MOUNT ALEXANDER PLANNING
SCHEME
AMENDMENT C36
TARRAN VALLEY, MALDON

PANEL REPORT

JANUARY 2009
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1. **Summary**

Amendment C36 to the Mount Alexander Planning Scheme involves rezoning a 125 hectare site approximately 2 kilometres south east of Maldon on the north side of the Castlemaine-Maldon Road from the Farming Zone (FZ) to the Rural Living Zone (RLZ) to facilitate a rural living subdivision and development set within a woodland landscape.

The Amendment also proposes that the Schedule to RLZ is amended to introduce a 1 hectare minimum lot size for subdivision and minimum area for which no permit is required to use land for a dwelling.

Further, the Amendment proposes to apply the Environmental Significance Overlay and a Schedule 8 - Tarran Valley – Biodiversity Protection and Enhancement (ESO8) and the Development Plan Overlay and a Schedule 8 - Tarran Valley, Castlemaine-Maldon Road, Maldon (DPO8) to the land. The ESO8 seeks to ensure that the native vegetation of the subject land associated with the Box Ironbark woodlands and their habitat values are protected. The DPO8 seeks to ensure that any future subdivision is based on a Development Plan that is site responsive to the characteristics and environmental and land capability sensitivities of the subject land.

An indicative Development Plan Version 21 was presented to the Panel which demonstrated that the subject land could be developed in a site responsive manner with smaller lots focused on those parts of the land that are predominantly cleared of vegetation and larger sized lots located on the more heavily vegetated areas. Although the Plan did not form part of the amendment, the proponent requested that Version 21 of the Development Plan should be specifically referred to in the DPO8 to provide a degree of certainty as to what is expected to occur with any rural living development of the land. The Panel supported this approach.

Thirty submissions were received to the amendment, and concerns were expressed in relation to the:

- Strategic justification of the rezoning;
- Environmental impacts particularly on the native vegetation of the subject land which forms part of the wider Box Ironbark woodlands of the Maldon area;
- Impacts on the heritage, cultural and landscape character of the Maldon area and the Maldon Historic Reserve; and
The appropriateness of the selection and make-up of planning controls proposed under the amendment.

The Panel hearing was conducted over three days on 8 – 10 December 2008. Comprehensive written submissions were tabled at the Hearing, and the Panel conducted inspections of the site and surrounds after the directions hearing and the full hearing.

The Panel’s overall findings are as follows:

- 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.
2. Background

2.1 The Amendment

Amendment C36 affects land described as Crown Allotments 1, 2, 3, 4, 5, 5A, 5B, 6, 6A, 7A, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 Section 1B Parish of Maldon and commonly known as Tarran Valley, Maldon (subject land) and as exhibited proposed the following changes to the Mt Alexander Planning Scheme:

- rezone 125ha of land on the north side of the Castlemaine-Maldon Road and approximately 2km south east of Maldon from the Farming Zone (FZ) to the Rural Living Zone (RLZ);
- amend the Schedule to the Rural Living Zone to provide a 1.0 ha minimum lot size for subdivision; and
- apply a Development Plan Overlay and Schedule 5 to the subject land.

On 13 May 2008 Mount Alexander Shire Council considered submissions to the amendment and in response, resolved to modify and re-number the proposed Schedule to the Development Plan Overlay, which is now referred to as Development Plan Overlay 8 – Tarran Valley, Castlemaine-Maldon Road, Maldon (DPO8) and to apply a new Environmental Significance Overlay 8 – Tarran Valley – Biodiversity Protection and Enhancement (ESO8) over the subject land.

The Panel determined to consider the modified amendment with no objections offered by other parties.

The planning authority is Mount Alexander Shire Council and the proponent is Tarran Valley Pty Ltd (the original amendment request was made by Nylorok Pty Ltd).

2.2 The Panel

This Panel was appointed under delegation on 12 June 2008 pursuant to Sections 153 and 155 of the Planning and Environment Act 1987 to hear and consider submissions in respect of the Amendment.

The Panel consisted of:

- Chairperson: Mr Chris Harty; and
- Member: Mr Graeme David.
The specified role of the Panel is to:

- give submitters the opportunity to be heard by an independent forum on an informal, non-judicial manner; and
- give independent advice to the Planning Authority and the Minister about the proposed amendment.

**Procedural issues**

A Directions Hearing was held at the Athenaeum Hall, High Street, Maldon on 25 July 2008 to consider preliminary matters, give directions about the conduct of the hearing and resolve other administrative matters. Written Directions for the Panel Hearing were subsequently made on 4 August 2008. A further Direction letter dated 2 September 2008 was made advising of a re-scheduling of the hearing until December 2008 due to the combination of unavailability of the proponent’s advocate and the Panel Chair. All directions were complied with and satisfied.

**Hearings and inspections**

The Panel Hearing was held on 8-10 December 2008 at the Masonic Hall, High Street, Maldon. The Panel made an arranged unaccompanied inspection of the subject land following the Directions Hearing on 25 July 2008. An additional accompanied inspection of the subject land was held at the conclusion of the hearing and unaccompanied inspections were made of the general area around Maldon including:

- Boundary Road – the western exit from the subject land;
- Nelson Street – an example of existing rural residential development close to Maldon;
- Mt Tarrengower lookout;
- Erin Court in Castlemaine as an example of the type of rural residential development sought by the amendment; and
- The Spring Creek rural residential development on the Maldon-Bendigo Road as an example of current rural living development.

**Submissions**

The Panel has considered all written and oral submissions and all material presented to it in connection with this matter. The Panel heard the parties listed in Table 1 below.
Table 1: List of Parties Heard.

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented By</th>
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<tbody>
<tr>
<td>Tarran Valley Pty Ltd</td>
<td>Mr John Cicero of Best Hooper Lawyers who called the following witnesses:</td>
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<td>• Mr Bernard Collins, town planner, BurnsBridge Sweett Pty Ltd (incorporating Foresite Pty Ltd)</td>
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<td></td>
<td>• Mr Andrew Sells, town planner/property analyst, BurnsBridge Sweett Pty Ltd (incorporating Foresite Pty Ltd)</td>
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<td></td>
<td>• Dr Robert van de Graaff, soil scientist, van de Graaff and associates Pty Ltd</td>
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<td>• Mr Brett Bahen, development engineer, Coomes Consulting Group Pty Ltd</td>
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<tr>
<td></td>
<td>• Mr Garry Cheers, flora and fauna consultant, G &amp; B Cheers Flora and Fauna Consultants</td>
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<tr>
<td>Mount Alexander Shire</td>
<td>Ms Joan Copland, strategic planner</td>
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<td>Friends of the Box Ironbark Forests Inc.</td>
<td>Dr George Ryan, solicitor who called the following witnesses:</td>
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<td>• Mrs Debra Worland, swift parrot expert</td>
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<td></td>
<td>• Mr Hans van Gemert, demand and supply analyst</td>
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<td>• Mr Frank Panter, Vice President of Friends of the Box Ironbark Forests Inc.</td>
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Alan & Marjorie Smidt
Anne Hayes
Keith Roberts
Murray Forbes

A list of all written submissions to the Amendment is included in Table 2.

Table 2: List of Written Submissions Received.

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Organisation (if any)</th>
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<tbody>
<tr>
<td>Graham Hall</td>
<td>North Central Catchment Management Authority</td>
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<tr>
<td>John Stark</td>
<td>Country Fire Authority</td>
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<tr>
<td>Tony Edgar</td>
<td>Department of Sustainability and Environment</td>
</tr>
<tr>
<td>Naren Narenthiran</td>
<td>Environment Protection Authority</td>
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<tr>
<td>Greg Sheehan</td>
<td>Coliban Water</td>
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<tr>
<td>Joanne Runciman</td>
<td>Goulburn-Murray Water</td>
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<tr>
<td>Ravi Mylvaganam</td>
<td>VicRoads</td>
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<tr>
<td>W. R. Taylor</td>
<td>National Trust of Australia (Victoria) Mt Alexander Branch</td>
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<tr>
<td>Steve Haslam</td>
<td>Castlemaine Property Group</td>
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<tr>
<td>Doug Ralph</td>
<td>Friends of the Box-Ironbark Forests (Mt Alexander Region Inc)</td>
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<tr>
<td>Robin Taylor</td>
<td>Bush Users Group My Alexander Region</td>
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<tr>
<td>Lynda Bullen</td>
<td>Maldon Heritage Advisory Committee</td>
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<tr>
<td>B. Acklom</td>
<td>Castlemaine Action Inc</td>
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<td>Submitter</td>
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<td>Coral O’Hara</td>
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<td>Lucy Phillips</td>
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<td>Alan and Marjorie Smidt</td>
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<td>Peter Nestorowicz</td>
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<td>Rose Watson</td>
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<td>R.G. Mills and A.M. Hayes</td>
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<td>Brian Rhule</td>
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<td>Ralph Fuller*</td>
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<td>Townsend Wylde Lawyers (for I J Townsend)</td>
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<tr>
<td>Michael Brouwer and Natalie Greenwood</td>
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<td>Gillian Rayner and Tony Bates</td>
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<td>Netti Byrnes</td>
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<td>Sally Dean-Orchard</td>
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<tr>
<td>Keith V Roberts</td>
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<tr>
<td>Jill Bullen</td>
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<tr>
<td>Murray Forbes</td>
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<tr>
<td>Garry Edwards and Sue Wood</td>
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* Submission withdrawn
3. **What is proposed?**

3.1 **The subject site and surrounds**

Maldon is a former gold mining area from the 1850s and original land titles in and close to town date back to that early time.

The subject land is approximately 125 ha in area and irregular in shape and includes 24 current Crown Allotments (CA 1, 2, 3, 4, 5, 5A, 5B, 6, 6A, 7A, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 Section 1B Parish of Maldon) located approximately 2 kilometres south east of Maldon township. Primary access is via the sealed Castlemaine-Maldon Road. Access is also available via an unmade extension of Boundary Road on the north west boundary of the land. The site contains two main internal tracks and apart from some remnant agricultural buildings, is vacant.

The subject land is typical of Ordovician era sedimentary land in the Maldon area and the broader Central Goldfields region. It is on gently undulating to rolling sedimentary geology, typical of the Maldon area. The soils are old and typically have low permeability with shallow depth on the rises often with exposed rock. They are of average to very poor quality for agriculture. The characteristics of the subject land are described in a report by Mr David Luke; *A Report on land use and land degradation with respect to a rezoning proposal for the Nylotroc Pty Ltd Maldon property* and summarised in Table 3.

**Table 3: Description of the Subject Land**

<table>
<thead>
<tr>
<th>Topography soils and vegetation</th>
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<tr>
<td><strong>Soils</strong></td>
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<td><strong>Slope</strong></td>
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<td><strong>Vegetation</strong></td>
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<tr>
<td><strong>Land degradation</strong></td>
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<tr>
<td>Sheet/rill and minor gully erosion</td>
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<tr>
<td>Gully erosion</td>
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<td>Salinity</td>
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<td>Land Capability</td>
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A scattered cover of remnant box-ironbark vegetation occurs, with the remainder having been cleared in the past for agriculture (refer to Figures 1, 2 and 3). It is apparent that the vegetation that occurs on the subject land is, in part regrowth from past clearing associated with the mining history of the Maldon area.

Approximately 32 ha of the subject land is cleared with 93 ha vegetated. The copses of native vegetation are unfenced from the cleared land and carry little understorey due mainly to the prolonged drought conditions and some grazing evident by pest animals. No stock grazing has been conducted on the land for some time and some coppice regrowth and natural regeneration has occurred.
The subject land is in the Farming Zone (FZ) and is covered by the following overlays; Wildfire Management Overlay (WMO), Significant Landscape Overlay No’s 1 – Maldon Landscape Area (SLO1) and 3 – Scenic Landscape Area (SLO3), and the Erosion Management Overlay (EMO). It is located...
within the Lake Cairn Curran special proclaimed water supply catchment and is bounded by two drainage lines on the east and west side of the subject land.

Surrounding land is a mix of public and private land including private bushland areas. The Maldon Historic Reserve is located on the north and eastern boundary which is in the Public Conservation and Resource Zone (PCRZ) and reflects the gold mining past of the area. The surrounding area contains a number and range of small lot titles with rural residential development scattered throughout the region under the FZ. Some agricultural activity is also evident on land to the west and along Boundary Road amongst some existing dwellings including a vineyard, orchard, tree plantation and grazing.

Historically in the Maldon and wider Central Goldfields area, the least suitable land for agriculture and settlement was left uncleared. These areas provided the structural and fuel timbers used for mining and urban uses. As a result, these areas now contain significant stands of regrowth vegetation.

The history and current use of cleared and partially cleared private land is represented by the deeper soils being largely cleared while shallower soils, generally on mid to upper slopes and on crests, and often with exposed rocks often retaining vegetation cover.

### 3.2 Background to the proposal

The proposal for rural living development of the subject land has been in progress since 2003. It is clear to the Panel that there has been a range of discussions over the last five years or so regarding the future zoning of the subject land and the future use and development of the land for rural living purposes. Council has prepared the *Mount Alexander Urban Living Strategy* in 2004 and the *Mount Alexander Rural Living Strategy* in 2006, which identifies the subject land as potentially suitable for use and development for rural living purposes and rezoning to the RLZ (Figure 4). The Rural Living Strategy outlined a number of strategic principles against which proposals for rural living development could be assessed, and identified the subject land at ‘Tarran Valley’ as satisfying these principles.

The amendment was exhibited from 17 May 2007 to 22 June 2007 with a total of thirty (30) submissions received of which twenty three (23) submissions opposed or sought modifications to the amendment. The exhibition of the amendment was accompanied by an indicative Development Plan prepared to show how the subject land could be used and developed for rural living purposes if it were rezoned from Farming to Rural Living and how the
future development of the land may comply with the requirements of the proposed Development Plan Overlay. Council considered the amendment and submissions at its meeting on 13 May 2008 and resolved to modify the amendment to revise the schedule to the Development Plan Overlay and introduce the Environmental Significance Overlay to the land to address matters raised in some of the submissions and refer the amendment to a Planning Panel.

The Panel acknowledges that a separate planning permit application and Development Plan approval process will be required for subdivision if the subject land is rezoned.

Figure 4: Map 1 from Mount Alexander Shire Rural Living Strategy identifying the subject land (within the dark blue shaded area) as being potentially suitable for rural living development.

3.3 The proposal

The amendment seeks to rezone 125 ha of farming land containing both some cleared areas but predominantly covered in native vegetation located on the north side of the Castlemaine-Maldon Road and approximately 2km south east of Maldon from the FZ to the RLZ. It also seeks to amend the Schedule to the RLZ to provide a 1.0 ha minimum lot size for subdivision and apply a Development Plan Overlay and Schedule 8 – Tarran Valley, Castlemaine-Maldon Road, Maldon (DPO8) and Environmental Significance Overlay and
Schedule 8 – Tarran Valley – Biodiversity Protection and Enhancement (ESO8) to the subject land. All other existing overlays remain unchanged.

The DPO8 contains provisions which require the following matters to be addressed in the preparation of any Development Plan:

- **Regard to the objective of sustainable development** outlined in the *Mount Alexander Rural Living Strategy 2006*;
- Identification of vegetation and sites of heritage significance;
- Provision of a site responsive subdivision plan which has a minimum lot size of 1 ha within the areas of the site cleared of vegetation and larger sized lots where vegetation exists;
- Shows compliance with *Victoria’s Native Vegetation Management – A Framework for Action* and the net gain policy with the preparation of an offset plan;
- Protection of cultural heritage features;
- The relationship and interface with adjoining land including appropriate buffers to the adjoining Maldon Historic Reserve;
- Preservation of the existing view corridor along the Castlemaine-Maldon Road and mitigation of any impacts;
- Staging details of development;
- Provision of underground electricity;
- Provision of sealed roads and reticulated water;
- Provision of on-site effluent treatment and disposal and an appropriate Land Capability Assessment Report for each proposed lot;
- Provision of wildlife corridors;
- Delineation of building envelopes and a no building zone within 30m of waterways;
- Provision of a Traffic Impact Assessment report;
- Provision of a Stormwater Management Strategy;
- Erosion mediation works;
- Preparation of a Section 173 Agreement to prevent further subdivision, restrict buildings to within building envelopes, prevention of dams, appropriate wildlife friendly fencing, rainwater tanks, cat prohibition, controlled keeping of dogs and prevention of grazing; and
- Preparation of an Agreement under Section 69 of the *Conservation Forests and Lands Act 1987* to ensure the environmental works and protection required by the provisions of the Schedule and approved Development Plan.
The ESO8 includes the following objectives to be satisfied with any future development:

- To provide for the sustainable management of biodiversity on the site;
- To protect populations of threatened flora and fauna species;
- To protect remnant habitat for native fauna, particularly hollow trees;
- To protect and enhance the viability of habitats including appropriate management of pest plants and animals;
- To reduce further loss and fragmentation of vegetation and habitat;
- To encourage revegetation for wildlife corridors to connect the remaining habitat in the area; and
- To manage sedimentation and nutrients.

The ESO8 contains a permit trigger for buildings and works including a fence with an exemption from the need for a permit only for undertaking works to any existing buildings and works contained within the designated building envelopes.

Amendment C36 also included an indicative Development Plan, the latest version (Version 21) of which shows that the subject land could be subdivided into 44 lots ranging in size from 1.3 ha to approximately 15.6 ha (refer to Figure 5). The approximate location of building envelopes, which are of sufficient size (approximately 1,750m²) to accommodate both a dwelling footprint (generally 300m²) and effluent disposal fields are also shown as well as the location of internal roads and access driveways. Some of the internal roads will follow existing farm tracks while some of the government road reserves are avoided because of the quality of native vegetation found within them. The Plan also nominates a 9 metre height limit for dwellings and provides for a 50 metre buffer zone on those lots adjacent to the Maldon Historic Reserve.

The proponent submitted to the Panel that is would prefer to have the Development Plan Version 21 specifically referred to in the DPO8 as being the Plan to which any modification must be generally in accordance with. Mr John Cicero, Advocate for the proponent advised the Panel that:

*What this means is that the various public authorities and all other stakeholders can have confidence that the subdivision of this land will take place generally in accordance with what is shown on the proposed Development Plan Version 21 that would form part of the Development Plan Overlay.*
The intent is to provide greater certainty and less flexibility to deviate from the Development Plan during the planning approval process for any future subdivision if the subject land is rezoned.

Figure 5: Indicative Development Plan Version 21 showing how the subject land may be subdivided if rezoning is approved.
4. Planning context

This section of the Report considers the policy context for the amendment and focuses on the strategic and policy issues. It assesses how the amendment meets the objectives of the Planning Scheme. The following sections of this Report include a brief appraisal of the State Planning Policy Framework (SPPF), the Municipal Strategic Statement (MSS) and Local Planning Policies, and the appropriate zone and overlay controls.

Many planning policies are partially applicable to consideration of the amendment. The submissions of the Council and the proponents identified relevant policies that were not identified or pursued by other submitters.

The Panel will focus discussion on the most relevant matters.

4.1 Policy framework

4.1.1 State Planning Policy Framework

The Panel considers the following SPPF Clauses relevant to the proposal.

- Clause 11 Introduction Goals and Principles
- Clause 12.03 Networks with the Regional Cities
- Clause 14 Settlement
- Clause 15 Environment
- Clause 16 Housing
- Clause 17 Economic Development
- Clause 18 Infrastructure

The relevant SPPF Clauses are outlined in Table 4:

Table 4: Relevant SPPF Clauses

<p>| Clause 11: Introduction goals and principles | Clause 11.03 Principles of land use and development planning identifies the following 7 general principles for planning in Victoria: Settlement; Environment; Management of resources; Infrastructure; Economic well-being; Social needs; Regional co-operation. In short, the application of planning practice must take account of the above matters including their underlying policies and strategies, to ensure the best overall outcomes for current and future generations. This inevitably involves judgement on balances between individual principles. It requires that Victoria’s planning objectives are fostered through appropriate land use and development planning which integrates relevant environmental, social and economic factors in the interests of net community benefit and sustainable development |
| Clause 12.03 Networks with the | Seeks to promote the growth of regional cities and key towns which include the Bendigo hinterland and towns like Maldon and which looks to ensure planning for rural residential |</p>
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<thead>
<tr>
<th>Regional Cities</th>
<th>development avoids or significantly reduces adverse economic, social and environmental impacts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 14 Settlement</td>
<td>This clause relates to urban settlement and is not directly relevant to this proposal in a rural area. Its objectives are to ensure that a sufficient supply of land is available for residential, commercial, industrial, recreational, institutional and other public uses, and to facilitate the orderly development of urban areas. The following requirements are considered to be also broadly applicable to rural areas. Planning authorities should plan to accommodate projected population growth over at least a 10 year period, taking account of opportunities for redevelopment and intensification of existing urban areas as well as the limits of land capability and natural hazards, environmental quality and the costs of providing infrastructure. Planning authorities should encourage consolidation of existing urban areas while respecting neighbourhood character and should use any relevant structure plan or precinct structure plan in considering applications for subdivision. Decision making must be consistent with any relevant requirements of State environment protection policies.</td>
</tr>
<tr>
<td>Clause 15 Environment</td>
<td>The objective is to assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment. Specific objectives and implementation requirements are specified for the following aspects most relevant to the current proposal: Catchment planning and management (including water quality protection, and floodplain management), Salinity, Soil contamination, Protection from wildfire, Conservation of native flora and fauna, Open space, Heritage.</td>
</tr>
<tr>
<td>Clause 16 Housing</td>
<td>The objective for Rural living and rural residential development is to identify land suitable for rural living and rural residential development. It requires compliance with Minister’s Direction No 6 Rural Residential Development for allowance of rural residential development. Importantly land should not be zoned for rural living or rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources. Also land should only be zoned for rural living where it is close to towns and urban centres, but not in areas that will be required for fully serviced urban development.</td>
</tr>
<tr>
<td>Clause 17 Economic development</td>
<td>This Clause provides policy for activity centres, business, industry, tourism, agriculture, intensive agricultural industries, forestry and timber production, mineral resources, extractive industry and apiculture. The objective for Clause 17.05 Agriculture, is to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland which is of strategic significance in the local or regional context. The General Implementation measures in the sub-Clause identify a range of safeguards and referral requirements to minimise potential to compromise the above objective. These include but are not limited to the following: Consultation with DPI to identify areas of productive agricultural land Permanent removal of productive agricultural land from the State's agricultural base must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors. Subdivision of productive agricultural land should not detract from the long-term productive capacity of the land. In assessing rural development proposals, planning and responsible authorities must balance the potential off-site effects of rural land use proposals (such as degradation of soil or water quality and land salinisation) which might affect productive agricultural land against the benefits of the proposals. In considering a proposal to subdivide or develop agricultural land, the following factors must be considered: • The desirability and impacts of removing the land from primary production, given its agricultural productivity.</td>
</tr>
</tbody>
</table>
• The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.
• The compatibility between the proposed or likely development and the existing uses of the surrounding land.
• Assessment of the land capability.

Planning and responsible authorities should consider the potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas.

Clause 18
Infrastructure
The objective for Clause 18.09 Water supply, Sewerage and Drainage, is to plan for the provision of those services to efficiently and effectively meet State and community needs and protect the environment.

The objective for Clause 18.12 is to facilitate the timely provision of planned infrastructure to communities through the preparation and implementation of development contributions plans, that should be used to manage contributions towards infrastructure.

4.1.2 Local Planning Policy Framework

Municipal Strategic Statement

The Municipal Strategic Statement (MSS) is intended to be a concise statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving the objectives. It must be compatible with State Planning Policy. It provides strategic basis for the application of the zones, overlays and particular provisions in the planning scheme and decision making by the responsible authority. Planning and responsible authorities must take account of the MSS when preparing amendments to planning schemes and before making decisions about permit applications.

The relevant MSS Clauses are outlined in Table 5:

Table 5: Relevant Municipal Strategic Statement (MSS) Clauses in Mount Alexander Planning Scheme

| Clause 21.01 Overview | The settlement pattern and Crown Allotment structure emanate from the gold era. This has left a legacy of dispersed small allotments that are popular for hobby farming and rural lifestyle activities. The Shire is well known for its heritage townships, buildings and places, which are of local, state and national significance, and Maldon was recognised as Australia’s first Notable Town in 1966.

The Shire has extensive road and rail transport links to Melbourne and Bendigo via the Calder Highway and the Melbourne-Swan Hill railway line.

The Loddon Campaspe catchment is ranked as one of the nations four most degraded catchments; dryland salinity, poor soil structure and erosion are prevalent throughout the Shire while the catchment has the highest incidence of algal blooms in the State. Its poor water quality threatens a range of activities (aquatic and riparian ecology, recreation, tourism, aesthetic values, urban water supply, domestic and stock and irrigation uses) throughout the catchment.

The Shire contains twenty Ecological Vegetation Classes of which sixteen are ‘vulnerable’ or ‘endangered’. It also contains sixty-five threatened flora species and fifty-four threatened fauna species. The Region’s Box Ironbark forests are important habitat for many threatened species, and the bushland is a most important recreational and tourism asset for the Shire, contributing to its unique character as a destination. |
## Clause 21.02 Key issues influencing the Shire’s future land use planning and development

The Shire has important natural and cultural assets including the Box Ironbark forests that are greatly diminished in Victoria. The recognised cultural assets are a defining aspect of the area’s character and identity.

While Coliban Water considers the existing water supply infrastructure able to meet most water supply needs for the Shire’s projected population growth, there will be a need for upgrade of the system at some towns in the future.

Potential environmental and amenity impacts between horticulture and dwellings in rural areas needs to be minimised. Land use planning decisions should not reduce the potential for agricultural production.

There is also a need to identify areas appropriate for rural living so that:
- Agricultural areas are not restricted by incompatible uses,
- Demand can be focused into areas, which will not conflict with established agricultural land uses,
- The “rural feel” of the Shire is not eroded.
- Sustainability of water supply and other resources is established.
- Threatened species and vegetation communities are identified, and the three-step approach to achieving net gain is used in development.
- The amenity of ... the Maldon Historic Reserve and other Parks are not adversely affected.

## Clause 21.03 Municipal Vision and Framework Plan

Of relevance to the amendment this Clause outlines that the land use planning and development vision for Mount Alexander Shire will be achieved by:
- Improved decision making for land use considering the Regional Catchment Strategy to improve the environment of the Loddon and Campaspe catchments.
- Increase in housing choice, in sympathy with the environment, for demographically diverse community.
- Protection of agriculture land uses from incompatible non-agricultural based development.
- Maintenance of the biodiversity of the Shire.

The Shire’s strategic framework is illustrated on plans including:
- Plan 1 Mount Alexander Shire Strategic Framework Plan Strategic Issues and Directions (refer to Figure 6), which identifies Maldon as Australia’s first notable town. The strategic issues and directions are to protect and preserve the image and heritage identity of this nationally recognized asset. Infill development must be compatible in form and appearance to maintain the character and function of the historic and commercial tourist area. The surrounding reserves and other natural landscapes must be protected.
- Plan 2 Mount Alexander Urban Living Strategy, which illustrates the Cluster, Connect and Consolidation model which is the selected growth model adopted by Council. This strategy reinforces the existing settlement pattern and concentrates future growth in towns with existing infrastructure.
- Plan 4 Maldon Framework Plan (refer to Figure 7), which identifies the subject land as the preferred Rural Living Area – staging of rural living development recommended. The Framework Plan was informed by the Mount Alexander Urban Living Strategy (2004) and the Rural Living Strategy (2006) which are reference documents in Clause 21.05.

## Clause 21.04 Objectives and Strategies

**Clause 21.04-1 Management of Urban Growth**

Almost 3,000 people moved to the Shire between 1996 mainly from Melbourne. The Mount Alexander Urban Living Strategy contains a growth management model called “Cluster Connect and Calder Corridor” (CCCC). A main component (with others) of this is Urban containment and limited expansion at Maldon.

‘Recent’ sewer ing of Maldon and other towns provides opportunities for housing growth. Identified issues include lack of housing diversity for existing and future needs.

Settlement objectives relevant to Maldon include:
- Encourage and guide urban growth that is generally consistent with the preferred urban growth model (Cluster Connect and Calder Corridor) for the Shire to the year 2030.
- Encourage residential infill and expansion in Maldon that protects the town’s heritage.

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MOUNT ALEXANDER PLANNING SCHEME AMENDMENT C36
PANEL REPORT: JANUARY 2009
significance and character.
Increase housing choice to meet the diverse household types.

Environment objectives include:
- Encourage urban containment and planned growth to protect the natural environment and rural landscapes.
- Protect visual landscape corridors along highways between towns in the Shire.

Clause 21.04-4 Rural Living

Demand for living in the Shire continues and needs to be managed. Rural living has been a part of the Shire’s rural landscape and population growth for many years and is a key has been a main contributor to social, economic and environment change.

Attraction for rural living is due to several factors. These include:
- proximity to urban centres (Bendigo, Castlemaine, and Melbourne)
- attractive and varied rural landscapes;
- undulating forest and farmland,
- low productivity values of much of the agricultural land
- prevalence of small lots throughout the rural areas (including forest areas around Maldon and Castlemaine) as a result of the gold mining heritage.

The fragmented land pattern has dispersed rural living activity. It contributes substantially to local supply and poses a significant land management issue.

Unlike many agriculturally based rural municipalities, Mount Alexander Shire’s mining heritage means that the land subdivision pattern in the Shire is highly fragmented into small lots throughout the rural areas, including forest areas around Maldon and Castlemaine.

There are opportunities to provide for this form of development at locations which are within close proximity to services and settlements and in locations which do not compromise existing land uses and values and future needs of the community. The provision of land for future rural living does not have to be on the basis necessarily that a continuing supply must be available.

Issues identified for attention include (but are not limited to) the following

**Settlement**
Constraints to the supply of suitable land, fragmentation of small lots, and dispersed rural living areas.

**Environment**
Development in rural areas could lessen or impact on environmental qualities and natural resource base (water quality, salinity levels, native vegetation and biodiversity loss).

Rural landscape provides part of the charm and appeal for local residents.

Rural living development has been associated with some land management and primary production impacts including:
- Spread of environmental weeds and pest animals;
- Proliferation of dogs and feral cats;
- Increased fire hazards.
- Proliferation of dams reducing the environmental flows on streams and waterways,
- Illegal vegetation removal and loss of understorey and habitat.
- Rural living developments in the Shire have increased levels of native vegetation planting, removed stock from marginal country, and can improve land management practices.
- Strip type development along highways with adverse landscape and visual impact.

**Economic Development**

- Rural living has led to reinvestment in agricultural productivity particularly in intensive production of items such as grapes and olives.

**Infrastructure**

- Ad hoc residential development in rural areas can significantly increase costs of road upgrading and maintenance and general Council and community services.

The Shires objectives regarding rural living development include:
<table>
<thead>
<tr>
<th>Settlement</th>
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<tbody>
<tr>
<td>- Reduce the number of small and inappropriately located rural lots.</td>
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<tr>
<td>- Encourage rural living development that promotes efficient use of resources (eg. water, power and fuel).</td>
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<tr>
<td>- Discourage use of existing old Crown allotments in the Rural Zone for rural living.</td>
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<tr>
<td>- Avoid strip development along highways.</td>
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<table>
<thead>
<tr>
<th>Environment</th>
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</thead>
<tbody>
<tr>
<td>- Provide locations for rural living development that will not cause water quality decline, native vegetation and habitat loss, soil erosion, and salinity.</td>
</tr>
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</table>

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<thead>
<tr>
<th>Infrastructure</th>
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<tr>
<td>- Provide location for rural living development that can be readily serviced by the facilities of a nearby urban area or town.</td>
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<table>
<thead>
<tr>
<th>The Shire’s strategies for rural living development are as follows: Settlement</th>
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<tbody>
<tr>
<td>- Ensure rural living development is located outside of defined urban boundaries and does not occur on land set aside for future urban development.</td>
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<tr>
<td>- Encourage clustering of rural living development close to key service areas.</td>
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<tr>
<td>- Consolidate lots in old and inappropriate townships into existing tenements or land holdings wherever practicable.</td>
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<table>
<thead>
<tr>
<th>Environment</th>
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<tbody>
<tr>
<td>- Avoid rural living development in significant water supply catchments areas and in areas of significant vegetation and habitat and high erosion risk.</td>
</tr>
<tr>
<td>- Prevent vegetation removal and encouraging revegetation as a component of land use change.</td>
</tr>
<tr>
<td>- Ensure net environmental gain as a consequence of rural living development.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Economic Development</th>
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<tbody>
<tr>
<td>- Ensure rural living development does not detrimentally impact on adjoining or nearby productive agricultural uses.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Infrastructure</th>
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<tbody>
<tr>
<td>- Ensure the full impact of rural living development in respect to road infrastructure, services and the management of storm water is met by the proposed development.</td>
</tr>
<tr>
<td>- Ensure rural living lots are of a size that all effluent and household stormwater can be contained on site.</td>
</tr>
<tr>
<td>- Ensure all rural living development is serviced with sealed roads, where reasonable and practicable, to a standard approved by Council.</td>
</tr>
<tr>
<td>- Ensure all rural living development is serviced, where practicable, with a reticulated domestic water supply.</td>
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</tbody>
</table>

The Shire will implement rural living as follows:
- Implement the Mount Alexander Rural Living Study.
- Apply the Rural Living Zone to areas found to meet the criteria established in the Rural Living Strategy, as required to meet demands over time.
- Use relevant local policies.

The following further strategic work is proposed in the MSS:
- Prepare Rural Living Local Policy to assist implementation of the Rural Living Study.
- Develop a process to refine areas proposed for immediate zoning to Rural Living and determine the appropriate staging of other areas that have been found generally suitable.
- Undertake a Rural Land Study to assess the agricultural, mixed farming, lifestyle farming and environmental conditions of rural land, making recommendations on the application of the Farming, Rural Activity and Rural Conservation zones.

Clause 21.04-6 Agriculture

This clause identifies agriculture as a significant industry within the Shire and the importance of protecting viable farming land for production. It has been demonstrated that the subject site is not productive agriculturally and environmental enhancement and land rehabilitation will be achieved through the proposed development, consistent with this...
Clause 21.04-7 Protection of Biodiversity and Landscape

Relevant considerations from this clause are that appropriate locations for rural residential developments are to be based on a number of considerations including the condition and value of the natural environment, native flora and fauna habitats, flooding, fire hazard, land capability, soil structure, vegetation quality and proximity to reserves and parks. The selection of locations and appropriate lot sizes can enhance the control of weeds and vermin and the illegal dumping of household and garden waste which often results in the spread of weeds into public land and native bush.

Clause 21.05

Reference Documents

Both the Mount Alexander Rural Living Strategy, (2006) and the Mount Alexander Urban Living Strategy, (2004) are included within this clause and are adopted by Council and have provided the strategic basis for the amendment.

Local planning policy

The Local Planning Policies (LPPs) for the Mount Alexander Planning Scheme are at Clause 22. They provide more detailed land use and development objectives, strategies and actions for the future development of the Shire, which flow on from the policies contained in the MSS. The relevant clauses of the LPPs that are of particular relevance to the proposed amendment are outlined in Table 6 below.

Table 6: Relevant Local Planning Policy (LPPs) in Mount Alexander Planning Scheme

| Clause 22.02 | Maldon | This policy applies to the Maldon township as defined on the Maldon Framework Plan (refer to Figure 7). It primarily recognises Maldon’s important preserved heritage values, relating to its gold mining past (ie: buildings, mining relics, landscape and townscape, historical interpretative value, evidence of early settlement patterns, and interaction between the areas landforms and a wide range of historic pastoral, mining, residential and industrial development activities).
Major policies include
• Preservation of the character and cultural assets of the town.
• Protection and enhancement of the environs and approaches to Maldon township, including important landscape features of Anzac Hill, Mt. Tarrengower and the Nuggetty Range.
• Recognition of potential for mining activity
• Active discouragement of residential development proposed outside of the sewerage district (Where reticulated sewerage is not possible, proposals for residential development must satisfy the requirements of a land capability assessment prepared in accordance with the Septic Tanks Code of Practice).
Specific policy detail is provided for three Township segments: Maldon Historic Central, Maldon Historic Residential and Maldon Historic Reserve. (These do not directly interface with the current proposal).

| Clause 22.11 | Streetscape | Presentation of towns from the highway is important in reinforcing the character, protecting existing heritage values and supporting tourism development. Landscaping of developments on the edge of towns will be a requirement and must demonstrate how development will be absorbed by the surrounding environment. The provisions contained within the proposed DPO schedule address the need to preserve the existing view corridor along the Castlemaine–Maldon Road such that impact of any new buildings and works is mitigated through the appropriate siting and design of all allotments and building envelopes.

| Clause 22.12 | Urban growth boundaries | Applies to the urban rural interface of towns including Maldon. It encourages consolidation of development within existing township areas, not prejudicing or limiting agricultural use of land around towns. An objective is to establish a clear process and criteria to guide the process of future conversion of productive rural/agricultural land to urban uses.
It is policy that:

- Provision for population growth within the main township areas should be designed to:
  - Prevent further reduction of water quality within the water catchment;
  - Maximise the use of infrastructure;
  - Lessen conflict in agricultural areas between agriculture and non-agricultural land uses;
  - Ensure greater use of our community services and facilities;
  - Assist in increasing the viability of such facilities;
  - Ensuring the viability of local businesses and shopping areas; and
  - Improve service delivery due to increased population of urban centres.

- A clear urban edge for towns should be established to ensure that the area of development is known to all residents.

- Land in agricultural production is to be protected from adjoining uses and development inconsistent with normal farming practices. Zoning will be used to provide a clear urban growth boundary.

### Clause 22.13
**Catchment and land protection**

Aims to achieve long term sustainable care and management of the Shire’s natural resource base by ensuring sustainable development of natural resources, promoting the maintenance of ecological processes and genetic diversity, ensure that the use and development of land and water takes into account impacts on the quality and quantity of natural resources, and promoting consistency with, and application of, the regional and other catchment and natural resource management strategies.

Policies include:

- Preference is given to the use and development which incorporates measures that protect and/or improve the quality and sustainable development of natural resources.
- Use and development proposals are consistent with and seek to implement a whole farm management plan.
- Impacts on soil, water, flora, fauna, air and ecosystems should be considered in the assessment of use and development proposals.
- Land capability is taken into account in the assessment of use and development proposals. This includes an assessment of the biophysical characteristics (soil, slope and climate) of the land and any physical limitations present.
- The potential effect of use and development on the quality of natural resources in the water catchment are considered.
- Measures to manage pest plant and animal problems should be incorporated in use and development proposals where appropriate.
- Applications for the use and development of land should be required to demonstrate consistency with the regional catchment strategy, and other relevant natural resource management strategies.
- Where the responsible authority considers that more information is required about a proposal, it may require a site and area analysis which sets out:
  - a natural resource profile including watercourses, soil type, vegetation and habitat area;
  - an assessment of physical limitations;
  - an assessment of environmental hazards;
  - the location and type of buildings and works, infrastructure, adjoining use and development and access; and
  - that measures will be taken to address natural resource management issues, physical limitations and environmental hazards.

### Clause 22.14
**Wildfire management**

Applies to developments in the FZ, RLZ and LDRZ. Objectives are:

- To ensure that new land use and development does not increase the level of fire risk.
- To ensure new land use and development include adequate fire protection measures.

Policies include matters relating to:

- the provision, dimensions and accessibility of roads for emergency services access
- fuel management and buffering widths
- water supply for fire fighting, including water tank requirements
- Buildings in Wildfire Management Overlays to be constructed in accordance with

#### Clause 22.15 Hilltop and ridgeline protection
Requires consideration of environmental, landscape and visual significance of hilltops and ridgelines in the assessment of use and development applications.

#### Clause 22.17 Pest plant and animal management
Applies to the management and control of pest plants and animals on productive and non-productive agricultural land.
Requires Council to consider management of pest plants and animals on all land and where appropriate, include permit conditions to require the removal of pest plants, feral orchards and eradication of pest animals prior to the commencement of a use or development.

#### Clause 22.20 Natural and cultural heritage
Applies to all buildings, works, sites and landscapes of local natural and cultural significance, including those buildings or places listed in the Heritage Overlay schedule.
Objectives include:
- Preservation and maintenance of local heritage.
- Ensuring that new uses and developments harmonise with and complement the historic and architectural integrity, character and appearance of the surrounding buildings, works, site or landscape.
- Recognise buildings, works, sites and landscapes of local historical and architectural significance and their role, and the need for their preservation and maintenance.
- Identification and protection of places, items and sites of Aboriginal cultural heritage.
Policies require council to take regard of cultural heritage matters including relevant advice and policy bases, in making decisions that may impact on heritage assets and areas.

#### Clause 22.22 Excisions, construction of housing and re-subdivision of land in the farming and rural living zones
This policy applies to all land in the Farming Zone and Rural Living Zone. It states that fragmentation of productive agricultural land by inappropriate subdivision is to be avoided in order to maintain the productive capacity of the land.
The policy mainly relates to land being retained in the FZ but Discourages low density residential estates and lots in the Farming Zone on agricultural land that has not been identified in the Town Structure Plans or the Municipal Strategic Statement as suitable for low density residential expansion. (ie does not apply to the subject land). It also discourages new house developments on existing small lots in all rural areas except if (and in addition to all other considerations):
- the lot has been created since the introduction of planning controls and;
- the development is completed by 1st October 2003 and;
- the development will not inhibit the rights of existing farms to continue their operations.
Discourages boundary re-alignments except if they are minor adjustments to take account of physical, man made or topographical features on the site.
It supports restructuring of old and inappropriate subdivisions on rural land.
On subdivision it :
- Supports adopting subdivision sizes which reflect farm viability;
- Discourages subdivision that is likely to lead concentrating lots so as to change the general land uses and character of the rural areas, unless it can be shown that the clustering of lots will not limit the productive use and development of larger lots in the subdivision or that surrounding.
- Strongly discourages subdivision in water supply catchment areas, to protect water quantity and quality.
- Discourages subdivision of high quality agricultural land.

#### Clause 22.26 Residential infrastructure
Applies to the provision of services of infrastructure for new residential development, where such services are presently available or in those areas where infrastructure is to be provided. It recognises that it is essential that infrastructure services are provided that contribute to functional and attractive living environments, and also ensure environmental quality is maintained.
Objectives include the following:
- To ensure that all existing and future forms of residential development, including rural residential development is serviced with reticulated sewerage when available and practical, water, electricity and other services.
- To ensure that all roads that service a residential development are fully constructed and sealed.
- To ensure that environment and water quality downstream of urban development is not affected.
- To ensure that development is located within or abutting the existing urban areas and does not prejudice the further development of the town.
- To establish a clear process and set of criteria to guide the process for the future conversion of rural land to residential uses.
- Policy includes that new development is to be focused in and around the Shire’s townships providing an opportunity to expand and improve upon the current level of amenity and services provided within these communities, and that land in agricultural production is to be protected from adjoining uses and development inconsistent with normal farming practices. Zoning will be used to provide a clear urban growth boundary.

<table>
<thead>
<tr>
<th>Clause 22.07</th>
<th>Applies to the construction of non urban roads and proposes (in short) to ensure that the improvement and upgrading of roads and infrastructure is commensurate with the expected impacts of proposed uses and developments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road construction</td>
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</table>
Figure 6: Plan 1 – Mount Alexander Shire Strategic Framework Plan Strategic Issues and Directions
Figure 7: Plan 4 – Maldon Framework Plan.
4.2 Planning scheme provisions

4.2.1 Zones

The subject land is in the Farming Zone (FZ). Under Clause 35.07 – Farming Zone, the minimum lot size for dwellings without a permit is 40 ha. Land to the north and to the south east is contiguous forested public land in the PCRZ. Land abutting the north east of the site but surrounded on other sides by the aforementioned public land is in the FZ. Land to the west and south of the site is also in the FZ. Current allotment sizes on the subject land generally vary between around 0.5 ha to around 5.5 ha, which are by any assessment not viable sized lots for agricultural enterprise in their own right.

Amendment C36 proposes to rezone the subject land to the Rural Living Zone (RLZ). Under Clause 35.03 – Rural Living Zone the purposes are:

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

Under the zone the use of land for the purposes of a dwelling does not require a permit if the land meets the minimum lot size specified in the zone schedule. Under Amendment C36 it is proposed to introduce a 1 ha minimum lot size which would mean that in accordance with the indicative Development Plan Version 21 (refer to Figure 5) no permit would be required for a dwelling on each vacant lot. A permit is required for subdivision into the number of lots in accordance with the 1 ha minimum lot size as a density under the schedule as proposed in the amendment.

4.2.2 Overlays

The following Overlays that apply to all or part of the subject land are outlined in Table 7.
## Significant Landscape Overlay (Clause 42.03)

### Schedule 1: Maldon Landscape Area

The Maldon landscape is classified by the National Trust. SLO1 covers most of the subject land, apart from a small portion in the far north east of the site. The landscape character objective to be achieved is:

- To prevent the destruction of significant tracts of bushland or trees which would detract from the value of the landscape, or area of significant vegetation.
- To preserve and enhance the character of the roadside along major approach roads to towns, the areas of landscape significance as identified by the National Trust and the Department of Natural Resources and Environment, prominent vegetation within the township area, the environs of the Cairn Curran Reservoir and other areas of visual landscape interest.
- To minimise the impact that mining activities are able to have on land of landscape significance.
- To encourage development of a type which does not detract from the value of the landscape due to its siting, height or general appearance.

Before deciding on an application, the responsible authority must consider:

- The effect on the whole landscape of buildings, works or activities in the specified area, particularly prominent hilltops and visually significant landforms.
- The siting and design of building and works.
- The retention of areas of vegetation or remnant vegetation as a habitat for native animals and birds and as an important visual element of the overall landscape.

### Schedule 3: Scenic approaches to Maldon

Covers the southern portion of the site abutting the Maldon-Castlemaine Rd. Relevant objectives re subject land are:

- 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.

A permit is required to conduct most works including agricultural activities including ploughing and fencing (but not the construction of dams) and to remove, destroy or lop most vegetation (unless under prescribed conditions). Developments need to comply with the Maldon Design Guidelines.

### Erosion Management Overlay (Clause 44.01)

The ESO covers around 75% of the subject land: except the south east portion. Its main objective is to protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development. A permit is required to:

- construct a building or construct or carry out works except for the use and development of an outbuilding of less than 120m²
- remove, destroy or lop any vegetation (except under specified conditions).

Permits to subdivide land must be accompanied by information showing

- The existing site conditions, including land gradient and the extent of any existing erosion, landslip or other land degradation.
- The extent of any proposed earthworks.
- The means proposed to stabilise disturbed areas.

Council must consider a range of plans strategies and other documents and matters before making any decision on land covered by the EMO.

### Wildfire Management Overlay (Clause 44.06)

The WMO covers only a very small portion of land in the north east of the site. Its objective is to ensure that development which is likely to increase the number of

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**Table 7: Overlays currently applying to the subject land**

<table>
<thead>
<tr>
<th>Overlay Type</th>
<th>Description</th>
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<tbody>
<tr>
<td>Significant Landscape Overlay (Clause 42.03)</td>
<td>The Maldon landscape is classified by the National Trust. SLO1 covers most of the subject land, apart from a small portion in the far north east of the site. The landscape character objective to be achieved is:</td>
</tr>
<tr>
<td>Schedule 1: Maldon Landscape Area</td>
<td>The Maldon landscape is classified by the National Trust. SLO1 covers most of the subject land, apart from a small portion in the far north east of the site. The landscape character objective to be achieved is:</td>
</tr>
<tr>
<td>Schedule 3: Scenic approaches to Maldon</td>
<td>Covers the southern portion of the site abutting the Maldon-Castlemaine Rd. Relevant objectives re subject land are:</td>
</tr>
<tr>
<td>Erosion Management Overlay (Clause 44.01)</td>
<td>The ESO covers around 75% of the subject land: except the south east portion. Its main objective is to protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development. A permit is required to:</td>
</tr>
<tr>
<td>Wildfire Management Overlay (Clause 44.06)</td>
<td>The WMO covers only a very small portion of land in the north east of the site. Its objective is to ensure that development which is likely to increase the number of</td>
</tr>
</tbody>
</table>
people in the overlay area satisfies the specified fire protection objectives, and does not significantly increase the threat to life and surrounding property from wildfire.

An application to construct a building or construct or carry out works must be accompanied by a statement which demonstrates that all fire protection requirements for water supply, access, buildings and works, vegetation and any other relevant matter have been considered and incorporated. The statement must show how the following objectives and outcomes are achieved, as appropriate.

4.3 Other planning strategies

The key planning strategy of most relevance to the amendment is the Mount Alexander Rural Living Strategy, which is a reference document in the Planning Scheme. The Strategy provides the basis for directing rural living development. It is based on the following principles summarised from the Strategy:

- That rural living is a form of residential development in the Shire which is sought after and can be located close to settlements which do not compromise existing land uses and values of the community. The provision of land for future rural living does not have to be on the basis necessarily that a continuing supply must be available and there are constraints to the supply of suitable land.
- That rural living development shall not be provided in areas which are required to be set aside for future urban development.
- That rural living development needs to be economically sustainable. Each development must meet its full costs.
- That the net impact of each and every rural living development on the environment is to be at least neutral and preferably positive. Rural living development will only be supported where it is appropriate given a range of issues, including location, access to services and facilities, off site impacts, respect for the local environment, land capability, achieves a substantial reduction in the number of small lots in rural areas, safety and fire protection, and opportunities to provide for sustainable rural land use which strengthen the local economy. Proposals will be required to demonstrate that they have considered the full environmental impact and can preferably evidence a net gain in the environmental condition.
- That rural living development does not detrimentally impact on adjoining or nearby productive agricultural uses.

The outcomes of the Strategy have been incorporated into the planning scheme under Amendment C24 which was approved on 22 March 2007 and are encapsulated primarily in the Maldon Framework Plan and Clause 21.04-4 - Rural Living in the MSS.
5. Identification of issues

5.1 Summary of issues

Issues raised in submissions

From the submissions to the Amendment, the Panel identified a number of key issues that need to be addressed. These are:

- the need to amend the flora and fauna report submitted with the amendment to show the conservation significance of the native vegetation and in particular the values associated with the presence of any threatened species on the land;
- the adequacy of the capability of the land to treat and dispose of wastewater effluent;
- the introduction of unsewered lots within the catchment of the Cairn Curran Reservoir which is a water supply catchment proclaimed under the Catchment and Land Protection Act 1994;
- the adequacy of compliance with the EPA Septic Tank Code of Practice, particularly with regards to waterway setbacks;
- the land should be rezoned to the Rural Conservation Zone (RCZ) and a Vegetation Protection Overlay (VPO) applied to better protect the vegetation;
- impacts on the amenity of the area;
- increased traffic particularly in Boundary Road;
- lack of detailed and independent economic, social and environmental assessment;
- lots are too small and should a minimum of 8 ha;
- no wildlife corridors;
- no landscaping to screen impacts on Castlemaine-Maldon Road or to protect the approach into Maldon;
- no provision of public land;
- buffer zones between the subject land and the Maldon Historic Reserve are inadequate;
- proposed development is not a sustainable form due to lack of pedestrian or cycling access;
- the amendment should be abandoned because the land description in the amendment was incorrect;
• no need for development as there are adequate areas of vacant land available for development in and elsewhere around Maldon;
• development will be unsuitable so close to the historic town of Maldon;
• lack of transparency in how the subject land was identified for rezoning;
• potential to compromise the future of the proposed heavy vehicle bypass of Maldon;
• development threatens the integrity of the historic elements of Maldon and the adjacent historic reserve;
• the development is out of character with the heritage values of Maldon;
• the proposal will set an undesirable precedent and reduce the attraction of the area for tourists;
• impacts on the environment due to the need to remove large areas of native vegetation and impacts associated with grazing and keeping of domestic pets;
• the design of the proposed subdivision should cluster lots on the cleared areas away from waterways and bushland areas;
• increased fire hazards;
• inadequate water supply for the development due to drought conditions;
• the development is isolated from the town;
• impacts with nutrients;
• water supply could be impacted by dam constructed;
• fences and human movement will impede wildlife movement in the area;
• lack of lots zoned for rural living in the Maldon area; and
• support for amendment because the identification of the land for rural living has already been approved under Amendment C24 and will help sustain Maldon.

Ministerial Directions

The Minister has made a direction under Section 12(2)(a) that contains the following requirement:

Ministerial Direction No. 6 Rural Residential Development

Ministerial Direction No. 6 - Rural Residential Development is relevant to Amendment C36 because it proposes to rezone land from Farming to Rural Living with a minimum lot size of 1 ha. The Direction is required to be taken into consideration in the preparation and assessment of the amendment. In
preparing an amendment which would allow rural residential development, a planning authority must demonstrate and show in the explanatory report that the proposed rural residential development:

- Is consistent with the housing needs and settlement strategy of the area.
- Is supported by and supports sustainable and viable settlements and communities.
- Does not compromise the sustainable future use of existing natural resources, including productive agricultural land, water, mineral and energy resources.
- Protects existing visual and environmental qualities of the area, such as landscape, water quality, native vegetation, habitat and biodiversity.
- Avoids predictable adverse environmental processes and effects, such as flooding erosion, landslip, salinity or wildfire.
- Can efficiently be serviced by social and physical infrastructure, at an acceptable and sustainable community cost.

The Rural Residential Development Guidelines, 2006 are formally linked to Ministerial Direction No. 6 as a General Practice Note. Their purpose is to provide planning authorities and developers with a strategic framework and guidelines for planning and evaluating sustainable rural residential use and development.

The Guidelines require that the following broad questions should be answered in sequence:

- **Strategy**: Does rural residential development fit into 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?

The Guidelines further identify that a proposed amendment must satisfy the strategic and land capability matters contained in the practice note. Consideration of how the amendment satisfies the requirements of the Ministerial Direction are provided later in the report under Chapters 6 Strategic Justification and 7 Environmental Considerations.
Ministerial Direction No. 11 Strategic Assessment of Planning Scheme Amendments

Ministerial Direction No 11 - Strategic Assessment of Planning Scheme Amendments applies to the preparation of all planning scheme amendments. Its objective is to ensure a comprehensive strategic evaluation of a planning scheme amendment and the outcomes it produces. It requires that in preparing a planning scheme amendment a planning authority must evaluate and include in the explanatory report a discussion about how the amendment addresses the following strategic considerations:

- Why is an amendment required?
- How does the amendment implement the objectives of planning in Victoria?
- How does the amendment address any environmental effects?
- How does the amendment address any relevant social and economic effects?
- Does the amendment comply with the requirements of any other Minister’s Direction applicable to the amendment?
- How does the amendment support or implement the State Planning Policy Framework and any adopted State policy?
- How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
- Does the amendment make proper use of the Victoria Planning Provisions?
- How does the amendment address the views of any relevant agency?

The planning authority must also assess the impact of the new planning provision on the resource and administration costs of the responsible authority.

Strategic Assessment Guidelines support the Ministerial Direction as a General Practice Note and are to be used by Councils and Panels in considering amendment proposals. The Guidelines identify matters that should be considered to ensure that planning is strategic and policy based, and they are intended to provide a consistent framework for the evaluation of a proposed planning scheme amendment and the outcomes it produces.

The Panel has considered the response to the Strategic Assessment Guidelines included in the exhibited Explanatory Report for the Amendment, together with the submission on the Guidelines from Council.
The Panel endorses Council’s response and considers that no issues are raised by an assessment against the Strategic Assessment Guidelines.

**Compliance with Practice Notes**

The following Practice Notes are relevant to the consideration of this Amendment:

- Managing native vegetation in the planning system,
- Native vegetation offsets,
- Applying the Incorporated Plan and Development Plan Overlays,
- Planning for wildfire protection,
- Biodiversity.

The Amendment complies with the relevant practice notes.

5.2 **Issues dealt with in this Report**

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

This Report deals with the issues under the following headings:

- Strategic justification,
- Environmental considerations,
- Impacts on Maldon township,
- Appropriateness of the planning controls.
6. Strategic Justification

6.1 What is the issue?

Amendment C36 seeks to rezone land south east of Maldon from FZ to RLZ which will facilitate a rural living subdivision and development. A Development Plan Version 21 indicates how the subject land could be subdivided into 44 lots. Submitters questioned whether the proposal has strategic justification. This was particularly highlighted with respect to compliance of the amendment with Ministerial Direction No 6 relating to land supply and demand and the location of the subject land within Box Ironbark woodland and the Lake Cairn Curran Special Water Catchment area. There is also the issue of the loss of agricultural land resulting from the rezoning to RLZ.

6.2 Policy context of the issue

Relevant provisions of the SPPF and LPPF are identified in Section 4.1. The policies of most relevance to the Amendment are Clause 21.03 and 21.04-4 of the Mount Alexander Planning Scheme. Clause 21.03 sets the context for the Panel’s consideration where it contains the Maldon Framework Plan (Figure 4), which identifies the subject land as follows:

Preferred Rural Living – Staging of rural living development recommended.

Ministerial Direction No 6 – Rural Residential Development is also important to consider because it sets key criteria for assessing rezoning proposals that allow rural living development.

From the perspective of the loss of farming land, planning policy direction for agriculture is reflected through the objective of Clause 17.5 which reflects on the importance of protecting productive agricultural land from other competing uses and influences and unplanned loss.

6.3 Evidence and submissions

Both Council and the proponent submitted to the Panel that the amendment satisfies the planning policy framework of the planning scheme and the requirements of Ministerial Guideline No 6. Ms Joan Copland, Council’s Strategic Planner submitted to the Panel that the rezoning of the subject land
will not inhibit future urban growth of Maldon because although the land is located close to the town centre it is not within the township boundary. The subject land is approximately 2 kilometres south east from the town and does not interfere with the urban fabric of Maldon.

Both Council and the proponent indicated that the rezoning of the subject land seeks to implement the land use and development vision for Mount Alexander and complies with the strategic direction of the Maldon Framework Plan under Clause 21.03.

Council considered that the amendment will introduce, to the Maldon area the Rural Living Zone, which will facilitate an integrated rural living development. The amendment provides for a range of lot sizes and includes the application of both the DPO8 and ESO8 to support the environmental values of the land.

In contrast, Dr George Ryan, Advocate for the Friends of the Box Ironbark Forests Inc. (FOBIF) submitted that although the amendment may appear to comply with the Maldon Framework Plan and rural living policy under Clause 21.04-4, it fails to satisfy those policies that seek to provide caveats on rural living development. These policies relate to matters such as avoiding the loss of native vegetation and biodiversity and the protection of water catchments.

The Panel heard contrasting views and evidence from the proponent and FOBIF with respect to whether or not there was sufficient demand for additional rural living zoned land around Maldon. What the Panel does understand is that population growth in Maldon is virtually non-existent but that there is growth for new dwellings much of which occurs within the existing rural areas under the FZ. Much of this growth with new dwellings appears to be related to a continuing reduction in household size and a high proportion of unoccupied dwellings in the Maldon area. This reflects the holiday or getaway nature of the town and surrounds and possibly a preference to rural lifestyle living within the area around Maldon.

All parties made extensive reference to both the Mount Alexander Rural Living Strategy and the Mount Alexander Urban Living Strategy in their submissions. The Panel heard evidence from Mr Bernard Collins, Town Planner which included a statement of evidence from Mr Trevor Budge, Town Planner and author of the Rural Living Strategy about how the subject land was nominated in the Strategy as a candidate site for rural living development. Mr Budge’s evidence outlined how the Rural Living Strategy had developed a set of principles which could be used to assess rural living proposals. He described how the owners of the subject land submitted an expression of
interest in late 2003 following a call from the consultants preparing the Strategy and how the subject land had satisfied the assessment principles for inclusion under the Strategy. Mr Collins and Ms Copland also described how the outcomes of the Rural Living Strategy were incorporated into the planning scheme via Amendment C24 and the consideration of the Panel Report into that amendment.

Mr Cicero submitted to the Panel that:

This Panel is entitled to conclude that this site was identified at an early stage as a site which could potentially provide rural living opportunities in a town where there are no structured rural living areas.

The significant point, I think, made by Mr Budge and supported by Mr Collins is that in the absence of a Rural Living Zone, there is considerable pressure on the Farming Zone to fulfil that role in a de facto way.

It is submitted that that is not a good land use planning outcome.

There is substantial policy that informs outcomes in the Farming Zone which discourages the fragmentation of the Farming Zone and encourages consolidation to ensure that viable parcels of land continue to exist to provide farming pursuits.

The proposal presents an opportunity to provide in a controlled, co-ordinated and, indeed, appropriately located rural living opportunity where it currently does not exist in such an organised way.

In contrast, the Panel heard from Ms Anne Hayes, submittor that:

I suggest that the proposal as it stands be abandoned. It would appear that the Developer bought this farming land with the intention of subdivision. Any argument that the land is unsuitable for farming is irrelevant as no “farming” land in our region is suitable for farming. All farming land in this region is mineral deficient and suitable only for light grazing. There is no water available to support intensive farming practice. I see no reason why we should not return to the earlier system whereby small-scale sub-division proposals were considered on their merits in order to satisfy the demand for Rural Living land as and when required. I believe that this ad hoc approach which is opposed by Council is in fact more suitable in the Maldon environment.

In relation to the land use change from farming to rural living, the Panel notes that no one disagreed with the understanding that the subject land is of low agricultural quality. This has been described earlier in Section 3.1 of this report. The subject land generally supports poor pasture and has historically
been used for low intensity grazing and is subject to sheet and gully soil erosion.

6.4 Discussion

The level of information included in this amendment has been very detailed. For example, information concerning net gain evaluation for native vegetation management is not usually considered at the rezoning stage, but rather is usually a matter for assessment at the planning permit application stage of land use development. Yet, this level of information has been put to the Panel to demonstrate recognition of how environmental sensitivity has been considered by the proponent and Council.

The Panel notes that its consideration of Amendment C36 is with respect to a rezoning proposal only and not a planning permit application matter. Detailed issues associated with how the subject land may be subdivided or developed, although useful in assisting the understanding of the Panel as to what may be possible are not part of the Panel’s main considerations of this amendment. Accordingly, the Panel is concerned with how suitable the land is for use for rural living purposes. This includes how well it supports and is supported by the planning policy framework established under the Mount Alexander Planning Scheme and the Ministerial Direction No 6 for Rural Residential Development.

From the policy context and submissions made, the Panel considers that one of the key issues within Mount Alexander Shire generally and including the Maldon region is the legacy of the myriad of small Crown Allotments and existing small lots within the FZ. This, in combination with an apparent attitude that rural living development is reflected by the residential use of existing small lots under the FZ represents a significant issue for Council. There is a concern over the future viability of farming activity which the Rural Living Strategy and the MSS is attempting to address.

The Panel understands that Maldon currently does not have any areas zoned Rural Living, yet submittors such as Ms Hayes clearly indicate that rural living development is possible by permitting residential development on small lots within the FZ which is clearly in conflict with State policy relating to protecting agricultural land use. The Panel considers that the emphasis of the Rural Living Strategy is to shift the pressure on developing small lots within the FZ and which are scattered over a wide area to within a more defined area that can be zoned specifically for rural living and which satisfy clear criteria established under the Strategy.
In many respects the question of strategic justification has been addressed in part under Amendment C24 which identifies the subject land as preferred for rural living zoning.

6.4.1 Planning Policy

The policy framework under Clause 21.03 seeks to achieve four key aims that are relevant to the amendment:

- Improve land use decision making for the environment of the Loddon catchment (this draws in the issue of water supply catchments).
- Increase housing choice in sympathy with the environment.
- Protect agricultural land uses from incompatible non-agricultural based development.
- Maintain biodiversity.

The Panel considers that these aims are clearly met by Amendment C36 because rezoning the subject land to Rural Living will introduce a dedicated area adjacent to Maldon whereby rural living development may occur under conditions which ensures that environmental issues are considered and managed. Importantly, it affords Council the opportunity to better control the “ad hoc” nature of residential development pressure on small lots in the FZ. This means that Council can better plan and strengthen its administration of State and local planning policy relating to protecting and supporting agriculture and better plan for rural living land use around Maldon.

Although the amendment may result in the loss of 125 ha of land from the FZ, the Panel considers that the ultimate effect of this loss is relatively minor. This is because the subject land has low fertility with physical constraints such as slope, and shallow or rocky soils and that most of the site remains well vegetated, all making it impractical for it to be used for sustainable farming.

What this also means is that the issue of rural living development within the Lake Cairn Curran Special Water Catchment area and associated impacts on water supply and quality can be better controlled and managed in order that unplanned development of existing lots scattered throughout the FZ and the water supply catchment can be controlled. Certainly, the amendment seeks to allow rural living development within the water supply catchment. However, the Panel considers that the strategic benefit of the rezoning in terms of providing a mechanism to limit unplanned rural living development on farming land within the catchment outweighs the concern over allowing the Rural Living Zone. The Panel’s views on this are further
supported by the fact that the subject land is not covered by the Environmental Significance Overlay 2 – Lake Cairn Curran Catchment. This is the planning scheme tool that seeks to highlight the need to restrict development within the Lake Cairn Curran Special Water Catchment area and which also brings to bear on any proposal for development, the local planning policy requirements under Clause 22.21 - Water Supply Catchment Area.

The Panel considers that the rezoning will permit a range of lots to be subdivided in the future which will serve to provide an increase in housing choice, but developed in a manner which ensures that with the application of the DPO8 and ESO8, environmental values and significant impacts are mitigated. These provisions will support the maintenance of biodiversity values of the subject land through controls over the amount of clearing of native vegetation and land management practices undertaken by future lot owners.

With respect to Clause 21.04-4 – Rural Living, the Panel notes the intent of the policy to encourage integrated forms of rural living development (ie: make efficient use of resources such as power, water etc…), can be serviced by a nearby town, discourage use of existing Crown Allotments in farming areas for rural living development and avoid strip development along highways. The Panel considers that these objectives would be satisfied and supported by the amendment because it will provide for a form of rural living development that is integrated with services, is close to Maldon’s services and will provide a platform from which rural living use of FZ lots can be discouraged on the basis that suitably zoned land for such land use would be available.

The policy also has relevant strategies, which seek to avoid rural living development in significant water supply catchments and in areas of significant vegetation and habitat and high erosion risk. It also seeks to prevent vegetation removal and encourage revegetation and ensure that net environmental gain is achieved with rural living development while ensuring that agriculture is not impacted. The Panel considers that the amendment achieves these strategies because the rezoning will support agriculture under the FZ by taking up demand for rural living around Maldon and preventing inappropriate development of farming land for rural living purposes. The amendment also requires that the net gain policy of Victoria’s Native Vegetation Management – a Framework for Action is complied with under the provisions of the DPO8 and the environment protection provisions of the ESO8, which will be applied to the subject land for the first time. These provisions will promote environmental protection and ensure that gains will be achieved from the rezoning.
6.4.2 Ministerial Direction No 6 – Rural Residential Development

With respect to Ministerial Direction No 6 – Rural Residential Development, the key issues relate to Strategy, Housing Need, Location and Subdivision Design.

With respect to Strategy, this has been covered above.

With respect to Housing Need, the Panel noted above the contrast with submissions and evidence presented during the hearing regarding demand and supply issues. The Panel considers that the issue of determining demand for rural living zoned land is difficult given the fact that there is no other such zoned land to use as a gauge. However, the Panel does note that although there may well be ample existing vacant lots within the Maldon township, they most likely provide a different style of living compared to that offered under a Rural Living Zone (this is essentially promoting residential living in a rural environment).

The Panel does note from the submissions and evidence however, that there is some demand for residential use of rural lots. This is evident by Mr Andrew Sells, Town Planner and Property Analyst referring to at least approximately 30% of new dwellings within the Shire built in 2002 occurring within the rural areas.

The Panel considers that although the Maldon area may not be experiencing population increases, the Rural Living Strategy has established through the planning scheme a policy direction to formalise rural living zonings in an attempt to arrest unplanned rural living development pressure within the agricultural areas of Maldon and the Shire generally. The Panel believes that this policy framework should be supported. It will shift demand from the scattered ad hoc nature of rural living as currently occurs within the Shire to areas where rural living can be focused with controls to ensure the environment is not significantly impacted.

The Panel considers that Amendment C36 may well satisfy unmet demand and in any event will establish a staging of development under the DPO8 which further supports the strategic direction of the Maldon Framework Plan. The Panel considers that the rezoning will most likely produce its own demand similar to that inspected at the Spring Creek Estate located on the Maldon-Bendigo Road and the nature of development inspected at Erin Court near Castlemaine.

With respect to Location, the Panel considers that the rezoning of the subject land will not interfere with the urban future of Maldon. Both the Rural Living Strategy and Urban Living Strategy have identified future directions
for both the Maldon township and its surrounds. Amendment C36 is in accordance with both these Strategies and whose strategic directions are now incorporated into the planning scheme.

The Panel believes that the agricultural value of the subject land is limited and that it’s conversion to rural living will not result in the substantial loss of productive agricultural land. Impacts on surrounding agricultural land are also considered minor.

From the perspective of the Lake Cairn Curran Special Water Catchment area, the Panel has already addressed this issue and considers that from an overall strategic viewpoint the rezoning is appropriate and will assist in supporting the long term protection of the water supply catchment.

Protection of environmental areas, biodiversity and landscape values and land capability are addressed in more detail later in this report. From a strategic viewpoint, the Panel notes that the amendment includes applying a DPO8 and ESO8 which contain detailed requirements to ensure a net gain is achieved from any future rural living development. Impacts on landscape values are considered minor given the low density of development and extent of screening from public viewpoints including from the Castlemaine-Maldon Road. Land capability has been generally assessed, but indicates that on-site effluent treatment and disposal is achievable subject to detailed design and siting of development and that, erosion hazards of the subject land can be appropriately managed for environmental improvement.

6.5 Conclusions

The Panel concludes that:
- Amendment C36 to facilitate the rezoning of land at Tarran Valley from Farming to Rural Living is consistent with the strategic planning framework for the site and the Maldon area.
- Amendment C36 is in accordance with Ministerial Direction No 6 – Rural Residential Development.
7. Environmental Considerations

Three main areas of environmental considerations are discussed in this Section and are:

- Special water catchment areas;
- Land capability for rural living use and in particular the capacity to adequately treat and dispose of wastewater effluent; and
- Biodiversity including flora and fauna issues.

7.1 Special Water Catchment areas

7.1.1 Legislative and Policy context

Special Water Catchment areas are declared under the *Catchment and Land Protection Act 1994 (CaLP Act 1994)* which superceded the former *Soil Conservation and Land Utilization Act 1958 (SC&LP Act 1994)*. The purpose of declaration is to officially recognise designated catchments for water supply purposes. This is to highlight to the community, land managers and planners, the importance of the catchment for water supply purposes.

The Cairn Curran catchment is a sub-catchment of the Loddon River Basin. Maldon township and the subject land are at the north east boundary of the 1594 sq km Cairn Curran Special Catchment Area as proclaimed on 30 May 1962 under the *SC&LP Act 1958*.

Proclaimed areas are listed under Schedule 5 of the *CaLP Act 1994* Act. Victoria’s DPI website declares that Cairn Curran’s function is to: ‘ensure supply to irrigated properties along the Loddon River and the western sector of the Goulburn-Murray Irrigation District (GMID); provide stock and domestic supplies; maintain minimum flows for environmental purposes; and generate electricity when irrigation and flood releases are being made.’ A two megawatt power station at the reservoir operates when irrigation and flood releases exceed 250 ML/d.

Special areas are proclaimed following recommendation to the relevant Minister by a Catchment Management Authority (previously by their predecessor bodies). The Minister’s must consider how the existing or potential use of the area may adversely affect (a) the quality and condition of land; or (b) water quality or aquatic habitats; or (c) aquifer recharge areas or aquifer discharge areas. Following declaration a special area plan may be prepared for Ministerial endorsement that deals with specific land...
management issues. Under the former *SC&LU Act 1958*, Land Use Notices could also be gazetted which required land managers to apply to the (former) Soil Conservation Authority if it was proposed to alter land use to any of a specified range of uses.

The *Victorian Government Gazette* of 16 February 1972 included a Land Use Notice covering part of the proclaimed Cairn Curran catchment. The notice specified 'changes in land use which may not be made without the prior approval of the (then Soil Conservation) Authority’, in the specified part of the Catchment as defined on Plan No. 2596 (Refer Figure 8).

**Figure 8: Land Use Notice Plan No 2596 for the Cairn Curran Catchment**

The notice states the following for the specified area:

*The changes in land use which may not be made without the prior approval of the Soil Conservation Authority are:*

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**Plan 2596**

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1. The clearing of timbered land, the construction of roads, the clearing or trenching of easements, the carrying on of any extractive industry, the building of dams in excess of 1,600 cubic yards capacity or a wall height of 8 feet.

2. The ploughing or cultivation of land within two chains of the edge of the banks of streams, creeks or watercourses for a distance of twenty chains upstream from the fully supply level of the reservoir and upstream from that point within one chain from the edge of the banks of such streams, creeks or watercourses.

3. The subdivision of rural land into allotments for uses to which hitherto it has not been put, or into allotments of a size which when developed may result in the deterioration of the soil and/or the quality and purity of the water in the reservoir and streams within the catchment thereof, or all subdivisions of land to create allotments of less than sixty (60) acres within area.

4. The establishment of feed-lots, piggeries, poultry farms or any other industry which will discharge effluent within the specified area.

5. In respect to an existing use of land, the construction or change of location or addition to any building or a change in any industry which will result in an increase in the rate of discharge, or the discharge, of effluent to the specified area.

The Land Use Notice does not cover Maldon township nor the subject land, which is several hundred metres to its north east.

The ESO2 for the Lake Cairn Curran Catchment in the Mount Alexander Planning Scheme applies to that part of the catchment in the Mount Alexander Shire that is covered by the Land Use Notice. As such it also does not cover Maldon township nor the subject land.

In August 2000 the State government released Interim Guidelines for planning permit applications in open, potable water supply catchment areas under s.60(1)(b)(ii) (now s.60(1A)(g)) of the Planning and Environment Act 1987. The guideline was intended to apply until a review of water catchment issues was completed. However a ‘final’ guideline has not yet been released.

The stated purpose of the interim guideline is to assist responsible authorities in their assessment of planning permit applications for use and development in all open, potable water supply catchments in Victoria.
The following key features of the document are relevant to the current proposal.

- A potable water supply catchment provides water resources to a reservoir/water storage used primarily for domestic water supply purposes. An ‘open’ catchment is where part or all of the catchment is privately owned, such that water authorities do not have direct control over land use and development. However, because of public health risks, all use and development should be sited and managed to protect catchment water quality.

- The guideline applies to all ‘open’ special water supply catchment area declared under Division 2 of Part 4 of the *CaLP Act 1994*

- Residential development and agriculture in particular have potential to pollute water quality through discharging contaminated run-off, wastes, nutrients or sediments to waterways. Three key pollutants are septic tank systems, agricultural practices, and buildings and works.

- The guideline nominally links to SPPF Clauses 15.01 and 18.09 (refer to Section 4.1.1).

The guideline includes (in summary):

- **Guideline 1:** (Density of dwellings): Dwellings densities should not exceed one dwelling per 40 hectares (1:40 ha), and the minimum subdivision lot size should be at least 40 hectares. However, this does not apply if a catchment management plan or similar project addressing land use planning issues has been prepared, and its objectives, strategies and requirements are included in the planning scheme; and a land capability assessment for the on-site management of domestic wastewater has been completed showing that a greater or lesser minimum subdivision area and density of development is appropriate.

- **Guideline 2:** (Effluent disposal and septic tank system maintenance): This states that all dwellings must be connected to a reticulated sewerage system or, an approved on-site treatment system must be installed in accordance with the *EPA Code of Practice for Septic Tanks, On-site Domestic Wastewater Management* (CoP, March 1996 version). It proposes, in part that septic tank systems including their effluent disposal areas should be located at least 60 metres from any surface waters or 100 metres from any surface waters within a declared special water supply catchment area. Where these setback distances cannot be achieved, consideration should be given to a higher level of effluent treatment before discharge to the disposal system.

- **Guideline 3:** (Vegetated corridors and buffer zones along waterways): Planning and responsible authorities should encourage retention of
natural drainage corridors with vegetated buffer zones at least 30 metres wide along waterways.

- Guideline 4: (Buildings and works): Buildings and works should not be permitted on effluent disposal areas or on slopes exceeding 20 per cent, with setbacks of at least 30 metres from waterways to minimise pollution impacts.
- Guideline 5: Agricultural activities: Stock access to waterways should not be permitted. Stocking rates should reflect land capability to prevent overstocking. Water pollution reductions should be encouraged by appropriate or improved use and management of polluting agents and practices that can threaten water quality.

The Interim Guideline is not referred to nor incorporated into the Mount Alexander Planning Scheme.

SPPF Clause 15.01 requires decision-making to be consistent with relevant requirements of State Environment Protection Policy (Waters of Victoria) (SEPP-WoV), and requires planning authorities to have regard to relevant aspects of:

- Any regional catchment strategies approved under the Catchment and Land Protection Act 1994 and any associated implementation plan or strategy, including regional vegetation plans, regional drainage plans, regional development plans, catchment action plans, landcare plans, and management plans for roadsides, soil, salinity, water quality and nutrients, floodplains, heritage rivers, river frontages and waterways.
- Any special area plans approved under the Catchment and Land Protection Act 1994.

SPPF Clause 18.09 relates to planning for the provision of water supply, sewerage and drainage services. Documents explicit in the clause include the Guidelines for Environmental Management - Septic Tanks Code of Practice, Publication 891 (EPA 2003)\(^1\), and the State Environment Protection Policy (Waters of Victoria).

The Rural Residential Guidelines of Ministerial Direction No 6 in part state that rural residential development is not appropriate on land that is in a special water supply catchment area under the Catchment and Land Protection

\(^1\) The Septic Tanks Code of Practice of 2003 is now replaced by the document titled 'Code of Practice Onsite Wastewater Management' Publication 891.1 September 2008.
Act 1994. It requires that when land is not to be connected to reticulated sewerage, treated waste needs to be able to be wholly contained on site.

### 7.1.2 Evidence and submissions

Council submitted that the support provided in submissions from the Department of Sustainability and Environment (DSE) and the Country Fire Authority (CFA) and the findings of the land capability and flora and fauna assessments are indication of an adequate level of compliance with Clause 15.

Dr Ryan proposed that as the subject land is within the proclaimed Cairn Curran Special Water Catchment area it should be assessed against the Interim Guideline including its 40 ha provisions for subdivision and housing density. FOBIF presented the following main points for its case:

- the subject land is in the upper reaches of Sandy Creek in the Cairn Curran catchment, with the Creek roughly beside the south west lots. Cairn Curran Reservoir experiences algal blooms, and has been flagged (in Our Water Our Future: Regional Action Plan – Bendigo) as a potential additional source of water for Bendigo. Two badly eroded watercourses border the land and redgums grow in this part of the creek; and
- the major concern with the proposal is the planned allotment/housing density in the proclaimed catchment, which is considered too high.

Dr Ryan was unable to advise why the subject site is not covered by the ESO2 for Lake Cairn Curran Catchment.

The proponent did not discuss the Cairn Curran catchment in its submission, but Mr Cicero identified that no public or statutory authorities opposed the amendment outcome which is consistent with the Shire’s Rural Living Strategy and the previous C24 Panel Hearing that introduced that Strategy into the planning scheme. The development of the Strategy and the C24 Panel process had both involved extensive community consultation, which was outlined by Mr Cicero. Neither the evidence of Mr Collins or Mr Budge identified the proclaimed Cairn Curran Catchment in a strategic or policy context.

The land capability evidence of Dr Robert van de Graaff, Soil Scientist indicated that the risk to water quality is insignificant in that the site is capable of effluent absorption such that it will not have any impact on the environmental qualities of the subject site.

Dr van de Graaff commented upon the attributes of the subject land only, and did not discuss any implications associated with its location within the
broader landscape including the Cairn Curran catchment. However his report is largely about the ability of the land to accommodate treated effluent on site, and is therefore relevant to potential wider catchment impacts. His assessment was based on eight test sites at each of two locations in the 125 ha of the subject land. While he acknowledged that further investigations are needed to confirm his findings, he concluded that treated effluent and nutrients can be contained on site with insignificant off-site impact subject to the following provisos:

*It is important to ensure that the sizing of all effluent re-use areas or disposal areas is done conservatively and that, where possible, the areas are spelled, so that the soil is not saturated with effluent, and all effluent movement in the soil takes place very slowly under unsaturated conditions.*

and that:

*Because the terrain varies across the subject land some (treatment) options are not appropriate to certain types of terrain.*

In summary, Dr van de Graaff indicated that:

- conventional absorption trenches associated with septic tanks are only appropriate in soils deeper than 0.9m and on slopes of <20%;
- subsurface irrigation dispersion fields of the type associated with modern secondary treatment systems are needed where soils are less than 0.5m and where slopes are irregular or >20%; and
- subject to detailed on site investigations and appropriate design to suit, the proposed siting of effluent fields will satisfy requirements without causing adverse off site impacts.

The Panel notes that no other authority apart from Goulburn Murray Water raised the issue of the Cairn Curran special Water Catchment area. While not objecting to the proposal, GMW indicated an interest, as it will introduce a large number of un-sewered properties into the catchment of the Cairn Curran Reservoir which is a special water supply catchment proclaimed under the Catchment and Land Protection Act 1994. It noted that the land is of poor quality with limited potential for agriculture, and recommended that because the land capability and topographic constraints vary across the subject land, at the time of development of each lot with a dwelling an individual land capability assessment must be undertaken. It also proposed that at the time of each assessment, the setback distances for effluent disposal be applied based on currently used definitions of a waterway. It identifies that as currently defined in the...
Waterway Determination Guidelines\(^2\) a waterway does not necessarily have the defined bed and banks of a watercourse. GMW considers that setbacks should not just apply to watercourses that contain bed and banks (as tabulated by Dr Van de Graaff), as this would be inconsistent with the intention of the EPA Septic Tanks Code of Practice.

### 7.1.3 Discussion

The application of the ESO2 within the Cairn Curran catchment requires discussion. This is because the Panel needs to consider the capability of the land from a water quality perspective to accommodate rural living development as proposed under the amendment. The following points are relevant:

- The declaration of the Cairn Curran catchment as a special water supply catchment area under the Soil Conservation and Land Utilization Act 1958 (now the Catchment and Land Protection Act 1994).
- The designation of only part of the catchment for application of a Land Use Notice under the abovementioned Act, and the subsequent application of the ESO2 in the Mount Alexander Planning Scheme to that same part of the catchment.
- The recognition of water supply catchments in the Mount Alexander Planning Scheme.
- The status of the Interim Guidelines for planning permit applications in open, potable water supply catchment areas.
- Land capability of the subject land for on site containment of treated effluent.

For this, the Panel is guided by the Mount Alexander Planning Scheme and related State and local policies and strategies, and identifies the following main points:

- The DPI website advises that declaration of Special Areas (Water Supply Catchments) highlights to the community, land managers and planners, the importance of the catchment for water supply purposes. Further, most water supply catchments in Victoria are ‘open’ catchments, and as the supply of good quality water is essential for human needs, declaration means that consideration must be given to water matters by land managers and users and by planning authorities. It follows that this must be the case in the Cairn Curran special water supply catchment area.

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\(^2\) Reference unable to be found by Panel.
The issuing of Land Use Notices further highlights the importance of proclaimed catchments or part thereof. The notices are not applied in all proclaimed catchment areas, but where there was priority need. In this case the land subject to the Land Use Notice surrounds Lake Cairn Curran to an average distance of around 3 km.

The reason for the delineation of only part of the catchment is not provided on the Gazetted Notice and the Panel is not aware of other information on this. However, the Panel notes that the geology and form of the land from the subject land to Cairn Curran Reservoir including land designated in the Land Use Notice area, is generally consistent (ie: low sedimentary hills). It would appear that the (former) Soil Conservation Authority assessed that land use in closer proximity to the lake was a more significant risk factor to water quality than land use associated with the subject land which is located outside of the Land Use Notice area.

It is also apparent that 1972 Land Use Notice clearly provided a substantive rationale for application of the ESO2 to only that part of the Cairn Curran catchment covered by the Notice.

Further, the application of the ESO2 to part of the Cairn Curran catchment is the Planning Scheme’s primary ‘practical’ recognition of the catchment as a proclaimed source of domestic and industrial water supply. Also, while the Implementation section of Clause 21.04-7 - Protection of Biodiversity and Landscape states that catchment improvement objectives will be achieved by applying the Environmental Significance Overlay to Lakes Eppalock, Cairn Curran and Laanecoorie catchments, Loddon and Campaspe Rivers and other watercourses the ESO2 remains applied only to that area covered by the gazetted Land Use Notice.

The Panel therefore concludes that there remains a distinct strategic difference between the areas covered and not covered by the ESO2. It follows that greater weight must be given to catchment and water quality matters in the land covered by the ESO2 than for areas outside of the ESO2 area regardless of both areas being within a proclaimed catchment.

In considering the Interim Guideline for planning permit applications in open, potable water supply catchment areas, the Panel notes that the guideline has not been formalised into a ‘final’ document and is not recognised in the Mount Alexander Planning Scheme. This is despite various other documents being explicitly identified the Planning Scheme that are relevant to catchment management.
In the 2008 Supreme Court case of Western Water v Maurice and Esther Rozen and Macedon Ranges Shire Council and Others (No. 8990 of 2007)³, Justice Osborne provided considerable weight to the Interim Guidelines in overturning a VCAT judgement (Reference No P86/2006)⁴ to permit construction of dwellings on four contiguous titles abutting the Campaspe River in the Eppalock Special Water Catchment Area near Woodend.

Although the Supreme Court afforded the Interim Guidelines some status as a planning document, the case related to planning permit applications, which are the explicit subject of the guideline. Further, the decision to overturn the VCAT judgement was based on technical grounds not related to the current matter being considered by this Panel. A key point of difference here is that the current proposal is for rezoning, not for the consideration of a planning permit application, which is the explicit subject of the guideline. The Panel considers that as the Interim Guideline does not relate directly to rezoning proposals and the reasons for the Supreme Court’s overturning of a VCAT decision are not relevant to the current matter, both the guideline and the Court decision have little weight in determining the current matter.

It has already been acknowledged that the Mount Alexander Planning Scheme does not identify the Special Area Status of the Cairn Curran Reservoir apart from the application of the ESO2 to part of it. Other references to the importance of water and catchments are generic within the scheme’s policy content. Also as noted earlier, none of what could be considered interested agencies including DSE, Goulburn Murray Water, Coliban Water and the North Central CMA have objected to rezoning of the land to RLZ, and have not raised the water supply catchment issue as a determining factor for the amendment.

On the matter of the Rural Residential Guidelines under Ministerial Direction No 6, the Panel has earlier discussed the strategic issues but takes the following view:

- If taken literally the exclusion of rural residential development from within water supply catchments would have major implications across most of North Central Victoria, where extensive areas including at least one entire Shire are within special water supply catchment areas. Application of this policy is not practicable across the board, in part because rural residential development has already occurred extensively, including close to towns and in rural areas.

³ Western Water v Rozen Anor [2008] VSC 382 (29 September 2008)
The minimum housing and subdivision density of 40 ha proposed in the above mentioned Interim Guidelines has not been formally adopted.

The Mount Alexander Planning Scheme applies the ESO2 (Cairn Curran Catchment) to part of the catchment that does not include the subject land.

The subject land is designated in the Mount Alexander Rural Living Strategy as the area close to Maldon for rural living development.

If the rezoning is approved it will be incumbent on the developers or individual lot owners to demonstrate through site specific land capability studies that waste can be treated and contained on site without adverse off site impacts.

An important additional matter is that the Panel does not have evidence that land in the RLZ is a greater threat to water quality and quantity than land in the FZ where treated effluent is contained on site. The Panel noted that the concern of FOBIF was more about lot density rather than zoning per se. Likewise the Panel cannot accept on face value the statements of Dr van de Graaff that land under rural living development will contribute less nutrients to waterways than land being used for agriculture. Nutrient runoff can occur from either category of land depending on land management.

On the basis of the above, the Panel considers that the statement in the Rural Residential Development Guidelines regarding the unsuitability of land in special water supply catchment areas has more carriage in the ESO2 portion of the Cairn Curran catchment, than for the subject land. The notion of a rural living development for the subject land should not be discarded on face value, particularly if other sustainability criteria including the ability to treat and contain waste on site, can be met.

### 7.2 Land Capability for Rural Living

An important issue for the Panel is the suitability of the subject land to treat and dispose of wastewater effluent on site as a result of rural living use and development. Land capability refers to the capacity of the land to accommodate activities without deterioration. Land capability assessment provides an indicator of the resources required to enable land to be used for a purpose without deterioration. Land with high capability for a purpose can be used successfully for that purpose with limited management or resource input requirements. Conversely land with low capability for a purpose will require additional input to provide for ‘sustainable’ use.
7.2.1 Legislative and Policy context

Ministerial Direction No 6: *Rural Residential Development* and its associated *Rural Residential Development Guidelines*, 2006 require that rural living development (including rezoning), satisfy land capability requirements. This is to ensure that developments do not compromise the sustainable future use of existing natural resources, including productive agricultural land, water, mineral and energy resources. Land capability requirements include the provision of reticulated sewerage, or satisfaction that each lot can retain treated effluent without causing adverse off-site impacts.

The EPA *Code of Practice – Onsite Wastewater Management* dated September 2008 (CoP) has replaced the March 2003 version and is legally binding under Clause 32 of the *State Environment Protection Policy (Waters of Victoria)* (SEPP - WoV). The CoP applies to all types of onsite systems treating up to 5000 L/day, specifically:

- onsite systems that treat and dispose of, or recycle, domestic wastewater at unsewered sites; and
- onsite systems that treat and recycle domestic greywater for garden irrigation, toilet flushing and use in washing machines.

It provides direction while also providing *sufficient flexibility to tailor designs to meet local conditions* and it does not recommend any specific treatment or disposal/recycling method.

Some key points from the Code relevant to the current proposal include the following:

- Primary treatment systems (including Septic tanks) do not require EPA approval but must comply with Australia/New Zealand Standards. They require disposal via soil absorption trenches that must include a reserve field (of equal size) for use if the primary area fails, proves inadequate, or needs resting. Secondary treatment systems must be EPA certified and can disperse treated water (at 20/30 minimum standard\(^5\)) via surface or sub-surface irrigation systems. Treated water must not contact the edible parts of herbs, fruit or vegetables. Absorption trench areas for primary treatment systems.
- The onus is on applicants or developers to prove that a proposed wastewater treatment system will adequately operate. Council must be fully satisfied that the system proposed is appropriate for the site by requiring submission of a professional land capability assessment compliant with EPA Publication 746, *Land capability assessment for onsite*

\(^5\) (ie:Less than 20mg BOD\(^5\) per litre, and less than 30 mg of Suspended Solids per litre).
**domestic wastewater management**, the MAV Model Land Capability Assessment Report (Oct 07), and AS/NZS1547, *On-site domestic wastewater management*.

- Buffer or setback distances are required for disposal fields from site boundaries, buildings or waterways/drainage lines as in the Code. However, Councils may increase or decrease EPA setback distances where public health or environmental risks are considered too high or negligible respectively. The distances can be generally halved for secondary treatment systems.
- Land capability assessments can be conducted at various stages of a planning process from the application for rezoning, to the individual lot development stage.

### 7.2.2 Evidence and submissions

Council submitted that the proponent’s land capability assessments have informed lot sizes and design and support the contention that on-site wastewater treatment and disposal is achievable without detriment to the environment. It regards the support from DSE as supporting both this view and compliance with Clause 15 of the planning scheme.

The Proponent commissioned van de Graaff and Associates to report on land capability for treating and retaining waste on site. A draft report (May 2004) was presented prior to the Directions Hearing that was upgraded to a final report dated September 2008 (further edited in November 2008). Dr van de Graaff stated that the assessment conformed with the requirements of EPA Publication 746.1 *Land Capability Assessment for on-site Domestic Wastewater Management*.

The 2004 assessment was based on absorption testing at eight sampling points at each of two selected sites (representative of deeper and shallower stony soils) on the 125 ha subject land. Further site inspections and investigations were not made between the 2004 and 2008 reports. The main conclusions of the ‘final’ report are summarised below:

- Areas of deeper soil and gentle slopes are suitable for absorption trenches and for irrigation (from secondary treatment systems), but the areas with shallower soil and irregular slopes are suitable only for irrigation, possibly also using benching of the ground surface (refer Table 88).
- Depending on the method of re-use or disposal, the effluent will require treatment to minimum of 20/30 standard.
- Below ground disposal or re-use methods are preferable, as deposition within the soil presents higher risk.
- Primary treatment effluent (eg: from septic tanks) with absorption trenches requires disposal areas of 301m², or 602m² with a necessary ‘reserve’ area. Secondary treated effluent with subsurface irrigation will require a 464m² field including a reserve area from the outset, to ensure sufficient nutrient distribution.

- Ensuring low loading rates of effluent in the application areas and spelling areas between effluent applications minimises risks of localised waterlogging, or excessive build up of salts or nutrients while maximising the area of dry land that receives some extra water and nutrient for vegetation growth.

Table 8: Summary of appropriate methods for treating domestic wastewater and re-using or disposing of treated wastewater.

<table>
<thead>
<tr>
<th>Wastewater treatment</th>
<th>Appropriate disposal - re-use method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Septic tank</td>
<td>Conventional absorption trenches</td>
</tr>
<tr>
<td>Biolytix filter (worm farm)</td>
<td>Subsurface irrigation</td>
</tr>
<tr>
<td></td>
<td>Conventional absorption trenches</td>
</tr>
<tr>
<td>Sand filter</td>
<td>Subsurface irrigation</td>
</tr>
<tr>
<td></td>
<td>Conventional absorption trenches</td>
</tr>
<tr>
<td>Aerated Wastewater Treatment System</td>
<td>Subsurface irrigation</td>
</tr>
<tr>
<td></td>
<td>Conventional absorption trenches</td>
</tr>
</tbody>
</table>

Dr van de Graaff concluded that the impact of nutrients, water and salts from domestic sources will be quite minor and on the basis of common well-understood soil chemical processes …very little of the nutrients that have entered the soil will escape from the application areas. He considers that the off-site risks are insignificant and places importance on establishment of herbaceous ground cover to impede the rate of surface water runoff and promote vertical infiltration.

Dr van de Graaff tabulated the suitability of each proposed allotment for placement of an effluent disposal envelope. This was under the proviso that detailed soil information had not been obtained for each location and that further site investigations are needed (refer to Table 9).
Table 9: Summary of calculations of required effluent dispersion fields for septic tank and secondary treatment systems

<table>
<thead>
<tr>
<th>Land application system</th>
<th>Number of Bedrooms</th>
<th>Number of persons for design</th>
<th>Standard fixtures excluding top loading automatic washing machine</th>
<th>Standard Water Reduction Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>180 L/person day</td>
<td>110 L/person day</td>
</tr>
<tr>
<td>Subsurface Irrigation</td>
<td>3 bedrooms</td>
<td>3+1=4</td>
<td>720 L/day</td>
<td>440 L/day</td>
</tr>
<tr>
<td>Subsurface Irrigation</td>
<td>4 bedrooms</td>
<td>4+1=5</td>
<td>900 L/day</td>
<td>550 L/day – 232m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>464m² recommended</td>
</tr>
<tr>
<td>Subsurface Irrigation</td>
<td>5 bedrooms</td>
<td>5+1=6</td>
<td>1080 L/day</td>
<td>660 L/day</td>
</tr>
<tr>
<td>Absorption trenches</td>
<td>3 bedrooms</td>
<td>3+1=4</td>
<td>720 L/day</td>
<td>440 L/day – 3 trenches of 23m, 220m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>With reserve: 440m²</td>
</tr>
<tr>
<td>Absorption trenches</td>
<td>4 bedrooms</td>
<td>4+1=5</td>
<td>900 L/day</td>
<td>550 L/day – 4 trenches of 21.5m, 301m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>With reserve: 602m²</td>
</tr>
<tr>
<td>Absorption trenches</td>
<td>5 bedrooms</td>
<td>5+1=6</td>
<td>1080 L/day</td>
<td>660 L/day – 5 trenches of 20.6m, 381m²</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>With reserve: 762m²</td>
</tr>
</tbody>
</table>

NOTES:
1. In order to build a safety factor of 100%, the irrigation areas are recommended to be doubled in size.
2. For absorption trench fields equivalent space must be reserved for a replacement field should the primary field fail.
3. Effluent must be treated up to a secondary standard for land application via subsurface irrigation.

Dr van de Graaff also reported that:
- In addition to conventional septic tank and conventional absorption trench systems, other electrically driven aerated wastewater treatment systems (ie: secondary treatment systems) could be considered (ie: the ‘Biolytix’ filter);
- If irrigated areas are small relative to surrounding unirrigated land, the watertable below the site would not rise;
- Absorption trenches are an option at sites with deeper soils (>900mm), low tree density, and simple slope forms;

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6 A Biolytix system breaks down effluent by biological processes and has the lowest energy demands of the secondary wastewater treatment systems. It also produces better quality effluent than raw septic tank effluent and could be used underground in dedicated irrigation systems.
- Pressurised subsurface irrigation systems are more efficient in controlling application rates and location. Lines do not have to follow contours, and can be in soils as shallow as 0.5m. The distribution systems are also more easily relocated than are septic tank trench systems;
- Reserve areas may be desirable for pressurised irrigation systems with automated switching between fields; and
- The 1250m$^3$ building envelopes depicted on all lots in the indicative Development Plan are large enough to accommodate a 464m$^2$ or 602m$^2$ effluent envelopes and still maintain buffer distances from buildings.

Dr van de Graaff’s preliminary assessment of the proposed 44 lots indicates that:
- 11 to 13 lots are potentially suitable for all on site treatment systems (ie including septic tank systems).
- 31-33 lots are potentially only suitable for secondary treatment systems.

This assessment is qualified however on the basis that detailed inspections of individual allotments have not occurred, and the assessment is done from desk top analysis using contour information and knowledge of the soils from the 2004 field investigation including absorption testing results (refer to Table 10).

On questioning at the Hearing Dr van de Graaff identified that in soils of less than around 1.5-2 metres depth, excavations into rock would be required for installation of septic tanks. This would not be a requirement for secondary treatment systems which are installed above ground.

**Table 10: Summary of preliminary classification of the suitability of individual lots and potential effluent disposal methods.**

<table>
<thead>
<tr>
<th>Lot#</th>
<th>Comment</th>
<th>Potential disposal method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>No significant limitations.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Has larger area with shallower soils.</td>
<td></td>
</tr>
<tr>
<td>5-9</td>
<td>Shallow soils: Locate disposal area away from centre of depressions.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Shallow soils: Some areas with deeper soils, but maintain 60m setback from dam or at least 30m setback from treated effluent.</td>
<td></td>
</tr>
<tr>
<td>11-12</td>
<td>No significant limitations, but locate disposal area away from centre of depression.</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>No significant soil limitations, but maintain 60m setback from dam or at least 30m setback for treated effluent and existing dam could be used for trapping any runoff from disposal area.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>No significant limitations, but maintain 100m setback from stream or at least 50m setback for treated effluent.</td>
<td></td>
</tr>
<tr>
<td>15-17</td>
<td>No significant limitations, but maintain 100m setback from stream or at least 50m setback for treated effluent.</td>
<td></td>
</tr>
<tr>
<td>Lot#</td>
<td>Comment</td>
<td>Potential disposal method</td>
</tr>
<tr>
<td>------</td>
<td>-------------------------------------------------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>18</td>
<td>No significant limitations, but maintain 100m setback from stream or at least 50m setback for treated effluent.</td>
<td></td>
</tr>
<tr>
<td>19-20, 22</td>
<td>Shallowers soils, maintain 100m setback from stream or at least 50m setback for treated effluent.</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>No significant soil limitations, but maintain 100m setback from stream or at least 50m setback for treated effluent.</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Shallowers soils; locate disposal area away from centre of depressions.</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Shallowers soils; locate disposal area away from centre of depressions: very large lots, will also have better areas.</td>
<td></td>
</tr>
<tr>
<td>25-27</td>
<td>Shallowers soils: locate disposal area 100 (50) m away from stream: very large lots, will also have better areas.</td>
<td></td>
</tr>
<tr>
<td>28-29</td>
<td>No significant limitations; Large lots.</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Many shalowers soils.</td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>No significant limitations.</td>
<td></td>
</tr>
<tr>
<td>32-33</td>
<td>Very large lot, shalowers soils, stay away from centre of depressions.</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Extremely large lot, mainly shalowers soils but also has deeper soils, stay away from centre of depressions.</td>
<td></td>
</tr>
<tr>
<td>35-36</td>
<td>Shallowers soils, locate disposal area away from centre of depressions.</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Shallowers soils; large lot.</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>No significant limitations.</td>
<td></td>
</tr>
<tr>
<td>39-42</td>
<td>No significant limitations; stay away from centre of depression.</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>No significant limitations; stay away from centre of depression. Very large lot.</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Very large lot, mainly shalowers soils, stay away from centre of depressions.</td>
<td></td>
</tr>
</tbody>
</table>

Legend

All methods for disposal/re-use potentially feasible.
Subsurface irrigation of secondary treated effluent only.

DSE did not comment on waste treatment or disposal in its final submission of 22 June 2007. However in an earlier letter of 16 February 2004 it identified that many areas of the subject land would be rated as poor for effluent disposal due to soil permeability and proximity to waterway considerations and that consideration should be given to connecting to reticulated sewer.

The EPA submitted that available information on the proposed site indicates that the capacity of the soil to contain domestic wastewater within the block boundaries is limited. It stated that Council should seek expert advice to ensure that the land capability assessment report has considered the above issues and 1 ha minimum lot size is large enough to contain domestic wastewater within the property boundary. It closed by stating that it is recommended that council explore options to provide reticulated sewerage for the subject land.

Goulburn Murray Water submitted that as land capability and topographic constraints are variable across the subject land that individual land capability
assessments must be undertaken for each site prior to development. Further, setback distances for effluent disposal should be based on currently used definitions of a waterway, as to base setbacks from water courses (with defined beds and banks being inconsistent with the intention of the EPA Septic Tanks Code of Practice).

FOBIF proposed that the proponent’s land capability assessment is an inadequate generic report that contravenes the EPA CoP. This is because it does not contain individual lot assessments, nor specifically recommended disposal systems. FOBIF identified specific lots on steeper land, near ‘watercourses’ or drainage lines, in heavily vegetated land and on hilltops where soils were not assessed, and considers that in this land type the operation of disposal fields will be compromised as the biologically active layer of topsoil may not reach to 30 cm below the surface.

Other concerns are:

- Parts of nominated building envelopes are within setback distances set out in Table 4.2 of the EPA CoP. These are identified in Table 11 below. FOBIF submitted that the high rate of likely non-compliance with the setback requirements is unacceptable and is a consequence of the developer insisting on lot sizes of between 1 and 2 hectares.

- While the land capability assessment acknowledges ‘the potential impact from poorly maintained and designed septic tank systems’ it bases its advice on all systems being properly installed, used in accordance with their manufacturers instructions and properly maintained. Further, caution is needed regarding the number and minimum area of lots to provide a margin for known and unknown hazards associated with failed systems that may not be easily identified.

Table 11: Building envelopes on lots which fail to comply with the EPA Septic Tank Code of Practice setbacks.

<table>
<thead>
<tr>
<th>Lot</th>
<th>Setback to watercourse (100m)</th>
<th>Setback to drainage line</th>
<th>Setback to dam or Dam Outfall (60m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-8</td>
<td>Within setback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>10-11</td>
<td></td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>13, and 20</td>
<td></td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>14-17</td>
<td>Within setback Lot 15 fails for 2 watercourses</td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>30-32</td>
<td></td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>33-34</td>
<td>Within setback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38-41</td>
<td></td>
<td>Within setback</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td></td>
<td></td>
<td>Within setback</td>
</tr>
</tbody>
</table>
7.2.3 Discussion

The Panel emphasises that the amendment proposal is for the rezoning of land, not for permit applications for dwellings. It is not required for rezoning proposals to provide full detail for all lots that may or may not be proposed in any ultimate subdivision or development proposal that may flow from a rezoning amendment. Rather, the proponent needs to provide enough information to satisfy the Panel that the rezoning can proceed in the context of being capable of complying with existing legislation and policy, and avoid causing significant environmental impacts.

It follows that if the rezoning proceeds, it will be the role of Council to take into account and to administer its legislative responsibilities based on sound technical information in considering the approval of any Development Plan under the DPO8. This requires a land capability assessment to be prepared for each lot and any associated planning permit application for subdivision of the subject land under the provisions of the RLZ, DPO8 and ESO8. While the Panel accepts that the Ordovician land type found on the subject land has constraints, this does not per se suggest that the land cannot be used for rural living purposes as proposed.

The Panel considers that the soils investigation conducted by Dr van de Graaff provides an adequate representation of the site, given the extent of knowledge and reporting available on this land type, to enable it to form reasoned conclusions on the suitability of the land for rezoning to RLZ. Additional sites would have confirmed the information gained from the two investigated sites. The Panel therefore does not require soils data from each individual building envelope.

Dr van de Graaff identified that the land has limitations for absorption of treated waste, through his identification that secondary treatment systems will be needed at many sites. Further, absorption fields can be designed and constructed to work effectively in situations with low absorption capabilities, such as by constructing elevated field areas (ie: from transported soil). These types of design options and the siting of absorption fields is a matter for Council to be thorough in meeting its obligations at the required statutory approval stages of development.

On the matter of soil erosion, no evidence was provided to the Panel that, the land would be more vulnerable under a rural living situation.

The subject land has clearly received little strategic care over many years, and existing gully and surface soil erosion is typical of that on this land type. The gully erosion is old and has occurred under a history of mixed land use with no current evidence of past pasture improvement or fertiliser addition.
Gullies are eroded to a shallow stable bedrock base with some continuing activity along gully sides and heads. This activity is primarily due to lack of remedial attention that could occur via the shaping of gully heads and sides with earth moving equipment, and revegetation. Such measures have been standard soil conservation procedure on such land, and evidence of past erosion can be virtually obliterated.

The Panel also inspected rural living land referred to it at Erin Court, near Castlemaine that is of similar land type to the subject land including its soils, topography and vegetation. There was no visual evidence the inspected land was more vulnerable than the subject site (refer to Figure 9).

Figure 9: View of typical similar land with house and similar vegetation type in a Rural Living Zone area at Erin Court, Muckleford South near Castlemaine

On this basis the Panel does not concur with FOBIF that the eroded gullies are formally watercourses. The matter of what constitutes a watercourse, a waterway, a stream or a channel has historically been and remains confusing. Also the setback requirements in the EPA CoP have changed including the September 2008 version (refer to Table 12).

Table 12: Extract from Table 4.2 in EPA Publication 891.2 dated September 2008 regarding setback distances for primary and secondary treated sewage in unsewered areas

<table>
<thead>
<tr>
<th>Item</th>
<th>Setback distance 2,3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface waters (upslope from)</td>
<td></td>
</tr>
<tr>
<td>Dam or reservoir (potable, includes water for food production)²</td>
<td>300</td>
</tr>
<tr>
<td>Stream, river, waterways (potable water supply catchment)⁴</td>
<td>100</td>
</tr>
<tr>
<td>Dam or reservoir (stock &amp; non-potable)⁵</td>
<td>60</td>
</tr>
<tr>
<td>Stream or channel (continuous or ephemeral, non-potable)</td>
<td>60</td>
</tr>
<tr>
<td>Drainage lines, dam outfalls</td>
<td>60</td>
</tr>
</tbody>
</table>
Notes
1 These distances act as a guide and must be measured horizontally from the defined boundary of the disposal/irrigation area. They do not apply vertically. For streams and dams, the measuring point shall be the ‘bank-full discharge level’. See Table 5.3 for setback distances for irrigating with treated greywater.
2 With the exception of groundwater bores, the setback distances may be reduced by up to 50 per cent where all the following conditions are met:
   • effluent quality meets 20/30 standard when used for sub-surface irrigation; or
   • effluent quality meets 20/30/10 standard when used for surface irrigation; and
   • slopes are <5%, or pressure compensated sub-surface irrigation drip lines along the contour.
3 Effluent typically contains high levels of nutrients that may have a negative impact on native vegetation. When considering setbacks, council should consider not only the potential impact of nutrients in regards to the proposed onsite wastewater system, but in regards to other existing onsite wastewater systems located in the same area.
4 Setback distances help protect human health. However, establishing an effluent disposal field/irrigation area upslope of a building may have implications for the structural integrity of the building. This issue is beyond this Code’s scope and should be examined by a building professional on a site-by-site basis.
5 Does not apply to dams and reservoirs located above ground-level.
6 Means a water course within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994.

The Panel must be guided by the most up to date version of the EPA CoP (ie: Publication 891.2). The Panel regards the following as main points noted from the above:

- The most recent version of the EPA CoP does not provide a definition for ‘waterway’, ‘watercourse’ or ‘drainage line’.
- The tabulated setback distances act as a guide and are therefore subject to site by site interpretation. Councils have the discretion to increase or decrease distances where either residual risks to public health or the environment are considered too high or negligible.
- The primary setback distance for septic tank systems from drainage lines is 60m. This can be halved for secondary treatment systems that treat to 20/30 or 20/30/10 standard when used for subsurface irrigation and where slopes are either <5% or irrigation systems are pressurised.
- For setback distances from drainage lines (ie: indicatively 60 or 30 m) it is not relevant whether or not the land is in a Special Catchment Area.

In considering this matter the Panel is initially guided by the submission of Goulburn Murray Water which states that the EPA CoP setbacks need to apply at least to waterways which do not need to have defined bed and banks. The Water Act 1989 (Section 3 of Part 1) in part defines ‘waterway’ which includes a ‘watercourse’ as follows:

(a) a river, creek, stream or watercourse; or

(b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
(c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or

(d) a lake, lagoon, swamp or marsh, being

(i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or

(ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or

(e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or

(f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or

(g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip; waterway management district, in relation to an Authority, means-

(a) any district that the Authority is deemed to have as a waterway management district under Division 1 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A; and

(b) any district that is declared to be a waterway management district of the Authority under Division 3 of Part 6A, and (where the case so requires) any such district as extended or changed under Part 6A;

The Panel considers that it is generally understood that a watercourse will have at least defined bed and banks and that they will also run water at least intermittently and more so than that which would be expected to occur on the subject land. It is reasonable to expect that formal watercourses are of a scale that are created from hydrological processes rather than poor land management, and which are by nature less amenable to soil conservation remediation such as that discussed above for this site.

On this basis, the Panel considers it reasonable to conclude that the depressions across the subject site are drainage lines rather than waterways.
or watercourses as inferred in the definition in the Water Act 1989, and that 60 metre setbacks should be considered the ‘base case’ for standard septic tank systems and potentially 30 m for secondary treatment systems subject to the qualifications provided in the footnotes described in Table 12.

Overall, the Panel accepts the assessment of Dr van de Graaff that the location of effluent disposal fields within the 1250m² building envelopes on the 44 lots shown in the Development Plan Version 21 are adequate to accommodate the effluent disposal envelopes. It is also accepted that sewage treatment systems can be designed to comply with the current EPA Code of Practice including satisfying buffer setbacks.

7.3 Biodiversity

The impact on biodiversity from land use and development that follows on from the amendment is an important issue for the Panel to consider. Both the Mount Alexander Planning Scheme and the Rural Living Strategy establish strong policy commitments towards ensuring a net environmental gain as a result of rezoning to RLZ. This is heightened by the extensive coverage of native vegetation and fauna habitat value that exists on the subject land.

7.3.1 Legislative and Policy context

Biodiversity is comprehensively addressed in a legislative and policy context at National, State and local levels. Key legislation is contained in the following:

- Various State Acts including the Flora and Fauna Guarantee Act 1988 (FFG Act) and the associated State Biodiversity Strategy, State Native Vegetation Management Framework including its Biodiversity Net Gain requirements.
- Elements within the Mount Alexander Planning Scheme.

In considering Amendment C36, the Panel needs to be satisfied that the outcomes sought by the State’s Net Gain policy can be demonstrated and that the rezoning and what may flow from it will not result in significant impacts on the environment. This requires a sound understanding of existing biodiversity features, and the implications of any change to or impact on those features.

A guiding principle of the Victoria’s Native Vegetation Management – A Framework for Action is a reversal ……of the long term decline in the extent and
quality of native vegetation, leading to a Net Gain. Councils must consider the Framework’s Net Gain goal when assessing land use development proposals that involve native vegetation removal.

Priority achievements are the avoidance, minimising, and identification of appropriate off-sets in that order.

7.3.2 Evidence and submissions

Much focus was given to biodiversity matters in submissions and throughout the Hearing.

The Proponent stated that understanding of the biodiversity attributes of the site was fundamental to the design layout of the amendment proposal, and that various studies were conducted to achieve this:

- Mr Paul Kelly, Ecologist of Environmental Resources Management Australia (ERM) prepared a report titled Report on Achieving Ecological Enhancement at Tarren (sic) Valley, Maldon (February 2005).
- Mr Garry Cheers, Flora and Fauna Consultant prepared a report titled Flora and Fauna Assessment. Proposed Development Site Castlemaine Maldon Rd, Maldon (September 2003, Revised April 2006), and a further ‘Statement of Evidence’ (November 2008).
- Ms Marilyn Sprague of Goldfields Revegetation Pty Ltd conducted a preliminary flora assessment.

The following key points summarise the submission presented by Mr Cicero and the findings of the above reports, and actions emanating from them:

- Of the total site area of 125 ha, 32 ha is cleared and 93 ha contains native vegetation. The Ecological Vegetation Classes (EVC), their conservation status and distribution on the subject land are provided in Table 13 and Figure 10. They show that EVCs of Very High conservation significance occur on Lots 25-29, 33 (each lot approximately 3.5 ha) and 34 (15.6 ha) in the east, and lot 43 (6.7 ha) in the north. None of this vegetation is to be removed as they are included in building exclusion zones, and road locations also avoid these areas. EVC’s of medium conservation status vegetation occur on most other lots and are not considered in the best 50% of habitat or the remaining 50% of habitat for any threatened species recorded at the site. Lots 1-3, 11, 12, 17, 21 and 22 do not contain vegetation of either Medium or Very High conservation status.
- A total of 22.68 ha of full or partial vegetation clearance is required for the development as proposed
  - 14.35 ha of total clearance is assumed from within the areas of the proposed 44 building envelopes and for roads; and
- 8.33 ha of understorey clearance on 20 of the lots shown in the Development Plan Version 21 is required to meet CFA fire protection requirements (Overstorey vegetation being trees, will be retained at these locations).

This requires a total Net Gain requirement of 11.06 Habitat Hectare (6.54 HHA and 4.52 Hahn respectively) and all required offsets will be provided on site with DSE being satisfied that the proposal will not have any impact on flora and fauna to an extent that it should not be supported.

- Net Gain is to be achieved by protecting approximately 65 ha of vegetation on the subject land. Mr Garry Cheers, Flora and Fauna Consultant advised the Panel that net gain could be achieved through:

  * A Section 69 Agreement and 10 year management plan will be placed on lots with Very High or High conservation significance even if they are not required for offset. In addition to the above the Medium conservation significance vegetation on lots 23-29 and 43 and 44 will be protected by a Sec 69 Agreement and Management plan.
  * A 173 Agreement with restrictions will be placed on the rest of the vegetated lots. Conditions for restrictions will be.
    * No grazing
    * No removal of trees
    * No removal of litter
    * No removal of logs or fallen branches.

- All vegetation to be removed is of Medium conservation value with Habitat Hectare scores ranging from 52 to 59.

- The smaller lots are planned on sites with low or no native vegetation of lesser conservation significance cover and with minimal topographic constraints.

- The design and siting of lots and roads shown in the indicative Development Plan Version 21 has responded to the environmental features of the land including biodiversity. The larger lots, on land on the eastern and northern parts of the subject land contain most of the remnant vegetation including that of higher conservation value.

- A restriction on title will be placed on all 50 and 75 m buffers around the Maldon Historical and Cultural Reserve to prevent vegetation clearance. Livestock grazing will not be permitted in the vegetated areas of the development.

- Building envelopes have been sited wherever possible on land that has already been cleared. Where this is not possible, the vegetation
proposed to be removed is of medium conservation value. No high or very high conservation value vegetation is to be removed.

- A Section 69 Agreement under the Conservation Forests and Lands Act 1987 and a Ten Year Management Plan will be placed on lots with very high or high conservation significance, *even if they are not required for offset*. The remainder of the lots are to be covered by Section 173 Agreements under the Planning and Environment Act 1987). These will be capable of being enforced. The S173 agreements will provide for no grazing, no tree removal, no litter removal, and no removal of logs or falling branches.

- An Environmental Significance Overlay (ESO8) over the entire site will ensure vegetation retention vegetation.

Mr Cicero proposed that people purchasing the lots are likely to be willing to accept the obligations imposed, and that comments made about the difficulty of management by objectors should therefore carry little weight with the Panel.

Table 13: Conservation significance of Vegetation of Tarran Valley Estate

<table>
<thead>
<tr>
<th>EVC</th>
<th>EVC Conservation status of in Goldfields Bioregion</th>
<th>EVC conservation significance at Tarran Valley</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVC 22 Grassy Dry Forest (Site 6)</td>
<td>Depleted</td>
<td>High</td>
</tr>
<tr>
<td>EVC 47 Grassy Valley Forest (Site 10)</td>
<td>Vulnerable</td>
<td>Very High</td>
</tr>
<tr>
<td>EVC 61 Box Ironbark forest (Sites 1,2,4,5,7,8,9)</td>
<td>Depleted</td>
<td>Medium</td>
</tr>
<tr>
<td>EVC 67 Alluvial Terraces Herb rich Woodland (Site 3)</td>
<td>Vulnerable</td>
<td>Very High</td>
</tr>
</tbody>
</table>
The key biodiversity features noted by the Panel on the subject land include:

- The location of the subject land within the Goldfields Bioregion and containing four EVCs as shown in Table 13.

- Fifty-three native and one introduced bird species found in the study area by transect counts and incident sightings. Two threatened bird species recorded on the subject land: Three ‘endangered’ Swift Parrots (*Latham us discolour*) were incidentally recorded on the south eastern side of the subject land, and the ‘vulnerable’ Speckled Warbler (*Chthonic agitate*) was recorded on the northern end of the land.

As the Swift Parrots were sited only once, it is assumed that the species may use the site occasionally but not significantly, and one sighting is insufficient to warrant upgrading the conservation significance of the site. Also, the larger lots can accommodate these birds without disturbance, as they have regularly been recorded at populated locations including golf courses, streets, gardens and parks, and use
trees close to houses on bush blocks. There is little chance of collision with house windows or fences.

- Six species of native mammal were recorded including scats of the ‘endangered’ Brush-tailed Phascogale (*Phascogale tapoatafa*) on the northern end of the subject land. Common species recorded were: Black Wallaby, Eastern Grey Kangaroo, Brush tailed Possums, a Yellow-footed Antechinus, and two short-beaked Echidnas. The European rabbit was common and a fox was sighted. The Panel also sighted several deer on the eastern side of the subject land during its accompanied inspection.

- One hundred and four native and 21 introduced vascular plant species were recorded.

- Vegetation has been modified by past and current use and is mainly regrowth following historic harvesting to service historic mining industry and domestic needs. It is well connected to other vegetated areas including adjoining public land. Pasture development is poor and dominated by weeds including Capeweed, Onion Grass and Herons-bill with no biodiversity value. The diversity of native understorey and ground layer vegetation varies depending on past grazing pressure, and weed density is highest at the interface between pasture and timbered areas.

- The site contains few, mainly small tree hollows that are in coppice regrowth. Large trees are now mainly confined to drainage lines, and all mature trees (>70 cm diameter at breast height) are to be retained.

- Biodiversity enhancement is best achieved via maintenance of interconnected tree canopies and understorey which have not been the focus of past management. The isolated vegetation patches are less ecologically stable and more prone to ‘infection’ (ie: by mistletoe in trees).

- Vegetation corridors will not be affected by the proposed development and should not limit the ability of fauna to move through the site and beyond from north to south. Fauna will still be able to move through the creekline and vegetation on the east side of the subject land.

Mr Cheers responded to the 22 June 2007 submission of DSE regarding the need to consider species and other biodiversity attributes as well as EVCs in assessing site conservation significance:

- *Sites 10 and 3 (north eastern and eastern parts of the subject land) have a Very High conservation status; the use of these sites by threatened fauna will not alter their conservation status.*
· *Site 6 (northern part of the subject land) has a High conservation status, although Brush-tailed Phascogale were not trapped or spotlighted on any site, a single scat of this species was found on site 6 and although there are not any hollows that this species could den in on this site, the site could be used for foraging. The vegetation type on site and adjoining the site is suitable habitat for Brush-tailed Phascogale and the presence of the scat means that at least one Phascogale has used the site.*

· *Using the criteria, Table 2 Habitat Assessment for Threatened Species in the Guide for Assessment of Referred Planning Permit Applications, Site 6 should be given a Very High conservation status.*

· *As all of the above sites will be protected, as outlined below, this will not alter required offsets.*

· *The remainder of the vegetation on site is Medium conservation status and is not considered the best 50% of habitat or the remaining 50% of habitat for any threatened species recorded in the threatened species search.*

The proponent also proposed the following:

- Power is to be undergrounded on the individual lots and in some areas along roads.
- The proposed permit conditions including the prohibition of cats are geared for biodiversity conservation.
- Landholders will be encouraged to participate in schemes such as Land for Wildlife, or Conservation Covenants (but cannot be required to participate in them).

DSE did not present at the Panel Hearing. It supported the rezoning to the Rural Living Zone and in its letter dated 22 June 2007 endorsed the Habitat Hectare assessment of Mr Cheers as being consistent with DSE’s field assessment method for the ‘vegetation’ attribute. However it stated that *species and other attributes also need to be considered as the conservation significance of the assessed sites may be higher than that reported.* DSE also proposed:

- a satisfactory off-set plan was needed showing compensation for the removal of native vegetation; and
- the application of an ESO to native vegetation areas with high and very high conservation significance.

The proponents response to the ‘species and other matters’ submission is covered above, and the ESO8 is being applied as proposed by DSE.
The CFA indicated that it does not object to the amendment. It had previously commented on the rezoning proposal in September 2002, when it stated that it will support the rezoning subject to a range of conditions relating to water supplies, street hydrants, on site water storage within 60m of building envelopes, road access to the subject land, minimum widths and provision of passing bays on internal roads, and minimum fuel condition management of public open space during the fire danger period. It noted that the land in its current condition does not represent a particularly high fire risk due to the lack of human habitation. However it also noted that the application Wildfire Management Overlays is being revised across the State based on new data sets, and that the extent of coverage of the WMO is expected to increase over the subject land.

FOBIF addressed biodiversity matters that embraced and expanded upon comment from other community parties. It challenged the proponent’s claims that the proposal will have a net environmental benefit. It called on Ms Debra Worland as an expert witness on the Swift Parrot and also on its Vice President Mr Frank Panter for aspects of its presentation. Its main points include the following:

- the extent of remaining box-ironbark forests and woodland is around 15% of the pre European settlement level;
- the choice of the 1 ha minimum lot size, the subsequently proposed lot density, and wording of the DPO which implies that a loss of native vegetation is acceptable, are the main problems rather than rezoning to RLZ per se. It considers the notion that the proposal to rezone to RLZ including the use of an ESO, covenants, and s173 agreements, presents a net benefit to the environment, is a pretence, and that these measures will not have the desired effect on future residents. Dr Ryan submitted that:

> What is involved in this case is a fraud on the community and future generations. It introduces a new zone that appears sympathetic to environmental considerations but tacks on a minimum lot size schedule and a DPO Overlay that makes the need for vegetation clearance a fait accompli.

In the State document titled Native Vegetation - Guide for assessment of referred planning permit applications it follows on that:

Applications to remove or destroy such vegetation (ie: of high or medium conservation significance) may be considered where (in part):

- Removal of vegetation is of a very limited scale relative to other native vegetation on the property.
- …
FOBIF proposed that removal of approximately 27% of native vegetation is not removal on a very limited scale. (It is noted that the proponent argued that the correct figure is approximately 15% based on the area of both overstorey and understorey vegetation being removed, compared with the area of vegetation present on the subject land and does not include the understorey clearance area of 8.33 ha required for CFA fire hazard reduction).

- The state’s Native Vegetation Planning controls mean that avoidance of vegetation clearance (rather than minimisation or implementing offsets) must be achieved, and that removal of 22.68 ha (27%) of vegetated land is inappropriate. The Native Vegetation Framework also states that for medium to high value vegetation, clearing is not generally permitted. It is also best to leave vegetation intact that host threatened species.

- Apart from sightings of the Swift Parrot, the Speckled Warbler, and the rare Emerald-lip Orchid and the scat evidence of the Brush-tailed Phascogale identified by Mr Cheers, other sightings made by Mr Tim Read of the Trust for Nature and a Mr Ern Perkins include the ‘Vulnerable’ Clover Glycine (Glycine latrobeana) (‘Endangered’ under the Commonwealth EPBC Act) in Box-Ironbark land in the east of the property, and the ‘Threatened’ Buloke (Allocasuarina luehmannii). Further Mr Cheers’ survey was done at a time when by Mr Cheers own explanation, a significant proportion of the flora eg lilies orchids, shoots were not identifiable to species level.

- The credibility of Mr Cheers’ Habitat Hectare score of 0.59 (‘Medium’ conservation status) for vegetation in building envelopes on lots 23 -29 is challenged, when a score of 0.60 would have lifted the conservation status to ‘High’, and when the Habitat Hectare scoring method is not an exact science. It proposed that as scoring land in lots 24-29 adjoin a section of alluvial terraces herb rich woodland that has a ‘Very High’ conservation status, this is sufficient reason to classify the conservation status of that land as ‘High’ rather than ‘Medium’. FOBIF also challenged the loss of 4.3 ha of vegetation required for the proposed building envelopes and services provision on Lots 23-29, particularly following the location of the Clover Glycine in that area.

- The conservation significance of the land in the north east corner of Lot 42 is given a Very High status as a result of the finding of Phascogale scats. However as Phascogales forage over 30-60 ha (females) and 100 ha (males) and use rough-barked Ironbarks which are also located on other lots, it can be assumed that those parts of the land in the Box-Ironbark EVC must also be treated as part of the Phascogale habitat. As a consequence, FOBIF argued that the Panel should treat all such land and
the proposed building sites on proposed lots 14-15, 23-31 and 33-34 as land of 'high' conservation significance.

- The subject land is likely to provide 'important' Swift Parrot habitat, in part due to large trees and sheltered valleys on the land and the existence of a recognised priority site three kilometres away. Mr Cheers had previously reported to VicRoads in 2007 that Swift Parrots often use vegetated private land often connected to public land and along creeklines, often set in lower landscape areas with large trees. These characteristics are consistent with the subject land on lots 25-29, 31-34 and on or adjacent to lots 39-41 which should have High conservation significance under the Native Vegetation Framework. The presence of the Clover Glycine provides further reason for the land in Lots 23-29 to be classified as of High or Very High conservation significance.

- The lack of third party rights will prevent any further comment on any changes to the current indicative Development Plan.

- There is no evidence before the Panel that DSE is convinced that vegetation clearance on this land can proceed. This is on the basis that the DSE letter dated 22 June 2007 identifies that when species and other attributes are taken into account the various assessed sites on the land may assume a high status – a position that FOBIF supports from its arguments above. Further, DSE has not commented upon the latest Development Plan Version 21 and is not aware of the further threatened species now known to be on the land (ie: Clover Glycine).

- SPFF Clause 15.9 rebuffs any proposition that the Panel can ignore the devastating effects the proposed layout of building envelopes will have on the conservation of native vegetation. The relevant section of 15.9 referred to is:

  Responsible authorities should ensure that the siting of new buildings and works minimises the removal or fragmentation of native vegetation.

- In relation to this FOBIF referred the Panel to the 2006 Federal Court decision of Brown v Forestry Tasmania Mr Justice Marshall said:

  Promotion of the conservation of biodiversity… can only be achieved by favouring a construction… which views protection of the environment as an act of not merely keeping the threatened species alive, but actually restoring their populations so that they cease to be threatened.

Ms Debra Worland, a member of the Castlemaine Field Naturalists Club provided an expert report for the Panel that commented on Swift Parrot habitat requirements and incidence. She referred to a Swift Parrot Management Plan for the Mount Alexander Shire which is stated to have been
adopted by Council in 2006. The document was not tabled and is not located on the internet including the Mount Alexander Shire site.

Ms Worland’s evidence included that there are approximately 2000 Swift Parrot left in the world as their habitat has diminished. The birds migrate annually between Tasmania (where they breed) and Victoria (for ‘overwintering’). While different areas down to 10 ha may be used annually, ‘priority sites’ for it exist at nearby Muckleford. Target feeding species are Yellow Gum, Grey Box, and River Red Gum.

Ms Worland described the habitat requirements and general distribution of the Swift Parrot in the Maldon-Castlemaine area generally. She notes that the subject land has suitable foraging habitat and that the bird has been sighted in the vicinity of vegetated rural living areas. She stated that:

Because of the value of the land for swift parrot feeding I believe the land in proposed lots 26-36 is within the best 50% of habitat for swift parrots in the Mount Alexander Shire making it of very high conservation significance under Victoria’s Native Vegetation Management Plan, A Framework for Action.

and

The Muckleford swift parrots have been recorded returning to the same site for at least the past 11 years, therefore it could be quite probable they could return to this site also.

However Ms Worland’s contribution did not provide cover of expected impacts of rezoning on the Swift Parrot.

Mr Panter also stated that the land from the north east to the east and to the south of the subject land is of high conservation value, and would prefer for the land to be rezoned to the Rural Conservation Zone. He considered that the land set aside in road reservations in the eastern and northern parts of the land contains a proportionately higher density of larger trees understorey plants and greater leaf litter than is generally found in public forests. He also proposed that it is inevitable that vegetation on small rural living lots such as those proposed in the Development Plan will become degraded.

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A Swift Parrot Recovery Plan prepared by the Tasmanian Department of Primary Industries, Water and Environment was located on the internet, and a Swift Parrot Habitat Management Plan, Threatened Species Network, 2005 is a reference document to the Mount Alexander Planning Scheme. 
7.3.3 Discussion

The Panel identifies the following key biodiversity matters for attention:

- the response of the proposal to the State’s Net Gain policy;
- the significance of the site to identified threatened species; and
- the biodiversity impact of rezoning to RLZ.

Response to Net Gain criteria

The Panel noted that an offer to gift vegetated land to the State by the proponent was rejected due to reasons associated with boundary alignments and the creation of boundary complexities.

As DSE did not present to the Panel, it is concluded that the Department accepts the Net Gain outcomes being proposed. With this in mind, the Panel considers that, overall the agency responsible for administering the net gain legislation considers that environmental enhancement will be achieved. A more detailed assessment of any future development will be required against the net gain policy as part of any planning permit application. Further the State’s Net Gain provisions need to be considered in balance with other planning considerations addressed in this report, and do not ‘by right’ over ride those other factors. On this basis the Panel does not consider it necessary or appropriate for it to consider upgrading the conservation status of areas to Very High conservation status as proposed by FOIBF.

The three tiered response to Net Gain of *avoidance, minimisation* and *offsetting* is a matter of balance and is not a clear cut issue. The three step approach to considering native vegetation management is to be considered in terms of how rural living use and development of the subject land could satisfy the hierarchical approach towards achieving net gain.

The Panel notes that, although FOIBF argued that the proposal is a pretence to avoidance and minimisation of vegetation loss, it does concede that the designation of larger lots in the development plan would seem likely to lessen the area of vegetation loss. However, the Panel cannot accept at face value that vegetation quality will necessarily be diminished under the small lot scenarios being proposed, as there is no substantiated evidence before it to support this.

The Panel therefore accepts that the State’s Net Gain provisions can be met under the provisions of the amendment. The amendment introduces a DPO8 which requires the demonstration to both the satisfaction of Council and DSE that the net gain policy and the three step approach to vegetation removal
can be met. The Panel notes that DSE has not objected to the amendment and the inference that is associated with it, that some loss of native vegetation classified as medium conservation significance may result from the amendment. The Panel also accepts that the Development Plan Version 21 endeavours to avoid and minimise vegetation loss within the context of the Plan.

**Significance of the site to identified threatened species**

No evidence was put to the Panel that rezoning from the FZ to the RLZ will be detrimental to any fauna species.

It is accepted that the site offers general browsing habitat for threatened species including the Swift Parrot and the Brush-tailed Phascogale. However from evidence given, both appear to exist in populated areas such as rural living areas with houses and associated populations. It is noted for example that the Phascogale has been discovered living in the roof of a nearby house and that the Swift Parrot frequents inhabited bushland areas.

While Mr Panter proposed that preservation and restoration of the Swift Parrot is *not consistent with medium density housing* this statement was not consistent with evidence from Ms Worland who indicated common sightings of Swift Parrot in such areas.

The same applies to the presence of the rare Clover Glycine. It does not necessarily follow that rezoning to RLZ from the FZ where the land has been subjected to a history of grazing and current pest animal use will be more detrimental to this plant. No evidence was put to the Panel to support such a notion. It is conceivable, that a sympathetic owner or owners could set about actively promoting the conservation of the plant on a rural living lot and beyond.

**The biodiversity impact of rezoning to RLZ**

While Mr Panter considered that native vegetation will normally decline on small lots of the size proposed, the Panel has been given no evidence that land use changes associated with the proposed rezoning will necessarily be disadvantageous to broader biodiversity assets and values. It does not necessarily follow that land and associated biodiversity values that have been subjected to grazing over many years under the FZ, will be less well protected than under land use associated with the RLZ. The ultimate design of any subdivision will be further informed and led by the application of the DPO8 and ESO8 proposed as part of the amendment as well as the remainder of the existing provisions of the Mount Alexander Planning Scheme.
7.4 Conclusions

The Panel concludes that:

- The rezoning of the subject land to RLZ from the FZ will not be detrimental in an overall environmental context.
- Amendment C36 does not contradict Ministerial Direction No. 6 regarding facilitating rural living within the proclaimed Lake Cairn Curran Special Water Catchment area;
- While the land capability of the subject land provides limitations, the site can provide for rural living purposes without presenting a significant threat to the water quality in the Cairn Curran catchment. Opportunity exists for the on-site treatment and disposal of domestic effluent subject to site specific land capability assessments from which appropriate treatment and disposal systems can be specified for each lot as provided for under DPO8.
- The amendment can satisfy Victoria’s Native Vegetation Management – A Framework for Action and the net gain policy and the three step approach to native vegetation management.
- There is no substantiated evidence that rare or threatened species will be adversely affected by rezoning from FZ to RLZ.
8. Impacts on the Maldon Township

8.1 What is the issue?

Maldon is recognised by the general community including residents and visitors as a town with significant historic and cultural value. It is recognised as a nationally significant notable town under the Mount Alexander Planning Scheme. This importance is founded on the town’s gold mining past, which is reflected by the combination of the built form and layout of the town, the surrounding vegetated landscape and the Maldon Historic Reserve.

The key issues with Amendment C36 and the proposal to rezone the subject land from agricultural use to rural living is that it will introduce a form of land use and development which will detract from the historic quality of Maldon. Concerns have been expressed that the lot from and density will compromise the historic values of the Maldon area. Landscape appeal and vistas will be impacted, strip development along the Castlemaine-Maldon Road will occur and the future option of a truck by-pass route of the town will be compromised.

8.2 Policy context of the issue

The policy context of the issue is founded strongly in the Mount Alexander Planning Scheme. The MSS contains a number of policies which seek to protect the character of Maldon and in particular the town entrances and landscape corridors between towns. Clause 21.04-1 - Management of Urban Growth seeks to ensure that the landscape, heritage and townscape character of the Shire’s town are protected. Under Clause 21.04-4 - Rural Living it seeks to specifically avoid strip development along highways throughout the Shire, while Clause 21.04-5 - Built and Cultural Heritage looks to protect both the heritage character of the towns and the significant natural and cultural heritage landscapes.

A local planning policy which, although directly applying to the proposed amendment does set the context for Maldon is Clause 22.02 - Maldon, which states:

*The Mount Alexander Shire Council recognises 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 policy describes the features that, contributes to Maldon’s significance under the Statement of Local Significance:

The Mount Alexander Shire Council recognises that the significance of Maldon and environs is due to a unique combination of many individual elements which contribute to its integrity as a whole. The combination of the following specific features contributes to Maldon’s significance:

- The interest and diversity of the range of buildings and works (including the street form, drainage patterns, exotic plantings and mine workings) that relate to gold-mining periods, in particular dating from the period up until the 1930’s.
- The numerous mining relics which demonstrate a wide range of nineteenth century mining technology.
- The mature and attractive post gold-mining quality of the landscape and of the township.
- Maldon’s outstanding interpretative value in respect of both its general arrangement and detailed elements.
- The evidence of early settlement patterns and the diverse cultures that pioneered the area.
- The interaction between the areas landforms and a wide range of historic development activities - pastoral, mining, residential and industrial.

Another local planning policy relevant to the consideration of the impacts on Maldon is Clause 22.11 – Streetscape which seeks to ensure that development enhances the presentation of main road entrances into townships and the immediate environment including vegetation and landscaping.
8.3 Evidence and submissions

A key concern expressed on the impacts of the proposed rezoning on Maldon is reflected in the submission from the Mount Alexander branch of the National Trust. It outlined how Maldon was classified by the Trust in 1966 as a “Notable Town” and the special relationship between the town and its urban form and its surrounding landscape emphasised by the Maldon Historic Reserve and its rich evidence of past gold mining history. The Trust identified that Maldon is one of the Shire’s most important and sustainable heritage and tourism assets but that the amendment will seriously compromise the historic character of the Maldon mining and cultural landscapes.

In particular, the Trust stated:

*Smaller lot sizes would not only be inconsistent with the historical land settlement pattern in this part of Maldon, but would also create a sense of suburban living rather than rural living, thereby compromising the historical character and community enjoyment of the Maldon Historic Reserve. Maldon’s integrity as a whole would be unnecessarily compromised.*

A similar view was expressed by other submitters.

Ms Hayes raised the issue of the impact from the potential development flowing from the rezoning on the townscape character of the entrance into Maldon from Castlemaine. She indicated that several of the residences in the subdivision will be visible, with little proposed in the way of built form design guidance to protect the heritage character of the area. Unique views from outlooks such as Mt Tarrengower and consequently the aesthetic appeal of the area will also be impacted by the future development of the subject land flowing from any rezoning.

Mr and Mrs Smidt expressed concern that the amendment will compromise the future of a planned truck by-pass which runs along the western boundary of the subject land along an existing unconstructed government road reserve which is zoned Road Zone Category 1 and which runs through existing farming land and the Historic Reserve. Conversely, Mr and Mrs Smidt considered that if the by-pass proceeds it could jeopardise the viability of any subdivision development.

In response, the Panel heard evidence from Mr Collins who stated that:

*The rezoning site is a stand alone, rural living site that will have no direct built form link to the Maldon urban area. It will not be
substantially visible from the main road nor will it detrimentally impact on the adjoining Maldon Historic Reserve.

In support of his evidence Mr Collins presented the Panel with a Viewshed Analysis prepared by Foresite and Creative Rib which provides a visual representation of the possible impact of development on the Castlemaine-Maldon Road frontage. Mr Collins noted that:

· Apart from one lot, the majority of the proposed lots are set well back from the road frontage (ie: over 100m).

· The lot that is closest to the roadside, as shown on the viewshed analysis, contains a substantial covering of vegetation, the majority of which will be retained. The dwelling will be located in the cleared envelope area set back approximately 25m from the property boundary, but this will still be partly screened via the retained vegetation between the boundary and the envelope. I believe that this is acceptable.

· The substantial amount of native vegetation along the roadside on the proponent’s property is left largely untouched. There is also a substantial amount of vegetation on an adjoining lot not under the proponent’s control that helps to shield the site. The removal of this vegetation would be subject to separate planning approval and would be considered against the decision guidelines of the Significant Landscape Overlay Schedule 3 that is in place to protect the approaches to Maldon.

· The dwellings located in cleared areas that are visual from the road are set back some distance from the road (a minimum of 100m) and will not have a significant visual impact nor will they be detrimental to the visual entrance to the township.

8.4 Discussion

The Panel acknowledges the historical and cultural importance of Maldon and its surrounds including the Maldon Historic Reserve. The value of the surrounding landscape and outlooks are also noted. The Panel inspected areas on the entrance to Maldon and viewpoints such as Mt Tarrengower to gauge the value and sensitivity of the outlooks.

However, the Panel could not see how the level of impacts expressed by submittors could occur from the subject land being developed under the rezoning to RLZ.
Firstly, regarding strip development, the Panel considers that the amendment will not result in this impact because the subject land is the only site on the outskirts of Maldon specifically identified under the Mount Alexander Planning Scheme for the potential to be rezoned for rural living purposes. The location of the rezoning allows space for future urban expansion of the town if there is ever a need to do so and accordingly, the amendment will not create an unreasonable restriction on the town’s urban development.

Secondly, the Panel considers that there will not be any direct impact on views into and from the town as a result of the rezoning. The subject land exhibits a valley falling away from the Castlemaine-Maldon Road, which combined with the extent of vegetation along the road frontage will act to reduce the degree of visibility of any rural living development that may occur. The subdivision design presented to the Panel shows only one lot directly fronting onto the Castlemaine-Maldon Road with the other lots setback from the road. The extent of vegetation proposed to remain on the subject land will also assist in filtering any views from outlooks such as Mt Tarrengower, which would be expected to be long distance views and most unlikely to impact on views.

The Panel considers that the lot density of 44 lots proposed under the indicative Development Plan Version 21 should not provide a significant impact on the visual character of Maldon or its vegetated surrounds.

The Panel acknowledges that the amendment does have the potential to change the existing Crown Allotment pattern of the subject land and accordingly alter the historical land settlement pattern of this part of Maldon. However, the Panel does not consider this impact to be significant in terms of the overall land settlement pattern that remains in and around Maldon. Arguments that the existing settlement pattern should remain intact are difficult to accept when they may well lead to an unacceptable outcome in terms of future rural living land use. The Panel considers that one of the benefits of the amendment is that irrespective of the minimum lot size used, the subdivision design of the subject land takes into regard a performance based approach which considers land opportunities and constraints. In this regard the areas of existing cleared land is proposed to be more intensively developed while those parts of the subject land, which contain greater coverage of native vegetation, drainage lines and eroded gullies are less intensively used through the selection of larger lot sizes. The Panel notes that despite a minimum lot size of 1 ha proposed for the Schedule to the Rural Living Zone under the amendment, the indicative Development Plan Version 21 does not proposed 125 lots which would be possible under such a density but rather 44 lots based on a performance based design approach.
The Panel believes that this provides a sensible approach to looking at how the subject land could be subdivided if rezoned, which is sensitive to the values of Maldon. This approach is considered by the Panel to be further demonstrated by the application of a buffer setback area of development from the boundaries of the subject land with the adjoining Maldon Historic Reserve.

With regards to the issue of the future by-pass route of the Maldon township, the Panel considers that the amendment will not jeopardise the future potential of any town by-pass. The amendment does not directly affect the status or otherwise of the Road Zone Category 1 apart form a new road extension to connect with Boundary Road into the town, which can be overcome through appropriate road design if and when the need to construct the by-pass occurs.

8.5 Conclusions

The Panel concludes that Amendment C36 will not result in significant impacts on the historic, cultural or landscape values of Maldon, its surrounds or the Maldon Historic Reserve.
9. Appropriateness of the Planning Controls

9.1 What is the issue?

Issues were raised by parties and submittors with respect to the appropriateness of the planning controls selected under the amendment. The appropriateness of zone and minimum lot size selection were questioned. While some of the detail of the DPO8 were argued by both Council and the proponent.

9.2 Policy context of the issue

The policy context for this issue can be found in the Maldon Framework Plan under the Clause 21.03 of the Mount Alexander Planning Scheme and the purposes of the Rural Living Zone (Clause 35.03), Environmental Significance (Clause 42.01) and Development Plan (Clause 43.04) Overlays.

The Maldon Framework Plan identifies the subject land as a location preferred for rural living development that is staged.

The purposes of the Rural Living Zone are outlined under Chapter 4.2.1 but seek to provide for residential use in a rural environment, provide for agriculture, protect environmental values and encourage sustainable land use and management.

The Environmental Significance Overlay has the purpose as set out under Clause 42.01:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

The environmental values identified under ESO8 – Tarran Valley – Biodiversity Protection and Enhancement as proposed under the amendment are that:
Tarran Valley is located within the Goldfields Bioregion which has only 36% of the original native vegetation cover remaining within the North Central Catchment Management Area (NCCMA).

The vegetation cover of Tarran Valley varies from cleared land through to scattered trees to dense canopy cover. It has four (4) Ecological Vegetation Classes (EVC) with the following conservation status within the bioregion of the NCCMA; depleted for Box Ironbark Forest and Grassy Dry Forest; vulnerable for Valley Grassy Forest and endangered for Alluvial Terraces Herb-rich Woodland.

One threatened species of flora – Emerald-lip Orchid (*Pterostylis longifolia sl*) is located on the site within the remnant Box Ironbark Forest, which is listed as rare under Victoria’s *Flora and Fauna Guarantee Act 1988*.

Scats of the threatened Brush-tailed Phascogale (*Phascogale tapoatafa*) have been recorded on the site, which is listed as vulnerable in Victoria.

Members of the Victorian temperate woodland bird community have been recorded on site. This community is listed as threatened under the *Flora and Fauna Guarantee Act 1988*. Two species recorded on this site are threatened including the Speckled Warbler (*Chthonicola sagittate*) and Swift Parrot (*Lathamus discolour*) which is also listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

The site has connectivity to other vegetation and habitat on both private and public land. Land within the Maldon Historic Area (managed by Parks Victoria) occurs on the south-eastern, north eastern and eastern boundaries.

The Development Plan Overlay has the purpose:

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

FOBIF questioned whether the most appropriate zone had been chosen, suggesting that the Rural Conservation Zone (RCZ) is more appropriate given the environmental sensitivity of the subject land because of its native vegetation coverage and the presence of threatened species. Dr Ryan submitted that:

*The Rural Living Zone proposed under this amendment does not cater for lots in a rural setting that are large enough to accommodate a dwelling and a farming use. Thoughts of small farming operations are quashed by the terms in the ESO and DPO Schedules.*

Dr Ryan argued that the use of the RCZ particularly for those lots located within the areas of native vegetation classified as Very High or High Conservation status would adequately control the use and development of land without the need to use multiple overlays.

The selection of the 1 ha minimum lot size was questioned when compared to the 8 ha lot size standard under the Rural Living Zone, which was considered more appropriate.

Some concern was expressed over a lack of control over built form design particularly in terms of ensuring the heritage character of the Maldon area is protected from unsympathetic building design. Under the configuration of the suite of planning controls proposed under the amendment, the permit triggers consist of the Significant Landscape Overlay and the proposed ESO8. Under the Schedule to the Rural Living Zone, the 1 ha minimum lot size exemption from the need for a permit to use land for the purposes of a dwelling will mean that with no lot smaller than 1 ha proposed in the indicative Development Plan Version 21, planning permits would not be needed for a dwelling and accordingly little control would be able to be exercised by Council over building design.

The Panel heard evidence from Mr Collins who stated in regards to the selection of the Rural Living Zone that:

*In my opinion, the proposal to apply the Rural Living Zone to the site to enable the proposed development is an appropriate zone selection. The proposal is consistent with the stated purposes of the zone as it will be a residential use in a rural environment, will protect and enhance the natural resources, biodiversity and landscape and heritage values of the area and the proposal incorporates sustainable land use management practices, via the approach to the retention and enhancement of high and...*
very high quality native vegetation and the approach to infrastructure provision.

With respect to the Schedule to the Rural Living Zone, the evidence of Mr Collins stated that:

Having regard to the draft Development Plan layout, I consider that the proposed site specific reference in the Schedule, providing for a 1 hectare minimum lot size, is appropriate. The location of the site in context to Maldon encourages a higher density outcome compared to other sites in ‘stand alone’ areas.

The substantial areas of cleared land within the site can be utilized on lots with areas smaller than 8 hectares without compromising the purposes of the zone. The use of building envelopes even in cleared lots defines clearly the extent of construction that can occur on site.

The draft layout shows that areas of the site that contain areas of high and very high conservation significance have been placed in lots with larger areas whilst the cleared areas generally accommodate lots of between 1 and 4 hectares. This reflects a site responsive approach to the subdivision design.

The site therefore lends itself to development at the proposed density envisaged by the schedule.

On the proviso that the draft Development Plan is included for reference in the schedule to the DPO, I see no purpose in nominating a site specific lot average for the development in the RLZ schedule. The reference to the draft Development Plan in the DPO schedule provides a more substantial reference point for any approved Development Plan than the notion to achieve a lot average across the site.

Mr Collins suggested some changes to the proposed planning controls, particularly to some of the detailed provisions of the DPO8, and to include reference to the indicative Development Plan Version 21 within the DPO8. In particular, Mr Collins suggested:

- The requirement to prepare a detailed native vegetation offset plan at the development plan stage is not warranted and should be considered at the planning permit stage and dealt with by permit conditions as appropriate. Certainly the extent of vegetation removal and the ability to adequately offset any loss to achieve a net gain should be considered at the development plan stage.
- The need for underground electricity is not required and above ground electricity can be provided with minimal vegetation loss.
- The use of a Section 173 Agreement is not required with the matters sought to be included in the Agreement able of being addressed in permit conditions.

- The amended version of the DPO8 contains detailed provisions many of which have been addressed by the detail shown in the indicative Development Plan Version 21. The exhibited version of the DPO Schedule should be adopted with the following addition to Section 3 Requirements for development plan:
  
  - The layout and general arrangement of any approved Development Plan must be generally in accordance with the plan ‘Proposed Development Plan Job Ref 01314 Dwg No. 001 Version 21’ prepared by Coomes Consulting.

Under the ESO8, the need for controls that require planning approval for any buildings and works within an approved building envelope was also not supported by Mr Collins. He suggested that Section 3.0 of the ESO schedule should be amended to include an additional dot point as follows:

  A permit is not required to:
  
  Construct any new buildings or carry out works that are contained within a building envelope created on a registered Plan of Subdivision...

Mr Collins also suggested some changes to the SLO1 and SLO3 to remove permit triggers for buildings and works including those within any building envelopes, however, these matters are not part of the considerations of the Panel because these planning controls are not affected or proposed to be changed by the amendment.

In contrast Ms Copland submitted that from Council’s perspective the changes made to the DPO8 by Council:

- Reflects best practice requirements for rural living subdivision and development;
- Incorporates the requirements of various referral authorities; and
- Represents Council’s attempt to address issues raised in submissions.

She stated that:

Many of the common problems associated with rural living development (summarised earlier in this submission when addressing Clause 21.03) have been addressed through the requirement for a Section 173 agreement which prohibits further dams, domestic cats, grazing on lots of high and very high conservation significance and requires the appropriate confinement of dogs, over and above that required under Council’s Local Laws. The requirement for a large rainwater tank for
each dwelling erected will also contribute towards a more sustainable development.

Having regard to the important environmental and landscape values of the site (as evidenced by the proposed ESO and the two existing SLOs) Council considered that underground power should be a development requirement, including this as a provision in the DPO schedule. As this is a “Greenfield” site, greater economy can be achieved as there is the opportunity to install the underground system as part of the general civil works. This requirement can be justified by:

- the fact that this form of power is regarded as “best practice”
- the provision of underground power is recommended in the background reports accompanying the initial rezoning submission
- the development will not result in the addition of wires to existing overhead power infrastructure; there are no existing overhead power lines within the site and the introduction of poles and wires will contribute substantially to the visual impact of the development
- Generally a 7 metre vegetation clearance is required on either side of the power lines clearly resulting in a greater impact upon existing vegetation
- Climate change is predicted to result in more frequent and violent storms, which will result in more outages due to line damage on overhead power lines
- it will pose less fire risk
- result in less on-going maintenance requirements

The current plan before the Panel already reflects a number of the provisions detailed in the schedule as discussed in the section above. However, it is submitted it is appropriate to retain these development parameters within the schedule such that they are explicit. This is an important consideration should the land change hands prior to development or if another development is mooted.

9.4 Discussion

Amendment C36 proposes to rezone the subject land from Farming to Rural Living and as such implements part of the Maldon Framework Plan which forms part of Mount Alexander Shire’s planning scheme. The amendment does not propose to rezone the land to the Rural Conservation Zone. Accordingly, the question being asked of this Panel is whether the rezoning of the subject land to the Rural Living Zone is appropriate or not. The Panel is not being asked to consider what the most appropriate zoning of the
subject land is. The Panel considers that this question has already been asked and addressed during the Amendment C24 Panel process.

The Panel considers the Rural Living Zone appropriate for achieving the outcome sought by the Maldon Framework Plan which seeks to facilitate rural living land use whilst recognising and mitigating significant impacts on the environmental values of the land and its surrounds. The purposes of the Rural Living Zone support this aim as does the use of the supporting overlays such as the DPO8 and particularly the ESO8.

The ESO8 looks to protect the native vegetation and associated habitat values for those areas of the subject land located outside of the building envelopes as proposed in Development Plan Version 21. The level of protection is supported by the combination of controls provided by the Rural Living Zone, DPO8 and ESO8.

The proposal to use a 1 ha minimum lot size under the schedule to the RLZ is considered under normal circumstances to introduce a minimum which may be too small because it has the potential to compromise objectives to achieve adequate on-site wastewater effluent treatment and disposal and protection of native vegetation values. The introduction of such a low minimum lot size could introduce problems under the RLZ for Council, given the land capability characteristics of much of the Shire. However, with Amendment C36, the Panel considers the 1 ha minimum lot size in the Schedule to the Rural Living Zone has to some extent been overtaken by the level of detail shown in the indicative Development Plan Version 21 and the amount of work put into its preparation. This point is reinforced by the proponent seeking to have specific reference made to it in the DPO8. The Panel understands that the preparation of the indicative Development Plan Version 21 has been part of a site responsive design process based on the characteristics and constraints and opportunities of the subject land.

With 44 lots, the Development Plan represents a lot size density of over 2 ha, which could, for example be reflected as the minimum lot size in the Schedule to the Rural Living Zone. The question then becomes whether the minimum lot size for which a permit is not required to use land for a dwelling should be altered or not. If this is increased say from 1 ha to 2 ha, it would result in a permit trigger for the use of land for the purposes of a dwelling (based on the smallest lot size shown on the indicative Development Plan Version 21 which is 1.3 ha). The Panel notes that the only control over visual elements of any building erected on the subject land is a 9 metre high limit provided on the indicative Development Plan.
The Panel considers that it is not necessary to increase the minimum lot size of 1 ha, as proposed under the amendment because it is comfortable with including specific reference to the indicative Development Plan Version 21 in the DPO8. This will provide certainty over what might be expected regarding subdivision and development. The identification of building envelopes with a height limit provides certainty over where buildings might be erected and their maximum height. Any variations that are not generally in accordance with the Development Plan Version 21 as deemed by Council will not be approved. The Panel considers that the matter of whether or not for controls are needed over building design is a general matter for Council, as the Panel considers that development on the subject land will not significantly impact on the character of Maldon or its immediate surrounds.

No party really objected to the addition of the ESO8, and the Panel accepts that its application is appropriate. The permit trigger in the ESO8 should be amended to exempt any buildings or works from the need for a permit within approved building envelopes. This reflects the fact that in approving any eventual Development Plan and subsequently any proposed subdivision, building envelopes will have been clearly identified and impacts assessed. The Panel also considers that the ESO8 will continue to perform a role, in that any removal of native vegetation outside of the building envelopes will require Council approval. This is consistent with the intent of the DPO8 to require an assessment of any Development Plan and subdivision against the net gain policy.

The DPO8 is an important tool. It ensures that details associated with any subdivision proposal of the subject land are assessed prior to any permit being granted and importantly, that permits are granted for use and development of land which is generally in accordance with the approved Development Plan. The Panel considers that the DPO8 and the indicative Development Plan Version 21 jointly provide parties with clear intentions as to how and what land use and development on the subject land will occur if the rezoning is approved. This level of detail is not normally expected for a rezoning amendment such as this and is evidence of the level of work that has progressed over time during the gestation of this amendment.

It is noted that the DPO8 as proposed contains some provisions that duplicate existing requirements in either other legislation or the planning scheme, and accordingly the Panel considers that the following changes should be made to the DPO8 under Section 3.0 ‘Requirements for development plan’ (The full DPO8, as modified by the Panel is included in Appendix A):

- Include reference to the Development Plan Version 21. This will add certainty over how the subject land may be developed.
Deletion of the reference in the third dot point to the subdivision plan providing for a range of lots sizes with a minimum size of 1.0 hectare within the areas clear of vegetation. This is consistent with the Panel’s finding above in relation to the 1 ha minimum lot size being overtaken by the site responsive design now shown on Development Plan Version 21 and the proposal by the proponent to refer to it in the DPO8.

Deletion of the requirement of an offset plan. This can be addressed at the subdivision permit stage.

Deletion of the need to describe cultural heritage features. This duplicates the provisions of the *Aboriginal Heritage Act 2006*.

Deletion of the provision relating to the preservation of the view corridor along the Castlemaine-Maldon Road. This is addressed under the existing SLO.

Amendment of the provision for electricity, to require a combination of aboveground and underground construction of electricity supply and to include reference to the provision of electricity to the subject land in accordance with the Electrical Plan Reference No. 01314 Rev. 0 dated 25/11/08 prepared by Coomes Consulting Group and presented in the evidence of Mr Brett Bahen, Development Engineer. The Panel is satisfied that a combination of aboveground and underground construction will satisfy environmental and economic objectives associated with any future subdivision development. Mr Bahen demonstrated that areas where native vegetation may be significantly impacted by aboveground electricity can be avoided by using underground construction techniques while areas clear of dense coverage of native vegetation can accommodate aboveground electricity supply. The Panel believes this provides a balanced approach.

Correction of the erosion provision to refer to remediation rather than mediation.

All other provisions are considered satisfactory and the Panel believes will ensure that environmental matters are adequately addressed by the final version of the Development Plan.

9.5 Conclusions and recommendations

The Panel concludes that:

- The use of the Rural Living Zone and 1 ha minimum lot size in the Schedule to the Rural Living Zone is appropriate under Amendment C36 on the basis that reference can be made to the Development Plan Version 21 under the Development Plan Overlay Schedule 8.
The use of the Environmental Significance Overlay Schedule 8 – Tarran Valley – Biodiversity Protection and Enhancement (ESO8) and the Development Plan Overlay Schedule 8 – Tarran Valley, Castlemaine-Maldon Road, Maldon (DPO8) is satisfactory, subject to a change to exempt buildings and works within building envelopes from the need for a permit under the ESO8, and some deletions and amendments of provisions under the DPO8 to remove duplication of legislation or other planning scheme provisions and improve clarity.

The Panel recommends that:

1. Section 3.0 ‘Permit requirement’ of the Schedule 8 to the Environmental Significance Overlay should be amended under ‘A permit is not required to’ by replacing the existing dot point with the following:
   - “Undertake buildings and works that are contained within the designated building envelope”

2. Section 3.0 ‘Requirements for development plan’ of the Schedule 8 to the Development Plan Overlay should be amended by the following changes:
   - Include reference to the Development Plan Version 21 by amending the second sentence to read; “The layout and general arrangement of any approved Development Plan must be generally in accordance with the plan ‘Proposed Development Plan Job Ref 01314 Dwg No. 001 Version 21’ prepared by Coomes Consulting and show or include the following matters to the satisfaction of the responsible authority:”.
   - Amend dot point four to read; “A subdivision layout which is responsive to the topography of the land with regards to site elements such as vegetation, waterways or other significant features to the satisfaction of the responsible authority in consultation with the Department of Sustainability and Environment. Such plan shall provide for a range of lot sizes within the areas clear of vegetation with larger lots to be established to the north and east of the site where greater environmental constraints apply”.
   - Delete dot point 7 regarding the requirement of an offset plan.
   - Delete dot point 8 regarding the need to describe cultural heritage features.
   - Delete dot point 10 regarding the preservation of the view corridor along the Castlemaine-Maldon Road.
   - Amend the provision for electricity, to require a combination of aboveground and underground construction of electricity supply by replacing dot point 12 to read; “The provision of
Electricity throughout the subdivision be a combination of underground and aboveground cabling and generally in accordance with the Electrical Plan Reference No. 01314 Rev. 0 dated 25/11/08 prepared by Coomes Consulting.

- Amend dot point 21 to correct the term “mediation” to read “remediation”.

10. Conclusions

The Panel considers that Amendment C36 should be adopted by Council subject to specified changes to the schedule to the ESO8 and DPO8. This is on the basis that:

- 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.

The planning controls proposed in the amendment are appropriate for the rezoning, subject to changes to the ESO8 and DPO8 to improve consistency of approach and remove duplication.
11. Recommendations

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

Amendment C36 to the Mount Alexander Planning Scheme should be adopted subject to the following recommendations:

1. Section 3.0 ‘Permit requirement’ of the Schedule 8 to the Environmental Significance Overlay should be amended under ‘A permit is not required to’ by replacing the existing dot point with the following:
   - “Undertake buildings and works that are contained within the designated building envelope”

2. Section 3.0 ‘Requirements for development plan’ of the Schedule 8 to the Development Plan Overlay should be amended by the following changes:
   - Include reference to the Development Plan Version 21 by amending the second sentence to read; “The layout and general arrangement of any approved Development Plan must be generally in accordance with the plan ‘Proposed Development Plan Job Ref 01314 Dwg No. 001 Version 21’ prepared by Coomes Consulting and show or include the following matters to the satisfaction of the responsible authority:”.
   - Amend dot point four to read; “A subdivision layout which is responsive to the topography of the land with regards to site elements such as vegetation, waterways or other significant features to the satisfaction of the responsible authority in consultation with the Department of Sustainability and Environment. Such plan shall provide for a range of lot sizes within the areas clear of vegetation with larger lots to be established to the north and east of the site where greater environmental constraints apply”.
   - Delete dot point 7 regarding the requirement of an offset plan.
   - Delete dot point 8 regarding the need to describe cultural heritage features.
   - Delete dot point 10 regarding the preservation of the view corridor along the Castlemaine-Maldon Road.
   - Amend the provision for electricity, to require a combination of aboveground and underground construction of electricity supply by replacing dot point 12 to read; “The provision of electricity throughout the subdivision be a combination of underground and aboveground cabling and generally in accordance with the Electrical Plan Reference No. 01314 Rev. 0 dated 25/11/08 prepared by Coomes Consulting”.
   - Amend dot point 21 to correct the term “mediation” to read “remediation”.


Appendix A  Schedule 8 to the Development Plan Overlay as modified by the Panel

SCHEDULE 8 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO8

TARRAN VALLEY, CASTLEMAINE – MALDON ROAD, MALDON

1.0  Requirement before a permit is granted

The responsible authority may grant a permit for subdivision, use or development prior to the approval of a development plan only where it is satisfied that the proposed subdivision, use or development will not prejudice the future use or development of the land for the purpose provided for under the zone and overlay.

2.0  Conditions and requirements for permits

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

All applications for permits within this overlay must have regard to the underpinning objective of sustainable development as articulated in the Mount Alexander Rural Living Strategy 2006, which includes the provision of substantial gains to the natural resource base resulting in net environmental benefit.

3.0  Requirements for development plan

A single development plan must be prepared for all the land to which this schedule applies.

The layout and general arrangement of any approved Development Plan must be generally in accordance with the plan ‘Proposed Development Plan Job Ref 01314 Dwg No. 001 Version 21’ prepared by Coomes Consulting and show or include the following matters to the satisfaction of the responsible authority:

- A statement as to how the development meets the environmentally sustainable rural living objectives and is consistent with the Mount
Alexander Rural Living Strategy 2006 to the satisfaction of the responsible authority;

- Identification of sites of vegetation, landscape and heritage significance;
- The location and layout of all the proposed uses on the land including road and lot layout;
- A subdivision layout which is responsive to the topography of the land with regards to site elements such as vegetation, waterways or other significant features to the satisfaction of the responsible authority in consultation with the Department of Sustainability and Environment. Such plan shall provide for a range of lot sizes within the areas clear of vegetation with larger lots to be established to the north and east of the site where greater environmental constraints apply;
- Revisions to the Flora and Fauna Assessment Report by Garry Cheers September 2003 to show determination of conservation significance of all native vegetation on site including that which is to be removed in accordance with all attributes in Appendix 3, table 5 in Victoria’s Native Vegetation Management- A Framework for Action. This revision must be done in consultation with the Department of Sustainability and Environment;
- An explanation as to how the net gain outcome as specified in the above Framework has been met to the satisfaction of the responsible authority in consultation with the Department Sustainability and Environment;
- The relationship and interface with adjoining land uses on all boundaries of the plan area including the provision of appropriate buffers to the adjoining Maldon Historic Reserve;
- The timing and provision of infrastructure including overall staging of the development;
- The provision of electricity throughout the subdivision be a combination of underground and aboveground cabling and generally in accordance with the Electrical Plan Reference No. 01314 Rev. 0 dated 25/11/08 prepared by Coomes Consulting;
- The provision of a fully constructed sealed road;
- The provision of reticulated water to all lots;
- The provision of effluent disposal to all lots to the satisfaction of the responsible authority;
- The provision of wildlife corridors which will enhance the passage of wildlife through the site to other vegetated areas including the adjoining Crown land to the satisfaction of the Responsible Authority;
- The delineation of appropriate building envelopes on each lot. On those blocks with a waterway, a “no building zone” of 30m shall be
identified along the waterway to ensure protection of the riparian zone and water quality to the satisfaction of the responsible authority in consultation with Goulburn Murray Water;

- A Land Capability Assessment Report containing detailed recommendations for each allotment to the satisfaction of the Responsible Authority;

- 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.

- A comprehensive stormwater strategy for the site which provides for stormwater detention and water quality treatment through the use of water sensitive urban design techniques;

- A program of erosion remediation works to address onsite erosion;

- The preparation of a Section 173 agreement to the satisfaction of the responsible authority for execution prior to commencement of the development. The agreement shall cover the following matters:
  - The prevention of any further subdivision or the erection of a second dwelling on any allotment,
  - All buildings shall only be constructed within the building envelope delineated on each allotment,
  - The prevention of any further dam construction on any of the new allotments created,
  - Only fencing that is visually unobtrusive and appropriate to permit the passage of wildlife shall be constructed in or around any allotment. A rainwater tank with a minimum capacity of 23,000 litres shall be provided in conjunction with the construction of all new dwellings,
  - No cat shall be kept upon the land,
  - Dogs shall be appropriately confined within the site to prevent threat to wildlife,
  - Grazing animals shall not be permitted on lots of high and very high conservation significance.

The preparation of a Section 69 agreement between the proponents and the Department of Sustainability and Environment to the satisfaction of the responsible authority for execution prior to commencement of the development. The agreement shall cover the extent of environmental works and protection required for each lot in accordance with the environmental objectives to be achieved.