

*Planning and Environment Act 1987*

**Panel Report**

**Macedon Ranges Planning Scheme Amendment C110**  
**Rural Living Zones**

**17 June 2016**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act


Macedon Ranges Planning Scheme Amendment C110

Rural Living Zones

17 June 2016

A handwritten signature in black ink, appearing to read 'Chris Harty', with a stylized flourish at the end.

Chris Harty, Chair

A handwritten signature in black ink, appearing to read 'Peter Allen', with a long horizontal stroke extending to the right.

Peter Allen, Member

A handwritten signature in black ink, appearing to read 'Dawn Bray', with a stylized flourish at the end.

Dawn Bray, Member

# Contents

	Page
<b>Executive Summary .....</b>	<b>1</b>
<b>1 Introduction.....</b>	<b>4</b>
1.1 Panel process.....	4
1.2 Rural Living in Macedon Ranges Shire.....	5
1.3 Post exhibition changes.....	12
1.4 Procedural matters.....	14
<b>2 Identification of issues .....</b>	<b>16</b>
2.1 Issues dealt with in this Report .....	16
<b>3 Planning context.....</b>	<b>19</b>
3.1 Policy framework.....	19
3.2 Other planning strategies or policies used in formulating the Amendment .....	23
3.3 Planning scheme provisions .....	26
3.4 Ministerial Directions and Practice Notes .....	27
3.5 Other Amendments and the Macedon Ranges Protection Advisory Committee.....	29
3.6 Discussion .....	30
<b>4 Strategic justification .....</b>	<b>31</b>
4.1 The Issues .....	31
4.2 Are the proposed LPPF changes appropriate? .....	39
4.3 Are the proposed mechanisms to increase lot yield and facilitate development appropriate?.....	42
4.4 The appropriate long term extent of the RLZ.....	45
4.5 Recommendations.....	45
<b>5 Gisborne and Riddells Creek .....</b>	<b>47</b>
5.1 The issues .....	47
5.2 Are the precincts around Gisborne and Riddells Creek appropriate?.....	47
5.3 Are the environmental impacts acceptable? .....	59
5.4 Recommendations.....	68
<b>6 Kyneton .....</b>	<b>70</b>
6.1 Is the proposed site for rezoning to Rural Living the best option to meet future demand in Kyneton? .....	70
6.2 Is the site highly productive agricultural land that should be protected from further development?.....	75
6.3 Will a Rural Living Zone result in adverse impacts on the Eppalock Water Supply Catchment?.....	77
6.4 Land inundation issues .....	84
6.5 Suitability of the proposed Concept Plan and DPO22 .....	87
6.6 Impacts on amenity and other concerns.....	90
6.7 Overall conclusions.....	93
6.8 Recommendations.....	93

<b>7</b>	<b>Romsey .....</b>	<b>94</b>
7.1	The issues .....	94
7.2	Does the relatively low historical lot demand justify creating a change area in Romsey? .....	96
7.3	Is the proposed location the best option to meet the intent of the change area in Romsey? .....	97
7.4	Recommendations.....	99
<b>8</b>	<b>Individual requests for change – transformation and the future.....</b>	<b>100</b>
8.1	The issue .....	100
8.2	Submissions seeking the inclusion of land in the Amendment. ....	100
8.3	What represents a transformation of an amendment? .....	106

<b>Appendix A</b>	<b>Submitters to the Amendment</b>
<b>Appendix B</b>	<b>Parties to the Panel Hearing</b>
<b>Appendix C</b>	<b>Document list</b>
<b>Appendix D</b>	<b>Chronology of events</b>

## List of Tables

	Page
Table 1: Summary of existing Rural Living Zone lots sizes and extent of their application.....	7
Table 2: Proposed changes areas, current zone and subdivision areas and proposed zone and subdivision area changes.....	10
Table 3: Theoretical lot supply .....	34
Table 4: Overview of proposed lot supply response .....	36
Table 5: Strategic considerations .....	37
Table 6: Central Region proposed lot size change and lot yield .....	52
Table 7: Summary of current and potential future land supply in the Farming Zone.....	75
Table 8: Summary of submissions seeking inclusion of their land.....	100

## List of Figures

	Page
Figure 1: Current distribution of areas in the Rural Living Zone. ....	7
Figure 2: The five proposed change precinct areas in Gisborne, Gisborne South, New Gisborne and Riddells Creek.....	8
Figure 3: The proposed change area south of Kyneton involving rezoning from the Farming Zone to the Rural Living Zone Schedule 2.....	9
Figure 4: The proposed change area north of Romsey involving rezoning from Rural Living Zone Schedule 1 to Rural Living Zone Schedule 2. ....	9
Figure 5: Areas where Design and Development Overlay 13 and Section 173 Agreements are proposed to be removed. ....	12
Figure 6: Precinct 5 Riddells Creek Ecological Vegetation Classes and Property identification .....	61
Figure 7: Location of Gisborne Wastewater Treatment Plan and Precinct 4 Rural Living Zone 'change area' .....	66
Figure 8: Buffer sought by the EPA .....	67
Figure 9: Kyneton Investigation Areas .....	70
Figure 10: Outcome of site suitability assessment for Kyneton Investigation Areas.....	71
Figure 11: Evidence of inundation of waterway during September 2010 storm event.....	85
Figure 12: Kyneton Rural Living Area Concept Plan .....	88
Figure 13: Map showing the proposed DPO21 area (blue), the Footit landholding (yellow) and the 560 metre contour (red). ....	95

## List of Abbreviations

Background Report	In the Rural Strategy Background and Strategic Recommendations Context Report, September 2015, Macedon Ranges Shire Council
BMO	Bushfire Management Overlay
Bushfire Risk Assessment	Bushfire Risk Assessment – Development Plan Overlay Schedules 18, 19, 20, 21 and 22, Bennett Road Gisborne, Kilmore Road Gisborne, Campbell Road Riddells Creek, North Romsey and Kyneton, April 2016, prepared by Practical Ecology
CFA	Country Fire Authority
DDO5	Design and Development Overlay 5 – Emmaline Vale, Gisborne
DDO13	Design and Development Overlay 13 – Primary Lots
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
DPO18	Development Plan Overlay Schedule 18 – Bennet Road, Gisborne Rural Living Area
DPO19	Development Plan Overlay Schedule 19 – Kilmore Road, Gisborne Rural Living Area
DPO20	Development Plan Overlay Schedule 20 – Campbell Road, Riddles Creek Rural Living Area
DPO21	Development Plan Overlay Schedule 21 – North Romsey Rural Living Area
DPO22	Development Plan Overlay Schedule 22 – Kyneton Rural Living Area
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
DWMP	Macedon Ranges Domestic Wastewater Management Plan, December 2013
EPA	Environment Protection Authority
EBPC Act	Environment Protection and Biodiversity Conservation Act 1999
ESO4	Environmental Significance Overlay 4 – Eppalock Proclaimed Catchment
EVC	Ecological Vegetation Class

Flora and Fauna Assessment	Macedon Ranges Rural Living Strategy Flora and Fauna Assessment of areas covered by proposed Development Plan Overlays: Schedule 18 (Bennett Road, Gisborne), Schedule 19 (Kilmore, Road Gisborne) and Schedule 20 (Campbell Road, Riddles Creek), February 2016, prepared by Practical Ecology
FZ	Farming Zone
GRZ	General Residential Zone
GWMP	Green Wedge Management Plan
GWWTP	Gisborne Waste Water Treatment Plant
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
Ministerial Guidelines	Ministerial Guidelines for Planning Permit Applications in Open, Potable Water Supply Catchment Areas, November 2012, Department of Sustainability and Environment
MRRA Inc.	Macedon Ranges Residents' Association
MRSg	Macedon Ranges Sustainability Group
MSS	Municipal Strategic Statement
RCZ	Rural Conservation Zone
RLZ	Rural Living Zone
RLZ1	Rural Living Zone – Schedule 1
RLZ2	Rural Living Zone – Schedule 2
RLZ3	Rural Living Zone – Schedule 3
RLZ4	Rural Living Zone – Schedule 4
RLZ5	Rural Living Zone – Schedule 5
Settlement Strategy	Macedon Ranges Settlement Strategy, July 2011, Macedon Ranges Shire Council
SPP8	State Planning Policy No 8 – Macedon Ranges and Surrounds, adopted 1975
SPPF	State Planning Policy Framework
The Amendment	Amendment C110 to the Macedon Ranges Planning Scheme
The Strategy	In the Rural Living Strategy, September 2015, Macedon Ranges Shire Council
UGB	Urban Growth Boundary
UGZ	Urban Growth Zone
VPP	Victoria Planning Provisions

## Overview

### Amendment Summary

<b>The Amendment</b>	Macedon Ranges Planning Scheme Amendment C110
<b>Common Name</b>	Rural Living Zones
<b>Subject Site</b>	Various areas at Gisborne, Gisborne South, New Gisborne, Riddells Creek, Kyneton and Romsey
<b>Planning Authority</b>	Macedon Ranges Shire Council
<b>Authorisation</b>	A03201 on 30 October 2015
<b>Exhibition</b>	16 November to 23 December 2015
<b>Submissions</b>	Number of Submissions: 125 (including two late submissions) Opposed: 57. A list of submitters is included in Appendix A.

### Panel Process

<b>The Panel</b>	Chris Harty (Chair), Peter Allen and Dawn Bray
<b>Directions Hearing</b>	Gisborne on 15 March 2016
<b>Panel Hearing</b>	Gisborne on 18, 19, 20, 22, 26 and 27 April 2016
<b>Site Inspections</b>	Unaccompanied on 28 April 2016
<b>Date of this Report</b>	17 June 2016



## Executive Summary

Amendment C110 seeks to amend the Macedon Ranges Planning Scheme to implement the *'In the Rural Living Zone Strategy'*. The key objective of the Strategy was to deliver a long term sustainable supply of Rural Living lots. This was proposed to be achieved by providing for a finite 30 years supply of Rural Living zoned land across the Shire and associated policy clarity about the provision of rural living development, including its preferred location and form.

Specifically, the Amendment aimed to accommodate rural living growth through:

- Amending the existing Municipal Strategic Statement (MSS) at Clauses 21.02, 21.03, 21.04, 21.09, 21.13 and 22.02 to implement the findings and recommendations of the *'In the Rural Living Zone Strategy'*
- Including minimum setback requirements within Schedules 1, 2, 3 and 5 to Clause 35.03 Rural Living Zone
- Amending Schedule 1 of the Rural Living Zone to reduce the minimum lot size for which no permit is required to use land for a dwelling from 40 to 10 hectares
- Amending Schedule 2 of the Rural Living Zone to allow 1 hectare lots to be created on land designated in a Map attached to the Schedule
- Amending Schedule 3 of the Rural Living Zone to reduce the minimum lot size from 8 hectares to 4 hectares
- Supporting coordinated subdivision and development of seven 'change areas' in the Shire by reducing minimum lot sizes (generally to between 2 and 4 hectares), applying a Development Plan Overlay to 5 areas and deleting the Design and Development Overlay Schedule 13 (from three lots in the change areas)
- Creating a 'change area' south of Kyneton by rezoning land from the Farming Zone to the Rural Living Zone Schedule 2.

Public exhibition of the Amendment generated 125 submissions which raised issues associated with methodology, process, consistency with policy, environmental issues, additional requests for rezoning or reduction in minimum lot sizes, infrastructure, planning provisions and specific issues for Kyneton and Romsey.

The Panel has considered the merits of the Amendment and the referred submissions and considers the Amendment is strategically justified in part. Proposals to reduce the minimum lot size in existing Rural Living Zones in parts of Gisborne and Riddells Creek are supported. These changes are supported by application of Development Plan Overlay Schedules 18, 19 and 20 which will assist with integrated master planning of future subdivision and development of the some of the precincts identified for change. The 'change areas' and proposed planning controls for Gisborne and Riddells Creek are considered appropriate and supported by the Panel.

However, the Panel considers the proposal to rezone land south of Kyneton from the Farming Zone to the Rural Living Zone appears premature and is not supported by the Panel. The Panel considers the area at Kyneton requires further work to justify rezoning given the

location of the land within a water supply catchment and the constraints on the land from low lying areas and poor soil capability to accommodate development and associated impacts on lot yields.

Also, the Panel is not convinced that the proposed change north of Romsey represents orderly planning given its location within areas of high quality agricultural land, part of the non-urban break between Romsey and Lancefield, visually sensitive landscapes and difficulties with landowner willingness to achieve integrated development.

The Panel concludes Amendment C110 should be adopted in part and subject to recommended changes.

Based on the reasons set out in this Report, the Panel recommends:

**Macedon Ranges Planning Scheme Amendment C110 be adopted as exhibited subject to the following:**

- 1. Review the following:**
  - **Strategies under Objectives 1 and 3 in Clause 21.09-2 *Rural residential* to retain an ability to manage rural residential development that occurs in areas in the Rural Living Zone as well as in other rural zoned areas.**
  - **New or amended policies to remove references to the anticipated number of new lots created e.g. Strategies 2.2, 2.3 and 2.4 under Clause 21.09-2.**
- 2. Amend the following:**
  - a) Strategy 4.2 in Clause 21.09-2 to read:**
    - **Require appropriate supporting infrastructure including sealed roads, road/junction improvements, path networks, fire access tracks, lighting and reticulated potable water supply or an alternative potable water supply with adequate storage for domestic use in addition to that required for fire fighting purposes for new subdivision and development.**
  - b) The objective 'To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to reticulated water is available' under Clause 22.02 Dams to read:**
    - **To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to suitable rainwater tanks or reticulated water is available.**
- 3. Retain the existing 40 hectare minimum lot size for which no permit is required in the Rural Living Zone Schedule 1.**
- 4. Remove the following properties from the Amendment including Clause 5.0 of Development Plan Overlay Schedule 20 - Campbell Road, Riddells Creek Rural Living Area:**
  - **Lot 1 LP204042 Campbell Road, Riddells Creek (Property C in Figure 6 in this report);**
  - **Lot 3 LP200999 Campbell Road, Riddells Creek (Property D in Figure 6 in this report);**
  - **288 Campbell Road, Riddells Creek (Property E in Figure 6 of this report); and**
  - **Lot 1 LP146872 Riddell Road, Riddells Creek (Property F in Figure 6 of this report).**

5. Remove 22 Nolans Road, Riddells Creek (Property G in Figure 6 in this report), from the Development Plan Overlay Schedule 20 - Campbell Road, Riddells Creek Rural Living Area and Concept Plan in Clause 5.0.
6. Amend the Concept Plan in Clause 5.0 of Development Plan Overlay Schedule 20 – Campbell Road, Riddells Creek Rural Living Area to change the wording of the notation on Lot Size to refer not only to a 4 hectare minimum lot size in the Precinct but to also make allowance for smaller lots for areas with capacity to absorb development and larger ‘balance’ type lots for those areas where native vegetation is present and for Jacksons Creek and its escarpment area.
7. Amend the Development Plan Overlay Schedule 19 – Kilmore Road, Gisborne Rural Living Area and Clause 5.0 Concept Plan to include reference to a 590 metres buffer around the Gisborne Wastewater Treatment Plant.
8. Delete the rezoning of the Kyneton ‘change area’, bounded by Lauriston Reservoir Road, Harpers Lane, Kyneton Springhill Road and Harts Lane, from Farming Zone to Rural Living Zone, Schedule 2 and the application of Development Plan Overlay 22 from the Amendment.
9. Delete from the *Overview* in Clause 21.13-2 Kyneton of *‘In addition to established rural living areas, the potential for 100 additional lots is available in south Kyneton to meet future demand for rural living’*.
10. Delete the rezoning of the Romsey ‘change area’, bounded by Melbourne-Lancefield Road, Ochiltrees Road and Crooked Road, from Rural Living Zone Schedule 1 to Rural Living Zone, Schedule 2 and the application of Development Plan Overlay 21 from the Amendment.
11. Delete from the *Overview* in Clause 21.13-4 Romsey of *‘Rural Living areas surround the township and provide a diverse range of lot sizes where new opportunities to create 30-40 small lots is supported in the medium to long term.’*

# 1 Introduction

## 1.1 Panel process

Macedon Ranges Planning Scheme Amendment C110 (the Amendment) was prepared by the Macedon Ranges Shire Council as the Planning Authority. The Amendment proposes to implement key aspects of the *'In the Rural Living Zone Strategy'*, September 2015 (the Strategy) by amending the Municipal Strategic Statement (MSS), rezoning land, applying overlays, deleting overlay controls and amending schedules to the Rural Living Zone (RLZ). The key objective of the Strategy is to provide for a finite 30 years supply of rural living zoned land across the Shire. It is proposed to amend the schedules to the RLZ in selected locations to provide for additional lots, rezone land in Kyneton and apply the Development Plan Overlay (DPO) to selected locations where additional controls are required to achieve a master-planned outcome.

As exhibited, the Amendment proposes to:

- amend the existing Municipal Strategic Statement (MSS) at Clauses 21.02, 21.03, 21.04, 21.09, 21.13 and 22.02 to implement the findings and recommendations of the *'In the Rural Living Zone Strategy'*
- amend Schedule 1 to Clause 35.03 Rural Living Zone to reduce the minimum area for which no permit is required to use land for a dwelling from 40 to 10 hectares and to include minimum setback requirements
- amend Schedule 2 to Clause 35.03 Rural Living Zone to reduce the minimum subdivision lot size from 2 to 1 hectares for an area identified on Map 1 to the Schedule that is located south of Kilmore Road, Gisborne and to include minimum setback requirements
- amend Schedule 3 to Clause 35.03 Rural Living Zone to reduce the minimum lot size from 8 hectares to 4 hectares and include minimum setback requirements
- amend Schedule 5 to Clause 35.03 Rural Living Zone to include minimum setback requirements
- rezone land from Rural Living Zone 1 (RLZ1) to Rural Living Zone 3 (RLZ3) for an area south of Couangalt Road, Gisborne South (affecting Map 44)
- rezone land from Rural Living Zone 5 (RLZ5) to Rural Living Zone 3 (RLZ3) for:
  - an area between Brooking Road and Couangalt Road west of the Calder Freeway, Gisborne and Gisborne South (affecting Maps 36, 37, 43 and 44)
  - an area on the east side of the Calder Freeway south of Dalrymple Road in Gisborne (affecting Map 44)
  - an area south of Main Road/Kilmore Road in Gisborne and Riddells Creek (affecting Maps 37 and 38)
- rezone land from Rural Living Zone 5 (RLZ5) to Rural Living Zone 2 (RLZ2) for:
  - an area south of McGregor Road, Gisborne (Map 37)
  - an area south of Kilmore Road, Gisborne (Map 37)
- rezone land from Rural Living Zone 1 (RLZ1) to Rural Living Zone 2 (RLZ2) for an area north of Ochiltrees Road, Romsey (Map 18 and 29)

- rezone land from Farming Zone (FZ) to Rural Living Zone 2 (RLZ2) for an area south of Kyneton generally bound by Kyneton-Springhill Road, Harts Lane, Lauriston Reservoir Road and Harpers Lane in Kyneton (Map 12 and 13)
- delete Design and Development Overlay Schedule 13 (DDO13) from land at:
  - 284 Kilmore Road, Gisborne (Map 37)
  - 4 Campbell Road, Gisborne (Map 39)
  - 2 Cabbage Tree Lane, Gisborne (Map 44)
- insert Development Plan Overlay 18 (DPO18) to an area south of McGregor Road, Gisborne (Map 37)
- insert Development Plan Overlay 19 (DPO19) to an area south of Kilmore Road, Gisborne (Map 37)
- insert Development Plan Overlay 20 (DPO20) to an area south of Campbell Road in Gisborne and Riddells Creek (Map 37 and 38)
- insert Development Plan Overlay 21 (DPO21) to an area north of Ochiltrees Road, Romsey (Map 18 and 29)
- insert Development Plan Overlay 22 (DPO22) to an area south of Kyneton generally bound by Kyneton-Springhill Road, Harts Lane, Lauriston Reservoir Road and Harpers Lane in Kyneton (Map 12 and 13).

The Amendment was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 30 October 2015.

The Amendment was placed on public exhibition between 16 November and 23 December 2015, with 125 submissions received (refer to Appendix A) of which 57 opposed the Amendment, 37 sought changes that were not considered by Council to be consistent with or supported by the recommendations of the *'In the Rural Living Strategy'* and 27 submissions supported the Amendment.

At its meeting of 24 February 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 8 March 2016 and comprised Chris Harty (Chair), Peter Allen and Dawn Bray<sup>1</sup>.

A Directions Hearing was held in relation to the Amendment on 15 March 2016.

A Panel Hearing was conducted in the offices of the Macedon Ranges Shire Council in Gisborne on 18, 19, 20, 22, 26 and 27 April 2016 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Appendix B. On 28 April 2016, the Panel undertook inspections of areas around Gisborne, Riddells Creek, Macedon, Kyneton and Romsey affected by the Amendment and identified by submitters.

## **1.2 Rural Living in Macedon Ranges Shire**

The Amendment focuses almost exclusively on land in the RLZ. The Amendment represents a shift in direction, which is most evident with changes proposed to local policy. This is best summed by the proposed change under Clause 21.03-2 relating to *Land Use Vision*. The

---

<sup>1</sup> The Panel was initially appointed on 1 March 2016 comprising Trevor McCullough and Chris Harty and was re-constituted due to a conflict of interest with Mr McCullough.

current reference in the planning scheme to rural residential land identifies the desire to restrict the creation of further rural residential lots due to recognition of a considerable supply of such lots. It states:

*Since the Shire has a considerable supply of rural residential land, further creation of such lots is restricted. Development of existing lots for rural residential purposes recognises the importance of surrounding agricultural land and protects water supply, native vegetation and landscape characteristics.*

The proposed change with respect to rural residential development shifts focus to rural living and the creation of a finite supply to 2045. It states:

*Rural living areas will be planned to achieve a finite supply up to 2045 in well serviced areas with good internal connectivity and integration with external road and path networks.*

Other changes are proposed to local policy under Clause 21.04 relating to *Settlement* and Clause 21.09 relating to *Housing*. Both recognise the provision of rural living development close to existing townships. Changes are to be implemented through the use of vacant lots and the creation of additional lots in existing RLZ areas close to those settlements identified to bear the brunt of accommodating future growth such as Gisborne and to a lesser extent, Riddells Creek and Romsey and with rezoning in Kyneton. Further detailed policy changes are proposed under Clause 21.09-2 relating to *Rural residential* land use and development with respect to where rural living supply is directed and its form with respect to sustainability, landscape and environmental features.

It is clear that the 2013 reforms to the rural zones under VC103 and in particular, the reduction in the Statewide standard minimum lot size for subdivision from 8 to 2 hectares in the RLZ, has broadened the scope and allowed for the opportunity to re-visit the lot supply capacity within the RLZ areas of the Shire.

The RLZ has been applied via five schedules in locations generally close to townships or smaller settlements. The RLZ represents around 9% of land within the Shire. It caters for residential use in a rural setting where lots are large enough to accommodate a dwelling and some form of farming or hobby farm use, which is likely to be undertaken for reasons other than the need to provide a significant source of household income.

Within Macedon Ranges Shire, the RLZ has been applied in a number of distinct clusters generally related to towns and transport corridors including:

- in the south of the Shire where the RLZ is clustered around Gisborne, New Gisborne, Macedon and Riddells Creek; this area abuts the Shire's interface with the City of Hume and the City of Melton with their green wedge areas
- in the east, the RLZ is located around Lancefield and Romsey including pockets of land east of Lancefield along the Kilmore-Lancefield Road
- in the north the RLZ has been applied around the townships of Kyneton, Malmsbury and Lauriston
- other areas where the RLZ has been applied include Woodend, Tylden, Darraweit Guim and Fenton Hill.

Apart from the proposal to rezone land in the FZ south of Kyneton to RLZ, the Amendment does not affect land in the Rural Conservation Zone (RCZ) or in other areas in the FZ.

A summary of the extent of RLZ in the Shire and where the zoning occurs is shown in Table 1 and Figure 1.

Table 1: Summary of existing Rural Living Zone lots sizes and extent of their application.

Rural Living Zone Schedule No	Minimum subdivision area (hectares)	Percentage of Rural Living Zone affected by each Schedule	Percentage of Shire affected by each Schedule
RLZ1	40	57%	5%
RLZ2	2	14%	1.3%
RLZ3	8	0.1%	<0.1%
RLZ4	1	2%	0.2%
RLZ5	8	26%	2.3%

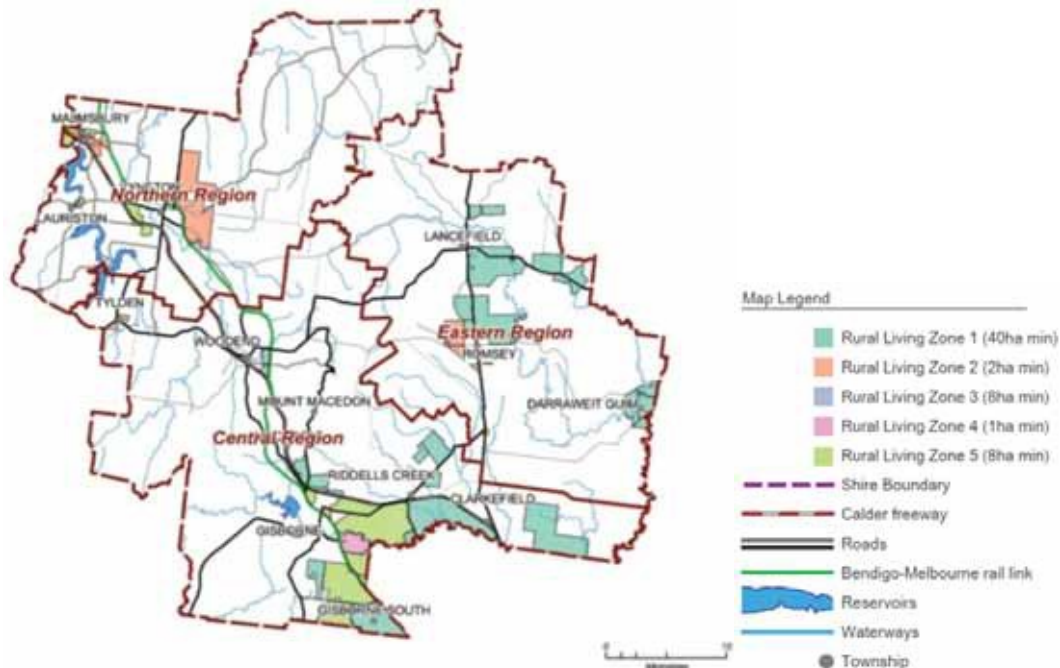


Figure 1: Current distribution of areas in the Rural Living Zone.



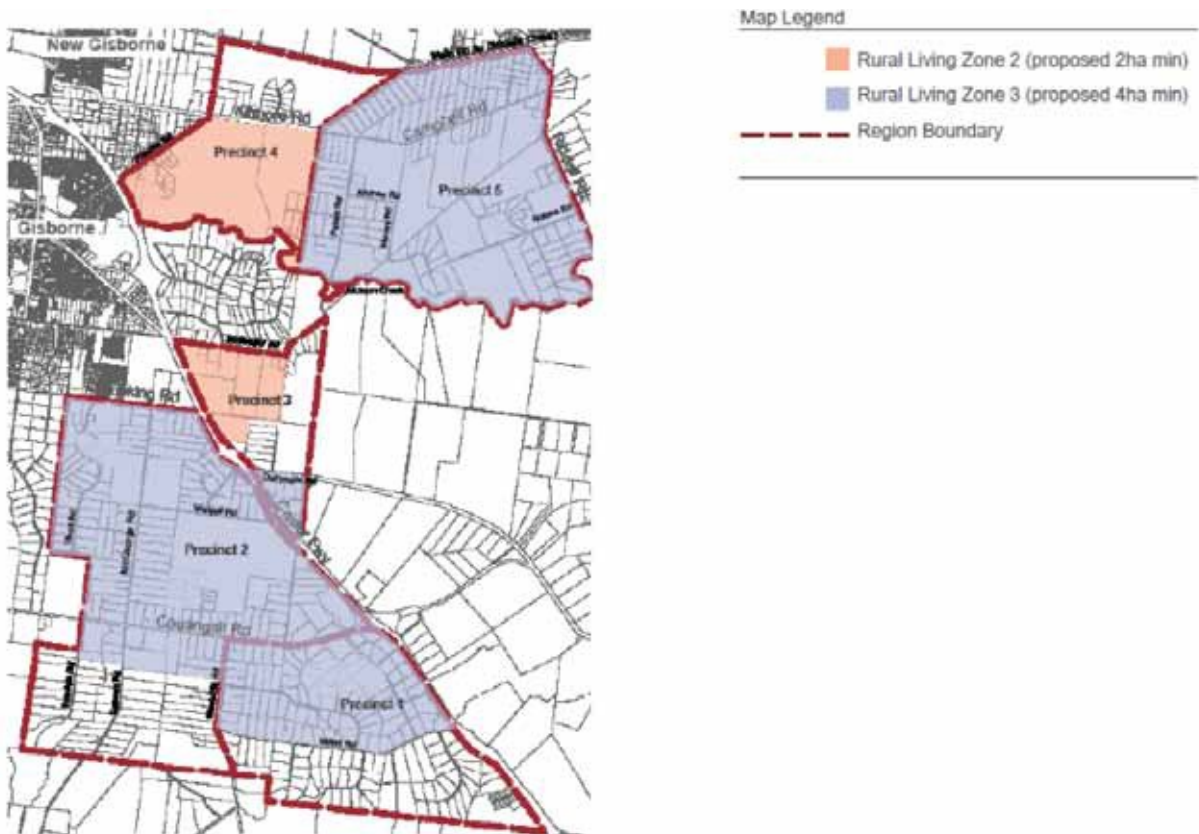


Figure 2: The five proposed change precinct areas in Gisborne, Gisborne South, New Gisborne and Riddells Creek.

To implement the Strategy through the Amendment, seven (7) 'change areas' have been identified (refer to Figures 2, 3 and 4 and Table 2) with five precincts for change identified within existing RLZ areas located in Gisborne, Gisborne South, New Gisborne and Riddells Creek. A rezoning of land in the FZ south of Kyneton bounded by Lauriston Reservoir Road, Harts Lane, Kyneton-Springhill Road and Harpers Lane. An area of RLZ north of Romsey located between the Melbourne-Lancefield Road and Crooked Road.

The Amendment proposes to reduce the minimum area for which no planning permit is required to use the land for a dwelling from 40 hectares to 10 hectares for all land in the RLZ1.

The schedules for RLZ1, RLZ2, RLZ3 and RLZ5 are to be amended to introduce the following minimum setbacks for all land:

- 20 metres from a road
- 10 metres from a boundary
- 40 metres from a dwelling not in the same ownership.

It is also proposed to amend RLZ3 to reduce the minimum subdivision area for all land from 8 hectares to 4 hectares. The minimum area for which no planning permit is required to use land for the purpose of a dwelling is also to be reduced from 8 hectares to 2 hectares for all land in the RLZ3.





Figure 3: The proposed change area south of Kyneton involving rezoning from the Farming Zone to the Rural Living Zone Schedule 2.

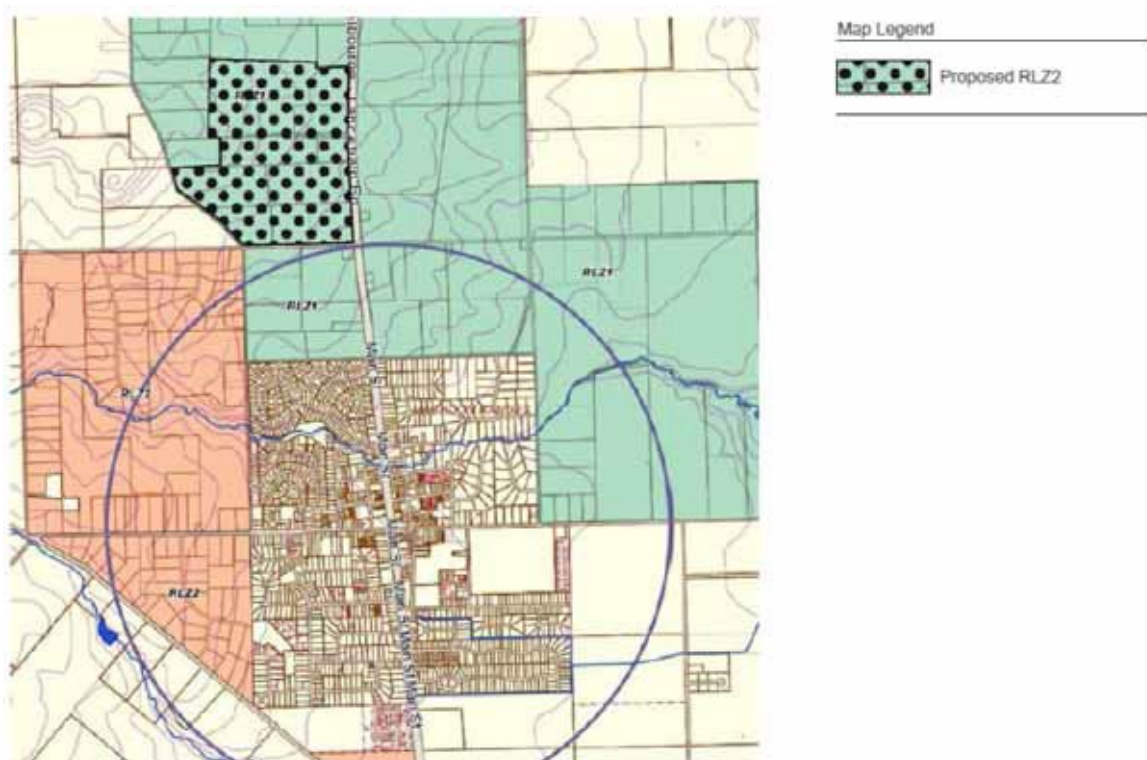


Figure 4: The proposed change area north of Romsey involving rezoning from Rural Living Zone Schedule 1 to Rural Living Zone Schedule 2.

Table 2: Proposed changes areas, current zone and subdivision areas and proposed zone and subdivision area changes.

Change Area	Existing zone and minimum subdivision area (hectares)	Proposed zone and minimum subdivision area (hectares)	Proposed DPO
Precinct 1 (land south of Couangalt Road, Gisborne South)	RLZ1 40 ha	RLZ3 4 ha	None
Precinct 2 (land between Brooking Road and Couangalt Road, west of the Calder Freeway, Gisborne)	RLZ5 8 ha	RLZ3 4 ha	None
Precinct 3 Bennett Road Gisborne Rural Living Area (land south of McGregor Road and east of the Calder Freeway)	RLZ5 8 ha	RLZ2 2ha Land between McGregor Road and Dalrymple Road RLZ3 4ha Land south of Dalrymple Road	DPO18
Precinct 4 Kilmore Road Rural Living Area, Gisborne (land south of Kilmore Road)	RLZ5 8 ha	RLZ2 1 ha (based on Map 1 – Kilmore Road, Gisborne Rural Living Area in Schedule 2)	DPO19 (further regulates lots sizes between 1 and 2ha)
Precinct 5 Campbell Road, Riddles Creek Rural Living Area (land south of Campbell Road)	RLZ5 8 ha	RLZ3 4 ha	DPO20
North Romsey Rural Living Area (land north of Ochiltrees Road)	RLZ1 40 ha	RLZ2 2ha	DPO21
Kyneton Rural Living Area (land generally bound by Kyneton-Springhill Road, Harts Lane, Lauriston Reservoir Road and Harpers Lane)	FZ 40 ha	RLZ2 2 ha	DPO22

The Amendment also proposes to delete the application of the Design and Development Overlay 13 (DDO13) which applies to eight lots in the Gisborne/Gisborne South area affected

by the Amendment. In the same area, other large lots have a Section 173 Agreement on title that restricts further subdivision. The removal of DDO13 and where possible the cancellation of Section 173 agreements<sup>2</sup>, may allow for the creation of opportunities for more appropriately sized rural living lots (refer to Figure 5). The DDO13 sets a minimum lot size of 100 hectares and is designed to avoid the further subdivision of 'primary lots' created by previous subdivisions as a means of preserving the rural landscape. The Amendment proposes to delete this overlay from:

- 284 Kilmore Road, Gisborne (Map 37)
- 4 Campbell Road, Gisborne (Map 39)
- 2 Cabbage Tree Lane, Gisborne (Map 44).

The Amendment proposes to introduce a series of DPOs for five 'change' areas – DPO18, DPO19, DPO20, DPO21 and DPO22. While each DPO contains site specific objectives relating to the preservation of viewlines, protection of waterways and the consideration of water supply catchment management issues, the common objectives of all the proposed DPOs are to:

- coordinate development and provide an integrated and safe road and path network connecting land within the development plan area neighbouring land
- provide for a range of lot densities that respond to and manage site features and constraints
- strategically manage the features and constraints of the development area.

Each DPO outlines conditions that must be included on any permits granted, including the fencing of waterways, provision of a water supply of 10,000 litres that meets the requirements of the Country Fire Authority (CFA) and the filling in of existing dams on lots less than 4 hectares.

Only one development plan may be approved for each 'change area' affected by the respective Overlay.

Applications for a development plan must be accompanied by a number of studies including a site analysis plan, land capability assessment, biodiversity and heritage assessments, infrastructure provision plan, sustainable development plan, subdivision layout concept plan, traffic management and impact plan and landscape concept plan.

DPOs 18, 19, 20 and 22 include a Concept Plan identifying 'change area' boundaries, key natural features, existing lot boundaries and indicative roads, pedestrian/cycle paths, landscape buffers and other key design constraints. The DPO21 covering north Romsey does not have a concept plan.

---

<sup>2</sup> Unlike the proposal to remove DDO13, the consideration of removal or cancellation of Section 173 Agreement does not form part of Amendment C110 and is a separate statutory planning process.

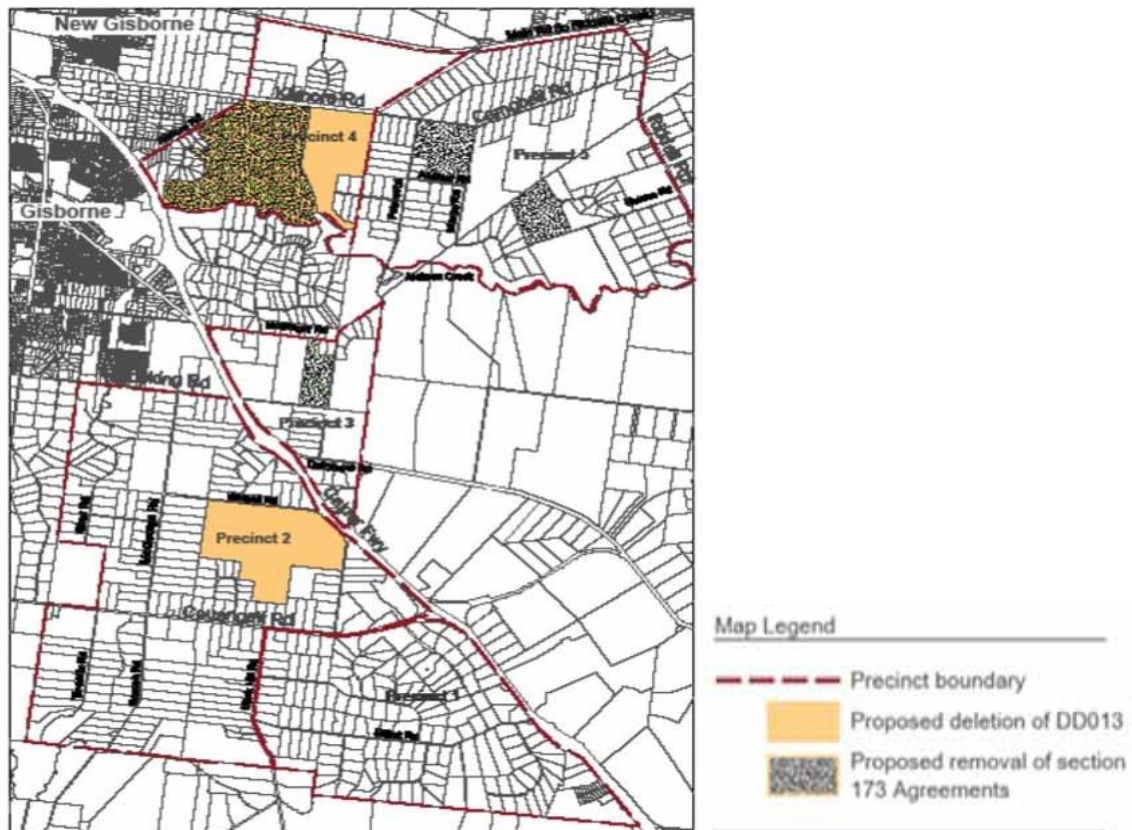


Figure 5: Areas where Design and Development Overlay 13 and Section 173 Agreements are proposed to be removed.

### 1.3 Post exhibition changes

Following exhibition of the Amendment, Council, at its meeting on 24 February 2016, considered the Amendment and submissions that had been received and resolved to make a post exhibition change to amend Schedule 21 to Clause 43.04 (DPO21). DPO21 relates to the proposed change to an area of land north of Romsey (North Romsey Rural Living Area) from RLZ1 to RLZ2 that would allow a minimum lot size for subdivision to be reduced from 40 hectares to 2 hectares. The change to DPO21 was to delete the third dot point under *Subdivision Layout Concept* which states:

*Building envelopes for lots incorporating land above the 560m contour must show all envelopes below the 560m contour and outside of sensitive viewlines identified in the Visual Landscape Assessment.*

Subsequent to Council's consideration of submissions and prior to the Directions Hearing, it received a final biodiversity assessment of areas in the RLZ around Gisborne and Riddells Creek titled; *Macedon Ranges Rural Living Strategy Flora and Fauna Assessment of areas covered by proposed Development Plan Overlays: Schedule 18 (Bennett Road Gisborne), Schedule 19 (Kilmore Road Gisborne) and Schedule 20 (Campbell Road Riddells Creek), February 2016* that has been prepared by Practical Ecology (Flora and Fauna Assessment).

The Flora and Fauna Assessment was prepared following surveys undertaken in spring 2015 of the 'change areas' where DPO18, 19 and 20 are proposed to be applied<sup>3</sup>.

The surveys were commissioned by Council in response to a desktop review of modelled Ecological Vegetation Classes (EVC) data that indicated the potential for the presence of Plains Grassy Woodland EVC 55 in the eastern parts of the Campbell Road precinct within DP20 (Precinct 5). Ms Maria Marshall on behalf of Council submitted that it is important to note that grassland EVCs are difficult to identify by aerial photography and on-ground surveys are required to confirm their presence. Spring is the optimal time for surveying of grassland EVCs in particular because this is the time of year when most flora and fauna diversity is evident and flora is in flower (including seed heads) allowing more accurate identification.

The spring surveys generally found native vegetation in patches around waterways or as scattered trees across the three 'change areas' in which cases the minimum lot sizes were sufficiently large enough to allow for the protection of native vegetation values.

However, a significant patch of Plains Grassland was found in the Campbell Road precinct (Precinct 5 adjoining Riddell Road) which exhibited the key diagnostic characteristics of the *Natural Temperate Grassland of the Victorian Volcanic Plain* vegetation community which is listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as a critically endangered ecological community. Council was advised of the presence of this patch on 13 October 2015 and made changes to DPO20 prior to exhibition to identify areas of land in the precinct as '*Native vegetation to be protected*' and which Council proposed to remove from the Amendment.

A number of other unsurveyed properties in Precinct 5 where modelled data also indicated the presence of Plains Grassy Woodland EVC and supported by observations of these properties from boundary fencing were also recommended for removal from the Amendment due to the likelihood of high ecological values.

Post exhibition changes were not able to be made to the Amendment in response to this information. Hence, Ms Marshall advised that Council accepted the evidence of Mr Lincoln Kern, ecologist from Practical Ecology and would be of the view that areas containing remnant grassland in Precinct 5 should be removed from the Amendment.

Due to the Flora and Fauna Assessment being received by Council after exhibition of the Amendment, it advised submitters by letter dated 3 March 2016 of its availability allowing late submissions to be lodged by 10 March 2016. As a result, one additional late submission (Submitter 124) and one supplementary submission (Submitter 99) were received and forwarded to the Panel. Accordingly, this issue is further considered by the Panel with respect to Gisborne and Riddells Creek.

---

<sup>3</sup> In the Flora and Fauna Assessment the study area covered three proposed changes areas covered by DPO18, which was identified as Precinct 3, the area within DPO19 was identified as Precinct 4 and the area within DPO20 was identified as Precinct 5.



## 1.4 Procedural matters

Procedural matters involved the lateness of both the Flora and Fauna Assessment and another report also prepared by Practical Ecology titled; *Amendment C110 Rural Living Zone: Bushfire Risk Assessment – Development Plan Overlay Schedules 18, 19, 20, 21 and 22, Bennett Road Gisborne, Kilmore Road Gisborne, Campbell Road Riddells Creek, North Romsey and Kyneton*, dated April 2016 (Bushfire Risk Assessment), with consequential issues associated with lack of opportunity for submitters and the public to review and make comment on these reports. With respect to the Bushfire Risk Assessment, this lateness was also an issue with regards to the expert evidence of Mr Kern on both biodiversity and bushfire risk because the Bushfire Risk Assessment was not available at the time of circulation of his evidence. The report was made available just prior to the commencement of the Panel Hearing.

With regard to the late reports from Practical Ecology, the Panel notes that submitters were given an opportunity to make late submissions on the Flora and Fauna Assessment because it was made publicly available prior to the Directions Hearing. However, the opportunity was more limited with respect to the Bushfire Risk Assessment. At the commencement of the Panel Hearing as a preliminary matter, the Panel provided an opportunity for parties to put their views. The Panel directed that Mr Kern should present his evidence on both biodiversity and bushfire risk to which parties present would have the opportunity to cross examine his evidence.

The Panel considers that bushfire risk is an important issue regarding rural living use and development and what the Amendment is proposing in terms of changes. However it is somewhat comforted by the fact that no 'change areas' are proposed under the Amendment that occur within the Bushfire Overlay (BMO). Nevertheless, the Panel is only in a position to give the Bushfire Risk Assessment and accordingly, the evidence on bushfire from Mr Kern weight in its consideration of bushfire matters that is commensurate with the lateness of circulation of the report. Similar but not as restrictive, the Panel considers the Flora and Fauna Assessment and Mr Kern's ecological evidence is given more weight given it had the benefit of more time to be considered by parties and the Panel.

Another procedural matter relates to a declaration by the Panel Chair at both the Directions Hearing and the commencement of the Panel Hearing with respect to past consulting work undertaken for the Tomkinson Group, an advocate representing three submitters (Submissions 83, 101 and 119) to the Amendment. The Panel Chair made the declarations for the purposes of transparency and to describe the nature of the past working relationship with the Tomkinson Group which involved work associated with a Land Management Plan at Apollo Bay. The declaration advised that the past work involvement was not planning related, did not relate to rural living development and did not involve Macedon Ranges Shire. At neither the Directions Hearing nor the commencement of the Panel Hearing were any objections or concerns raised by parties to the declaration.

Following the directions letter, an email was received from Mr John Moody (Submitter 102) expressing concern over the declaration and whether it represented a conflict of interest. Mr Moody was provided with an explanation about the declaration and offered an opportunity for him to outline his concerns before the Panel. However, Mr Moody did not appear during the course of the Panel Hearing including at his scheduled time to present

before the Panel. The Panel notes this situation and maintains its declaration of independence to hear submitters who have requested to do so and on the Amendment.

## **2 Identification of issues**

### **2.1 Issues dealt with in this Report**

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

In its Part A submission, Council identified the following issues raised in submissions:

#### **Methodology**

The methodology behind the Amendment had insufficient supporting background data and analysis. Issues raised included questioning the principle of providing for any further rural living lots in the Shire and the need to realise demand. Other submissions criticised the further exploration of options such as 'no change' and back zoning. The Strategy excluded other non-urban zones (FZ and RCZ) from its analysis as these may have provided de-facto rural living opportunities in the Shire.

#### **Process, resources and rates implications**

There was concern about the extent of consultation and notice and the timing of the Amendment (finishing just prior to Christmas). Other comments raised concern that the Amendment would increase the rates of affected properties or that the inherent motivation for the Amendment has been to increase Council's rate base.

The Panel is satisfied the Strategy and Amendment has been subject to appropriate notification and consultation. The issue of impact on rates is not a planning matter for the Panel.

#### **Consistency with policy**

Submitters raised the issue that the Amendment was contrary to local and State policy and inconsistent with policies relating to:

- maintaining non-urban breaks between: Romsey – Lancefield; Riddells Creek – Gisborne; Melbourne – Macedon Ranges Shire
- agricultural capability/quality and protection of agricultural land
- the promotion of township growth in accordance with the Settlement Strategy and Amendment C84 (which now form the current LPPF)
- loss of rural character and negative impacts on visual landscape and township gateways
- increased footprint of rural living land
- State Planning Policy No 8 – Macedon Ranges and Surrounds (SPP8), and premature given the Minister for Planning's recent appointment of the Macedon Ranges Protection Advisory Committee.

#### **Environmental issues**

Submissions raised a variety of environmental concerns that the Amendment would generate the following impacts:



- impact on native vegetation including very high quality vegetation in the Campbell Road area
- land management issues including weed proliferation; domestic animals attacking livestock; overstocking and overgrazing
- loss of wildlife – loss of habitat, encroachment on wildlife movement
- water quality – lack of sewer infrastructure and pressure for additional bores negatively impacting on groundwater
- reliance on fossil fuels for travel
- increased fire risk and resource implications for CFA
- other amenity issues were raised including noise, dust during construction, vandalism.

### **Requests to rezone or reduce minimum lot sizes**

Approximately 35 submissions suggested changes to the Amendment to provide further opportunities for rural living subdivision. These submissions largely came from landowners within the RLZ both where some change and no change is proposed. Some submitters in the FZ not included in the proposed 'change area' requested rezoning to RLZ.

### **Infrastructure**

Concern was raised over impact on local infrastructure including on the local road network. Agency submissions did not object to the Amendment and provided comments in relation to the following:

- the need for future consultation on precinct planning
- requirements for development adjacent to the Bendigo railway line
- extent of fire risk and settlement planning.

Specific requests were also made regarding changes or additions to the DPO Schedules relating to land capability assessments, dams, water supply and fire.

### **Proposed planning provisions**

Concerns were also raised about the proposed controls including:

- averaging provisions – concerns that controls allow for smaller lots than the minimum in the schedule which effectively support the changes to introduce minimum and maximum lot sizes to limit how the averaging provisions can be used
- how will development plans be prepared given multiple property owners
- that the use of DPOs removes third party notice and review rights in respect of planning permit applications.

### **Specific issues for development areas – Kyneton**

A number of submissions from landowners within and adjacent to the proposed Kyneton 'change area' (DPO22) raised concern, or made comment about, the proposed changes, which included:

- highlighted the waterway running north-south through the area which floods after heavy rain
- requested upgrade of the connecting road network including the provision of off-road cycle and pedestrian paths

- leapfrogging of undeveloped land between Harpers Lane and Trentham Road
- impacts on rural/equestrian activities within and adjacent to 'change areas'
- groundwater and water quality impacts
- inappropriate rezoning because the land is located within a water supply catchment
- opposition to rezoning of farming land.

### **Specific issues for development areas – Romsey**

Submitter concerns with the proposed Romsey North DPO included:

- lack of policy basis
- impact of change on land with very high agricultural values, noting that the soil quality is considered some of the highest quality in the State
- inconsistency with policy including policy relating to visual landscape, maintenance of a non-urban break between Romsey and Lancefield and the town gateway role of the land adjacent to the main spine running through Romsey
- lack of local infrastructure to serve increased population such as high school and public transport
- poor access to the western part of the area via Crooked Lane in Romsey which has a narrow sealed road with and is not currently appropriate for increased traffic and development
- availability of other more suitable areas in Romsey
- potential of the 'change area' to support more intensive development and a greater supply of lots.

The above issues are dealt with in this report under the following headings:

- Planning context
- Strategic justification
- Gisborne and Riddells Creek
- Kyneton
- Romsey
- Individual requests for change – transformation and the future.

### 3 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and through its Part A and B submissions.

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

#### 3.1 Policy framework

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

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

- *Clause 9 Plan Melbourne* – outlines key policy directions and objectives for metropolitan and hinterland areas. Council submitted the Amendment is consistent with Initiative 5.3.1 as it protects high quality agricultural land near Melbourne for food production through directing demand for rural lifestyle lots into existing RLZ areas and avoids change in sensitive peri-urban areas containing valued environmental, cultural and tourism assets as per Initiative 6.2.4. Growth is directed into Gisborne, which Plan Melbourne identifies as a regional centre designated for growth.
- *Clause 11.02-1 Supply of urban land* – the objective is to ensure adequate provision of land for a variety of residential, commercial, industrial, recreational and community uses, which Council stated is achieved through providing a coordinated rural living land supply across the Shire for the next 30 years.
- *Clause 11.05-1 Regional settlement networks* – states that sustainable development throughout regional Victoria is to be achieved through growth in a network of regional settlements, as outlined in the Regional Victoria Settlement Framework Plan. Council highlighted that Kyneton and Gisborne are nominated as regional growth centres.
- *Clause 11.05-2 Melbourne's hinterland areas* – the objective is to manage growth in areas just beyond the metropolitan fringe within 100 km of Melbourne, having regard to complex ecosystems, landscapes, agricultural and recreational land use. Council submitted that the Amendment eases development pressures in sensitive environmental areas and the FZ through consolidating future rural residential growth into areas close to townships, thereby avoiding dispersed settlement.
- *Clause 11.05-4 Regional planning strategies and principles* – seeks development in regions and settlements that creates identity, prosperity and sustainability. Council submitted its methodology used to identify 'change areas' achieved these aims through avoiding areas affected by bushfire risks, landscape impacts, ecological sensitivities and contained high value agricultural land.
- *Clause 11.12 Loddon Mallee South regional growth* – Macedon Ranges is located in the Loddon Mallee South region and the objective of this clause is to manage population growth and settlements. Council said regional growth objectives are achieved through focusing growth into areas around Gisborne and Kyneton, designated as Regional Centres that should absorb a significant portion of future growth, consolidating rural living development in RLZ areas close to existing settlements and maintaining settlement breaks along the Shire's southern and eastern boundaries.

- *Clause 12.01 Biodiversity* – the key objective is to protect and conserve Victoria’s biodiversity, including habitat and valuable biodiversity sites. Council submitted that desktop investigations were conducted for all proposed ‘change areas’ to avoid any important biodiversity sites, which led to the commissioning of a the more detailed Flora and Fauna Assessment for three areas in the Gisborne/Riddles Creek area. Furthermore, Council submitted the proposed DPOs require a number of studies to be undertaken to ensure future development responds to environmental constraints and that the Concept Plans identify areas of native vegetation to be protected.
- *Clause 12.04 Significant environments and landscapes* – sensitive landscapes are to be protected from development that would detract from their natural qualities, the aesthetic values of natural landscapes are to be recognised and key features are to be enhanced. Council stated the Amendment avoids the Macedon Ranges corridor and that the landscape analysis undertaken when identifying ‘change areas’ sought to avoid adverse impacts on view lines to the Ranges and across the broader agricultural landscape.
- *Clause 16.02-1 Rural residential development* – the key objectives are to protect agriculture, encourage the consolidation of rural living development close to existing settlements to utilise existing infrastructure and facilities, demonstrate the need for and location of rural residential development through a housing and settlement strategy and to avoid adverse economic, social and environmental impacts. Council submitted the selection of ‘change areas’ was informed by a land supply and demand analysis, adverse impacts were avoided and that all of the ‘change areas’ were close to existing settlements. It noted all but one was already in a RLZ and that the Kyneton FZ ‘change area’ was close to the town and transport links, land ownership was fragmented and it was not prime agricultural land.

**(ii) Local Planning Policy Framework**

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

- *Clause 21.01 Municipal profile* – this clause identifies Kyneton and Gisborne as key growth areas and that rural areas provide a buffer between settlements and to the Melbourne metropolitan area. The presence of natural environmental and landscape assets of State and Regional importance is noted, along with the location of Special Water Supply Catchments and high quality soils in localities such as Kyneton, Lancefield and Romsey respectively. Key transport links and the range of employment opportunities, services and infrastructure available in settlements are also noted. Council stated the Amendment consolidates settlement in areas close to existing township, provides for rural living style development on a range of lot sizes to meet a variety of needs and avoids adverse impacts on water catchments and highly productive soils.
- *Clause 21.02 Key Issues and Influences* – this clause incorporates the strategic planning directions outlined in State Planning Policy No 8 – Macedon Ranges and Surrounds (SPP8) into the Macedon Ranges Planning Scheme. SPP8 recognises the national significance of the Macedon Ranges and seeks to set out strategic planning policy to ensure the Range’s environmental and landscape values are protected and enhanced. Council’s submission outlined that the Amendment was consistent with the policy directions of SPP8, providing detailed comment on each sub clause (outlined in the following paragraphs).

- *Clause 21.02-1 Settlement* – notes the key influences that shape settlement patterns across the municipality such as the high levels of residential amenity, the Calder Freeway and Bendigo rail line, the significant environmental constraints on development in Woodend, Macedon and Mount Macedon and the potential for rural residential development to create adverse impacts. Council submitted the Amendment directs rural living growth into areas that maximises the use of transport links and facilities, while minimising development in areas that are constrained by agricultural, environmental and landscape constraints.
- *Clause 21.02-2 Environment and landscape values* – highlights the key topographical features that contribute to the area's significant landscapes and stresses the need to carefully manage development in water supply catchments. Council stated that such highly valued areas were protected by selecting 'change areas' that were not of significant environmental or landscape value and limiting the fragmentation of valuable agricultural land by relieving development pressure in the FZ. It noted that water corporations had not objected to the proposed 'change area' in Kyneton which is located in the Eppalock water supply catchment.
- *Clause 21.02-3 Environmental Risk* – notes that rural living development can result in the loss or fragmentation of landscape values through the removal of native vegetation and highlights the high bushfire risk that affects the Ranges, noting that land use and development must minimise these risks. Council argued that the Amendment avoids the removal of native vegetation as the DPOs and Concept Plans highlight areas that must be protected from development, that risk from bushfire is mitigated through 'change areas' being located outside of the Bushfire Management Overlay (BMO) and that the DPOs provide for grassfire mitigation measures equal to that required by the BMO.
- *Clause 21.02-6 Housing* – identifies the need for housing diversity and that new development should be close to town centres, while highlighting that housing needs to respect landscape values and environmentally sustainable. Council commented 'change areas' were chosen for their proximity to regional growth centres and settlements with existing services and facilities. It also noted that the Amendment provided for a greater choice in the diversity of rural living lots by providing 1 – 4 hectare lots in response to market demand.
- *Clause 21.03-2 Land use vision* – states that development and land use planning will be guided by a settlement framework, retention of agricultural land, protection of water quality, orderly development that maintains non-urban breaks between settlements and encouraging development that respects the rural character of the landscape. Council stated that by concentrating small lot rural living development in areas where land ownership is already fragmented, the Amendment avoids adverse visual impacts on the broader rural landscape. It submitted that urban breaks between settlements were preserved and that unserviced development in catchment areas was minimised through relieving pressure for new dwellings in the FZ.
- *Clause 21.03-3 Strategic framework plans* – identifies the settlement hierarchy within the shire that identifies Gisborne as a Regional Centre, Kyneton and Romsey as Large District Towns (with Kyneton being the focus for future growth) and Riddles Creek as a District Town. The presence of high quality agricultural land is highlighted in the Romsey area. Council stated that the Amendment reinforced the settlement hierarchy by focusing

growth in Kyneton and Gisborne and proposing growth commensurate with the roles of Romsey and Riddles Creek in the hierarchy.

- *Clause 21.03-3 Rural framework plan* – highlights the importance of maintaining agricultural land given the contribution of this sector to the Region’s economy, the need for land capability assessments to ascertain that further development will not compromise water quality and encourages the provision of a range of rural living lot sizes to cater for a range of complimentary agricultural uses. Council commented that the Amendment seeks to protect agricultural land uses, creates a range of rural living lot sizes that does not currently exist within the shire and avoids significant development in water catchments or forested areas.
- *Clause 21.04 Settlement* – seeks to focus growth into key regional towns and along the Calder Freeway corridor, noting that Gisborne, Kyneton, Romsey and Riddles Creek are grow over the next 20 years. Other centres and rural areas (with the exception of Tylden) are not to experience growth that would change their status in the settlement hierarchy. Council stated the Amendment implements this Clause by focussing growth into settlements earmarked for growth with the greatest levels of growth being in Kyneton and Gisborne and moderate growth in Romsey and Riddles Creek.
- *Clause 21.05 Environment and landscape values* – provides local policy content in support of the SPPF, highlighting the need to protect and enhance the region’s biodiversity through well designed development that retains native vegetation, achieves environmental benefit such as the creation of biolinks and protects visually sensitive areas such as roadsides, rail corridors and water courses. Council noted that the DPOs and Concept Plans will achieve environmental improvements, particularly through the fencing and revegetation of waterways, the creation of biolinks through this revegetation and that a landscape impact analysis was undertaken to protect viewlines from major roads and the railway. The proposed setback provisions are the vehicle through which the DPOs will maintain a rural, open feel across the ‘change areas’.
- *Clause 21.07 Natural resource management* – seeks to protect agricultural land, notes the high quality soils in Romsey and outlines objectives around the protection of water quality and yields in water catchments. Council stated that the Amendment protects agricultural land from development pressures caused by an insufficient rural residential land supply, avoids development in areas with highly productive soils, requires land capability assessments to confirm development will not adversely impact water quality and that dams will be prohibited on lots less than 4 hectares to avoid a reduction in water yield within the catchment.
- *Clause 21.09-2 Housing (Rural residential)* – the key objective of this clause is to ensure that rural residential development is “*sustainable and gives priority to the environment and landscape*”. It seeks to provide for a range of rural residential opportunities and supports development within RLZ areas. Council noted that a variety of lot sizes are created by the Amendment and that the Strategy forms part of the ‘Further strategic work’ required to analyse existing land supply and appropriate locations for future rural residential lots.
- *Clause 21.13 Local areas and small settlements* – outlines detailed objectives and strategies for each settlement. Again, Council said that their proposals reinforce the role of Gisborne/New Gisborne and Kyneton as district towns and ensures rural residential

growth at the urban interface does not impede future expansion of townships, as per approved township framework and structure plans.

- *Clause 22.01 Macedon Ranges and surrounds* – this local policy is “a restatement” of SPP8 and serves to underline the policy objectives of preserving the policy area’s role as a water catchment and as a prime recreational and conservation asset. Council stated the Amendment responds to the key issues outlined in this clause by ensuring a range of environmental and land capability studies guide future development in the Kyneton ‘change area’ located in the Eppalock water supply catchment, through coordinating the rural living land supply at a regional level, by coordinating land use and development across the shire, by ensuring future development responds to water conservation, fire hazard and access issues, and by minimising ad hoc subdivision in the area defined by the policy map.
- *Clause 22.02 Dams* – this local policy aims to balance the need for dams to support agricultural pursuits with that of adverse impacts on water quality and yields, particularly in sensitive water catchments. Council contended that the Amendment supports this policy by prohibiting the creation of new dams on rural living lots less than four (4) hectares where connection to reticulated water is available or where there is potential for adverse impacts on local waterways.

### **3.2 Other planning strategies or policies used in formulating the Amendment**

A detailed discussion of documents (i) to (iii), (vi) and (vii) is provided in Section 4 of this report.

#### **(i) Macedon Ranges Rural Living Supply and Demand Assessment, Urban Enterprise, October 2014**

The Assessment divides the shire into three regions; North (containing Kyneton), Central (containing Gisborne and Riddles Creek) and East (containing Romsey). It identifies the demand for rural living land in recent years through the analysis of building permit trends and property turnover data. Determines a ‘theoretical’ supply of Rural Living zoned land by analysing development potential of existing Rural Living zoned land. Identified that there was a particular need for additional land supply in the Northern and Central regions. Concluded that there was particular demand for lots between 1 – 4 hectares as this land balanced lifestyle aspirations with achievable land management requirements.

#### **(ii) In the Rural Living Zone Strategy - Strategic Directions for the Rural Living Zone, Macedon Ranges Shire Council, September 2015**

Identifies a Vision and three Strategic Criteria for future rural living supply, including the statement that Council will provide a 30 year land supply across the Shire and around 20 years’ land supply in each of the three regions. A range of lot sizes are to be provided, responding to the identified need for smaller lots, with the supply being distributed across the shire. Increasing land supply through the re-subdivision of land already zoned Rural Living by reducing minimum lot size requirements is seen as the best way to relieve development pressures in the Farming Zone and more sensitive rural living locations.



**(iii) In the Rural Living Zone Background and Strategic Recommendations Context Report, September 2015**

This report outlines the investigations Council undertook to define ‘change areas’ within the Northern, Central and Eastern Regions based on the application of a number of elements including viewlines, topographic constraints, presence of planning scheme overlays, desktop biodiversity reviews, land use compatibility, agricultural viability of land, infrastructure availability and identification of ‘logical’ zone and schedule boundaries.

**(iv) Macedon Ranges Agribusiness Plan 2013 – 18**

States that agribusiness is an important part of the Shire’s economy, employing over 500 people and contributing over \$73 million in gross regional product. Rural Living Zoned land plays a part in providing land for a variety of agricultural uses. Includes anecdotal evidence that land supply and price are main constraints restricting business expansion. States smaller lots suit some agribusinesses, such as vineyards.

Council submitted that the Amendment responds to the Plan’s recommendations by providing certainty in the supply of Rural Living zoned land, increasing the diversity in lot sizes and increasing the customer base for local products through population growth.

**(v) Macedon Ranges Equine Industry Strategy 2011 – 16**

Outlines seven strategic directions; Strategic Direction 3 aims to address barriers to investment in the equine industry, including the review of Planning Scheme provisions to provide for 2 – 5 hectare blocks for horse enthusiasts in “*appropriate locations*”. Council submits this Amendment responds to this recommendation by providing for a range of opportunities to create lots between 1 – 4 hectares across the Shire.

Council commissioned two additional studies after the Amendment’s exhibition to assist in the consideration of submissions and the Amendment. As these reports will be discussed in more detail later in this Panel Report, only a brief summary of their findings is provided here.

**(vi) Macedon Ranges Rural Living Strategy Flora and Fauna Assessment of areas covered by proposed Development Plan Overlays: Schedule 18 (Bennett Road Gisborne), Schedule 19 (Kilmore Road Gisborne) and Schedule 20 (Campbell Road Riddles Creek), February 2016, prepared by Practical Ecology**

This report was commissioned by Council following the identification of the potential for presence of significant native vegetation in three ‘change areas’ (Precincts) in the Gisborne/Riddles Creek area following a desktop investigation by Council’s Biodiversity Officers.

The fieldwork undertaken by the Consultant to inform the Assessment was completed during the spring of 2015, although its findings were not available in time for the exhibition of the Amendment during November/December 2015. The document was released to the public Council in March 2016.

The Assessment found that the Plains Grassland Ecological Vegetation Class (EVC) present and that it is also listed as a threatened community (Natural Temperate Grassland of the Victorian Volcanic Plains) under the *Federal Environment Protection and Biodiversity Conservation Act 1999*.



The Assessment found that:

- overall, native flora and fauna around waterways was seen to be adequately protected and managed under the proposed DPO provisions, coupled with the larger rural living lot sizes
- the main impacts on native vegetation would occur on flatter land, not escarpments
- in Precinct 3, remnant vegetation was restricted to the ephemeral water course but this would not be impacted upon by development. Property D needs reassessment
- in Precinct 4, remnant vegetation values were generally restricted to escarpments and a riparian strip along Jacksons Creek. Property A contains seven scattered remnant eucalypts. The proposed DPO provisions provide sufficient protection for the remnant eucalypts but a Vegetation Protection Overlay (VPO) is an alternative
- in Precinct 5, remnant vegetation was found along Jacksons Creek, some of the ephemeral waterways and in patches of grassland in flatter areas. The patches of Plains Grassland in flatter areas of the site would be directly impacted upon by development. Recommends removal of properties B, F and G from the DPO Schedule (and therefore the Amendment), given the presence of threatened flora species until these properties can be studied in more detail. Properties C, D and E were not surveyed as permission to access these properties was not gained in time (Council subsequently submitted that these lots be deleted from the Amendment).

**(vii) Bushfire Risk Assessment – Development Plan Overlay Schedules 18, 19, 20, 21 and 22, Bennett Road Gisborne, Kilmore Road Gisborne, Campbell Road Riddells Creek, North Romsey and Kyneton, April 2016, prepared by Practical Ecology**

This Assessment was not released to the public until April 2016. It reviewed bushfire risk for all 'change areas'. In summary, its findings were:

- none of the 'change areas' were subject to the Bushfire Management Overlay but were in a Bushfire Prone Area under the building control system
- all five areas are in open, undulating agricultural environments. Some 'change areas' in Gisborne/Riddells Creek contain areas of steep escarpment/slope along Jacksons Creek and its tributaries, where slopes of up to 40 per cent can be found
- bushfire scenarios were identified as being moderate to high risk of a grassland fire, with the escarpments along Jacksons Creek being the main hazard
- despite the Amendment proposing an increased rural living lot density it was concluded that bushfire risk would be better managed than at present through sensitive subdivision layout and DPO provisions
- the proposed mandatory permit conditions required by the DPOs are beyond the recommended bushfire risk mitigation measures currently provided by Australian Standard 3959 but were inserted by Council following consultation with the CFA

- overall, the proposed planning provisions mean that the Amendment will not increase bushfire risk in the 'change areas'.

### **3.3 Planning scheme provisions**

#### **(i) Zones**

The Amendment affects the RLZ. Under Clause 35.03 the purposes of the RLZ are:

- *to implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies*
- *to provide for residential use in a rural environment*
- *to provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses*
- *to protect and enhance the natural resources, biodiversity and landscape and heritage values of the area*
- *to encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

The Table of Uses under Clause 35.03-1 allows for the use of land without a permit for a dwelling on the basis of the land being at least the area specified in a schedule to the zone or if no area is specified at least 2 hectares and no other dwelling is on the land.

Clause 35.03-3 relates to subdivision and requires a permit for subdivision. The Clause requires:

*Each lot must be at least the area specified for the land in a schedule to this zone. If no area is specified, each lot must be at least 2 hectares.*

*A permit may be granted to create smaller lots if any of the following apply:*

- *the subdivision is the re-subdivision of existing lots and the number of lots is not increased*
- *the number of lots is no more than the number the land could be subdivided into in accordance with a schedule to this zone*
- *the subdivision is by a public authority or utility service provider to create a lot for a utility installation.*

Clause 35.03-5 includes decision guidelines relating to general matters, agricultural and environmental issues and design and siting issues for use and development.

#### **(ii) Overlays**

With regards to Overlays, the Amendment has a direct effect on the DDO13 and the DPO.

##### **Design and Development Overlay**

Clause 43.02 seeks:

- *to implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies*
- *to identify areas which are affected by specific requirements relating to the design and built form of new development.*

Schedule 13 to the DDO relates to 'Primary Lots' and seeks:

*To protect the primary lots created from former subdivisions from further fragmentation as these lots contribute to the variety of lot sizes in this area and preserve the rural landscape.*

It applies to eight lots in the Gisborne/Gisborne South area, including some of the land affected by this Amendment and sets a minimum lot size of 100 hectares designed to avoid further subdivision of large balance areas created by previous subdivisions as a means of preserving the rural landscape. The Amendment proposes to remove the DDO13 from these lots.

### **Development Plan Overlay**

The DPO is to be applied via a number of schedules. Clause 43.04 seeks:

- *to implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies*
- *to identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land*
- *to exempt an application from notice and review if it is generally in accordance with a development plan.*

The focus of the DPO is on the Development Plan, which is to be in place before planning permits can be granted for significant forms of development. Permits may be granted for development that is generally in accordance with an approved development plan. The schedule to the overlay specifies the requirements for preparing a development plan and for development of land.

### **Environmental Significance Overlay – Eppalock Proclaimed Catchment**

Environmental Significance Overlay 4 (ESO4) applies to land around Lake Eppalock, including the Kyneton 'change area' affected by this Amendment. Its objective is to protect and maintain water quality and water yields across the catchment. This overlay is unaffected by the Amendment.

### **Other overlays**

While other overlays apply to RLZ land across the shire, such as those relating to vegetation protection, significant landscapes, land subject to inundation, bushfire management and heritage, none apply to the land affected by this Amendment.

## **3.4 Ministerial Directions and Practice Notes**

### **(i) Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

### **Ministerial Direction 11 - Strategic Assessment of Amendments**

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments), which seeks to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces.

### **The Form and Content of Planning Schemes (s7(5))**

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act, which seeks to ensure consistency in form and content of planning schemes.

### **(ii) Planning Practice Notes**

#### **Planning Practice Note PPN37 – Rural Residential Development**

The Amendment is consistent with the Practice Note for Rural Residential Development. It sets out the matters that must be considered when planning for rural residential use and development, including the need ensure such development aligns with an overall strategy for the municipality, responds to diverse housing needs, is appropriately located, and that proposed planning provisions deliver high amenity living supported by appropriate infrastructure.

#### **Planning Practice Note PPN42 – Applying Rural Zones**

The Amendment is consistent with the Practice Note for Applying Rural Zones, which states the role of the Rural Living Zone is to cater for residential use in a rural setting while providing for agricultural uses compatible with the amenity of the area. The Practice Note reinforces the need to protect and enhance the landscape values.

#### **Planning Advisory Note 53: - Reformed Rural Zones for Victoria**

This Advisory Note provides information about the reformed rural zones, introduced in September 2013 via Amendment VC103. The Amendment altered a variety of Rural Living Zone provisions, including the removal of a mandatory requirement for a Section 173 Agreement to restrict further subdivision and a reduction in both the minimum lot size for subdivision and an as of right dwelling from 8 hectares to 2 hectares for the standard Rural Living Zone.

#### **Statement of Planning Policy No 8 - Macedon Ranges and Surrounds (SPP8)**

The Governor in Council approved SPP8 on 30 September 1975. It outlines how the Policy Area, which is effectively the mountain range and foothill areas, should be planned and managed to recognise the area's respective roles as a leisure/tourism designation, high quality conservation area and water supply catchment asset. These assets are considered to be of State, regional and local importance worthy of additional recognition and protection, hence the need for SPP8.

The Policy aims to reflect the unique character of the locality and the quality of its natural features. It discusses how the competing objectives at play within the Policy Area should be actively manage to achieve the policy's objectives.

The planning policy to be applied (that is most relevant to Amendment C110) include:

- protection and utilisation of the policy area for the purposes of a water supply catchment, tourism and recreation, forestry and agricultural uses
- controlling development and subdivision in water supply catchment areas, elevated areas of the ranges and around the Mt Macedon and Macedon townships
- coordinating urban development on a regional basis, with growth to be directed to existing townships
- ensuring new development is designed in a way that respects the character and unique qualities of the Policy Area, maintaining both the visual quality, and rural nature, of the landscape.

### **3.5 Other Amendments and the Macedon Ranges Protection Advisory Committee**

#### **Amendments C98, C99, C100, C103 and C105 – Structure Plans**

Several other amendments are being processed in parallel with Amendment C110, namely:

- Amendment C98 – Woodend Structure Plan
- C99, C103 and C105 – Kyneton Structure Plan Implementation
- C100 – Riddles Creek Structure Plan Implementation.

While they do not overlap the changes proposed by this Amendment, they do interrelate as they seek to set in place structure plans for a number of townships, reinforcing the settlement hierarchy. These amendments relate to planning provisions for urban zoned land and seek to rezone of land designated to be inside new township boundaries.

Council submitted it applied a deliberate strategy to ensure these amendments did not address rural living land supply, as this was to be dealt with under this Amendment.

Panel hearings to hear submissions made in relation to these amendments were held between March and April 2016.

#### **Amendment C102 – Tilwinda Views Estate, Kyneton**

This amendment is a joint rezoning/planning permit application that seeks to rezone around 13 hectares of land in Kyneton, between Trentham Road and Harpers Lane, from Farming Zone to Low Density Residential Zone. This land effectively forms Stage 2 of the Tilwinda Views Estate, located to the site's immediate south, and the planning permit component of the amendment seeks to provide for an additional 33 lots.

Council submitted that C102 is complementary to C110 in that it provides a transition in lot sizes from the township towards farming land to the south.

#### **Macedon Ranges Protection Advisory Committee**

This Advisory Committee was appointed by the Minister for Planning in December 2015. According to the Terms of Reference, its purpose is to:

*Provide advice on appropriate policy to support changes to the legislative framework to achieve protection for the Macedon Ranges and its unique natural attributes, high environmental values and distinctive rural character and townships. The Advisory Committee will also consider and report on legislative options and statutory arrangements to achieve protection.*

The Advisory Committee published an Issues Paper for public comment in March 2016, with submissions closing on 15 April 2016. Public hearings were held in support of written submissions in the week commencing 2 May. The Committee is to submit its findings to the Minister by July.

Several verbal and written submissions stated that this Panel should be suspended until the Minister has considered the Advisory Committee's recommendations.

The Panel has considered this matter and has reviewed the Issues Paper published by the Advisory Committee.

Our conclusion is that the Advisory's Committee task is a far broader and higher level one than that of this Panel.

Given this Amendment essentially seeks to change planning provisions within areas already included in the Rural Living Zone (with the exception of the Kyneton site), its impact on the broader regulatory issues being considered by the Advisory Committee is considered marginal.

The Panel also concurs with Council's Part B submission, that any conflict between the Advisory Committee's findings and those of this Panel needs to be dealt with by the Minister and the Department of Environment, Land, Water and Planning (DELWP) once all reports are before them.

### **3.6 Discussion**

The Panel concludes that the Amendment is generally supported by, and implements, the relevant sections of the State Planning Policy Framework, Ministerial Directions and Practice Notes, including State Planning Policy No 8. It is consistent with relevant recommendations of Council's Equine Strategy and the Agribusiness Plan.

Discussion relating to consistency with, and the implementation of, the Local Planning Policy Framework and the strategies commissioned by Council to inform this Amendment is provided in the *Strategic Justification* section of this report.

## 4 Strategic justification

### 4.1 The issues

Amendment C110 seeks to implement the statutory actions identified by the Strategy to plan and manage rural living development in the shire. This chapter examines those actions by considering a series of questions about the strategy and the evidence and submissions in relation to each question.

The vision of the Strategy is to:

*Provide living options outside of townships in well planned, managed and contained locations that provide desirable living choices to 2040.*

Nine strategic principles underpin the Strategy vision. These are:

- **contain rural living areas:** *Focus rural living development within or adjacent to the existing Rural Living Zone where potential exists and manage supply of rural living opportunities accordingly*
- **agriculture:** *Protect productive agricultural land across the Shire*
- **social infrastructure:** *Locate new rural living development within proximity and accessibility to existing community facilities and services*
- **viable rural living areas:** *Protect residential amenity in the Rural Living Zone*
- **sustainable towns:** *Protect the potential for townships to expand*
- **natural environment:** *Ensure there is no or limited impact on the natural environment such as biodiversity and habitat; water catchments and water quality*
- **infrastructure needs:** *Minimise the costs to Council of providing and maintaining infrastructure such as roads, drainage, waste treatment, etc*
- **tourism and business:** *Support the operation and development of tourism and business uses that are compatible with the local environment and existing residential amenity*
- **environmental hazards:** *Minimise the risk to people and property from environmental hazards such as flooding and fire.*

Council has also identified three strategic criteria that inform how the vision will be translated into actions. These are:

- *Council will provide for around 30 years of projected supply in the Rural Living Zone across the Shire with around 20 years of projected supply in each region*
- *a range of lot size options will be provided in the Rural Living Zone*
- *projected supply will be distributed across the Shire based on the Strategic Considerations in Chapter 6 of the strategy.*

The approach Council has developed in formulating the Strategy is based, broadly, on a number of issues. These are to:

- consider the RLZ areas separately from the township areas



- focus the review on three Rural Living 'change areas': the Central Region (Gisborne, Gisborne South and Riddells Creek), the Northern Region (Kyneton) and the Eastern Region (Romsey)
- set 30 years as the lot supply horizon overall and 20 years as the lot supply horizon for each 'change area'
- apply the strategic considerations outlined in the Strategy when identifying land for increased rural living lot yield
- increase the lot yield by allowing smaller lots in locations consistent with the strategic considerations
- apply various other changes that will facilitate development on rural living lots.

In seeking to form a view as to whether the strategic basis of the Amendment is sound, the Panel has considered each of these issues.

#### **4.1.1 Should changes to the RLZ be considered separately to the structure planning of associated towns?**

##### **(i) Discussion**

A number of townships (such as Riddells Creek and Kyneton that are affected by this Amendment) with associated RLZ areas are concurrently in the process of structure plan review. Submitters such as Ms Christine Pruneau from the Macedon Ranges Residents' Association (MRRRA) (Submitter 92) raised concerns over the potential increase (and oversupply) of housing spread over both urban areas associated with these township structure plans and the Amendment affecting RLZ areas. Council's *Settlement Strategy* does recognise that there may be some further residential development in rural living areas. Mr Paul Shipp, Economist from Urban Enterprise Pty Ltd in his expert evidence on behalf of Council noted that in the 13 years from 2000, rural living development approvals comprised 9.5% of the total in the Shire and that the likely increase in the number of lots (and consequent population increase) generated by the Amendment would be relatively insignificant compared to the overall dwelling and population projections for the Shire.

Apart from the area at Kyneton, this Amendment will only affect land already included in the RLZ. In addition, one of the strategic principles of the Strategy is to protect the potential for towns to expand.

##### **(ii) Conclusion**

The Panel concludes that, given that rural living is a distinct market segment to urban residential development, the general impact on lot numbers and population is low relative to that of urban development in towns. Potential impacts on the future expansion of towns are recognised and the strategic considerations for deciding areas for rural living development are significantly different to those for urban areas. It is therefore considered appropriate to pursue a rural living strategy separately to the more urban based strategies for towns.



#### **4.1.2 Is the Rural Living Change Areas approach appropriate?**

##### **(i) Discussion**

The arguments for the use of three Rural Living 'change areas' (referred to as 'regions') were set out in the evidence statement of Mr Shipp, who said that:

*The assessment of land supply was undertaken in 'regions' in order to allow a review of the adequacy of land supply in each part of the municipality. The selection of regions was based on an understanding of the variable landscapes and residential property market characteristics across the Macedon Ranges Shire and confirmed by consultation with real estate agents.*

Mr Shipp noted that:

*The Gisborne and Riddells Creek area is characterised by rural living areas and townships that are located near the foothills of the Macedon Ranges and near State forests. Demand for properties in these towns is strongly influenced by the close proximity and ready access to metropolitan Melbourne...*

and that:

*The east of the Shire, including the main townships of Romsey and Lancefield, are physically separated from the towns along the Calder Highway corridor by the Macedon Ranges, and the agricultural setting in the east means that the property market is somewhat different in this part of the Shire. This is reflected in median house values, which are significantly higher in the Central region towns of Gisborne and Woodend (in the order of \$500,000) than in the Eastern region towns of Romsey and Lancefield (less than \$400,000) and the Northern region town of Kyneton (\$400,000).*

During cross-examination, Mr Shipp noted that in the Northern region, part of the pressure for further lot supply was because around 40% of the existing lots were discounted because they were around one hectare or less and were therefore unlikely to obtain development approval from the water authority.

There was little comment on the use of the 'change areas' approach in submissions.

##### **(ii) Conclusion**

The Panel agrees that there are discernable and relevant differences between the three regions Council has identified. The Panel therefore concludes that the use of this mechanism to develop and apply the strategy is appropriate.

#### **4.1.3 Are 30 years and 20 years appropriate lot supply horizons?**

##### **(i) Discussion**

The Strategy says that that Council should plan for 30 years of growth in the RLZ to:

- *protect agricultural (sic) and minimise the pressure of (sic) rural living style development in the Farming Zone*

- *manage constraints of the theoretical supply resulting from fragmented ownership of lots, which contributes to the level of uncertainty around the actual land supply that will be provided to the market*
- *ensure adequate supply remains available into the medium-long term.*

Clause 11.02-1 of the SPPF relates to the supply of urban land and requires a planning authority to plan to accommodate population growth over at least a 15 year period. It also requires a planning authority to consider residential land supply on a municipal basis rather than a town-by-town basis. While this requirement does not formally apply to rural living land supply, it is used as a benchmark for non-urban land supply as well.

There is a question therefore about why land supply generally should exceed a 15 year horizon and what the potential implications of an over supply might be.

Mr Shipp in his written and verbal evidence provided an explanation of the thinking behind the use of the 30 and 20 year time horizons that are a key element of the Council's Strategy. He noted that the purpose of the SPPF requirement to maintain a 15 year land supply provided a rolling supply to maintain a balanced property market and that *"...a significant oversupply can distort the market and lead to piecemeal development, infrastructure inefficiencies and low land value growth"*.

In this case however, Mr Shipp considered that Councils intention to provide a finite supply of 30 years was appropriate and was designed to *"...do it once and do it properly"*. Because Council did not intend to provide a rolling supply over time or to review the supply for 10 years or more, he considered it prudent to adopt a long planning horizon to minimise the risk of a shortage of supply during this period. Mr Shipp also noted that it would take two or more years before any new land is made available to the market.

In relation to setting a 20 year horizon for each region, Mr Shipp considered that it was *"...important to ensure that the available land supply will meet the needs of each segment of the market and will be available in each geographic region of the Shire"*. He noted that the 20 year horizon does not increase the overall supply of land across the Shire, but simply seeks to prevent a significantly uneven distribution of supply across the regions.

Mr Shipp gave evidence of his analysis of the supply and demand for rural living lots using two methodologies, population projections and building approvals. The results were similar and are summarised in Table 3.

Table 3: Theoretical lot supply

Region	Demand (lots needed a year)	Lot capacity	Years of supply currently available
Northern	16	215	13
Central	12	202	17
Eastern	6	157	27
<b>Total for the Shire</b>	<b>34</b>	<b>574</b>	<b>17</b>

There was little comment from submitters about the selection of a 30 year horizon, apart from the MRRA and the Macedon Ranges Sustainability Group (MRSG) (Submitter 95).

The MRRA considered that the Amendment's "... *reliance upon clause 11.02 (of the SPPF) to justify expanding and intensifying rural living land supply, along with application of a 30 year supply horizon, makes inappropriate use of the policy*".

Mr Keith Altmann for the MRSG also pointed out that there was no State policy requirement that a 15 year (or any other) horizon be applied to rural living land supply.

The MRRA also questioned whether the 30 year horizon was intended to be 'finite' or 'perpetual'. The Council and Mr Shipp had different views as to what an appropriate time period for monitoring the actual demand against supply might be. In the proposed changes to Clause 21.09-2 under *Other actions of Council*, a monitoring period of 3-5 years is proposed. Ms Marshall indicated that monitoring was included in a five year cycle in Council's strategic workplan. Mr Shipp in his verbal evidence indicated that up to 10 years would be suitable, given the slow expected take up and the fact that it would be two or three years before any new lots become available to the market.

The monitoring period is only relevant to the Amendment in that it influences the question raised by the MRRA. Is the 30 year supply a 'one off' allocation, or is it a horizon that continually extends? The Council's intention was not clear on this, although the proposed new vision statement in Clause 21.03-2 refers to a 'finite supply'.

A future Council has the opportunity to review strategy as it sees fit and monitoring of the success or otherwise of the current strategy will be an important input. The Panel observes, however, as Mr Shipp also noted, that new lots created as a result of this Amendment are unlikely to be on the market for at least two or three years, so monitoring is unlikely to be useful until at least five years after that.

## **(ii) Conclusion**

In the context of the approach adopted by the Strategy the Panel concludes that, there is no required policy requirement and setting 30 and 20 year time horizons is a reasonable approach overall. How the Strategy responds to the theoretical supply 'gaps' identified in each region is a separate matter however, and this is considered in the discussion for each region in Chapters 5, 6 and 7. In relation to the practical meaning of a finite the 30 year horizon, the Panel considers it would be beneficial for the precise intent to be clarified, possibly in the wording of Clause 21.03-2.

### **4.1.4 Is the response to the lot supply and demand situation appropriate?**

#### **(i) Discussion**

The effect of the proposals in the Amendment is summarised in Table 4, which is based on Table 14 in the Background Report.

Table 4: Overview of proposed lot supply response

Region	North	Central	Eastern	Shire
Current supply (lots/years)	215/13	202/17	157/27	574/17
Additional supply from AM C110 (lots/years)	96/6	271/23	25/4	391/12
Total lots	310	466	182	963
% of Shire supply	32%	49%	19%	100%
Current annual lot demand (lots/year)	15.7	11.6	5.7	33
<b>Total supply (years)</b>	<b>20</b>	<b>40</b>	<b>32</b>	<b>29</b>

Mr Shipp in his evidence noted that the number of annual dwelling approvals had declined in the last few years and that 43% of new dwelling approvals were on lots less than 2 hectares in area and a further 44% on lots between 2 hectares and 6 hectares. There was general agreement from many submitters that the dominant market demand was for lots in the 1-4 hectare range.

Mr Altmann for the MRSG submitted that “... from a sustainability perspective, it is preferable and more efficient to cope with the predicted population increase within existing urban areas that impact more lightly on all aspects of natural resources than scattered rural living.”

The Amendment proposals can be seen to focus future rural living lot creation into the Central Region, where the proposed zoning is either RLZ2 (2 hectare minimum lot size) or RLZ3 (4 hectare minimum lot size). This is the region where, amongst other things, there is good proximity to the main urban areas and access to transport services.

This is consistent with the intent of the Strategy to direct rural living growth into these areas because of their access to services and transport connections and to direct growth pressure away from farming and conservation areas. It is also consistent with the objective of seeking to respond to the demand preference for lots of 4 hectares or less.

## (ii) Conclusion

The Panel agrees with Mr Altmann but notes the advice of Council that overall, rural living development constitutes about 9% of residential development in the Shire, so arguably the Strategy is largely consistent with his premise. The Panel therefore concludes that the general thrust of the proposals is appropriate as it is likely to achieve the objectives of the Strategy.

### 4.1.5 Are the strategic considerations appropriate?

#### (i) Discussion

In Chapter 6 of the Strategy Council sets out a range of strategic considerations designed to guide decisions about which areas in the RLZ can best be utilised to increase the lot yield from the zone. They are summarised in Table 5 including the considerations and the implications and recommendations that flow from them.

Table 5: Strategic considerations

Consideration	Implication/recommendation
Supply and demand	<ul style="list-style-type: none"> <li>- Rural living opportunities are limited and provide less than 20 years of supply in the north and central regions.</li> <li>- Fragmented land ownership creates uncertainty around how much and when rural living opportunities will be created and put on the market.</li> <li>- A diversity of lot sizes, including a greater supply of smaller lots between 2 and 4 hectares would better match market demands and more effectively utilize land in the RLZ.</li> <li>- Development should be sited and designed to respect key landscape features using larger lots, design guidelines and setbacks away from key vistas.</li> <li>- Important landscapes should be identified and protected using appropriate planning tools such as Significant Landscape, Vegetation Protection or Design and Development Overlays.</li> <li>- Increased rural living densities should be directed to areas outside of water catchments.</li> <li>- Consider protection of important biodiversity using appropriate overlays such as Vegetation Protection, Environmental Significance Overlays or Native Vegetation Precinct Plans.</li> </ul>
Environment	<ul style="list-style-type: none"> <li>- Flood risk must be considered in decision making in the RLZ.</li> <li>- Increased densities should be located outside of the Bushfire Management Overlay.</li> <li>- Through road and multiple road accesses should be encouraged in new subdivisions in the RLZ.</li> </ul>
Land use compatibility	<ul style="list-style-type: none"> <li>- Development within the RLZ must manage the expectations and responsibilities of both residential and other allowable activities within the RLZ.</li> <li>- Buffers and setbacks should be created in the RLZ at the interface with the Farming Zone to protect residential amenity and allow for adjoining uses and businesses to continue to operate and adapt without constraint.</li> <li>- Clarify landowners' responsibilities and manage expectations for the diverse living opportunities in the Shire.</li> <li>- Rural living areas should be maintained close to major towns and increased densities supported where existing services and facilities have most efficient access.</li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>- Rural living areas should be maintained close to major towns and increased densities supported where existing services and facilities have most efficient access.</li> <li>- Sealed roads should be a requirement for subdivisions in the RLZ where minimum lot sizes are below 6 hectares or where commercial /tourist development significantly increases local trade.</li> <li>- All developable lots in the RLZ must be able to treat their own waste</li> </ul>

Consideration	Implication/recommendation
	<p>water on site.</p> <ul style="list-style-type: none"> <li>- Connection to potable water will be encouraged in new subdivisions.</li> <li>- Construction of new dams will be discouraged on lots less than 3 hectares.</li> <li>- Water catchment authorities and current State guidelines and regulations will influence the density and location of development within open water catchments.</li> </ul>
Economy	<ul style="list-style-type: none"> <li>- Provide for non-urban lifestyle residential opportunities within the RLZ that allow a mix of lot sizes in locations close to major towns.</li> <li>- Existing large lots on the edges of urban centres should not be further subdivided in order to maintain options for future urban growth.</li> <li>- Tourism and other business uses are supported in the RLZ where impacts on neighbours and the landscape can be minimized.</li> </ul>

Not all of these matters translate directly into the Amendment. Submitters generally accepted a number of the implications/recommendations, such as the need to recognise the preference for smaller two to four hectare lots and the need to locate rural living areas close to towns and services.

Some matters were generally accepted by submitters, but there were different views about what they meant in practice, such as the need to respect key landscape features and how to respond to flood and bushfire risk. Mr George Wright (Submitter 13) for example, expressed concerns about a number of fire related matters, including that outside areas included in the BMO, there was still a significant danger from grass fires that needed to be recognised.

At a general level, a number of submitters, including the MRRA, objected to the market demand response inherent in the strategy and considered that the Strategy simply created a population increase in addition to that addressed by the Settlement Strategy. Others considered that the proposals were either inconsistent with or not in the spirit of SPP8.

In considering these issues, the Panel was mindful that (apart from at Kyneton) all the land subject to the Amendment is already included in the RLZ and the strategic considerations are directed only at assisting to identify which areas might be suitable for increased lot yield.

## **(ii) Conclusion**

Overall, the Panel concludes that these considerations are reasonable, comprehensive and constitute an appropriate set of considerations for determining what land in the RLZ may be appropriate for increased lot yield.

How these considerations have been applied to specific land is reviewed in detail in the discussion for each region in Chapters 5, 6 and 7.

## 4.2 Are the proposed LPPF changes appropriate?

### (i) Discussion

The Amendment proposes a number of changes to the MSS (Clause 21) and to the local policy about dams (Clause 22.0) to implement the Strategy.

The most significant changes are the proposed change to the *Land use vision* (Clause 21.03-2) the local policy for *Rural residential* (Clause 21.09-2) and the local policy for *Dams* (Clause 22.02).

#### Clause 21.03-2 Land use vision

As noted in Section 1.2, the current reference in the *Land use vision* to rural living expresses an intention to restrict the creation of further rural residential lots in recognition of an existing considerable supply of such lots. It states:

*Since the Shire has a considerable supply of rural residential land, further creation of such lots is restricted. Development of existing lots for rural residential purposes recognises the importance of surrounding agricultural land and protects water supply, native vegetation and landscape characteristics.*

The proposed change shifts focus to rural living and the creation of a finite supply to 2045. It states:

*Rural living areas will be planned to achieve a finite supply up to 2045 in well serviced areas with good internal connectivity and integration with external road and path networks.*

The MRRA expressed the view that this change was contrary to SPP8 and represented a 'tipping point'. As noted previously, the MRRA also questioned what was meant by 'finite supply'.

The Panel notes that the time horizon for the strategic framework plan in Clause 21.03-3 and for the *Settlement Strategy* is 2036, the horizon referred to in the Strategy's vision statement is 2040 and the time horizon based on 30 years from 2015 and proposed above is 2045.

#### Clause 21.09-2 Rural residential

The proposed changes to this policy reflect the change of focus in Clause 21.03-2 by inserting new objectives and strategies into the policy and deleting strategies that are no longer considered consistent with the Strategy. The proposed policy changes include actions to monitor the effect of the policy changes over a 3-5 year timeframe and to monitor the demand for small lots around Romsey township.

Strategy 4.2 of this policy states:

*Require appropriate supporting infrastructure including sealed roads, road/junction improvements, path networks, fire access tracks, lighting and reticulated water for new subdivision and development.*



Coliban Water (Submitter 86) submitted that it did not accept that reticulated water is required for all new rural residential development and did not believe that this was required elsewhere in the catchment. Coliban Water suggested the strategy be changed to:

*Require appropriate supporting infrastructure including sealed roads, road/junction improvements, path networks, fire access tracks, lighting and reticulated potable water supply or an alternative potable water supply with adequate storage for domestic use in addition to that required for fire fighting purposes for new subdivision and development.*

This issue is discussed further in Section 6.3.3.

The Amendment proposes to delete Strategies 1.1 to 1.7 from Objective 1 of Clause 21.09-2. Strategies 1.1 to 1.6 are general strategies about achieving good rural residential development outcomes. Strategy 1.7 relates to the further subdivision of large balance lots.

Ms Sharon Macaulay (Submitter 110), while supporting the Strategy generally, was concerned about the proposed deletion of strategies 1.1 to 1.6. She considered that the planning scheme needs to still recognise that some rural residential development occurs outside the RLZ and these strategies should be retained to guide discretionary decision making in these areas. Ms Macaulay is concerned that deleting these policies creates a 'policy vacuum' for dwelling proposals outside the RLZ.

The Panel accepts that the Strategy's initiatives to remove restraints on the further development of balance lots (such as deleting DDO13) make Strategy 1.7 redundant.

The Panel agrees with Ms Macaulay however, that Strategies 1.1 to 1.6 are of general application, remain relevant and should be retained in an appropriate form. The Panel notes that some of the strategies proposed to be deleted are replaced with new strategies under Objective 3, but this objective as currently drafted applies only to the RLZ. The strategies in Objectives 1 and 3 are of generally similar purpose and the Panel considers it likely that they could be efficiently combined to resolve the issue raised by Ms Macaulay.

Ms Macaulay was also concerned that it was premature to delete the *Further strategic work* action:

*Prepare a rural living strategy to review existing supply and locations and identify appropriate locations for rural residential development across the Shire.*

Ms Macaulay asserted that a vision for all rural residential areas is needed which goes beyond the scope of the Rural Living Zone Review, as there are a number of areas where a rural residential dwelling in the other rural zones is a legitimate outcome and the Amendment will not remove all pressure for such development. The FZ provisions allow opportunities for a dwelling application on lots less than 40 hectares, so these policies are still needed.

The Panel agrees with this view in part. As discussed in Section 4.4, the Panel suggests that there remains a need to review both, the role of rural living opportunities outside the RLZ as well as the appropriate future role and zoning of RLZ areas that are not included in the change areas.

The Panel also noted that a number of the proposed strategies, particularly those in the proposed new Objective 2 include reference to numbers of lots in a way that makes them appear to be lot targets. The Panel suggests that once the zoning changes proposed by the Amendment are in place, specifying specific numbers in these policies is confusing and risk becoming redundant over time.

### **Proposal: Amendments to Clause 22**

The proposed changes to Clause 22.02 insert a new objective:

*To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to reticulated water is available.*

and add an additional criterion for considering proposals, that:

*'...alternative access to water sources (such as reticulated water, tanks collecting rainwater runoff from roofs) is insufficient for existing and proposed uses.*

Coliban Water submitted that this objective should be modified to:

*To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to suitable rainwater tanks or reticulated water is available.*

The reason for this change was that in some areas of the Shire, particularly the north, connection to reticulated water is not likely to be available in the foreseeable future and rainwater tanks are the preferred option to limit the impact of development on water quantity within catchments.

The Panel considers that the general intent of this requirement to prevent the proliferation of dams on smaller lots is appropriate. The Panel was not provided with any evidence about the effect of the more restrictive proposal sought by Coliban Water, however a precautionary approach would support the more restrictive requirement.

The other proposed LPPF changes are essentially consequential on the adoption of the Strategy and apply to matters such as background, overview and a map legend. The Panel noted that a number of these background statements contained various estimates of numbers of lots and related matters. The overview to Clause 21.13-1 for instance, includes the statement '*...where approximately 180 new lots are proposed...*'. The Panel suggests that, similarly to the previous comments about Objective 2, it would be more appropriate and robust to rephrase these without reference to specific numbers.

### **(ii) Conclusion**

In relation to the proposed deletion of strategies in Clause 21.09-2, the Panel concludes that the intent of Strategies 1.1 to 1.6 should be retained and that a way to achieve this could be to combine the proposed Objectives 1 and 3 to apply to all rural living development, whether or not included in the RLZ.

In relation to the modification of the proposed objective requested by Coliban Water, the Panel concludes the request should be supported.

The Panel also suggests that where possible, the policy drafting avoid the use of specific numbers that have no statutory effect and risk becoming out of date.

#### **4.3 Are the proposed mechanisms to increase lot yield and facilitate development appropriate?**

The statutory changes proposed in the Amendment essentially enable reduced lot sizes in most areas, make it easier to construct a dwelling on appropriate sized lots, introduce some amenity safeguards in the form of dwelling setbacks and require a form of master planning for the five change areas.

**Proposal: In the RLZ1, reduce the minimum area for which no permit is required for a dwelling from 40 hectares to 10 hectares**

##### **(i) Discussion**

The Panel was not provided with any explanation of the intent or purpose of this proposed provision.

The Panel supposes that the intended effect of this proposal would be to reduce the instances where a planning permit is required to build a dwelling on a large lot in the RLZ and the proposed introduction of minimum setbacks (discussed below) would impose consistent siting requirements to all lots whether a permit was required or not. Where an overlay requires a planning permit be obtained for a reason specific to the overlay, this would still apply to lots larger than 10 hectares.

The MRRA was strongly opposed to this proposal and calculated that the area of land affected was over 8,300 hectares, including sensitive areas at Mount Gisborne, the high quality soils at Romsey and Lancefield and the rural buffer with metropolitan Melbourne at Riddells Creek.

The Panel was concerned to note that this proposed change was not mentioned in the Explanatory Report and potential submitters would have needed to examine the Amendment provisions in detail to be aware that it was proposed.

##### **(ii) Conclusion**

As the Panel did not have the benefit of an explanation of the intent or impact of this proposed change it is unable to evaluate or support the proposal.

Should the Council wish to progress this change, the Panel suggests that it be included in a future Amendment and be supported with an appropriate assessment of its impacts and benefits. These impacts should include consideration of the desirable ultimate extent of the RLZ as discussed in Section 4.4.

**Proposal: In the RLZ1, RLZ2, RLZ3 and RLZ5, introduce minimum setbacks**

##### **(iii) Discussion**

The Amendment proposes to include new setback provisions in these schedules to *'create separation between development and lot boundaries'* and to *'facilitate an open landscape feel, define the pattern of development and protect the amenity of adjacent land.'* The proposed setbacks are the same for all the schedules and are:

- minimum setback from a road - 20 metres
- minimum setback from a boundary - 10 metres
- minimum setback from a dwelling not in the same ownership - 40 metres.

A permit can be sought to reduce the minimum setback.

The proposed setbacks are based on analysis of existing setbacks and the outcomes of a survey of landowners that showed that the valued aspects of the rural living area are *'having more space'* and *'being in a rural area'*. Council considers that the benefits of introducing these setbacks will be to provide space around dwellings, allow large trees and shrubs to establish, create visual space between development and roads and to reduce the clustering of dwellings.

#### **(iv) Conclusion**

The Panel concludes that the proposed introduction of setback requirements in the RLZ schedules is satisfactory and appropriate.

**Proposal: In the RLZ3, reduce the minimum subdivision area from 8 hectares to 4 hectares and reduce the minimum area for which no permit is required for a dwelling from 8 hectares to 2 hectares**

#### **(v) Discussion**

These changes are proposed to apply to RLZ3 areas in Precincts 1, 2 and 5 in Gisborne and Riddells Creek. This change to the lot size would allow some of the larger lots in these precincts to be subdivided into lots that are more consistent with the existing lot pattern, creating infill opportunities that could realise about 65 additional lots.

Council's analysis shows that over two-thirds of the existing lots in Precincts 1 and 2 are between 0.5 and 6 ha.

#### **(vi) Conclusion**

The Panel concludes that this proposal is generally appropriate for these Precincts. Specific submissions about these areas are discussed in Chapter 5.

**Proposal: Delete DDO13**

#### **(vii) Discussion**

Many subdivisions in the south of the Shire around Riddells Creek and Gisborne contain large primary lots, often of more than 50 hectares. Currently, DDO13 restricts subdivision of eight of these primary lots and others have a Section 173 agreement on title that restricts further subdivision.

While some balance lots contain land that was considered unsuitable for rural living use because of environmental conditions or the need for separation from other land or uses, the removal of DDO13 and the cancellation of Section 173 agreements in appropriate locations would create opportunities for more appropriately sized rural living lots. Council estimates that up to 150 additional lots could be created in the Gisborne and Riddells Creek area, equivalent to about 4.5 years of additional supply for the Shire.

In 2013 the State Government removed the requirement for a mandatory Section 173 agreement to restrict future subdivision from the RLZ<sup>4</sup>. Council considers that deleting DDO13 and cancelling Section 173 agreements where possible would be consistent with the intent of that amendment.

**(viii) Conclusion**

The Panel concludes that because the areas affected by DDO13 are well located in relation to the services of Gisborne and Riddells Creek and the planning permit process can manage issues such as development suitability and subdivision design, these changes are consistent with the objective of seeking increased yield from the existing RLZ areas.

**Proposal: Introduce new DPOs for five change areas**

**(ix) Discussion**

The Council has identified five 'change areas' where the RLZ2 or RLZ3 is proposed to be applied, together with a DPO. The purpose of the DPO is to coordinate future subdivision and infrastructure provision in each area. All of the proposed DPO schedules require a development plan to be prepared before subdivision can take place.

Except for DPO21 at Romsey, the proposed DPO schedules include a requirement that the development plan be consistent with a concept plan included in the schedule. The schedules include a requirement for a Sustainable Development Plan and a development contribution, either through a Development Contributions Plan or a Section 173 agreement.

The DPO proposals have been summarised in Table 2.

Council has not proposed a DPO for Precincts 1 and 2 of the Central Region because it considers that development in these areas will be essentially infill and the existing policies and the permit approval process will be sufficient.

Some submitters, including Mr Travis Conway, Town Planner from Urbis Pty Ltd in his expert evidence for Mr George Footit, (Submitter 30) were concerned about the timing of having to meet development contribution obligations. This is a matter that can be managed through any Section 173 agreement if necessary.

Some submitters also questioned the requirement that there be only one development plan in each area. Council considered that there must only be one plan to ensure a coordinated outcome, and that this requirement had been able to be met in a number of other areas. Council indicated that it would be prepared to facilitate cooperation between landowners and that one landowner often took a lead in preparing the plan.

**(x) Conclusion**

The Panel concludes that the general approach of applying a DPO as proposed by Council is an appropriate way to achieve coordinated development outcomes for the identified areas. The specific details of each precinct are discussed in Chapters 5, 6 and 7.

---

<sup>4</sup> Amendment VC103, September 2013.

## 4.4 The appropriate long term extent of the RLZ

### (i) Discussion

An issue that became apparent to the Panel but is not addressed by the Amendment is the appropriate extent of application of the RLZ across the Shire in the longer term.

Council submitted that the RLZ applies to about 9% of land in the Shire. Compared to other peri-urban municipalities, this is a high percentage. Outside the change areas, large areas around Clarkefield, Darraweit Guim, Romsey and Lancefield are included in the RLZ1 with a minimum lot size of 40 hectares. A number of these areas have a significant role as either an interurban break (such as between Romsey and Lancefield) or as a buffer to the metropolitan municipalities to the south and east.

The effect of the 40 hectares minimum lot size in many locations is largely to freeze the existing lot pattern. The purposes of the RLZ however include *“To provide for residential use in a rural environment.”*

Esther Kay (Submitter 109) amongst other issues noted that the Strategy did not include an option to reduce the number of rural living lots by back zoning some RLZ areas. Ms Kay suggested that the FZ may be a better option in some situations.

While not directly a part of this Amendment, the Panel considers there is an issue of balance to be considered that is relevant to the strategic justification of the Amendment. On the one hand, the Amendment proposes to open up significant areas of the already high proportion of land in the Shire in the RLZ for more intensive development. Other areas however, where the purpose of the RLZ and the preferred lot size are potentially not well aligned to the purposes of the RLZ, remain unexamined. The strategic approach to the areas for intensification does not appear to be balanced by similar strength of purpose for those areas where intensification is clearly not intended or appropriate.

### (ii) Conclusion

The Panel concludes there would be substantial merit in including these areas in the further review suggested in Section 4.2.

## 4.5 Recommendations

The Panel recommends:

### 1. Review the following:

- **Strategies under Objectives 1 and 3 in Clause 21.09-2 *Rural residential* to retain an ability to manage rural residential development that occurs in areas in the Rural Living Zone as well as in other rural zoned areas.**
- **New or amended policies to remove references to the anticipated number of new lots created e.g. Strategies 2.2, 2.3 and 2.4 under Clause 21.09-2.**

### 2. Amend the following:

#### a) Strategy 4.2 in Clause 21.09-2 to read:

- **Require appropriate supporting infrastructure including sealed roads, road/junction improvements, path networks, fire access tracks, lighting and reticulated potable water supply or an alternative potable water**

- supply with adequate storage for domestic use in addition to that required for fire fighting purposes for new subdivision and development.
- b) The objective 'To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to reticulated water is available' under Clause 22.02 Dams to read:
- To avoid the creation of new dams to serve rural living lots less than 4 hectares where connection to suitable rainwater tanks or reticulated water is available.
3. Retain the existing 40 hectare minimum lot size for which no permit is required in the Rural Living Zone Schedule 1.



## **5 Gisborne and Riddells Creek**

### **5.1 The issues**

Rural living in the Gisborne and Riddells Creek area of the Shire forms what the Strategy identifies as the Central Region<sup>5</sup>. The Strategy provides a strategic plan for how future demand for population growth with respect to rural residential housing in a rural environment should be supplied. It is guided by State and local planning policy that primarily seeks to ensure that rural living occurs in a manner that is located close to settlements but not in a way that restricts the ability of a settlement to grow with future population change.

For Gisborne and Riddells Creek, the Strategy and the Amendment propose to change selected areas currently within the RLZ to intensify rural living development. The issues for Gisborne and Riddells Creek in relation to the proposed changes under the Amendment relate to whether the areas selected within the RLZ are appropriately located in terms of physical context and strategic planning policy having regard to access to services and their relation to township areas. Do they pose unacceptable impacts on environmental and biodiversity values, visual and landscape values, are at risk from bushfire threat and will they achieve the outcomes sought under the Strategy.

### **5.2 Are the precincts around Gisborne and Riddells Creek appropriate?**

The Strategy identified that within the Central Region, existing areas of land in the RLZ around Gisborne and Riddells Creek offer the most appropriate locations to accommodate future growth for rural living. Through lot assessment and a supply and demand analysis of existing areas in the RLZ around Gisborne and Riddells Creek, the Strategy identified that future rural living housing demand and growth within these areas could be catered for through changes to the minimum lot size provisions under the RLZ. This approach avoids the necessity for rezoning existing areas in other rural zones such as the FZ and RCZ for rural living purposes. It provides for the demand for rural living housing in close proximity to Gisborne and Riddells Creek that is adequate and shifts pressure away from more environmentally sensitive areas around Woodend and Macedon.

In facilitating the availability of land that could accommodate future growth in the RLZ, the Strategy identified five precincts within the Gisborne South, Gisborne, New Gisborne and Riddells Creek area (refer to Figure 2).

#### **5.2.1 Evidence and submissions**

For the Central Region covering Gisborne and Riddells Creek, a large number of submissions were received on the Amendment. Those submissions relating to land outside of the 'change areas' proposed under the Amendment are addressed in more detail under Chapter 8. Those submissions relating to the proposed 'change areas' have been considered by the Panel and references are made by the Panel to those that have highlight issues for its consideration of the Amendment.

---

<sup>5</sup> The Central Region also includes areas in the Rural Living Zone around Woodend, Macedon and Clarkefield.

Regarding Gisborne and Riddells Creek, the evidence given by Mr Shipp identified that:

*The Gisborne and Riddells Creek area is characterised by rural living areas and townships that are located near the foothills of the Macedon Ranges and near State forests. Demand for properties in these towns is strongly influenced by the close proximity and ready access to metropolitan Melbourne (less than an hour from the Melbourne CBD).*

Access to the area is enhanced by the presence of the Calder Freeway that dissects the RLZ areas between Gisborne and Riddells Creek.

Ms Marshall submitted that places like Gisborne along with Kyneton that are well serviced with community infrastructure and have close access to the Calder Freeway would bear the brunt of accommodating future growth for rural residential development. Riddells Creek would accommodate moderate growth. This would particularly be the case where they offer fewer constraints from an environmental and landscape quality perspective.

The Strategy identified that land in the RLZ around Gisborne and Riddells Creek currently has a minimum lot size of either 40 or 8 hectares and that there is no schedule to the RLZ that allows for lots between 2 and 8 hectares. Community surveys and land management issues indicate that lots around 8 hectares in size are an inefficient size. An 8 hectare lot provides more land than most prospective residents need and require a greater degree of land management than new landowners residing on these sized lots will usually be able to provide. The Strategy found that the presence of an 8 hectare minimum lot size in areas of the RLZ around Gisborne and Riddells Creek provides impetus to apply the strategic principle of focusing rural living development within areas that are currently in the RLZ where potential exists to increase the supply of rural living opportunities without requiring further rezoning for such use.

The exhibition version of the Background Report provided a description of the precincts within the 'change areas' identified in the Strategy.

It also included the outcomes of a landscape assessment to identify areas of landscape and visual sensitivity that could be detrimentally affected by changes proposed under the Amendment. The landscape assessment focussed on areas with high visibility including from major roads like the Calder Freeway and areas where aesthetic qualities are valued. The Background Report focussed its assessment on Precincts 3, 4 and 5, which informed the development of the DPO schedules.

Council also undertook a desktop assessment of biodiversity values which highlighted that more detailed assessment would be required for Precincts 3, 4 and 5 in order to confirm the extent of change within these RLZ areas. Further more detailed investigation of biodiversity was undertaken by Practical Ecology Pty Ltd for which a Flora and Fauna Assessment was prepared.

A bushfire risk assessment was also undertaken for all changes areas in all regions of the Shire, which was also prepared by Practical Ecology Pty Ltd.

### **Precincts 1 and 2**

Precincts 1 and 2 are located south of the Gisborne township in the Gisborne South area south of Brooking Road, west of the Calder Freeway and extending to the municipal

boundary with Melton City. Most of the developed lots are between 0.5 and 6 hectares while the minimum lot size is either 40 hectares (Precinct 1) or 8 hectares (Precinct 2). Within the precincts, the Amendment proposes to change some of the land areas by reducing the minimum lot size to 4 hectares to allow for some of the larger lots to be further subdivided into lots more consistent with the prevailing lot size pattern. This will create some limited infill opportunities. In total, these changes could realise approximately 65 additional lots.

The Background Report considers some of the land in the southern parts of Precincts 1 and 2 have environmental constraints including significant slope, native vegetation cover and bushfire risk or other constraints such as poor access. These areas will be excluded from the 'change areas' and the current minimum lot size and zone schedule will be retained. In this respect, Council considered the retention of a non-urban break with Melton to the south would be retained.

Precincts 1 and 2 are not proposed to be covered by a DPO. Council's response to why this was the case was that they are essentially infill areas that have limited capacity to allow for additional lots. Council considered that the application of a DPO would not work in these locations because of the fragmented land pattern and that the policies and provisions in the planning scheme would be sufficiently adequate to guide subdivision and development proposals for these areas.

### **Precinct 3**

Precinct 3 is located east and close to Gisborne township on the eastern side of the Calder Freeway, south of McGregor Road and east of Bennett Road extending to the municipal boundary with Hume City. The precinct includes smaller lots of 2 and 5 hectares. The Background Report considers the eastern section of this precinct contains steeply sloping escarpments unsuited to any further subdivision. The remaining larger lots in the north and east of the precinct are on flat land. It recommended that a 2 hectare minimum lot size be applied to reflect the existing lot sizes in the area, along with DPO18 to guide coordinated development outcomes. An estimated 100 hectares would be available within this area and the proposed changes could potentially provide for an additional 50 lots.

The Background Report identified a small area to the south of Dalrymple Road with lots around 4 hectares. It recommended that this area have a minimum subdivision lot sized of 4 hectares to correspond with the prevailing subdivision pattern. There is only one lot with an area greater than 8 hectares that may have potential to subdivide under the proposed change.

With regards to landscape assessment, the Background Report concluded that:

*Views from the Calder Freeway into the flat paddocks of Precinct 3 are the most significant element for the Study to consider given the high traffic volumes and exposure. These views have been obscured by well-established rows of pine trees adjacent to the Bennett Road boundary. Protection of these trees through a Vegetation Protection Overlay or similar will be considered as part of more detailed planning as part of preparation of a Development Plan. The Development Plan controls will include requirements to retain these and*

*other established trees in the future subdivision and development of the precinct.*

#### **Precinct 4**

Precinct 4 is located east on the fringe of Gisborne township adjacent to areas in the LDRZ on the west side of Kilmore Road. A number of existing clusters of smaller lots have been created in the precinct and developed in the last couple of decades.

To the south of Kilmore Road are two large lots which feature flat paddocks in the north falling to the south into the wide and steeply sloping Jacksons Creek escarpment. The Background Report identifies that the Jacksons Creek escarpment and its tributaries are significant constraints to the development of this area. There is approximately 100 hectares of unencumbered land. It recommended that the majority of the area could be subdivided into 2 hectare lots transitioning to 4 hectare lots along the Kilmore Road and eastern interface. These 4 hectare lots would provide a more open visual landscape from Kilmore Road and the already developed rural living lots adjoining the precinct to the east.

The Background Report recommended that DPO19 be applied to facilitate the coordinated subdivision of this area. It also recommended that the existing DDO13, which restricts subdivision to a minimum lot size of 100 hectares, be removed from the land. DPO19 would coordinate the design and layout of future road networks, identify constraints and provide for a site responsive pattern of lot sizes.

The Background Report outlined that investigation of the land north of Kilmore Road identified a number of constraints. The area is dissected by two incised waterways. Views from Kilmore Road across the eastern section also look out to the foothills of the Macedon Ranges. For these reasons, rural living subdivision and development is not supported in this part of the precinct.

With regards to landscape assessment, the Background Report concluded that:

*Precinct 4 has prominence from the Calder Freeway bridge over the Jacksons Creek escarpment and Kilmore Road. The precinct is an important gateway into Gisborne, providing an open landscape from these key corridors. Development Plan controls should require development to be setback from the Jacksons Creek escarpment to minimize views of future development into this area. The views from Kilmore Road should be managed by requiring larger lot sizes and landscape setback free of development adjacent to this road.*

*Most significant is the views across land in the east of the precinct looking north from Kilmore Road to the Macedon Ranges and its nearby foothills. This area is currently protected by a Design and Development Overlay that sets a minimum lot size of 100 hectares. This control should be retained to prevent the encroachment of development into this important vista.*

*The north-east section of this precinct has a variety of developed lots with lot areas ranging from 1.5 to 7 hectares. These lots front Pierce Road, Kilmore Road and Macedon Close and established landscaping screens this area from public roads. Changes to the current minimum lot size controls are not proposed for this area to maintain the existing landscape screening and development density.*

## Precinct 5

Precinct 5 is located south-west of Riddells Creek and is bounded to the north by the Bendigo Rail line/Markham Road (Kilmore Road), east by Riddells Road and to the south by Jacksons Creek. The Background Report considered that opportunities for more intense development are isolated to twelve large lots between Campbells Road and the Jacksons Creek escarpment. The size of these lots has historically been controlled through subdivision controls and title restrictions which were imposed when subdividing smaller lots out of a 'primary lot'. These lots have few natural constraints and the area is generally flat except for steep land flowing into the Jackson Creek in the south and gentle depressions running east-west through the area.

With regards to landscape assessment, the Background Report concluded that:

*Existing rural living development along Kilmore Road/Markham Road and north of Campbell Road screens internal views of this precinct from Kilmore Road. There are no significant views into this area that influence the Study. Although where possible established tree planting should be retained.*

The Background Report considered that given the area is more remote from Gisborne and associated services, a minimum lot size of 4 hectares is recommended. DPO20 is recommended to coordinate the development of this area and, in particular, provide for a road network including through road connections that minimise dead ends. It is anticipated that approximately 90 lots could be created through the proposed changes in this area.

The Background Report summarised that the changes in the Central Region under the Amendment would yield 271 lots which would be equivalent to 8 years supply Shire wide and 23 years supply for the Central Region (refer to Table 6).

Precincts 1, 2 and 3 fall close to the municipal boundaries with Hume and Melton triggering fears over the loss of the urban break between Gisborne/Riddells Creek and these boundaries. Council's response was that these areas are currently zoned rural living. Over time the land has been subdivided into a diversity of lot sizes creating a highly fragmented pattern of development and ownership. The urban break from the growth of Metropolitan Melbourne is an objective that the Amendment retains with some of the RLZ areas adjoining the municipal boundaries remaining unchanged whilst other areas are included that allow some infill development of larger 'balance' lots which were the result of past subdivision.

Submissions relating to the Gisborne and Riddells Creek area have been broad ranging from support for the proposed changes to the Amendment and for it to proceed as soon as possible to objection to what the Amendment seeks and for it to be abandoned.

Table 6: Central Region proposed lot size change and lot yield

Precinct	Zone	Current Minimum Lot Size (ha)	Proposed Minimum Lot Size (ha) Change	Proposed Zone Schedule	Approximate Lot Yield from Proposed Changes
1	RLZ1	40	4	RLZ3	2
2	RLZ5	8	4	RLZ3	64
3	RLZ5	8	2 and 4 south of Dalrymple Road	RLZ2 and RLZ3	51
4	RLZ5	8	2 and 4	RLZ2	63
5	RLZ5	8	4	RLZ3	91
Potential additional lots from proposed changes					271
Potential additional years of supply from proposed changes					8

Submitters who own larger land holdings were generally supportive of a reduction in minimum lot size from either 8 to 4 hectares or from 40 to 4 hectares. Submitters like Mr John Dixon (Submitter 61) relating to Precinct 1, which is proposed to change from 40 to 4 hectares, supported the Amendment. He considered it would allow the creation of lots that would be in keeping with the current lot size and pattern of the area, assist land management, provide housing opportunities and allow him to downsize and age in place in an area that is appreciated and enjoyed. Similarly, Mr Rod McNeil (Submitter 9) relating to Precinct 2 supports the Amendment and the proposed change from 8 to 4 hectares. Although he would prefer 2 hectares, he considered the proposed change is satisfactory and allows for land use diversification including possible tourism orientated use of the land in the future.

Other submitters supported the Amendment but considered it did not go far enough with respect to reducing the minimum lot size. Mr Anthony Whittall (Submitter 1) relating to Precinct 2 supported the Amendment but considered lot size should be reduced from 8 to 2 hectares instead of 4 hectares. He commented that the area contains hobby farms that are unproductive or under-utilised with varying degrees of good land management in terms of weeds, fire risk or neglect. He considered 2 hectare lots would facilitate both the land to accommodate growth and be more readily maintained. Similarly in Precinct 2 on Brooking Road and opposite residential zoned areas of Gisborne, the submission from Ms Fiona Slechten from Calibre Consulting on behalf of Mr Troy Rodda and Ms Kay Millington (Submitter 118) submitted that their land, in the RLZ, was suited to a reduction in minimum lot size from 8 to either 1 or 2 hectares. The Amendment proposes 4 hectares for this area. Ms Slechten submitted that 1 or 2 hectare sized lots would represent a more appropriate form of lot size transition from the General Residential Zone opposite her client's land to the north to areas further south that would be 4 hectares and transitioning further south to 8 hectares. She submitted the land opposite was now urban in character with all services available.



Similarly, the submission from Mr Neville Smith on behalf of Mr Fred Sewell (Submitter 106) and Jim Vella (Submitter 125) in relation to Precinct 3 who supported the proposed change from 8 to 2 hectares, but considered a 1 hectare minimum lot size would have no additional detrimental effect on the landscape or environment of the surrounding areas.

Other submitters focussed on the proposed controls, like Ms Andrea Tomkinson from the Tomkinson Group on behalf of Hyperno Pty Ltd (Submitter 101) relating to Precinct 4 who supported the Amendment but sought changes to the proposed DPO19 to avoid what was considered to be provisions that would hinder full realisation of subdivision development. Ms Tomkinson submitted that the Concept Plan in DPO19 had depicted the extent of the Jacksons Creek escarpment, which she considered was not accurate and would overly limit subdivision opportunities.

In a broader ranging submission, Mr Andrew Gray from ARG Planning on behalf of Mr Frank and Ms Dorothy Costa (Submitter 48) in relation to land in Nolans Road, Precinct 5 supported the Amendment considering that it reflected the broad objectives of the Strategy. Their land is bounded in part by Jacksons Creek and its steep escarpment and was affected by the 2014 bushfire. He submitted the proposal to reduce the minimum lot size from 8 to 4 hectares together with the application of DPO20 would allow for appropriate management of fire risk and environmental values primarily through the ability to create larger lots on the escarpment and higher density subdivision on the less constrained flatter areas of his client's land.

Mr Gray's submission also raised issues with DPO20 with respect to subdivision staging, averaging of lot sizes, detail shown on the Concept Plan and the creation of a public reserve along Jacksons Creek from privately owned land.

The Amendment was considered by submitters, such as Mr George Wright (Submitter 13), as being too demand driven and failing to address issues such as agriculture, environment, bushfires and water quality before moving to implementation of the changes proposed by the Amendment.

Similarly, the submission from Ms Pruneau from the MRRA (Submitter 92) considered that the Amendment would create unacceptable impacts on landscape character highlighting the example of the Jacksons Creek escarpment which was considered to conflict with policy in Clause 21.13-1 that seeks to protect the escarpment from development. Ms Pruneau also considered that reducing lots sizes and intensifying rural living development may have the effect of losing the open rural character of the area and viewlines of the Macedon Ranges themselves through the resultant increase in vegetation planting that comes with increased settlement.

Mr Ian Law (Submitter 40) also expressed concern over the loss of character of existing areas in the RLZ with more intense subdivision and development and associated reduction in spacing between buildings.

Other submitters like Mr Altmann from the MRSG considered that due to the existing fragmented land holdings in the Gisborne and Riddells Creek area the reduction of lot sizes was generally not opposed and the location was generally close to existing community services and infrastructure in the towns. His view was moderated by the exception of Precinct 4 which is located close to the existing urban area of Gisborne and for which he



considered that further fragmentation of land would seem premature without scoping longer term options including what may be required for any future urban expansion of the town.

### 5.2.2 Discussion

In Gisborne and Riddells Creek, the focus of the Amendment is on areas within the existing RLZ where a determination has already been made for rural living and where these areas have already been identified due to suitability for residential use in a rural environment.

The Panel accepts that there is a need to provide for rural living in the Shire. There is an existing supply of rural living land, however what Council is arguing is that the demand for smaller lots in the 2 to 4 hectare range is not being presently met. The Amendment recognises that the existing policy framework in the Macedon Ranges Planning Scheme identifies that Gisborne is one of the Shire's large district towns and the major urban centre in the south of the Shire that will bear the brunt of accommodating growth. The planning scheme also recognises that Riddells Creek will also share some of that burden for moderate growth.

The focus of the Amendment is on rural living and for provision of supply for that land use to occur within some of the areas that are currently in the RLZ around Gisborne and Riddells Creek. This approach appears logical and worthy of support from the Panel. The areas selected for change through reduction of the minimum lot size for subdivision in the RLZ are targeted to where there is capacity for further intensification of subdivision, yet remain close to either Gisborne or Riddells Creek townships. In this regard, the Panel notes and agrees with the comments of Mr Altmann with respect to the appropriateness of reducing minimum lot sizes in those selected areas already in the RLZ, which for the most part will reflect existing lot sizes and patterns and not have impacts due to the existing fragmented nature of development in these areas.

A key issue is whether the areas selected for change may impede the future urban growth of these towns. Clause 16.02-1 dealing with *Rural Residential Development* includes a strategy to:

*Ensure land is only zoned for rural living or rural residential development where it:*

- *is located close to existing towns and urban centres, but not in areas that will be required for fully serviced urban development*
- *can be supplied with electricity and water and good quality road access.*

Regarding Precinct 4, Mr Altmann considered it may potentially compromise future urban growth, the Panel notes that urban areas in Gisborne that are nearby are either bounded by land currently in the LDRZ (located opposite Precinct 4 on the other side of Kilmore Road) or the Calder Freeway, which acts as a significant barrier to any future urban growth. The Gisborne/New Gisborne Framework Plan under Clause 21.13-1 of the planning scheme does not envisage future urban expansion in the direction of Precinct 4. Any future review of strategies for urban growth in Gisborne/New Gisborne are yet to occur and hence, the Panel is not in a position to speculate what any outcomes might be in that regard to discounting the proposal for change in Precinct 4.

The identification of select areas within Precincts 1 and 2 for change retains RLZ areas in periphery locations that remain unchanged. This means to the south, adjoining the municipal boundary to Melton, areas of RLZ will remain with either a 40 hectare or 8 hectare minimum lot size. This will maintain the non-urban break, albeit that the current lot sizes and patterns reflect relatively small sized land parcels. The Panel acknowledges that the 'change areas' will not pose any additional threat to the retention of a non-urban break due to the retention of the RLZ and current minimum lot size requirements that are not proposed to be altered under the Amendment.

Similarly, to the east, the proposed 'change area' in Precinct 3 leaves an area of existing RLZ that will remain in the RLZ with an 8 hectare minimum lot size requirement bordering the municipal boundary with Hume. This will retain the no-urban break. In Precinct 5, the area bordering the municipal boundary with Hume is proposed to be reduced from 8 and 40 hectares to 4 hectares. Although this change is proposed, it is noted that the municipal boundary in this area comprises Jacksons Creek itself. This area is noted by the Panel for protection as an open space corridor in DPO20 and for the escarpment to be further protected by creation of only one or two large lots which will assist in maintaining a relatively low lot density and non-urban break with Hume.

These conditions and proposed changes supplemented by the DPO schedules provide sufficient assurance to the Panel that the existing non-urban breaks between Gisborne and Melton and Hume will be satisfactorily maintained.

With respect to the separation between Gisborne and Riddells Creek, the Panel notes that these settlements are already commonly joined by the RLZ as well as areas north of the Bendigo Railway line that are in the RCZ, thus providing a non-urban break between the settlements. The RLZ is applied south of the railway line up to Riddell Road with an 8 hectare minimum lot size. Beyond, on the other side of Riddell Road, a 40 hectare minimum lot size is applied. Precinct 5 extends south of Campbell Road to Riddell Road and is proposed to be reduced from 8 to 4 hectares. The combination of retention of the 8 hectare minimum lot size between the Kilmore Road and Campbell Road and 40 hectare minimum lot size east of Riddell Road provides sufficient assurance that the non-urban break between Gisborne and Riddells Creek is not being put at risk under the Amendment.

The selection of minimum lot size changes under the Schedules to the RLZ from 40 and 8 hectares to 4 or 2 hectares and in some localised areas to 1 hectare are generally considered satisfactory. The Panel's view is supported by the existing small lot sizes and pattern for those areas where changed is proposed (e.g. Precincts 1 and 2). The proposal for reducing lot sizes from 8 to 4 hectares is a reasonable response, particularly for those areas located opposite existing urban residential areas of Gisborne. The proposed change from RLZ5 to RLZ3 is considered appropriate in continuing a clear distinction between urban and non-urban areas of Gisborne, whilst allowing scope for future urban reviews of Gisborne.

The application of DPO schedules in Precinct 3, 4 and 5 introduces additional fine tuning of requirements for subdivision design and layout and permit requirements that also ensures lot size and pattern is responsive to local conditions, which include landscape sensitivity, the presence of native vegetation and the Jacksons Creek and its escarpment area. Although there have been requests to further reduce the minimum lot sizes, it is considered such changes are not supported and would risk impacts on the character of the areas including

their environmental sensitivities. The Panel considers Council have selected the range of reduced minimum lot sizes correctly and finds the changes proposed under the Amendment for Gisborne and Riddells Creek appropriate.

With respect to impacts on the rural character of those areas proposed for change and adjoining areas, the Panel considers changes to 1, 2 and 4 hectares will not result in changes that will be significant. These lot sizes retain opportunities for spacing between dwellings and associated outbuildings as well as for landscaping works and vegetation planting. Spacing around buildings will be supported by nomination of setbacks in the RLZ schedules, which provides further control of development in terms of avoiding detrimental impacts on character.

The Panel considers that generally, for those areas including much of Precincts 1, 2, 3 and parts of 5, the Amendment represents change that is considered infill development. Opportunities for subdivisions, in many instances, that consist of a small number of additional lots being created. Where there are larger lots affected by the Amendment, and this includes those large balance or 'primary' lots covered by DDO13 or Section 173 Agreements, they are inevitably located in areas where either a DPO is proposed to be applied requiring a Development Plan to be prepared to ensure integrated development (e.g. Submitter 101 in Precinct 4) or are located close to existing lots of similar sizes that would be permitted under the Amendment (e.g. 'Gisborne Park' in Precinct 2).

The Panel notes the submissions from Mr Mark Bartley from HWL Ebsworth on behalf of Submitter 38 that the proposed change for 'Gisborne Park' in Precinct 4 from 8 to 4 hectares (RLZ5 to RLZ3) represents development that would be in keeping with the pattern of subdivision that surrounds this land which is generally 4 hectares in size. He stated that:

*Some submitters, many already the beneficiaries of previous subdivisions in the area, have made comments opposing further subdivision, either specifically about this property or generally about fragmentation of rural properties. This site is clearly not part of a rural landscape or farming zone. It is surrounded by existing RLZ subdivision.*

The Panel agrees with these sentiments and considers the primacy of what the Amendment seeks to do in Gisborne and Riddells Creek is a form of rural living development that is in the form of infill development generally in keeping with what has occurred and is present in the area.

Regarding broader landscape aesthetics, Mr Wright considered the landscape feature which deserves most attention in terms of protection is the Macedon Ranges massif. He considered that areas proposed for more intense development in the RLZ avoided this area. The Panel agrees with this conclusion and does not consider landscape impacts from the areas identified for intensified subdivision associated with rural living development will impact on the Macedon Ranges itself.

From a more localised perspective, landscape sensitivity associated with the Calder Freeway and areas in and around Precinct 4 was addressed in Council's Part B submission which reiterated the landscape assessment undertaken in the Background Report. Council further submitted that the Amendment applies DPO19 which requires a number of design provisions to be taken into account when a Development Plan is prepared for Council approval under

the Overlay. In relation to Precinct 4, primary viewsheds into the site are available from Kilmore Road and the Calder Freeway. Views from Kilmore Road comprised areas that were screened by existing vegetation while other sections were more open with views across into Precinct 4 across relatively gentle slopes. Key views from the Calder Freeway bridge over Jackson Creek were available along the valley.

The DPO19 contains provisions that seek to manage the identified visual aspects through:

- providing for a range of lot densities that responds to and manage site features and constraints
- strategically managing the features and constraints of the development area
- limiting the visual intrusion of development around Jacksons Creek escarpment and from Kilmore Road, particularly between Pierce Road and Campbell Road.

The DPO19 also contains provisions under 'Subdivision Layout Concept' requiring subdivision design to include:

- land fronting Kilmore Road between the Pierce Road and Campbell Road intersections to have lots with a minimum size of 4 hectares
- land adjacent to the Jacksons Creek escarpment on the north side of a proposed boulevard road to have lots with a minimum size of 1 hectare
- a maximum of 2 lots of similar size created to the south of the boulevard road incorporating the escarpment land
- building envelopes setback a minimum of 70 metres from the Kilmore Road boundary for lots fronting Kilmore Road between the Pierce Road and Campbell Road intersections
- provision of a landscape concept plan which utilises locally indigenous native vegetation retention and planting.

The requirement to retain vegetation ensures that the landscape screen along the angled Kilmore Road section will remain and continue to screen views in Precinct 4, limiting the impact of development and change. The Concept Plan shows a 15 metre planted landscape buffer along the northern boundary of the lots which address Kilmore Road. The requirement for the two lots south of the boulevard road limits any change in this location, and accordingly limits the potential for change in visual impact from the Calder Freeway to the escarpment. These provisions combined with the Concept Plan clearly set out a lot and building envelope layout that manages the potential visual impacts of new development from the identified primary viewsheds.

The Panel considers these provisions provide adequate control to protect local landscape sensitivity.

Regarding the content of the DPO18, DPO19 and DPO20 schedules, the Panel considers that despite the concerns of submitters, they are generally appropriate. The provision of a Concept Plan in each schedule is not necessarily required in drafting a schedule to the DPO. The *Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlays* does not specify the inclusion of a Concept Plan. However, the Panel does believe inclusion of the Concept Plans in the schedules has allowed parties to make submissions in relation to their content and more importantly, with respect to future indicative land use and development layouts. The Panel notes that any Development Plan prepared is to be

generally in accordance with the Concept Plan and guided by the other provisions of the schedule. A single Development Plan is sought under the schedules which the Panel considers may include information concerning any staging of subdivision. These provisions are considered useful and satisfactory.

The requirement for a Development Plan to be informed by a series of technical assessments for land capability, biodiversity and heritage and archaeological assessment, infrastructure provision, sustainable development, subdivision layout concepts, traffic management, landscaping and open space is logical and are able to be prepared as part of an integrated package of analysis that would inform a final subdivision and development design that is generally in accordance with the Concept Plan. The Panel considers what is proposed for Gisborne with DPO18 and DPO19 and Riddells Creek with DPO20 are generally satisfactory.

The Panel does note an exception with the notation on the Concept Plan of DPO20 concerning lot size which states '*4 hectare minimum lot size throughout precinct*'. The Panel considers that, given the presence of the Jacksons Creek escarpment and native vegetation and the purpose of what this schedule is seeking with the provision of a range of lot densities and management of site features and constraints, this notation should be changed to allow for a more responsive subdivision design and layout for this precinct. The Panel considers the notation should refer to not only to a 4 hectare minimum lot size but also allow for smaller lots for areas with capacity to absorb development and larger 'balance' type lots for the more environmentally and topographically challenging areas of the precinct.

### **5.2.3 Conclusion**

The Panel concludes that the location of the identified 'change areas' in Precincts 1, 2, 3, 4 and 5 in the Gisborne and Riddells Creek area are appropriate and will support Council's Strategy to increase supply of rural living land as a form of housing for the Shire.

The Panel considers the location of the precincts will not restrain urban growth and development of the townships. The retention of non-urban breaks between Gisborne and Riddells Creek and to Hume and Melton will be maintained under the changes proposed in the Amendment. Impacts on the character and landscape sensitivity of the area are not considered to be detrimentally impacted.

The proposed application and drafting of the DPO18, DPO19 and DPO20 are appropriate and generally satisfactory, subject to changes suggested by Council and identified by the Panel. The overlay schedules will assist in integrating the subdivision and development of Precincts 3, 4 and 5 which all have multiple land ownership and can master plan these areas including protection of environmentally sensitive areas of native vegetation, Jacksons Creek and its escarpment areas.

Overall, the Panel considers the Amendment is satisfactory and represents sound planning to better utilise existing areas in the RLZ around Gisborne and Riddells Creek that are close to services and avoiding the need to rezone additional areas to RLZ, whilst diverting pressure for rural living from areas in the FZ and RCZ.

### **5.3 Are the environmental impacts acceptable?**

Apart from issues of character and landscape considered above, important environmental issues for the Gisborne and Riddells Creek changes areas related to flora and fauna, bushfire risk and buffers for amenity protection.

#### **5.3.1 Flora and fauna**

The Flora and Fauna Assessment report from Practical Ecology Pty Ltd has made a number of recommendations which affected the Amendment both before and post exhibition and during the course of the Panel Hearing. The areas investigated included Precincts 3, 4 and 5 with the recommendations affecting properties within Precinct 5.

##### **(i) Evidence and submissions**

The Flora and Fauna Assessment, which was described in Chapter 1 and the evidence given by Mr Kern identified the presence of Plain Grassland EVC in Precinct 5 (refer to Figure 6). An outcome from the Flora and Fauna Assessment that was included in the exhibition of the Amendment was for a property in Precinct 5 (referred to as Property F, shown in Figure 6 and owned by Submitter 99) to be identified in the Concept Plan in DPO20 as an area where native vegetation is to be protected. A number of other properties in Precinct 5 described by Mr Kern as Properties C, D and E were not able to be surveyed but were considered likely to have important grassland vegetation present including the *Natural Temperate Grassland of the Victorian Volcanic Plain* critically endangered ecological community listed under the EPBC Act.

At the Hearing, Ms Marshall using Mr Kern's evidence advised that Council prefers to see Property F and Properties C, D and E removed from the Amendment.

The outcomes from the Flora and Fauna Assessment raised concerns from affected landowners. Mr Bill Nicol from Nicol Projects on behalf of Ms Mahmood Mahomed (Submitter 99) in relation to Precinct 5 highlighted the difficulty in having land removed from the Amendment due to the presence of native vegetation. He noted that some of the properties in Precinct 5 proposed to be removed were not surveyed and the lateness of the Flora and Fauna Assessment raises issue over the Amendment process and the ability to respond. Mr Nicol highlighted that the effects of removing properties from the Amendment would be a loss of the proposed link roads within the Precinct 5 that are shown in the Concept Plan to DPO20 and the loss of connectivity throughout the precinct and the loss of additional RLZ land of around 5 years of the forecast supply for RLZ development.

Ms Marina Howell (Submitter 124) in relation to Property G raised concerns over uncertainty as to what effects there are to their land with regards to the removal of Properties C, D, E and F, particularly as it relates to fragmentation of areas proposed to be covered by DPO20. She submitted their land should not be removed from the Amendment and that it should be removed from the coverage of DPO20 because their land would now become an isolated parcel which would gain no benefit from being included in DPO20.

Ms Howell considered that allowance for 2 hectare sized lots would better allow flexibility to makes efficient use of both their land's frontage to Nolans Road and the Riddell Road and to create lots on those parts of their land where native vegetation is not present and leave those areas where native vegetation exists in larger balance type lots.

Ms Marshall responded for Council by stating:

*In the circumstances, Council's position is that site G should be retained in the Amendment and included in the DPO area. However, given the island nature of that site, and the fact that issues of integration and connectivity with other land affected by the DPO will not arise, Council would be content for that site to be subject to a DPO on similar terms as that exhibited, but with a different schedule number, relating just to that address. To the extent that some of the requirements might be regarded as being onerous for a site of this size, Council observes that there is sufficient discretion given to Council in relation to the contents of the Development Plan and the background reports to deal appropriately with such issues, noting that the 'Development Plan must be to the satisfaction of the RA' and reports 'as required' which enables a 'lighter touch' Development Plan in these circumstances.*



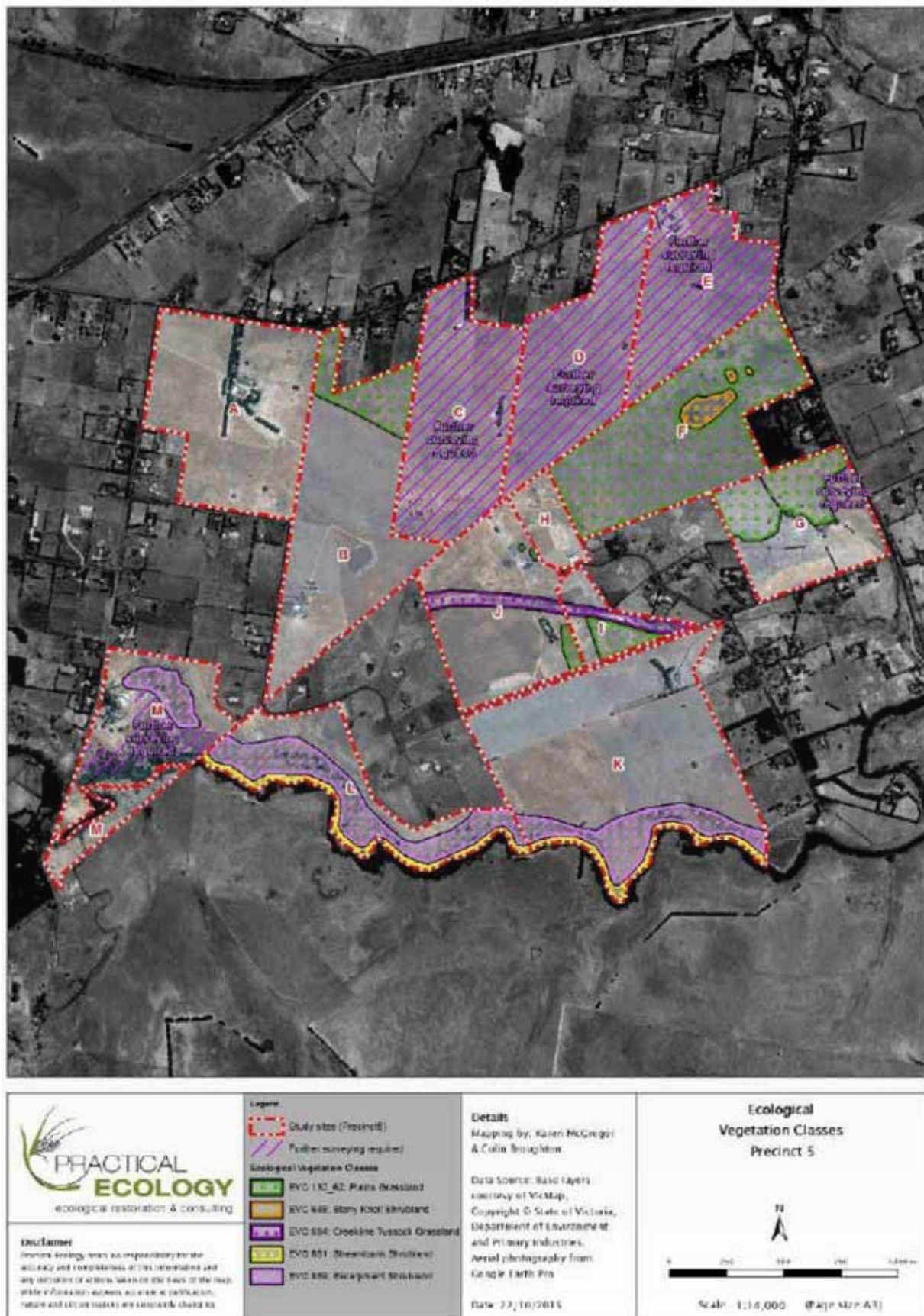


Figure 6: Precinct 5 Riddells Creek Ecological Vegetation Classes and Property identification

**(ii) Discussion**

Consideration of flora and fauna matters was identified in the Strategy as an important element in identifying areas where further intensified rural living development may occur. Accordingly, it is a critical factor in determining whether areas in the RLZ should have minimum lot sizes reduced and allowing more intensified rural living development. The Precinct 5 area is the focus of the outcomes of the Flora and Fauna Assessment and recommendations from it that have been accepted by Council to remove Properties C, D, E and F from the Amendment.

Having regard to the above, the Panel is not persuaded that these properties should remain in the Amendment. The presence or likely presence of the Plains Grassland EVC and the nationally listed critically endangered *Natural Temperate Grassland of the Victorian Volcanic Plain* ecological vegetation community means that until further investigation can be conducted, it would be unwise to retain these parcels of land in the Amendment.

The Panel notes the concerns of Mr Nicol on behalf of Submitter 99 with respect to the lateness of biodiversity outcomes and inability to more fully respond and to the internal connectivity within Precinct 5 and loss of land supply. However, the Panel considers that, although the removal of Properties C, D, E and F represent an impact for those landholders concerned, there may be other opportunities to revisit these sites once a more thorough biodiversity investigation has been conducted that may better resolve what vegetation occurs where and whether there is scope for rezoning in the future that may allow more intense RLZ development to occur.

Regarding Property G and Ms Howell's submission, the Panel considers this land should remain in the Amendment, but because it would become an island of land with a reduced minimum lot size, it would be inappropriate for it to remain under DPO20. It would be a disconnected area of land from the balance of land in Precinct 5. The land has frontage to Nolans Road and Riddell Road, and the Panel considers that, although Council believes it should have its own DPO schedule, it is a small area of land that would be capable of being considered as a stand-alone subdivision proposal. Native vegetation issues would be capable of being considered separately as part of any permit application. The subdivision provisions of Clause 35.03-3 includes scope to create smaller lots than the minimum lot size specified in the schedule where the number of lots is no more than the number the land could be subdivided into in accordance with the schedule. This allows, even with a 4 hectare minimum lot size, an opportunity to create smaller lots for those parts of the land with greater capacity to absorb development and larger sized lots for the more sensitive areas. Accordingly, the Panel considers it is not necessary for Property G to have its own individual DPO schedule and that the proposed 4 hectare minimum lot size should remain. Inclusion of the land in its own DPO schedule is considered to be an excessive requirement by the Panel and not warranted.

**(iii) Conclusion**

The Panel concludes that the proposal by Council to remove Properties C, D, E and F in Precinct 5 at Riddells Creek from the Amendment is appropriate.

### 5.3.2 Bushfire risk

Bushfire risk has been considered by Council in the Amendment, primarily through design by the Strategy requiring that areas proposed under the Amendment for change within the RLZ are located outside of the coverage of the BMO. *Planning Practice Note 64 – Local Planning for Bushfire Protection* identifies that for areas that are outside of BMO areas that are subject or likely to be subject to bushfire are included in the Bushfire Prone Area designated under the *Building Regulations 2006* (regulation 810). In Bushfire Prone Areas planning scheme amendments and planning permit applications to subdivide land should consider the risk from bushfire.

Council further engaged in more detailed analysis of bushfire risk through Practical Ecology Pty Ltd who prepared a Bushfire Risk Assessment for all 'change areas' proposed under the Amendment.

#### (i) Evidence and submissions

The Bushfire Risk Assessment was prepared purportedly for all areas of land affected by the Amendment, however, the Panel notes that for the Gisborne/Riddells Creek area, it covered only those areas where it was proposed to apply the DPO18, DPO19 and DPO20. Consequently, the Bushfire Risk Assessment did not cover Precinct 1 (Gisborne South) and Precinct 2 (Gisborne).

The Bushfire Risk Assessment documents the current site and surrounding landscape conditions, discusses potential future site and landscape conditions based on the proposed increased density of rural living, and provides an analysis of the likelihood of bushfire events, and the likely severity of any bushfire events within each of the DPO 'change areas'. Potential bushfire scenarios across the general landscape and within each of the DPO 'change areas' are detailed, to consider the potential impact of a severe bushfire.

For the Gisborne/Riddells Creek areas, the bushfire risk assessment identified the main landscape features relating to bushfire risk as grazed flat land areas of grassland and the steeper ungrazed grassland escarpment associated with Jacksons Creek and a more woodland and scrub vegetation associated with the riparian corridor of Jacksons Creek itself.

The most significant threat of bushfire risk within the Gisborne/Riddells Creek area was identified in the Bushfire risk Assessment from grass fires. Grass fires can be dangerous because they are fast moving. Precincts 3, 4 and 5 were burnt by fires in 2014 and the Jacksons Creek escarpment represents an opportunity for grass fires.

However, the consideration of the Bushfire Risk Assessment and the evidence of Mr Kern was that the precincts were not affected by the BMO and despite the areas being identified as Bushfire Prone Areas, the nearest forested areas being over four kilometres to the north across a fragmented landscape results in a low to moderate bushfire risk. This was considered to be further reinforced by the increased future fuel fragmentation across the precincts due to the proposed smaller lot sizes proposed under the Amendment. The change in land-use may affect the vegetation across the landscape. For instance, it is likely that each future lot will contain a dwelling, shed, some garden area, perimeter plantings and the remainder of the lot will remain as exotic grassland in lawn and grazing areas. Any fires are likely to be typified with limited fuel loads and fragmented fire fronts, which would

restrict the rate of spread, making it unlikely that fast moving large scale bushfires with extreme behaviour and winds, such that can occur from the interaction of the huge amounts of convective energy with the atmosphere, will impact the precincts.

Mr Kern considered that higher risks associated with the Jacksons Creek escarpment in Precincts 4 and 5 could be minimised through dwellings being setback from the edge of the escarpment and use perimeter roads along the escarpment to create strong firebreaks and which could be included in the DPO schedules and concept plans.

The CFA (Submitter 120) responded to bushfire risk and does not oppose the Amendment. Application of the BMO focuses on crowning and ember attack risks. Fires in grassland areas are not as intense as forest fires, but still remain dangerous, hence the designation of Bushfire Prone Areas. The CFA acknowledged that areas of change avoided areas affected by the BMO.

Council's response was that it had worked with the CFA in relation to managing bushfire risk. The filtering process undertaken by Council has had regard to fire risk and has avoided areas affected by the BMO. Council sought expert advice from Practical Ecology, even though such bushfire analysis was not required to support the Amendment. In this respect Council's view is that there has been more than adequate risk analysis undertaken and that appropriate risk and mitigation measures have been included in the proposed planning provisions to adequately address identified risks.

Mr Wright also expressed concern regarding bushfire risks particularly from ember attack in grassland environments that could present an increased risk to areas where increased density of lots would occur following the Amendment. The increased density and complexity of smaller lots increases difficulties for fire access.

## **(ii) Discussion**

The Panel acknowledges that bushfire risk is an important issue in the Shire. The region has been the subject of significant bushfires in the past noting the Ash Wednesday fires and more recently in 2014, fires affecting parts of Riddells Creek. Hence, any proposal that increases the presence of human life or increases the exposure of human life to bushfire threat is important.

The Amendment does provide for an increase in human presence in areas that are identified as bushfire prone, albeit not affected by the BMO. The Panel gives credit to Council for selecting areas within the RLZ around Gisborne and Riddells Creek that are not covered by the BMO. However, they remain identified as bushfire prone under building regulations, so taking into consideration bushfire risk remains relevant.

The Bushfire Risk Assessment was a late piece of work and although it was produced just before the Panel Hearing and bushfire risk was included in the evidence of Mr Kern that was circulated in accordance with the Panel's directions, parties had little time to absorb the information. Despite this however, the Panel has had time to consider the outcomes of Mr Kern's report and had the benefit of cross examination of his evidence, particularly from Mr Wright and also the benefit of the submission from the CFA.

Avoidance of BMO areas is a positive action taken by Council. The Panel notes that the areas of change in Gisborne and Riddells Creek are primarily at risk from grass fires. It appears



that fire threats from forest fires are more remote despite the distances that embers can travel in bushfire events. What seems more of a problem are grass fires being triggered by embers from a forest fire and becoming problematic on potentially multiple fronts.

Increased density of rural living lots reduced from the 8 hectare lot size to 4, 2 or 1 hectares will, for some areas reflect on existing lot sizes and patterns and for those larger parcels of land increase the presence of development and result in more effective land management that should assist in reducing risk from bushfires. The Panel notes and accepts that evidence of Mr Kern that increased development would increase the fragmentation of fire fuels and avoid larger areas where fires can become damaging or dangerous within the RLZ areas where closer settlement is proposed.

The Panel acknowledges the concern of Mr Wright particularly with regards to a perceived difficulty for property access given a potential for a larger number of smaller land holdings and access points. The Panel considers this may not necessarily be problematic and also considers that there will be opportunities through the DPOs to create subdivision layouts that are more responsive to fire protection including through the use of perimeter roads that can act as fire breaks and building setbacks from fire risk areas such as the Jacksons Creek escarpment area.

### **(iii) Conclusions**

The Panel concludes that bushfire risk will be manageable under the proposed Amendment.

### **5.3.3 Gisborne Wastewater Treatment Plant buffer**

Buffer separation from the Gisborne Wastewater Treatment Plant was raised by the Environment Protection Authority (EPA). Although this is a matter that would be better classified as a transformation of the Amendment, the Panel considers it is an issue that should be considered for the Gisborne and Riddells Creek area.

#### **(i) Evidence and submissions**

The EPA (Submitter 66) considered the Amendment had identified the majority of the land for additional rural living development in areas that were appropriately located generally away from escarpment areas, waterways and native vegetation. However, they expressed concern about land situated directly north of the Gisborne Waste Water Treatment Plant (GWWTP), which is located just east of the Calder Freeway and operated by Western Water. This area is in Precinct 4 and has frontage to Kilmore Road, Gisborne-Kilmore Road and the Calder Highway and is proposed to be amended from RLZ5 to RLZ2, which would facilitate increased residential densities (refer to Figure 7).

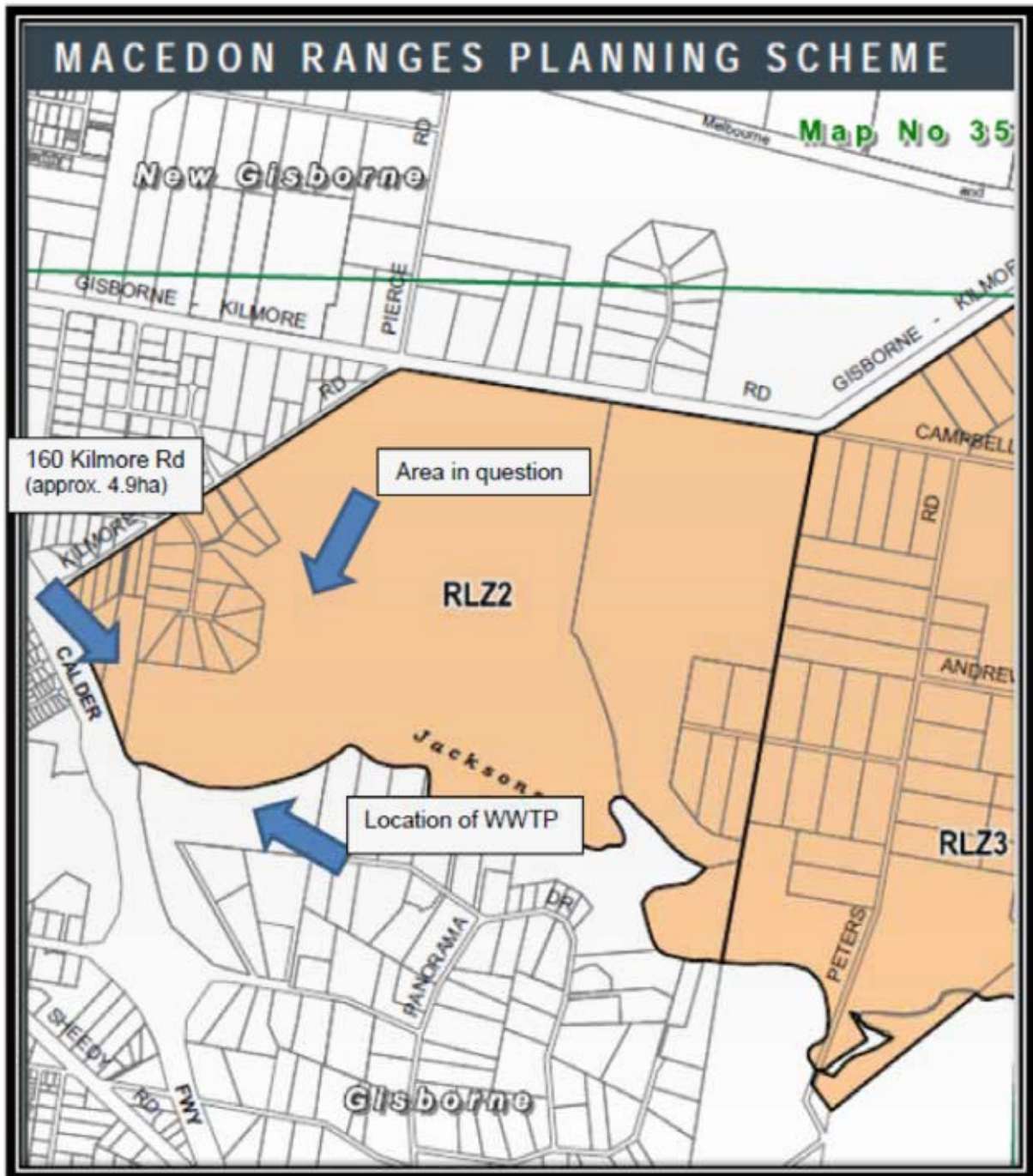


Figure 7: Location of Gisborne Wastewater Treatment Plan and Precinct 4 Rural Living Zone 'change area'

The EPA considered the Amendment has not considered potential impacts on amenity on RLZ development from the GWWTP. They expressed the need for a 590 metre buffer around the existing GWWTP (refer to Figure 8). The buffer is in accordance with the EPA Publication 1518 – *Recommended separation distances for industrial residual air emissions* and based on the population expected to be serviced. They considered the buffer should be applied from the treatment plant's lagoon area and that proposed changes to reduce the minimum lot size within the buffer for rural living purposes would increase the risk of odour impacts on amenity.





Figure 8: Buffer sought by the EPA



It was noted that the DPO19 proposed to be applied to the land north of the GWWTP addressed issues such as conditions and requirements for permits, bushfire requirements, land capability and protecting local waterways, but there was no guidance or acknowledgement of potential amenity impacts from the nearby GWWTP. The EPA submitted that DPO19 contains provisions to protect and manage Jacksons Creek, its escarpment and tributaries but did not include provisions or notations on the concept plan forming part of the overlay schedule that would protect amenity of the area from the GWWTP. The use of the Environmental Significance Overlay (ESO) was also identified.

Council's response was that the Amendment has not offered the application of the ESO, despite this occurring with Amendments C98 and C99 affecting Woodend and Kyneton respectively. Council's position was that application of an ESO would only be appropriate as part of a future amendment process. For purposes of this Amendment, Council acknowledges that an indicative buffer area to identify potential odour issues would be appropriate and that this could be noted in the DPO19, both in the schedule text and the buffer line noted on the concept plan.

Ms Tomkinson for Hyperno Pty Ltd (Submitter 101) also acknowledged the EPA's comments on buffers from the GWWTP submitting that larger lots abutting the Jacksons Creek area and incorporating the EPA required buffer is reasonable and supported. She submitted that the EPA buffer may vary depending on treatment processes and noise and odour analysis which may alter the extent of buffer necessary.

#### **(ii) Discussion**

The Panel considers the recognition of a buffer to the GWWTP proposed by Council in response to the EPA is appropriate. The application of an ESO to act as a buffer is not considered appropriate and is beyond the scope of this Panel process. However it does have merit for consideration as part of any future amendment process to which Council, the EPA and Western Water should continue to discuss and collaborate upon.

Inclusion of an indicative buffer area to identify potential odour issues in DPO19 and a buffer line noted on the Concept Plan to DPO19 is considered by the Panel to be appropriate.

### **5.4 Recommendations**

The Panel recommends:

- 4. Remove the following properties from the Amendment including Clause 5.0 of Development Plan Overlay Schedule 20 - Campbell Road, Riddells Creek Rural Living Area:**
  - **Lot 1 LP204042 Campbell Road, Riddells Creek (Property C in Figure 6 in this report);**
  - **Lot 3 LP200999 Campbell Road, Riddells Creek (Property D in Figure 6 in this report);**
  - **288 Campbell Road, Riddells Creek (Property E in Figure 6 of this report); and**
  - **Lot 1 LP146872 Riddell Road, Riddells Creek (Property F in Figure 6 of this report).**

5. **Remove 22 Nolans Road, Riddells Creek (Property G in Figure 6 in this report), from the Development Plan Overlay Schedule 20 - Campbell Road, Riddells Creek Rural Living Area and Concept Plan in Clause 5.0.**
6. **Amend the Concept Plan in Clause 5.0 of Development Plan Overlay Schedule 20 – Campbell Road, Riddells Creek Rural Living Area to change the wording of the notation on Lot Size to refer not only to a 4 hectare minimum lot size in the Precinct but to also make allowance for smaller lots for areas with capacity to absorb development and larger ‘balance’ type lots for those areas where native vegetation is present and for Jacksons Creek and its escarpment area.**
7. **Amend the Development Plan Overlay Schedule 19 – Kilmore Road, Gisborne Rural Living Area and Clause 5.0 Concept Plan to include reference to a 590 metres buffer around the Gisborne Wastewater Treatment Plant.**

## 6 Kyneton

### 6.1 Is the proposed site for rezoning to Rural Living the best option to meet future demand in Kyneton?

#### 6.1.1 The issues

The Amendment proposes to rezone land in Lauriston Reservoir Road, Kyneton from FZ to RL22. The key issue with respect to the proposed change is whether or not the site chosen by Council is the best available option. Some verbal and written submissions suggested that it was not.

The Background Report contains an assessment of six 'investigation areas' located around the Kyneton township measuring their capacity and suitability for small lot rural residential development (refer to Figure 9).

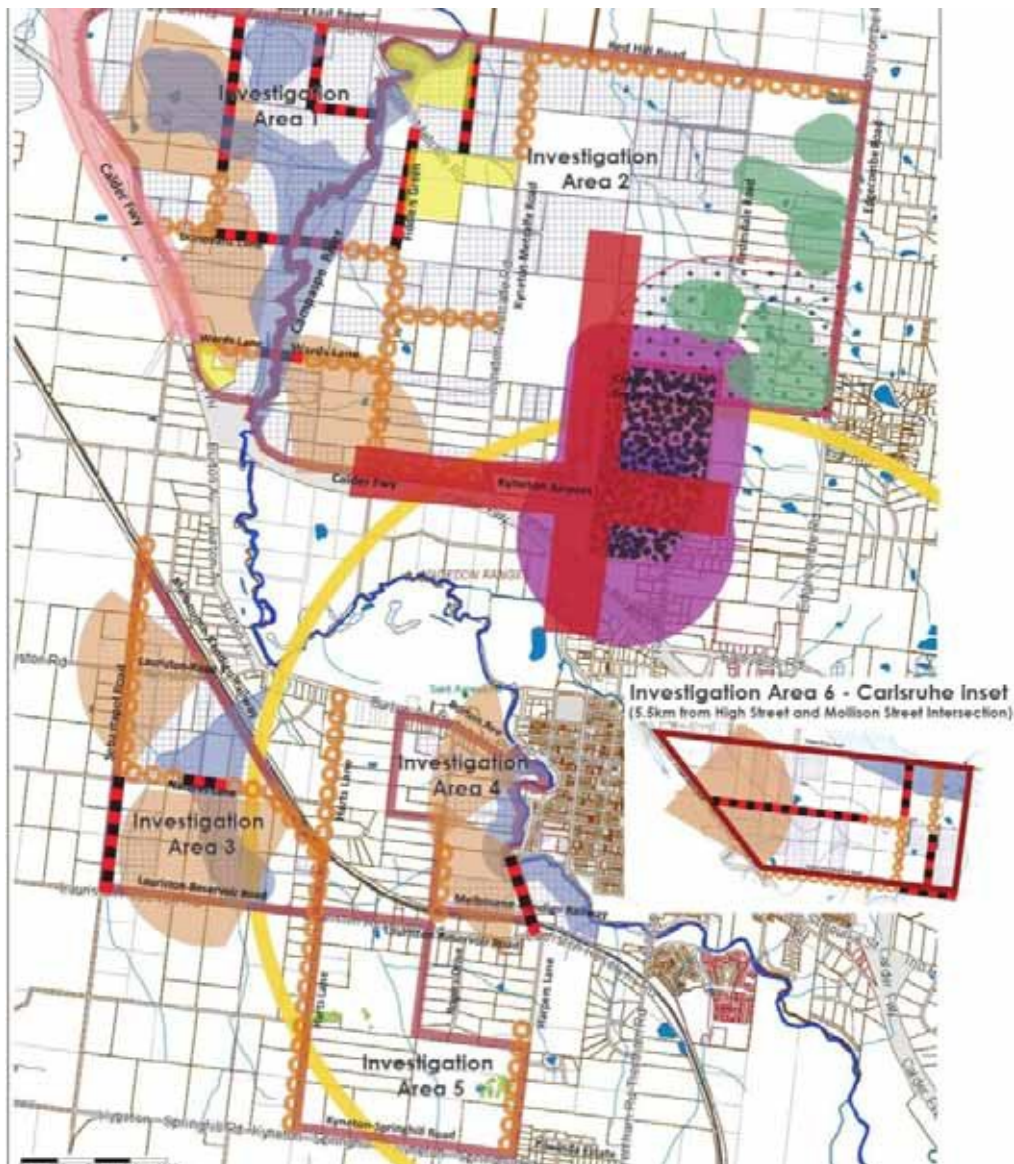


Figure 9: Kyneton Investigation Areas

=As can be seen in Figure 10, Council's assessment was that Investigation Area 5 was the only one that, in their view, satisfied all nine criteria. Accordingly, the rezoning of this land from FZ to RLZ2, with a minimum lot size of 2 hectares, and application of DPO22 formed part of the exhibited Amendment.

Criteria	Options					
	1	2	3	4	5	6
Good access to Kyneton Township	-	-	✓	✓	✓	✗
Maintain options for future urban growth of towns	✓	✓	✓	✓	✓	✓
Sealed Road access	✓	✓	✗	✗	✓	✓
Outside of prominent view corridor	✗	✓	✗	✗	✓	✗
No significant biodiversity	✓	✗	✓	✓	✓	✓
No flood constraints	✗	-	✗	✗	✓	✗
Minimal loss of existing agricultural uses	✗	✗	✗	✓	✓	✗
Outside of buffer to recycled water plant, airfield, waste depot	✓	✗	✓	✓	✓	✓
Provides required yield and logical subdivision potential/connectivity	✗	✓	✗	✗	✓	✗

Figure 10: Outcome of site suitability assessment for Kyneton Investigation Areas

### 6.1.2 Submissions

Ms Marshall submitted that Council had undertaken detailed investigations to identify the most suitable site for additional rural living development.

In its Part A submission, Council submitted that:

*The proposed development change area to the south of Kyneton demonstrates a capacity for 2ha density where constraints, including flooding, can be managed through a Development Plan.*

It also noted:

*The proposed rezoning to Rural Living Zone is an appropriate transition from the township. The land currently adjoins existing Rural Living Zone and Low Density Residential Zone land. Amendment C99 proposes to introduce the Kyneton Strategic Framework Map at Clause 21.13 which shows Farming Zone land to the east of Harpers Lane as 'potential future low density residential area', which is currently being advanced as part of Amendment C102. Overtime, the Farming Zone between the DPO22 area and the township will be rezoned for Low Density residential development.*

Council contended that not only did other sites around town fail to meet all of their assessment criteria, but that the existing fragmentation of land ownership and subdivision patterns in these areas meant that the quantum of land supply required to meet projected demand could not be achieved elsewhere.

In response to objector concerns that no detailed investigations had been undertaken for this site in relation to land capability and ecological values, Ms Marshall submitted that

DPO22 requires a number of detailed investigations to be undertaken to design a site responsive Development Plan.

Mr William Frost of Springview Pastoral Pty Ltd (Submitter 60), who owns land bounded by Lauriston Road, Browns Court and Harts Lane believed his land, located in a RLZ with a minimum lot size of 8 hectares, was suitable for a RLZ2. He questioned why Council had chosen only one area for inclusion in the Amendment in Kyneton and believed that the minimum lot size provisions for all land within two kilometres of the township which satisfied the majority of criteria set out in Figure 10 should have been changed by the Amendment. Mr Frost believed Council's list of criteria was too limited and should have included equity considerations and the need for a diversity in geographical locations for future rural living land supply.

Mr Sean Darcy and Ms Annette Smith (Submitter 7) also proffered an additional 21 hectares of land on Lauriston Road, located to the north east of the 'change area', that met all of Council's criteria. The land is in the FZ with lots between 4 to 12 hectares in size. Some lots are vacant. Their reasoning for this site to be considered as an augmentation of the 'change area' was that site constraints affecting the latter may reduce the expected lot yield, therefore other land was required to meet estimated demand.

Mr Richard and Ms Angela Fooks (Submitter 49) suggested that all land between Harts Lane and Trentham Road be rezoned for small lot rural living with a minimum lot size of 1 hectare. This would avoid the development of the 'change area' leapfrogging undeveloped FZ land closer to town. They believed that development should spread from the township outwards, rather than the rezoning of 'dispersed' areas. The submission concluded that a more logical pattern of development would facilitate efficient and cost effective infrastructure provision.

Mr John Pallot (Submitter 55) believed that land FZ land to the north west of Kyneton (east of Edgecombe Road) should have been an investigation area. He stated that land north of the railway was served by sealed roads and was close to town. The submission observed that over time, Council had approved numerous small and 'anomalous' lots in the FZ in this locality and that the characteristics of these lots were best reflected by a RLZ, not a FZ.

Ms Fiona Slechten from Calibre Consulting acting on behalf of her client, Mr Brian Brady (Submitter 50), stated that Council had undertaken a rigorous analysis of possible growth sites across Kyneton. It was noted that this site met all of Council's criteria and achieved the optimal outcome for future growth compared to other sites around Kyneton.

Ms Slechten commented that Council's *Settlement Strategy*, incorporated into the Planning Scheme via Amendment C84, identified Kyneton as being a District Town, while Amendment C99 currently proposes to rezone land to the immediate east to LDRZ. Her contention was, therefore, that this part of Kyneton had been identified for some time as an appropriate location for future growth.

In terms of written submissions, CS and AM Hall (Submitter 46) stated that the land was suitable for further development given its proximity to the train station, a school bus route, natural gas and other reticulated services.

Other submitters, however, challenged the nomination of this site for future rural residential growth. Mr Doug and Ms Sally Wollert (Submitter 16), Mr David and Ms Helen McKelvie



(Submitter 27) and Mr Desmond and Ms Marjorie Eklom (Submitter 78) expressed their concerns through both written and verbal submissions.

Mr Wollert, in his verbal submission to the Panel representing both himself and those who made Submission 44, stated that he believed Council's analysis of potential growth sites was flawed, contending that much of the site was not within walking distance of the train station (the south west corner of the site was 35 – 40 minutes from the station), the land was used for productive farming (pasture for cattle and horses and hay production) and the land was subject to flooding. He was unsure why other land on the eastern side of Kyneton, located closer to services and facilities, was discounted by Council when they were already in the RLZ.

These comments were supported through the verbal and written submissions of the McKelvie and Walsh families. Mr and Ms McKelvie believed that a lack of detailed ecological and bushfire assessments for the site meant that the site's nomination was premature and uninformed. They questioned why such assessments were undertaken for other sites in Gisborne but not this land.

During his verbal submission Mr Eklom submitted that, in his view, land bounded by the train line, Trentham Road and Pleasant Hill Road was more suited to rural living development.

Submitters 31 (Mr Chris and Ms Elizabeth Walsh), 43 (Ms Sue Owen), 44 (Ms Carol Barnes, Mr Barry and Ms Sharon Bradley), 47 (Ms Melinda Mockridge) and 93 (Dr Ruth Williams) also expressed concerns that this area was unsuitable for future development due to parts of the land being subject to inundation, the high agricultural productivity of the land, adverse impacts on the water catchment, increased pressure on groundwater supplies and a range of amenity and traffic related concerns.

Ms Pruneau, from the MRRRA (Submitter 92), commented that the Lauriston Reservoir Road site significantly shifts the growth pattern for Kyneton from east-west to north-south. She commented that Council's *Settlement Strategy* and the Kyneton Structure Plan stated that there was sufficient land supply to meet demand to 2036, a sentiment echoed by written submissions from Mr Barry McDonald (Submitter 12), Mr Jay Williams (Submitter 67) and Mr Stephen and Ms Jane Guilmartin (Submitter 72).

### **6.1.3 Discussion and conclusions**

The Panel considers that Council has made a reasonable attempt to compare the viability of a number of sites across Kyneton.

In relation to concerns about the efficacy of Council's assessment of the six Kyneton sites, the Panel notes Council's assessment of distance to services perhaps represent the best-case scenario. It accepts, however, that the majority of the land is reasonably accessible to a range of key transport nodes, services and facilities in and around the Kyneton township.

The Panel has reviewed the Kyneton Structure Plan in response to submitter concerns that there is an apparent discrepancy in future land supply requirements for Kyneton. It is clear that the Structure Plan and supporting land supply and demand analysis did not review rural living land supply and demand. The Structure Plan focuses on urban residential land supply

only. Consequently, the Panel does not believe there is any inconsistency as the two deal with completely different housing markets and zoning provisions.

The Panel agrees with Council's analysis that the quantum of lots required to meet the estimated demand for rural living land in the Northern Region cannot be found by reducing lot sizes in existing RLZ areas due to fragmented ownership and subdivision patterns.

Of all the sites analysed by Council, the Lauriston Reservoir Road site is the largest and on the face of it, the one with the potential to offer the highest lot yield.

However submissions from local residents regarding the constraints of the site lead to questions in the Panel's mind as to whether or not a sufficient level of investigation into the site's constraints has been undertaken, and whether or not the yield required to meet future demand will be forthcoming should the land be rezoned.

Furthermore, the Panel does not accept Council's contention that these issues are best addressed at the Development Plan stage. Given the nature of the issues raised by local residents, and the fact that the land is located within the Lake Eppalock special water supply catchment, we believe a cautious approach must be taken when reviewing the development potential of this land. The Panel agrees with some submitters' contentions that the sensitivities of this site warrant the type of detailed investigations undertaken by Council for other 'change areas' to inform any decision on changing the current planning provisions applying to the land.

The prematurity of the decision to rezone the Kyneton 'change area' also has implications for Council's proposed amendments to the LPPF, namely the insertion of the following sentence in Clause 21.12-2 *Kyneton*:

*In addition to established rural living areas the potential for 100 additional lots is available in south Kyneton to meet future demand for rural living.*

The Panel does not believe that the inclusion of this policy is appropriate for two reasons; firstly, the Panel was not provided with any information relating to the basis for the calculation of a 100 lot yield for this site and secondly, because the inclusion of such a specific figure can easily become out-dated or inaccurate once detailed investigations of the site's opportunities and constraints have been undertaken.

Accordingly, the Panel considers that:

- the quantum of lots required to meet the projected 30 year demand for Rural Living land cannot be found by reducing minimum lot sizes in existing Rural Living areas within the Kyneton township
- there are valid questions around whether, once the constraints of this site are taken into account, the quantum of lots required to meet projected demand can be provided by the Lauriston Reservoir Road site alone
- a more detailed analysis of the constraints of this site is required to more accurately assess the suitability of a RLZ2 for this site prior to its rezoning
- the proposed amendment to Clause 21.12-2 around the provision of an additional 100 lots in south Kyneton risks becoming out of date and should be deleted from the Amendment.



## 6.2 Is the site highly productive agricultural land that should be protected from further development?

### 6.2.1 The issues

The Macedon Ranges Planning Scheme underlines the importance of protecting productive agricultural land from incursion from urban development and an incremental change of use from farming to residential purposes through the development of dwellings in the FZ.

One of the key issues relating to the Kyneton 'change area' was whether or not highly productive agricultural land would be lost through its rezoning from FZ to RLZ2.

### 6.2.2 Submissions

Ms Marshall's submissions on behalf of Council underlined the importance of protecting the FZ from incursions from residential development and the LPPF's emphasis on protecting the most productive agricultural farmland from future development. The protection of productive agricultural land was also highlighted by Ms Marshall as one of the Strategic Principles underpinning the Strategy.

The assessment criteria relating to agricultural productivity was "...*Minimising the loss of existing agricultural activities...*" (refer to Figure 10). In its assessment of the six possible growth sites, Council's conclusion on page 75 of the Background Report was that:

*The area [ie the Lauriston Reservoir Road site] is not constrained by existing activity that require buffers to protect amenity.*

Council submitted that part of the strategic basis for the Amendment included responding to the recommendations of the *Macedon Ranges Equine Industry Strategy* around increasing the availability of lots between 2 to 5 hectares in size. It was also noted that the *Macedon Ranges Agribusiness Plan* highlighted that some intensive agribusiness practices required less land when compared to more traditional cropping and rearing stock. Good access to Melbourne markets and a high amenity rural setting were also competitive strengths for emerging types of agribusinesses.

The conclusion made by Council, is therefore, that land in a RLZ can support agricultural land use, though it may not be in the form of more traditional farming practices.

Council provided a summary (Document 62) of changes in FZ land supply across the Shire should this Amendment and Amendment C102 (Tilwinda Views, Kyneton) be approved. It concluded that the change in the quantum of FZ land, when viewed across the Shire, was negligible and that the Amendment was consistent with planning policy objectives around the protection of productive farmland (refer to Table 7).

Table 7: Summary of current and potential future land supply in the Farming Zone

Current (hectares)	Amendment C110 (Rural Living) (ha)	Amendment C102 Tilwinda Views (ha)	Post Amendment Update (ha)
170,070	-208	-12.96	169,849

Ms Marshall's closing statements revolved around the need to balance often competing, and sometimes "*diametrically opposed*", objectives when developing long-term strategies. The assertion was made that the detailed strategic work and thorough methodology that formed the basis of the Strategy results in a fair and balanced outcome.

Ms Slechten, on behalf BJ and P Brady (Submitter 50), stated in both her written and verbal submissions that her client's land totalled around 68 hectares of the nominated 'change area' and that no '*serious*' farming or agricultural pursuits were to be found in this land. She acknowledged, however, that her client and other landowners graze small numbers of cattle, alpacas and horses. Ms Slechten remarked that her client's land is now unsuitable for any form of intensive agricultural land use due to the increasing urban interface on the eastern side of Harpers Lane, which she commented will only increase should Amendments C99 and C102 be approved.

Other submitters contended that the 'change area' was highly productive agricultural land.

Mr Wollert stated at the Hearing that land in the south-eastern corner of the area had, until recently, been productively used for cattle and hay production, while many other property owners had invested in equine related facilities.

Mr McKelvie also made verbal submissions that when he and his wife purchased their property it was on the basis that the land was highly productive, as they wanted to establish an alpaca stud and hence required good agricultural land for this purpose. He added that from his research, Council's 2008 *Rural Living Strategy* stated that this land was too significant in terms of its agricultural productivity to be rezoned for rural living purposes.

Ms M Mockridge raised concerns that a more intensive subdivision pattern in this area would make the current use of the land for grazing "*impossible*", thereby reducing the availability of productive agricultural land in the locality.

Dr Williams (Submitter 93) stated that she had lived in the area for the past 40 years and that the 'change area' was highly productive farmland. Her concern was that its loss to smaller, rural living type properties meant that an important, finite resource would be permanently lost. Dr Williams also expressed the concern that smaller hobby farms were generally poorly managed and resulted in land degradation.

A written submission from Ms Margaret Boyd (Submitter 10) expressed concern at the loss of farmland, as she believed the retention of farmland around Kyneton was fundamental to the preservation of its character. Mr Williams expressed the view that farmland in Kyneton was being lost through 'intermediate' type subdivision that lay somewhere between rural living and suburbia.

### **6.2.3 Discussion and conclusions**

A number of properties are used for grazing cattle, horses and alpacas. It is evident that a number of landowners have invested in facilities to support these grazing (and in some cases breeding) activities. Submissions that the south-eastern corner of the site has been used for hay production are noted, however due to the timing of the Panel's site inspection in late April, this land use was not directly observed.

Overall, though, there certainly is a reasonable level of animal husbandry activity being undertaken across this area, which is in part facilitated by the soil type and the presence of

some reasonably large land holdings. It is noted, however, that many properties have been developed for the purpose of a dwelling and outbuildings, thereby reducing the amount of land able to be dedicated to agricultural pursuits.

The Panel believes there is some merit to Ms Slechten's submission that the direct interface with the 'change area' and existing LDRZ land to the east means that the prospects for a more intensive agricultural land uses are significantly reduced. The Rogers Drive subdivision, which contains lots of around 2 to 4 hectares, to the immediate north-east of the 'change area', compounds this issue.

Submissions from Council that rural living zoned land can support very small scale agricultural pursuits also have some validity. The anecdotal evidence presented by local residents that the soils are suitable for agricultural production support this statement.

Given this, the Panel considers that:

- while the land may well be relatively productive, it has effectively already been lost to large scale, intensive agricultural use through past subdivisions and the growing urban interface to the immediate north and east
- a RLZ can facilitate the ongoing use of the area for small scale agricultural pursuits, thereby taking advantage of the relatively productive soils
- the agricultural productivity of this land is not, on its own, sufficient reason to remove this site from Amendment C110.

### **6.3 Will a Rural Living Zone result in adverse impacts on the Eppalock Water Supply Catchment?**

#### **6.3.1 Issue**

The Kyneton 'change area' is located within the Eppalock Water Supply Catchment and is subject to Environmental Significance Overlay 4 (ESO4) – Eppalock Proclaimed Catchment. The ESO4 states that Lake Eppalock is a major source of water used for irrigation, stock and urban water supply purposes. The Lake is also an important regional recreational facility. The environmental objective to be achieved is:

*To ensure the protection and maintenance of water quality and water yield within the Eppalock Water Supply Catchment Area ...*

Coliban Water is the urban water corporation for this locality, providing both potable water and sewerage services to the northern region of the Shire. Goulburn Murray Water (GMW) is the rural water corporation that manages Lake Eppalock, provides bulk irrigation supplies to landholders and supplies Coliban Water with raw water from the Lake. Both corporations have a heightened interest in the potential rezoning of the Kyneton site due to its location in a water supply catchment.

A number of verbal and written submissions raised concerns about the impact of additional rural living development on water quality and quantity given the:

- 'black pug' soil that is found in low lying areas of the site that becomes boggy when wet and shrinks and cracks when dry, and is therefore poorly suited to onsite wastewater management treatment
- lack of reticulated sewerage to service development within this 'change area'

- potential for an increased number of bores, which would place already depleted groundwater supplies under further pressure.

There was also discussion on a secondary issue, that being the status of Council's Domestic Wastewater Management Plan (DWMP) and whether or not Council was meeting the requirements for an exemption to be sought under Guideline 1 of the Ministerial Guidelines for *Planning Permit Applications in Open, Potable Water Supply Catchment Areas, November 2012*, Department of Sustainability and Environment (the Ministerial Guidelines). This guideline enables water corporations, acting as determining referral authorities under Section 55 of the *Planning and Environment Act 1987*, to consider consenting to planning permits for dwellings where the dwelling density in the locality exceeds 1 dwelling per 40 hectares.

The concern raised by some submitters was that that water corporations may not consent to planning permit applications for dwellings if the Ministerial Guideline's requirements were not being met, thus potentially making the RLZ2's lot size provisions redundant.

### **6.3.2 Submissions**

#### **(i) Potential impacts on the broader water supply catchment**

Council's Part A submission commented that water corporations had input into the development of the Strategy and the Amendment.

Council's submission observed that:

*Advice was sought from relevant catchment agencies and water authorities prior to and throughout the investigation of the change areas around Kyneton. These authorities do not object to the proposed zoning changes. In response to discussions with water authorities, measures to minimise impacts on water quality have been incorporated into Schedule 22 to the DPO. Schedule 22 also requires a land capability assessment and traffic management plan to be provided to inform a development plan.*

Council noted that DPO22 requires a number of conditions to be placed on planning permits to prohibit dams on lots less than 4 hectares, to require the provision of fenced buffer areas around waterways and to require the revegetation of these buffer areas.

Mr Barry Floyd from Coliban Water (Submitter 86), acknowledged that Council had engaged with the water corporation at an early stage in relation to the Kyneton 'change area' and that it had no significant concerns, provided that the proposed DPO22 dealt with potential risks to water quality and yield. He also observed that the subject land was high in the catchment and a reasonable distance from Lake Eppalock.

Mr Floyd explained that unsewered development was not the only risk to water quality - run off from driveways, land management practices and stock accessing waterways also had the potential to degrade water quality.

GMW's written submission (Submitter 28), stated that its interests are surface water and groundwater, along with the supply of water from an approved source. GMW commented it had been involved in discussions with Council around sites suitable for rural residential development across the shire and that it had no objection to the Amendment.

In relation to the Kyneton 'change area', GMW congratulated Council on the provisions of DPO22, which it believed took an innovative approach to protecting catchments and water quality, particularly in relation to the fencing of land within 30 metres of a drainage line and the revegetation of these areas.

The Wollerts' submission raised concerns around the potential for additional development to adversely affect the catchment, as did the written submission from Mr and Mrs McKelvie. The latter also questioned who would ensure the integrity of drinking water was monitored and controlled.

Written submissions from the MRRA, Ms Lorraine Beyer (Submitter 58) and Ms Pene Rice (Submitter 80) all raised general concerns about the impacts of additional unsewered development in what they termed 'sensitive' water supply catchment areas.

**(ii) Dams and reticulated water infrastructure**

Mr Floyd highlighted the significant impact dams can have on water resources, particularly when our climate is changing. Coliban Water's written submission states that dams for domestic use should be discouraged, with rainwater tanks being the preferred option to help limit reductions in water yields. Its written submission reinforces that reticulated water is unlikely to be provided to the Kyneton 'change area' in the foreseeable future.

In light of these issues, Coliban Water submitted that additional wording changes to the LPPF could be strengthened at Clause 21.09-2 *Rural Residential*, Strategy 4.2 and Clause 22.02 *Dams* and proffered suggested wording, as outlined in Section 4.2 of this Report.

**(iii) Land capability and onsite wastewater disposal**

Council's Part B submission stated it did not consider it necessary to undertake detailed land capability assessments for the 'change areas' as the bulk of land affected by the Amendment was already within a RLZ.

Rather, the submission explained that a broad land capability assessment had been undertaken for the Kyneton 'change area' in the form of an analysis of land constraints and planning overlays:

*Land capability has been addressed at several levels in the proposed Amendment:*

- *At a broad level, during the selection of the change areas themselves having regard to a wide range of locational criteria including:*
  - *that the land not be subject to BMOs, LSIOs or RFOs under the planning scheme*
  - *that the land be free of other constraint based overlays such as EMOs, ESOs and the like*
  - *after direct consultation with Coliban Water and Western Water, selection of land meeting their criteria.*

Council outlined that it has set in place a DPO that provides for coordinated and integrated planning of the 'change area' and that provisions relating to the analysis of topography, flooding, natural drainage lines, waterways and buffers would provide for a more detailed land capability assessment.

Ms Marshall also made the point that individual land capability assessments are required at the planning permit stage to ensure EPA standards for wastewater system location and design are met.

Mr Floyd, in response to questions from the Panel, stated that as a general rule lots greater than two hectares were of an adequate size to ensure wastewater is adequately treated and contained within a lot. Accordingly, unsewered development within the Kyneton 'change area', therefore, should not pose a significant threat to water quality.

However, he suggested that schedule to DPO22 could be further strengthened in terms of mitigating any potential risks from onsite systems through the inclusion of provisions around:

- the need to submit a land capability assessment that meets EPA standards at the planning permit application stage
- the requirement for a Section 173 Agreement on all planning permits for dwellings to ensure that onsite systems were adequately maintained and inspected.

GMW's submission also requested the inclusion of a requirement for land capability assessments to meet EPA standards, specifically Code of Practice 891.3, in Section 3 of the draft DPO22. Its reasoning was that it had commissioned an independent review of a sample of land capability assessments and found that 80% of them did not comply with the EPA's standards and believes Council can do more to ensure the standard of land capability assessments are improved through the Amendment.

In her verbal submission on behalf of Submitter 82, Ms Fiona Slechten commented that her client would be amenable to the inclusion of a Section 173 agreement on any permits issued relating to ongoing maintenance and inspections of onsite wastewater treatment systems, or alternatively a developer contribution to fund Council's ongoing monitoring of systems.

In his verbal submission Mr Eklom's mentioned concerns that some of the properties in the southern part of the 'change area' in Kyneton Springhill Road were only around 400 metres north of Lake Eppalock and therefore poorly maintained onsite systems could affect water quality.

Mr Wollert and Mr McKelvies' verbal submissions reiterated their concern about the suitability of the soil, which is as 'black pug' or black clay, for unsewered development. Their collective observations of this soil were that it had a propensity for significant shrinkage in dry months, and expansion and water retention in wetter months. Low lying areas of the site were noted as being particularly boggy for many months of the year.

Mr Wollert also commented that he did not understand why land capability for onsite wastewater treatment had not been assessed by Council. He believed that once such investigations are undertaken the number of additional dwellings that could be constructed would be significantly less than Council's projected 90 dwellings.

Mr and Ms Walsh's written submission highlighted the propensity for low-lying land to become a "*boggy marsh*" during winter. Ms M Mockridge also believed that low-lying areas were undevelopable and unsuited to onsite wastewater treatment systems.



Ms Slechten briefly touched on land capability issues, observing that her client's land contained the black pug and that it could become waterlogged when it rained, but this constraint affected only part of her client's property.

**(iv) Impact of additional development on groundwater supplies**

Several submitters raised concerns about the impact of additional development on groundwater quantity and quality given that Coliban Water had ruled out supplying the area with reticulated water.

Mr Wollert raised concerns that additional development would result in the unregulated sinking of bores in the search for a reliable water supply, resulting in the volume of groundwater available in the area to decrease.

Mr Eklom made the observation during his verbal submission that his bore had dropped by around eight feet since it was sunk a few years ago and that he was concerned additional development would result in further decreases. He also believed unsewered development could affect the quality of local groundwater.

Ms Mockridge's submission echoed the concerns of Mr Eklom in that the groundwater supply to her bore had reduced in recent years and that the aquifer was already under stress. In her view, additional development would drastically alter groundwater availability.

Ms Owen observed that there would be no reticulated water to the land and that dams were to be prohibited. She expressed concerns that climate change could make water supplies from rain tanks unreliable, leading to bores being sunk and a diminishing water table that would impact well beyond the 'change area'.

**(v) Status of Council's Domestic Wastewater Management Plan (DWMP) and ability for permits to be granted for unsewered dwellings under the Ministerial Guidelines**

Council, through its Part B submission, stated that its DWMP had been adopted in December 2013 but that Coliban Water had ongoing concerns around insufficient Council resources to implement the Plan.

Despite these concerns, Council observed that Coliban Water had been consenting to new dwellings requiring on site effluent disposal systems within the Lake Eppalock catchment at a rate of around one per month in 2016. The conclusion was, therefore, that there were no particular restrictions on the ability to construct dwellings provided that the standards set by the EPA are met. Council's Right of Reply provided detailed commentary around this issue and around the provisions of the Ministerial Guidelines in terms of what is required to relax the unsewered dwelling density of 1 dwelling per 40 hectares.

Coliban Water's written and verbal submissions raised concerns about the lack of progress on implementing aspects of Council's DWMP and whether Council was in a position to adequately manage the expansion of unserved residential development across the Shire. Despite this, Mr Floyd emphasised Coliban Water's strong desire to work in partnership with Council to resolve these concerns.

Mr Floyd confirmed that Coliban Water were consenting to applications for dwellings on rural living lots under the Ministerial Guidelines and that they assessed each application on



its merits, rather than having a blanket view that no further development was to occur if dwelling densities were above the one dwelling per 40 hectare guideline.

Mr Wollert and Mr Eklom stated that they believed the one dwelling per 40 hectares density was being applied to all unsewered development within the Eppalock catchment. Mr Wollert commented that prior to purchasing his property, he was told that no further unsewered development would be allowed within the water catchment.

**(vi) Reference to Council's adopted DWMP in the Local Planning Policy Framework**

Coliban Water observed that the Amendment made no reference to the DWMP in proposed changes to the Local Planning Policy Framework, even though it was a key document for consideration, particularly when assessing additional unsewered development in a water supply catchment.

In response to questions from the Panel, Mr Floyd commented that Coliban Water did not proffer suggested wording in its written submission given the Amendment was prepared by Council and that it was best placed to craft the appropriate wording, not Coliban Water.

Ms Marshall, when questioned by the Panel on this matter, stated Council did not have any objection to a reference to the DWMP being inserted into the Amendment if the Panel felt it would be a useful addition.

### **6.3.3 Discussion and conclusions**

**(i) Impacts on the broader catchment**

The Panel accepts submissions from Coliban Water and GMW that the proposed rezoning of the Kyneton 'change area' does not pose a significant threat to the broader Lake Eppalock catchment, nor the reservoir. These two water corporations are responsible for the management of water quality and Lake Eppalock respectively, so their submissions must be given an appropriate amount of weight when considering this matter.

It is apparent both corporations were extensively involved in the preparation of the Strategy and have had sufficient opportunity to assess the potential impacts of the Amendment on the broader Eppalock catchment.

As will be discussed in later parts of this Chapter, the Panel is, however, concerned about localised water quality impacts resulting from the interaction between the local soil type, the extent of low lying land within the 'change area' and evidence that the central waterway can cause relatively extensive inundation of this low lying land.

The potential for localised water quality impacts have not been assessed in any detailed way by Council as there has been no analysis of key land capability determinants such as soil type, slope, location of waterways, proximity of bores to onsite systems and proposed unsewered dwelling density. The Panel is concerned about this lack of analysis and considers that any decision on the future zoning and development of this land is premature without it.

**(ii) Dams and reticulated water infrastructure**

The Panel accepts Coliban Water's concerns around the potential for reduced water yields through the construction of additional dams within the locality and that there is a need to

strengthen planning provisions to prohibit the construction of dams on small rural residential lots.

This issue, however, does not only apply to Coliban Water's service area. There is merit for its application across the broader area affected by the Amendment. Accordingly, as stated in Section 4.2 of this Report, the Panel agrees that Coliban Water's suggested amendments to the wording of Clauses 21.09-2 and 22.02 be adopted by Council.

**(iii) Land capability and onsite wastewater disposal**

While it acknowledges Council's submissions that a broad land capability of the 'change area' has been undertaken, the Panel is concerned that a more land capability assessment examining the potential impacts of additional unsewered development on the water supply catchment has not been undertaken. This view is, in part, due to the anecdotal evidence provided by local residents around the 'black pug' and whether or not soil type will be a significant challenge to meeting EPA standards for onsite wastewater treatment and retention.

Soil type is a key determinant in the design of onsite wastewater treatment systems. The poorer the soil, the more sophisticated the onsite system has to be and the larger the effluent disposal field. Heavy clays are a particular challenge when designing onsite wastewater systems due to their tendency to become impermeable and crack in dryer months and to become waterlogged in wetter months.

While Mr Floyd's view that lots of two hectares are generally capable of treating wastewater to the required EPA standards is reasonable, site specific factors including slope, soil type and the proximity of waterways are also critical determinants of land capability.

The Panel acknowledges Council's contention that DPO22 requires a detailed land capability assessment at the development plan stage and, therefore in its view, sufficiently addresses land capability issues. The Panel also notes that both water corporations suggest additional provisions for inclusion in DPO22 to further mitigate potential issues with onsite system design and maintenance and that they would be worthy additions to DPO22.

However, after considering all of the information provided to it, the Panel is of the view that a more detailed investigation into land capability is required prior to making a decision on the suitability of RLZ2. Doubts revolve around whether or not the soil type is suited to supporting unsewered development on relatively small rural living lots, particularly when the interplay between the black clay, presence of multiple drainage lines and low-lying land is considered.

In the Panel's view, undertaking a detailed land capability assessment up front is key to the due diligence required when making a decision to increase unsewered dwelling density in a water supply catchment.

The Panel is also cognisant that Council repeatedly stated that this Amendment was a one off to provide a 'finite' supply of rural living land to provide certainty over the next 30 years. This argument supports the completion of a detailed analysis of the 'change area' to ensure that Council's expected dwelling yield is achievable, otherwise Council may find itself in the position where the objectives of the Strategy for the Northern region in terms of land supply are compromised.

Accordingly, the Panel's concludes that:

- Rezoning at Kyneton is premature and that a detailed land capability assessment should be conducted for the entire Kyneton 'change area' to inform a decision as to whether or not RLZ2 is appropriate for this site
- Any use of the DPO22 would benefit from the inclusion of:
  - a requirement that all land capability assessments comply with EPA standards to the satisfaction of the Responsible Authority
  - a mandatory planning permit condition for a Section 173 Agreement around ongoing onsite wastewater treatment system maintenance and reporting.

**(iv) Impact on groundwater**

GMW is responsible for assessing applications for a bore construction licences in the Kyneton area. It is considered that the potential impact on groundwater supplies from any additional bores in the locality is a matter for GMW to assess on a case-by-case basis through its bore construction licensing process.

**(v) Status of Council's DWMP and the 1:40 hectare dwelling density Ministerial Guideline**

Council provided evidence to the Panel that the DWMP had been adopted in December 2013. Both Council and Coliban Water confirmed that planning permit applications for unsewered dwellings were being considered on their own merits, with several permits being issued in recent months, representing a relaxation of the Ministerial Guideline's dwelling density provisions.

The Panel does not, therefore, believe that issues around Council's implementation of the DWMP or the potential for the one dwelling per 40 hectare provision to be applied to this 'change area' are relevant to the merits of this Amendment.

**(vi) Reference to the DWMP in the Local Planning Policy Framework**

The Panel supports Coliban Water's suggestion that some reference to the adopted DWMP and its strategies to protect human health, water quality and environmental health, be incorporated into the LPPF through this Amendment. It is a reasonable request that Council, when making decisions relating to unsewered development in a water supply catchment, consider the DWMP.

## **6.4 Land inundation issues**

### **6.4.1 The issue**

A number of submitters raised concerns about the level of Council's assessment of the intermittent waterways that run through the 'change area'. The concern was that such waterways were so extensive during rain events that inundation issues could have a significant impact on the site's expected dwelling yield.

There is no Land Subject to Inundation Overlay or Floodway Overlay applicable to the site.

Mr Wollert tabled photographic evidence of inundation after the September 2010 rainfall event. A sample is shown in Figure 11.



Figure 11: Evidence of inundation of waterway during September 2010 storm event

### 6.4.2 Submissions

Council's Part A submission stated that flood risk was considered during the development of the Strategy and in the identification of 'change areas' (refer to Figure 10). Council sought input from water corporations and the catchment management authority prior to the finalisation of the draft Strategy. The submission affirmed that:

*The proposed development change area to the south of Kyneton demonstrates capacity for a 2 ha density where constraints, including flooding, can be managed through a Development Plan. Local overland flows are characteristic of rural areas, including the Rural Living areas of the Macedon Ranges Shire. It is preferable to maintain natural drainage lines where possible. In the rural living context, drainage area can be accommodated within private lots and the DPO22 has sought to manage this in a number of ways:*

- *a Development Plan is to include a map showing topographical features, other relevant elements or features of the land*
- *a Development Plan is to include a Subdivision Concept Layout that (inter alia) demonstrates how fragmentation of [the] drainage line is minimised and responses to topography*
- *the DPO requires stock exclusion fencing to be constructed 30m from the drainage line and the area within this fencing is to be revegetated prior to certification of a plan of subdivision*
- *a Section 173 Agreement is required to ensure future landowners maintain stock exclusion fencing and restrict stock access from the exclusion area.*

Council addressed flood liability issues stating that sites affected by the Land Subject to Inundation Overlay and Flood Overlay were excluded from 'change areas'. Ms Marshall's verbal submissions to the Panel also noted DPO22's requirement for a fully fenced 30 metre buffer to waterways, excluding stock and all buildings and works.

Ms Slechten, on behalf of Submitter 50, commented in her verbal and written submission that the 'change area' was suitable for development given the lack of flood related overlays. Commenting on the photographic evidence tendered by Mr Wollert, Ms Slechten noted that

the September 2010 event represented the worst-case scenario and that the provisions of DPO22 would successfully mitigate the impacts of such inundation.

Mr Wollert provided photographs from the flooding of the waterway during the September 2010 storm event. He added that the site had flooded in a similar fashion since that time and that the land inundation, coupled with the 'black pug' soil means that a significant portion of low lying areas are, in his mind, undevelopable. Mr Wollert also asked how the 30 metre buffer area from a waterway was to be calculated given that in high rainfall events, the width of the waterway increased significantly.

Mr and Ms McKelvie raised questions as to how the waterway would be drained to accommodate housing and what the impacts of formalised stormwater management would have downstream. Their submission also included photos of the inundation experienced September 2010 but commented that flooding in January 2011 was more significant. They commented low lying areas are boggy for much of winter and that for this reason this area should be unimpeded by roadways, dwellings and other structures.

Mr McKelvie concluded his verbal submission with the comment that he was not opposed to well designed development, but that a more detailed analysis of the site was required and that the Concept Plan's depiction of a north-south road along the waterway required more thought.

Mr and Ms Walsh submitted they had witnessed extensive flooding of the low-lying land during the past four and a half years and that this area of the site was boggy for much of winter. While they acknowledged that DPO22 went some way to addressing inundation issues by requiring a 30 metre buffer along waterways, they were concerned that this distance was inadequate to ensure dwellings were unaffected by floodwater. They also expressed unease about the impact of flooding on wastewater treatment systems and subsequent water quality impacts from failing systems. Their conclusion was that inundation issues should be thoroughly reviewed and low lying land excluded from subdivision, or alternatively another site be identified for rezoning that did not experience inundation issues.

Ms Mockridge commented that the land was subject to extensive inundation in wet seasons and that land remains wet throughout the year, as indicated by the nature of the vegetation growing in the low lying parts of the site.

### **6.4.3 Discussion**

The 'change area' is not subject to either a Land Subject to Inundation Overlay or Floodway Overlay. Regardless, the Panel is satisfied that there is sufficient photographic evidence to demonstrate low lying areas have been subject to significant inundation during recent high rainfall events.

While the flooding events in 2010 and 2011 may well represent the worst case scenario, they do raise questions as to whether or not the level of inundation experienced in low lying areas have been adequately assessed.

Questions raised by local residents as to where the 30 metre buffer area from a waterway is to be applied under the DPO22 are also considered valid given the absence of a more thorough analysis of the topography and extent of the drainage basin.

Council's contention that such issues are best analysed at the development plan stage is noted, along with the fact that Council has attempted to mitigate any possible issues around inundation in the drafting of DPO22. However, these provisions do not, in the Panel's view, replace a more thorough and detailed examination of this issue prior to the rezoning of this land.

While it is acknowledged that the introduction of formal drainage infrastructure and a comprehensive stormwater management plan can often assist in mitigating inundation issues, the interplay between the waterway, topography and soil type create a unique challenge for this site. It is also possible that once thoroughly analysed, these constraints may result in the drafting of different planning provisions for this site.

The Panel concludes that it would be prudent for Council to undertake a more detailed analysis of drainage lines, topography, waterway behaviour and inundation issues prior to continuing with the rezoning of this land.

## **6.5 Suitability of the proposed Concept Plan and DPO22**

### **6.5.1 The issue**

Concerns were raised by local residents around the level of analysis and thinking applied by Council in the development of the Kyneton Rural Living Area Concept Plan, shown in Figure 12.

Some submitters suggested that it was more appropriate for Council to produce the development plan required by DPO22 given the complexities of this site and multiple landowners. The view was that the area could not be cohesively developed if landowners were left to agree between themselves on how to proceed with the area's development.

More specific concerns revolved around the indicative placement of roads, coordination and management of infrastructure, uncertainty about who pays for the development plan, the provision of landscape buffers to protect the amenity of existing residences and a lack of detail around the design and timing of pedestrian/bike paths and parking provision.



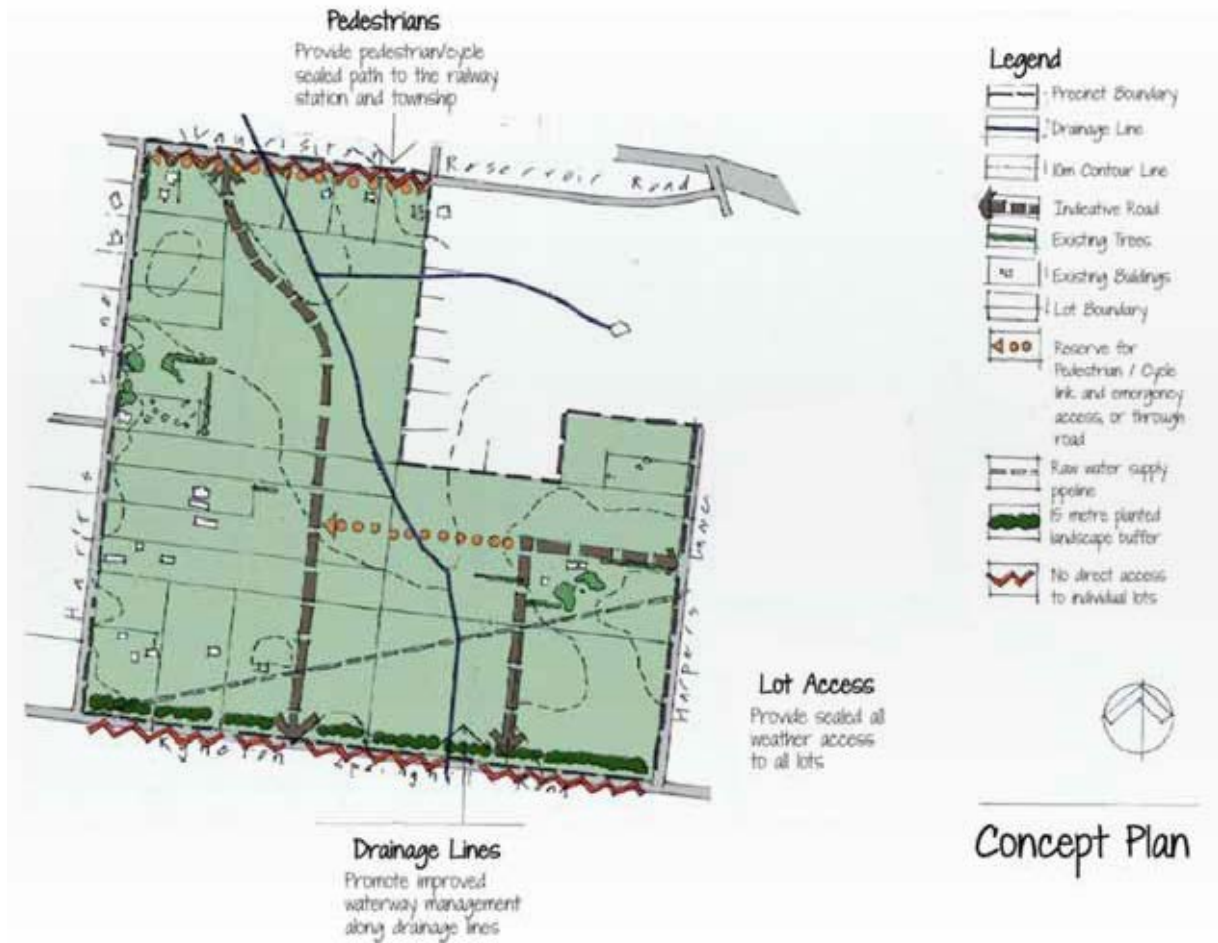


Figure 12: Kyneton Rural Living Area Concept Plan

### 6.5.2 Submissions

Council stated that the Concept Plans included in the Amendment covered issues such as minimum lot sizes, site constraints, indicative locations for through roads, access links for pedestrians, cyclists and emergency service vehicles and areas to be excluded from development such as reserves or protected areas of native vegetation. Ms Marshall noted that all of the DPOs require a development plan to be generally in accordance with the Concept Plan.

Regarding infrastructure issues, Council observed that relevant authorities did not object to the Amendment but requested involvement in the future planning of 'change areas'. Council commented that the DPO schedules reflected agency requirements such as the location of road connections and intersections on the Concept Plans.

Council also stated that infrastructure needs were assessed when identifying the 'change areas' and that the Concept Plans reflected this analysis. Ms Marshall submitted that the requirement for a single development plan would require multiple land owners to come to a cost sharing agreement and that it was not Council's responsibility to prepare the Development Plan. Council would, however:

*... provide assistance and support to the landowners to drive the development plan process.*



Further, Council commented that it:

*... accepts that there is often an issue in relation to who is driving development of a Development Plan, particularly when the DPO covers land in multiple ownership. Council's preference is to drive, produce and take ownership of development plans. However, this has obvious resource implications for Council. In practice what occurs is that, generally, one landowner largely drives the development of the Development Plan on behalf of the group of landowners.*

Mr Wollert stated that the Concept Plan's indicative north-south road runs through his property and that he met with Council to raise concerns about the subsequent impact of increased traffic and loss of land on his lifestyle and property value.

Mr and Ms McKelvie questioned how Council would ensure appropriate infrastructure would be in place prior to the sale of lots given multiple landowners. They were unsure as to who would be the project manager and where the funds would come from to pay for the requisite infrastructure. They requested that a comprehensive plan be provided to local residents addressing issues around lot size, infrastructure provision, road layout, speed limits, railway access, parking, bike paths, buffer zones around waterways and buffers for existing dwellings. In their view, more information around who will pay for infrastructure, the timing of its provision and how the Plan's implementation would be monitored was required.

The Walsh family raised concerns about the Concept Plan's placement of the north-south road in a relatively close position to a crest at the intersection of Harts Land and Lauriston Reservoir Road, where the speed limit on the latter is a 100 km/hour. The lack of a traffic safety analysis was of concern to them given any additional development would, in their view, exacerbate existing safety concerns along Lauriston Reservoir Road.

The Walsh submission also mentioned their concern that the indicative north-south road ran along their western boundary, reducing their privacy. They requested a review of the Concept Plan to change the road's location or, alternatively, the provision of a landscape buffer along the road alignment.

Their written submission did, however, express support for the proposed cycle/pedestrian path, though they believed it should be fully constructed before any development proceed.

Mr Darcy and Ms Smith, while being supportive of the intent of DPO22, stated their objection to the ability for a planning permit to be granted for a dwelling prior to approval of a development plan. They believed that the area was lacking in infrastructure, specifically pedestrian and bicycle paths, that there should be no consideration of planning permits until a Development Plan adequately addresses infrastructure requirements.

### **6.5.3 Discussion and conclusions**

The Panel considers that a genuine attempt has been made by Council to appropriately manage the issue of coordinating the future development of the land through the drafting of DPO22 and the inclusion of a Concept Plan.

Coordinating development over a long period of time when there are multiple landowners is a challenge. The Panel supports Council's view that it play the role of facilitator in the

development plan process. The requirement for a single Development Plan, allowing for staged development, is also considered to be an effective way to manage this issue.

The requirement for a detailed infrastructure plan to inform the creation of the development plan required by the DPO is also a reasonable, and widely accepted, way of managing infrastructure costing, timing and funding. The Panel does, however, wish to acknowledge submitter concerns about infrastructure timing and funding. In the end, it will be up to Council and relevant authorities to ensure that any future infrastructure plan adequately manages these challenges.

The Concept Plan's role is to provide a broad overview of the site's opportunities and constraints and to inform the future creation of a development plan. Although any concept plan needs to be viewed in this way, the Concept Plan included in DPO22 is perhaps an unfortunate mixture of general analysis and too much detail, which is perhaps why local landowners have expressed concerns about its content.

While the Panel recognises the resource demands on Council in the preparation of the Amendment, it may have been appropriate for Council to consult with local residents when preparing the Concept Plan. In doing so, the local community may have felt more informed and empowered around issues relating to the future of their neighbourhood. Some of their concerns regarding indicative road placement, infrastructure provision and timing and the overall coordination of development may have been addressed through such a process.

The Panel considers the Concept Plan would benefit from a revision that depicts general areas of opportunities and constraints rather than indicative locations for key infrastructure, and that this process be informed by the input of local residents, particularly on issues around traffic and inundation issues.

The Panel is also concerned that the Concept Plan proposes to locate the north-south road close to the crest of a hill, which the Panel observed was the location of a cross road between Harts Land and Lauriston Reservoir Road. The location of this road should be considered further by Council should they wish to pursue the rezoning of this land.

## **6.6 Impacts on amenity and other concerns**

### **6.6.1 The issue**

Several residents within the 'change area' explained that they believed the very things that had drawn them to the area, and to invest in their properties, would be lost.

Some submitters explained that they had performed due diligence in terms of researching land use and planning regulations prior to purchasing their properties. At the time, these investigations had not uncovered a potential change to the zoning of the area to provide for small rural living lots.

Increased noise, poor land management practices by new owners, increased dust, land degradation, a drastically altered vista and higher traffic volumes were some of the impacts mentioned by submitters. Some landowners felt that property values would reduce, while others were concerned about an increase in Council rates.

## 6.6.2 Submissions

Council's verbal and written submissions made broad reference to the amenity issues raised by Kyneton landowners. Council made the observation that the setback controls proposed by the DPOs created a consistent development pattern and provided buffers to roads and between dwellings. The inclusion of a connected system of roads, cycle and pedestrian paths was, Ms Marshall submitted, an attempt to create a sense of community to discourage anti-social behaviour.

A theme throughout Ms Marshall's verbal submissions was that the application of the multi-layered 'filtering' process used to identify 'change areas', followed by the more detailed investigations of these areas by Officers, enabled Council to identify the key attributes of each site. A combination of site specific DPOs and Concept Plans were then created to protect and enhance these features.

Ms Marshall specifically responded to a question raised during the Hearing around why a Significant Landscape Overlay was not applied to the area, as per a recommendation of the Kyneton Structure Plan. The response was:

*Council undertook additional visual analysis work which was commissioned from Aecom. That work concluded that there was not sufficient justification to support an SLO and that the existing provisions of the scheme were sufficient to manage visual impacts.*

Mr and Mrs Wollert felt that the amenity of their property would be irrevocably damaged. Their concerns revolved around a significant change in their outlook from paddocks to dwellings, outbuildings and other urban infrastructure. The long, narrow configuration of their land led to concerns that provisions around dwelling setbacks would not afford them much protection from intrusion.

Noise was also a concern given that they felt the topography of the land meant that the low-lying area along the waterway acted as an 'amphitheatre'. The significant increase in traffic, unsealed roads, high speed limits and a potential conflict between more cars, people and horse riders made them concerned that the local road network would become unsafe.

Mr Wollert's concluding statements were around the need for local residents to have input into additional amenity related provisions for DPO22, such as larger lot sizes, restrictions on dwelling height and building materials.

Mr and Ms McKelvie also believed that their amenity, and that of the locality, would suffer from adverse environmental, health, safety and property value impacts. The potential for increased dog attacks on their alpaca stud stock was a concern. Their written submission concluded by suggesting that the community be provided with a more detailed plan that:

*... accommodates dwellings based on the top of the foothills only, minimal but safe road access/egress to and from those dwellings, the installation of buffer zones alongside existing properties zoned farming and leave the basin area unimpeded by roadways, dwellings and other structures ...*

The Walsh family's concerns around the potential for the north-south through road to reduce their privacy has been discussed previously. They too, believe additional measures could be employed to protect the existing level of amenity enjoyed by residents.

Ms Barnes, Mr Bradley and Ms Bradley wrote that upon purchasing their property 10 years ago they were told that the land's location in a FZ and within a water supply catchment meant that the area would not be further developed. Concerns around views turning from a rural to an urban outlook were expressed. Increased development was seen as a threat to the locality's sense of community, as well as leading to a deterioration in the environmental value of the area through poor land management practices. An increase in Council rates also concerned them.

Ms Mockridge considered that bushfire risk could increase, noting that the area had experienced grass fires in recent years. She also expressed concerns around increased traffic, rural crime, noise, loss of property values and general lifestyle impacts.

Mr and Ms Eklom believed the area's amenity would suffer due to a lack of appropriate road infrastructure, particularly due to the unsealed nature of the section of Harts Lane north of Lauriston Reservoir Road. The sealing of this road was mentioned as a solution to overcome their objection.

### **6.6.3 Discussion and conclusions**

Concerns about a change in the nature and size of lots within the locality are understandable given the proposed 2 hectare minimum lot size. Anxiety around increased noise, traffic and significant shifts in the 'feel' of the area are also valid to the extent that increased dwelling densities will inevitably result in all of these things.

The question the Panel must answer, though, is whether the level of change in amenity is such that the proposed rezoning should not be supported.

Some landowners will suffer a lesser degree of impact than others due to the size and configuration of their properties, along with the potential location of future roads and other such infrastructure.

The Panel believes that Council has made an attempt to tailor DPO22 and the Concept Plan as a way to enhance its key features and to mitigate, as much as possible, adverse amenity impacts through increases in dwelling density.

While some concerns around issues such as increased noise and changed vistas cannot be totally overcome, the engagement of local landowners by Council to inform the creation of the Concept Plan may have served to address some of the locals' fears. Indeed, the McKelvie, Eklom and Wollert submissions all proffered possible remedies to address their key concerns and all revolved around being involved in the creation of a comprehensive plan for the area.

Such consultation cannot be achieved through the Development Plan process as DPO22 does not require public consultation when a plan has been submitted to Council for consideration, nor does it offer third party appeal rights.

When questioned about whether Council requires some form of public consultation to accompany the creation of a Development Plan, Ms Marshall responded that it generally does not. She did not, however rule out such a process being undertaken, but expressed the concern that the lack of appeal rights would have to be clearly explained so that third parties understood that there were no appeal rights.

As the Panel has already concluded that further analysis is required for this site to determine whether or not the proposed rezoning of this 'change area' represents a good planning outcome, this additional work should also include a community engagement phase where the issues raised by affected landowners are heard and possible mitigation measures explored. It is clear that several owners accept that some form of change may be inevitable and that they wish to be a constructive voice in the creation of a plan for the area's future.

## **6.7 Overall conclusions**

Overall, the Panel concludes that for Kyneton, the proposed rezoning should not proceed due to issues regarding land capability, conceptual design and water quality concerns. The Panel considers that:

- Prior to considering a change in the planning provisions for this site, Council should undertake a detailed assessment of:
  - the site's constraints, including soil type, topography, location of waterways and the extent of inundation in low-lying areas after a major rain event
  - land capability with respect to the treatment and retention of wastewater, in partnership with relevant water corporations and the catchment management authority, to ensure that a Rural Living Zone 2 is appropriate
  - whether, after taking into consideration these constraints, the lot yield is proximate to that which land supply projections state is required for the Northern region.
- Consultation with affected landowners form part of the additional work.
- Any application of a DPO22 would benefit from incorporation of suggested additions from Coliban Water and Goulburn Murray Water around meeting EPA land capability assessment standards and a mandatory requirement for a Section 173 Agreement for ongoing maintenance of onsite wastewater systems into any future development plan overlay for this site.
- Council could also consider the benefit of including reference to the Macedon Ranges Shire Domestic Wastewater Management Plan 2013 in a relevant section(s) of the LPPF to underline its overall purpose, key strategies and relevant planning considerations.

## **6.8 Recommendations**

The Panel recommends:

8. **Delete the rezoning of the Kyneton 'change area', bounded by Lauriston Reservoir Road, Harpers Lane, Kyneton Springhill Road and Harts Lane, from Farming Zone to Rural Living Zone, Schedule 2 and the application of Development Plan Overlay 22 from the Amendment.**
9. **Delete from the *Overview* in Clause 21.13-2 Kyneton of '*In addition to established rural living areas, the potential for 100 additional lots is available in south Kyneton to meet future demand for rural living*'.**

## 7 Romsey

The Amendment proposes to rezone an area of more than 100 hectares on the northwest corner of Melbourne-Lancefield Road and Ochiltrees Road to RLZ2 and include the land in DPO21.

The exhibited DPO21 included requirements that a Development Plan be prepared that includes:

- a site analysis plan
- a land capability assessment
- biodiversity and heritage assessments
- an infrastructure provision plan
- a visual landscape assessment
- a sustainable development plan a subdivision layout concept
- a traffic management and impact plan
- a landscape concept plan.

An extensive list of specific requirements for development included:

- a minimum lot size of 2 ha, except for land fronting the Melbourne-Lancefield Road, where the minimum lot size must be 4 ha
- building envelopes set back at least 70 metres from the Melbourne-Lancefield Road
- building envelopes for lots with land above the 560m contour must show all building envelopes below the 560m contour and outside sensitive viewlines identified in the Visual Landscape Assessment
- a 15 metre wide landscape buffer to the Melbourne-Lancefield Road
- no road or vehicle access to new lots from the Melbourne-Lancefield Road.

### 7.1 The issues

In examining the Eastern Region, the Background Report found 27 years of supply were available, which significantly exceeded the target criteria of 20 years of supply, but also noted that feedback during the consultation period indicated that there is a lack of diversity in lot sizes. The Strategy noted that:

*Currently much of the supply in the eastern Region is in the Rural Living 1 Zone where 72% of lots have an area greater than 7 hectares and this zone has virtually no subdivision opportunities.*

Council has responded to this perceived lack of diversity by seeking to “...create a sample of smaller lots (around 2 hectares) and provide an opportunity to test the demand for smaller lots.” The Strategy says that the take up of these lots will be monitored over a 3 to 5 year period.



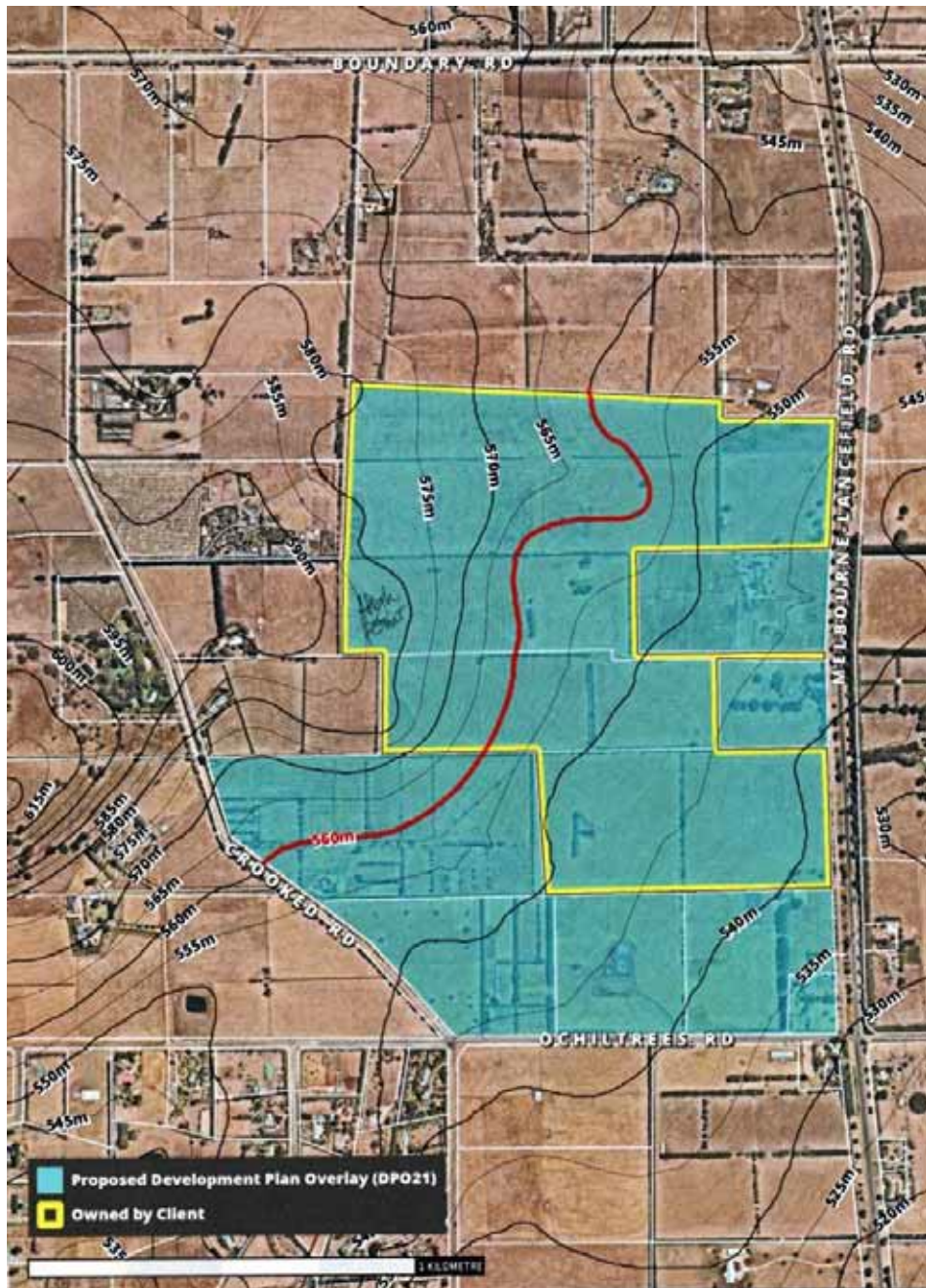


Figure 13: Map showing the proposed DPO21 area (blue), the Footit landholding (yellow) and the 560 metre contour (red).

The Background Report also documents five strategic criteria that were applied to identify suitable change areas in Romsey. In summary, these criteria were:

- proximity to Romsey township
- avoiding areas within 2 kilometres of the town centre to retain urban growth options
- giving preference to access from a sealed road
- maintaining open rural landscape and urban breaks, particularly the non-urban break between Romsey and Lancefield
- avoiding the buffer area of the Romsey Recycled Water Plant.



Applying these criteria identified two investigation areas to the east of the town and one of these was recommended as the change area.

When Council considered the Strategy and the preparation of the Amendment in September 2015 it removed the area of land recommended as the change area by officers and inserted the area of land north of Ochiltrees Road now included in the Amendment as the preferred change area. The Panel was advised that this change was in response to advice from the owners of the land initially identified as the change area that they did not want to develop the land in the short to medium term.

When Council considered the Amendment and the submissions received in February 2016, it also resolved to amend DPO21 by deleting the requirement for the concept plan that:

*Building envelopes for lots incorporating land above the 560m contour must show all envelopes below the 560m contour and outside of sensitive viewlines identified in the Visual Landscape Assessment.*

The submissions about this part of the Amendment raised a range of issues that can be summarised as:

- does the relatively low historical lot demand justify creating a change area in Romsey?
- is the proposed location the best option to meet the intent of the change area in Romsey?

## **7.2 Does the relatively low historical lot demand justify creating a change area in Romsey?**

### **(i) Evidence and submissions**

Council stated that the decision to provide for a change area in Romsey was made in response to submissions to the draft strategy seeking a greater diversity of rural living lots in Romsey.

In the Background Report, Council indicated that the supply of lots of the desired size of around two hectares is small. An analysis of lot sizes in the eastern Region showed that 28% of vacant lots in the RLZ were less than seven hectares. While the total theoretical supply of vacant lots is 157 lots, Council indicated that many of these are not available to the market. Council also indicated that the take up rate of the 25 small lots in the nearby Embley Court subdivision was 14 over five years, or about three a year.

Several submitters, including Ms Maureen Thomas (Submitter 25), Ms John and Ms Kirsty Moody (Submitter 102), and the MRRRA (Submitter 92) contested the need for further small lots. Mr J and Ms K Moody considered that Gisborne and Riddells Creek were more suitable areas to meet this demand and that there were existing two hectare blocks still available in Romsey.

### **(ii) Discussion**

Mr Shipp's report on supply and demand stated that, for the whole Eastern region (Romsey and Lancefield) the projected number of lots required a year was about six lots.

Mr Shipp's report also stated that for the 14 years from 2000 to 2014 the average dwelling approvals for Romsey was four a year with a total of 56. However, for the four years from 2011 to 2014 the average was only three a year.

These numbers are very low and the Panel was not persuaded that there was a compelling case to respond to this very low demand. As noted by some submitters, one possible response is to not respond and allow any demand to be redirected to the areas of Riddells Creek and Gisborne where provision for these small lots is being encouraged.

The Panel is also concerned that the size of the area proposed to be rezoned is out of proportion with the purported intent to create a 'sample' of lots to 'test the market'. Having regard to the slow take up of the Embley Court subdivision, rezoning an area of well over 100 ha is significantly more than a sample. Based on the rate of take up for Embley Court and the fact that some lots still remain, a five year supply would only currently be around a dozen lots or less than 30 hectares.

### **(iii) Conclusions**

The Panel concludes that, on present data and trends, there is only a case to create a small sample area at best.

## **7.3 Is the proposed location the best option to meet the intent of the change area in Romsey?**

### **(i) Evidence and submissions**

Little evidence of the strategic benefits of the proposed change area was presented to the Panel. In fact, the main reason put forward for the location was that the owners of the recommended location had indicated they were not interested in developing the land at present.

Unlike the other proposed change areas, Council had not prepared a concept plan for this area, instead relying on a substantial list of requirements embedded in the proposed DPO21 that would require a proponent to prepare the concept plan before obtaining development approval.

Also unlike the other areas, Council did not provide a strategic analysis of how the proposed area met the objectives of the Amendment or the existing policy expectations of the planning scheme.

The land proposed to be included in the change area is composed of five parcels. Mr George Footit (Submitter 30), strongly supports the Amendment and owns three of these parcels, totalling about 77 hectares. Mr Footit's submission was supported by expert evidence about planning and landscape analysis issues. This evidence focussed mainly on arguments to reduce a number of the restrictions to development proposed by DPO21, such as the proposed limitation on development above the 560m contour and the nature of setbacks from existing roads.

Mr Christoph and Ms Candice Jentsch (Submitter 6) own 46 Crooked Road, which is proposed to be included in the Amendment. They conduct an equine business on the land and oppose the Amendment.

Their neighbours Mr Neil and Ms Denise Barker (Submitter 4) also oppose the Amendment. The Barker's land at 86 Crooked Road would be abutted on two sides by the rezoning. Both the Jentsch and Barker submissions questioned the loss of prime agricultural land that would result and argued that the hobby farms that would result could not be considered to be a non-urban break or buffer. They also challenged the consistency of the proposal with the objectives of current policies about protecting agricultural land and significant environments and landscapes, in particular Objectives 1 and 4 of Clause 21.05-2.

About 18 submitters opposed this part of the Amendment. The main concerns they raised were:

- loss of prime agricultural land
- impact on the rural landscape and viewlines
- erosion of the non-urban break with Lancefield
- inconsistency with current policies
- loss of rural amenity
- lack of real demand.

In particular, there was strong affirmation from many submitters as to the high quality of the soils in this area and that many owners were able to conduct viable rural enterprises in this area.

## **(ii) Discussion**

The evidence and strategic justification for the Romsey change area was not presented to the Panel with the same depth as the other change areas.

The Panel was not provided with any information about the actual area of the land, the potential lot yield, the likely subdivision design or any of the other expected basic data about such a proposal. Also, unlike some of the other proposed change areas, no investigations had been conducted about environmental or view line issues, opportunities or constraints. Nor was there any real proposal about how the 'sampling' or 'market testing' was to be evaluated or responded to once the land was rezoned.

The Panel took the opportunity to inspect the land at close hand, including from above the 560m contour. The Panel observed that there was no other location in the observable area where significant development was visible on the hillsides.

The Panel considers that the long-standing policy to preserve a non-urban break with Lancefield should be carefully maintained. The Panel notes that part of the justification for selecting this area was that it was outside a two kilometre radius from the town centre. The Panel considers that a two kilometre radius is a useful but arbitrary construction, but in this situation, the other strategic issues that affect this land are of far greater significance and it may be appropriate to consider reducing this distance on the north side of Romsey in order to reinforce those other strategic considerations.

At present, most of that break is held in the RLZ1. As discussed in Section 4.4, the Panel considers that the RLZ1 may not be the best long-term mechanism for a non-urban break and Council should give serious consideration to strengthening that policy through broader use of the FZ.

**(iii) Conclusions**

The Panel concludes that the strategic justification for this part of the Amendment is poor. While there may be a case to create some limited opportunity for additional two hectare lots somewhere near the township, the extent of this should be small and only provided in a location or locations that do not have the policy implications for loss of prime agricultural land, landscapes and view lines and the non-urban break that this land possesses.

**7.4 Recommendations**

The Panel recommends:

- 10. Delete the rezoning of the Romsey 'change area', bounded by Melbourne-Lancefield Road, Ochiltrees Road and Crooked Road, from Rural Living Zone Schedule 1 to Rural Living Zone, Schedule 2 and the application of Development Plan Overlay 21 from the Amendment.**
- 11. Delete from the *Overview* in Clause 21.13-4 Romsey of '*Rural Living areas surround the township and provide a diverse range of lot sizes where new opportunities to create 30-40 small lots is supported in the medium to long term.*'**

## 8 Individual requests for change – transformation and the future

### 8.1 The issue

Over thirty submissions sought a change to Amendment C110. Some sought a change in zoning from RCZ or FZ to RLZ, while others requested the application of a different schedule to existing rural living zoned land to allow further subdivision to occur. There were also a number of submissions from landowners with property affected by the Amendment seeking either the application of a different schedule, a change to the provisions of the relevant DPO or a change to the Concept Plan to allow the creation of smaller lots<sup>6</sup>.

These submissions all requested changes to the exhibited Amendment and therefore raise the question of whether or not individually, and cumulatively, they represent a transformation of the Amendment.

### 8.2 Submissions seeking the inclusion of land in the Amendment

A number of submissions sought changes to current planning provisions affecting their land through the Amendment, as summarised in Table 8.

Table 8: Summary of submissions seeking inclusion of their land

Submitter Number	Location	Requested change to Amendment C110
<b>Northern Region</b>		
8	Fiddlers Green Road, Kyneton	Seeks rezoning of their property from FZ to a RLZ
19	Duggan Road, Gisborne	Seeks the rezoning of all properties in Duggan Road from RLZ1 to RLZ3
21	Lauriston Road, Kyneton	Seeks the rezoning of three properties in the FZ to a RLZ
60	Land accessed via Lauriston Road, Browns Court and Harts Lane, Kyneton	Seeks rezoning of RLZ5 land to RLZ2
84	Redesdale Road, Kyneton	Seeks rezoning of FZ land to RLZ
85	Donnelly Road, Kyneton	Seeks rezoning of FZ land to RLZ
<b>Central Region</b>		
34	Tweedle Road, Gisborne South	Seeks rezoning of RLZ5 land to RLZ3
37	Benson Road, Gisborne South	Seeks rezoning of RLZ5 land to RL3

6 These submissions have been considered in Chapter 5 covering the Gisborne/Riddells Creek area.

Submitter Number	Location	Requested change to Amendment C110
56	Gyro Close, Riddles Creek	Seeks correction of zoning anomaly as the 'axe handle' of the lot is in an LDRZ zone, while the remainder of the land south of the waterway, and abutted by LDRZ, is zoned RCZ
57	Black Hill Road, Gisborne South	Seeks rezoning of RLZ5 land to RL3
63	Kilmore Road and Mt Charlier Road, Riddles Creek	Seek rezoning of RLZ1 land to RLZ3
64	Emmaline Vale Estate, Gisborne	Seek rezoning of land zoned RLZ4 with DDO5 to a RLZ allowing 1.5 ha lots
71	Benson Road, Gisborne South	Seeks rezoning of RLZ5 land to RLZ3
77	Mt Gisborne Road, Gisborne	Seeks rezoning of RLZ1 land to RLZ3
83	Pierce Road, New Gisborne	Seeks rezoning of RLZ5 land to RLZ2 and removal of DDO13
88	Coney Court and Dalrymple Road, Gisborne	Seeks rezoning of RLZ5 land to RLZ3
90 and 98 (Submission from 46 land owners)	Emmaline Vale Estate, Gisborne	Seeks rezoning of the Estate from RLZ4 to LDRZ and the removal of Design and Development Overlay 5 (DDO5)
97 (Submission from 8 land owners)	Saunders Road, New Gisborne	Seeks rezoning of RLZ 5 land to Urban Growth Zone (UGZ) or a RLZ with a minimum lot size of 1 ha
107 (Submission from several landowners)	Land in McDonalds Lane, Sundowner Lane, Howards Lane and Riddles Road, Riddles Creek	Seeks rezoning of this area from RLZ1 to RLZ 3 to reflect the nature of existing lot sizes
113	Two lots on Mt Macedon Road, New Gisborne and Macedon	Seeks rezoning of these sites from RLZ1 to RLZ3
119	Williams Lane, Riddles Creek	Seeks rezoning of RCZ land to a RLZ in future reviews of rural living land supply
<b>Eastern Region</b>		
62	Graham's Track, Lancefield	Seeks rezoning of FZ land to RLZ

Submitter Number	Location	Requested change to Amendment C110
69	Stockdale Road, Darraweit Guim	Seeks rezoning of RLZ1 land to Township Zone
116	Tickawarra Road, Romsey	Seeks rezoning of RLZ1 land to RLZ2 or LDRZ

### 8.2.1 Submissions

Council submitted that those 35 submissions seeking changes to the Amendment were not consistent with the recommendations of the Strategy. It outlined that it had not made any changes to the application of zones, DPO provisions or the area of land to be rezoned in response to these submissions.

Council did, however, identify two sites for which it would consider ‘proponent led’ amendments if the Panel was of a mind to support changes in planning provisions, namely:

- 798 Lauriston Road, Kyneton (Submitter 60)
- 74 Pierce Road, New Gisborne (Submitter 83).

The Panel was directed to Table 2, which formed part of the Council report of 24 February 2016 in relation to these two sites.

Officer comment relating to the Kyneton site included the following:

*... It is acknowledged that the prevailing lot size in this part of the RLZ5 is much lower than the 8ha minimum under the current controls. Council may consider a change in this subject to Panel consideration and support ...*

Comments relating to the New Gisborne land were:

*...The subject land was excluded from change on the basis of the significant landscape views to the Macedon Ranges looking across the site and desire to retain an urban break between Gisborne and Riddles Creek. It is acknowledged that the western portion of the land has limited landscape values with some existing dwellings to the south fronting Pierce and Kilmore Roads. Council may consider change in this case subject to Panel consideration and support.*

Requests from submitters seeking inclusion of their land in the Amendment have been summarised in Table 8 and therefore will not be discussed in detail here.

There were, however, detailed verbal submissions made to the Panel that warrant mention given that the Panel considers that these sites warrant further investigation by Council in the future. Ms Tomkinson’s representations on behalf of the Politini Family (Submitter 83) will not be outlined as Council has made verbal and written submissions to the Panel that it agrees to review the merits of rezoning this land in a future amendment.

Mr Andrew West from Fratello Consulting Pty Ltd tendered written and verbal submissions on behalf of Darren Turnbull and Om Puhja, landowners of 21 Coney Court and 23-25 Dalrymple Road, Gisborne (Submitter 88). The land had a combined area of around 83 hectares, both containing single dwellings. The Dalrymple Road land was subject to Heritage



Overlay 63. The area is serviced by reticulated water, electricity and telephone. Mr West outlined that the Background Report identified that these two lots were constrained by topography, with steeply sloping areas along a central waterway.

A vegetation assessment, prepared by Hamilton Environmental Services, was tabled by Mr West, which found the properties had been highly modified and cleared of all remnant indigenous woody vegetation. Due to prolonged grazing, the indigenous ground layer represented less than one per cent of the land and no rare or threatened species were observed.

Mr West tendered an Indicative Development Plan for the land, which he believed ensured future development met all of Council's criteria, focusing development on flat land within the site. The Development Plan depicted the connection of Coney Court to Dalrymple Road via Rockglen Way, which Mr West stated would improve emergency access to the area. It was estimated that the additional lot yield could be up to 12 lots. Mr West believed that this Plan demonstrated that an integration with the abutting Precinct 3 was possible.

Mr Matthew Gilbertson from Glossop Planning Pty Ltd, made verbal and written representations on behalf of Submitters 90 and 98, owners of land within the Emmaline Vale Estate, Gisborne (Mr Ray Wood, Submitter 64, also requested changes to the provisions for this Estate). Mr Gilbertson noted that there had been previous requests to Council to engage with local landowners in a strategic review of existing planning provisions for this area, including through submissions to the *Draft In the Rural Living Zone Strategy*.

Their objection to the Amendment was on the basis that Council had failed to undertake a strategic analysis of this land, located on the fringe of Gisborne and immediately east of the Calder Highway. Mr Gilbertson outlined the variability in lot size within this Estate, which ranged from 0.5 to over 4 hectares.

It was observed that while Schedule 4 to the RLZ allowed a minimum lot size of 1 hectare, Design and Development Overlay 5 (DDO5) required, amongst other things, that the lot density must not exceed 2 lots per 4 hectares, with a minimum lot size of 1 hectare. Mr Gilbertson stated that the conflict between these two provisions led to confusion, inequity and an inefficient subdivisional layout.

In a submission tabled at the Hearing, Mr Gilbertson argued that there was also a divergence between the results from Council's landowner survey around desired rural living lot size, and the lot sizes provided by the Amendment:

*These changes demonstrate a clear disconnect between the identified demand for housing from the Shire's ratepayer survey (in the order of 0.2 – 2 hectares) and the new typology of subdivision that council is seeking to delivery from this review (greater than 2 hectares).*

Overall, the key contention was that that the Rural Living Zone 4 schedule was the only one excluded from change in the Amendment. Mr Gilbertson concluded that there was an opportunity to meet the demand for small lots, in a location that met all of Council's criteria, by deleting DDO5 and rezoning the Estate to LDRZ. Submissions made to the Panel by Mr Gilbertson as to whether or not this would represent a transformation of the amendment are addressed in the next section.

Ms Fiona Slechten from Calibre Consulting, represented Ms S Carter and Mr E Godek (Submitter 37) and noted that previous submissions had been made to Council relating to what they believed was a zoning anomaly. The majority of land at 256 Gyro Close, Riddles Creek, was RCZ but the 'axe handle' part of the lot fronting Gyro close was LDRZ. Ms Slechten stated that:

*Council in its closing submission to the C100 Amendment did advise that Panel that it was willing to consider a site specific amendment to rectify our clients existing zoning anomaly.*

*...we maintain that the rezoning of the land should be included in either Amendment C100 or C110 given the inconsistency of the current zoning and the likely time and expense it would take for our client to pursue a separate amendment.*

Aerial photographs tendered by Ms Slechten showed that part of the 'battle axe' allotment was located to the south of a waterway. The waterway appeared to be the boundary between LDRZ land fronting Gyro Close and the RCZ to the north of the creek. The landowners' desire was to rezone the remaining part of the land south of the waterway, around 2.7 hectares in size, to be consistent with the zoning of land fronting Gyro Close. The remaining 45 hectares of land north of the waterway would remain in the RCZ.

### **8.2.2 Discussion**

Firstly, the Panel wishes to express its disappointment that Council, in referring submissions for the rezoning of land outside that covered by the exhibited Amendment, has created a level of submitter expectation that the Panel will be able to actively consider their requests to include their land in the Amendment. This is particularly unfortunate given that Council argued so strongly at the Hearing that the inclusion of such requests would represent a transformation of the Amendment and are thus to be avoided. It also expressed its objections to the Panel recommending further notification of affected parties to enable the consideration of additional land being included in the Amendment.

Putting this issue aside, the Panel is mindful of the significant amount of strategic work undertaken by Council in the preparation of this Amendment and, in particular, its methodical approach to applying 'filters' to land as a means of identifying 'change areas'. It agrees that a thorough, and strategic, analysis of the constraints and opportunities of all sites must be undertaken when operating in a locality that experiences the social, environmental and economic complexities that exist within this Shire; it takes time and thought to balance the competing objectives that may be at play within a locality, and to craft appropriate planning provisions that respond to its particular opportunities and constraints.

The Panel also wishes to acknowledge that several submitters have commissioned work that applies a level of strategic analysis to support their requests for a change in planning provisions, however this analysis has been undertaken on a site-by-site basis, rather than in a coordinated way that looks at impacts on the broader locality.

There are also questions around equity and fairness should the Panel accept the submissions of landowners seeking inclusion in the Amendment, no matter how detailed and reasonable those submissions may be.

Council made it clear that it did not support any change to the Amendment that would require further notification, as would be the case if the Panel were of a mind to recommend other sites be included in the Amendment.

The Panel recognises that the process undertaken to prepare the Amendment has taken a number of years and that any further delay to a decision being made on its merits would be unreasonable and also cause uncertainty within the community.

While thorough submissions were made during the course of the Hearing on behalf of landowners wishing to become parties to the Amendment, it should not be used as the panacea to address previous decisions to create undersized FZ lots. Nor should it jeopardise potential for future urban growth on township boundaries, which appears to be Council's reluctance to include some of the suggested sites in the Amendment.

While it acknowledges that Council stated that the Amendment was to be a definitive 'line in the sand' and that no further amendments would be considered regarding the provision of RLZ land, the Panel considers this is not a sustainable approach given:

- Council, in its submission, identified two sites which it believed proponent led amendments could be supported if the Panel made a recommendation to that effect
- the 30 year timeframe for the land supply is an incredibly long one during which significant shifts in demand and planning policy can occur
- the Strategy, submissions from Council and expert evidence from Mr Shipp all stated that the monitoring of land supply, demand trends and uptake within the 'change areas' be undertaken on a regular basis
- there appear to be a small number of sites where the long-term future of the land needs to be clarified, where existing provisions could be streamlined to achieve better planning outcomes or where anomalies in planning provisions should be addressed.

The Panel considers that the sites referred to in the final dot point above, should be reviewed by Council, whether it be through proponent led or Council sponsored amendments. They include the two sites identified by Council in its written and verbal submissions (Submitters 60 and 83) and the sites discussed below.

The draft Concept Plan tendered by Mr West on behalf of Submitter 88 has sufficient merit to warrant further consideration by Council. Although the Dalrymple Road site is affected by Heritage Overlay 63, and therefore does not meet Council's criteria for avoiding land subject to this type of overlay, the location of the historic dwelling to the south west corner of the site means that it should be possible to design a sympathetic subdivision that retains the values the Overlay is seeking to protect. The land is contiguous with a proposed 'change area' and the Panel considers that there are opportunities to utilise the existing road network to achieve good design outcomes. Consideration should, however, be given to the need to retain a non-urban break, as discussed in the Gisborne/Riddles Creek Chapter.

Submissions 64, 90 and 98 relating to the Emmaline Vale Estate, Gisborne raise valid issues around the efficacy of existing zoning provisions which the Panel believes also warrant further review. The Estate's location and the high degree of variability in lot size lend weight to the argument for a review of the existing provisions. The Panel concurs with Mr Gilbertson's contention that current planning provisions have created an inefficient

subdivisional layout and that opportunities to maximise the use of existing infrastructure should be explored by Council in the future. As discussed in Chapter 5, part of the Emmaline Vale Estate would lie in the buffer area around the wastewater treatment plan and therefore may be impacted should the EPA's request for an ESO to be applied to this buffer area be pursued. This matter should, therefore, be taken into account when Council is reviewing the provisions for this Estate.

### **8.2.3 Conclusions**

After considering verbal and written submissions, as well as undertaking site inspections, the Panel considers the following sites warrant further investigation in any forthcoming monitoring of RLZ land supply by Council:

- 74 Pierce Road, New Gisborne (Submitter 83)
- 798 Lauriston Road, Kyneton (Submitter 60)
- land at Coney Court and Dalrymple Road, Gisborne (Submitter 88)
- land within the Emmaline Vale Estate, Gisborne (Submitter 64, 90 and 98).

The Panel also notes Council's agreement to consider a proponent led amendment to address the anomaly raised by Ms Slechten (Submitter 56). The other alternative approach is that Council work with the landowner to provide further information to enable to include the change in a forthcoming 'correctional' amendment.

## **8.3 What represents a transformation of an amendment?**

### **8.3.1 Submissions**

Council provided the following advice to the Panel when considering submissions requesting changes that were outside the scope of the exhibited Amendment:

*The Panel needs to be mindful that the nature of change contemplated by these types of submissions may amount to a transformation that would either potentially trigger a legal challenge to the Amendment or create the need for additional notification processes.*

Council's submission then summarised the findings of several Panels around the issue of transformation, namely:

- Amendment C129 to the Greater Geelong Planning Scheme
- Amendment C83 to the Melton Planning Scheme
- Amendment C52 to the Melton Planning Scheme
- Amendment C44 to the Baw Baw Planning Scheme
- Amendment C96 to the Greater Dandenong Planning Scheme
- Amendments C136, C137 and C138 to the Darebin Planning Scheme.

The Greater Geelong Planning Scheme Amendment C129 Panel's comments around transformation are outlined on page 4 of Council's Right of Reply included:

*A number of submissions made requests that might be considered to 'transform' the Amendment. Transforming an amendment is changing it in a fundamental way so that, in effect, it becomes a different amendment.*

*The general principle applied in panel hearings is that modifications to amendments are acceptable so long as they do not result in a transformation of the proposal.*

*... What constitutes a transformation must be judged according to its own circumstances, but it would need to be something quite different to that originally proposed.*

*We think that the introduction of new zonings where the new zones would pave way for new development or lead to a new or more intensive use of the land would be a transformation of this Amendment.*

Council also outlined guidance from decisions of the Victorian Civil and Administrative Tribunal on the issue of transformation, which was referred to by the Panel for Amendment C52 to the Melton Planning Scheme, namely:

- *Addicoat v Fox (No 2)* [1979] VR 347
- *Melbourne CC v Becton* [2003] VCAT 1077
- *Mentone Mansions PL v Kingston CC* [2000] VCAT 1947
- *Anti-Cancer Council of Victoria v Melbourne CC* [2003] VCAT 144.

In that instance, the Panel noted that while the decisions related to planning permits rather than planning scheme amendments, they were useful in identifying the different levels of change that can be made to the substance of a proposal:

*In the case of a permitted development there is a continuum in the possibility of variations:*

- a) no variation;*
- b) trivial variation (de minimus, in an absolute sense);*
- c) inconsequential variation (de minimum in a contextual sense);*
- d) consequential variation; and*
- e) transforming variation.*

Ms Marshall referred to the Panel Report for Amendment C96 to the Greater Dandenong Planning Scheme around transformation and the notion that natural justice principles require further notification to be undertaken prior to the consideration of any 'transformational' change to an amendment:

*We think that significantly expanding the area to be rezoned from Residential 2 to Residential 1 in a fashion that is not consistent with the underlying strategic study or the policy maps exhibited with the Amendment would be a transformation of the Amendment.*

*It is only possible to consider such significant changes to an amendment if the rules of natural justice are adhered to. The particular rule of natural justice, which must be satisfied, is the requirement that all matters upon which a decision will be based are revealed to all parties and they are given an opportunity to be heard.*

*The transformation of an amendment will normally require re-exhibition ...*

In summarising its advice to this Panel, Council stated that the submissions seeking to rezone additional land or alter the planning provisions applied to land by Amendment C110 would:

- *change it in a fundamental way to a different amendment*
- *be a matter upon which other interested parties would have a legitimate expectation that such changes would not proceed without further notice being given to them*
- *necessitate significant further strategic work to be undertaken.*

Council concluded by saying that it was not seeking a recommendation to undertake additional notification for a transformed amendment.

Mr Mark Bartley from HWL Ebsworth on behalf of his clients, Mr R and Ms M Peavey and a group of landowners in the area between Saunders Road and the railway line east of New Gisborne (Submitter 97), dealt with the issue of transformation in his submission to the Panel. His clients were seeking a change to the current RLZ 5, with a minimum lot size of 8 hectares, to a RLZ allowing a minimum lot size of 1 hectare or alternatively the rezoning of the land to UGZ in recognition of its suitability for a mix of industrial and residential use.

Mr Bartley stated that such requests were not, in his view, a transformation and would therefore be within the boundaries of this Panel's decision-making powers. When asked by the Panel to clarify his reasoning behind this view, Mr Bartley responded that the question was whether or not the amendment would be significantly different from that which was exhibited.

He stated that this Amendment looks at changing the provisions to schedules for extensive areas of land already in a RLZ. This is consistent with the changes his clients' are seeking. Further, he considered that changing the schedule provisions for the land was a technical issue, not a transformation, and that this 'technical' change responded to the recommendations of the Strategy in that it seeks to provide small rural living lots to meet high levels of demand for this type of property around Gisborne.

Mr Trevor Ludeman from Project Planning and Development Pty Ltd, on behalf of his clients Mr Andrew and Ms Sally Rich (Submitter 34) argued that the inclusion of additional land to south of Precinct 2, Gisborne South, would not constitute a transformation as all criteria applied by Council are met and therefore it is consistent with the purpose of the Amendment.

Mr Gilbertson, on behalf of Submitters 90 and 98, quoted from a Panel report for Amendments C136, 137 and 138, which made recommendations to rezone a piece of land despite it not being included in the exhibited amendment. In this instance, Mr Gilbertson noted that limited additional notice was given to adjoining landowners and the land was subsequently rezoned. On this basis, he argued, the Panel could make a recommendation to change the planning provisions applying to the Emmaline Estate. Mr Gilbertson suggested that "*at the very least*" the Panel should recommend that Council undertake a strategic review of RLZ4 and DDO5.

### **8.3.2 Discussion**

As stated previously, the Panel believes it inappropriate to delay the consideration of the Amendment to enable the strategic analysis of additional RLZ sites or undertake further notification of affected parties.



Further, it does not share the view that changes to schedules for land already in a RLZ to allow for smaller lots than the controls exhibited do not represent a transformation of the Amendment.

As such, the changes requested by submitters would require additional notification of affected landowners and the local community by Council. Again, this would lead to delays in the finalisation of the Amendment and has the potential to cause confusion within the community. The Panel considers both are undesirable outcomes and are not supported.

### **8.3.3 Conclusions**

The Panel considers the nature of changes sought by submitters, whether they be requests for land to be included in the Amendment or changes to it to reduce lot sizes, alter the provisions of a DPO or alter a Concept Plan, represent both an individual and cumulative transformation of the Amendment and therefore are not supported.

## Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Anthony Whittall	33	Rosalind Maplestone
2	Harvey and Leanne Cleggett	34	Andrew and Sally Rich
3	Anna Athanasiadis	35	Christine Barraclough
4	Neil and Denise Barker	36	Lisa and Colin Renard
5	Robin Stewart	37	Chris and Dee Bren-Clarke
6	Christoph and Candice Jentsch	38	Michael Colbran
7	Sean Darcy and Annette Smith	39	Colin Maplestone
8	Brian Sheppard	40	Ian Law
9	Rod McNeil	41	Suzanne Broe
10	Margaret Boyd	42	John Phair
11	Brett Elliott	43	Sue Owen
12	Barry McDonald	44	Carol Barnes, Barry and Sarah Bradley
13	George Wright	45	Sharon Wicks
14	H and E Mullenger	46	C and A Hall
15	Debra and Neil Werrett	47	Melinda Mockridge
16	Doug and Sally Wollert	48	D and M Costa
17	Ian Powell	49	Richard and Angela Fooks
18	Peter Shaw	50	B J and P Brady (also Submitter 82)
19	Warwick Harding	51	Department of Environment, Land, Water and Planning
20	Ron Fitt	52	Karen Clifford
21	Planeta (Aust) Pty Ltd	53	Miranda Bain
22	Elaine and Roger Bain	54	Jeff, David and Janine Vains
23	Ken Grech	55	Redesdale Road Investments
24	Leith Clymo	56	Sally and Ed Godek
25	Maureen Thomas	57	Vern Sims
26	Owen Marshall	58	Lorraine Beyer
27	David and Helen McKelvie	59	Lyn Hovey
28	Goulburn-Murray Water	60	Springview Pastoral Pty Ltd
29	Zoe Phillips	61	E and J Dixon (also Submitter 117)
30	George Footit	62	Michael Graham
31	Chris and Elizabeth Walsh	63	Huon Damm
32	Scott and Leesa Lord		

No.	Submitter	No.	Submitter
64	Ray Wood	95	Macedon Ranges Sustainability Group
65	Greg O'Brien	96	Rodney Kane
66	Environment Protection Authority	97	HWL Ebsworth
67	Jay Williams	98	Roggero Gregory
68	Rodney Brown	99	Mahmood Mahomed
69	Kevin Breen	100	Ann O'Neill
70	Jim and Jennie Morrison	101	Hyperno Pty Ltd
71	Duncan Elliott	102	Kirsty and John Moody
72	Stephen and Jayne Guilmartin	103	Susannah, David and Zoe Hawke
73	Phillipa Butler	104	Brian Whitefield
74	Mark Horner	105	Richard Hughes
75	Sue Blakey	106	F Sewell
76	Marianne Stoettrup	107	Lindsay Sharpe
77	Anthony Stafford Australian Property Partnership Pty Ltd	108	Alison Joseph
78	Desmond and Marjorie Eklom	109	Esther Kay
79	Ron Phillips	110	Sharon Macaulay
80	Pene Rice	111	Lorel, Dennis and Stuart Cogger
81	Cathy Phelps	112	Margaret Douglas
82	B J and P Brady (also Submitter 50)	113	Terry and Mark Power
83	Politini Family	114	K and D Madigan
84	Joseph and Catherine Pulis	115	John Pilbeam and Helen Cottle
85	Tonia Todman	116	Mark Finegan
86	Coliban Water	117	John Dixon (also Submitter 61)
87	Sue Kirkegard	118	Kay and Brian Millington
88	Darren Turnbull and Om Puhja	119	Angela Papalia
89	Peter Banks, Patsy and Sue Tyquin	120	Country Fire Authority
90	Jurgen Mueller	121	Suncorp Group
91	Department of Economic Development, Jobs, Transport and Resources	122	Robyn Drysdale
92	Macedon Ranges Residents Association	123	Western Water
93	Dr Ruth Williams	124	Marina Howell and John Heffer
94	G and J Teal	125	Jim Vella

## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Macedon Ranges Shire Council	Ms Maria Marshall, lawyer of the firm Maddocks, supported by Ms Fiona Cotter, town planner from Provincial Matters Pty Ltd who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr Paul Shipp of Urban Enterprise Pty Ltd on land supply and demand</li> <li>- Mr Lincoln Kern of Practical Ecology on biodiversity and bushfire</li> </ul>
Environment Protection Authority (EPA)	Mr Sam Trowse
Coliban Water	Mr Barry Floyd
Country Fire Authority (CFA)	Mr Len Leslie
Mr George Footit	Mr Tom Pikusa, barrister instructed by Bazzani Scully Priddle Lawyers who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr Peter Haack of Urbis Pty Ltd on landscape and design</li> <li>- Mr Travis Conway of Urbis Pty Ltd on planning</li> </ul>
Roy Peavey	Mr Mark Bartley, lawyer of HWL Ebsworth Lawyers
Andrew and Sally Rich	Mr Trevor Ludeman, town planner of Project Planning and Development Pty Ltd
Politini Family	Ms Andrea Tomkinson, town planner of Tomkinson Group Pty Ltd
Hyperno Pty Ltd	Ms Andrea Tomkinson, town planner of Tomkinson Group Pty Ltd
Darryl Turnbull and Dr Om Puhja	Mr Andrew West, town planner of Fratello Consulting Pty Ltd
Mahmood Mahomed	Mr Bill Nicol, engineer of Nicol Projects
John Dixon	
Richard Hughes	
Vernon Sims	
Jurgen Mueller and Roggero Gregory	Mr Matthew Gilbertson, town planner of Glossop Planning Pty Ltd
Douglas Wollert	
Anthony Stafford of Australian Property Partnership	

Submitter	Represented by
The Erindale (Breen) Family Trust	Mr Kevin Breen
Mark Finegan	Mr Steven Hines, town planner of Urban Design and Management
Terry and Mark Power	Mr Steven Hines, town planner of Urban Design and Management
Brian Brady	Ms Fiona Slechten, town planner of Calibre Consulting
Kay Millington and Troy Rodda	Ms Fiona Slechten, town planner of Calibre Consulting
Sally Carter and Ed Godek	Ms Fiona Slechten, town planner of Calibre Consulting
Macedon Ranges Residents' Association	Ms Christine Pruneau, Secretary and Mr John Phair
David McKelvie	
Macedon Ranges Sustainability Group	Mr Keith Altmann
Rodney Kane	
Lindsay Sharpe	
Warwick Harding, Stephen Bailey and Tony Cilauro	
Desmond Eklom	
D and F Costa	Mr Andrew Gray, town planner of ARG Planning Pty Ltd
Neil Barker	
Sue Kirkegard	
Michael Colbran	Mr Mark Bartley, lawyer of HWL Ebsworth Lawyers and Mr Chris Banon, consultant of Banon Consultants
Fred Sewell and Jim Vella	Mr Neville Smith
George Wright	
Huon Damm and Gavan Lovell	
Sharon Macaulay, town planner of Central Highlands Planning	
Marina Howell	

## Appendix C Document list

No.	Date	Description	Presented by
1	18/4/16	Amendment Hearing Folder	M Marshall
2	18/4/16	Native Vegetation Location Risk Map : Precinct 5	L Kern
3	18/4/16	Strategic Biodiversity Score : Precinct 5	L Kern
4	18/4/16	Location and direction of assessment for unaccessed properties : Precinct 5	L Kern
5	18/4/16	Council submission : Part B	M Marshall
6	19/4/16	EPA hearing submission (Sub 66)	S Trowse
7	19/4/16	Coliban Water hearing submission (Sub 86)	B Floyd
8	19/4/16	Additional Information folder	M Marshall
9	19/4/16	CFA hearing submission (Sub 120)	L Leslie
10	19/4/16	G Footit hearing submission (Sub 30)	T Pikusa
11	20/4/16	Peavey hearing submission (Sub 97)	M Bartley
12	20/4/16	Minutes of MRSC meeting 22 8/2007	M Bartley
13	20/4/16	Riddells Creek Development Framework Plan 28/3/2014	M Bartley
14	20/4/16	A and S Rich hearing submission (Sub 34)	T Ludeman
15	20/4/16	Maps (6 sheets)	T Ludeman
16	20/4/16	Plans of subdivision (4 sheets)	T Ludeman
17	20/4/16	Aerial and site photos (6 sheets)	T Ludeman
18	20/4/16	Politini hearing submission (Sub 83)	A Tomkinson
19	20/4/16	Hyperno Pty Ltd hearing submission (Sub 101)	A Tomkinson
20	20/4/16	Turnbull/Puhja hearing submission (Sub 88)	A West
21	20/4/16	Mahomed hearing submission (Sub 99)	W Nicol
22	20/4/16	Attachment 3A to submission: Annotated DPO 20 Concept Plan	W Nicol
23	20/4/16	Dixon hearing submission (Sub 61)	J Dixon
24	20/4/16	Sims hearing submission (Sub 57)	V Sims
25	<b>22/4/16</b>	Mueller/Gregory hearing submission (Subs 90 and 98)	M Gilbertson
26	22/4/16	Recent subdivision plan, McGregor Rd	M Gilbertson
27	22/4/16	Panel Report Darebin C136, C137 and C138	M Gilbertson
28	22/4/16	Wollert hearing submission (Sub 16)	D Wollert
29	22/4/16	Stafford hearing submission (Sub 77)	A Stafford



No.	Date	Description	Presented by
30	22/4/16	Erindale (Breen) Family Trust hearing submission (Sub 69)	K Breen
31	22/4/16	Finegan hearing submission (2 parts) (Sub 116)	S Hines
32	22/4/16	Power hearing submission (Sub 113)	S Hines
33	22/4/16	Brady hearing submission (Sub 82)	F Slechten
34	22/4/16	Plan of subdivision for 145 Harpers Lane proposed in AM C102.	F Slechten
35	22/4/16	Millington/Rodda hearing submission (Sub 118)	F Slechten
36	22/4/16	Aerial photo 36 and 72 Brooking Road, Gisborne	F Slechten
37	22/4/16	Carter/Godek hearing submission (Sub 56)	F Slechten
38	<b>26/4/16</b>	Macedon Ranges Residents Association hearing submission (Sub 92)	C Pruneau
39	26/4/16	Table of unoccupied dwelling houses LGA	C Pruneau
40	26/4/16	Table of churn rates	C Pruneau
41	26/4/16	McKelvie hearing submission (Sub 27)	D McKelvie
42	26/4/16	Macedon Ranges Sustainability Group hearing submission (Sub 95)	K Altman
43	26/4/16	Annotated copy of DDO 20 schedule (Sub 96)	R Kane
44	26/4/16	Sharpe hearing submission (Sub 107)	L Sharpe
45	26/4/16	Concept Plan : Arterial Road for Area 5 from submission to Amendment C100	L Sharpe
46	26/4/16	Duggan Road (Gisborne) Landowners Group hearing submission (Sub 19)	W Harding
47	26/4/16	Eklom hearing submission (Sub 78)	D Eklom
48	26/4/16	Costa hearing submission (Sub 48)	A Gray
49	<b>27/4/16</b>	Supporting material for Footit site inspection	T Pikusa
50	27/4/16	Barker hearing submission (Sub 4)	N Barker
51	27/4/16	Kirkegard hearing submission (Sub 87)	S Kirkegard
52	27/4/16	Land capability map Romsey	S Kirkegard
53	27/4/16	Colbran (Gisborne Park) hearing submission (Sub 38)	M Bartley
54	27/4/16	Proposed draft DPO schedule for Gisborne Park	M Bartley
55	27/4/16	Extract from closing submission to Amendment C67 28/7/2010 and copy of letter requesting rezoning 22/8/2007 (for Sub 97)	M Bartley

No.	Date	Description	Presented by
56	27/4/16	Extract (p45) from Macedon Ranges Industrial Design and Development Guidelines (for Sub 97)	M Bartley
57	27/4/16	Sewell/Vella hearing submission (Sub 106)	N Smith
58	27/4/16	Damm/Lovel/Mazarella/Failla hearing submission (Sub 63)	H Damm
59	27/4/16	Macaulay hearing submission (Sub 110)	S Macaulay
60	27/4/16	Howell/Hefner hearing submission (Sub 124)	M Howell
61	27/4/16	Current and Proposed Planning Zones map	M Marshall
62	27/4/16	Table (untitled) of changes to land area in zones due to C110, C102 and C100	M Marshall
63	27/4/16	Maps of submitters requesting to be heard and sites requested to be included and zoning map of SW Kyneton area (5 sheets)	M Marshall
64	27/4/16	Council submissions in reply	M Marshall
65	27/4/16	BMO maps Gisborne and Gisborne South (2 sheets)	M Marshall
66	27/4/16	Ballarat Planning Scheme : DPO9 schedule	M Marshall
67	27/4/16	Ballarat Planning Scheme : DPO10 schedule	M Marshall
68	27/4/16	Maps of property owners in proposed DPO18, DPO19, DPO21 and DPO22 (4 sheets)	M Marshall
69	27/4/16	Copies of referral response letters from Coliban Water (4 letters)	M Marshall
70	27/4/16	Suggested new DPO23 for Riddells Creek (cnr Nolans and Riddell Roads – Precinct 5 Area G)	M Marshall
71	27/4/16	List of properties for site inspection (7 properties)	M Marshall
72	27/4/16	Copy of letter dated 17/4/15 to HWL Ebsworth Lawyers re Growth Area Opportunities – New Gisborne East (re Sub 97)	M Marshall

## Appendix D Chronology of events

Date	Events
2013	The adopted Council Plan included an action that a rural living strategy be prepared in 2015/16 and implementation of the adopted actions be progressed by December 2016.
2014	<p>Council undertook a detailed review of land in the Rural Living Zone to determine the theoretical amount of vacant land available to the market.</p> <p>In October 2014 Council received the <i>Macedon Ranges Rural Living Supply and Demand Assessment</i> from Urban Enterprises.</p> <p>Public comment was received on a draft strategy in late 2014. This feedback informed the final strategy.</p>
September 2015	Council adopted the <i>In the Rural Living Zone</i> strategy.
October 2015	Council sought authorisation to prepare and exhibit Amendment C110. Conditional authorisation A03201 was given by DELWP on 30 October 2015.
16 November 2015	Public exhibition of the amendment commenced, including over 2400 letters and a fact sheet sent to potentially affected landowners and notices in local newspapers and the Council's ShireLife newsletter.
23 December 2015	Public exhibition ended.
15 March 2016	The Directions Hearing for Amendment C110 held at Gisborne.
18, 19, 20, 22, 26 and 27 April 2016	The Panel Hearing for Amendment C110 held at Gisborne.