

Planning and Environment Act 1987

Government Land Standing Advisory Committee

Tranche 25 Report

13 Green Street, Healesville

28 January 2021

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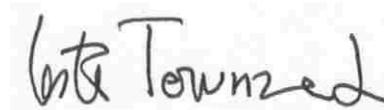
List of Abbreviations

BMO	Bushfire Management Overlay
CZ1	Commercial Zone – Schedule 1
DDO12	Design and Development Overlay – Schedule 12
DELWP	Department of Environment, Land, Water and Planning
EAO	Environmental Audit Overlay
GLSAC	Government Land Standing Advisory Committee
LSIO	Land Subject to Inundation Overlay
PUZ4	Public Use Zone - Schedule 4 (Transport)

About this report

On 28 September 2019, the Minister for Planning referred 13 Green Street, Healesville to the Government Land Standing Advisory Committee as Tranche 25. Progress in this matter was delayed due to the need for further background reports and the COVID 19 restrictions.

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 13 Green Street, Healesville.

A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive style with a large initial 'L'.

Lester Townsend, Chair

A handwritten signature in purple ink that reads "Elissa Bell". The signature is written in a cursive style with a large initial 'E'.

Elissa Bell, Member

28 January 2021

1 Summary and recommendation

1.1 The site

Figure 1: Site location



The site is currently owned by VicTrack for rail purposes. The site is on the southwest corner of Green and River Streets at the rear of the commercial strip on Maroondah Highway and opposite Coronation Park which provides access to the Watts River walking trail. The site has an area of 1,695 square metres and slopes gently to River Street.

Currently vacant, the site was previously used as a mechanic's workshop then leased by Council and used for a community market and as informal open space. This lease was terminated by the site owner in 2018.

1.2 Issues raised in submissions

The Committee considered all written submissions as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Committee has been assisted by the information provided to it as well as previous visits to the site.

Issues raised in submissions related to:

- whether the site should remain as open space

- whether there is sufficient demand for commercial land
- the impact of potential land contamination on possible future uses
- the impact of bushfire policy on possible future uses.

The Committee notes that railway activities had ceased by 1915, and the site has been leased by Council and used for community uses for over 30 years. Whilst acknowledging the restraints imposed by the Committee’s Terms of Reference, Council submitted its official position was a preference for the site to transfer to Council ownership and remain public space. The Committee also notes the significant community submissions for the site to remain in public ownership for the benefit of the community.

The Committee understands Council did not purchase the site during the first right phase due to the outcome of community consultation. This consultation indicated 89 per cent of submitters did not support the purchase at the price set by the Valuer General being \$1,185,000. The Committee notes the site owner’s submission that rezoning the site will not prohibit Council from purchasing it later down the track.

1.3 Committee conclusion

The site owner proposes to rezone the subject land from Public Use Zone 4 (Transport) PUZ4 to Commercial Zone – Schedule 1 (CZ1). The Committee agrees that this is an appropriate zone if the site is to be sold.

Existing overlays will remain on the land and these provide an appropriate framework for considering future planning applications. The land was previously used for a potentially contaminating use and the application of the Environmental Audit Overlay is appropriate.

The Specific Control Overlay was proposed at the Hearing in response to issues raised by the Country Fire Authority (CFA). The Committee supports the application of this overlay to properly manage bushfire risk.

The proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the *Ministerial Direction on the Form and Content of Planning Schemes*.

Table 1: Existing and proposed controls

Current planning scheme controls	Exhibited planning scheme controls	Advisory Committee Recommendation
Public Use Zone – Schedule 4 (Transport)	Commercial Zone – Schedule 1	Commercial Zone – Schedule 1
	Environmental Audit Overlay	Environmental Audit Overlay
		Specific Control Overlay
Design and Development Overlay – Schedule 12	Retain	Retain
Bushfire Management Overlay	Retain	Retain

Current planning scheme controls	Exhibited planning scheme controls	Advisory Committee Recommendation
Land Subject to Inundation Overlay to part of the site	Retain	Retain

1.4 Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved for 13 Green Street, Healesville to:

- 1. Rezone the land to apply the Commercial Zone – Schedule 1.**
- 2. Apply the Specific Controls Overlay with requirements that:**
 - **Prohibit the following uses: accommodation, education centre, fuel depot, hospital, medical centre, place of assembly, trade supplies and timber yard.**
 - **Require a minimum construction standard of BAL29**
 - **Require any permit include the following condition:**

Before the development starts, a Bushfire Emergency Management Plan must be submitted to and endorsed by the Responsible Authority in consultation with the CFA. When endorsed the plan forms part of this permit. The plan must not be altered unless otherwise agreed in writing the Responsible Authority in consultation with the CFA.

2 Process issues for this site

2.1 Process summary

The following tables set out the details of the process for this matter.

Table 2: Proposal summary

Proposal summary	
Tranche	25
Site address	13 Green Street, Healesville
Previous use	The site has most recently been used as public open space
Site owner	VicTrack
Council	Yarra Ranges Shire Council
Exhibition	17 August to 9 October 2020
Submissions	90 (see Appendix B)

Table 3: Exhibited planning scheme changes

Existing controls	Exhibited changes
Public Use Zone – Schedule 4 (Transport) (PUZ4)	Commercial Zone – Schedule 1 (CZ1) Environmental Audit Overlay (EAO)
Design and Development Overlay – Schedule 12 (DDO12)	Retain
Bushfire Management Overlay (BMO)	Retain
Land Subject to Inundation Overlay (LSIO) to part of the site	Retain

Table 4: Committee process

Committee process	
Members	Lester Townsend (Chair), Elissa Bell
Directions Hearing	21 October 2020
Hearing	4 November and 11 December 2020
Appearances	The site owner represented by Glenn Skoien of Auld Planning, calling evidence from Kevin Hazell of Bushfire Planning on bushfire. Yarra Ranges Shire Council represented by Claudette Fahy. Country Fire Authority represented by Anne Coxon and Luci Johnston Healesville Action Group represented by John Anwin

Committee process

Date of this Report 28 January 2021

2.2 Process issues

(i) Environmental Site Assessment

The EPA's initial submission raised concerns that an Environmental Site Assessment was required to inform the appropriate zone for the site. EPA subsequently provided a second submission noting that an Environmental Site Assessment had been provided to it, albeit not with the exhibited material for the Amendment. Whilst the EPA did not undertake a formal assessment of this report, it advised it seemed sufficient to inform the appropriate land use. The Committee directed the site owner to distribute this report to all parties prior to the Hearing.

(ii) Late submission

At the Directions Hearing the CFA indicated that it would like to lodge a late submission. The Committee agreed and this submission was circulated to all parties on Friday 30 October 2020. Due to the issues raised in CFA's submission, the site owner sought to adjourn the Hearing on 4 November 2020. The Hearing was adjourned and rescheduled for 11 December 2020.

(i) Declarations

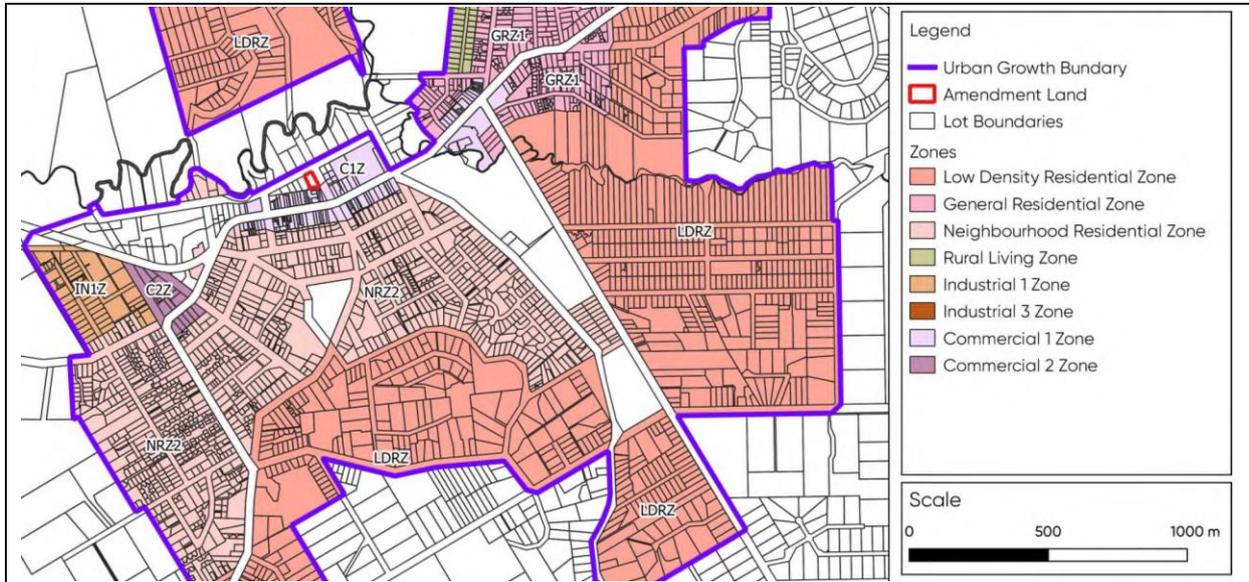
In response to CFA's submission, the site owner called Kevin Hazell of Bushfire Planning on bushfire matters. The Committee declared as a preliminary matter that Mr Hazell was known to Planning Panels Victoria generally and had provided training to members some years before. Member Bell also declared she knew Mr Hazell socially but had not communicated with him recently or in relation to this matter. No concerns were raised by parties in response to these declarations.

3 Site constraints and opportunities

3.1 Planning context

Figure 2 shows the zoning context.

Figure 2: Zoning context

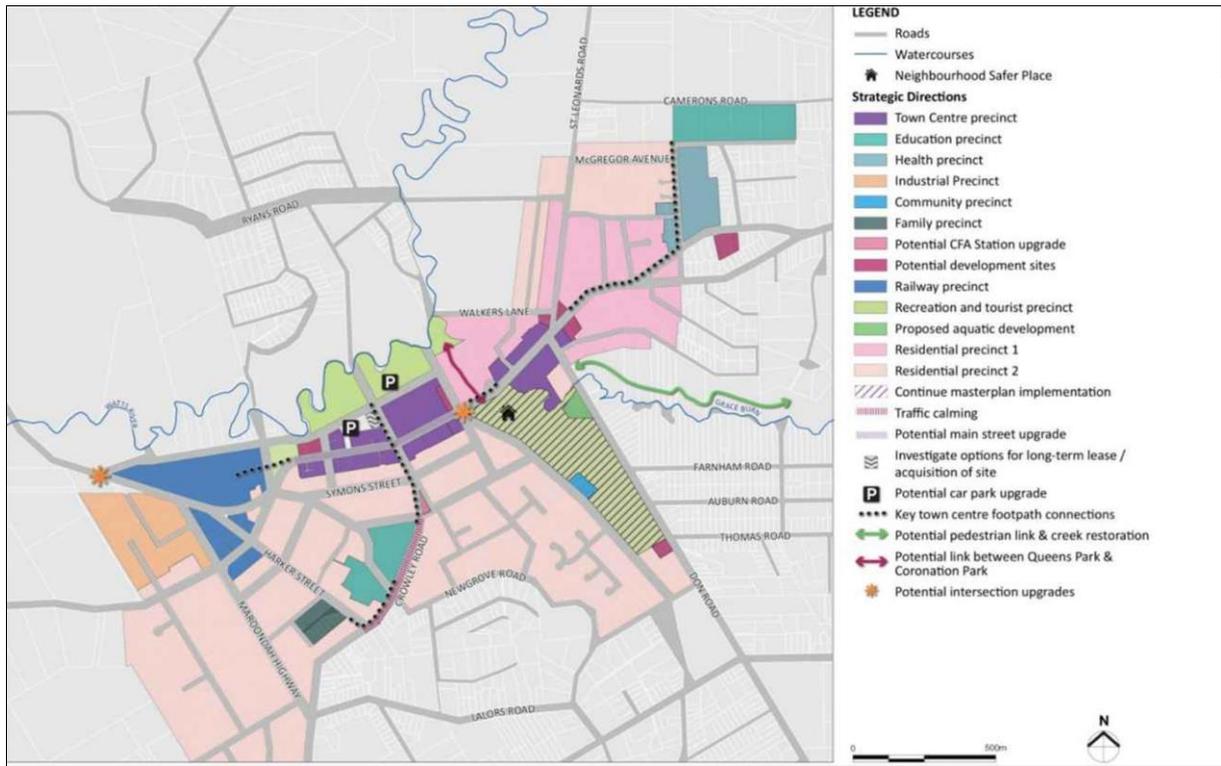


Clause 22.12 of the Planning Scheme provides planning policy for the Healesville district. The Healesville Structure Plan, adopted by Council in 2016, is a reference document to Clause 22.12 and an adopted Council policy. The preparation of this plan was supported by the following technical studies:

- bushfire
- community infrastructure
- economy
- land use planning
- transport and parking.

One output of the Structure Plan was the strategic framework for the town centre which is included as Figure 4 of Clause 22.12 and is reproduced in Figure 3 (below).

Figure 3: Healesville Town Centre map at Clause 22.12



The map includes the following strategic direction applied to the subject site:

Investigate options for long-term lease / acquisition of the site.

The site owner noted that this reference was raised during the Panel Hearing for Amendment C163pt1 which sought to implement the Healesville Structure Plan and introduced Clause 22.12 into the Planning Scheme. The Panel stated:

The Structure Plan and local policy will not be the sole determinants of what happens to the VicTrack land. Council indicated they are still keen to acquire the land and the 'investigate options' terminology reflects this. The reference in the local policy will not of itself constrain VicTrack from disposing of the land to market if this course is chosen as the preferred option by them.

The site owner submitted:

Although the structure plan includes the strategy for Council to investigate the purchase or long-term lease of the Amendment land, which is reflected in Clause 22.12, this strategy does not appear to be derived from any of the background technical assessments that informed the Structure Plan.

3.2 Background

(i) History of the site

The construction of the Lilydale to Healesville Railway Line was authorised by the *Railway Construction Act 1884*. The 27th schedule to that Act identifies land up the western bank of the Watts River as forming part of this railway line.

The site may have been once used as a railway at the start of the 20th century, however any railway activities that were historically carried out on the site ceased by 1915.

Currently vacant, the site was previously leased by the rail authority to a private company and was used as a mechanical workshop between 1948 and 1982. In 1984, Council took over the lease and continued to lease it up until 2018 when the lease was terminated by the site owner. Council used the site for a community market and as informal open space.

In 2007, the site owner completed a strategic review of railway corridors within Yarra Ranges Shire. This assessment concluded that the site in Healesville east of the railway station was no longer required to be reserved for railway purposes.

In 2010, the site owner and Council commenced negotiating a potential land swap. The land swap resulted in the transfer of land at Mooroolbark Railway Station to the site owner, and in return Council was provided with land in Healesville, including the River Street car park.

As there was a difference in land values between the Council owned land in Mooroolbark and the land in Healesville, the site owner retained a portion of the site in Healesville, being the site subject to the Amendment. This enabled a swap of equal valued land to occur.

Planning Permit No YR-2010/1449 issued on 18 March 2011, re-subdivided three lots that overlapped the Amendment land and the River Street car park into two lots. The River Street car park was subsequently transferred into Council ownership.¹

In April 2016, the site was declared surplus in accordance with the Victorian Government Landholding Policy and Guidelines. A First Right of Refusal Process was subsequently undertaken in 2017 with Council expressing interest in purchasing the site.

Following the valuation of the site by the Valuer General Victoria, Council withdrew from the First Right of Refusal Process in December 2017.

The conclusion of the First Right of Refusal Process brings us to the Amendment.

(ii) Amendment C108

In 2011, the Minister for Planning gave authorisation to Yarra Ranges Shire Council to prepare and exhibit Amendment C108, which proposed to rezone the site to the then Business 1 Zone, apply a site specific Design and Development Overlay and apply the EAO.

In 2012, a Planning Panel considered Amendment C108 and recommended that the site be rezoned. At the Council meeting on 27 November 2012 Council resolved to defer further consideration of Amendment C108 to enable the completion of the *“Healesville Master Plan”* and provide further time for discussions with the State to gift the site to the community.

In 2016, Council adopted the Healesville Structure Plan, which included an action to investigate the feasibility of purchasing the site or entering into a long-term lease. Following adoption of the Healesville Structure Plan, Council formally abandoned Amendment C108.

¹ Prior to the issue of new titles in 2013, the site was known as 9-13 Green Street, Healesville.

3.3 Constraints and opportunities

(i) Location

The site is behind the main commercial area for the town in a small strip of public use land used for various public services.

The site is on the southwest corner of Green and River Streets. The site abuts a Council owned car park at 80 River Street to the west. To the south is Taber Lane and the rear of commercial uses which front onto Maroondah Highway and Green Street. Coronation Park, which provides access to the Watts River walking trail and the Healesville Bowling Club, lies to the north. The Healesville Senior Citizens Club hall and residential dwellings are located opposite to the site on Green Street.

(ii) Current site conditions

The site is almost rectangular, 33 metres by 58 metres (the southern border is diagonal adjacent to Taber Lane) and about 1,695 square metres in area.

The site is currently vacant and contains no structures save for wooden bollards around most of the perimeter. There are a few trees on the River Street frontage however as these are in the road reserve, any removal would require Council consent. The site is mostly grassed lawn, with the exception of a portion of land along Taber Lane which is used for public car parking.

(iii) Drainage and flooding

The site has a gentle slope in a north east direction towards the corner of River and Green Streets. The surrounding area also slopes towards Watts River located to the north/northwest.

The LSIO applies to land near the Watts River and Grace Burn Creek.

Floodplain management policy encourages planning authorities to identify the 1 in 100 year floor level event in Planning Schemes.² This is reflected in the LSIO that applies to the site. It is policy to avoid intensifying flood levels through inappropriately located land use or development.

(iv) Potential contamination

Policy requires planning authorities ensure potentially contaminated land is suitable for its intended use and development and that contaminated land is used safely.

Given the long history of mechanic workshops on the site and potential prior use as railway land, the site is considered to have a high potential for soil and groundwater contamination according to the *General Practice Note – Potentially Contaminated Land* (DSE, 2005, PPN30).

Although soil testing undertaken in the Phase 2 Environmental Site Assessment identified some contamination on site, levels of contamination were not considered unacceptable to the proposed commercial use (or existing recreational use). National Environmental

² Clause 13.03-1

Protection Measures – Ecological Investigation Levels were exceeded for several heavy metals in the soils. Maximum lead concentrations at one site exceeded Health based Investigation Levels. Investigations indicated this contamination was likely limited to fill material present onsite with an average of 0.3 metres depth and would not be readily soluble under natural or landfill conditions. Should offsite disposal be required during redevelopment, the fill would likely be classified as Prescribed Industrial Waste (Category C).

Due to the lead contamination, further investigation would be required if a ‘sensitive’ land use was to be considered for the site in future. Such land uses include residential or childcare. Concentrations were however considered acceptable for recreational or business purposes.

Groundwater investigations indicated low risk of site sourced groundwater contamination.

(v) Development

The Design and Development Overlay – Schedule 12 (DDO12) was applied to the town centres of a number of townships within the Yarra Ranges Shire, including Healesville, in 2014. It applies to the site.

(vi) Access

Access to the site could be provided by Green or River Streets or Taber lane subject to traffic considerations.

(vii) Bushfire risks

What is the issue

The potential site constraints imposed by bushfire were a key issue discussed at the Hearing. In particular there was discussion as to whether there is need for explicit controls to:

- prohibit certain uses
- set a BAL rating
- require an emergency management plan.

Relevant policy

State policy at Clause 13.02 seeks “to strengthen the resilience of settlements and communities to bushfire” through a risk-based approach that gives priority to human life. Key strategies included in this policy include directing population growth to low risk locations and considering bushfire risk at all stages of the planning process. This policy applies within a bushfire prone area, an area subject to a BMO or area proposed to be used in a manner that may create a bushfire hazard.

For bushfire hazard identification and assessment, the policy requires hazards to be identified and appropriate risk assessment be undertaken by, amongst other things:

- Consulting with emergency management agencies and the relevant fire authority early in the process to receive their recommendations and implement appropriate bushfire protection measures.
- Ensuring that strategic planning documents, planning scheme amendments, planning permit applications and development plan approvals properly assess bushfire risk and include appropriate bushfire protection measures.

- Not approving development where a landowner or proponent has not satisfactorily demonstrated that the relevant policies have been addressed, performance measures satisfied or bushfire protection measures can be adequately implemented.

In terms of settlement planning the policy plans to strengthen community resilience and prioritise human protection by:

- directing population growth to low risk locations being those with a radiant heat flux of less than 12.5 kilowatts per square metre
- ensuring safe access to areas assessed as BAL-LOW
- achieving no net increase in risk
- assessing and addressing bushfire hazard at a landscape, settlement, local, neighbourhood and site scale including the potential for neighbourhood scale destruction
- assessing alternate low risk locations
- not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of development in an area with a BAL rating greater than BAL12.5.

The BMO was applied across all of Healesville in 2017 by Amendment GC13. The BMO – Schedule 1 applies to land south of River Street, including the site. This overlay sets requirements for constructing new, or extending existing, single dwellings on a lot and requires a construction standard of BAL12.5. Other areas of Healesville are affected by the BMO – Schedule 2, which applies a construction standard of BAL19. Some areas, including land west of Church Street, have the BMO with no schedule.

Both Clause 13.02-1S and Clause 71.02-3 (Operation of the Planning Policy Framework: Integrated Decision Making) require planning authorities to prioritise the protection of human life over all other policy considerations when considering bushfire threats.

Evidence and submissions

The CFA sought to prohibit vulnerable uses on the site. The site owner engaged Mr Hazell to address the bushfire risks. There was a general level of agreement between the CFA and Mr Hazell on several aspects.

Mr Hazell's bushfire hazard landscape assessment concluded the likely bushfire impact at the site is from ember attack which would be at high levels across the site. Mr Hazell's bushfire hazard site assessment, derived from there being no classifiable vegetation within 100 to 150 metres of the site, concluded the exposure is less than the 12.5 kilowatts per square metre required under Clause 13.02-1S. Mr Hazell's evidence then addressed the approved measures under the BMO and Clause 53.02 and concluded that a BAL29 would likely be the outcome of necessary considerations. In the case of accommodation, childcare, education, hospital, leisure and recreation or a place of assembly he concluded an application would be capable of complying.

In assessing the Amendment against Clause 13.02, Mr Hazell acknowledged no alternate sites had been considered. He identified the favourable location features of the site being:

- Meeting site-based exposure benchmarks
- Availability of safer places
- Its location within the low fuel and built up commercial area of Healesville.

In responding to the CFA's original submission that selected uses should be prohibited, Mr Hazell noted that *"if the amendment is approved, most new future uses, developments and subdivisions of bushfire interest would be subject to planning scheme bushfire conditions."* Such considerations include permit triggers under the BMO and Clause 13.02-1S 'use and development control for a bushfire prone area'. In this context he concluded *"there is little that could occur without further scrutiny ... If the Amendment is approved, a comprehensive framework for decision-making, already in place, will continue"*. He then outlined the assessment and decision-making frameworks set up under the BMO and other applicable planning scheme provision.

In assessing the overall risk Mr Hazell concluded *"the introduction of any new development will increase people in a bushfire area such as Healesville."* He considered the exposure could be managed by the favourable locational features mentioned above together with *"the usual and extensive requirements for bushfire contained in the planning scheme."* In considering these factors together, Mr Hazell gave evidence the risk would be reduced to an acceptable level.

In terms of the Amendment Mr Hazell recommended:

- the explanatory report be updated to address Ministerial Direction 11
- future uses, developments and subdivisions be required to deliver the following bushfire protection measures:
 - constructed to a minimum standard of BAL29
 - defensible space vegetation management to all of the site
 - bushfire emergency management plan for vulnerable uses.

In terms of implementing the above recommendation, Mr Hazell gave evidence the ordinary operation of the planning scheme would likely result in the above measures being required. Alternatively he suggested these measures could be included in the planning scheme. In conclusion, Mr Hazell gave evidence that:

Subject to the recommendations in this report being accommodated, the amendment appropriately considers c13.02-1S Bushfire Planning of the planning scheme. Acceptable bushfire outcomes are achieved.

Relying upon Mr Hazell's evidence the site owner submitted the retention of the BMO on the site was appropriate. The vacant nature of the site and the triggers in the BMO would mean many types of development and use would require a planning permit (the same uses CFA sought to prohibit). The site owner submitted *"the planning policy framework and the proposed zone and overlays provide a suitable framework for assessing how a future use and development of the land responds to bushfire risk, including the provision of bushfire protection measures specific to the proposed development"*. In the alternative, if the Committee were to consider additional measures appropriate, it was the site owner's submission such measures should be incorporated into the scheme through the application of a Specific Control Overlay and an incorporated document. A draft was provided for consideration.

CFA's submission described the landscape as being heavily forested with likely high to extreme fuel loadings creating an extreme risk to Healesville township. In describing the likely fire behaviour it stated:

- The site would experience/be impacted heavily by embers and smoke from fires in surrounding areas, and may also experience direct flame from the surrounding grasslands.
- A fire in the wider landscape could lead to neighbourhood scale destruction.

Whilst the CFA agreed with the classification of surrounding vegetation as low threat and modified, its submission noted it was useful in the context of a planning scheme amendment, to also acknowledge the limitations in the classification of “*modified vegetation*”. To overcome these limitations, the vegetation should also be considered in association with its parent type (or unmodified form). In this case, forest. Whilst the CFA noted vegetation between the road reserve and creek appeared to be maintained in a low fuel condition, should this change and become less managed, there would be greater impact on the site in the event of a bushfire.

The CFA considered that should vulnerable uses be considered for the site, then all development should have a construction standard of BAL29. The CFA agreed with Mr Hazell’s analysis that application of the BMO would likely result in a requirement for a BAL29. The CFA submitted:

The CFA agrees that there is policy in the BMO that addresses various requirements for bushfire protection measures. Some of these requirements are different to the policy tests under Clause 13.02-1S and consequently when considering the recommendations of either CFA or Mr Hazell – there is a high level of value to having clear requirements that are applied to the site to minimise some of the variables allowed under the BMO and ensure a more comprehensive bushfire response for development of the site into the future.

The primary position of the CFA was for the Amendment to rezone to CZ1 with a prohibition on certain vulnerable uses. In addition a minimum construction standard of BAL29 ought be applied and a emergency management plan be required for all uses. Failing that, the CFA was seeking the Amendment to rezone to CZ2 which in itself limits vulnerable uses, together with a BAL19 and emergency management plan for all uses. Failing that, if the Committee were to accept the site owner’s submission, CFA requested as a minimum the addition of a requirements for an emergency management plan.

Discussion

Healesville is a township threatened by bushfire. This is recognised by the BMO. The Committee recognises there was a high level of agreement between the expert witness and the CFA in terms of the hazard of bushfire to the site. The Committee agrees with Mr Hazell’s analysis as to what the likely conditions may be on a permit should no other requirements be imposed at this stage. The Committee also accepts the CFA’s submission that there are a number of discretionary powers in play at the permit application stage and the ultimate outcome is not certain, albeit likely.

The Committee accepts the CFA’s submission that the requirement of Clause 13.02-1S to consider bushfire risk at the planning scheme amendment stage, requires more than identifying the risk and deferring controls to a later process. The Committee is cognisant the relevant fire authority is providing early advice as to what they think is an acceptable use for this site.

CFA’s submission notes the context of the site needing to be rezoned to be sold and so, adopts a pragmatic approach in applying policy. If circumstances were different, the

Committee considers it possible the CFA might not support such rezoning where alternate and perhaps preferable sites exist. CFA’s pragmatic approach is to essentially enable the site owner to dispose of the site. The Committee does not think it is appropriate to dispose of land with controls which allow uses which it has been informed are unlikely to be suitable or acceptable to the CFA.

The Committee therefore accepts the primary submission of the CFA to limit the permissible uses, set a minimum construction standard of BAL29 and require an emergency management plan for all uses.

In terms of the best means to implement these recommendations, the Committee accepts the site owner’s submission the zone is not the proper place for site specific amendments to the zone. The Committee agrees with the site owner’s proposal to apply a Special Controls Overlay with an Incorporated Document. The Committee also accepts the site owner’s submission the uses to be prohibited should be based on pre-defined uses recognised as vulnerable to bushfire risk in the planning scheme.

Clause 44.06 provides a list of vulnerable uses. There is some overlap between this and the uses identified by CFA’s submission. In some cases CFA have specified uses which are ordinarily nested in the below parent use as per Clause 73.04. The CFA’s submission does not request prohibiting all vulnerable uses as defined in Clause 44.06 and the Committee agrees with this. There are two remaining uses which CFA’s submission suggests should be included as vulnerable; Fuel depot and Home based business. If Accommodation is prohibited Home based business is not relevant. It would seem to make sense to prohibit a Fuel depot given the potential for such a depot to add to the fire risk of the town centre.

Table 5 below provides a summary of the uses from Clause 44.06 and CFA’s submission which it says should be prohibited.

Table 5: Summary of the uses from Clause 44.06 and CFA’s submission

Clause 44.06	CFA submission	Comment
Accommodation	Accommodation	
	Hotel – must not include accommodation	Covered by Residential hotel nested in accommodation at Clause 73.04-1
Education centre	Education centre	
	Childcare centre	Nested in Education centre at Clause 43.04-4
Hospital	Hospital	
Industry	-	
Leisure and recreation	-	
Office	Medical centre	Nested in Office at Clause 73.04-8
Place of assembly	Place of assembly	

Clause 44.06	CFA submission	Comment
Retail premises	Bar – must not include accommodation	Bar is nested in Retail premises group at Clause 73.04-11
	Trade supplies	Nested in Retail premises group at Clause 73.04-11
	Timber yard	Nested in Retail premises group at Clause 73.04-11
Service station	-	
Timber production	-	
	Fuel depot	Nested in Warehouse, not identified as vulnerable use in Clause 44.06
	Home based business	Not identified as vulnerable use in Clause 44.06. Only possible in accommodation.

Conclusion

The Committee concludes that:

- Planning controls for the site should:
 - Prohibit the following uses: accommodation, education centre, fuel depot, hospital, medical centre, place of assembly, trade supplies and timber yard.
 - Require a minimum construction standard of BAL29
 - Require any permit include the a condition for a Bushfire Emergency Management Plan.

4 Issues with the proposed changes

4.1 What zone is suitable

(i) Evidence and submissions

Most submissions sought the retention of the site as open space. At the Hearing Mr Anwin acknowledged an unfortunate misunderstanding in the eyes of the community as to what the Committee could achieve in this respect. Accepting the restraints imposed by the Terms of Reference, Mr Anwin hoped the Committee could at least record the significant community support for the site to be retained as open space.

Citing its Terms of Reference, Council also acknowledged the Committee's inability to consider a public zone for the site in the absence of a specific request by the Minister for Planning. Nevertheless, Council submitted its *"official position is to have the land retained for public use / open space"*.

Public uses aside, most submissions from residents and community questioned the need for further commercial zoned land in the area with many shopfronts currently vacant.

The site owner identified the surrounding zoning being:

- The Public Use Zone (PUZ)
- The Public Park and Recreation Zone (PPRZ)
- The Commercial 1 Zone (C1Z)
- The Neighbourhood Residential Zone – Schedule 2 (NRZ2).

Of the two non-public zones, the site owner considered Commercial 1 Zone was the *"most suitable underlying zone"* which would represent *"the most policy neutral approach to the disposal of Government land"*.

In relation to concerns about an oversupply of retail space, the site owner referred to the listed policies to achieve Objective 1 of Clause 22.12 (economic development and employment) and noted that *"together these policies broadly encourage an increase in retail and commercial development within the Healesville Town Centre"*. The submission further analysed the 2014 economic study commissioned by Council to inform the Healesville Structure Plan and concluded that even accounting for two recent significant retail developments, the forecast demand for retail and non-retail floor space, had not yet been achieved.

The site owner's submission also considered industrial, residential and other commercial zones as potential alternatives to C1Z. With respect to industrial, the submission noted the site is in a *"visually prominent location"* and not proximate to either of the two existing industrial precincts in Healesville. Although there are existing dwellings on the eastern side of Green Street, they appeared to persist in the C1Z via existing use rights and *"are not an expression of any preferred policy outcome"* contained within the planning scheme. Finally in relation to the Commercial 2 Zone (C2Z), the submission notes as compared with the C1Z, this zone allows industrial and warehouse uses as of right and is often used as a buffer zone to more sensitive areas.

The site owner concluded:

It is submitted that the C1Z provides a superior land use and development outcome for the land by encouraging active ground floor retail or commercial uses, while enabling residential development or additional commercial development at upper floor levels if a two-storey development is realised of the land.

(ii) Discussion

The Committee acknowledges the significant desire by community and Council alike to retain the area as open space. To apply a Public Use Zone, is outside the Committee's Terms of Reference.

Public use aside and having agreed with the CFA's submission to include a Special Controls Overlay to limit vulnerable uses, the Committee agrees the C1Z is the most appropriate zone to assist in achieving the objectives of the Healesville Structure Plan for this area.

The Committee notes, the effect of the SCO will mean the ultimate outcome will not enable residential development at upper floor levels as anticipated by the site owner's submission, but notes it would allow additional commercial development at upper floors should two-storey development be pursued on the site.

(iii) Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved to:

- 1. Rezone the land to apply the Commercial Zone - Schedule 1.**

4.2 What overlays are suitable

4.2.1 Existing overlays

It is not proposed to alter the existing BMO or LSIO and the Committee considers these are appropriate.

4.2.2 Specific Controls Overlay

In order to address bushfire issues discussed in Chapter 3.3(vii) the application of the Specific Controls Overlay is required.

The Committee recommends that the planning scheme amendment:

- 2. Apply the Specific Controls Overlay with requirements that:**

- Prohibit the following uses: accommodation, education centre, fuel depot, hospital, medical centre, place of assembly, trade supplies and timber yard.**
- Require a minimum construction standard of BAL29**
- Require any permit include the following condition:**

Before the development starts, a Bushfire Emergency Management Plan must be submitted to and endorsed by the Responsible Authority in consultation with the CFA. When endorsed the plan forms part of this permit. The plan must not be altered unless otherwise agreed in writing the Responsible Authority in consultation with the CFA.

4.2.3 Is the existing DDO appropriate?

(i) Evidence and submissions

Council supported the retention of DDO12 and considered it sufficient to ensure any buildings would contribute to the existing rural ambience and complement its surrounds. Some individual submissions (14, 38 and 61) claimed future development on the site would detract from and ruin the existing rural town charm.

The site owner quoted the Design Objectives of DDO12:

- To enhance the distinctive built form and streetscape characteristics of the town centre.
- To reinforce the main street as the focus of business and pedestrian activity in the town centre.
- To maintain visual links between the town centre and its rural hinterland.
- To protect and enhance the amenity of residential and public places within and adjoining the town centre.
- To provide safe and convenient on site car parking that has a minimal visual impact on public places.

The site owner submitted that DDO12, which was proposed to be retained, *“is a satisfactory tool to ensure that future development responds appropriately to the Healesville Town Centre and the immediate surrounds of the site”*.

(ii) Conclusion

The Committee agrees that DDO12 is an existing and appropriate tool which will guide future built form on the site to ensure it appropriately responds to the site’s context.

4.2.4 Environmental Audit Overlay

(iii) Evidence and submissions

EPA provided two submissions. The first advice was based on the Amendment documentation provided which had not included the Environmental Site Assessment. The second included consideration of the ESA. The EPA understood the EAO was proposed to ensure an assessment of contamination would be undertaken prior to any sensitive uses, noting that sensitive uses are allowed under the C1Z. The EPA supported the application of the EAO as the primary mechanism for ensuring risks posed by potentially contaminated land are appropriately addressed.

EPA’s submission identified that Ministerial Direction 1 provides two options for the assessment of potentially contaminated land being either prior to notice (default position) or, if prior assessment is inappropriate, a planning authority must include a requirement to the effect that an audit is undertaken prior to use for a ‘sensitive use’.

... under the EAO, the requirement for an audit is triggered only for sensitive uses as defined in Ministerial Direction 1. This includes residential uses, childcare centres, pre-school centres or primary schools but does not include consideration of other uses including commercial uses which may be adversely affected by the environmental condition of the land.’

EPA considered it appropriate for the planning authority to consider what risk the environmental conditions may have on other potential uses of the site. Whilst the EPA did not undertake a full technical review of the ESA, they did provide some advice to assist the Committee, including that there were no results in the ESA which showed the soil samples exceeded Health based Investigation Levels for commercial, industrial or recreational purposes. Further *“the assessment concludes that no unacceptable levels of site contamination for non-sensitive uses have been identified by the soil and groundwater assessment undertaken”*. The EPA concluded the ESA is consistent with Planning Practice Note 30.

The site owner submitted:

... the ESA reports provide sufficient basis to conclude that non-sensitive uses can be established on the land and the application of the EAO provides an appropriate planning mechanism to ensure potential land contamination matters are addressed prior to a sensitive use commencing on the land, consistent with Ministerial Direction 1.

(i) Discussion and conclusion

The Committee agrees with the site owner’s submission and considers the application of the EAO is appropriate.

Appendix A: About the Government Land Standing Advisory Committee

The Government Land Planning Service is a 2015 initiative to deliver changes to planning provisions or correct planning scheme anomalies for land owned by the Victorian Government. The Government Land Standing Advisory Committee (the Committee) was initially appointed under Part 7, section 151 of the *Planning and Environment Act 1987* in July 2015.

A revised Terms of Reference for the Committee was approved in April 2018.

The Committee currently consists of:

- Chair: Lester Townsend
- Deputy Chairs: Lisa Kendal, Mandy Elliott, Trevor McCullough and Annabel Paul
- Members: Elissa Bell, Meredith Gibbs, Jonathan Halaliku, Prue Mansfield, Elizabeth McIntosh, Cazz Redding and Lynn Sweeney.

The Committee is assisted by Chris Brennan, Project Officer in Planning Panels Victoria.

The Committee's Terms of Reference state that the purpose of the Advisory Committee is to:

- a. advise the Minister for Planning on the suitability of new changes to planning provisions for land owned, proposed to be acquired or to land required to facilitate the delivery of priority projects by the Victorian Government, and
- b. provide a timely, transparent and consultative process to facilitate proposed changes to land owned or proposed to be acquired; or to support delivery of priority projects by the Victorian Government.

The Advisory Committee must produce a written report for the Minister for Planning providing:

- a. an assessment of the appropriateness of any changes of planning provisions in the context of the relevant planning scheme and State and Local Planning Policy Frameworks,
- b. consideration of whether the proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes,
- c. an assessment of whether planning scheme amendments could be prepared and adopted for each proposal, including the recommended planning provisions,
- d. an assessment of submissions to the Advisory Committee,
- e. any other relevant matters raised during the hearing(s),
- f. a list of persons who made submissions considered by the Advisory Committee,
- g. a list of persons consulted or heard,
- h. endorsement by the Chair or the Deputy Chair.

Appendix B: List of submitters

No.	Submitter	No.	Submitter
1	Allan Farnell (Healesville Action Group)	46	Crispin Pollard
2	Janice Wilma Taylor	47	Kelly Hinton
3	Arina Gotts	48	Sandy Clinton
4	Linda Ross	49	John Anwin (Healesville Action Group)
5	Marc Skolnik	50	Helen Collier (Pooches and Pinot)
6	James Gray	51	Monica Hayes
7	Lauren Beard	52	Jacinta Ehrenberg
8	Heather Ellis	53	Heather Storen
9	Mairead Curran	54	Sharon A Bourke
10	Jessica Phillips	55	Karin Manley
11	Danny Zemp	56	Jennifer Townsend
12	Colette Shaw	57	Zoe
13	Laura Windmill	58	Peter Manley
14	Kristy Aberline	59	Sarah Kelly
15	Susan Ratcliff	60	Diana Francis
16	Christopher Topp	61	Christina Watson
17	Jacinta Birchall	62	Liliana Lees
18	Glenice Liston	63	Shane And Marina Donkin
19	Tessa Lockhart (Lyrebird Cottages)	64	Mark Webber
20	Karen Garth (Healesville Environment Watch Inc)	65	Heather Smyth
21	Megan Ruffino	66	Elaine Truman
22	Beth Campitelli	67	Karen Meuleman
23	Sally Gales	68	Marie Marshall (Healesville Community Market)
24	Melissa Ogilvie	69	Angelique Fleming
25	Helen Elizabeth Higgins	70	Name withheld
26	Bob Rich, PhD	71	Brian Garth
27	Roger Treen	72	Karen Garth
28	Beth Rosemary Bagley	73	Environment Protection Authority
29	Naomi Macdonald-Johnson	74	Alison Froud

30	Kathleen Cameron	75	Peter Froud
31	Lynne Kathleen Mary Brayne	76	Allan Litchfield
32	Beverley Joy Gilbert	77	John Edwin Frogley
33	Julie Kirkwood	78	Virginia Nugent
34	Tony McManus	79	Laura Mitchell
35	Joanne Tate	80	Kate Derrig
36	Carly L Derisz	81	Yarra Ranges Shire Council
37	Kathleen Holton	82	Peder Holton
38	Elisha Donkin	83	Denise Gilbert
39	Robert Lindsay Greig	84	Aline Scott-Maxwell
40	Margaret Susan Vile	85	Prof John Whiteoak
41	Louisa Cleland	86	Gillian Williams
42	Jodi Schoffer	87	Kenneth George Fewster OAM (Healesville Senior Citizens Club)
43	Noriko Iwanaga	88	Raymond Donkin
44	Amber Mitchell	89	Carl Dowd
45	Ria Lidgerwood	90	CFA

Appendix C: Document list

No.	Date	Description	Presented by
1	7/8/20	Notification Report	Department of Environment, Land, Water and Planning (DELWP)
2	17/8/20	Exhibited Information Pack including background and proposed amendment documents	DELWP
3	19/10/20	Late submission 87 – Kenneth George Fewster OAM	Planning Panels Victoria (PPV)
4	19/10/20	Late submission 88 – Raymond Donkin	PPV
5	19/10/20	Late submission 89 – Carl Dowd	PPV
6	26/10/20	Committee Directions and Timetable Version 1	PPV
7	27/10/20	Environmental Site Assessment	The site owner
8	30/10/20	Email enclosing: <ul style="list-style-type: none"> a) Cover letter b) Late submission 90 c) Bushfire Policy attachment d) Landscape Hazard Assessment attachment 	Country Fire Authority
9	30/10/20	Email advising of intention to request hearing adjournment	The site owner
10	5/11/20	Committee letter and Timetable Version 2	PPV
11	4/12/20	Expert Witness Statement of Kevin Hazell on bushfire	The site owner
12	11/12/20	Email enclosing: <ul style="list-style-type: none"> a) Submission on behalf of the site owner b) Amendment C108 Explanatory Report c) Amendment C108 Panel Report d) Plan Book e) Healesville Structure Plan – Background Economic Report f) Proposed SCO Incorporated Document 	The site owner
13	11/12/20	Submission from Council	Claudette Fahy