

*Planning and Environment Act 1987*

Advisory Committee Supplementary Report

Tarran Valley Rezoning

Mount Alexander Planning Scheme Amendment C36

13 July 2016

# 1 Context

The Minister for Planning wrote to the Chief Panel Member, Planning Panels Victoria on 13 June 2016 regarding the Tarran Valley Rezoning Advisory Committee's (the Committee) report of 1 February 2016 (Appendix 1). This report responds to that request.

In essence, the Minister for Planning was seeking further advice on whether Mount Alexander Planning Scheme Amendment C36 prioritises the protection of human life over other policy considerations:

*I do not believe that chapter 6 of the report adequately assesses the amendment in the context of Clause 13.05-1 Bushfire planning strategies and principles of the State Planning Policy Framework. I therefore request that the advisory committee provides further analysis and discussion of the amendment against this clause and an opinion regarding whether the amendment has prioritised the protection of human life and applied the precautionary principle.*

In response to the Minister's request, this report:

- explains how the Committee has met its Terms of Reference, including its assessment of the Amendment in the context of Clause 13.05-1
- needs to be read in conjunction with the Tarran Valley Rezoning Advisory Committee Report of 1 February 2016.

The subject land has had an extensive number of bushfire assessments prepared, including:

- Bushfire Management Overlay Standing Advisory Committee Report, June 2014
- Bushfire Assessment and Net Gain Analysis Tarran Valley, Maldon, Practical Ecology Pty Ltd, October 2012
- Bushfire Development Plan, 20 May 2014
- Bushfire Development Report for the proposed rezoning and development of the land known as 'Tarran Valley', comprising Amendment C36 of the Mount Alexander Planning Scheme, Terramatrix, 2014
- Supplementary comments made on the Fire Risk Management Review for Tarran Valley Pty Ltd at Castlemaine-Maldon Road, Maldon, Geoplan, 2009
- Fire Risk Management Review for Tarran Valley Pty Ltd at Castlemaine Maldon Road, Maldon, Neander and Associates Fire Safety Consultant, 2008
- Tarran Valley, Maldon Proposed Rezoning, Assessment of BALs, Neander and Associates Fire Safety Consultant, 2008
- Fuel Hazard Assessment Tarran Valley Pty Ltd, Castlemaine Maldon-Road, Maldon, Neander & Associates Fire Safety Consultant, 2008

In response to the Minister for Planning's request, the Committee has prepared the following questions and answers that provide further context associated with the Amendment and Clause 13.05-1:

What did the terms of reference require the Committee to consider?

The Terms of Reference for the Committee to "report on Amendment C36 to the Mount Alexander Planning Scheme, which seeks to facilitate the rezoning of land for a rural residential development." Permit application and associated detailed development plans do not form part of the Amendment.

How did the Committee consider Mount Alexander Planning Scheme Amendment C36 against Clause 13.05-1?	<p>The Committee’s report provides a strategic assessment that considers Clause 13.05-1. This differs from a statutory assessment, which responds to a greater level of detail available through a planning permit application.</p> <p>The Committee concluded that the Amendment is consistent with State policy (relevant Clauses at pages 13-14 of the report and conclusion at page 32).</p> <p>As outlined on page 31, the Committee conducted a more detailed bushfire analysis later in the report to be entirely convinced that there is an opportunity for future development of the subject land to meet Clause 13.05-1 (Chapters 3 and 6).</p>
Will approving Mount Alexander Planning Scheme Amendment C36 as recommended by the Committee automatically permit the subject land to be developed?	<p>Developing the subject land, as envisaged by the land owner, will be prohibited even if the Amendment is approved. Development would only be able to proceed if:</p> <ul style="list-style-type: none"> <li>(a) the landowner applies for a permit, <u>and</u></li> <li>(b) Mount Alexander Shire Council approves the permit subject to any proposal meeting the extensive list of mandatory bushfire planning controls, among other planning controls.</li> </ul>
In addition to the many previous bushfire studies and assessment, what else informed the Clause 13.05-1 assessment?	<p>Victoria’s leading bushfire authority, the Country Fire Authority, supported the Amendment after considering it through two strategic planning processes. An expert witness supported the Amendment. Both parties provided valuable information that helped form the Committee’s view of the Amendment against Clause 13.05-1. This included a comprehensive suite of recommended bushfire provisions in Development Plan Overlay Schedule 8 that are tailored in response to a future permit application meeting Clause 13.05-1 – specifically <i>“Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire”</i>.</p>
What planning controls need to be in place so that a future planning permit application can meet Clause 13.05-1?	<p>The Committee concluded that the Amendment can prioritise the protection of human life over other policies if tailored bushfire planning controls are in place (page 56 of its report). The Committee therefore recommended that any future development meet (depending on the development proposal and in addition to Clause 13.05-1) the following bushfire requirements, among an exhaustive list of other planning controls (see the recommended Development Plan Overlay Schedule 8).</p> <p>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.</p> <p>Any development proposal must include, to the satisfaction of the relevant fire authority, a:</p> <p><b>Defendable Space Plan</b> with specified requirements including:</p> <ul style="list-style-type: none"> <li>- The road layout and identification of all lots within the site.</li> </ul>

- A dwelling footprint and building envelope for each lot.
- A contiguous area of defensible 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 defensible space.
- The management of vegetation in accordance with inner zone requirements within the identified Defensible and Grouped Defensible Space Areas and in accordance with outer zone requirements within the identified Additional Defensible Space.
- Sufficient detail for areas of defensible space to be clearly identified at an individual lot level.

A statement of compliance cannot be issued for the first stage of subdivision until the following has been prepared for all the land to the satisfaction of the responsible authority:

**Section 173 agreement** that includes, among other things:

- 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.
- All dwellings and dependent 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 'Defensible 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.

In many circumstances, a permit to subdivide, use or develop the land cannot be granted until the following is approved:

**Development Plan** that includes, among many other

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requirements:

- All electricity through underground cabling.
  - Fully constructed sealed roads with specific layout requirements.
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Potentially, 32 hectares of land could be cleared for a future development – is this a concern?

As outlined in the Committee’s report, developing the subject land (depending on the proposal in a future permit) could reduce the risk of bushfire to some parts of the existing Maldon township. One of the many reasons for this, is the potential clearance of up to 32 hectares of vegetation. The Department of Environment, Land, Water and Planning (Environment and Land)<sup>1</sup>, which did not object to the Amendment, clarified that no tree will be permitted to be removed from the subject land until a suitable off-set plan has been approved to its satisfaction. This provides certainty that any tree removed will be offset within the region.

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The issues associated with the subject land appear complicated – why didn’t the Committee recommend abandoning the Amendment?

The Committee carefully considered all issues, including bushfire related matters, from all perspectives. Issues associated with the subject land are complicated so the Committee considered whether they are too complicated to eliminate any opportunity to consider the subject land for any future development. Most importantly, it considered whether these issues restricted the opportunity for a future development proposal to meet Clause 13.05-1. The Committee concluded that there is an opportunity for a future development proposal to address these issues through a permit application process. These issues will determine the ultimate number of lots, layout, etc that may be considered through a future permit application.

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<sup>1</sup> A representative from the regional office of the Planning group of the Department of Environment, Land, Water and Planning attended and observed proceedings throughout the Hearing but did not prepare a submission and did not appear as a party to the Hearing.

## 2 Clause 13.05-1 assessment

As outlined in Chapter 6 of its report, the Committee was informed by (among other information) submissions from Victoria's leading bushfire agency, the Country Fire Authority and a bushfire management expert to assess the Amendment in the context of Clause 13.05-1. The Committee comprehensively investigated whether there was any opportunity for a future permit application to respond to Clause 13.05-1. The Committee would have, without any hesitation, recommended abandoning the Amendment, if there was absolutely no opportunity for a permit application to prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.

The information below needs to be read in conjunction with Clause 13.05-1 and Chapter 6 of the Committee's report where the associated assessment is included.

The Committee came to the same conclusion as the Country Fire Authority, a bushfire management expert and the Bushfire Management Overlay Standing Advisory Committee that there is an opportunity for a permit application to propose a development that prioritises the protection of human life over other policy considerations. The Committee took into account the extensive evidence and many bushfire assessments on the subject land listed on page 52 of its report. It also considered the example concept plan that was prepared as part of the Bushfire Management Overlay Standing Advisory Committee process. Chapter 6 provides a strategic assessment of Clause 13.05-1 expected for a planning scheme amendment. A comprehensive permit application assessment should not be expected at this stage of the process and in the absence of development details to assess against the strategies.

However, the Committee draws together information included, or referred to, in its report within specific sections of Clause 13.05-1 to clarify how it met this part of its Terms of Reference. The following sub-chapters show Clause 13.05 (shown below in green italic text) separated into logical sections and the Committee's response provided after each section.

### 2.1 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 Committee considered whether there was an opportunity for a future permit application to prioritise the protection of human life over other policy considerations in planning and decision making in areas at risk from bushfire. Whether a permit application can achieve such an outcome depends on whether there are appropriate bushfire mitigation measures including the layout, defensible space provisions, and access and egress arrangements (p51). The Country Fire Authority's support for the example concept plan directly demonstrates that such an outcome is possible. The bushfire expert witness considered that a proposal such as the example concept plan may in fact reduce Maldon's existing bushfire risk. Any future permit application and development proposal will need to meet the mandatory Development Plan Overlay Schedule 8 planning controls. These controls prioritise the protection of human life above other policy considerations. For example, the defensible space requirements must be met and any vegetation or other policies must align to this priority.

The Victoria Planning Provisions and planning schemes changes that implemented recommendations of the 2009 Victorian Bushfire Royal Commission introduced the precautionary principle with respect to assessing the risk to life, property and community infrastructure from bushfire (page 21 of its report). This has placed an obligation on a Proponent (for a planning scheme amendment) and an Applicant (for a planning permit) to prove that this policy can be met. This information subsequently informs decision makers. The Proponent has met this obligation, as outlined in the report and summarised below.

The Committee considered the extensive information, assessments and evidence prepared for its process and previous panel/advisory committee processes, and noted the consensus between the Country Fire Authority, expert witness, two independent advisory committees and Council before concluding that there is an opportunity to develop the subject land with some form of future rural living that meets Clause 13.01-5. The Committee's extensive bushfire planning controls recommended for Development Plan Overlay Schedule 8 will ensure that the risk to life, property and community infrastructure from bushfire are appropriately considered by Council when assessing a planning permit application. The precautionary principle applied before and during the Committee's process will therefore continue to apply throughout the permit application stage.

The Committee made its conclusion based on best available science and evidence, and any other conclusion would have been in direct conflict with this information.

## **2.2 Bushfire hazard identification and risk assessment strategies**

*Apply the best available science to identify vegetation, topographic and climatic conditions that create a bushfire hazard.*

*Assess the risk to life, property and community infrastructure from bushfire at a regional, municipal and local scale.*

*Identify in planning schemes areas where the bushfire hazard requires that:*

- *Consideration needs to be given to the location, design and construction of new development and the implementation of bushfire protection measures.*
- *Development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.*

The Committee considered the abnormally high number of bushfire assessments (page 52 of its report), which all came to the same conclusion that it is possible to develop the subject land for rural residential. This aligns with the Mount Alexander Planning Scheme that specifically identifies the subject land for future rural living. The Committee considers that these reports apply the best available science to identify vegetation, topographic and climatic conditions that create a bushfire hazard.

Previous assessments and the expert evidence assessed the risk to life, property and community infrastructure from bushfire. In response, the Committee recommended a comprehensive suite of bushfire related provisions to be included in the proposed Development Plan Overlay Schedule 8. This includes section 173 agreements to ensure that defensible spaces (that are important to protecting life, property and community infrastructure) are maintained on an ongoing basis (page 55 of the Committee's report). These provisions establish a framework for considering the location, design and construction of any development on the subject land. They also implement bushfire protection measures found in particular provisions of the Victoria Planning Provisions.

It is most important to note that, even if the subject land is rezoned, any future development is prohibited until it meets all requirements in Development Plan Overlay Schedule 8 and other bushfire related provisions. Therefore, development cannot proceed until risk to life and property from bushfire can be reduced to an acceptable level (page 56 of the Committee's report).

### **2.3 Strategic and settlement planning strategies**

*Ensure that strategic and settlement planning assists with strengthening community resilience to bushfire.*

*Consult with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures.*

*Ensure that planning to create or expand a settlement in an area at risk from bushfire:*

- *Addresses the risk at both the local and broader context.*
- *Reduces the risk to future residents, property and community infrastructure from bushfire to an acceptable level.*
- *Ensures any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.*
- *Ensures the risk to existing residents, property and community infrastructure from bushfire will not increase as a result of future land use and development.*
- *Ensures future residents can readily implement and manage bushfire protection measures within their own properties.*

As outlined earlier, the Victoria Planning Provisions introduced stronger policy and more stringent bushfire provisions following the 2009 Black Saturday bushfires and in response to recommendations from the Victorian Bushfire Royal Commission. Most of Maldon's settlement area was established before the introduction of the new bushfire provisions. When taking into account that a new development has to apply stringent new provisions and that about 32 hectares of vegetation is proposed to be removed from the subject land, any future development can assist to strengthen community resilience to bushfire. Currently, considerable vegetation abuts the existing Maldon township settlement area. It is important to note that no vegetation will be permitted to be removed until the Department of Environment, Land, Water and Planning has approved an offset plan that ensures appropriate revegetation.

The Country Fire Authority has been consulted about this Amendment over the past eight years through three different strategic planning processes. It supports the type of bushfire protection measures included in the example concept development plan.

The five considerations related to planning, creating or expanding a settlement in an area at risk from bushfire was assessed by the Committee (page 55 of its report). Having considered all evidence and submissions, it found that Maldon, like a significant proportion of Victoria, will remain a fire-prone area, which is likely to increase with climate change. However, the Committee was not presented with any evidence to demonstrate that developing the subject land will increase bushfire risk. Any further consideration of these matters can only be made where a detail development plan in a permit application is available for assessment.

## 2.4 Planning scheme implementation strategies

*Specify in planning schemes the requirements and standards for assessing whether the risk to a proposed development from bushfire is acceptable and the conditions under which new development may be permitted.*

*Ensure that planning schemes, in particular the Municipal Strategic Statement, Local Planning Policies and zones applying to land, provide for use and development of land in a manner compatible with the risk from bushfire.*

*Ensure that planning schemes support bushfire management and prevention and emergency services actions and activities.*

*Ensure that planning schemes do not prevent the creation of required defensible space around existing development through the removal and management of vegetation.*

The most important primary note here is that Victoria's State planning policy seeks to manage bushfire risk so that it is acceptable – it does not seek to entirely eliminate bushfire risk.

Existing particular provisions in the Victoria Planning Provisions have requirements and standards for assessing where risk to a proposed development from bushfire is acceptable and the conditions under which new development may be permitted. However, the Committee has recommended new bushfire related requirements for the subject land that are tailored to the specific circumstances of the land and its surrounding context (pages 56-57 of its report).

The Committee strongly encourages that Development Plan Overlay Schedule 8 planning controls be carefully read to fully appreciate the comprehensive measures proposed for the subject land. These provisions will directly ensure that bushfire management and emergency services are supported, and that defensible space is provided before a future permit can be granted.

Rezoning the land to the Rural Living Zone will ensure that there are relatively large residential properties that can accommodate bushfire measures such as adequate defensible spaces and water storage.

Most importantly, the Development Plan Overlay Schedule 8 planning controls are tailored for the subject land to manage bushfire risk to an acceptable level. Any future permit application with an actual development proposal would provide details that would be assessed in the context of Clause 13.05-1.

## 2.5 Development control strategies

*In areas identified in the planning scheme as being affected by the bushfire hazard, require a site-based assessment to be undertaken to identify appropriate bushfire protection measures for development that has the potential to put people, property or community infrastructure at risk from bushfire.*

*Only permit new development where:*

- The risk to human life, property and community infrastructure from bushfire can be reduced to an acceptable level.*

- *Bushfire protection measures, including the siting, design and construction of buildings, vegetation management, water supply and access and egress can be readily implemented and managed within the property.*
- *The risk to existing residents, property and community infrastructure from bushfire is not increased.*

The suite of bushfire provisions proposed for Development Plan Overlay Schedule 8 requires a site-based assessment that identifies appropriate bushfire protection measures. Most of this policy relates to a permit application where relevant details are known.

## **2.6 Conclusion**

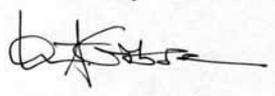
The Committee considered the volumes of submissions, expert evidence, associated information including many strategies, assessments, policies and studies when assessing the Amendment in the context of Clause 13.05-1. The comprehensive and specifically tailored bushfire planning controls recommended for Development Plan Overlay Schedule 8 provide a robust and multi-faceted planning framework that any future permit application and development must meet. The concept plan rigorously tested throughout the Hearing demonstrated that there is an opportunity to develop the subject land in a form that meets Clause 13.05-1. A more detailed assessment would only be possible when actual details associated with a development proposal are available through a permit application process.

The Committee concludes, in line with the conclusions in its original report, that Mount Alexander Planning Scheme Amendment C36 has prioritised the protection of human life and applied the precautionary principle.

### **Tarran Valley Rezoning Advisory Committee**



Con Tsotsoros (Chair)



Ian Gibson



Ian Harris

## Appendix 1



The Hon Richard Wynne MP  
Minister for Planning

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East Melbourne, Victoria 3002  
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Ms Kathy Mitchell  
Chief Panel Member  
Planning Panels Victoria  
Level 5, 1 Spring Street  
MELBOURNE VIC 3000

Ref: MBR029839

Dear Ms Mitchell

### AMENDMENT C36 TO THE MOUNT ALEXANDER PLANNING SCHEME TARRAN VALLEY RURAL RESIDENTIAL DEVELOPMENT

I refer to the Tarran Valley Rezoning Advisory Committee Report for Amendment C36 to the Mount Alexander Planning Scheme.

Under the terms of reference, I asked that the advisory committee produce a written report, which amongst other things, was to include:

- *'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 13.05 of the planning scheme;' (refer to page 5).*

I do not believe that chapter 6 of the report adequately assesses the amendment in the context of Clause 13.05-1 *Bushfire planning strategies and principles* of the State Planning Policy Framework. I therefore request that the advisory committee provides further analysis and discussion of the amendment against this clause and an opinion regarding whether the amendment has prioritised the protection of human life and applied the precautionary principle.

In order to enable the timely progress of this matter, it would be appreciated if this further advice could be provided to me within 30 days from the date of this letter.

If you have any queries about this request, please contact Rachael Joiner, Director, Planning Services and Impact Assessment of the Department of Environment, Land, Water and Planning on (03) 8392 5464.

Yours sincerely

HON RICHARD WYNNE MP  
Minister for Planning

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