Planning and Environment Act 1987
Advisory Committee Report pursuant to Section 25 of the Act
Tarran Valley Rezoning
Mount Alexander Planning Scheme Amendment C36

1 February 2016

Con Tsotsoros, Chair

Ian Gibson, Member

Ian Harris, Member
Contents

Executive Summary ........................................................................................................1

1 Introduction ..................................................................................................................7
  1.1 The subject land ........................................................................................................7
  1.2 Amendment description ..........................................................................................8
  1.3 Background to the proposal ..................................................................................9
  1.4 Procedural matters ...............................................................................................10
  1.5 Issues dealt with in this report .............................................................................12

2 Planning Context ..........................................................................................................13
  2.1 Policy framework ..................................................................................................13
  2.2 Planning scheme provisions ................................................................................16
  2.3 Relevant strategies and plans ................................................................................18
  2.4 Relevant Amendments ........................................................................................19
  2.5 Ministerial Directions ..........................................................................................19
  2.6 Planning Practice Notes ......................................................................................20
  2.7 Bushfire matters ..................................................................................................21

3 Previous Panel and Committee ..................................................................................23
  3.1 Amendment C36 Panel Report, January 2009 .....................................................23
  3.2 Bushfire Management Overlay Standing Advisory Committee Report, June 2014 ..................................................................................................................24
  3.3 Other relevant Panel Reports .............................................................................28

4 Strategic justification ..................................................................................................29
  4.1 Strategic support ..................................................................................................29
  4.2 Demand and supply ............................................................................................32
  4.3 Net Community Benefit ......................................................................................37
  4.4 Conclusions .........................................................................................................39
  4.5 Recommendation ................................................................................................39

5 Heritage character and visual impact .........................................................................40
  5.1 The issue ...............................................................................................................40
  5.2 Evidence and submissions ..................................................................................40
  5.3 Discussion ............................................................................................................45
  5.4 Conclusions .........................................................................................................49
  5.5 Recommendations ..............................................................................................49

6 Bushfire management ..................................................................................................51
  6.1 The issue ...............................................................................................................51
  6.2 Evidence and submissions ..................................................................................51
  6.3 Discussion ............................................................................................................55
  6.4 Conclusions .........................................................................................................56
  6.5 Recommendations ..............................................................................................56
7 Flora and fauna ................................................................. 58
  7.1 The issue ........................................................................ 58
  7.2 Evidence and submissions ............................................. 58
  7.3 Discussion ..................................................................... 61
  7.4 Conclusions ................................................................... 63
  7.5 Recommendations ....................................................... 63

8 Cairn Curran water catchment ............................................. 64
  8.1 The issue ........................................................................ 64
  8.2 Evidence and submissions ............................................. 64
  8.3 Discussion ..................................................................... 66
  8.4 Conclusions ................................................................... 68
  8.5 Recommendations ....................................................... 68

9 Other issues ........................................................................ 69
  9.1 Amenity and services .................................................... 69
  9.2 Traffic ........................................................................... 69
  9.3 Recommendations ....................................................... 70

10 Form and content of the Amendment .................................. 72
  10.2 Conclusions ................................................................. 74
  10.3 Recommendations ....................................................... 74

11 Response to Terms of Reference ........................................ 75

Appendix A Terms of Reference
Appendix B Submitters to the Amendment
Appendix C Parties to the Hearing
Appendix D Document list
Appendix E Development Plan Overlay Schedule 8 (Committee Version)
List of Tables

Table 1  Policy Framework ........................................................................................................ 13
Table 2  Response to the Terms of Reference ........................................................................ 75

List of Figures

Figure 1  Subject land: Location .............................................................................................. 7
Figure 2  Subject land: Contours .............................................................................................. 8
Figure 3  Subject land - Planning Scheme Overlays ................................................................. 17
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMO</td>
<td>Bushfire Management Overlay</td>
</tr>
<tr>
<td>BMOSAC</td>
<td>Bushfire Management Overlay Standing Advisory Committee</td>
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<tr>
<td>CFA</td>
<td>Country Fire Authority</td>
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<tr>
<td>the Committee</td>
<td>Tarran Valley Rezoning Advisory Committee</td>
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<td>DELWP</td>
<td>Department of Environment, Land, Water and Planning</td>
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<td>DEPI</td>
<td>Department of Environment and Primary Industries (former)</td>
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<td>DPO</td>
<td>Development Plan Overlay</td>
</tr>
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<td>DPO8</td>
<td>Development Plan Overlay Schedule 8</td>
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<td>DWMP</td>
<td>Domestic Wastewater Management Plan</td>
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<tr>
<td>ESO8</td>
<td>Environmental Significant Overlay Schedule 8</td>
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<td>ha</td>
<td>Hectare</td>
</tr>
<tr>
<td>LMS RGP</td>
<td>Loddon Mallee South Regional Growth Plan</td>
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<td>LPPF</td>
<td>Local Planning Policy Framework</td>
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<td>MSS</td>
<td>Municipal Strategic Statement</td>
</tr>
<tr>
<td>PPN37</td>
<td>Planning Practice Note 37 (Rural Residential Development), June 2015</td>
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<td>RLZ</td>
<td>Rural Living Zone</td>
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<td>Significant Landscape Overlay Schedule 1</td>
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<td>SLO3</td>
<td>Significant Landscape Overlay Schedule 3</td>
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<td>State Planning Policy Framework</td>
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<td>VPP</td>
<td>Victoria Planning Provisions</td>
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Overview

<table>
<thead>
<tr>
<th>Amendment Summary</th>
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<tbody>
<tr>
<td>The Amendment</td>
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<td>Subject Land</td>
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<td>Tarran Valley Pty Ltd</td>
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<td>Planning Authority</td>
<td>Mount Alexander Shire Council</td>
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<td>Authorisation</td>
<td>March 2007</td>
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<td>The Amendment was exhibited from 17 May to 22 June 2007 and on public notice between 14 August to 14 September 2014</td>
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<td>Submissions</td>
<td>30 submissions were received in 2007 (23 opposing) 97 submissions were received in 2015 (90 opposing) Appendix B provides a full list of submitters</td>
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</table>

<table>
<thead>
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<th>Committee Process</th>
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<tbody>
<tr>
<td>The Committee</td>
<td>Con Tsotsoros (Chair), Ian Gibson and Ian Harris</td>
</tr>
<tr>
<td>Directions Hearing</td>
<td>23 September 2015, Castlemaine</td>
</tr>
<tr>
<td>Panel Hearing</td>
<td>25 and 25 November and 2 and 3 December 2015</td>
</tr>
<tr>
<td>Site Inspections</td>
<td>23 September 2015 (Unaccompanied) and 25 November 2015 (Accompanied onsite)</td>
</tr>
<tr>
<td>Appearances</td>
<td>See Appendix C</td>
</tr>
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</tr>
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Executive Summary

Maldon is located approximately 18 kilometres north-west of Castlemaine, approximately 37 kilometres south-west of Bendigo and just over 1.5 hours drive from Melbourne. The township is of national significance, designated as Australia’s first ‘notable town’ and classified by the National Trust. Many of the nineteenth century buildings constructed during Victoria’s gold rush era have been preserved.

Considerable existing planning policy, provisions and guidelines protect Maldon’s historic township. These include the Significant Landscape Overlay schedules along the main road approaching the township and the Maldon Design Guidelines which are incorporated into the Mount Alexander Planning Scheme.

It is imperative that planning in and around Maldon recognises the township’s significance and continues to preserve this historic town for future generations. The Maldon community and the National Trust have been exemplar custodians of this township.

The subject land is located on Castlemaine-Maldon Road in Gower, south-east of the Maldon township. The Maldon township and the subject land are located in the Cairn Curran special water supply catchment and the Bushfire Management Overlay applies to most of the Maldon township and the subject land.

Mount Alexander Planning Scheme Amendment C36 seeks to rezone the subject land and apply associated provisions so that it can considered for a future rural living development through permit application processes. The Committee has considered strategic issues and makes no comment on the merits of any future planning permit application. The subject land is specifically identified for future rural living in the Local Planning Policy Framework of the Mount Alexander Planning Scheme.

Following the original exhibition of the Amendment in 2007, 30 submissions were received and a panel was appointed in 2008 to consider the submissions. In its 2009 report, the panel recommended that Council adopt the Amendment subject to changes.

The report was completed in January 2009, one month before Victoria’s Black Saturday Bushfires. The then Minister for Planning deferred his decision until the 2009 Victorian Bushfires Royal Commission released its report and he subsequently referred the Amendment to the Bushfire Management Overlay Standing Advisory Committee to consider bushfire related matters. Their terms of reference limited matters for consideration and who could submit to the Committee. The committee provided its report to the Minister for Planning in June 2014, recommending that Council adopt the Amendment subject to changes. However, the report was not released until July 2015.

In June 2015, the Minister for Planning appointed the Tarran Valley Rezoning Advisory Committee to consider the appropriateness of the Amendment. Its Terms of Reference provided the ability to give public notice of the Amendment, seek submissions and allow submitters to present at a Hearing. Following advertising of the same Amendment in August and September 2015, 97 submissions were received.

Submitters were concerned about, among other matters:
- Lack of strategic justification
- Visual impact of any future built form on:
- Maldon’s heritage
- The view line from Castlemaine-Maldon Road

- Potential bushfire risk on the subject land and its surrounds
- Native vegetation removal and fauna
- Impact on the Cairn Curran special water supply catchment
- Amenity, services and traffic.

The Committee notes the time and effort that members of the community put into preparing their submissions and presenting at the Public Hearing. The level of detail raised in many submissions is generally considered during the planning permit application stage when the relevant statutory process applies and when details are available. However, this information provided valuable context to the Committee.

The Committee considered all issues raised in submissions, reviewed an exhaustive list of documents and met its requirements in the Terms of Reference through ‘fresh eyes’.

The Committee considers there is an assessment ‘gap’ between the two previous review processes. Since 2009 Victorian Black Saturday Bushfires, the Victoria Planning Provisions have been amended several times to implement the recommendations of the 2009 Victorian Bushfires Royal Commission. The 2008 panel considered the Amendment based on policy before the bushfires while the 2014 committee was limited with what it could consider.

The Tarran Valley Rezoning Advisory Committee process is the first time that all aspects of the Amendment are being considered since the 2009 bushfires. Having reviewed the Amendment, the Committee’s finds that many, but not all, of its conclusions are generally consistent with those in the previous panel and committee report.

The Committee’s role is to focus on the strategic merits of the Amendment and, if it considers that the Amendment should be adopted, establish an appropriate planning framework for future planning permit applications. The extent to which the subject land is developed, and the form of this development, will be further refined through the permit process when more details are available.

The Committee considers that some recommendations from the previous panel and committee do not go far enough to address some issues; primarily the visual impact from Castlemaine-Maldon Road. Information provided in submissions and evidence has helped shape the planning provisions to an extent that would satisfactorily address these issues. They are reflected in the Committee’s conclusions and recommended Development Plan Overlay Schedule shown in Appendix E. The Committee’s conclusions are summarised under relevant headings.

**Strategic justification**

The Committee finds that the Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions. It is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework and will have a positive net community benefit for Maldon.

The Mount Alexander Planning Scheme identifies the subject land as ‘Preferred rural living’ but provides limited and relatively dated strategic assessment of housing requirements. The Committee has relied to a large degree on the material provided by the proponent, expert evidence and submissions and concluded that an addition of up to 42 dwellings over several
years adjacent to Maldon is not exorbitant. The lack of an equivalent development in a Rural Living Zone near Maldon means that the subject land would provide housing diversity. However, the optimum number of lots should relate to the best form of development from landscape, bushfire and environmental perspectives, rather than the supply and demand analysis.

Heritage character and visual impact

The Amendment will not result in adverse impacts on the heritage values of the Maldon township, the Maldon Historic Reserve or views from Mount Tarrengower if specific design guidelines and development plan requirements are applied. The Committee is satisfied that known historic cultural items on the subject land are protected by specific legislation.

The proposed planning provisions do not go far enough to adequately address the potential visual impact of future development from Castlemaine-Maldon Road. Matters such as greater separation distances, better screening and non-intrusive fencing need to be specified to address this. Design guidelines that are prepared in consultation with interest parties would help guide development so that details such as colours, materials and form can co-exist harmoniously with their surrounds. For these reasons, the Committee does not support the previously recommended concept plan (Version 30) being referenced in the Development Plan Overlay Schedule.

Bushfire management

Like Maldon and much of Victoria, it is not possible to remove all bushfire risk from the subject land. The Committee finds that the bushfire risk on the subject land can achieve an acceptable level by implementing specific bushfire planning provisions. A bushfire management regime that includes lot layout, defendable space, water provision and access and egress is required to align with the bushfire policy framework. Importantly, developing the subject land will not increase Maldon’s bushfire risk. Bushfire risk is not sufficiently serious that the Amendment should be abandoned.

Flora and fauna

The extent of envisaged vegetation removal meets the strategic objectives for permitting the clearing of native vegetation in Victoria. The Committee is satisfied that all vegetation losses including loss of habitat of rare or threatened species and any required offsets, will be considered through a statutory process. No vegetation can be cleared until all offset requirements are met and until a clearing permit is issued. Clearing vegetation beyond 32.63 hectares would exceed the area agreed by the Department of Environment, Land, Water and Planning and would be unlikely to align with Planning Practice Note 37.

Cairn Curran water catchment

The Guidelines for Planning Permit Applications in Open, Potable Water Supply Catchments are likely to result in the subject land requiring reticulated sewerage. Prohibiting any lots not connected to reticulated sewerage until a Domestic Wastewater Management Plan has been endorsed, and until the Plan’s requirements are met, aligns with the intent of the Guidelines. A more detailed assessment will be undertaken as part of a future planning permit application.
Other matters

Any potential impact on amenity, services and traffic can be satisfactorily managed. However, a traffic impact assessment that supports the development plan will quantify the extent of any traffic impacts and recommend any responding measures. The Committee has recommended changes to the Development Plan Overlay Schedule that address drafting issues and include matters raised in submissions to the previous panel and committee processes.

(i) Recommendations

Based on the reasons set out in this Report, the Committee recommends that Mount Alexander Planning Scheme Amendment C36 be adopted as exhibited subject to the following changes:

1. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Add a new objective “A development plan is required to ensure that planning, infrastructure and amenity issues are resolved before development commences and that future subdivision and development are in harmony with Maldon’s character.”
   b) Require the development plan to show:
      • A subdivision layout which responds to the topography, vegetation, waterways and other significant features.
      • A variety of lot sizes with the larger lots located to maximise the preservation of native vegetation.
      • Building envelopes on each lot including setbacks from Castlemaine-Maldon Road.
      • On land subject to Significant Landscape Overlay Schedule 3:
         • any road to be designed to minimise its visibility from Castlemaine-Maldon Road
         • at least 80 metres between building envelopes.
      • At least 20 metres between Castlemaine-Maldon Road and any defensible space to allow for vegetation screening.
      • Areas of native vegetation, bushfire hazard, landscape features and heritage significance.
      • The relationship and interface with adjoining land uses on all boundaries including the provision of any buffers to the adjoining Maldon Historic Reserve.
      • Lots not connected to a reticulated sewerage system to be developed only if there is an adopted Domestic Wastewater Management Plan that includes land subject to this schedule; and to meet the requirements of the approved Plan.
      • Protection of the riparian zone and water quality on any waterway so that no building envelope can be located within 30 metres of a waterway.
      • the location of physical infrastructure such as roads and reticulated services, and the proposed staging of infrastructure development.
c) Require the development plan to be supported by:
   - A compliant offset management plan in accordance with the relevant manual.
   - A Section 173 agreement that shows flora and fauna related matters listed in a new Clause 5.0.
   - A remediation works program that addresses onsite erosion.
   - A Traffic Impact Assessment in consultation with VicRoads that addresses the development’s impact on the existing arterial road network and details of any mitigating works required on Castlemaine-Maldon Road.
   - A works program to achieve defendable space requirements of the Bushfire Management Plan before any lot is sold.
   - A defendable space plan that shows matters listed in a new Clause 4.0.
   - A Section 173 agreement that shows bushfire related matters listed in a new Clause 5.0.

d) Require Design Guidelines to be prepared in consultation with interested parties and to the satisfaction of the responsible authority and include, as a minimum, the following guides:
   - Dwellings potentially visible from Castlemaine-Maldon Road to appear as single storey.
   - Building materials and colour palate for dwellings and other structures such as garages, sheds and tanks to ensure that they are in harmony with the landscape.
   - Use of non-reflective roofing materials.
   - Materials used for any retaining walls to reflect local rock type.

e) Introduce a new Clause 4.0 that describes what matters need to be included in the Defendable Space Plan.

f) Introduce a new Clause 5.0 that requires, among other matters:
   - The Bushfire Management Plan to be implemented.
   - All vegetation identified in the inner zone or outer zone of defendable space on the Defendable Space Plan (and regardless of whether a dwelling is located on the land or not) to be maintained as specified on the plan at all times.
   - All dwellings and dependant persons units to be constructed to a minimum level of BAL-19 in accordance with the relevant sections of AS3959-2009.
   - A 10-year offset management plan and a restriction on property title that prevents clearing of this native vegetation, to the satisfaction of the Department of Environment, Land, Water and Planning on any lot where native vegetation is to be retained in order to offset the impacts of native vegetation removal.

g) Require a Section 173 agreement that:
   - Restricts a lot from being further subdivided.
   - Restricts more than one dwelling on each lot.
   - Requires fencing in or around any lot to be visually unobtrusive and allow wildlife movement, except for fencing in the building envelope.

h) Change Schedule 5 to Schedule 9.
i) Change the provisions, as recommended by the Bushfire Management Overlay Standing Advisory Committee, to include practical provisions related to matters such as animal management and dams.

j) Delete provisions that duplicate other provisions and are no longer required.

k) Change provisions that address drafting issues.
1 Introduction

1.1 The subject land

The Amendment applies to land shown in the red outline in Figure 1 (subject land). The subject land is 125 hectares and located in Gower, approximately 350 metres from Maldon’s township boundary along Castlemaine-Maldon Road. The subject land is generally vacant, with trees on approximately 93 hectares and grassland and scattered vegetation on the remainder of the land.

Figure 1  Subject land: Location

The extent of the subject land’s undulation is shown by the 10 metre contours in Figure 2.
1.2 Amendment description

The Amendment proposes to:

- Rezone the subject land from the Farming Zone to the Rural Living Zone.
- Amend the Schedule to the Rural Living Zone to apply a one hectare minimum lot size for subdivision.
- Apply Development Plan Overlay Schedule 5 to the subject land.

(i) References to Development Plan Overlay Schedule 8

The Amendment was exhibited in 2007 with Development Plan Overlay Schedule 5. Since exhibition, new Development Plan Overlay schedules have been introduced into the Mount Alexander Planning Scheme. For the purposes of this report and to minimise confusion, Development Plan Overlay Schedule 5 is referred to as Development Plan Overlay Schedule 8 (DPO8) because this is what is referred to in several submissions and the Bushfire Management Overlay Standing Advisory Committee (BMOSAC) report.

(ii) Development Concept Plan

The development concept plan presented to the Committee does not form part of the exhibited Amendment. It was prepared for the original planning panel process and revised 29 times over seven years. The BMOSAC progressed the concept plan and recommended that the development plan be generally in accordance with version 30 of the concept plan.

The Committee has considered Amendment C36 in its exhibited form and has not adopted the version 30 concept plan and the DPO8 provisions as a baseline for discussion. The Committee has only referred to these where conclusions in this report align with them.
(iii) Purpose of the Amendment

The Explanatory Report states:

*The amendment is required to increase the supply of Rural Living land around the Maldon township. The proposal is consistent with the Mount Alexander Rural Living Strategy 2004 and the Maldon Framework Plan contained within the Planning Scheme.*

*Further, the land is unsuitable for farming where the soil is shallow and rocky, and a large proportion of the vegetation on the site is in a degraded state. The amendment will also facilitate rehabilitation of eroded gullies and drainage lines on the subject land, and generally lead to the protection and enhancement of the environmental qualities of the land.*

### 1.3 Background to the proposal

<table>
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<tr>
<th>Month</th>
<th>Event Description</th>
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<tr>
<td>March 2007</td>
<td>Mount Amendment Planning Scheme C36 was authorised</td>
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<tr>
<td>22 March 2007</td>
<td>The subject land was identified as ‘preferred rural living’ in the Municipal Strategic Statement of the Mount Alexander Planning Scheme [Amendment C24]</td>
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<tr>
<td>May-June 2007</td>
<td>The Amendment was exhibited and received 30 submissions</td>
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<td>December 2008</td>
<td>Panel Hearing was held and five parties requested to be heard (no agencies)</td>
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<td>January 2009</td>
<td>Panel report received and recommended that the Amendment be adopted</td>
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<td>February 2009</td>
<td>Black Saturday bushfires</td>
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<td>March 2009</td>
<td>Council adopted the Amendment</td>
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<tr>
<td>April 2009</td>
<td>The Amendment was forwarded to the Minister for Planning for his decision</td>
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<tr>
<td>February 2010</td>
<td>The Minister for Planning deferred his consideration of the Amendment until after release of the 2009 Victorian Bushfires Royal Commission final report</td>
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<tr>
<td>July 2010</td>
<td>The 2009 Victorian Bushfires Royal Commission final report was released</td>
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<tr>
<td>November 2011</td>
<td>New bushfire planning provisions that implement the recommendations of the Royal Commission were introduced into all Victorian Planning Schemes [Amendment VC83]</td>
</tr>
<tr>
<td>May/June 2012</td>
<td>Ministerial Direction No 6 (Rural Residential Development) was revoked and Planning Practice Note 37 (Rural Residential Development) was introduced</td>
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<td>November 2012</td>
<td>The proponent submitted a bushfire assessment and net gain analysis to Council, Country Fire Authority (CFA) and the former Department of Sustainability and Environment (DSE)</td>
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<tr>
<td>March 2013</td>
<td>In a letter, DSE stated that it will not support the higher level of native vegetation removal proposed by a CFA condition</td>
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| May 2014 | The Bushfire Management Overlay (BMO) Standing Advisory Committee consider the Amendment through specific Terms of Reference. The Minister for Planning sought advice on the following issues:  
- Whether the location of the site is appropriate for rural living development, given the significant bushfire hazard in the wider landscape  
- If so, the nature of a suitable fire management regime, its long term viability, and the conservation and long term management of surrounding bushland  
Council, the CFA and the former Department of Environment and Primary Industries presented to the BMO Standing Advisory Committee |
| June 2014 | BMO Standing Advisory Committee submitted its report to the Minister for Planning |
| July 2014 | The bushfire planning provisions were amended in all Victorian planning schemes [Amendment VC109] |
| November 2014 | New Victorian Government |
| June 2015 | The Minister for Planning appointed the Tarran Valley Rezoning Advisory Committee to consider, among other things, the appropriateness of the Amendment |
| July 2015 | The Minister for Planning released the BMO Standing Advisory Committee report |

### 1.4 Procedural matters

#### (i) Timing

Planning Panels Victoria received a copy of the original Terms of Reference and Instrument of Appointment on 13 July 2015, ten business days after they were signed on 28 June 2015. The Terms of Reference required the Committee to complete its Hearing no later than 40 business days from the date of its appointment. This timing would have resulted in a Directions Hearing being held at the end of July 2015, providing submitters with little notice. This effectively provided submitters and experts with two weeks to prepare because the Hearing would be required to conclude by 21 August 2015.

On 17 July 2015, in line with clause 20 of the Terms of Reference, the Committee wrote to the Minister for Planning seeking his agreement to remove the Hearing timeframe from the Terms of Reference so that, among other reasons, submitters and experts had adequate time to prepare for the Hearing.

Conscious of the tight timeframes, Committee tentatively scheduled the Directions Hearing for 18 August 2015 and the Hearing for the week of 21 September 2015.

The Minister responded to the Committee through a letter dated 9 August 2015. The Minister agreed to the change and signed an addendum to the Terms of Reference that included the following clause:

> After considering a request made by the Tarran Valley Rezoning Advisory Committee, I have decided to replace clause 30 of the Terms of Reference with:
30. The Advisory Committee is required to complete its hearings as soon as practicable from the date of this appointment.

Although the Terms of Reference made advertising the Amendment and seeking further submissions an option, and not a requirement, the Committee decided that this was important and formally introduced these processes.

To accommodate advertising and submissions, the Committee subsequently rescheduled the Directions Hearing to 23 September 2015 and the Hearing to commence in the week of 23 November 2015.

(ii) Submissions

The Terms of Reference did not include a requirement or practical ability to request further submissions. In the same letter dated 9 August 2015, the Minister for Planning added the following clause in the addendum to the Terms of Reference:

After considering the advice of the Department of Environment, Water, Land & Planning and to provide for additional consultation and transparency I have decided to include an additional dot point at the end of clause 21 of the Terms of Reference:

- The Advisory Committee may advertise to seek the views or a submission from any other interested party.

The Committee considered submissions to the 2007 and 2015 processes and notes that issues raised in submissions to both processes are almost identical. The Committee has generally referred to submissions to the 2015 process in this report.

(iii) Parties to the Hearing

The Committee wrote to parties listed in clause 24 of the Terms of Reference to provide them with an opportunity to present at the Hearing. Appendix C shows parties to the Hearing.

Ms Smidt requested to be heard at the Hearing and subsequently withdrew her request on 7 October 2015.

(iv) Declarations

At the Directions Hearing, Mr Harris declared that he is a general public member of the National Trust and is not, and has never been, involved as a committee, board or voluntary member of the organisation. The National Trust is a submitter and party to the Advisory Committee process. Mr Cicero challenged Mr Harris as a member of the Advisory Committee because he believed that Mr Harris’ National Trust membership could be perceived as a conflict of interest.

As outlined in the Directions Letter dated 29 September 2015, Mr Harris carefully considered this matter and confirmed his decision not to stand down. Mr Harris has since resigned as a member of the National Trust. While raised, Mr Cicero did not take it any further.

During the Directions Hearing, Maldon Residents Group stated its intention to call Mr Ingamells as an expert witness. Mr Harris declared that he understands that Mr Ingamells is a staff member of the Victorian National Parks Association, of which Mr Harris is a general public member.
(v) Accompanied site inspection

At the Directions Hearing, the proponent agreed to allow parties to access the subject land for an accompanied site inspection. In its letter dated 29 September 2015, the Committee invited parties to attend an accompanied site inspection on 25 November 2015.

1.5 Issues dealt with in this report

The Committee considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Committee has been assisted by the information provided to it as well as its observations from inspections. Although the Committee has considered all submissions, it provides general discussion on each issue and does not necessarily reference every submission due to the extent of issues, submissions and evidence.

This report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Heritage character and visual impact
- Bushfire management
- Flora and fauna
- Cairn Curran water catchment
- Infrastructure
- Other issues
- Form and content of the Amendment.
2 Planning Context

Council and the proponent provided a response to the Strategic Assessment Guidelines in their submissions.

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

2.1 Policy framework

Table 1 Policy Framework

<table>
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<th>State Planning Policy Framework</th>
<th>Clauses</th>
<th>9</th>
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<td>Operation of the State Planning Policy Framework</td>
<td>10</td>
<td>Goal</td>
<td>Sets out Victoria’s planning goal and objectives, as set out in Section 4 of the Planning and Environment Act 1987.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Integrated decision making</td>
<td>10.04</td>
<td>Integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Settlement</td>
<td>11</td>
<td>Urban growth</td>
<td>Supply of urban land</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>11.02</td>
<td>To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional development</td>
<td>11.05</td>
<td>Regional settlement networks</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>11.05-1</td>
<td>To promote the sustainable growth and development of regional Victoria through a network of settlements identified in the Regional Victoria Settlement Framework plan.</td>
<td></td>
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<td></td>
<td></td>
<td>Melbourne’s hinterland areas</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>11.05-2</td>
<td>To manage growth in Melbourne’s hinterland, the area immediately beyond Metropolitan Melbourne and within 100 kilometres of the Melbourne’s Central City.</td>
<td></td>
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<td></td>
<td></td>
<td>Rural productivity</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>11.05-3</td>
<td>To manage land use change and development in rural areas to promote agriculture and rural production. Strategies include:</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>• Prevent inappropriately dispersed urban activities in rural areas.</td>
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<td></td>
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<td></td>
<td>• Limit new housing development in rural areas.</td>
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<td></td>
<td></td>
<td></td>
<td>• Encouraging consolidation of existing isolated small lots in rural zones.</td>
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<td></td>
<td></td>
<td>Regional planning strategies and principles</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>11.05-4</td>
<td>To develop regions and settlements which have a strong identity, are prosperous and are environmentally sustainable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loddon Mallee South regional growth</td>
<td>11.12</td>
<td>Planning must consider as relevant the Loddon Mallee South Regional Growth Plan (Victorian Government, 2014)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environmental and landscape values</td>
<td>12</td>
<td>Biodiversity</td>
<td>Protection of biodiversity</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.01</td>
<td>To assist the protection and conservation of Victoria’s biodiversity, including important habitat for</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Victoria’s flora and fauna and other strategically valuable biodiversity sites

### 12.01 Native vegetation management
To ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria’s biodiversity.

### 12.04 Significant environments and landscapes

#### 12.04-2 Landscapes
To protect landscapes and significant open spaces that contribute to character, identity and sustainable environments.

### 13 Environmental risks

#### 13.05 Bushfire

##### 13.05-1 Bushfire planning strategies and principles
To assist to strengthen community resilience to bushfire.

### 14 Natural resources management

#### 14.01 Agriculture

##### 14.01-1 Protection of productive agricultural land
To protect productive farmland which is of strategic significance in the local or regional context.

#### 14.02 Water

##### 14.02-1 Catchment planning and management
To assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment.

### 15 Built environment and heritage

#### 15.01 Urban development

##### 15.01-1 Urban design
To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

#### 15.02 Sustainable development

##### 15.02-1 Energy and resource efficiency
To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.

#### 15.03 Heritage

##### 15.03-1 Heritage conservation
To ensure the conservation of places of heritage significance.

### 16 Housing

#### 16.02 Housing form

##### 16.02-1 Rural residential development
To identify land suitable for rural living and rural residential development.

### 17 Economic development

Planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential.

### 19 Infrastructure

#### 19.03 Development infrastructure

##### 19.03-2 Water supply, sewerage and drainage
To plan for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.
Local Planning Policy Framework

Clauses

21 Municipal Strategic Statement

21.01 Overview of the Mount Alexander Shire

21.02 Key issues influencing the Shire’s future land use planning and development

This policy includes key issues, which are of importance to the Shire’s future land use planning and development.

21.03 Municipal vision and framework plan

The Municipal vision is linked to the Council’s Corporate Plan Vision. It includes Plan 4: Maldon Framework Plan that shows the subject land as ‘RL’ in the south-east corner.

PLAN 4: MALDON FRAMEWORK PLAN
21.04 Objectives and strategies
- Urban containment and limited expansion at Maldon.
- Encourage residential infill and expansion in Maldon that protects the town’s heritage significance and character.
- Encourage planned and sustainable growth in recently sewered towns and areas including Maldon.
- Apply the General Residential Zone in existing and proposed residential areas in Castlemaine and Maldon.

21.05 Reference documents
This clause includes a list of reference documents relevant to Maldon.

21.06 Monitoring and review
This policy states that the planning scheme must be reviewed at least once every three years to evaluate the achievement of strategic policy directions. It includes key elements of a performance monitoring program with associated indicators and targets.

22 Local Planning Policies
22.02 Maldon
This policy applies to the Maldon township as defined on Plan 4: Maldon Framework Plan. Council recognises that the heritage of the town of Maldon is of national significance.

22.12 Urban growth boundaries
This Policy applies to the urban rural interface of several townships including Maldon.

22.13 Catchment and land protection
This policy applies to all land and water in the Farming and Low Density Residential Zones.

22.14 Wildfire management
This policy applies to developments in the Farming Zone, Rural Living Zone and the Low Density Residential Zone. It seeks to ensure that new land use and development:
- Does not increase the level of fire risk
- Includes adequate fire protection measures.

22.15 Hilltop and ridgeline protection
This policy applies to buildings and works on all hilltops and ridgelines in the Mount Alexander Shire. It seeks to:
- Protect areas of environmental and visual amenity importance from inappropriate development
- Limit development on prominent ridges and hilltops.

22.16 Steep land
This policy applies to all land having a slope greater than 20%. It seeks to ensure that:
- Development on such land takes into account environmental constraints such as erosion and fire hazards
- Landscaping of sites and the design of buildings are undertaken so that landscape values, natural features and important vistas are not interrupted or degraded.

22.17 Pest plant and animal management
This policy seeks to contain and limit the spread of pest plants, animals and feral orchards.

22.30 Building lines and heights
This policy seeks to ensure that:
- new uses and development of land at or near highways and main roads is not prejudicial to the use, safety or amenity of such transport routes
- development is appropriately located and sited having regard to streetscape and environmental attributes of residential areas
- development is appropriately located in relation to watercourses.

2.2 Planning scheme provisions
The Bushfire Management Overlay, Significant Landscape Overlay Schedules 1 and 3 and the Erosion Management Overlay apply to the subject land. The Heritage Overlay abuts a proportion of the subject land boundary.
Zones and overlays

A purpose common in zones and overlays is:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

Rural Living Zone

The Amendment proposes to rezone the subject land from Farming Zone to Rural Living Zone. The Rural Living Zone is a rural zone and its purposes are:

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.

Development Plan Overlay

The Amendment proposes to apply DPO8 to the subject land. The Development Planning Overlay purposes are:

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.

**Significant Landscape Overlay**

Significant Landscape Overlay Schedule 3 (SLO3) applies to the southern portion of the subject land and Significant Landscape Overlay Schedule 1 (SLO1) applies to most of the subject land, north of SLO3. The Significant Landscape Overlay purposes are:

*To identify significant landscapes.*

*To conserve and enhance the character of significant landscapes.*

**Erosion Management Overlay**

The Erosion Management Overlay applies to the northern portion of the subject land. The Erosion Management Overlay purpose is:

*To protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*

**2.3 Relevant strategies and plans**

**Loddon Mallee South Regional Growth Plan**

The Loddon Mallee South Regional Growth Plan (LMS RGP) is one of eight regional growth plans that apply to regional areas outside of Melbourne. The LMS RGP provides broad direction for land use and development across regional Victoria and more detailed planning frameworks for key regional cities and centres.

The LMS RGP states that smaller lot development should be located to:

- integrate with existing urban areas
- avoid or complement strategically important, highly productive agricultural land, natural resources, significant natural hazards (especially bushfire), significant landscapes, environmental and cultural heritage assets
- assist to achieve better land use management outcomes.

**Mount Alexander Rural Living Strategy, 2006**

The Mount Alexander Rural Living Strategy states that main concentration of rural housing is through the centre of the Shire, around Castlemaine, Maldon and Newstead, where good access to major centres is provided and small lots are provided. It adds that there are a significant number of small rural lots in the forest areas around Maldon and Castlemaine.

It references the Strategy and Policy Framework in the Mount Alexander Planning Scheme that includes Maldon as one of the settlements in the municipality with rural living and rural residential opportunities or identified demand. It states that areas in close proximity to Castlemaine and other service centres such as Maldon and Newstead could be supported to be rezoned to the Rural Living Zone.

The Strategy recommends seven sites to be rezoned to the Rural Living Zone and adds:

*Council invites landowners and prospective developers to prepare proposals for rezoning to Rural Living that satisfy the criteria set out in the Strategy and to provide these in a form that Council can consider and incorporate into comprehensive amendments to the planning scheme.*
The subject land is identified as Site 1. The Strategy acknowledges that there may be subdivisions in the Rural Living Zone with lots of less than two hectares and notes:

...any proposed subdivision into lots of 2ha or less will have to be assessed against the requirements of Ministers Direction No. 6, and the Net Gain requirements of the Native Vegetation Framework.

Mount Alexander Rural Land Study, January 2014

The Mount Alexander Rural Land Study provides the strategic framework for the future use, development and conservation of rural land in the municipality.

2.4 Relevant Amendments

Mount Alexander Planning Scheme Amendment C61

Mount Alexander Planning Scheme Amendment C61 implements the findings of the following adopted documents:

- The Review of the Mount Alexander Planning Scheme (2014)
- Mount Alexander Rural Land Study, 2014

A Planning Panel considered Amendment C61 and provided its report on 25 March 2015. Council subsequently adopted the report.

2.5 Ministerial Directions

Ministerial Direction 11 (Strategic Assessment Guidelines)

Ministerial Direction 11 seeks to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces. The Ministerial Direction requires a planning authority to consider the following when preparing an amendment:

- Specified strategic considerations that need to be discussed in the Amendment’s explanatory report
- The impact of the new planning provision on resource and administration costs of the responsible authority.

Ministerial Direction (The Form and Content of Planning Schemes)

The Ministerial Direction applies to the form and content of all planning schemes prepared under Part 3 of the Planning and Environment (Planning Schemes) Act 1996 and any amendment to those planning schemes.

Ministerial Direction 6 (Rural Residential Development)

The Mount Alexander Rural Living Strategy refers to Ministerial Direction 6. This Direction was revoked on 17 May 2012. Its purpose was to manage the provision of sustainable rural residential development. Planning Practice Note 37 (Rural Residential Development) was introduced in June 2012.
2.6 Planning Practice Notes

Planning practice notes provide ongoing advice about the operation of the Victoria Planning Provisions, planning schemes and a range of planning processes and topics. Planning Practice Notes have no statutory weight but the Committee has relied on them in the absence of other suitable advice.

The Terms of Reference refer to older versions of the following practice notes. The Committee has referred to the most current version of the practice notes and notes that there have been minimal substantive changes made to them. The Committee has considered all of these practice notes when considering issues discussed in this report.

Plan Planning Practice Note 23 (Applying the Incorporated Plan and Development Plan Overlays), August 2015

Planning Practice Note 23 explains the functions of the Incorporated Plan Overlay and the Development Plan Overlay (DPO), advises when these tools should be used and guides on how to use these planning tools.

Planning Practice Note 37 (Rural Residential Development), June 2015

Planning Practice Note 37 provides guidance when planning for, or assessing proposals for, rural residential use and development. It states that the Low Density Residential Zone, Rural Living Zone and Green Wedge A Zone are usually applied to rural residential land.

Planning Practice Note 37 states:

*The planning scheme should ensure that reasonable opportunities are found for rural residential development, as part of providing for housing diversity and choice.*

It explains that rural residential development requires special considerations that respond to the following questions in sequence:

- **Strategy:** Does rural residential development align with the overall strategic planning of the municipality?
- **Housing need:** How much rural residential development is required to provide appropriate housing diversity and choice to meet housing needs?
- **Location:** Where should new rural residential development take place?
- **Subdivision and design:** Is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure?

Planning Practice Note 37 provides more detailed guidance to assist councils when assessing a planning permit application for rural residential development.

Planning Practice Note 46 (Strategic Assessment Guidelines), June 2015

Minister’s Direction 11 (Strategic Assessment Guidelines) requires a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations.

Planning Practice Note 46 provides a consistent framework for preparing and evaluating a proposed planning scheme amendment and its outcomes.

Planning Practice Note 64 (Local planning for bushfire protection), September 2015
Planning Practice Note 64 provides guidance about local planning for bushfire protection to assist councils to tailor the Local Planning Policy Framework in response to bushfire matters where necessary. It also provides guidance on how to prepare schedules to the Bushfire Management Overlay. Planning Practice Note 64 acknowledges the State Bushfire Plan 2014 prepared by Emergency Management Victoria which identifies that the bushfire risk in Victoria is increasing. Planning Practice Note 64 states:

*Bushfire should be considered wherever there is a bushfire hazard that may impact on planning objectives. This includes when preparing strategic plans and policies for settlements, towns and rural areas, when preparing planning scheme amendments and when considering development proposals. Considering bushfire as part of strategic planning ensures that bushfire matters are identified and addressed early and facilitates strategies and directions which have bushfire considerations embedded within them. Engagement with the relevant fire authority on strategic planning is essential.*

Planning Practice Note 65 (Preparing and Assessing a Planning Application under the Bushfire Provisions in Planning Schemes), September 2014

Planning Practice Note 65 advises on preparing and assessing a planning permit application under Clause 44.06 Bushfire Management Overlay. Although Planning Practice Note 65 is not relevant to a planning scheme amendment, it provides insight into what will subsequently be considered in a planning permit application subject to the Bushfire Management Overlay.

2.7 Bushfire matters

2009 Victorian Bushfire Royal Commission Final Report

The 2009 Victorian Bushfire Royal Commission Final Report provided a suite of recommendations to better manage bushfire issues including those relevant to planning and building. According to the Bushfires Royal Commission Implementation Monitor 2014 Annual Report, the planning related recommendations were implemented through changes to the Victoria Planning Provisions. Many of the changes were introduced through Amendment VC83 in November 2011 and through subsequent State and local amendments. The most noteworthy changes include changes to the State Planning Policy Framework, a new Bushfire Management Overlay and bushfire related particular provisions (Clauses 52.47 and 52.48). Specifically, Clause 13.05 introduced the following overarching strategies:

*Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.*

*Where appropriate, apply the precautionary principle to planning and decision-making when assessing the risk to life, property and community infrastructure from bushfire.*

The Victoria Planning Provisions and planning schemes therefore directly respond to the recommendations of the 2009 Victorian Bushfire Royal Commission. However, the Terms of Reference require the Committee to return to the relevant commentary and accepted recommendations of the 2009 Victorian Bushfire Royal Commission’s final report.

The Committee completed this task before considering bushfire issues discussed in Chapter 6.
State Bushfire Plan 2012

The Terms of Reference require the Committee to consider the State Bushfire Plan 2012. However, the Committee has considered the State Bushfire Plan 2014 because it is the most current version. The State Bushfire Plan provides an overview of arrangements for managing bushfire in Victoria and contains information on bushfire prevention, response and recovery.

Section 6.5 (Planning and building in bushfire prone areas) recognises that towns and rural areas will grow and states:

*Planning and building systems are important for creating more bushfire resilient communities. Local planning schemes set out how settlements, towns and rural areas will grow and change in response to the threat of bushfire, with building regulations ensuring new development is constructed with regard to likely forms of bushfire attack.*

Section 7.2 states:

*Each household is responsible for preparing their own property for bushfire for example, clearing vegetation around the house, in accordance with State planning controls for the clearing of native vegetation (that is, the 10/30 and 10/50 rules) and local government requirements.*


The Plan identifies strategies to fill the gap between potential impacts of bushfires and the desired level of resilience of the community, economy, and environment in our municipality. It includes municipal-wide objectives, strategies and work plan actions. It also includes three work plan actions specific to Maldon.
3 Previous Panel and Committee

3.1 Amendment C36 Panel Report, January 2009

(i) Background

The proposed ‘Tarran Valley’ development was initially considered in 2003. This eventually led to Amendment C36 being prepared and then exhibited between 17 May and 22 June 2007. The Amendment proposed:

- Rezoning the subject land from the Farming Zone to the Rural Living Zone
- Amending the Rural Living Zone Schedule to provide a minimum 1 hectare lot size for subdividing land
- Applying Development Plan Overlay Schedule 5 to the subject land.

In May 2008, Mount Alexander Shire Council resolved to:

- Modify and renumber the proposed Schedule to the DPO (which became DPO8)
- Apply a new Environmental Significance Overlay 8 – Tarran Valley – Biodiversity Protection and Enhancement (ESO8).

Following exhibition of the Amendment, 30 submissions were received, and a Panel was appointed. A Hearing took place in December 2008 and the panel report was finalised in January 2009.

(ii) Panel Conclusions

The panel concluded:

- The rezoning is consistent with the strategic planning framework for Maldon as shown on the Maldon Framework Plan.
- The RLZ, ESO8 and DPO8 are appropriate to apply in this instance, that accord with the VPP manual and general accepted practice for rural living developments of this nature.
- The rezoning satisfies the requirements of Ministerial Direction No 6 – Rural Residential Development and the associated guidelines.
- The rezoning of the subject land within the Lake Cairn Curran Special Water Catchment area is not considered a significant issue because although the subject land is located within the proclaimed catchment it does not fall within the area covered by the ESO2 which applies explicit Planning Scheme policy for protecting the Cairn Curran water supply catchment to a designated part of the catchment closer to the Cairn Curran Reservoir.
- Land capability is considered acceptable albeit limiting to satisfy the provisions of the DPO8 for development and waste treatment and disposal, including the need for site specific soil investigations.
- The proposal to apply the RLZ, DPO8 and ESO8 over the subject land will establish an adequate planning framework within which future rural living use and development can be designed to demonstrate compliance with the net gain policy and Victoria’s Native Vegetation Management – A Framework for Action. Biodiversity impacts including those on vegetation and rare or threatened species are not considered significant with approximately 65 ha of the 93 ha area of native vegetation on the subject land to be retained and protected under the provisions of the amendment.
particularly the more significant vegetation areas adjoining the Maldon Historic Reserve and along the existing waterways and drainage lines.

- There are no significant impacts on the heritage and cultural values of Maldon area arising from the proposed rezoning.

*On the basis of the above the Panel concludes that Amendment C36 should be adopted by Council subject to changes to the schedules to the ESO8 and DPO8, which reflect improvements to their operation and avoids duplicating other legislation or planning scheme provisions.*

Council adopted Amendment C36 in March 2009 and forwarded it to the Minister for Planning for his consideration and decision in April 2009. Since then, there has been no decision and Council’s adopted position has not changed.

(iii) Implications

The Tarran Valley Rezoning Advisory Committee’s Terms of Reference state that the Committee must consider a range of specified material, including the earlier C36 panel report.

The Committee has considered the previous panel report, but has done no more than that. It has not regarded the previous report as a starting point in a Panel process that has taken several steps. Rather, it has treated the previous report as interesting and valuable input, just as it has treated all submissions and evidence.

Mr Cicero on behalf of the proponent, submitted that this in effect is a ‘repeat assessment’ of the planning merits of the Amendment. He submitted that there have been no material changes to the proposal, the land and the ‘relevant facts’. Further, he argued that recent changes to the policy and planning framework relating to bushfire protection, vegetation management and management of potable water supply catchments do not warrant changes to any of the previous panel and advisory committee recommendations.

This Committee understands the position presented by Mr Cicero and accepts that the proponent would consider that the assessment process for this development appears tortuous. However, it has concluded that its task to address its Terms of Reference, breadth of which implies a fresh consideration of the issues. The Committee’s requirement to consider all relevant submissions and carry out a public hearing led to its public advertising of the Amendment, a large number and very wide range of submissions and a four-day Hearing. The Committee has retained an open mind on the issues raised, rather than accept the implication that a repeat assessment would take previous recommendations as given.

3.2 Bushfire Management Overlay Standing Advisory Committee Report, June 2014

(i) Background and Terms of Reference

The Black Saturday bushfires took place in Victoria in February 2009. In February 2010, the Minister for Planning postponed a decision on Amendment C36 until the Victorian Bushfires Royal Commission final report was released. Following this report, new bushfire planning

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provisions were introduced into all Victorian Planning Schemes by Amendment VC83 in November 2011.

Subsequently, in November 2012, a bushfire assessment and net gain analysis was submitted to Mount Alexander Shire Council, the CFA and the former DSE by the proponent for Amendment C36. The CFA proposed conditions relating to defendable space that would result in a higher level of native vegetation removal, leading to advice from DSE in March 2013 that it would not support the additional native vegetation removal.

As a result, in May 2014 the Amendment was referred to the BMOSAC.

The BMOSAC’s terms of reference required it to report in two stages:

- **Stage 1:**
  - Whether the location of the site is appropriate for rural living development given the significant bushfire hazard in the wider landscape.

- **Stage 2:**
  - If the Advisory Committee is satisfied that the location is appropriate:
    - The most suitable fire management regime for the site;
    - Whether the regime can be effectively maintained in the long term;
    - Whether the amount and biodiversity conservation significance of native vegetation to be removed to implement the proposed fire management regime is acceptable; and
    - Whether rural living development at this location will potentially change the way in which the surrounding bushland adjoining the site is managed in the long term, including the need for fuel reduction burning.

In accordance with the Minister’s referral, the BMOSAC invited specified parties to make submissions, including Tarran Valley Pty Ltd (the proponent), Mount Alexander Shire Council, Country Fire Authority, Department of Environment and Primary Industries (DEPI) and Parks Victoria. The BMOSAC did not seek public submissions, and was not required to reassess the full range of matters considered by the earlier C36 panel. However, it advised that it may consider submissions made by other parties, provided that they related to the BMOSAC’s terms of reference. Mr Panter, representing the Friends of the Box-Ironbark Forests, subsequently made a submission in relation to the potential impact of the development on the Maldon Historic Reserve. Further, the BMOSAC received letters from Mr Slattery and Mr and Mrs Buck, who submitted that the BMOSAC should consider changes to planning provisions since 2008.

A significant aspect of the BMOSAC consideration was outlined in the Council Part A submission to the Tarran Valley Rezoning Advisory Committee:

At the suggestion of the BMOSAC during the directions hearing, Council participated in discussions with other submitters on 16 April 2014, to establish the key elements required for a bushfire management plan for the land. This resulted in the proponent developing a revised Bushfire Management Plan (Version 30, dated 20/05/2014) for consideration by the BMO Committee. During the committee hearing, Council participated in further discussions regarding the Bushfire Management Plan and appropriate planning controls,
including revisions to the Development Plan Overlay Schedule 8 and whether a separate BMO schedule was required.

The ‘Version 30’ Plan and the details of DPO8 became relevant for the BMOSAC considerations and formed the basis of further assessment by this Committee.

(ii) Conclusions

The BMOSAC submitted its report to the Minister of Planning in June 2014, which was publicly released in July 2015.

With regard to ‘Stage 1’ of its terms of reference, the BMOSAC concluded:

The overall conclusion of the Advisory Committee is that the location of the site is appropriate for Rural Living development taking into account the extent of bushfire hazard in the wider landscape, subject to appropriate fire management and environmental regime being applied through the planning controls proposed by Mount Alexander Shire Council.

More specifically, Advisory Committee concludes that:

- There have been no material changes to the strategic planning controls applying to the site since the C36 Panel report of January 2009 that would change the substantive recommendations of that Panel;
- The changes in the Planning Practice Notes applying to the site since 2009 do not present any significant barrier to the Amendment being approved, subject to compliance with new Practice Notes 37 and 55 at the planning permit stage;
- The characteristics of the site indicate that the level of bushfire risk on the site is moderate to high;
- The level of bushfire risk can be managed to an acceptable level through the appropriate application of planning controls on the site;
- The development of the site for Rural Living is likely to increase the resilience of the Maldon community to bushfire;
- The Bushfire Assessment carried out for the site has appropriately considered risk at both a local and broader level; and
- The development is not likely to result in an increased bushfire risk to existing residents, property and community infrastructure.

The BMOSAC reached numerous conclusions regarding its ‘Stage 2’ assessment, including support for:

- Bushfire Development Plan dated 20/05/2014
- Revised Development Plan (Version 30)
- Not applying an ESO Schedule to the subject land
- The BMO Schedule
- DPO8, in a modified form
- Use of Section 173 Agreements as required by DPO8 to provide a mechanism for Council to implement an ongoing enforcement program

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2 Bushfire Management Overlay Standing Advisory Committee, Mount Alexander Planning Scheme Amendment C36 (June 2014), p. 47.
• A requirement for the proponent to clear native vegetation to the standard required for defendable space prior to sale of any lots.

It also reached the following conclusions:

• The impacts of the proposed development on biodiversity and native vegetation are relatively minor and can be managed, and that the amount and biodiversity conservation significance of native vegetation to be removed to implement the proposed fire management regime is acceptable
• The proposed building envelopes are set well away from adjoining public and private land
• Defendable space areas do not impinge on adjoining private or public land (with the exception of the Castlemaine-Maldon Road reserve)
• There will not be any requirement for the public land manager to change the fire management regime on the adjoining and nearby Crown land.\(^3\)

(iii) Implications

This Committee is required to consider the BMOSAC report and it has treated the report as interesting and valuable information.

By its nature, the BMOSAC report focused on bushfire and vegetation matters. The Advisory Committee explicitly stated that it relied on the previous Panel’s assessment “on matters other than those on which it is to advise the Minister”\(^4\). To this extent, the approach did resemble a genuine ‘repeat assessment’, as described by Mr Cicero.

In accordance with its terms of reference, the process adopted by the BMOSAC involved limited public consultation, although Council and local residents distributed information regarding the status of the Amendment and the role of the BMOSAC. The focus of the terms of reference and limited community engagement, together with the delay in releasing the report until July 2015, meant that there was incomplete understanding of its content within the Maldon community.

The main differences between the BMOSAC and the Tarran Valley Rezoning Advisory Committee are the terms of reference of the two committees.

As noted above, the Tarran Valley Rezoning Advisory Committee has interpreted its Terms of Reference as requiring a fresh consideration of all the relevant issues. Further, following the Direction from the Minister that the Committee “may advertise to seek the views or a submission from any other interested party”, it has strongly supported the need to engage as effectively as possible with the Maldon community. This led to advertising a request for submissions, a large number of submissions and a four-day Hearing at the Maldon Golf Club.

One aspect of the BMOSAC report that played a significant role in the Tarran Valley Rezoning Advisory Committee considerations was the recommended version of DPO8, as presented in Appendix E of the BMOSAC report. This was an updated version of DPO8 as recommended in the Amendment C36 panel report (and included as Appendix A in that report). The content of the recommended DPO8 provided a starting point for a number of submissions, and was a reference point throughout the Hearing.

\(^3\) Ibid., pp. 47-48
\(^4\) Ibid., p. 12
The Committee has reviewed DPO8 in light of submissions, as discussed in Chapter 10 of this report.

3.3 Other relevant Panel Reports

(i) Mount Alexander Planning Scheme Amendment C24, November 2005

Mount Alexander Planning Scheme Amendment C24 aimed to implement the findings of the three-year review of the Mount Alexander Planning Scheme, including a redrafted Municipal Strategic Statement, inclusion of Township Structure Plans in the Municipal Strategic Statement, and inclusion of a number of studies and strategies as reference documents in the Scheme. Those relevant to Amendment C36 included the Mount Alexander Rural Living Strategy (RPD Group, 2004) and the Maldon Urban Design Framework Masterplan (Arup, 2004).

The C24 panel report reached a number of conclusions relevant to Amendment C36:
- The criteria established in the Rural Living Strategy for identifying areas for rezoning to Rural Living Zone are appropriate, but that the extent of areas required to meet demand in the short to medium term needs to be defined more precisely.
- The areas of Rural Living proposed on the Maldon Framework Plan appear excessive, and the Maldon Framework Plan should be amended to make it clear that areas proposed for Rural Living will be rezoned progressively, as development proceeds.5
- With regard to rural residential development on small lots in what is now the Farming Zone, the panel supported the Council policy of discouraging dispersed residential development in these areas.6

(ii) Mount Alexander Planning Scheme Amendment C61, March 2015

As noted in Section 2.4 of this report, Mount Alexander Planning Scheme Amendment C61 implemented the findings of Reviews of the Mount Alexander Planning Scheme (2010 and 2014), Mount Alexander Rural Land Study (2014) and the Castlemaine Commercial Centre Study (2012). A panel considered the amendment and provided its report in March 2015. Council subsequently adopted the amendment, and it is awaiting a Ministerial decision.

The Tarran Valley Rezoning Advisory Committee accepts the status of Amendment C61 as a seriously entertained planning proposal.

Issues in the C61 panel report of significance to Amendment C36 include:
- Confirmation of support for the Council policy to discourage dispersed development on existing small lots in the Farming Zone and to discourage new subdivision for such lots.
- Support for the inclusion of policies relating to subdivision in Clause 22.04, on the basis that they are consistent with the State Planning Policy Framework and the findings of the Mount Alexander Rural Land Study (2014).
- A recommendation to replace Strategy 1.2 in Clause 21.04-3 (Rural landscape and character) with:

Discourage buildings close to roads in rural areas that will have a negative visual impact from the public domain unless specific measures to minimise those impacts are proposed.7

5 Mount Alexander Planning Scheme Amendment C25 MSS Review Panel Report, November 2005, pp. 73-74
6 Ibid., p. 76
7 Mount Alexander Planning Scheme Amendment C61 Panel Report, March 2015, p. 25
4  Strategic justification

4.1  Strategic support

(i)  The Issue

The issue is whether the development is consistent with State and Local Planning Policy Frameworks and other relevant strategies and plans.

(ii) Evidence and Submissions

The proponent called Ms Cotter, an expert on planning. In her evidence, Ms Cotter concluded that the development is consistent with the 2006 Rural Living Strategy, and remains consistent with State and Local planning policy despite the changes that have taken place since then. She identified the key fundamental planning principles relating to Amendment C36 as follows:

- The land is located close to Maldon township and services and will deliver a supply type identified as being required through previous strategies. The rezoning is consistent with the objectives of the SPPF for regional growth and housing as well as the principles set out in Practice Note 37.
- The land will not prejudice the urban expansion of Maldon as it is located outside the town boundary within which there is area suitable to accommodate growth.
- There is limited rural living land around Maldon resulting in pressure on development of housing in the Farming zone. The delivery of rural living lots should reduce this pressure and provide for a diversity of housing options suitable to a regional/rural location consistent with State and Local policy.
- The land is of low to no agricultural quality, therefore achieving State and Local policy regarding the protection of agricultural land.
- The future lots are proposed to be serviced by reticulated sewer ensuring no impact on the waterways and the open potable water supply catchment.
- The future subdivision and design matters are guided by the DPO8 and will be considered in further detail at the planning application stage. Practice Note 37 provides a comprehensive list of considerations for such applications.

Furthermore, Amendment C61 considers rural land use and rural living in revised planning policy. The proposed Clause 23.03-3 Rural Living Objective 1 is “To provide for rural living development in identified areas.” The Rural Living Strategy 2006 remains as a reference document and Clause 21.12 contains the Maldon Framework Plan which identifies this area for Rural Living.

Ms Cotter concluded that there is strategic justification for the Amendment and that the land is suitable for rural residential development.

Maldon Residents Group called Mr Milner, an expert on planning. Mr Milner considered the Amendment should be abandoned because, among other reasons, it is inconsistent with Planning Practice Note 37 and the overarching directions of State Bushfire Policy.
Mr Milner flagged the potential for agriculture on the subject land:

> It might be put that the Farming Zone and agricultural policy and use can be put to one side because of the poor quality of the soils and its impact upon productivity.

Such a conclusion can be too easily drawn and is not supported by the evidence of a vineyard that has been established in a clearing on the immediately abutting land to the west.

While not farm land of strategic significance, agricultural production compatible with the setting and landscape of the site is demonstrated to be feasible and actively being undertaken.

However the limitations upon productive uses do not translate into the land being suitable for rural living.⁸

The Bendigo and District Environment Council referred to the potential use of the land for agriculture:

> The proponent has provided insufficient evidence that none of the land could be gainfully used for agriculture. Agricultural pursuits are in fact being carried out on the land on the opposite side of Sandy Creek and along Boundary Road, including a vineyard, a cherry orchard, a tree plantation and grazing.⁹

Maldon Residents Group provided a detailed case, arguing that the Amendment should be rejected for the following reasons:

- The original strategic justification for the development in 2005 is highly questionable, lacked rigour and contains irregularities.
- Current planning policies and growth demand studies do not support the original arguments supporting C36.
- Present day planning policies provide no strategic justification for the proposal.
- The Amendment does not comply with or meet the requirements of relevant decision guidelines including Planning Practice Note PPN37: Rural Residential Development 2014 and Planning permit applications in open potable water catchment areas 2012. Council has recently approved Planning Amendment C61 which amends the MSS to require that both these guidelines be applied when planning for, or assessing proposals for rural residential development.
- The Amendment is inconsistent with the State Planning Policy Framework (SPPF) in particular Plan Melbourne, the Local Policy Planning Policy Framework Plan (LPPF) and the Loddon Mallee South regional Growth Plan.
- The Amendment conflicts directly with Council’s policy on Rural Living, in particular the Rural Land Study 2014, which expressly states Tarran Valley is no longer an appropriate site for residential development …¹⁰

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⁸ Rob Milner, 10 Consulting Group, Mount Alexander Planning Scheme Amendment C36 - Strategic Planning Evidence (November 2015), p. 37
⁹ Submission 66, p. 2
¹⁰ Submission 89, p. 3
The Friends of the Box-Ironbark Forests (Mount Alexander Region) submitted that the strategic basis of the Amendment is outdated, being based on the Amendment C25 Panel report of 2005 and the 2006 Rural Living Strategy. It referred to subsequent policy changes relating to bushfire protection and development in open potable water catchments, and concluded that the maximum of three lots should be developed at the subject land (or that other locations for Rural Living Zone development should be found).

(iii) Discussion

The Committee has reviewed the Amendment in several stages. Its initial assessment is an overview of whether there is any fatal flaw in it, based on inconsistency with State and Local policy at a high level. If this were to be the case, further consideration would be redundant.

A second level of analysis is the consideration of specific matters raised in submissions, and these are addressed in Chapters 5 to 9 of this report. A more refined level involves review of the planning tools proposed in the Amendment, which is provided in Chapter 10.

State Policy

The Committee has reviewed the Amendment in terms of its consistency with State policy, as described in statutory policy such as Ministerial Directions and the State Planning Policy Framework (SPPF), and the non-statutory guidelines represented by Planning Practice Notes.

The Committee finds that the Amendment has been prepared consistent with Ministerial Direction 11 (Strategic Assessment Guidelines) and the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

The proposed development is consistent with the SPPF in terms of its role in providing an option for rural residential living. It is consistent with the LMS RGP that seeks to locate smaller lot development in areas that integrate with an existing urban area. Other aspects of the SPPF such as bushfire protection, vegetation management and protection of potable water catchments are dealt with in Chapters 5 to 9 of this report.

The Committee recognises the importance of protecting agriculture, as required under Clause 16.02-1 Rural Residential Land. However, there has been little agricultural activity on the subject land for years, while the soils are of limited productivity. The Committee is aware of a neighbouring vineyard, but small vineyards would be possible on the larger sites on the subject land under a Rural Living Zone. It therefore considers that the potential loss of agricultural land is not a constraint that would preclude rural residential development.

Local Policy

The 2006 Mount Alexander Rural Living Strategy provided the original justification for rural residential development at the subject land. This led to subject land being identified as ‘Preferred Rural Living – staging of rural living development recommended’ in the Maldon Framework Plan, which has been a key element of the Mount Alexander Planning Scheme since March 2007.

The subsequent 2014 Rural Land Study referred to the previous strategy, and flagged the need to review rural residential localities, but did not preclude Tarran Valley:

\[\text{The strategy established a planning direction which basically proposed the RLZ as the appropriate zone for rural living purposes in areas close to urban settlements, and not supporting continued development of existing small lots}\]
within the Farming Zone for rural residential or lifestyle property development. The Strategy identified seven areas around Castlemaine for investigation into suitability for potential rural living rezoning via application of the above principles.

However, recommendations for the nominated sites are now considered outdated and inappropriate given the chain of events and changes to policy that have occurred since 2006, and particularly relating to water supply protection, bushfire safety, and biodiversity management. The strategy’s encouragement for rural living development in areas with extensive vegetation cover (which generally couples with poor agricultural land quality), or directly adjoining such areas, is now problematic. This direction is now complicated by the apparent conflict between this and heightened concern relating to fire hazard and water quality risk.\(^{11}\)

The key new issues for the 2014 Rural Land Study are therefore water supply protection, bushfire safety and biodiversity management. These are addressed in Chapters 6, 7 and 8 of this report.

There is a strong alignment between the principles underpinning the 2006 Rural Living Strategy and guidance in Planning Practice Note 37. The Committee acknowledges that the subject land has numerous challenges to address, however, Planning Practice Note 37 does not advise that such sites should not be considered for rural living opportunities. The Amendment seeks to rezone the land and apply associated provisions so that the land can be considered through a planning permit application process for rural living development.

(iv) Conclusions

The Committee, like the proponent and the submitters, takes the policy framework as given. That does not mean that all parties interpret the framework the same way, as shown by the diversity of views expressed in the submissions. However, with regard to the planning context, the Committee concludes:

- The Amendment is consistent with State policy.
- The strategic justification of the Amendment dates from the 2006 Mount Alexander Rural Living Strategy, and the 2014 Rural Land Study pointed to the need for this work to be updated. However, it does not preclude the proposed development.
- The Mount Alexander Planning Scheme clearly identifies the area as ‘Preferred rural living’ in the Maldon Framework Plan.
- The planning context provides no fatal flaws for the Amendment, and it therefore can be considered on its social, economic and environmental merits.

4.2 Demand and supply

(i) The Issue

Several submitters considered that there is insufficient evidence showing demand for the type of rural residential land represented by the Tarran Valley Estate development, and that slow population growth in Mount Alexander Shire means that the proposal does not meet a

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\(^{11}\) Enplan, Mount Alexander Rural Land Strategy, (January 204), p. 80
need for housing. The issue is whether there is sufficient evidence on the supply of and demand for housing to justify the rezoning.

(ii) Evidence and Submissions

The proponent called Mr Sells, an expert on property market supply and demand. Mr Sells provided expert evidence on demand for and supply of rural residential land around Maldon.

Mr Sells cited Planning Practice Note 37 (June 2012) guideline “to identify projected population and household increases and housing needs over a 10 year period for the area”. His estimate is that 50 additional rural living dwellings will be required over the next 10 years at Maldon, or five dwellings each year. He concluded that Tarran Valley would therefore supply 8.4 years of supply at this rate of demand.

Mr Sells noted that demand for rural living dwellings is influenced by the following drivers:

- The lack of alternate consolidated, good quality supply of vacant rural residential lots within 5 kilometres of Maldon...
- The continued growth in the population of Castlemaine as a key place of work for Maldon residents and lack of residential and rural residential land supply in Castlemaine.
- The Tarran Valley estate rural living development in Maldon is of a scale that is different to other small lots being developed for rural living in Maldon and will therefore generate a demand of its own.¹²

Mr Sells concluded that alternate sites for rural residential development around Maldon are:

severely constrained due to lack of consolidated landownership, fire hazard and interface and amenity issues including the adjacent State Parks and historic reserves that form an edge to the urban area as well as wastewater management, land capability constraints and the heritage overlays effecting the central township area. Urban expansion is also further limited by the planning objectives of the Maldon Framework Plan, which aims to protect the views and vistas to Mount Tarrengower and the views of the historic reserves and mining landscapes adjacent to the township. These constraints will therefore significantly limit the number of opportunities in and around Maldon to create further residential lots to cater for market demand.¹³

He referred to State Government planning policy to retain high quality agricultural land, which discourages approvals for dwellings on Farming Zone land if they are not required to support agricultural uses undertaken on the land.

He considered that there were limitations on residential land supply in Maldon, and concluded that the development would not result in any oversupply of residential land:

On this basis, a master planned, larger scale rural living development will provide the best outcome for both providing new housing to meet demand, but also to meet the demand more specifically for rural living.¹⁴

¹³ Ibid, p. 6
¹⁴ Ibid, p. 8
Maldon Residents Group called Professor Buxton, an expert on planning. Professor Buxton disagreed that there will not be an oversupply. He compared Mount Alexander Shire with six other municipalities in his study region and found Mount Alexander to have one of the largest oversupplies of rural lots. Professor Buxton stated:

*The study region has numerically more lots zoned Rural Living than Rural Conservation (15,000 compared to 9,000) but their total area is smaller; many municipalities contain fragmented rural landscapes with many small lots not necessarily used for farming.*

Mr Milner did not consider there was strategic justification of need, or merit for rural living land at Maldon, and stated:

*The identification of a demand or need for a particular land use does not make all sites equally suitable. The 2006 Rural Living Strategy advanced a series of principles that might guide the identification of suitable land for rural living.*

He concluded:

*Recent studies and reports adopted by Council record that there is no reliable basis to form an opinion about the supply of and demand for rural residential land in the Shire or in Maldon and the recommendations of the Rural Living Strategy are no longer appropriate.*

*The Planning Authority has committed as part of Amendment C61 to undertake strategic planning work to establish the need for rural living land and to review the recommendations of the Rural Living Strategy that has to date identified land at Maldon.*

*The strategic justification of need and the merit of rural living land at Maldon have not been demonstrated.*

Friends of the Box-Ironbark Forests addressed the issue of population projections in its submission. Citing the Amendment C24 panel report’s criticism of the methodology used by Council for projecting population, it argued that the strategic basis of the project remains flawed:

*...Council has been using exaggerated population projections compared to the actual population growth in its strategic planning for the last 10 years, so the justification for this development is questionable.*

Maldon Residents Group submitted that the current population growth forecast shows no demand for the proposal, and that there is sufficient land available to meet future residential demand. It referred to the *Mount Alexander Shire’s Urban Development Program (2012), Residential Supply and Demand Analysis (2010), and Urban Living Study (2004)* to justify this case. Maldon Resident Group’s summation at the Hearing included:

*There has been discussion about demand for the proposed development with evidence ranging from a predicted population boom unseen since the glory days of the gold rush to the idea that build it and they will come. Council admit they have not done the supply and demand work necessary and are essentially leaving it to the expert witnesses and the developer to make the*

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15 Submission 85, p. 6
case. We would argue in line with PPN37 this is the planning authority’s responsibility ...

We have heard a lot about what a different product the proposed development will be. And therein lies its major problem, this development is so different and so out of keeping with Maldon’s character. If we have heard it once over the last four days we have heard or read it a dozen times. “Tarran Valley will create its own demand”. They want to create a new market. But not once has it been explained why this new market has to be in Maldon.

(iii) Discussion
The Committee considers two aspects of the assessment of supply and demand for rural residential land:
• Is the Tarran Valley development likely to lead to an oversupply in the housing market?
• Should Council carry out the strategic assessment, and what role should the proponent play in providing justification?

The potential for oversupply
The Committee worked through the range of policy documents relating to housing supply and demand at Maldon, particularly the Mount Alexander Rural Living Strategy (2006) and the Mount Alexander Rural Land Study (2014). In particular, the relationship between the policy framework and the assessment made by the proponent was reviewed.

Ideally, the policy framework should provide clarity about rural residential development in the sequence outlined in Planning Practice Note 37:
• Strategy: Does rural residential development align with the overall strategic planning of the municipality?
• Housing need: How much rural residential development is required to provide appropriate housing diversity and choice to meet housing needs?
• Location: Where should new rural residential development take place?
• Subdivision and design: Is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure?16

The issue of demand and supply of rural residential land relates to the first two of these questions.

The Committee sympathises with Maldon Residents Group’s view that Council should provide clarity in the overall strategic direction of the Shire, as well as rigour in its analysis of housing need. It accepts the position of the Friends of the Box-Ironbark Forests that past projections have overestimated population and housing growth in the Shire.

Despite this, the Committee considers that there is sufficient clarity in the settlement and housing strategies within the Municipal Strategic Statement to justify rural residential development, and that the discouragement of this development in the Farming Zone means that some level of development in a zone such as the Rural Living Zone is supported. The

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16 DELWP, Planning Practice Note 37: Rural Residential Development (June 2015), p. 2
issue is therefore whether the proposed subdivision envisaged to follow the Amendment is an excessive addition to the residential housing market.

The Committee does not dispute Professor Buxton’s high level evidence at that broad level. However, his evidence does not take into account Council’s policy change since 2006 to encourage a more strategic approach to rural living development and discourage rural living on fragmented rural lots. Further, it does not go into the next level of detail to assess whether the identified lots are available or suitable for rural residential development. This next level of refinement would have made his evidence more applicable to the Amendment.

The Committee disagrees with Mr Milner about the extent of strategic work needed to justify a rural living proposal of the scale proposed by the Amendment. The 2006 Rural Living Strategy that Mr Milner referred to recommends the subject land to be rezoned to Rural Living Zone in accordance with an approved development plan.

The Committee concludes that a development of this scale is not sufficiently large that it would distort housing markets. There has been little population growth in Maldon in recent years, meaning that data on annual additions to the housing stock provide a limited understanding of the impact of the proposal. It does not mean that there should be no growth near the town when the development proceeds. Further, it is highly likely that development will take place over a number of years, ensuring that there will be minimal likelihood of oversupply in any year.

The fact that this is a rural residential development unlike other housing development in or near Maldon complicates the matter. In this regard, the Committee accepts the evidence of Mr Sells that the proposal would provide 8.4 years of supply of rural residential land near Maldon, and that this is a reasonable outcome. Any refinement of the optimum number of lots should relate to the best form of development from landscape, bushfire and environmental perspectives, rather than the supply and demand analysis.

**Should Council prepare the assessment?**

The 2006 Rural Living Strategy identifies Maldon as a possible location for rural residential development in the Rural Living Zone, and invited prospective developers to prepare proposals for rezoning that satisfy the criteria set out in the Strategy. Part of the expectation of Council was the preparation of strategic justification based on housing supply and demand.

This approach was reinforced in the 2014 Mount Alexander Rural Land Study, which recommended implementation of the principles in Planning Practice Note 37, the 2006 Rural Living Strategy and State and Local Planning Policy Frameworks, and considered more recent guidelines:

- Guidelines for Planning Permit Applications in Open, Potable Water Supply Catchments for development within open potable water supply catchments, including local water authority guidelines such as the Coliban Water *Catchment Water Quality Protection Policy and Guidelines for Planning Permit Applications and Government Planning Initiatives* (May 2012)
- Planning Practice Note 64: Local Planning for Bushfire Protection (November 2011).
One of the recommendations of the Rural Land Study was the following:

*The onus for justifying proposals for rezoning or development of land for rural residential development rest with the proponent, against the guidelines and principles referred to in the above recommendation.*

The Committee considers that it is good practice to require a developer to provide a rigorous analysis of a proposal’s impact on housing markets. The role of the Council in this circumstance is to provide clarity about the broader settlement and housing strategy, and about the requirements for a satisfactory analysis of supply and demand. In this case, these have been achieved.

(iv) **Conclusions**

The Committee concludes:

- The Mount Alexander Planning Scheme provides limited and relatively dated strategic assessment of housing requirements in the Shire. Consequently, the Committee has relied to a large degree on the material provided by the proponent, expert evidence and submissions.
- While the rate of growth in population and dwelling numbers is low within the Shire, the addition of up to 42 dwellings over several years adjacent to Maldon is not exorbitant.
- The lack of an equivalent development in a Rural Living Zone near Maldon means that Tarran Valley provides diversity in the housing offer, so that consideration of supply and demand is not straight-forward.
- The optimum number of lots should relate to the best form of development from landscape, bushfire and environmental perspectives, rather than the supply and demand analysis.

4.3 **Net Community Benefit**

(i) **The Issue**

The objectives of land use planning in Victoria are described in Clause 10.02 (Operation of the State Planning Policy Framework – Goal):

*The State Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.*

The issue is whether net community benefit and sustainable development have been demonstrated in the case of the proposed Tarran Valley development. In other words, has there been an integrated consideration of environmental, social and economic factors, leading to net community benefit?

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17 Enplan, Mount Alexander Rural Land Study (January 2014), p. 82
(ii) Submissions

Maldon Residents Group explicitly referred to net community benefit. In its summation at the Hearing, it stated:

*The words “net community benefit” have been mentioned more than once during the last four days. Yet nowhere have we seen any clear evidence of the net community benefit that would be created as a result of Tarran Valley. All we have heard are bold assertions.*

Submissions covered environmental, social and economic impacts of the development, so are relevant in assessing the balance of conflicting objectives that determines ‘net community benefit’. The remainder of this report considers these submissions and provides the Committee’s assessment of each issue.

Submissions raised concern about social and economic impacts resulting from a future development on the subject land. These are two considerations when assessing the net community benefit of an Amendment.

At least 16 submissions stated that a proposed development just outside of Maldon will have an adverse impact on Maldon’s tourist economy.

Bendigo and District Environment Council considered that the proponent provided insufficient evidence to demonstrate that the land could not be used as productive agricultural land. The submission referred to neighbouring land that includes a vineyard, cherry orchard, tree plantation and grazing.

The Tudor Family was concerned that any future development may add to existing social issues and submitted:

* … Maldon is going through an ongoing spate of thefts, destruction, house break-ins and people affected by drugs and alcohol since random undesirables have moved in... This used to be a safe environment in which to live, an environment in which you could move around with confidence and ease.*

Ms Cropley and Ms Watson disagreed that the Amendment would result in negative net community benefit. Mr Cropley submitted that a future development resulting from the development would generate jobs and increase the town’s economic activity and Ms Watson considered that it would provide options for families seeking to live in the area and “hopefully support the town’s infrastructure, including shops, sporting facilities, etc.”

(iii) Discussion and Conclusions

Elaboration of the concept of net community benefit is provided in Clause 10.04 Operation of the State Planning Policy Framework – Integrated Decision Making in the SPPF:

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

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18 Maldon Residents Group, Summation, p. 2
Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

Following review of the environmental, social and economic impacts of the proposal, the Committee concludes:

- The environmental impacts can be managed with appropriate controls, such that the development would not proceed unless the environmental conditions are met.
- On balance, the development will have positive social and economic impacts on Maldon.
- Unregulated development on the subject land that is out of context to its historic surrounds could have an adverse economic impact. However, for reasons outlined in the following chapters, the Committee considers that existing Planning Scheme provisions combined with additional planning provisions can ensure that future development is sensitive to its surrounds. A well-designed development of this scale and nature is likely to result in a positive social and economic benefit to Maldon.
- The subject land is not of a quality that warrants its protection for agricultural purposes. Council has identified the subject land as ‘preferred rural living’ in the Municipal Strategic Statement of the Mount Alexander Planning Scheme since March 2007.
- A subdivision of lots of one hectare or more just outside of Maldon cannot be compared with perceived social issues related to residential units located in the north-western part of Maldon. There is unlikely to be any adverse social impacts resulting from the Amendment.
- The Amendment will have a positive net community benefit for the greater Maldon area, subject to the recommendations provided in this report.

The Committee was impressed with the number and quality of submissions on the Amendment, and the capacity of the community to present a case to the Committee. The resilience of this social capital will not be undermined by a well-planned rural residential development on the outskirts of the town, as long as the conditions covered by the planning provisions protect the character and heritage of this unique community.

4.4 Conclusions

The Committee concludes:

- The Amendment is well founded and is strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapters.
- The Amendment will have a positive net community benefit for Maldon.
- The Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

4.5 Recommendation

The Committee recommends that:

Amendment C36 be adopted, subject to other recommendations in this report.
5 Heritage character and visual impact

5.1 The issue

The issue is whether the proposal would adversely affect the heritage significance or character of Maldon or its setting, or affect values of the wider landscape or any significant views.

5.2 Evidence and submissions

(i) Impact on Maldon and its setting

The majority of submitters (63 out of a total of 97), particularly residents of Maldon and visitors to the town, were concerned that the proposal would impact on the heritage, character or appearance of Maldon and its surroundings. These submitters believed that the rezoning would allow development which would be out of character with Maldon township and its setting, and would jeopardise the heritage of the area especially as the township and the surrounding land had high historic and heritage values. Many submitters expressed concern that the rezoning was inappropriate as they believed that the subject land was larger in area than the township itself and if developed with houses of modern design, it would overwhelm the character of the existing town.

The National Trust submitted that the Maldon township and surrounding landscape is an area of historic interest and significant historic and landscape value recognised in 1965 when Maldon was declared a ‘Notable Town’, the first such classification by the National Trust in Australia. The National Trust submitted that the historic value of Maldon and the surrounding landscape was recognised in the Planning Scheme under Clause 22.02, which states:

...that the heritage of the town of Maldon is of national significance due to:

- The town centre being one of the most intact of any nineteenth century town in Australia.
- The large number of buildings and works of historic significance in the area.
- The unusual and attractive relationship of the town and other historic sites with the diverse natural and historic landscape which forms an essential part of the character of both the town and its surroundings.

The National Trust and Maldon Residents Group submitted that the recent draft of the Central Victoria Landscape Assessment Study (2014) identified Mount Tarrengower and Maldon Historic area landscape (including the subject land) as being of Statewide significance. These and many other submitters were concerned that the rezoning and proposed development in such an area would create a highly visual scar visible from Mount Tarrengower. Bendigo and District Environment Council submitted that the rezoning would result in a collection of modern dwellings seen in the middle distance from Mount Tarrengower which would clash with the old world charm of the rest of Maldon’s landscape.

The National Trust submitted that this type of development was not currently available in the Maldon area and had never been offered, and the proposed development was in not in keeping with the current pattern of development. RG Mills and AM Hayes submitted that when the State government approved the Land Conservation Council recommendation in 1981 to create the Maldon Historic Reserve, it emphasised the interdependence of the
Maldon township and the surrounding historic reserve. They said that as the subject land lay between the township and the Maldon Historic Reserve, this meant that the subject land should be considered within the Maldon historic precinct.

Many submitters were concerned with the version 30 concept plan, especially the subdivision layout and number and size of lots proposed on this plan. This plan was a proposed development plan that was prepared for, and adopted by the BMOSAC to meet the defensible space requirements for all the dwellings on the subject land, while conserving as much vegetation as possible. The plan is included in documents 9, 10 and others submitted by Mr Cicero. Many were concerned that the small size of some of the lots proposed would lead to a development that would not appear ‘rural’ in nature but would look more like an inappropriate urban development which would degrade Maldon’s setting. Many suggested that the strict building controls that applied in the existing Maldon township area to ensure that its heritage character was maintained would not apply to the subject land, resulting in unsuitable buildings being built. RG Mills and AM Hayes submitted that development resembled a residential cluster of houses, albeit with large back yards, more like a low density residential area.

Maldon Residents Group submitted that the proposal did not comply with the requirements of Planning Practice Note 37 which stated inter alia that ‘A proposal must demonstrate that it will not impact on the natural heritage values of the land’. The National Trust submitted that the requirements to create defensible spaces (which overlap) on the version 30 concept plan had significantly altered and worsened the landscape impact of the proposed rural living development since Amendment C36 was assessed in the 2009 panel report.

Mr Cicero argued that from a heritage and landscape perspective, the proposal had not changed since the 2009 C36 panel and it was not appropriate for this Committee to consider these matters again. Mr Cicero submitted that the 2009 C36 panel report concluded that ‘Amendment 36 will not result in significant impacts on the historic, cultural or landscape values of Maldon, its surrounds or the Maldon Historic Reserve’.

Mr Cicero contended that the proposal would have negligible impact on the heritage values and integrity of Maldon and the surrounding area. He submitted that the landscape qualities of the area would be appropriately preserved though the implementation of DPO8 and the proposed planning assessment framework.

Parks Victoria as the manager of the Maldon Historic Reserve (as indicated in DELWP’s submission), considered that the proposal would not have any greater impact on the Maldon Historic Reserve than the existing residential development.

Ms Cropley submitted that the subject land is not close enough to the Maldon Town Centre to have an impact on its heritage. She added that development of infill subdivisions within the town precinct are having a greater impact on Maldon’s heritage.

(ii) Views from Castlemaine-Maldon Road

Many submitters were concerned that the view from Castlemaine-Maldon Road near the entry to Maldon would be marred by the intrusion of the housing development in this area. For example, Ms Smidt submitted that the first impression that most visitors had of the town and its setting was along Castlemaine-Maldon Road and this development had the potential to destroy the natural balance and main entrance to Maldon. Ms Warracke submitted that several building envelopes shown on the version 30 concept plan were located between
Castlemaine-Maldon Road and the ridgeline and houses built in these envelopes would be highly visible and severely impact on the visual entrance to Maldon and damage the historic settlement pattern in the area.

Many submissions noted concern with the near straight alignment of the road and building envelopes located on the slope rising up from Castlemaine-Maldon Road as shown on the version 30 concept plan. Other concerns related to building designs that might not be sympathetic with their surroundings and the visual impact of proposed overhead power lines.

The National Trust submitted that, as the subject land was higher than Castlemaine-Maldon Road and all the houses on the slope up from the road would require defendable space, there would be little or no screening vegetation between the road and these houses. It considered all the houses on the southeast side of the subject land would be highly visible from the road, and stated that this would be contrary to Clause 22.11 of the Planning Scheme:

*Development located on the edge of township areas should be landscaped to assist in absorbing the development with the surrounding landscape and to provide a delineated edge to the town.*

Mr Leslie, on behalf of the CFA, submitted a case study of defendable space planting around a dwelling (document 28) which showed that certain low growing plants were suitable for planting in the defendable space.

The proponent called Mr Kern, an expert on flora and fauna and bushfire risk. Mr Kern referred to the CFA guidelines for managing defendable spaces¹⁹ which provided details on how the inner and outer zone of defendable spaces should be managed. The guidelines state that the management of the inner zone of the defendable space require tree canopy densities to be no more than 15%, shrubs must not be planted under trees, shrubs must be separated by at least 1.5 times their mature height, and tree branches less than two metres from the ground must be removed. The guidelines state that in the outer zone, tree canopies densities should be no more than 30%, tree branches less than two metres from the ground must be removed and shrubs must not be in clumps of more than 10 square metres with shrub clumps separated by at least 10 metres.

Mr Kern stated that in his view the inner zone should extend to a 40 metre radius from the dwelling or to the property boundary. Under cross examination, Mr Kern stated that from his experience, he would expect landowners would be more likely to over clear and remove most shrubs in the defendable space.

Ms Cotter gave evidence that the proposed DPO8 and the siting of lots and building envelopes (as indicated on the version 30 concept plan) would not result in unreasonable visual impacts. Ms Cotter added that some lots would be visible from the Castlemaine-Maldon Road and some building envelopes would be located where there was currently little or no vegetation. She said some dwellings might be seen from a moving vehicle, occasional cyclist or walker but the proposal was appropriate in the broader rural character of the area. Ms Cotter stated that in her opinion, the development would not cause a detrimental visual impact to the entry of Maldon or Maldon Historic Reserve.

¹⁹ *Planning for Bushfire Victoria (CFA 2012)*
Many submitters including Maldon Residents Group were concerned that if future permit applications for buildings were consistent with the proposed DPO8, then there would be no opportunity for community comment on the applications. They were concerned with the type of development that might occur on the subject land such as modern urban style houses. Maldon Residents Group submitted that this would be contrary to Planning Practice Note 37 which states that consideration should include ‘Using buildings material that do not visually impact on the rural landscape’.

Mr Cicero submitted that the proposal was compliant with Clause 22.11 (Streetscape) that aimed to ensure development ‘Has regard to design, siting and landscape issues’ and ‘enhances the presentation of main road entrances into townships and enhances the immediate environment’. He stated that ‘views towards the site will continue to be of a vegetated vista given the substantial amount of trees along the roadside and in patches across the site and ‘improvements to vegetation cover will occur through proposed planting regimes’.

Mr Cicero submitted that the proposed development would not be substantially visible from the Castlemaine-Maldon Road and the majority of the lots would be set well back from the road frontage. He presented an artist’s impression of the proposed development - Looking toward lot 24 from the Castlemaine Maldon Road (Document 22).

Mr Wright presented a number of photographs of housing developments in other areas such as Castlemaine and photographs of the subject land. He presented his artistic impression of the subject land when fully developed, many of which were vertical or oblique aerial views.

(iii) Significant Landscape Overlay Schedules

Bendigo and District Environment Council and the National Trust submitted that the importance of the landscape in and around Maldon was acknowledged in the Planning Scheme in two Significant Landscape Overlays (SLO1 – Maldon Landscape Area and SLO3 - Scenic Approaches to Maldon) which together covered almost all of the subject land. In relation to SLO1, Maldon Residents Group submitted that, as the proposal would effectively be a low density modern residential housing development, it would detract from the value of the landscape and not preserve the visual amenity on a major approach road to Maldon. Maldon Residents Group argued that the envisaged development did not meet the objectives of SLO1 which include:

- To preserve and enhance the character of the roadside along major approach roads to the towns… and other areas of visual landscape interest ...
- To encourage development of a type which does not detract from the value of the landscape due to its siting, height or general appearance.

The National Trust submitted that the development would not be consistent with the objectives of SLO3 which included:

- To recognise, conserve and enhance the character of the approach roads to Maldon, their immediate environments and other prominent scenic areas ...
- To encourage development which complements the density, scale and setback of existing development.
- To discourage development which is not in harmony with the existing character and appearance of the area.
Mr Milner stated that if rural living was to occur on the subject land and be consistent with the objectives of SLO1 and SLO3, it would require a significantly larger minimum lot size and fewer, if any dwellings to be sited on the elevated land facing onto the Castlemaine-Maldon Road, than shown of the version 30 concept plan.

The National Trust submitted that the impact of the clearance of 50 metre defendable spaces now allowed under the BMO (which covered all the subject land) was not in place in 2008 and therefore was not considered in the 2009 C36 panel report. The National Trust submitted that as the BMOSAC did not receive any submissions in relation to the SLO1 or SLO3 (there was limited opportunity for the general community to submit to the BMOSAC), the BMOSAC determined not to comment further on this matter. The National Trust submitted that landscape impacts resulting from the clearance of the defendable spaces had therefore not been fully considered by the BMOSAC.

Council submitted that Amendment C61 (adopted by Council and currently being considered by the Minister) although not implemented, should be seriously considered. It stated that Amendment C61 under Clause 21.02-3 (Rural and landscape character policy) includes:

- **Strategy 1.2** – Discourage building close to roads in rural areas that will have a negative visual impact form the public domain unless specific measure to minimise those impact are proposed
- **Strategy 1.3** – Require the use of building materials and colours which are in context with the surrounding environment in areas of landscape significance in rural areas.

Mr Schier on behalf of Council said that both these strategies were relevant as the subject land lay largely within SLO1 and partly within SLO3. He added that as the subject land was substantially screened from the Castlemaine-Maldon Road combined with the topography of the subject land, it meant the most of the lots would not be visible from Castlemaine-Maldon Road. Mr Schier submitted that compliance with Strategy 1.2 could be ensured by an additional condition in the DPO8 schedule requiring the screening of any dwellings from the Castlemaine-Maldon Road by either a revised lot layout or additional native plantings.

Mr Schier submitted that compliance with Strategy 1.3 could be ensured by adding a condition in the DPO8 schedule requiring the use of building material and colours with are in context with the surrounding environment. This should specify non-reflective materials, which would reduce any potential impact of the development when viewed from Mount Tarrengower. He said that in other respects, the subject land was sufficiently distant from Mount Tarrengower, partly obscured by its setting in a shallow valley, and sufficiently surrounded by other scattered developments, and therefore the proposal was not likely to have a detrimental impact on the landscape views from Mount Tarrengower.

(iv) **Other matters**

Mr Cicero submitted that DPO8 and the planning assessment framework provided adequate protection for any Aboriginal cultural heritage features that may be identified on the subject land.

In relation to historical archaeological sites located on the land, Maldon Residents Group submitted that there were three sites (14315, 14317 and 7825) listed on Victoria’s Heritage Inventory located on the subject land and that the proposal did not respect the importance of these sites.
The Committee inspected the subject land on an accompanied visit on 25 November 2015 and visited other key sites in the area including Mount Tarrengower on unaccompanied inspections.

5.3 Discussion

(i) Impact on Maldon and its setting

The Committee appreciates the high heritage significance of Maldon and it surrounds and understands its importance to local residents, visitors to the area and the Victorian community. The subject land occupies a key part of the setting of Maldon township adjacent to both the township and the Maldon Historic Reserve and the heritage values of both the township and the reserve should not be compromised. The Committee understands that the current views from Mount Tarrengower and from the Castlemaine-Maldon Road, with scattered houses set in a mixture of cleared and vegetated areas, are considered important.

The Committee agrees with Mr Cicero’s submission (confirmed by the Committee’s inspection) that the subject land is separated from the Maldon township by a low hill, and any well-planned development would not directly affect the heritage character or appreciation of the township as a heritage place. The Committee accepts Parks Victoria’s position, as manager of the Maldon Historic Reserve, that the proposal would not have any greater impact on the reserve than the existing residential development.

The Committee was not presented with convincing evidence that the Amendment itself would directly or adversely affect the heritage values of either the Maldon township or the Maldon Historic Reserve. Nor was the Committee presented with convincing evidence that the Amendment would have an unacceptable impact on the character of Maldon’s setting, the views from Mount Tarrengower or the views from the Castlemaine-Maldon Road. This opinion is similar to that expressed in the 2009 C36 panel report which concluded ‘There are no significant impacts on the heritage and cultural values of (the) Maldon area arising from the proposed rezoning’.

The Committee appreciates that a key concern raised in many submissions related to the layout of the subdivision subsequent to the rezoning (specifically the envisaged development as outlined on the version 30 concept plan), and the form and type of development that could occur on the land. The Committee notes that many submitters expressed concern that there would be no opportunity to comment on future permit applications that were compliant with DPO8.

The Committee has concern with the proponent’s proposition that the version 30 concept plan and DPO8 that were supported by the BMOSAC should be accepted by the Committee as a basis for developing the subject land. There was little opportunity for members of the wider community or organisations such as the National Trust to participate in the BMOSAC hearing as the proposed version 30 concept plan and DPO8 were prepared without extensive community input. This in itself has caused difficulty with the community.

The Committee does not agree with Mr Cicero that it was not appropriate for this Committee to consider landscape issues because it was considered by the 2009 C36 panel report (see Chapter 3). The contours on the site plans provided (such as Document 9) shows that the subject land generally rises to the northeast away from the Castlemaine-Maldon
Road. The subject land could not be described, as stated in the 2009 C36 panel report, as ‘a valley falling away from the Castlemaine-Maldon Road’.

(ii) Views from Castlemaine-Maldon Road

The Committee considers that the visual representations presented could have been important aids to consider the impact of the proposal on its setting and views from Castlemaine-Maldon Road. However, the visual representations presented by both Mr Wright and Mr Cicero (prepared by Spiire) were not as helpful as they could have been. Some of Mr Wright’s views were irrelevant because they did not represent rural living developments that could be typically located on the subject land and did not show views from ground level. The Committee considers that the Spiire view was not as helpful as it could have been because it represented the subject land not from where it directly abuts the Castlemaine-Maldon Road, but from a location further to the northwest where there is another property in the foreground between the road and the subject land.

The Committee does not agree with Mr Cicero that with the envisaged development, the views of the subject land from Castlemaine-Maldon Road would ‘continue to be of a vegetated vista given the substantial amount of tree cover along the roadside and in patches across the site’. The Committee observed on the accompanied site visit that the roadside was largely cleared of vegetation under power lines and an accompanying access track. The Committee does not agree with Ms Cotter’s evidence that as the majority of viewers would see the subject land from a vehicle travelling at 80 km/h this would make the view more acceptable than if passing the subject land more slowly.

The Committee agrees with the National Trust that while the development may meet the bushfire management requirements (and minimise the impact on native vegetation) and was supported by the BMOSAC report from a fire management perspective, the envisaged development does not adequately address the character or visual impact of the development of the subject land. The Committee considers that the details of the version 30 concept plan could be out of character with the wider area, compromise part of the Maldon setting, and adversely affect landscapes values and significant views.

The Committee is concerned with some design features of the development including the proposal for the south eastern road to run straight regardless of the slope from the southwest and be flanked by a straight line of building envelopes located on relatively narrow lots. The Committee considers that while this layout may be highly desirable in creating overlapping defendable spaces, it could lead to a development which would have an unacceptable impact on the views from the Castlemaine-Maldon Road. The Committee agrees with some submitters that overhead power lines, even if aerial bundled, would detract from the appearance of the development.

The Committee considers that the proposed management of the whole of the defendable space area in line with inner zone requirements (see Chapter 6) would have major implications for the potential for screening of buildings by vegetation. The Committee considers that the CFA guidelines which requires that no shrubs be planted under tree canopies and all shrubs be separated by 1.5 times their mature height means that little plant screening would be possible in any of the proposed defendable space areas. The Committee notes that Map 1. Condition of Native Vegetation: Overall Habitat Score (document 23) shows that in order to meet the overlapping defendable space requirement extending from
the Castlemaine-Maldon Road reserve all the way up the slope (as shown on document 9), existing vegetation would need to be removed from this whole area.

The Committee therefore considers that, in relation to the envisaged development, houses proposed to be located on the slope facing the Castlemaine-Maldon Road along the eastern side of the access road from the Castlemaine-Maldon Road could be effectively screened by vegetation. The Committee considers that a similar situation applies to the houses proposed to be located on the north western part of the subject land.

(iii) Significant Landscape Overlay Schedules

The Committee agrees with the National Trust, Maldon Residents Group, Bendigo and District Environment Council and other submitters that the objectives of the SLO1 and SLO3 which together cover almost all of the subject land are worded to ensure the protection of the character of the setting of Maldon and in particular, the views from Mount Tarrengower and the Castlemaine-Maldon Road near the entry to Maldon.

The Committee agrees with submitters that the details of the version 30 concept plan are not consistent with the objectives of SLO1 and SLO3 and would not meet:

- **The SLO1 objectives**: To preserve and enhance the character of the roadside along major approach roads to the towns... and other areas of visual landscape interest, and to encourage development of a type which does not detract from the value of the landscape due to its siting, height of general appearance.

- **The SLO3 objectives**: To recognise, conserve and enhance the character of the approach roads to Maldon, their immediate environments and other prominent scenic areas, to encourage development which complements the density, scale and setback of existing development and to discourage developments which is not in harmony with the existing character and appearance of the area.

The Committee agrees with Mr Milner that rural living on the subject land that was consistent with the objectives of SLO3 would require a larger minimum lot size and fewer dwellings to be sited on the elevated land facing Castlemaine-Maldon Road than shown on the version 30 concept plan. The greatest separation distance between building envelopes needs to be carefully considered so that contiguous defendable space can still be achieved. Based on these criteria, the Committee considers that an 80-metre separation could satisfactorily achieve both outcomes.

The Committee agrees with the National Trust that as there were limited opportunities for the wider community to participate in its processes, the BMOSAC did not receive any submissions relating to SLOs and did not consider this issue in detail.

The Committee accepts Council’s position that Amendment C61 (adopted by Council and currently being considered by the Minister for Planning) although not implemented should be seriously considered as the subject land lies largely within SLO1 or SLO3. The Committee notes that Amendment C61 under ‘Rural and landscape character’ in Clause 21.04-3 proposes:

*Strategy 1.2* Discourage buildings in rural areas that are sited close to roads, unless specific measures are proposed to reduce visual impacts.
**Strategy 1.3** Require the use of building materials and colours which are in context with the surrounding environment in areas of landscape significance and in rural areas.

The Committee accepts Mr Schier’s submission that a condition in DPO8 requiring dwellings to be screened could ensure compliance with Strategy 1.2. However, such screening would be difficult to achieve while maintaining the defensible space requirements. The Committee agrees with Mr Schier that compliance with Strategy 1.2 may be achieved through a revised lot layout.

The Committee considers that in order to meet the objectives of SLO1 and SLO3 and not detract from the character of the area or adversely affect view lines, the subdivision design should be sympathetic with the topography of the subject land and the nature of buildings and other features in the area surrounding the subject land.

**(iv) Framework for considering future permits**

The Committee considers that if the rezoning is approved, the approval should be dependent on the adoption of a framework for considering future permits. The Committee notes that this issue was similarly considered by the 2009 C36 panel report which recommended a proposed DPO5, and the BMOSAC which recommended DPO8 including a reference to a proposed concept development plan.

The Committee therefore considers that in order to achieve development on the subject land which is in character with the setting of Maldon, and is in harmony with the wider area, any approval for rezoning of the subject land should be conditional on the adoption of DPO8 and the incorporated design guidelines (Appendix E). The Committee considers that DPO8 would need to require:

- Roads on the subject land to be designed to reflect the topography of the subject land, and in particular the slope facing Castlemaine-Maldon Road, to minimise the impact on views from the road.
- Building envelopes to be spaced at least 80 metres from each other on the slope facing Castlemaine-Maldon Road in the area covered by SLO3.
- Screening of the development by retaining existing vegetation and planting native vegetation, on a 20-metre-wide area between the Castlemaine-Maldon Road reserve and any development, or defensible space area around any dwelling.
- Design guidelines developed to address the design of all proposed structures including the style of buildings, type of building materials (such as non-reflective roofing), colour of buildings and type of retaining walls and fences.

**(v) Views from Mount Tarrengower**

In relation to the impact on the views from Mount Tarrengower, the Committee agrees that the subject land is surrounded by other scattered developments and is not in the foreground of the view from Mount Tarrengower. Implementing DPO8 would result in development which would be in character with the wider area and would not have a significant detrimental impact on the landscape views from Mount Tarrengower.
(vi) **Other matters**

Should any Aboriginal cultural heritage sites be encountered during any development, the Committee considers that the processes required under the *Aboriginal Heritage Act 2006* would protect any significant values.

In relation to the sites listed on the Victorian Heritage Inventory (and any other historic cultural heritage sites that may be encountered during any development), the Committee considers that the processes and approvals that would be required under the *Heritage Act 1995* would protect any significant values.

### 5.4 Conclusions

The Committee concludes:

- The Amendment will not result in adverse impacts on the heritage values of the Maldon township or the Maldon Historic Reserve if specific design guidelines and development plan requirements are applied.
- The Amendment will not result in adverse impacts to the character of the Maldon area or the views from Mount Tarrengower or Castlemaine-Maldon Road if specific design guidelines and development plan requirements are applied.
- The known historic cultural heritage sites on the subject land and any other historic cultural heritage sites or Aboriginal cultural heritage sites that might be encountered during development are protected by specific legislation.

### 5.5 Recommendations

The Committee recommends:

1. **Amend Development Plan Overlay Schedule 5**, as shown in Appendix E, to:
   
   a) Add a new objective “A development plan is required to ensure that planning, infrastructure and amenity issues are resolved before development commences and that future subdivision and development are in harmony with Maldon’s character.”

   b) Require the development plan to show:
      
      - A subdivision layout which responds to the topography, vegetation, waterways and other significant features.
      - A variety of lot sizes with the larger lots located to maximise the preservation of native vegetation.
      - Building envelopes on each lot including setbacks from Castlemaine-Maldon Road.
      - On land subject to Significant Landscape Overlay Schedule 3:
         - any road be designed to minimise its visibility from Castlemaine-Maldon Road
         - at least 80 metres between building envelopes.
      - At least 20 metres between Castlemaine-Maldon Road and any defendable space to allow for vegetation screening.
      - Areas of native vegetation, bushfire hazard, landscape features and heritage significance.
      - The relationship and interface with adjoining land uses on all boundaries including the provision of any buffers to the adjoining Maldon Historic Reserve.
c) Require a Section 173 agreement that:
- restricts a lot from being further subdivided
- restricts more than one dwelling on each lot
- requires fencing in or around any lot to be visually unobtrusive and allow wildlife movement, except for fencing in the building envelope.

d) Require Design Guidelines to be prepared in consultation with interested parties and to the satisfaction of the responsible authority and include, as a minimum, the following guides:
- Dwellings potentially visible from Castlemaine-Maldon Road to appear as single storey.
- Building materials and colour palate for dwellings and other structures such as garages, sheds and tanks to ensure that they are in harmony with the landscape.
- Use of non-reflective roofing materials.
- Materials used for any retaining walls to reflect local rock type.
6 Bushfire management

6.1 The issue
Numerous submissions expressed concerns that the development is located in an area of high bushfire risk and will increase the risk of bushfire around Maldon. The issues are whether the proposal represents an excessive bushfire risk, and whether the level of risk can be managed effectively.

6.2 Evidence and submissions
The Committee placed considerable weight on the submission of the CFA. Mr Leslie presented CFA’s submission to the Committee, highlighting the history of bushfire assessment at the subject land, planning provisions and policy context, bushfire hazard, and the CFA’s assessment of the proposed bushfire protection measures. With regard to bushfire hazard, he submitted:

The level of the overall fuel hazard onsite and in the surrounding vegetation is moderate, and considerably lower than other more productive Eucalypt dominated forested areas in Victoria. The sparse nature of the understorey means that the propensity of a bushfire to develop vertically and involve a significant part of the canopy layer is somewhat limited, although candling (flames climbing the trunks into the upper branches and canopy) of individual trees is likely.

The topographic features of the broader landscape around the subject site are relatively benign and unlikely to produce an Extreme Fire Behaviour event involving massive convection columns and cyclonic winds.²⁰

The CFA submission supports the previous BMOSAC recommendations. It considered that the proposed bushfire mitigation measures including the layout, defendable space provisions and access and egress arrangements would provide an adequate and appropriate level of protection. In particular, it supported the conditions within DPO8 and the proposed section 173 agreements relating to ongoing bushfire protection.

An issue that the CFA flagged as potentially problematic was a Council proposal to add additional protection to vegetation along the frontage to Castlemaine-Maldon Road. It argued that these measures:

...should not impact on the agreed upon bushfire mitigation measures. If there are significant changes to the lot layout and offsets planting, CFA will need to reassess its position.²¹

A further issue that was flagged in the Hearing was the potential establishment of a perimeter road around the subject land, aimed at improving access and egress and providing a non-vegetated buffer between the residential areas and surrounding bushland. In response to questions from the Committee, the CFA considered that there may be some bushfire management advantages in having a perimeter road, but the advantages were

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²⁰ CFA Submission to the Committee, pp. 6-7  
²¹ Ibid., p. 10
marginal in this case because of the presence of two locations for access and egress at the subject land.

Council addressed bushfire-related issues in its Part A submission. It outlined changes to the bushfire planning provisions in Victorian planning schemes since March 2009 and the details of the BMOSAC considerations and recommendations. In particular, it referred to the implications of changes introduced by Amendment VC109 in July 2014:

The impact of these changes would be at the stage of permit application for subdivision, where specific requirements for defendable space, construction, water supply and vehicle access would have to be met under the provisions of Clause 52.47 – Planning for Bushfire. A detailed assessment of the proposal against these provisions would not be required until that stage. Nevertheless, an initial assessment of the proponent’s revised Bushfire Development Plan, as provided as Attachment F to the BMOSAC Report, indicates that meeting the requirements of Clause 52.47 should not be considered an insurmountable barrier.

The new requirements introduced by Amendment VC109 should therefore not be considered reason to depart from Council’s support for Amendment C36, as adopted in March 2009 and with subsequent revisions recommended by the BMOSAC in its report of 12 June 2014.22

Practical Ecology had been commissioned by the proponent to review material presented to the Amendment C36 Panel, and prepared an initial report in October 2012 and a Bushfire Development Plan in November 2013. Mr Kern provided evidence to the BMOSAC in May 2014.

Mr Kern referred to numerous bushfire assessments of the proposed development:


Mr Kern cited several submissions to the BMOSAC addressing bushfire risk, including those from the CFA, Department of Environment and Primary Industries, Mount Alexander Shire Council and the proponent. In particular, he noted the report by Terramatrix dated February 2014, which had been prepared for Mount Alexander Shire Council, and which was central to the considerations of the BMOSAC:


Mr Kern outlined the process of assessing and refining the bushfire-related issues at the subject land since 2008. He referred to a significant development in 2013, when the CFA

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22 Document 1, p 14
confirmed that the proposal “satisfies broader strategic principles in managing rural residential growth in bushfire hazard environments”, and applies a precautionary approach to prioritising human life. This conclusion was subject to the following conditions:

i. The whole area of the defendable space, as identified in the Bushfire Assessment, be combined as a ‘single’ grouped defendable space and managed to CFA Inner Zone requirements on an on-going basis.

ii. The area within 150 metres (or to the subject land property boundary) of the outer edge of the grouped ‘inner zone’ defendable space be managed to CFA Outer Zone requirements on an ongoing basis.

iii. The Development Plan (and associated bushfire management plans) be revised to include the redesign of the subdivision to show vegetation management prescriptions as outlined in Conditions No. 1 & 2 above.23

Mr Kern’s assessment, including his review of previous studies, covered the bushfire risk specific to the subject land, as well as the broader landscape risk. With regard to the bushfire hazard present at the subject land, he reached the following conclusions:

In consideration as to whether the location of the site is appropriate for rural living development given the significant bushfire hazard in the wider landscape Practical Ecology has considered the nature of the landscape including the factors that influence fire behaviour and the potential impact on life and property.

There is an absence of detail from planning authorities regarding a metric or scale for considering what an acceptable level of risk from bushfire is at the rezoning level. Practical Ecology has employed the considerations of assessing an acceptable risk at the subdivision and building permit stage within the planning scheme and supporting documentation. We have also considered the broader bushfire risk management framework detailed in various relevant government policies and documents.

We have found that while a significant risk could exist for a rural residential development at the site, the level is not outside the acceptable parameters used within the planning scheme or contrary to the strategic bushfire risk management framework in place. Development at this site can also mitigate the fire risk to nearby and adjacent properties and the Maldon township as a whole by providing more bushfire resilient and secure land management at the interface between bushland and residential development than currently exists.24

Mr Kern assessed the most suitable fire risk management regime for the subject land, reviewing the subdivision layout, defendable space and its management, access, water and power. He reviewed the process for long-term control of the fuel management regime, and the impact of the development on management of surrounding bushland on public land adjoining the subject land, and concluded:

24 Ibid., pp. 18-19
...the bushfire risk to future residents on the site can be mitigated effectively with latest Bushfire Development Plan that was developed in consultation with the CFA and Strategic Advisory Committee. The town of Maldon and the site is not in an extreme bushfire zone because of the low fuel levels in the areas of native vegetation and the substantial firebreaks throughout the landscape. In addition, the proposed development can be made adequately safe for the future residents through the measures included in version 30 of the development plan. This is my opinion and the CFA and Bushfire Advisory Committee agreed with this assessment in May 2014. It is also likely that the development would reduce the bushfire risk for the town of Maldon by creating a reliable firebreak to the south of town which is currently vulnerable to fires that start in extreme north winds but change to a southwest front with typical wind changes.25

As noted in Chapter 7, DELWP addressed the issue of whether the bushfire controls relating to the development would affect the management of the adjoining Maldon Historic Reserve:

**DELWP has consulted with Parks Victoria on this matter. Parks Victoria do not consider that this subdivision would have any greater impact on the Maldon Historic Reserve than the existing residential development as all management for fire would be constrained to the subject land.**26

The evidence of Mr Milner addressed the bushfire risk in planning for the development. He argued that there is a difference between a new residential development in a medium to high bushfire risk area, compared with decisions on individual applications for areas that have already been set aside for housing. He considered that the risk in this case can be avoided by choosing locations where the threat of bushfire is less.

Mr Ingamells was originally intending to provide expert evidence on bushfire planning to the Committee, but his contribution was accepted as part of the Bendigo and District Environment Council submission. He explored the implications of the Bushfire Royal Commission reports in the context of climate change in the Murray Darling Basin cluster, pointing out that fire risk is likely to increase in the future. In response to questions from the Committee, he stated that Tarran Valley was a borderline case, and that increased fuel reduction, rapid attack capability and private bushfire bunkers were likely to be required as part of bushfire planning in Maldon.

Many of the submissions referred to concerns about the bushfire risks associated with the proposed development. One example is the submission from Ms Bell:

...one of my major concerns is related to the additional risk of bushfire, attendant on such a development so close to the Maldon Historic Reserve bushland. Our local CFA cannot be expected to cope with this additional area, equivalent in size to the Maldon township.27

Maldon Residents Group summed up numerous community submissions with a detailed review of relevant bushfire policy and submissions to the BMOSAC. It cited comments on

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25 Ibid., pp. 31-32
26 Submission 3, p. 5
27 Submission 80
bushfire safety by Ms Webster, an ‘author and authority on bushfire safety for the householder’, who concluded:

> No houses near bushland means no risk. Every additional house increases risk. In the absence of demonstrated demand it is hard to understand why anybody would even consider placing 44 houses and thus 44 families in a high risk area.\(^{28}\)

Maldon Residents Group referred to the Macedon Ranges Planning Scheme Amendment C92 panel report, relating to changes to Restructure Overlay on 13 properties in Macedon and Mount Macedon. The panel report in this case concluded that no proper strategic fire analysis had been presented and therefore the Amendment should be abandoned. Bendigo and District Environment Council expressed similar concerns. Its submission was that the loss of open country between north and east to existing residents, while the need for defendable space and reducing fuel loads will compromise conservation and biodiversity objectives.

### 6.3 Discussion

The Committee has reviewed the extensive range of bushfire-related material relevant to the subject land, particularly the expert evidence; submissions from the proponent, the community and agencies; the policy framework; and the material provided to the previous Amendment C36 Panel and the BMOSAC. Much of this material assisted in framing the proposed bushfire management controls that were considered in the previous Panel and BMOSAC processes, and which formed the basis of discussion at the Tarran Valley Rezoning Advisory Committee Hearing.

This Committee reaches the same conclusion as that of the CFA. The subject land cannot be free of all risk relating to bushfire, but the level of hazard is such that it can be managed. The landscape bushfire risk is relatively low, while fuel hazard on the subject land and surrounding areas is moderate. Further, the proposed provisions including DPO8 (with reference to the section 173 agreements requiring ongoing maintenance of defendable spaces) provide a degree of protection that ensures that the residual risk is acceptable.

With regard to the issue of whether the development may increase the risk of bushfire within the existing Maldon township, the Committee agrees with Mr Kern that the development of the subject land will create conditions for greater bushfire resilience and more secure land management than currently exists at the subject land. Irrespective of whether the development proceeds, Maldon will remain a fire-prone area, while the long-term risk of bushfire is likely to increase with climate change. However, there will be no increase in bushfire risk because of the nature of the Tarran Valley development.

The Committee accepts the submission by DELWP that bushfire controls at Tarran Valley will not have an impact on the management of Maldon Historic Reserve. The increased bushfire management regime at Tarran Valley will take place within the subject land, so there is no reason for the Maldon Historic Reserve to change its operations as a result of the development.

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\(^{28}\) Submission 89, p. 38
The Committee concludes that a perimeter road should not be constructed. The concept design of the subdivision aims to retain high quality vegetation at the rear of many of the blocks, while a perimeter road would have limited bushfire management value in this case.

The Committee has reviewed the Macedon Ranges Planning Scheme Amendment C92 panel report referred to by Maldon Residents Group. However, the Committee concludes that there is a significant difference in the case of Mount Alexander Planning Scheme Amendment C36 which has been through a comprehensive strategic fire analysis, at the landscape level as well as within the subject land.

The Committee’s findings generally align with those of the BMOSAC report. This is not because it used the BMOSAC as a starting point – on the contrary, it has addressed all the material presented to the Committee, independent of the BMOSAC report.

6.4 Conclusions

The Committee concludes:

- It is not possible to remove all risk of bushfire from the subject land, as is the case for Maldon and much of Victoria. It is therefore necessary to consider whether management for bushfire protection is possible to achieve an acceptable level of risk.
- The bushfire risk on the subject land is acceptable subject to implementing specified bushfire planning provisions.
- Development on the subject land will not increase the risk of bushfire within Maldon township.
- The evidence considered by the Committee aligns with the bushfire policy framework subject to implementing the bushfire management regime covering matters including lot layout, defendable space, water provision and access and egress.
- There is an acceptable level of bushfire risk relating to the development.
- Bushfire risk is not sufficiently serious that the Amendment should be abandoned.

6.5 Recommendations

The Committee recommends:

2. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Require the development plan to be supported by:
      - A works program to achieve defendable space requirements of the Bushfire Management Plan before any lot is sold.
      - A defendable space plan that shows matters listed in a new Clause 4.0.
      - A Section 173 agreement that shows bushfire related matters listed in a new Clause 5.0.
   b) Introduce a new Clause 4.0 that describes what matters need to be included in the Defendable Space Plan.
   c) Introduce a new Clause 5.0 that requires, among other matters:
      - The Bushfire Management Plan to be implemented.
      - All vegetation identified in the inner zone or outer zone of defendable space on the Defendable Space Plan (and regardless of whether a dwelling is located on the land or not) to be maintained as specified on the plan at all times.
• All dwellings and dependant persons units to be constructed to a minimum level of BAL-19 in accordance with the relevant sections of AS3959-2009.
7 Flora and fauna

7.1 The issue

The issue is whether the extent of vegetation removal, including native vegetation, and any impact on fauna is appropriate to facilitate the rural residential development.

7.2 Evidence and submissions

Many submitters were concerned with the extent of native vegetation that would need to be removed or modified as a result of the envisaged development. The National Trust submitted that this proposal did not meet the objective of the Municipal Strategic Statement under 21.04-7 or Planning Practice Note 37 which states that ‘Rural residential development should be located in areas to avoid or minimise any adverse impact on the environment, native vegetation and biodiversity.’

A number of submissions stated that the subject land contained important habitat for rare or threatened species. These included Ms Worland who submitted that the eastern part of the subject land contained significant habitat for Swift Parrot. Bendigo and District Environment Council submitted that although some rare or threatened plants had been found on the subject land, more would have been found if the subject land had been more comprehensively surveyed. Several submitters including Maldon Resident Group and Friends of the Box-Ironbark Forests were concerned with the potential loss of habitat of rare or threatened species and in particular of the endangered Brush-tailed Phascogale (Phascogale tapoatafa) and Swift Parrot (Lathamus discolor).

Mr Kern stated that, of the 125-hectare subject land area, 93 hectares was treed comprising four Ecological Vegetation Classes which were Box Ironbark Forest (Depleted), Grassy Dry Forest (Depleted), Valley Grassy Forest (Vulnerable) and Alluvial Herb-rich Woodland (Endangered). He said that remainder of the subject land of approximately 32 hectares was open grassland with scattered trees. Mr Kern stated that, as was common with Box-Ironbark vegetation, the entire area had experienced clearing and disturbance in the past with the few old trees left on the subject land mostly located along the drainage lines.

Ms Johnson, representing DELWP, submitted that DELWP supported in principle the proposed rezoning and development envisaged by the version 30 concept plan. She indicated that this plan met the two strategy objectives for permitting the clearing of native vegetation in Victoria which were to avoid the loss of higher quality native vegetation and to minimise the loss of lesser quality vegetation. Ms Johnson submitted that DPO8 would provide for ongoing management control of the retained vegetation. In relation to the amount of loss of native vegetation and offsets envisaged by the development, Ms Johnson submitted that the proposal had been assessed under the Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013) and DELWP had concluded:

- The 32.63-hectare vegetation loss would be ‘moderate’ and comprise 32.28 hectares of remnant patches and five scattered trees which would need to be offset either onsite (first party) or offsite (third party).
- The proposal would impact on three species that would exceed the threshold required for specific offsets (that is the proportional impact on their habitat across Victoria would be 0.005% or more). These species were Regent Honeyeater, Western Golden-tip and Arching Flax-lily.
The proposal would impact on 17 other rare or threatened species that would not exceed the threshold for specific offsets (that is the proportional impact on their habitat across Victoria being less than 0.005%). These species included Swift Parrot and Brush-tailed Phascogale.

Ms Johnson said that any clearing that would be required if a perimeter road was required as part of the fire management of the subject land had not been considered in the clearing or offset calculations.

Ms Johnson submitted that the proponent had advised DELWP that the balance of the subject land not being developed contained native vegetation which the proponent proposed to use to partially meet the required offsets as listed above. She said that the proponent proposed to obtain the remaining balance of offsets required from third party (or offsite) offsets. She added that as at 5 August 2015, the offset requirements for Western Golden-tip and Arching Flax-lily could not be met by available credits that were listed on the Native Vegetation Credit Register. In response to questions from the Committee, Ms Johnson said that it would be the proponent’s responsibility to identify land suitable for use as offsets and organise the listing on the Register so this land could then be used for third party offsets.

Ms Johnson noted that, as more than 0.5 hectare of native vegetation would be removed, the Secretary of DELWP would be the recommending referral authority for a permit application to remove native vegetation under Clause 66.04-2 of the Mount Alexander Planning Scheme. She added that DELWP would only agree to issue such a permit if it was satisfied that the proponent could fully meet the offset requirements.

Dr Lentini stated that, as offsets required for the loss of habitat cannot currently be identified, the rezoning should not be approved. She added that DELWP’s modelling used to calculate the proportional impact for threatened species was based on ‘biased’ data sets because of problems with the methodology used in surveying species. Dr Lentini stated that this would affect the offset requirements for species such as Swift Parrot. She said the impacts of housing development were not limited to vegetation clearing, the environmental features of the subject land had been underestimated and the rezoning would detrimentally impact on the Swift parrot habitat.

Mr Kern gave details of the impact that the defendable space around dwellings envisaged by the development would have on the vegetation on the subject land. He stated that the CFA had published guidelines on how vegetation in the defendable space should be managed (see Chapter 6 for details).

Mr Leslie was asked by the Committee whether a perimeter road around the subject area which would require substantial clearing of vegetation would be required as part of the fire management requirements for the subject area. He responded by saying that although such a road was not essential for fire protection, it would give greater access for fire fighters in the event of a fire.

Mr Cicero submitted that in terms of vegetation removal, the proposal successfully balanced the interests of bushfire safely and biodiversity protection. He said that large areas of the highest conservation vegetation would be protected by implementing a vegetation management plan and legal agreements registered on individual titles. Mr Cicero submitted that the loss of scattered trees was expected to be minimal and ‘Large Old Trees’ could be
avoided altogether as they were primarily located along gully lines in the lower part of the subject land where no development was proposed. He said that the removal of vegetation arising from the development would be offset in line with the *Permitted clearing requirements for native vegetation – Biodiversity assessment guidelines (Department of Environment and Primary Industries, September 2013)*. Mr Cicero emphasised that the proponent was aware that the development would not go ahead unless the required offsets were identified to DELWP’s satisfaction and a permit for native vegetation removal was issued.

Mr Cicero submitted that offsets would be managed through an offset management plan that would be prepared in accordance with DELWP’s requirements. He said ongoing offset management over the prescribed 10-year period could be enforced through a legal agreement under section 69 of the *Conservation, Forest and Lands Act 1987* and section 173 of the *Planning and Environment Act 1987*.

Council submitted that whether the proposal could meet the offset requirements was generally an issue for the permit application stage rather than at the Amendment stage and was addressed in DPO8.

In relation to potential impact on the adjoining Maldon Historic Reserve which has significant flora and fauna values, Ms Johnson submitted that the envisaged development proposed sufficient buffer adjoining the Maldon Historic Reserve to mitigate any edge effect on the Reserve from development. She added that Parks Victoria, the manager of the Reserve, had been consulted and did not consider that the subdivision would have any greater impact on the reserve than the existing residential development. Ms Johnson said that any encroachment issues from either people or animals could be minimised though planning permit conditions relating to fencing.

The impact of the proposal on native vegetation was considered by both the 2009 C36 panel report and the BMOSAC report. The C36 panel found that ‘*Biodiversity impacts including those on vegetation and rare of threatened species are not considered significant with 65 ha of 93 ha area of native vegetation on the subject land to be retained and protected under the provisions of the amendment particularly the more significant vegetation adjoining the Maldon Historic Reserve and along the existing waterways and drainage lines*’. The 2009 C36 panel report recommended that Amendment C36 should be adopted subject to ESO8 and DPO8.

The BMOSAC concluded that ‘*there was general agreement between all the parties that the impacts of the proposed development on biodiversity and native vegetation are relatively minor and can be managed*, and that:

- *The Advisory Committee supports the revised development plan ‘version 30’ from a fire management perspective.*
- *The amount and biodiversity conservation significance of native vegetation to be removed to implement the proposed fire management regime is acceptable.*
- *The Advisory Committee therefore concludes rural living development will not require any change to the way in which the surrounding bushland is managed.*

The BMOSAC considered the recommendation of the 2009 C36 panel for ESO8 to apply to the subject area and concluded that the requirements in the proposed section 173
agreements set out in DPO8 would duplicate the provisions in ESO8 and render them redundant.

7.3 Discussion

The Committee understands submitters’ concern about the extent of the vegetation that would need to be removed following the rezoning to allow development of the subject land. The Committee acknowledges concern expressed by submitters and Dr Lentini, with the potential loss of habitat of rare and threatened species and especially of the endangered Brush-tailed Phasocogale and Swift Parrot. The Committee acknowledges Dr Lentini’s concern that the current policy framework may not give the best results for conserving habitat of threatened species such as Swift Parrot. However, the Committee considers that the current policy in relation to Brush-tailed Phasocogale and Swift Parrot habitat has been appropriately applied by the proponent and DELWP to the subject land.

The Committee accepts DELWP’s advice that the extent of loss of vegetation envisaged by the development would comprise 32.63 hectares of remnant patches out of a total area of 93 hectares of vegetated land (as stated by Mr Kern), as well as five scattered trees. The Committee notes that area to be cleared would be over one-third of the currently vegetated area of the subject land.

In relation to concern expressed by submitters that the extent of clearing might not meet the objective of Planning Practice Note 37, the Committee is guided by the DELWP submission which supports the rezoning and the envisaged development. The Committee accepts DELWP’s advice that the proposal will have a ‘moderate’ impact and meet the objectives for permitting the clearing of native vegetation by avoiding the loss of higher quality native vegetation and minimising the loss of lesser quality vegetation. The Committee accepts the outcome shown on Map 1 Condition of Native Vegetation: Overall Habitat Score prepared by Practical Ecology (document 23). The Committee therefore considers that the Amendment would not lead to an unacceptable extent of native vegetation removal.

However, any clearing beyond 32.63 hectares would exceed the area agreed by DELWP. The Committee therefore considers that such an additional area would be unlikely to still meet the intent of the objective of Planning Practice Note 37, to ‘avoid or minimise the adverse on the environment, native vegetation and biodiversity’.

The Committee accepts Mr Cicero’s submission that large areas of the highest conservation vegetation would be protected through the implementation of a vegetation management plan and legal agreements registered on individual titles. The Committee accepts that losses of scattered trees would be expected to be minimal and ‘Large Old Trees’ would be avoided altogether as they are primarily located along gully lines where no development is proposed. The Committee accepts that these protected areas will contribute to satisfying the offset requirements and will be managed in line with an offset management plan over the prescribed 10-year period. The Committee supports the proponent’s proposal to conserve these protected areas in perpetuity by applying legal agreement under Section 69 of the Conservation, Forest and Lands Act 1987 or section 173 of the Planning and Environment Act 1987.
The Committee accepts DELWP’s submission that:

- The extent of loss of vegetation would be 32.63 hectares which would need to be offset onsite (first party) or offsite (third party).
- The proposal would impact on three species that would exceed the threshold required for specific offsets, specifically Regent Honeyeater, Western Golden-tip and Arching Flax-lily.
- The proposal would impact on 17 other rare or threatened species including Swift Parrot and Brush-tailed Phascogale but specific offsets would not be required under current policy for these species.

Although offset requirements for Western Golden-tip and Arching Flax-lily cannot currently be met through available ‘onsite’ or ‘offsite’ credits currently listed on the Native Vegetation Credit Register, this can change through further work by the proponent and an update to the register. A permit to remove native vegetation would need to be referred to the Secretary of DELWP before a decision is made, which provides certainty that such permit would only be issued if the proponent can secure and meet all required offsets.

The Committee accepts Mr Schier’s advice that the issue of meeting offset requirements was generally an issue for the permit application stage rather than at the rezoning stage.

The Committee agrees with DELWP that the envisaged development includes sufficient buffer adjoining the Maldon Historic Reserve, which has significant flora and fauna values, to mitigate any edge effect from development on the Reserve. The Committee accepts DELWP submission that Parks Victoria, the manager of the Maldon Historic Reserve, does not consider that the subdivision would have any greater impact on the Reserve than the existing residential development. However, the Committee considers that boundary issues such as fencing, would be better covered in DPO8 rather than in planning permits as proposed by DELWP, as this would provide for a standardised approach across the subject land rather than a lot by lot approach.

The Committee notes that the 2009 C36 panel report found that biodiversity impacts including those on rare or threatened species, were not considered significant and that the more significant vegetation adjoining the Maldon Historic Reserve and along the existing waterways and drainage lines would be protected. The Committee notes that 2009 C36 panel report recommended that the amendment be adopted subject to DPO8 and the introduction of a new ESO8.

The Committee notes that the BMOSAC report concluded that the impacts of the proposed development on biodiversity and native vegetation were relatively minor and could be managed. The Committee considers that its findings are similar to the BMOSAC report which concluded that the amount and biodiversity conservation significance of native vegetation to be removed to implement the proposed fire management regime was acceptable. The Committee agrees with the BMOSAC report that the proposed rural living development would not require any changes to the way in which the surrounding bushland was managed. The Committee has reached the same conclusion as the BMOSAC that the requirements in the proposed section 173 agreement, as set out in DPO8, would duplicate the ESO8 provisions and render them redundant.
7.4 Conclusions

The Committee concludes:

- The extent of envisaged vegetation removal meets the strategic objectives for permitting the clearing of native vegetation in Victoria.
- All vegetation losses including loss of habitat of rare or threatened species and any required offsets, will be considered by the DELWP through a separate statutory process.
- Onsite offset areas in perpetuity should be conserved by applying a legal agreement under section 69 of the Conservation, Forest and Lands Act 1987 or section 173 of the Planning and Environment Act 1987.
- Vegetation cannot be cleared until all offset requirements are met to the DELWP’s satisfaction and until a permit to clear native vegetation has been issued by the Department.
- Any vegetation clearing beyond the envisaged 32.63 hectares would exceed the area agreed to by the DELWP and would be unlikely to meet the intent of the relevant objective of Planning Practice Note 37.
- Boundary fencing and land management arrangements will ensure that the development does not adversely impact on the conservation values of the adjoining Maldon Historic Reserve.

7.5 Recommendations

The Committee recommends:

3. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Require the development plan to be supported by:
      • A compliant offset management plan in accordance with the relevant manual.
      • A Section 173 agreement that shows flora and fauna related matters listed in a new Clause 5.0.
   b) Introduce a new Clause 5.0 that requires, among other matters:
      • A 10-year offset management plan and a restriction on property title that prevents clearing of this native vegetation, to the satisfaction of the Department of Environment, Land, Water and Planning on any lot where native vegetation is to be retained in order to offset the impacts of native vegetation removal.
8 Cairn Curran water catchment

8.1 The issue

The subject land is located in the Cairn Curran water supply catchment. The main issue is whether the development will threaten the status of the Cairn Curran catchment, largely because of the impact of septic tanks on water quality.

A significant change to the treatment of this issue occurred before the Hearing, when the proponent offered to provide reticulated sewerage to all but four of the lots.

A further issue is whether run-off from the development is likely to exacerbate erosion in the catchment.

8.2 Evidence and submissions

Sewerage

Council’s Part A submission provided background to the issue:

*Practice Note 55 – Planning in open drinking water catchments (November 2012) was considered by the BMOSAC, which concluded that the rezoning is unaffected by it, as the associated Guidelines apply at planning permit stage rather than at amendment stage. Council’s Memorandum of Understanding with Goulburn-Murray Water, which relates to local application of the Guidelines, has been extended to 30 June 2016 to cover the interim until a Domestic Wastewater Management Plan (DWMP) is in place. It is noted that Goulburn-Murray Water has not yet made a submission to the Committee, while the submission from Coliban Water asserts that it is critical for the DWMP to be completed as a matter of urgency in managing water supply quality. A draft DWMP is currently under consideration.*

Many of the community submissions raised concern about the development’s impact on the Cairn Curran catchment. These were largely based on the exhibited Amendment, which had not initially proposed reticulated sewerage. For example, Ms Wyldbore submitted:

*Cairn Curran Reservoir has one of the highest pollution levels in the State. The development will not be connected to town sewerage. The run off from 42 septic tanks poses real risks to the water quality, as does increased and polluted run-off from roofs, roads, paved surfaces etc. This also interrupts natural flows into and out of the area’s creeks.*

*Further, there is substantial recreational use at Cairn Curran, a valuable source of income for the township and a very valuable regional asset. The potential for further increasing pollution to the Reservoir – and therefore having it closed to public access – is a huge concern.*

Goulburn-Murray Water was represented by Mr Repacholi who submitted that the proposed connection to reticulated sewerage “is yet to be approved or demonstrated as being practicable”. Further, he argued that the lack of an approved Domestic Wastewater

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29 Submission 78, p. 1
Management Plan (DWMP) in the Shire meant that the subject land should not be rezoned unless there is a specific requirement to connect all lots to reticulated sewerage.

In its submission, Mr Cicero outlined the proposal to connect most of the lots to reticulated sewerage:

- **It is noted that the ‘Guidelines for Planning permit applications in open, potable water supply catchments’ is now adopted. It seeks to protect water supply catchments from inappropriate development and in particular seeks to apply a development density of 1:40 hectares in the absence of a Domestic Waste Disposal Policy.**
- **It is submitted that as there is no adopted Domestic Waste Disposal Policy and following a review of the Guidelines and submissions from Coliban Water and Goulburn Murray Water, it is appropriate for the smaller lots to be connected to sewer.**
- **The proponent would agree to a condition being included in any Development Plan Overlay to require all of the lots except lots proposed lots 34-36 and 42 to be connected to a reticulated sewer system.**
- **It is considered that the retention of a requirement for a Section 173 Agreement, which in part will prohibit the further subdivision of the proposed lots and the development of more than one dwelling on each of the proposed lots will ensure that the proposed estate is consistent with a Rural Living rather than an urban residential offer.**

Mr Milner noted the proponent’s offer to provide reticulated sewerage to most of the lots, but expressed further concerns:

*While this offer is made as a response to the sustainable management of wastewater it has significant implications for the potential longer-term manner of development on the subject site and other land that might access the sewer at a later date.*

*In effect the delivery of a full range of utility services sets the context and potential for urban style development in the south east quadrant of Maldon to the subject site.*

Ms Cotter’s evidence presented an alternative view, stating that the provision of reticulated sewerage addresses the main considerations regarding the impact of onsite effluent disposal on water catchments.

**Protection of Riparian Zones**

Mr Repacholi expressed concern that the proposed development would encroach on high quality agricultural land or adversely impact on waterways, in contravention of Clause 16.02-1 (Rural residential development) in the Planning Scheme. Citing Planning Practice Note 37 and the 2014 *Mount Alexander Rural Land Study*, he considered that the steep and rolling

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30 Best Hooper Lawyers for Tarran Valley Pty Ltd, Mount Alexander Planning Scheme Amendment C36: Advisory Committee – Proponent (December 2015), p. 13
31 Rob Milner, 10 Consulting Group, *Mount Alexander Planning Scheme Amendment C36 - Strategic Planning Evidence* (November 2015), p. 42
slopes of the subject land, the thin and dispersive soils, and the evidence of gully erosion limited the capacity for development.

8.3 Discussion

Sewerage

The introduction of Guidelines for *Planning Permit Applications in Open, Potable Water Supply Catchments* in November 2012 changed the planning context for the development envisaged by the Amendment. The SPPF requires planning to consider the Guidelines, however, the Guidelines themselves are not statutorily enforceable. They provide guidance when assessing a planning permit to use land for a dwelling or to subdivide land and have been used by the Victorian Civil and Administrative Tribunal. They apply to all open drinking water supply catchments declared to be special water supply catchment areas under Division 2 of Part 4 of the *Catchment and Land Protection Act 1994*, including the Cairn Curran catchment. The subject land is located in this catchment.

Although the Guidelines apply specifically to planning permits, the Committee has considered them against relevant SPPF clauses to determine whether aspects of the Amendment, including rezoning the land for rural living, can be planned in a manner that protects water quality in the Cairn Curran catchment. The Committee has taken this strategic approach because:

- the Amendment does not include any specific development proposal
- the planning permit application process is the most appropriate stage for assessing potential impact on the water catchment when full details are known and when the Guidelines apply.

Guideline 1 covers ‘Density of dwellings’ and states:

*Where a planning permit is required to use land for a dwelling or to subdivide land or where a planning permit to develop land is required pursuant to a schedule to the Environmental Significance Overlay that has catchment or water quality protection as an objective:*

- *the density of dwellings should be no greater than one dwelling per 40 hectares* (1:40 ha); and
- *each lot created in the subdivision should be at least 40 hectares in area.*\(^{32}\)

The Committee notes that Guideline 1 does not explain the logic behind the 40-hectare minimum lot size in open drinking water catchments. This information is useful when strategically planning land in water catchments.

There are three categories, which can be summarised as:

**Category 1** A planning permit is not required for a dwelling, subdivision or development by an ESO schedule with a catchment or water quality protection objective.

**Category 2** A planning permit is required for a dwelling, subdivision or development by an ESO schedule with a catchment or water quality protection objective and the proposed development will be connected to reticulated sewerage.

\(^{32}\) DSE, *Planning Permit Applications in Open, Potable Water Supply Catchments* (November 2012), p. 3
Category 3  An endorsed catchment policy exists and the proposed development is consistent with the policy.

Guideline 1 includes a fourth category which advises the water corporation will consider allowing a higher density of development than would otherwise be permitted under the Guideline if a lengthy list of conditions are met. These include the water corporation being satisfied that the Council has prepared, adopted and is implementing a DWMP in accordance with the DWMP requirements. The requirements for preparing a DWMP are specified in the Guidelines.

The Committee considers that lots on the subject land would have to be either connected to reticulated sewerage or be developed only until an DWMP is adopted and the requirements of this plan are met. This two-prong approach provides certainty that lots will only be developed if they are generally consistent with the most important aspects of Guideline 1. The Committee questions why Category 2 needs to be associated with an ESO if reticulated sewerage is provided or if lots cannot be developed until a DWMP that seeks to protect the water catchment is endorse through the appropriate process. This is a matter to be considered during the planning permit application stage.

The proponent has provided written confirmation that it proposes to connect a majority of the lots to reticulated sewerage so the only remaining issue is the preparation, adoption and implementation of a DWMP. Council has not yet completed this in consultation with stakeholders, but it is proposed that DPO8 include a condition that any lot that is not connected to reticulated sewerage will only be developed in accordance with a future adopted DWMP.

Protection of Riparian Zones

Guideline 3 of Planning Permit Applications in Open, Potable Water Supply Catchments (2012) refers to protecting riparian zones:

Vegetated corridors and buffer zones along waterways

Planning and responsible authorities should encourage the retention of natural drainage corridors with vegetated buffer zones at least 30 metres wide along waterways. This will maintain the natural drainage function, minimise erosion of stream banks and verges and reduce polluted surface run-off from adjacent land uses.33

The Committee accepts that riparian zones need to be protected. It supports the conditions outlined in DPO8 as a requirement for the development:

• Protection of the riparian zone and water quality on any waterway such that no building envelope can be located within 30 metres of a waterway
• A comprehensive stormwater strategy for the subject land which provides for stormwater detention and water quality treatment through the use of water sensitive urban design techniques
• A program of remediation works to address erosion.

33 Ibid., p. 4
8.4 Conclusions

The Committee concludes:

- The practical implication of the Guidelines for Planning Permit Applications in Open, Potable Water Supply Catchments in 2012 is that reticulated sewerage would be required at the subject land unless there is a significantly reduced lot yield.
- Any lots that are not connected to reticulated sewerage should only be developed until a DWMP has been endorsed and its requirements are met.
- A DWMP is likely to be adopted in the longer term future.
- Providing reticulated sewerage to most proposed lots largely removes the issue as a major constraint on development.

8.5 Recommendations

The Committee recommends:

4. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Require the development plan to show:
      - lots not connected to a reticulated sewerage system to be developed only if there is an adopted Domestic Wastewater Management Plan that includes land subject to this schedule; and to meet the requirements of the approved Plan
      - protection of the riparian zone and water quality on any waterway so that no building envelope can be located within 30 metres of a waterway.
   b) Require the development plan to be supported by:
      - a remediation works program that addresses onsite erosion.
9 Other issues

Other issues raised in submissions related to the potential impact of the proposed development on amenity, infrastructure, services and traffic.

9.1 Amenity and services

Several submitters commented that the development is likely to place increased pressure on services and infrastructure in Maldon, as well as reduce amenity of local residents. For example, Ms Wyldbore submitted that:

*Existing ratepayers may also face significant costs with demands for greater service delivery and infrastructure such as road maintenance, footpath installation, rubbish disposal etc.*

Ms Gamble and Mr Topp addressed ‘infrastructure and amenity’ as one of the grounds for their opposition to the development:

*The capacity of local infrastructure to service such a substantial increase in dwellings has been inadequately addressed. Water supply is problematic – particularly when also considering the water pressure requirements for fighting fires; existing roads inadequate to the traffic associated with civil and construction works of this scale, let alone the new residents. Medical services in Maldon are already stretched.*

The Committee does not accept the argument that this development would be a tipping point that will negatively impact on services, infrastructure or amenity in Maldon. There has been very limited population growth in Maldon in recent years, and the additional dwellings and population on the outskirts of the town will not create capacity problems.

Further, the specific infrastructure issues relating to the development will be addressed at the planning permit stage.

9.2 Traffic

A number of submissions expressed concern that the development will place excessive traffic impact on Maldon.

An example is the submission by Mr Willemse:

*With the large number of dwellings proposed we would see a huge impact on traffic volume using Boundary R. as the main entry and exit road to this development. Boundary Rd. will also become a major thoroughfare from Castlemaine to Bendigo. High traffic volumes, noise and the passing of trucks will greatly impact on residents who will lose the tranquil and secluded lifestyle that we sought by moving to Maldon.*

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34 Submission 78, p. 2
35 Submission 79, p. 2
36 Submission 30
Ms Moore also raised the issue:

I believe that, due to the increased traffic that will be associated with the development, the quiet streetscape associated with this heritage town will be disrupted and there will be more trucks and vehicles along the Main Street, Hornsby Street and Morris Street as it will be the direct route to Bendigo. Boundary Rd. will also see a large volume of traffic as it is the entry and exit point to the Tarran Valley Estate ...  

The Committee accepts that the addition of households will lead to some expansion of traffic within Maldon, and that the streets already suffer congestion at peak tourist times. However, the expansion of population over the several years of development is unlikely to impose inordinate traffic impacts on the town.

There will clearly be a change in the traffic along Boundary Road, which currently has low levels of traffic volumes. However, the Committee considers that there is unlikely to be a capacity constraint in Boundary Road.

While concerns about traffic are not sufficient to abandon the Amendment, the extent of additional traffic and any mitigation measures will be addressed in further traffic analysis required as part of the Development Plan. The proposed Schedule to DPO8 includes the requirement for a traffic study prior to the commencement of development, stating that the approved Development Plan must include:

- The preparation of a Traffic Impact Assessment report to the satisfaction of the responsible authority in consultation with VicRoads. This assessment will address the impact of the development on the existing arterial road network and details of any mitigating works required on the Castlemaine-Maldon Road.

The Committee considers that many of the submissions regarding traffic impacts reflect concern about potential change to the character of the town as a result of the development. This character is important and should be protected, as discussed in Chapter 5 of this report. However, the community of Maldon is sufficiently resilient to cope with the changes that will result from the development, if the planning framework recommended by this report is adopted.

In summary, the Committee anticipates that changes in traffic are unlikely to exceed the capacity of the road system, and that traffic issues will be further addressed in the Traffic Impact Assessment.

### 9.3 Recommendations

The Committee recommends:

5. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Require the development plan to show:
      - The location of physical infrastructure such as roads and reticulated services, and the proposed staging of infrastructure development.

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37 Submission 76
b) Require the development plan to be supported by:

- A Traffic Impact Assessment in consultation with VicRoads that addresses the development’s impact on the existing arterial road network and details of any mitigating works required on Castlemaine-Maldon Road.
10 Form and content of the Amendment

Council and the proponent supported the form of the Amendment recommended by the BMOSAC. Submitters were concerned about the form and content of the Amendment and there was a ‘without prejudice’ discussion about this towards the end of the Hearing. Related issues include the zone selection, minimum lot size, DPO version 30 concept plan and drafting issues.

(i) Zone and minimum lot size

Council has adopted the BMOSAC’s recommended version of the Amendment which includes a one-hectare minimum lot size in the Rural Living Zone schedule.

Submitters considered the minimum one-hectare size to be too small. Some submitters were concerned that reticulated sewerage to the subject land would encourage smaller lots and that the subject land would set precedence for other land around Maldon. They held differing views about the minimum subdivision lot size with suggestions ranging from two hectares to 40 hectares. Those who preferred 40 hectare lots sought the subject land to either remain in the Farming Zone or be rezoned to the Rural Conservation Zone.

The Committee considers that the Farming Zone and Rural Conservation Zone are unsuitable for implementing the rural living strategy shown in the Maldon Framework Plan at Clause 21.03 of the Mount Alexander Planning Scheme. The Committee supports the Rural Living Zone because:

- It will ensure that lots are at least 10,000 square metres (a standard size suburban lot ranges between 500 to 800 square metres)
- Its purposes such as protecting and enhancing the natural resources, biodiversity and landscape and heritage values of the area, are important when planning for rural living just outside of Australia’s first notable town.

Chapter 5 discusses the appropriateness of one hectare lots in relation to heritage character and visual impact.

The Committee adds that the Rural Living Zone provides the ability to specify any minimum subdivision lot size in its schedule. This number will vary based on local planning considerations. The Rural Living Zone specifies that where a localised minimum lot size has not been specified in the schedule, the State default in the absence of this local knowledge is two hectares. A minimum lot size of less than two hectares should not be confused as being an inferior planning outcome or inconsistent with the planning provisions.

Based on discussion in earlier chapters of this report, the Committee finds that the one hectare minimum lot size is suitable for the subject land. Developing the subject land for rural living will not set any precedence. Each amendment needs to be strategically justified and assessed on its own merit.

(ii) Use of the Development Plan Overlay

The DPO specifies:

An application under any provision of this scheme which is generally in accordance with the development plan is exempt from the notice
requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

Bendigo and District Environment Council referred to Planning Practice Note 23 which states:

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.

Bendigo and District Environment Council submitted that the DPO should not be used because it does not align with these circumstances. It added that the community was entitled to have a say on native vegetation removal, bushfire management, effluent disposal and other planning matters. Mr Newman expressed concerned that the community will not have the ability to challenge future development on the subject land.

The Panel notes that area where the DPO8 is proposed to be applied is 126 hectares, in single ownership, has no existing residential population and adjoins the Farming Zone and Public Conservation and Resource Zone. The application of DPO8 therefore aligns with Planning Practice Note 23 and can achieve the intended planning outcomes.

Members of the community have had considerable opportunity through written and oral submissions to express their views on matters that Bendigo and District Environment Council believes that the community is entitled to have a say on. Many submissions provided a level of detail that would be normally considered with a planning permit application. Many provisions included in DPO8 respond directly to issues raised by the community, groups and organisations and therefore collectively help shape the requirements for a future development plan. Members of the community will have the opportunity to comment on any future planning permit application, including those required through other provisions in the Planning Scheme, that is not generally in accordance with the development plan.

For these reasons, the Committee considers the DPO and the proposed DPO8 are appropriate for the subject land.

(iii) DPO8 requirements

Council supported DPO8 as recommended by BMOSAC and sought to add a requirement to:

- Screen any dwellings from Castlemaine-Maldon Road through either a revised lot layout or additional native vegetation
- Specify non-reflective materials to reduce potential visual impact from Mount Tarrengower.

Chapter 5 discusses the merits of the requirements and the Committee has recommended changes to DPO8, as shown in Appendix E.

(iv) Version 30 concept plan, 30 May 2014

A concept plan was prepared for the two previous planning process. BMOSAC recommended that DPO8 require the development plan to be generally in accordance with the version 30 concept plan, 30 May 2014. Council and the proponent asked the Committee to adopt DPO8 including the version 30 concept plan.
Submitters were concerned with this concept plan because of reasons outlined in the heritage and visual impact chapter of this report. As outlined earlier in the report, the Committee shares submitters’ concern about the potential visual impact resulting from the layout in the version 30 concept plan.

The Committee understands that this plan was prepared to specifically address bushfire management, however, a better balance has to be found between bushfire management and other planning matters. For these reasons, the Committee considers that the version 30 concept plan forms a reasonable discussion point but should not form the basis for a future development plan until it is considered further in the context of other planning matters.

There was no reference to a concept plan in the exhibited DPO schedule therefore the Committee makes no recommendation on this matter.

(v) Drafting issues

Recommended changes to DPO8, as shown in Appendix E, include the following drafting changes that:

- Change Schedule 5 to Schedule 9 - although this report refers to DPO8, a new DPO8 has been introduced into the Mount Alexander Planning Scheme since the BMOSAC report
- Delete provisions that duplicate provisions in the DPO
- Delete provisions in Clause 1.0 and 2.0 that are no longer required because they have been addressed through other provisions within and outside of the schedule
- Make the schedule more legible by:
  - separating supporting information requirements from more general development plan requirements
  - making general clerical changes.

10.2 Conclusions

The Committee concludes:

- The Rural Living Zone, one hectare minimum subdivision lot size and DPO are appropriate for the subject land
- Version 30 concept plan should not be referred to in the DPO schedule
- The DPO schedule needs changes to its drafting to assist with its operation.

10.3 Recommendations

The Committee recommends:

6. Amend Development Plan Overlay Schedule 5, as shown in Appendix E, to:
   a) Change Schedule 5 to Schedule 9.
   b) Change the provisions, as recommended by the Bushfire Management Overlay Standing Advisory Committee, to include practical provisions related to matters such as animal management and dams.
   c) Delete provisions that duplicate other provisions and are no longer required.
   d) Change provisions that address drafting issues.
11 Response to Terms of Reference

The Terms of Reference state that the Committee must produce a written report for the Minister for Planning that is consistent with paragraphs 3 and 4 which includes a number of specified outcomes. The Committee’s response to these requirements is shown below.

Table 2 Response to the Terms of Reference

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<thead>
<tr>
<th>Terms of reference requirement</th>
<th>Section of report that addresses this requirement</th>
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</thead>
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<tr>
<td>An assessment of the appropriateness of the provision of additional rural residential development in Maldon and its environs and the appropriateness of rezoning the subject land in light of the Planning and Environment Act 1987 and the Mount Alexander Planning Scheme provisions</td>
<td>Chapters 4 to 10</td>
</tr>
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<td>Whether the subject land can be practicably developed for rural residential development when considerations such as land capability, topography, hydrology, geotechnical, erosion management, landscape significance, servicing including reticulated services, access, vegetation removal, building envelopes, defendable space, bushfire hazard landscape assessment and a bushfire management statement for the subject land are generally considered</td>
<td>Chapters 4 to 10</td>
</tr>
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<td>Whether within the broader landscape the subject land is appropriate for rural residential development noting the land is designated as a Bushfire Prone Area under the Building Regulations 2006 and as a Bushfire Management Overlay under the Mount Alexander Planning Scheme, and the significant bushfire hazard in the wider landscape</td>
<td>Chapter 6</td>
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<tr>
<td>Whether the extent of vegetation removal, including native vegetation, is appropriate to facilitate the rural residential development</td>
<td>Chapter 7</td>
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<td>Whether the affected land is located in a special water supply catchment area under the Catchment and Land Protection Act 1994 and the appropriateness of locating a rural residential development in such an area</td>
<td>Chapter 8</td>
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<td>Whether a rural residential development on the subject land would affect the heritage significance of Maldon and the adjoining Maldon Historic Reserve</td>
<td>Chapter 5</td>
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<tr>
<td>Whether the rural residential development would affect any landscape values in the wider landscape, including areas or features and significant views</td>
<td>Chapter 5</td>
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<td>Whether the amendment prioritises the protection of human life over other policy considerations in planning and decision-making and applies the precautionary principle to planning and decision-making where appropriate when assessing the risk to life, property and community infrastructure from bushfire as identified in the Overarching strategies of Clause 13.5 of the planning scheme</td>
<td>Chapter 6</td>
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<td>Any other relevant matters raised in the course of the Advisory Committee hearings</td>
<td>Chapters 4 to 10</td>
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<td>A list of persons who made submissions considered by the Advisory Committee</td>
<td>Appendix B</td>
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<tr>
<td>A list of persons consulted or heard</td>
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</table>
Appendix A  Terms of Reference

Advisory Committee appointed under Part 7, Section 151 of the Planning and Environment Act 1987 to report on Amendment C36 to the Mount Alexander Planning Scheme, which seeks to facilitate the rezoning of land for a rural residential development.

Version: 9 dated 22 April 2015

Name

1. The Advisory Committee is to be known as the 'Tarran Valley Rezoning Advisory Committee'.

2. The Advisory Committee is to have members with the following skills:
   a. Strategic and statutory planning,
   b. Environmental planning; and
   c. Bushfire planning and management.

Purpose

3. The purpose of the Advisory Committee is to consider:
   a. The appropriateness of Amendment C36 to the Mount Alexander Planning Scheme and provide advice to the Minister for Planning on whether the land at Crown Allotments 1-S, 5A, 5B, 6A, 7 A, 13-14, 21-32, Section IB, Parish of Maldon (the subject land) and its location, near Maldon, is suitable for rural residential development.
   b. Whether the subject land is an appropriate location for additional dwellings on new lots in rural residential settings given the objectives of the Planning and Environment Act 1987 and in particular:
      • to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
      • to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
      • to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
      and the consideration of State Planning Policy 13.05 (Bushfire) and the existing Bushfire Management Overlay objectives:
      • to assist to strengthen community resilience to bushfire.
      • to ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
      • to identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
      • to ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.
      • without unacceptable compromise of flora and fauna and the consideration of Amendment C36 against current state planning policy, regional growth plan and local planning policy.

4. In particular, the Advisory Committee is to focus on:
   • Whether the subject land can be practicably developed for rural residential development when considerations such as land capability, topography, hydrology, geotechnical, erosion management, landscape significance, servicing including reticulated services, access, vegetation removal, building envelopes, defensible space, bushfire hazard landscape assessment and a bushfire management statement for the subject land are generally considered;
   • Whether within the broader landscape the subject land is appropriate for rural residential development noting the land is designated as a Bushfire Prone Area under the Building Regulations 2006 and as a Bushfire Management Overlay under the Mount Alexander Planning Scheme, and the significant bushfire hazard in the wider landscape;
• Whether the extent of vegetation removal, including native vegetation, is appropriate to facilitate the rural residential development;
• Whether the affected land is located in a special water supply catchment area under the Catchment and Land Protection Act 1994 and the appropriateness of locating a rural residential development in such an area;
• Whether a rural residential development on the subject land would affect the heritage significance of Maldon and the adjoining Maldon Historic Reserve; and
• Whether the rural residential development would affect any landscape values in the wider landscape, including areas or features and significant views.

Background
5. The amendment proposes to rezone approximately 125 hectares of land approximately 2.5 kilometres south-east of Maldon on the north side of the Castlemaine-Maldon Road, from Farming Zone to Rural Living Zone. Essentially, the amendment would facilitate a rural residential development of 42 lots ranging in size from 1.0 to 22.8 hectares.
6. The site is located in a high bushfire risk landscape, the topography is undulating and native vegetation covers 73 per cent of the site. The site connects to surrounding bushland on private land and Crown land, including the Maldon Historic Reserve to the north, east and south.
7. The amendment was authorised on 26 March 2007 and exhibited between 17 May and 22 June 2007, attracting 30 submissions.
8. The panel hearing was held from 8 to 10 December 2008 to consider the submissions. The proponent, Mount Alexander Shire Council (council) and five submitters presented to the Panel. No agencies presented to the Panel.
9. The panel report was received in January 2009 and recommended that council adopt the amendment, subject to changes.
10. On 7 February 2009 major bush fires, known as Black Saturday, had a major impact in Victoria.
11. The amendment was adopted by council on 10 March 2009.
12. On 2 February 2010, the former Minister for Planning deferred a decision on the amendment until the 2009 Victorian Bushfires Royal Commission final report had been released.
14. New bushfire planning provisions were introduced into all Victorian planning schemes via Amendment VC83 on 18 November 2011.
15. In response, the amendment proponent submitted a bushfire assessment and net gain analysis. In November 2012, the report was circulated to council, the Country Fire Authority (CFA) and the former Department of Sustainability and Environment (DSE). On 7 March 2013, an additional letter from the former DSE was received expressing concern about the conditions proposed by the CFA and advising that DSE would not support the higher level of native vegetation removal.
16. On 2 July 2013, the former Minister for Planning, by letter of referral dated 2 August 2013, sought the advice of the Bushfire Management Overlay Standing Advisory Committee on:
• Whether the location of the site is appropriate for rural living development given the significant bushfire hazard in the wider landscape.
17. The Minister also sought other advice on fire management regime, its long term viability, conservation and long term management of surrounding bushland if the Standing Advisory Committee was satisfied that the location is appropriate.
18. A directions hearing was held on 13 March 2014, the hearing was held on 7 and 8 May 2014 and the Advisory Committee submitted its report to the Minister on 12 June 2014. Council, the CFA and the former Department of Environment and Primary Industries presented to the Standing Advisory Committee.
Method

20. The Advisory Committee may apply to vary these Terms of Reference in any way it sees fit prior to submission of its report.

21. The Advisory Committee may inform itself in anyway it sees fit, but must consider all relevant matters to the subject land and proposed Amendment C36, including but not limited to:
  - Relevant provisions of the Planning and Environment Act 1987 and the Mount Alexander Planning Scheme, including Clause 13.05 of the State Planning Policy Framework;
  - Any relevant Minister’s Directions and departmental practice notes, advisory notes and guidelines, including PPN37: Rural Residential Development, November 2013 and PPN46:
  - The Mount Alexander Planning Scheme Amendment C36 Tarran Valley Maldon panel report dated January 2009;
  - The Bushfire Management Overlay Standing Advisory Committee Report on Amendment C36 to the Mount Alexander Planning Scheme;
  - The relevant commentary and the accepted recommendations of the Final Report of the 2009 Victorian Bushfires Royal Commission;
  - The relevant parts of the State Bushfire Plan 2012;
  - Relevant municipal fire management plan(s);
  - All relevant material prepared by or for the proponent; and
  - The views of the proponent, council, departments, authorities and any other interested party.

22. The Advisory Committee must consider all relevant submissions.

23. The Advisory Committee is expected to carry out a public hearing.

24. The following parties should be asked to present to the Advisory Committee:
  - The proponent;
  - Mount Alexander Shire Council;
  - Emergency Management Victoria
  - Country Fire Authority;
  - Department of Environment, Land, Water & Planning;
  - Parks Victoria;
  - Goulburn Murray Water
  - North Central Catchment Authority;
  - Coliban Water;
  - Heritage Victoria; and
  - Any other interested parties.

25. The Advisory Committee is bound by the rules of natural justice.

26. The Advisory Committee may regulate its own proceedings, including:
  - The Advisory Committee may meet and invite others to meet with them when there is a quorum of at least two Committee members.
  - The Advisory Committee may limit the time of parties appearing before it.
  - The Advisory Committee may prohibit or regulate cross-examination.

Submissions are public documents

27. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly until a decision has been made on its report or five years has passed from the time of its appointment.
28. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain ‘in camera’.

Outcomes
29. The Advisory Committee must produce a written report, and submit it to the Minister for Planning, consistent with paragraphs 3 and 4, which includes but is not limited to:
   - An assessment of the appropriateness of the provision of additional rural residential development in Maldon and its environs and the appropriateness of rezoning the subject land in light of the Planning and Environment Act 1987 and the Mount Alexander Planning Scheme provisions;
   - Whether the amendment prioritises the protection of human life over other policy considerations in planning and decision-making and applies the precautionary principle to planning and decision-making where appropriate when assessing the risk to life, property and community infrastructure from bushfire as identified in the Overarching strategies of Clause 13.5 of the planning scheme;
   - An assessment of submissions to the Advisory Committee;
   - Any other relevant matters raised in the course of the Advisory Committee hearings;
   - A list of persons who made submissions considered by the Advisory Committee;
   - A list of persons consulted or heard.

Timing
30. The Advisory Committee is required to complete its hearings no later than 40 business days from the date of its appointment.
31. The Advisory Committee is required to submit its report in writing as soon as practicable but no later than 40 business days from the completion of its hearings.

Fee
32. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the Planning and Environment Act 1987.
33. The costs of the Advisory Committee will be met by the Department of Environment, Land, Water & Planning.

Project Manager
34. Day to day liaison for the Advisory Committee will be through Greta Grivas, Senior Project Officer, Planning Panels Victoria on 8392 6393 and email greta.grivas@delwp.vic.gov.au
35. Administrative and operational support to the Committee will be provided by Robert Rorke of the Department of Environment, Land, Water & Planning on ph. 4433 8000 or by email at robert.rorke@delwp.vic.gov.au.

Hon Richard Wynn MP
Minister for Planning
Date 28/6/15

ADDENDUM 1 TO THE TERMS OF REFERENCE

The Terms of Reference for Tarran Valley Rezoning Advisory Committee are amended as follows:
A    After considering the advice of the Department of Environment, Land, Water & Planning and to provide for additional consultation and transparency I have decided to include an additional dot point at the end of clause 21 of the Terms of Reference:
   - The Advisory Committee may advertise to seek the views or a submission from any interested party.
B    After considering a request made by the Tarran Valley Rezoning Advisory Committee, I have decided to replace clause 30 of the Terms of Reference with:
30    The Advisory Committee is required to complete its hearings as soon as practicable from the date of its appointment.

Hon Richard Wynn MP
Minister for Planning
Date 9/8/15
## Appendix B  Submitters to the Amendment

### Submitters to the 2015 process

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* Was also a submitter to the 2007 process
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**Submitters to the 2007 process and not the 2015 process**

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<td>Castlemaine Action Inc</td>
<td>Murray Forbes</td>
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<tr>
<td>Castlemaine Property Group</td>
<td>Netti Byrnes</td>
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<tr>
<td>Coral O’Hara</td>
<td>North Central Catchment Management Authority</td>
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<tr>
<td>Submitter</td>
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<tr>
<td>Country Fire Authority&lt;sup&gt;+&lt;/sup&gt;</td>
<td>Peter Nestorowicz</td>
</tr>
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<td>Environment Protection Authority</td>
<td>Ralph Fuller</td>
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<tr>
<td>Gary Edwards and Sue Wood</td>
<td>Rose Watson</td>
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<tr>
<td>Goulburn-Murray Water&lt;sup&gt;+&lt;/sup&gt;</td>
<td>Sally Dean-Orchard</td>
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<tr>
<td>Jill Bullen</td>
<td>VicRoads</td>
</tr>
</tbody>
</table>

<sup>+</sup> Appeared as a Party to the 2015 Hearing
### Appendix C  Parties to the Hearing

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mount Alexander Shire Council</td>
<td>Mr Phillip Schier and Ms Rebecca Stockfeld</td>
</tr>
<tr>
<td>Tarran Valley Pty Ltd (proponent)</td>
<td>Mr John Cicero of Best Hooper Lawyers and calling the following expert witnesses:</td>
</tr>
<tr>
<td></td>
<td>- Ms Fiona Cotter of Provincial Matters on planning</td>
</tr>
<tr>
<td></td>
<td>- Mr Lincoln Kern of Practical Ecology on flora and fauna and bushfire risk</td>
</tr>
<tr>
<td></td>
<td>- Mr Andrew Sells of Sweett (Australia) on demand and supply analysis</td>
</tr>
<tr>
<td>Department of Environment, Land, Water and Planning (Environment and Land)</td>
<td>Ms Amanda Johnson</td>
</tr>
<tr>
<td>Country Fire Authority*</td>
<td>Mr Len Leslie, Manager Bushfire Safety</td>
</tr>
<tr>
<td>Goulburn-Murray Water*</td>
<td>Mr Neil Repacholi</td>
</tr>
<tr>
<td>National Trust of Australia (Victoria)</td>
<td>Ms Anna Foley</td>
</tr>
<tr>
<td>Maldon Residents Group</td>
<td>Mr Ian Slattery, Ms Deanna Buck and Mr George Ryan (part) and calling the following expert witnesses:</td>
</tr>
<tr>
<td></td>
<td>- Mr Michael Wright of Rush Wright Architects on urban design and landscape</td>
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<tr>
<td></td>
<td>- Prof Michael Buxton of RMIT University on planning</td>
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<tr>
<td></td>
<td>- Mr Rob Milner of 10 Consulting Group on planning</td>
</tr>
<tr>
<td>Bendigo and District Environment Council Inc</td>
<td>Mr George Ryan and calling the following expert witnesses:</td>
</tr>
<tr>
<td></td>
<td>- Mr Philip Ingamells of the Victorian National Parks Association on bushfire risk</td>
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<tr>
<td></td>
<td>- Dr Pia Lentini on environmental issues</td>
</tr>
<tr>
<td>Friends of the Box-Ironbark Forests</td>
<td>Mr Frank Panter</td>
</tr>
</tbody>
</table>

* Did not provide a written submission in response to notice of the 2015 process
## Appendix D  Document list

<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>Presented by</th>
</tr>
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<tbody>
<tr>
<td>5 November 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Mount Alexander Shire Council – Part A submission</td>
<td>Mr P Schier</td>
</tr>
<tr>
<td>25 November 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Mount Alexander Shire Council – Part B submission in the form of a PowerPoint presentation</td>
<td>Mr P Schier</td>
</tr>
<tr>
<td>3</td>
<td>DELWP Submission</td>
<td>Ms A Johnson</td>
</tr>
<tr>
<td>4</td>
<td>Attachment to DELWP submission, DELWP, Specific offset requirements calculation amendment – Fact Sheet, 2015</td>
<td>Ms A Johnson</td>
</tr>
<tr>
<td>5</td>
<td>Victoria, Safer Together: A new approach to reducing the risk of bushfire in Victoria, 2015</td>
<td>Ms A Johnson</td>
</tr>
<tr>
<td>6</td>
<td>Mount Alexander Shire Council, selection from minutes of Ordinary Meeting of Council, 23 June 2015 relating to adoption of Amendment C61</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>7</td>
<td>Images provided by Michael Wright to support evidence</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>8</td>
<td>Zoning map for Ireland Street, Castlemaine</td>
<td>Mr G Gilfedder</td>
</tr>
<tr>
<td>26 November 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Version 30 of Development Plan superimposed on contours</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>10</td>
<td>Version 30 of Development Plan superimposed on aerial image</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>11</td>
<td>CFA submission to the Advisory Committee</td>
<td>Mr L Leslie</td>
</tr>
<tr>
<td>12</td>
<td>Attachments relating to Mr Milner’s evidence</td>
<td>Mr R Leslie</td>
</tr>
<tr>
<td>13</td>
<td>Mr Ingamells submission to the Committee</td>
<td>Mr P Milner</td>
</tr>
<tr>
<td>14</td>
<td>EnPlan, Mount Alexander Shire Council: Rural Land Study, 21 January 2014</td>
<td>Mr P Schier</td>
</tr>
<tr>
<td>15</td>
<td>Research Planning Design Group, Mount Alexander Rural Living Strategy, 2006</td>
<td>Mr P Schier</td>
</tr>
<tr>
<td>16</td>
<td>Terramatrix, Bushfire Development Report: for the proposed rezoning and development of the land known as “Tarran Valley”, comprising Amendment C36 to the Mount Alexander Planning Scheme, February 2014</td>
<td>Mr P Schier</td>
</tr>
<tr>
<td>17</td>
<td>MOU between Mount Alexander Shire Council and Murray Goulburn Water dated 31 December 2014</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>18</td>
<td>Mount Alexander Shire Council, selection from minutes of Ordinary Meeting of Council, 25 August 2015 regarding the status of Council’s Domestic Wastewater Plan</td>
<td>Mr G Ryan</td>
</tr>
</tbody>
</table>
### 2 December 2015

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Graphs plotting data from Mr Sells evidence, showing population growth in Maldon and Mount Alexander Shire, 1996-2011</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>20</td>
<td>Graph showing distribution of lot sizes for 2008 and 2014 layouts at Tarran Valley</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>21</td>
<td><em>Aerial image showing Canopy Tree Management for Fire Safety: Tarran Valley, Maldon</em></td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>22</td>
<td>spiire, <em>Tarran Valley Artist Impression – Looking Towards Lot 25 from Castlemaine Maldon Road</em></td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>23</td>
<td><em>Map 1: Condition of Native Vegetation: Overall Habitat Score,</em> plotting information in Cheers Report</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>24</td>
<td><em>Map 2: Condition of Native Vegetation: Understorey Score,</em> plotting information in Cheers Report</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>25</td>
<td><em>Map 3: Condition of Native Vegetation: Large Old Tree Score,</em> plotting information in Cheers Report</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>26</td>
<td>Image of Mount Tarrengower and subject land from approximately 15 kilometres south</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>27</td>
<td>Image of southern edge of bush from Bendigo fire of 2009</td>
<td>Mr F Panter</td>
</tr>
<tr>
<td>28</td>
<td><em>Landscaping for Bushfire: Case Study,</em> downloaded from CFA website</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>29</td>
<td>Zoning Map of Newstead-Maldon Road about 6 kilometres from town boundary</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>30</td>
<td>Submission by Tarran Valley Pty Ltd, <em>Mount Alexander Planning Scheme Amendment C36,</em> 2 December 2015</td>
<td>Mr J Cicero</td>
</tr>
<tr>
<td>32</td>
<td><em>Goulburn Murray Water submission, including Appendices</em></td>
<td>Mr N Repacholi</td>
</tr>
<tr>
<td>33</td>
<td><em>National Trust submission to Tarran Valley Advisory Committee</em></td>
<td>Ms A Foley</td>
</tr>
<tr>
<td>34</td>
<td><em>Friends of the Box Ironbark Forests (Mount Alexander Region)</em> submission*</td>
<td>Mr F Panter</td>
</tr>
<tr>
<td>35</td>
<td>Minutes of Mount Alexander Shire Council Ordinary Council Meeting of 23 June 2015, p. 79</td>
<td>Mr I Slattery</td>
</tr>
<tr>
<td>36</td>
<td><em>Centrum Town Planning, Review of the Mount Alexander Planning Scheme: Final Report,</em> June 2014, pp. 66</td>
<td>Mr I Slattery</td>
</tr>
<tr>
<td>38</td>
<td>Maldon Residents Group Summation, Thursday, 3 December 2015</td>
<td>Mr I Slattery</td>
</tr>
<tr>
<td>39</td>
<td><em>Aerial image of Maldon-Newstead Road</em></td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>Page</td>
<td>Description</td>
<td>Author</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>40</td>
<td>Image of dwelling on Maldon-Newstead Road</td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>41</td>
<td>Excerpt from <em>Maldon Historic Reserve Management Plan, 1984</em></td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>42</td>
<td>Excerpt from <em>Technical Report: Climate Change in Australia – Projections for Australia’s NRM Regions</em></td>
<td>Mr G Ryan</td>
</tr>
<tr>
<td>43</td>
<td>Proposed wording of DPO condition relating to treatment of entry from Castlemaine – Maldon Road</td>
<td>Mr P Schier</td>
</tr>
</tbody>
</table>
Appendix E   Development Plan Overlay Schedule 8 (Committee Version)
SCHEDULE 59 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO59

TARRAN VALLEY, CASTLEMAINE – MALDON ROAD, MALDON

A development plan is required to ensure that planning, infrastructure and amenity issues are resolved before development commences and that future subdivision and development are in harmony with Maldon’s character.

1.0 Requirement before a permit is granted

The responsible authority may grant a permit to subdivide, use or develop the land before the Development Plan is approved only where it is satisfied that the permit will not prejudice the long term future of the land for rural living development.

Before deciding on any application the Responsible Authority must consider:

- The purpose of the zone.
- The Approved Development Plan.
- Whether a feasibility report addressing issues of water supply and wastewater disposal has been completed to the satisfaction of the responsible authority.
- Whether an assessment of erosion mediation issues and management of eroded drainage reserves, which also provides construction technique options and landscaping and reinstatement options has been prepared to the satisfaction of the responsible authority.

A permit may be granted before a Development Plan has been prepared to the satisfaction of the responsible authority, for the following:

- Agriculture and any buildings or works in association with the use of the land for agricultural purposes.
- A fence.
- Minor extensions, additions or modifications to any existing use or development.

2.0 Conditions and requirements for permits

A proposal to construct a building or construct or carry out works before the Development Plan has been approved must be accompanied by a report demonstrating that it will not prejudice the long term future of the land for rural living development.

A permit application must have regard to managing bushfire risk and development must not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level by meeting the requirements in this schedule.

23.0 Requirements for development plan

The Development Plan must be prepared to the satisfaction of the responsible authority and include:

- A description of the proposed uses on the land, including road and lot layout.
- A range of lot sizes with a minimum of 1.0 hectare with larger lots to be established to the north and east of the site, where vegetation and topographical conditions require higher levels of environmental management.
- A subdivision layout which responds to the topography, vegetation, waterways and other significant features.
- A variety of lot sizes with the larger lots located and designed to maximise the preservation of native vegetation.
On land subject to Significant Landscape Overlay Schedule 3:
- any road to be designed to minimise its visibility from Castlemaine-Maldon Road
- at least 80 metres between building envelopes.

At least 20 metres between Castlemaine-Maldon Road and defendable space to enable vegetation screening.

Identification of areas of native vegetation, bushfire hazard, landscape features and heritage significance.

The relationship and interface with adjoining land uses on all boundaries including the provision of any buffers to the adjoining Maldon Historic Reserve.

The provision of reticulated water to all lots.

Lots not connected to a reticulated sewerage system:
- must only be developed if there is an adopted Domestic Wastewater Management Plan that includes land subject to this schedule, and
- must meet the requirements of the approved Domestic Wastewater Management Plan.

The local of physical infrastructure such as roads and reticulated services, and the proposed staging of infrastructure development.

Fully constructed sealed roads, including:
- an access point providing ingress and egress at Castlemaine-Maldon Road to the south-east
- an access point providing ingress and egress at a new bridge connection to Boundary Road to the north-west
- a central loop road providing access and egress to most lots
- any dead-end road to remaining lots of no more than 200 metres.

All electricity through underground cabling.

Protection of the riparian zone and water quality on any waterway so that no building envelope can be located within 30 metres of a waterway.

An explanation of how the ‘no net loss’ objective specified in the Permitted clearing of native vegetation - Biodiversity assessment guidelines (Department of Environment and Primary Industries, 2013) has been met to the satisfaction of the responsible authority in consultation with the Department of Environmental, Land, Water and Planning.

Building envelopes to be established for on each lot including setbacks from Castlemaine-Maldon Road.

Any other matters which relate to the development of the land.

Supporting Information Requirements
The Development Plan must be supported by the following reports, plans and documents prepared by suitably qualified person(s) to the satisfaction of the responsible authority:
- A Defendable Space Plan in accordance with Clause 4.0 of this schedule.
- A section 173 agreement in accordance with Clause 5.0 of this schedule.
- A Traffic Impact Assessment in consultation with VicRoads that addresses the development’s impact on the existing arterial road network and details of any mitigating works required on Castlemaine-Maldon Road.
- A Land Capability Assessment Report that includes detailed recommendations for each lot.
- A comprehensive stormwater strategy which provides for stormwater detention and water quality treatment through the use of water sensitive urban design techniques.
A compliant offset management plan in accordance with the Permitted clearing of native vegetation - Biodiversity assessment guidelines and Native vegetation gain scoring manual (Department of Environment and Primary Industries, 2013)

A remediation works program to address onsite erosion.

A works program to achieve defendable space requirements of the Bushfire Management Plan before any lot is sold.

### Design Guidelines

The Development Plan must be supported by Design Guidelines prepared in consultation with interested parties and to the satisfaction of the responsible authority and include the following guides:

- Dwellings potentially visible from Castlemaine-Maldon Road to appear as single storey.
- Building materials and colour palate for dwellings and other structures such as garages, sheds and tanks to ensure that they are in harmony with the landscape.
- Use of non-reflective roofing materials.
- Materials used for any retaining walls to reflect local rock type.
- Type of fencing to minimise impact on views and wildlife movement, such as plain wire to a maximum height of 1.5 metres.

The Development Plan may be amended to the satisfaction of the responsible authority.

### 4.0 Requirements for Defendable Space Plan

A Defendable Space Plan must be prepared to the satisfaction of the relevant fire authority and show:

- The road layout within the site.
- The identification of all lots within the site.
- A dwelling footprint and building envelope for each lot.
- A contiguous area of defendable space for all lots, crossing lot boundaries where necessary, managed to inner zone standards and located predominantly in previously cleared areas.
- On those lots located in close proximity to Sandy Creek on the south western edge of the site and commencing from the northern boundary of Lot 19, the remainder of the lot being identified as an area of outer zone of defendable space.
- The management of vegetation in accordance with inner zone requirements within the identified Defendable and Grouped Defendable Space Areas and in accordance with outer zone requirements within the identified Additional Defendable Space.
- Sufficient detail for areas of defendable space to be clearly identified at an individual lot level.

### 5.0 Requirements for Section 173 Agreement

A Section 173 Agreement must be prepared for all the land to which this schedule applies, for execution before a statement of compliance is issued for the first stage of the subdivision of the land. It must include the following matters to the satisfaction of the responsible authority:

- Implementation of the Bushfire Management Plan.
- No further subdivision of a lot or the construction of more than one dwelling on a lot.
- All buildings shall only be constructed within the building envelope nominated for each lot.
- Erection only of fencing that is visually unobtrusive and appropriate to permit the passage of wildlife except that this restriction shall not apply to fencing within the building envelope.
- All vegetation identified in the inner zone or outer zone of defendable space on the Defendable Space Plan must at all times (and regardless of whether a dwelling is located on the land or not) be maintained to the specified prescriptions on the plan.
- All dwellings and dependant persons units must be constructed to a minimum level of BAL-19 in accordance with the relevant sections of AS3959-2009.
- A non-combustible rainwater tank must be provided before works commence and during the use of any new dwelling or dependant persons unit within any lot, with a minimum capacity of 23,000 litres, of which a minimum 10,000 litres is to be reserved solely for fire fighting purposes.
- Access to each dwelling and a water supply outlet on each rainwater tank to the satisfaction of the relevant fire authority.
- A copy of the ‘Defendable Space Plan’ as an annexure to the section 173 agreement.
- On any lot where native vegetation is to be retained in order to offset the impacts of native vegetation removal, the provision of a 10-year offset management plan and a restriction on property title that prevents clearing of this native vegetation, to the satisfaction of the Department of Environment, Land, Water and Planning.
- No new dam may be constructed and no existing dam may be enlarged.
- No cat shall be kept on the land.
- Dogs shall be appropriately confined within the site to prevent any threat to wildlife.
- Grazing animals are not permitted outside areas managed as defendable space.