negatively impact previously permitted development or the existing use rights at the site.

³ Hepburn Mineral Springs Revitalisation, Hepburn Shire Council Economic Development Strategy 2016-2021, pg. 63

Discussion

The Panel agrees that there is inconsistency between Council's stated strategic intent for the Main Street in Hepburn Springs and its proposal to rezone the township to NRZ. Council has relied on its 2006 structure planning work as justification for the NRZ, however Mr Mok provided examples where that same structure plan also indicated that some areas should be zoned for more intense purposes. As outlined in Chapter 4 the Panel does not think it is appropriate for Council to cherry pick only parts of its previous strategic work.

As outlined in in Chapter 4 of this report, there is a discrepancy between the policy direction in the Planning Policy Framework and the underlying zoning provisions.

The Panel agrees with Council's concerns with site specific rezonings. The Panel has agreed with Mr Mok's submission that there is no strategic justification to apply the NRZ. It is considered that the site should remain in the GRZ until further strategic work has been completed to inform the vision for Hepburn Springs.

Conclusions

The Panel has already recommended that Hepburn Springs remain in the GRZ until further strategic work has been completed.

That Panel concludes that the site should not be rezoned to C1Z at this time and that the township should remain in the GRZ.

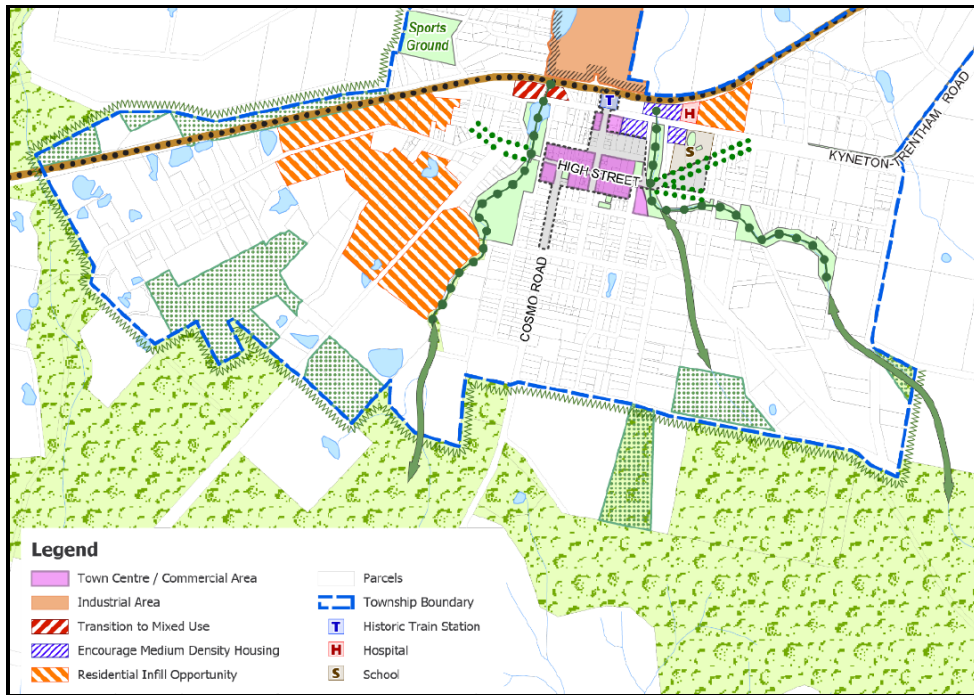
7.3.9 6 Victoria Street, Trentham

Mr Scarpaci, on behalf of Pachhe Family Trust (Submitter 269), submitted that the site should be rezoned from Industrial 1 Zone (INZ1) to TZ. He explained that the site was used for industrial purposes and is close to other land known to be contaminated.

Mr Scarpaci submitted that two preliminary contamination assessments have been completed for the site, one in 2015 and another in 2020. A copy of the 2020 assessment was provided to the Panel. The author of that report concluded that the site was potentially contaminated and that either an environmental audit should be completed or an EAO should be applied to the land before a sensitive use was permitted.

Mr Scarpaci submitted that there was sufficient strategic justification to rezone the land to TZ. He referred to the Trentham Structure Plan that identified the site as a candidate for mixed use zoning. Mr Scarpaci provided an extract from the exhibited version of maps at Clause 11.01-L (Figure 7) which identified the site should transition to mix use.

Figure 7: Trentham Structure Plan



Council supported the rezoning of the land in principle, but submitted that it was premature to introduce a new zone. Council submitted that the site should remain in the INZ1 until a full environmental audit was completed.

Council submitted that a contamination assessment must be carried out on the land to confirm its suitability for residential use and that any rezoning should take account of the Major Hazard Facility on the neighbouring site.⁴ Council submitted that any development at the site should need to meet the requirement at Clause 53.10 and Ministerial Direction 19. It submitted that any rezoning to a sensitive use in close proximity to a Major Hazard Facility (Arch Wood Protection wood treatment facility on land to the north) would require consultation with the EPA. Should the adjacent land not be rezoned residents would then face the risk of the potential of a new industrial operation being established in this part of Trentham.

Discussion

The Amendment includes a structure plan which earmarks the site for transition to mixed use zoning. The exhibited policy at Clause 11.01-L suggests that development should be directed to Trentham as one of the key townships in the Shire. On the face of the Planning Policy Framework, it appears that the site should be rezoned to Mixed Use Zone (MUZ). However, the Panel notes that there are several constraints affecting the development potential of the site, including its own level of potential contamination and proximity to a Major Hazard Facility to the north.

The Panel notes Council's submissions in relation to coordinating a contamination assessment for this site and the land to the north. However, this may not be practical as the future plans for the Major Hazard Facility are not clear to the Panel.

⁴ The site to the north is also identified as potentially contaminated and would presumably also require an environmental audit to be completed

There is justification to rezone the site to an alternative zone. However, the most appropriate zone is likely to be mixed use rather than TZ. In line with *Ministerial Direction 1 – Potentially Contaminated Land* and the recommendations of the 2020 contamination assessment, the Panel considers that an EAO is an appropriate tool to manage the risks of contamination at the site.

The implications of rezoning the site on the operational of the Major Hazard Facility were not fully ventilated at the Hearing. The Panel considers that further discussion with the EPA should occur.

Conclusion and recommendations

That the most appropriate zoning for the property is likely to be MUZ. However, given the existing contamination on the site and proximity to a Major Hazard Facility further consultation with the EPA should occur.

The Panel recommends:

- 11. Subject to advice from the Environment Protection Authority on the constraint imposed by the Major Hazard Facility, rezone 6 Victoria Street, Trentham to Mixed Use Zone and apply an Environmental Audit Overlay.**

7.3.10 Site specific request at 94 Mossops Road, Bullarto

Ms Fallshaw (270) submitted that the site at 94 Mossops Road Bullarto should be rezoned from FZ to RLZ. Ms Fallshaw submitted that the RLZ would align with neighbouring properties in Bullarto. She submitted that she intended to apply for a tourist facility at the site in the future.

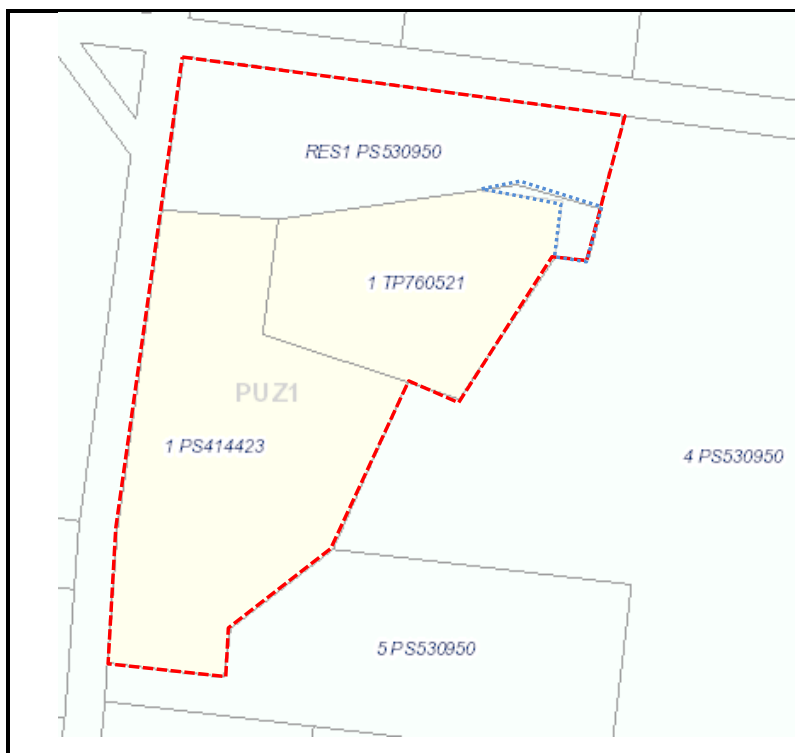
Council submitted that there was insufficient strategic support for this rezoning request. It submitted that the land is outside any defined townships or settlements. It submitted that the land is constrained by the ESO and the BMO which would make achieving the requirements of the BMO challenging.

The Panel agrees with Council. The site is located outside of existing settlements and is subject to several constraints, including bushfire risk and environmental values. Given the broader strategic issues in the Shire regarding settlement patterns, an intensification of the subdivision at this location is not strategically justified. A rezoning at this location is likely to be inconsistent with current State policy relating to consolidation of settlements and environmental hazards.

The Panel concludes that no change is required.

7.3.11 191 Lagoon Road, North Blackwood

The parcels sought to be rezoned (Part of TP760521 and Reserve 1 PS530950 in Figure 8) are owned by Coliban Water and associated with the Trentham potable water treatment plant. Coliban Water requested that the land should be rezoned from FZ to Public Use Zone 1 to better reflect the existing and future operations at the site.

Figure 8: Trentham Potable Water Treatment Plant

Coliban Water submitted that it acquired the land Reserve 1 PS530950 in 2005 to provide additional land for the expansion of the Trentham WTP. This reserve remains in the FZ. Coliban Water also submitted that there was a misalignment between the zoning layers and the title boundary on part of TP760521, dating back to 2002.

Council submitted that it supported the proposed rezoning. During the Amendment process Council asked Coliban Water to give further notice of the proposed rezoning to adjoining properties. Coliban Water advised that it sent letters to all adjoining property owners and encouraged them to make submissions to the Panel, if they had any concerns regarding the rezoning. The Panel has not been referred any submissions that oppose the rezoning.

This rezoning proposal is not considered controversial. The Trentham potable water treatment plan is a facility which services the needs of the existing community. If urban development is consolidated in settlement areas, infrastructure such as this facility will be necessary.

The Panel considers that the zoning anomaly should be corrected. The PUZ1 will enable the existing operations to continue and for future expansion in a manner consistent with the underlying zoning.

The Panel recommends:

- 12. Correct the minor zoning anomaly at the Trentham WTP on TP 760521 and the rezoning of Reserve 1 on PS530950 by rezoning the land from Farming Zone to Public Use Zone Schedule 1.**

7.3.12 217 Ascot Road, Creswick

Mr Austin on behalf of Mr Iles (Submitter 5) requested that the land shown in Figure 9 be rezoned from PUZ1 to RLZ. The land used to form part of the Creswick Wastewater Treatment Plant which has since been decommissioned.

Council submitted that it supported the rezoning on the basis that the PUZ1 is an anomaly.

Figure 9: Creswick Wastewater Treatment Plant



The site is in Creswick, which is identified as one of the townships where urban consolidation is encouraged in the exhibited version of the Planning Policy Framework.

The site is no longer used for a public purpose and the Panel agrees that the current PUZ1 is an anomaly. The Panel considers that it would be appropriate to rezone the land to RLZ given the surrounding zoning and context of the township. However, the Panel notes that the future zoning of the township is likely to be reviewed in a municipal wide settlement strategy.

The Panel recommends:

- 13. Rezone 217 Ascot Road, Creswick from Public Use Zone Schedule 1 to Rural Living Zone.**

8 Overlays and other controls

8.1 Removal of the Restructure Overlay

(i) The issue

A number of submissions (1, 9, 11, 187, 234, 263) requested the removal or resolution of the Restructure Overlay from Drummond (Schedule 1) and Sailors Falls (Schedule 2).

A Restructure Overlay applies to the settlements of Drummond, Sailors Falls and Wheatsheaf but no restructure plans have been prepared. This has created an impasse where landowners are unable to apply for planning permits in land within the Restructure Overlay.

(ii) What is proposed

No change to the Restructure Overlay is proposed as part of the Amendment.

(iii) Submissions

Council acknowledged the issues facing landowners in the Restructure Overlay. However, Council has determined to retain the Restructure Overlays and prepare the required restructure plans as a short-term action to ensure they are compliant. This work is identified in Clause 74.02 Further Strategic Work. Council submitted that it intends to commit funds at the 2020-21 mid – year budget with the intention of preparing restructure plans in 2021.

Council explained that in 2015 it sought authorisation for Amendment C60 to remove the Restructure Overlays. In November 2015, DELWP refused this request and asked Council undertake further work to consider bushfire requirements and justify the removal of these controls. This work has not been undertaken to date.

Mr Sloyan submitted the failure of Council to prepare restructure plans in Drummond had created significant uncertainty. He submitted that he was unable to apply for a planning permit on the basis that there was no restructure plan in place, effectively stalling any development proposals for his site.

Mr Sloyan referred to work previously completed by Meinhardt⁵ which reviewed the restructure areas in 2013. He questioned why the restructure planning process had stalled and did not consider this was a priority for Council to resolve. He submitted that this created an impasse.

(iv) Discussion

Council has conducted a review of the Restructure Overlay areas in 2013 after receiving funding in 2012. In 2015 Council resolved to remove the Restructure Overlay and Sailors Falls through Amendment C60,⁶ however this was not supported by the Department. There are no restructure plans for these areas.

The Panel reviewed the Meinhardt report referred to by Mr Sloyan. Meinhardt conducted a high level assessment of the bushfire risk and land capability in Wheatsheaf, Sailors Falls and

⁵ Hepburn Shire's Restructure Plan Project, Meinhardt, March 2013 - <https://www.hepburn.vic.gov.au/hepburn/wp-content/uploads/2015/01/20-08-2013-Attachment7-HepburnRestructurePlanFinalReport-March2013.pdf>

⁶ <https://www.hepburn.vic.gov.au/hepburn/wp-content/uploads/2015/07/21-07-2015-Council-Meeting-Agenda.pdf>

Drummond areas, all of which are affected by the Restructure Overlay. Meinhardt concluded that opportunities for restructure in Drummond and Sailors Falls would be limited given the number of dwellings. Meinhardt concluded that fire risk, land capability and relevant policy would strongly suggest that further subdivision was inappropriate and that any development would need to be carefully scrutinised.

The problems presented by the Restructure Overlays are indicative of a broader issue around settlement planning in the Shire. There are clear indications that the settlements currently affected by the Restructure Overlays are inappropriate for development, due to fire and land capability constraints. However, by retaining the underlying zoning and Restructure Overlays landowners face uncertainty about how (or when) they might be able to develop on their land.

It seems that the retention of the Restructure Overlays is providing false hope about the development potential in Sailors Falls and Drummond. By not preparing restructure plans for land in the Restructure Overlays Council have applied a default 'no go' on these settlements. If this is the strategic intention, Council needs to be more explicit about this in its PPF and through the selection of appropriate zones. This is an inequitable situation for landowners in these settlements.

The Panel considers that the future of the townships in the Restructure Overlay should be a priority for Council. The Panel has already recommended a municipal wide settlement strategy is required, however the Restructure Overlays present a unique challenge.

The purpose of the Restructure Overlay includes:

To identify old and inappropriate subdivisions which are to be restructured.

To preserve and enhance the amenity of the area and reduce the environmental impacts of dwellings and other development.

The Panel considered there is a structural issue with the VPP in that a Restructure Overlay has been applied to land, with no commitment or urgency to prepare a restructure plan. There is no direction in the Practitioner's Guide in relation to the process or timing of restructure plans. By not preparing restructure plans, Council is able to halt development without an explicit policy direction suggesting that these areas should not be developed.

Section 25A(1) of the PE Act allows a Panel to recommend that an amendment be prepared to the VPPs. The Panel considers that the VPP should be amended to ensure that Restructure Overlays cannot sit dormant without the preparation of a restructure plan. The Panel considers that there should be a sunset clause introduced into the VPP which requires a planning authority to prepare a restructure plan within 3 years of imposing the Restructure Overlay. After the 3 year period, landowners should then be given the option of applying for a permit, which Council would be required to consider on its merits. This would provide an incentive for Councils to ensure restructure plans are prepared in a timely manner to provide the community certainty about development expectations in legacy subdivisions.

(v) Conclusion

The Panel concludes that it is unfair for the Restructure Overlay to continue to apply to land without the preparation of a requisite restructure plan.

The Panel records that it will write to the Department suggesting that the Minister prepare an amendment to the Restructure Overlay in the VPPs to introduce a sunset clause of 3 years in

which to prepare a restructure plan. That clause should allow landowners to submit planning applications after the 3 year period if a restructure plan has not been prepared.

8.2 Clause 42.01 Environmental Significance Overlay

(i) The issue

The issue is whether the proposed changes to ESO1 and ESO2 are acceptable.

(ii) What is proposed?

Schedules 1 and 2 to Clause 42.01 (ESO) are proposed to be revised to comply with the *Ministerial Direction on the Form and Content of Planning Schemes*.

ESO1 and ESO2

The ESO1 aims for the long-term plentiful supply of quality water within the special water supply catchments by protecting and enhancing natural resources and environmental systems and eliminating detrimental impacts on the quality and quantity of water in the catchments.

ESO2 aims to protect water quality and quantity of mineral springs, fresh springs and their aquifers from the impacts of effluent and drainage, water bores that provide town water supply and private domestic bores. The areas identified are usually within a 200 metre radius of the identified spring or aquifer, other than the Central Springs area in Daylesford and Hepburn Springs which is a more expansive area.

Both schedules require a permit for buildings and works, subdivision and vegetation removal to appropriately manage land within the catchment, subject to a range of permit exemptions that have been drafted with the relevant water authorities.

The existing schedules includes a number of mandatory requirements for the treatment of wastewater, development and management of stormwater that have been translated into the proposed Schedule. The schedules are drafted so that a permit must meet the requirements in the following documents:

- Guidelines for Environmental Management: Code of Practice – Onsite Wastewater Management (Publication 891.4, Environment Protection Authority, 2016).
- Planning Permit Applications in Open, Potable Water Supply Catchment Areas (Department of Sustainability and Environment, 2012).
- Domestic Wastewater Management Plan (Hepburn Shire Council, June 2014).
- Construction Techniques for Sediment Pollution Control (Environment Protection Authority, May 1991).
- Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).

Amendments unique to ESO1

ESO1 currently includes a notice and review exemption. Council has proposed to include this in the new Schedule despite there being no related provision in the ESO parent provision.

A post-exhibition version of the ESO1 Schedule was included in Council's Part A submission.

(iii) Submissions

Council submitted that the ESO Schedules had been prepared based on feedback from the catchment management authorities, the relevant water authorities and DELWP.

Council submitted that the list of documents should be included at Clause 3.0 as permit requirements, rather than decision guidelines. It submitted that it was unnecessary to list the documents as decision guidelines given the documents are already listed as background documents at Clause 72.08.

Council has proposed to include the notice and review exemption as a permit requirement in ESO1. It submitted that there is no other area in which to include it within the ESO schedule template. Council submitted that it wanted to retain this exemption to assist in efficient and effective permit application processing and assessment but is aware that there is no head provision for this exemption.

Coliban Water made submissions in relation to ESO1. Coliban Water advised that it is seeking a consistent ESO across the Upper Coliban catchment to have a consistent approach across different municipalities that was modelled on the ESO1 proposed as part of the Amendment. It submitted that:

Coliban Water is currently working with Macedon Ranges Shire Council to provide an update to ESO4 in the Macedon Ranges Planning Scheme using essentially the same form ESO schedule as the post exhibition version of ESO1 proposed by Hepburn (save for the minor issues noted in this submission below). This reflects an agreed position of the Water Authorities.

...

By requiring all applications for works under ESO 1 to be referred to the relevant water authority, the ESO Amendment will ensure a consistent approach to assessing the potential impacts of development in the entire Catchment, balancing the reasonable needs of development with the effective protection and management of the catchment.

In relation to the drafting of Schedule 1 Coliban Water submitted that it agreed to the post exhibition changes to Clauses 1.0 and 2.0 of Schedule 1. However, it submitted that further revisions required.

Coliban Water submitted that the list of documents in Clause 3.0 would be more appropriately located in Clause 5.0 as decision guidelines have regard to the *Ministerial Direction on the Form and Content of Planning Schemes*. Coliban Water submitted that if that content was relocated to Clause 5.02 the following drafting should be included:

Whether the development is to be undertaken in accordance with:

- Any relevant catchment management plan, policy or strategy adopted by a relevant Water Authority or any relevant Ministerial Direction.
- The *Guidelines for Environmental Management: Code of Practice – Onsite Wastewater Management* (Publication 891.4, Environment Protection Authority, 2016).
- The *Planning Permit Applications in Open, Potable Water Supply Catchment Areas* (Department of Sustainability and Environment, 2012).
- The *Construction Techniques for Sediment Pollution Control* (Environment Protection Authority, May 1991).
- The *Urban Stormwater - Best Practice Environmental Management Guidelines* (Victorian Stormwater Committee, 1999).
- The *Domestic Wastewater Management Plan* (Hepburn Shire Council, June 2014).

Coliban Water acknowledge that the suggested first bullet point is arguably already covered in section 60(1A)(g) of the Act, however it submitted it should be included for the avoidance of doubt.

Coliban Water supported the continuation of the notice and review exemption in ESO Schedule 1. However, it acknowledged the form and content issues given the parent provision does not allow for such an exemption. Coliban Water noted that section 52(4) of the PE Act does permit a planning scheme to exempt any class of classes of application from all or any of the requirements of section 52(1) of the PE Act.

Coliban Water submitted that it supported the post exhibition changes at Clause 4.0. Coliban Water submitted that it would be assisted by this information when assessing referrals. It submitted that the post exhibition changes would aide applicants in the interpretation and understanding of the application requirements being requested within the geotechnical report or land capability assessment.

(iv) Discussion

There seems to be general agreement between the Council and Coliban Water in relation to ESO1. No specific submissions were received in relation to ESO2, however many of the same principles apply.

The Panel agrees that ideally the same ESO1 should be applied across the catchment, to ensure a consistent approach. However, the Panel needs to ensure the form and content in the ESO is consistent with the relevant Ministerial Direction and Smart planning principles.

The Panel considers including a specific list of documents with the requirement 'applications must meet' in Clause 3.0 is too vague. The documents referred to are guidelines published by other organisations outside of the control of the planning authority.

Furthermore, a new *Environment Protection Act* commences in July 2021, along with new guidance and controls for onsite wastewater treatment facilities. The Panel considered that it would be unwise to reference documents which are likely to become outdated in less than 5 months. However, the Panel agrees that onsite wastewater needs to be designed to meet industry standards.

Section 60(1A)(g) of the Act already requires Council to consider relevant guidance from the water authority. Similar guidance is also referenced in Clause 14.02-1S of the Planning Policy Framework. If additional policy guidance is proposed it could be included in the PPF.

If Coliban Water and Council are seeking to provide direction to landowners, it should provide separate guidance that it consistent with new environmental protection laws.

It is not clear that the Schedule can include notice exemptions as these are not provided for in the parent provision. If the Council receives a permit application, it could still form the view under section 52(1) of the PE Act that the grant of the permit would not cause material detriment to any person. If the Council formed that view it would not be required to give notice.

(v) Conclusion and recommendations

The Panel concludes that further changes are required to the drafting of ESO1 and ESO2 to meet the *Ministerial Direction on the Form and Content of Planning Schemes*.

The Panel recommends:

14. In the Schedules to Clause 42.01 Environmental Significance Overlay:

- In Clause 3.0 of Schedule 1 and 2 delete the text and documents listed, after and including the following text '*A permit must meet the following requirements*'.
- In Clause 3.0 of Schedule 1 delete the notice and review exemptions.

8.3 Clause 42.03 Significant Landscape Overlay

(i) What is proposed

The Amendment originally sought to extend the SLO1 mapping to more parts of the Shire. Council has abandoned this component of the Amendment until further strategic work and community consultation is undertaken.

SLO1 is proposed to be redrafted as part of the Amendment. This component was not abandoned by Council.

(ii) Submissions

Council submitted that the proposed changes to the drafting of the SLO1 would ensure it met the *Ministerial Direction on the Form and Content of Planning Schemes*.

Several submitters raised concerns regarding the extent of SLO1 mapping at the Hearing, even though this aspect of the Amendment was abandoned. Several submitters suggested that the extent of the SLO1 needed to be significantly expanded to provide greater protection for landscape values. Many submitters, including Ms Marshall, wanted the SLO1 to be expanded beyond the cones of the volcanic features, to ensure inappropriate development did not occur in the hinterland areas.

Mr David Toose, Mr Tom Toose and other submitters suggested that further discussion was required about the impacts of the SLO1 on farming. Mr Tom Toose submitted that there were many rich productive agricultural areas that could be adversely affected if onerous controls made farming difficult. Mr David Toose suggested that the landscape values needed to be considered in conjunction with other factors, such as land productively and proactive land management considerations.

(iii) Discussion

The Panel considers that the extent of the SLO1 mapping is an issue that needs to be resolved. Several submitters place a higher value on landscape and heritage values, whereas other submitters place a higher value on agricultural pursuits. These values are not necessarily always competing however the Council need to strike a balance.

The Panel has already recommended a Shire wide settlement strategy that accounts for different values and policy considerations. This work will be critical in informing the extent of the SLO1 in the future and the nature of the control.

Council has proposed significant changes as part of its post-exhibition version.

It is important to note that in the parent provision the requirement for buildings and works does not apply to:

To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay.

In relation to fences:

- The existing SLO1 does not require a permit for a fence (by virtue of the parent provision)
- The exhibited SLO1 required a permit to construct a fence but not “To construct a fence that is a timber or metal post and wire, timber or metal post and railing, wire mesh, chainmesh or similar open rural style fence up to 1.8 metres in height.”
- The post-exhibition changes removed the requirement for a fence.

In respect to other works:

- The existing SLO1 does not require a permit for:
 - Emergency works.
 - Works associated with minor works, repairs and routine maintenance to existing buildings and works.
- The exhibited SLO1 does not require a permit:
 - To construct a farm access track.
 - For minor construction to existing buildings and works.
 - For the construction of a building or the construction or the carrying out of works less than 6 metres in height above natural ground level and not more than 100 square metres in additional floor area that are of muted, natural and non-reflective colours and materials.
 - For works undertaken by or on behalf of a public authority relating to watercourse management and environmental improvements.
- The post-exhibition changes proposed to leave the existing exemption unchanged.

In respect of vegetation removal:

- The existing SLO1 requires a permit to remove, destroy or lop native vegetation
- The exhibited SLO1 requires a permit to remove, destroy or lop vegetation (this includes more than native vegetation)
- The post-exhibition changes proposed to confine the permit requirement to native vegetation (that is vegetation native to Victoria).

On balance the Panel considers that the exhibited version of the SLO1 is superior to the current version or the post-exhibition version. There is the real prospect of adverse impacts on the landscape from inappropriate fencing and other works. The Panel does not consider that the SLO1 would adversely impact the operation of agriculture, though this is something that may need to be further reviewed as part of the broader settlement strategy and the potential wider application of the Schedule.

(iv) Recommendation

The Panel recommends:

- 15. Adopt the exhibited version of Schedule 1 to the Significant Landscape Overlay but limit the requirement for a permit to remove vegetation to native vegetation.**

8.4 Clause 43.02 Heritage Overlay

(i) What is proposed

The Amendment redrafts the Schedule to Clause 43.01 to include application requirements. The Schedule currently does not specify any application requirements.

(ii) Submissions

Council submitted that the revisions were proposed to comply with the *Ministerial Direction on the Form and Content of Planning Schemes* and *A Practitioner's Guide to Victorian Planning Schemes*, April 2020.

Council submitted that the inclusion of new application requirements in Clause 43.01 reflects the details of further information requests made by Council officers and Council's Heritage Adviser on heritage applications. Council submitted that these requests often cause significant delays to applicants and Council's administration of applications. With clearer Council expectations expressed in application requirements, applications received should be of a higher standard, processing of heritage applications should be improved and decision making delays minimised.

(iii) Discussion

The Practitioner's Guide recognises that a local schedule can specify application requirements that are routinely requested for particular permit applications. The Practitioner's Guide states that the requirements included in the schedule must relate to the planning outcome of the parent provision.

The Panel has reviewed the application requirements in the revised HO Schedule. Notably the application requirements for subdivision proposals appears to duplicate requirements in other parts of the Planning Scheme that relate to subdivision proposals (for example, Clause 56.01). These application requirements do not appear to relate to the planning outcome sought by the Heritage Overlay. These requirements already exist and duplicating such requirement is not considered consistent with the *Ministerial Direction on the Form and Content of Planning Schemes*.

The other application requirements proposed in the new Schedule relate to the planning outcomes sought by the HO. The Panel supports these changes.

(iv) Conclusion and recommendations

The Panel concludes that the application requirements specified in the Schedule for subdivision applications are unnecessary and do not relate to the planning outcome sought by the Heritage Overlay.

The Panel recommends:

- 16. Revise the application requirements in the Heritage Overlay Schedule relating to subdivision to ensure they relate to planning outcomes of the Heritage Overlay and do not duplicate other requirements in the Planning Scheme.**

8.4.2 Heritage Overlay Potato Huts (HO988)

The Amendment proposes to include the Potato Huts into the Heritage Overlay. The huts are proposed to be included through a new listing in HO988 for identified 'Potato Huts' in Little Hampton and Trentham.

A number of submissions (241, 258, 265) supported the inclusion of the Potato Huts into the Heritage Overlay. No submissions opposed their inclusion, although one submission was concerned about damage and vandalism that could result from their identification.

Council supports these submissions and believes that no changes are required to the Amendment as a result of submissions.

This component of the Amendment is not considered controversial. There is sufficient strategic justification to recognise the heritage values of the Potato Huts in the Planning Scheme.

The Panel concludes that the Potato Huts should be included in the Heritage Overlay.

8.5 Clause 43.02 Design and Development Overlay

(i) What is proposed?

The Amendment proposes to replace existing Schedules 1, 2, 3, 4 and 5 to Clause 43.02 with new Schedules 1, 2, 3, 4 and 5.

The mapped areas for Clause 43.02 Schedules 1, 2, 3 and 4 that overlap areas where the NCO is applied have been deleted.

This is to reduce the duplication of controls (Smart Planning principles) and apply the intent of advice in the new Planning Practice Notes 90 and 91.

(ii) Submissions

Council submitted that the parts of DDO 1, 2, 3 and 4 that overlap with the NCO have been deleted to reduce duplication. Council submitted that the removal of duplication was consistent with Smart Planning principles the intent of advice in the new Planning Practice Notes 90 and 91.

Council submitted that the Schedules had been revised to provide improved clarity and guidance for decision making. Council submitted that these revisions were policy neutral.

(iii) Discussion

These changes do not alter the design intent for the existing settlements. The Panel supports the proposal to remove duplication in the system. However, the Panel notes that the design expectations in some townships may be altered following the completion of a Shire wide settlement strategy. For example, a more intense form of development may be expected in commercial areas of townships earmarked for growth. The Panel expects that the DDO controls would need to be revisited once the settlement patterns are known.

(iv) Conclusions

The Panel concludes that the alterations are acceptable at this time. The Panel expects that some of the design parameters would be revisited following a Shire wide settlement strategy.

8.6 Clause 43.02 Design and Development Overlay Schedule 6

Council originally proposed to apply Design and Development Overlay Schedule 6 (DDO6) to the Daylesford landfill site.

Council abandoned this component of the Amendment pending further strategic work and community consultation.

While this component of the Amendment had been abandoned, several submitters referred to it during the Panel hearing. For example, Mr Brownscombe submitted that the future controls over the landfill site needed to be reviewed and that the extent of the controls originally proposed was unnecessary.

The Panel did not receive any submissions from EPA regarding the removal of this component of the Amendment.

Given this component of the Amendment has been abandoned the Panel is not able to make any recommendations. However, the Panel notes that the future of buffers around the landfill facility are a live issue for many residents. Given the potential implications for future residents the Panel support Council's intention to resolve this matter in consultation with the EPA.

8.7 Clause 43.04 Development Plan Overlay

(i) What is proposed

The Amendment proposed to delete Clause 43.04 and Schedules 1, 2 and 3 and associated mapping to remove the DPO from land at:

- The former Daylesford Abattoir at 57 Leitches Creek Road, Daylesford.
- WD Seeds at Creswick-Newstead Road, Smeaton.
- Creswick Golf Course Resort at 1500 Midland Highway, Creswick.

(ii) Submissions

Council submitted that these controls are now redundant as development outcomes have been implemented or can be implemented in other ways.

Submissions were received in relation to the DPO3 which applies to the Creswick Golf Course Resort. The DPO3 currently applies to the site along with an approved Development Plan and an existing Section 173 Agreement. Council submitted that it is not necessary to retain the DPO3 in combination with the SUZ2 zoning, the approved Development Plan and Section 173 Agreement. Council submitted that requirements from the DPO3 (where relevant) have been included in the SUZ2 to give clear guidance to applicants which will continue to facilitate development of the land for a golf course and residential resort.

Tract Consultants made submissions on behalf of RACV (Creswick Resort) (submission 211). It opposed the removal of DPO3 from Creswick Resort on the basis that it still served a legitimate purpose. It raised three main concerns:

- Loss of existing notice and review exemptions under the DPO3.
- Lack of a suitable mechanism to amend the approved Development Plan.
- Inconsistency with Planning Practice Notes PPN03 'Applying the Special Use Zone' and PPN23 'Applying the Incorporated Plan and Development Plan Overlays'.

Tract submitted that the notice and review exemptions that currently operate under the DPO3 are broader than the exemptions that could be included in the SUZ2. Tract explained that the notice exemption in the DPO3 overrode all parts of the Planning Scheme. In contrast, any notice exemption in the SUZ2 would only override requirements in the SUZ2. Tract also acknowledged that other overlay controls and particular provisions already contain notice and review exemptions (for example, ESO, BMO and Clause 52.06).

Tract submitted that DPO3 contains a mechanism to review and amend the Development Plan. The Development Plan was most recently approved in 2008, therefore there is a reasonable expectation that further revision would be required. Tract submitted that it needs certainty in relation to the process for amending the Development Plan into the future.

Tract submitted that PPN03 and PPN23 clearly direct that the DPO is the preferred tool to support master planning processes.

No submissions were received in relation to the former Daylesford Abattoir at 57 Leitches Creek Road, Daylesford or WD Seeds at Creswick-Newstead Road, Smeaton.

(iii) Discussion

The Panel agrees with the submissions of Tract that DPO3 still serves a purpose. The DPO is designed to be a flexible control that enables long term master planning to evolve over time.

The Panel considers that there is a legitimate expectation that the approved Development Plan would need to be amended given it was last approved in 2008. It considers that the DPO3 is the most appropriate mechanism for such a revision.

The Panel is unclear about some of Tract's submissions in relation to the notice and review exemptions. On one hand it submitted that the DPO3 exemptions should be retained as it has broader reach. Tract later submitted that including the exemption in the SUZ2 may be acceptable given the other overlay controls on the land already include a notice exemptions. The Panel considers that the notice exemption should remain in the DPO3. While the ESO, BMO and Clause 52.06 (which currently apply to the land) contain exemptions, other controls could be applied in the future.

The Panel considers that the DPO3 should be retained to enable the completion of the master planning process originally envisaged for Creswick Golf Course Resort.

(iv) Conclusions and recommendation

The Panel concludes that:

- The DPO can be removed from the former Daylesford Abattoir at 57 Leitches Creek Road, Daylesford and WD Seeds at Creswick-Newstead Road, Smeaton.
- The DPO3 should be retained at the Creswick Golf Course Resort.

The Panel recommends:

- 17. Retain Development Plan Overlay Schedule 3 over the Creswick Golf Course Resort and abandon any changes made in the exhibited version of the Special Use Zone Schedule 2 that duplicate the Development Plan Overlay Schedule 3 requirements.**

8.8 Clause 43.05 Neighbourhood Character Overlay

(i) What is proposed

The Amendment simplifies the application of the existing Neighbourhood Character Overlays (Schedules 1 and 2) by splitting each Schedule that contains two and four precincts respectively into an individual overlay for each precinct. Schedules 1, 2, 3, 4, 5 and 6 are proposed to apply respectively to existing Precincts 1, 2, 5, 9, 14 and 13 as detailed in the *Daylesford Neighbourhood Character Study, 2002*. This results in six Schedules for individual neighbourhood character precincts and provides clarity for end users.

(ii) Submissions

Council submitted that other than simplifying Schedule content, there is no change to the intent of the permit requirements and content for the six neighbourhood character precincts.

(iii) Discussion

No specific submissions were raised in relation to the change. However, several resident submitters supported the protection of neighbourhood character values in Daylesford.

The changes proposed are effectively policy neutral and do not alter the character policy settings for existing settlements.

The Panel notes that these changes rely on a 2002 study, drafted at a time when different State policy priorities existed. It is anticipated that as part of a municipal wide settlement strategy the neighbourhood character expectations may alter (for example, some townships may need to accommodate higher population densities).

(iv) Conclusion

The Panel concludes that the changes to the Neighbourhood Character Overlay are acceptable.

9 Particular, general and administrative provisions

9.1 Clause 52.28 Gaming

The Amendment replaces the current Schedule with a new Schedule that Council submitted:

...includes clearer and more legible content based on its application to strip shopping centres in existing townships, identified through the Commercial 1 Zone.

Council submitted that this change provide clarity on where a gaming machine is prohibited and no additional land has been included in the Schedule.

This was not subject to discussion at the Hearing but the Panel notes there is a technical issue. In order to be 'prohibited' in Clause 52.28, an area must first meet the requirements of the parent provision as to what constitutes a strip shopping centre:

A strip shopping centre is an area that meets all of the following requirements:

- it is zoned for commercial use;
- it consists of at least two separate buildings on at least two separate and adjoining lots;
- it is an area in which a significant proportion of the buildings are shops;
- it is an area in which a significant proportion of the lots abut a road accessible to the public generally; ...

Whether the listed addresses are a strip shopping centre is a 'fact' that should be determined by the responsible authority (or by review, VCAT) considering the conditions at the time, and cannot not be fixed in the Schedule. The Panel has not reviewed whether the listed properties meet the requirements for a strip shopping centre.

The Panel recommends:

- 18. Review whether listing property addresses in the Schedule to Clause 52.28 has the potential to create uncertainty if the areas do not meet the requirements for a strip centre in the Clause 52.28-5.**

9.2 Clause 52.33 Post Boxes and Dry Stone Walls

The Amendment will apply the Schedule to Clause 52.33 to all land in the municipality. The Review identified that further heritage work was required to be undertaken to justify the inclusion of additional heritage sites.

Further heritage work was conducted with the *Hepburn Heritage Strategy 2020-2030* which was adopted by Council in June 2020. This strategy identified that there were significant gaps for the protection of dry stone walls in the Planning Scheme with the loss of these walls being a major threat to the Shire's heritage. Council endorsed the inclusion of Clause 52.33 in the Amendment to limit the losses of remaining walls across the municipality while undertaking further heritage work to identify precise locations of dry stone walls.

The Panel supports this change.

9.3 Clause 66.04 Referral of Permit Applications under Local Provisions

The Amendment will alter the Schedule to Clause 66.04 (Referral of Permit Applications under Local Provisions) to:

- include the relevant water authority as a determining referral authority for applications under Clause 42.01 Environmental Significance Overlay
- include the Country Fire Authority (CFA) as a determining referral authority under Clause 44.06 Bushfire Management Overlay for Schedules 1 and 2.

Coliban Water support the post exhibition changes to Clause 66.04 in relation to Clause 42.01. The way that the referral was originally drafted, Coliban Water (and all other Water Authorities) would have been excluded from considering most of the applications requiring a permit under the provisions of Clause 42.01.

This is proposed to be changed in the post-exhibition version. Coliban Water (and all other Water Authorities) prefer to see all applications that are not exempt under Clause 3.0 of Schedule 1 to the ESO and so welcome the post exhibition change.

The post-exhibition version of the ESO deals with the submitters concerns and is supported by the Panel.

The status of the CFA⁷ in the decision making process was not discussed at the Hearing. However, the Panel questions the logic of making the CFA a ‘determining’ referral authority for dwellings in lower risk areas⁸ and keeping the CFA as a ‘recommending’ referral authority in (arguably) higher risk locations. The Panel considers that it would be more logical to offer the CFA a higher referral status in higher risk parts of the Shire, particularly while settlement patterns need to be resolved as a key strategic priority.

The Panel recommends:

- 19. In consultation with the Country Fire Authority, review its referral status in the Bushfire Management Overlay, including whether it should be a recommending or determining referral authority.**

9.4 Clause 72.08 Background Documents

The Amendment will include all relevant and current background documents from Clause 21 of the LPPF and include new documents based on the Review. This will result in the removal of many outdated background documents and insertion of new documents necessary to support the updated Planning Scheme.

Council submitted that all background and reference documents were reviewed as part of the Review. Council submitted that there are some relatively old background documents, including water and heritage studies. These documents are still relevant until updated by new strategic work that is undertaken by Council or referral authorities in future years.

Submission 256 highlighted there is reference to the Wombat Hill Botanic Gardens Masterplan (Carl Mahoney and Associates, 1999) and that this document has been superseded by Wombat Hill Botanic Gardens Master Plan February 2017 (Laidlaw & Laidlaw Design).

Council supported this submission and proposed post-exhibition changes to address the issues. The Panel support this.

⁷ Noting that now the relevant fire authority may include Fire Rescue Victoria

⁸ In BMO schedule areas where predetermined bushfire protection measures can be achieved

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Robert Campbell and Chao Ping Huang	33	Brendan Cook
2	Dr. Patrick Jones	34	James Thomas
3	Michelle and Jock Leishman	35	Mark Stewart
4	David Toose	36	Lachlan McLennan
5	John Austin	37	Jo Kidd
6	Graeme Smith	38	Gregory Swan
7	Don Sargent	39	Gary Carter
8	Rob Alexander	40	Edward Manders
9	Ivan Carter	41	National Trust of Australia (Victoria)
10	Cliff Williams	42	Bruce Richardson
11	Lucas Carter	43	Tom Toose
12	DELWP (Fire and Water)	44	Jess Murray
13	Sue Wright and Lisa Brophy	45	Simon Rutherford
14	John Frost	46	Michael and Margaret Johnson
15	Dimitra Frost	47	Dudley McArdle
16	Chloe Freyer	48	Danny Moynihan
17	Kim Gilliott	49	Marina Pribaz
18	Guillermo Orsellini and David Krelle	50	Garry McKinnon
19	Justine and Gary Wilkinson	51	Graeme Schultz
20	Gary and Robyn Lawrence	52	Francois Laharrague
21	John Salter	53	Peter Sewell
22	John Roberts	54	Dawn Shultz
23	Victor Szwed	55	Phillip Gay
24	Friends of Ajax Road	56	Colin Bickell
25	Ken Marshall	57	Margaret Bickell
26	Tania Petrini	58	Mary Megaera
27	Helen Tobias	59	Jennifer and Geoffrey Toose
28	Aude Mallet	60	Graham Cronin
29	Garry Ralfs	61	Stephen Rieniets
30	Sharon Murray	62	Vincent Rieniets
31	Max and Ann O'Shea	63	Jenny Cronin
32	Michael De murashkin	64	John McKinnon

No.	Submitter	No.	Submitter
65	Carol Collins	97	Doug and Carolyn May
66	Emily McGuire	98	Michael Monaghan
67	Annette Leary	99	Angus and Jemma Holcombe
68	Nigel White	100	Gareth Mizzeni
69	Darryl Trewin	101	David Wilson
70	Peter Watt	102	Sharon Murray
71	Deb Hopwood	103	Alison Tracksdorf
72	Aron Marton	104	Gabe Phillips
73	Amanda Gray	105	Wally Manders
74	Andrew Fawcett	106	Ian Johnson
75	Nina Aburrow	107	Natural Resource Link
76	John and Kim Barter	108	Marilyn Chatfield
77	Bill May	109	Gary and Robyn Lawrence
78	Darma Yeomans	110	Marina Pribaz
79	Priscilla Johnson	111	Virginia Leopold
80	Debra McKinnon	112	Surinder Jan Alles
81	Annette Brownscombe	113	Nina Aburrow
82	Allan Coon	114	Sharon Widdis
83	Wendy Avery	115	Cazerine Barry
84	James M Stewart	116	Mary Love
85	Craig Mumford	117	Kristeena Saville
86	Alexandra Rodriguez	118	Stephen Carter
87	John Matthews	119	James Thomas
88	Cameron Suckling	120	Tania. M. Pedretti
89	Cazerine Barry	121	Jeff Brownscombe
90	Trentham Community Forum	122	Mike Johnson
91	Neville Pamment	123	Keith Bradford
92	Joanne Howes	124	Shane Biggs
93	Jack Leishamnn	125	Aude Mallet
94	Sharon Widdis	126	Francois Laharrague
95	Edward Nicholls	127	John Roberts
96	Tessa Halliday	128	Helen Tobias

No.	Submitter	No.	Submitter
129	Stan Capp	161	Wayne Cross
130	John Wallace	162	Wayne Cross
131	Michelle Moyle	163	Lily Andrew
132	Anthony Jansen	164	Dr William Callaghan
133	Louise Charleson	165	Deb Parkinson
134	Con Tsourounakis	166	John Stockfeld
135	Glenda Rozen	167	David Toose
136	John Cosgrave	168	Ullina Landcare Group
137	Sheri and Jim Tucker	169	Jim Taylor
138	Douglas Strates	170	Annabelle Geddes
139	Anna Szwed	171	Country Fire Authority
140	Leigh Morrish	172	Kylie McMickan
141	Rhonda Merrit	173	Vasko Drogriski
142	Caroline Harvey	174	Mount Rommel Mining
143	Holly Scoble	175	Ian MacBean
144	Beverly Smith	176	Marg Toose
145	Sue Wright	177	Kelly Connolly
146	James Thomas	178	MairiAnne Mackenzie
147	Wendy Avery	179	Tim and Jodie Barry
148	Yuge Bromley	180	James Sewell
149	Allan Nicholson	181	Lee, Danielle J
150	Aron Martin	182	Natalie Store
151	Lynne Nicholson	183	Casey Harper
152	Riding for the Disabled Association of Victoria – Daylesford	184	Rosemary McKinnon
153	Brett Gervasoni	185	Russell Keith
154	Briony Fitzgerald	186	Raia Faith & Valiant Halborg
155	Allessandro Micheli	187	Patrick Sloyan
156	Deb Parkinson	188	Hans Tracksdorf
157	Margaret Barry	189	Goulburn Murray Water
158	Lyle Weatherson	190	Hyde Custodian Pty Ltd
159	J Chen	191	Owner, 136 Raglan Street, Daylesford
160	Mark Stewart	192	Sandeepa Gould

No.	Submitter	No.	Submitter
193	Peter Righetti	224	Sarah Teague-Jones
194	Dja Dja Wurrung Clans Aboriginal Corporation	225	Debora Mermade
195	John Rowlands	226	Melanie Cail
196	Laurel Lewis	227	Richard Ansell
197	Maxine McMickan	228	John Norrish
198	Lynne Taylor	229	Ray and Sonia Spiteri
199	Steph Hodgins-May	230	Debra Rauber
200	Brian Rowe	231	Ben and Jo Fawcett
201	Deb and Gerry Rauber	232	Fraser Family
202	Danny Kinnear	233	Coliban Water
203	Colleen Qerim	234	Nick Carter
204	Stacey Anderson	235	Rob Alexander
205	Jen Bray	236	James Fawcett
206	Shani Clark	237	Peter Watt
207	Pamela Lyons-Capp	238	Michael Eddy
208	Coliban Water c/-Holding Redlich	239	Ian McAuliffe
209	Victorian Farmers Federation	240	Ian and Renee Miller
210	Ann O'Rourke	241	Michelle Porter and Geoff Phillips
211	Royal Automobile Club of Victoria	242	Tom Spanos
212	Regional Roads Victoria	243	John Righetti
213	Jo-Anna Wood	244	Environment Protection Authority
214	Paul Burke	245	Lachlan McLennan
215	Robert Simon Taylor, Lyndall Julie Biggar	246	Dallas Kinnear
216	Tracy Howard	247	Jan and Robert Jones
217	Meg Richardson	248	SD and JL Smithard
218	Siobhan McHale	249	Jan Smith
219	Sambodhi Prem	250	Evelyn Wilson and Neville Wilson
220	Megaera	251	Alan Stevens and Dale Cherrie
221	Tammi & Stuart Jonas	252	Edward Comelli
222	Trish Power	253	Sally Neilson
223	James Curzon-Siggers	254	Peter Bainbridge

No.	Submitter
255	William Alexander Ross
256	Susan Keys
257	Debbie Gervasoni
258	Mary Bignell
259	Stan Capp
260	Pamela Lyons-Capp
261	Shani Clark
262	Mia Pithie
263	Ivan Carter
264	Don and Faye Pollock
265	Susie Spence
266	Russell Keith
267	Basil Maher
268	Heather Mutimer
269	Anthony Scarpaci
270	Jo Fallshaw
271	David Brown
272	Lisa Gervasoni
273	Ezaz Sheikh
274	Yandoit, Clydesdale and Franklindford Community Planning Group
275	Trevor Armstrong
276	Liz Burns

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Hepburn Shire Council	Paul Buxton and Kellie Marks of Plan2Place Consulting
Yandoit, Clydesdale and Franklinford Community Planning Group	Nikki Marshall
Coliban Water	Barry Floyd of Coliban Water and Nick Sissons of Holding Redlich
	Trevor Armstrong
	David Toose
	Tom Toose
Victorian Farmers Federation	Lisa Gervasoni
Lisa Gervasoni	
Patrick Sloyan	
Sandeepa Gould	
Mary Love	
Sambodhi Prem	
Jen Bray	
Heather Mutimer	
Debora Semple	
Hyde Custodian Pty Ltd	Angela Moks of Clement-Stone Town Planners
Dr Gabriel Phillips and Mr Arthur Papapostolou	
Estate of Mary Margaret Monaghan	Michael Monaghan
Rhonda Merritt	
David Spargo and Jo Fallshaw	Jo Fallshaw
Liz Burns	
Pachhe Family Trust	Anthony Scarpaci of Clement-Stone Town Planners
Michelle Potter	
Con M. Tsourounakis	
Jeff Brownscombe	
Royal Automobile Club of Victoria Limited (RACV)	Paul Lewis of Tract

Appendix C Document list

No.	Date	Description	Presented by
1	3/11/20	Background documents referred to in Amendment documentation	Paul Buxton on behalf of Council
2	5/11/20	Submission materials	Michael Monaghan
3	6/11/20	Submission materials	Paul Lewis of Tract on behalf of RACV
4	9/11/20	Part A submission	Paul Buxton on behalf of Council
5	12/11/20	Supplementary information regarding 94 Mossops Road, Bullarto	Jo Fallshaw
6	13/11/20	Email withdrawing request to be heard	Tessa Halliday
7	16/11/20	Supplementary information regarding 6 Victoria Street, Trentham	Anthony Scarpaci on behalf of Pachhe Family Trust
8	18/11/20	Email regarding inability to attend hearing due to resourcing limitations	Rodney Carter on behalf of Dja Wurrung Clans Aboriginal Corporation
9	18/11/20	Email withdrawing submission	Jen Bray
10	19/11/20	Email withdrawing submission	Trevor Armstrong
11	20/11/20	Part B submission	Paul Buxton on behalf of Council
12	22/11/20	Email regarding submission	Sambodhi Prem
13	23/11/20	Hearing materials	Nikki Marshall on behalf of Yandoit, Clydesdale and Franklford Community Planning Group
14	23/11/20	Submission	Nick Sissons on behalf of Coliban Water
15	24/11/20	Submissions for 15 King Street, Daylesford and 128 Ajax Road	Con Tsourounakis on behalf of landowners
16	24/11/20	Submission materials	Sandeepa Gould
17	24/11/20	Submission materials	Heather Mutimer
18	24/11/20	Submission materials	Michael Monaghan
19	24/11/20	Submission materials	Angela Mok on behalf of Hyde Custodian Pty Ltd
20	24/11/20	Submission materials	Lisa Gervasoni
21	24/11/20	Submission material for VFF	Lisa Gervasoni on behalf of the VFF
22	24/11/20	Submission materials	Patrick Sloyan

No.	Date	Description	Presented by
23	24/11/20	Final submission materials	Nikki Marshall on behalf of Yandoit, Clydesdale and Franklinfoord Community Planning Group
24	25/11/20	Submission materials	Gabe Phillips and Arthur Papapostolou
25	25/11/20	Submission materials	Anthony Scarpaci on behalf of Pachhe Family Trust
26	26/11/20	Additional submission materials (plan of subdivision)	Michael Monaghan
27	26/11/20	Additional submission materials	Gabe Phillips and Arthur Papapostolou
28	26/11/20	Submission materials	Paul Lewis of Tract on behalf of RACV
29	26/11/20	Submission materials (photographs)	Anthony Scarpaci on behalf of Pachhe Family Trust
30	26/11/20	Email regarding non-attendance at hearing	Con Tsourounakis on behalf of landowners
31	27/11/20	Part C closing submission and version of Part A and B submission with clerical corrections	Paul Buxton on behalf of Council
32	30/11/20	Submission notes and photographs	Debora Semple
33	1/12/20	Final version of Part C closing submission	Paul Buxton on behalf of Council