

Planning and Environment Act 1987

Panel Report

Cardinia Planning Scheme Amendment C240card Implementing the Koo Wee Rup Township Strategy

10 December 2020

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [Section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

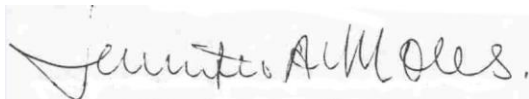
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Cardinia Planning Scheme Amendment C240card

Implementing the Koo Wee Rup Township Strategy

10 December 2020

A handwritten signature in black ink, reading "Jenny Moles". The signature is written in a cursive style with a large initial 'J' and 'M'.

Jenny Moles, Chair

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Glossary and abbreviations

| | |
|-------------------------|---|
| BPA | Bushfire Prone Area under the Building Regulations |
| CFA | Country Fire Authority |
| Council | Cardinia Shire Council |
| DELWP | Department of Environment, Land, Water and Planning |
| DDO | Design and Development Overlay |
| DPO | Development Plan Overlay |
| Township Strategy | Koo Wee Rup Township Strategy (October 2015) |
| Urban Design Guidelines | Koo Wee Rup Urban Design Study, Design Guidelines (February 2013) |

Overview

Amendment summary

| | |
|--------------------------|--|
| The Amendment | Cardinia Planning Scheme Amendment C240card |
| Common name | Implementing the Koo Wee Rup Township Strategy |
| Brief description | Introduction of two new DPO schedules to guide development in two developing residential areas and two new DDO schedules to implement design controls for established residential areas and the town centre of Koo Wee Rup. Reference and Incorporated Documents lists are also amended and other consequential changes are to be made to the Cardinia Planning Scheme. |
| Subject land | Koo Wee Rup Township |
| The Proponent | Cardinia Shire Council |
| Authorisation | Conditional on 9 August 2019 (2 conditions). Conditions satisfied on 20 January 2020. |
| Exhibition | 13 February – 16 March 2020 |
| Submissions | Four submissions were received during the exhibition period/prior to the Council consideration of submissions. Two were from public agencies who did not object or raised issues outside the scope of this Amendment. There were two objecting submissions from or on behalf of one landowner. A fifth submission from the Country Fire Authority was received on 14 July 2020 after the Council had formally considered submissions and had determined to request a Panel on 18 May 2020. |

Panel process

| | |
|----------------------------|--|
| The Panel | Jenny Moles |
| Directions Hearing | Conducted on 'Zoom' meeting platform on 6 October 2020 |
| Panel Hearing | Conducted on 'Zoom' meeting platform on 2 November 2020 |
| Site inspections | Unaccompanied on 20 October 2020 |
| Appearances | Ms Teresa Hazendonk, Principal Strategic Planner, represented Cardinia Shire Council Ms Luci Johnston, Land Use Planning Coordinator, represented the Country Fire Authority Ms Jan Cussen, Planning Team Leader at Nobeliuss Land Surveyors, represented Mr Mick Dwyer. |
| Citation | Cardinia Planning Scheme PSA C240card 2020 PPV |
| Date of this Report | 10 December 2020 |

Executive summary

Cardinia Planning Scheme Amendment C240card (the Amendment) seeks to implement the key objectives and strategies of the Koo Wee Rup Township Strategy (October 2015) (Township Strategy), and the Koo Wee Rup Urban Design Study, Design Guidelines (February 2013) (Urban Design Guidelines) by including two new Design and Development Overlay (DDO) schedules and two Development Plan Overlay (DPO) schedules in the Cardinia Planning Scheme as follows:

- 'Koo Wee Rup Established Residential Areas' - proposed DDO Schedule 8
- 'Koo Wee Rup Township Commercial Precinct' - proposed DDO Schedule 9
- 'Moody Street Residential Precinct' - proposed DPO Schedule 23
- 'Sims Lane Residential Precinct' – proposed DPO Schedule 24.

The Amendment also proposes to remove the Township Strategy from the list of Incorporated Documents in the schedule to Clause 72.04 and include it together with the Urban Design Guidelines as Reference Documents to the local policy section relating to Koo Wee Rup township.

There were five submissions received by the Council in response to the exhibited Amendment. Those submissions which raised issues requiring Panel attention related to the Development Plan Overlays. There were no submissions about the Design and Development Overlays.

Key issues raised in written submissions to the Council included:

- that the Development Plan Overlay provisions did not adequately deal with bushfire hazard
- that the requirement for preparation of a Development Plan for the Sims Lane area was excessive and the requirements for open space provision, density limits and roading were not workable.

Many of the Country Fire Authority (CFA) and the Sims Lane landowner's concerns were resolved by the time of the Panel Hearing as a result of discussions between Council and submitter representatives. The Council officer presented revised drafts of the Development Plan Overlay schedules to the Panel and a Bushfire Hazard Assessment for each of those areas.

Nevertheless, the Panel has reviewed the appropriateness of the Amendment as a whole. The Panel has made recommendations about outstanding issues, and suggested required further changes to the documentation to assist with clarity and consistency of expression.

The Panel's focus has been on the Development Plan Overlays given the issues in contention related to these growth areas. The issues that remained for the Panel's consideration related primarily to the appropriateness of the scheduled requirements especially in terms of bushfire hazard and intended general site layout.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme, noting that in integrated decision making:

Planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Broadly, the Panel considers that the Amendment is well founded and strategically justified, and it should proceed in amended form. The Panel has concluded that:

- the Development Plan Overlay schedules should be as generally recommended by the Council submissions following discussions with the submitters, subject to some further changes by the Panel
- the Design and Development Overlay schedules are clear in content and generally acceptably drafted. Comments on some limited drafting issues are made by the Panel.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Cardinia Planning Scheme Amendment C240card be adopted as exhibited subject to updating clause references and the following:

1. **Amend the decision guidelines at Clause 6.0 of Schedule 8 to the Design and Development Overlay relating to applications proposing departures from the requirements of the schedule, by wording them more consistently with the same guidelines in Clause 6.0 of Schedule 9 to the Design and Development Overlay.**
2. **Clarify whether the subdivision requirements of Schedule 8 to the Design and Development Overlay are intended to be mandatory or able to be varied with a permit and amend wording to clarify.**
3. **Correct spelling and other typographic errors in Schedule 8 to the Design and Development Overlay.**
4. **Adopt the revised version of Schedule 23 to the Development Plan Overlay included in Appendix C to this Report subject to further amending the Concept Plan at Figure 1 of the schedule to remove reference to a 19 metre width for the bushfire defensible space, inserting a note that the space is not to scale and its width will be determined by the Bushfire Hazard Assessment required by the schedule, and retitling the diagram as 'Concept Plan'.**
5. **Adopt the revised version of Schedule 24 to the Development Plan Overlay included in Appendix C to this Report subject to further amending the Concept Plan at Figure 1 of the schedule to refer to the reduced size of the open space area and show the changed roading arrangements as agreed with the principal landowner (Mr Dwyer).**
6. **Remove the two 'Further strategic work' projects relating to Schedules 23 and 24 to the Development Plan Overlay areas from Clause 21.08-3.**

1 Background

1.1 The Amendment

(i) Amendment description

The purpose of Amendment C240card (the Amendment) to the Cardinia Planning Scheme (the Planning Scheme) is to implement the key objectives and strategies of the Koo Wee Rup Township Strategy (October 2015) (Township Strategy), and the Koo Wee Rup Urban Design Study, Design Guidelines (February 2013) (Urban Design Guidelines) by including two new Design and Development Overlay (DDO) schedules and two new Development Plan Overlay (DPO) schedules in the Planning Scheme as follows:

- 'Koo Wee Rup Established Residential Areas' - proposed DDO Schedule 8 (DDO8)
- 'Koo Wee Rup Township Commercial Precinct' - proposed DDO Schedule 9 (DDO9)
- 'Moody Street Residential Precinct' - proposed DPO Schedule 23 (DPO23)
- 'Sims Lane Residential Precinct' – proposed DPO Schedule 24 (DPO24).

The Amendment also proposes to remove the Township Strategy from the list of Incorporated Documents in the schedule to Clause 72.04¹ and include it together with the Urban Design Guidelines as Reference Documents to the local policy section relating to Koo Wee Rup Township.

(ii) Relevant changes introduced by Amendment C250

It is recorded here that at the time of the Panel Hearing, the relevant Planning Scheme policies were numbered and worded in the same manner as during exhibition of the Amendment. Since the Hearing, however, on 20 November 2020, Amendment C250card MSS Review has amended the local policy content of the Planning Scheme and made other consequential changes.

Relevantly, local policy relating to Koo Wee Rup, formerly in Clause 21.07-7, is now part of Clause 21.08-3. The revised policy has omitted descriptive parts of the previous local policy relating to the township. The general thrust of the policy intents, however, remain unaltered.

The Panel also notes here that the 'Further strategic work' section of the policy clause has been supplemented. It now also lists the following strategic projects:

- Review the Koo Wee Rup Township Strategy, October 2015.
- Apply a Development Plan Overlay to the large blocks adjacent to Simms Land, bounded by Simms Lane, Rossiter Road, Supreme Road and the Urban Growth Boundary to guide development and address the issues of access, traffic movement, permeability, infrastructure provision, flood prevention and the protection and creation of habitat areas, to implement the Koo Wee Rup Township Strategy, October 2015.
- Apply a Development Plan Overlay to 65, 73 and 85 Moody Street and 120 Boundary Drain Road in order to guide development and address issues of access, permeability, infrastructure provision, flood prevention and the protection and

¹ It was included as an Incorporated Document via Amendment C189 in February 2016

creation of habitat areas, to implement the Koo Wee Rup Township Strategy, October 2015.

The latter two projects relate to proposed DPO24 and DPO23 respectively which are part of the present Amendment. Reference is made later in this Report to this policy content.

(iii) Detailed components of the Amendment

Specifically, the exhibited Amendment would:

- amend Clause 21 policy relating to Local Areas to insert the Koo Wee Rup Township Strategy (October 2015) and the Koo Wee Rup Town Centre Urban Design Study, Design Guidelines (February 2013) as Reference Documents. The relevant clause is now Clause 21.08-3
- insert new Schedules 8 and 9 to Clause 43.02 Design and Development Overlay
- insert new Schedules 23 and 24 to Clause 43.04 Development Plan Overlay
- amend the schedule to Clause 72.03 What does this planning scheme consist of?
- amend the schedule to Clause 72.04 Documents Incorporated in this Planning Scheme to remove the Koo Wee Rup Township Strategy (October 2015) as an Incorporated Document
- amend Planning Scheme Map Nos. 26DPO and 27DPO
- insert new Planning Scheme Map Nos. 26DDO and 27DDO.

1.2 The subject area

The Amendment affects much of the developed land in Koo Wee Rup Township and future residential areas undergoing development. Industrial areas and areas of public land are generally not included as is one area designated for housing consolidation.

The established residential areas of the township are currently included in the Neighbourhood Residential Zone Schedule 1 (NRZ1)². They include housing areas developed from the late nineteenth/early twentieth century to recent years. They are proposed to be included in DDO8.

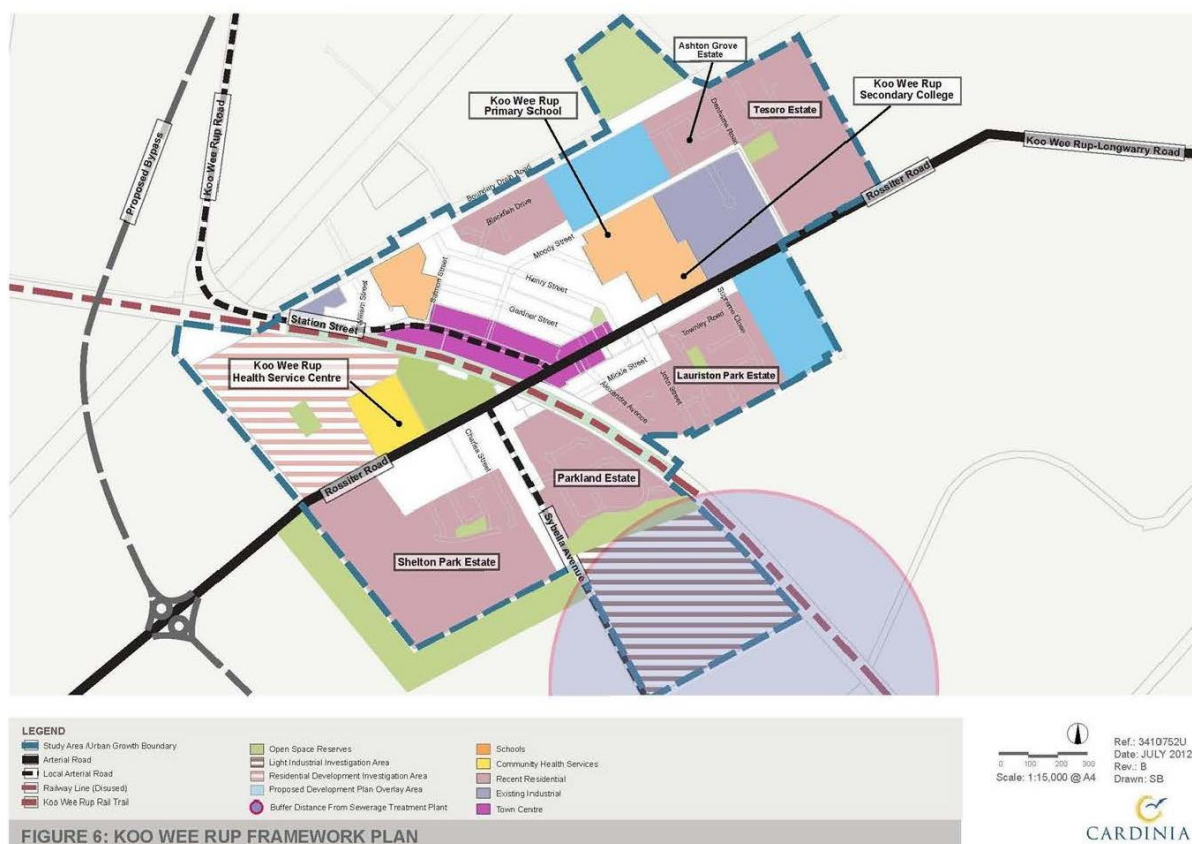
The town centre, focussed on Station Street east of Salmon Street and Rossiter Road around the Station Street intersection, is currently included in two Commercial Zones and one Mixed Use Zone. The town centre is proposed to be included in DDO9.

Two developing areas already zoned for residential purposes (NRZ1) – one at the northern township boundary and one at the eastern edge of the township – are affected by proposed DPO23 and DPO24, respectively. Both are currently in low density residential use and partly vacant. They directly abut other recently developed residential land. Abutting and nearby land outside the township boundary is in the Green Wedge Zone and generally in use for agriculture or pastoral purposes.

² The developing residential land in Rossiter Road subject to DDO22 is also zoned NRZ1. DDO8 is not proposed to apply to this land.

The Koo Wee Rup Framework Plan, now included in Clause 21.08-3 of the Planning Scheme, illustrates the affected areas - the DPO areas are shown in light blue, the town centre in purple and the established residential areas are not coloured (see Figure 1).

Figure 1 Koo Wee Rup Framework Plan



Source: Current Clause 21.08-3 Planning Scheme. Same plan as in *Koo Wee Rup Township Strategy* (October 2015).

1.3 Why is the Amendment required?

The Explanatory Report for the Amendment indicates that the Department of Environment, Water, Land and Planning (DELWP) had raised concerns about the incorporation of Structure Plans and Township Strategies in their entirety within the Planning Scheme, making their requirements difficult to access and locating the requirements 'behind' the Scheme. The use of other statutory planning tools was recommended. This is in accordance with Planning Practice Note 13 - Incorporated and Reference Documents. The Explanatory Report also advises that inclusion of the specific controls in the Planning Scheme would assist in clarifying matters to be considered when permit applications are made. The Council submission at the Panel Hearing also advised that it is expected that greater weight would then be given to the requirements of the Township Strategy in review hearings before the Victorian Civil and Administrative Tribunal.

1.4 The Development Plan Overlays

DPO23 and DPO24 are both based on the Development Guidelines in Section 4.4 of the 2015 Township Strategy. The new overlays seek to ensure that development in the two developing areas at the edge of the existing town area responds to the rural setting of the

township, provides housing diversity, manages stormwater appropriately and provides a high level of amenity and urban design. The exhibited schedules each set out a list of inclusions for a Development Plan relating to subdivision, building envelopes, staging, environment and landscaping, Aboriginal cultural heritage, traffic and transport, infrastructure and drainage, public open space and urban design and character. As exhibited, DPO24 also contained provisions relating to bushfire though DPO23 did not.

The content of each schedule also derives in part from the particular site circumstances/characteristics of the land. The content at Clause 3.0 of the schedules, for example, which imposes conditions and/or requirements on permits, includes particular road and bicycle/pedestrian path construction requirements which integrate with adjoining developed land; building envelopes mandated through agreements made under section 173 of the *Planning and Environment Act 1987* (the Act); and the siting of open space areas. An 8 per cent open space contribution of land or land value is specified in Clause 53.01 of the Planning Scheme as well as in these schedules.

Each schedule contains a Concept Plan which provides general guidance on how the land might be developed in accordance with the requirements of the schedule subject to further detailed analysis and reporting as specified. Each schedule specifies that a permit may be granted to use or subdivide land, construct a building, or construct or carry out works, before the Development Plan is prepared. This is conditional on the responsible authority being satisfied that the permit will not prejudice the future integrated use and development of the land.

1.5 The Design and Development Overlays

DDO8, proposed to be applied to the established residential areas in Koo Wee Rup, includes design objectives to encourage development and subdivision that maintains and enhances the rural character of the township, and to ensure that new development is responsive to existing building heights and setbacks.

The schedule provides that a permit for buildings and works (as is required by Clause 43.02) is not required if certain requirements of the schedule are met. These include a minimum frontage setback of 7 metres and side setback of 2.5 metres; a maximum building height of 7.5 metres; a maximum site coverage of 40 and 50 per cent for single dwellings and multi-dwellings respectively; or the proposal is an extension to an existing dwelling. Front fencing over 1.5 metres in height and less than 50 per cent transparent requires a permit.

The schedule also includes a list of 'requirements', some of which are qualitatively expressed, which apply in the event that a permit is required for buildings and works. They relate to built form and landscaping. There is also a list of subdivision 'requirements', general application requirements and decision guidelines.

In as much as the schedule does not include an explicit provision preventing a permit being granted that is not in accordance with its requirements, the grant of such a permit is enabled by Clause 43.02-2.

DDO9, applying to the town centre, contains separate provisions relating to four defined precincts within the centre. The design objectives seek to achieve urban design outcomes that create a strong traditional rural character and identity for the centre; establish high quality built form outcomes reinforcing that character; provide for active ground floor

frontages; create an attractive and safe place with a high level of pedestrian amenity; and to encourage environmentally sustainable design.

The schedule does not introduce any exemptions from the Clause 43.02 requirement for a permit for buildings and works nor does it have any provisions relating to subdivision and advertising signs. The schedule specifies only buildings and works requirements. The first group of requirements deals with 'Building heights and setbacks' including building heights; front and side street setbacks, and a rear setback in one precinct. A second group of 'General requirements' provide for urban design matters. Some of these are qualitatively expressed. 'Precinct requirements' introduce additional requirements for each precinct including more detailed frontage requirements, 'requirements' relating to the design of built form, building orientation and carpark and service area siting provisions.

The schedule also includes application requirements and decision guidelines.

As is the case with DDO8, this schedule does not include a provision preventing a permit being granted which is not in accordance with its requirements. Indeed, the schedule at Clauses 5.0 and 6.0 contemplates that this may occur: it imposes additional requirements in relation to applications for buildings not in accordance with the specified height and design controls, and provides that consideration of applications varying from the schedule's built form requirements are to be assessed against the design objectives of the schedule.

1.6 Planning context

The Explanatory Report and the Council submissions both set out the planning policy context for the assessment of the Amendment. The CFA submission also set out the bushfire planning policy and controls in some detail.

The Council submitted that the Amendment is supported by or implements the following parts of the State Policy of the Planning Scheme:

- Clause 11 Settlement
- Clause 13.02-1S Bushfire Planning
- Clause 15.01 Built Environment
- Clause 15.01-2 Building Design
- Clause 15.01-3 Subdivision Design
- Clause 15.01-5 Cultural Identity and Neighbourhood Character
- Clause 16.01-3 Housing
- Clause 16.01-2 Location of Residential Development.

Reference was also made to various directions in *Plan Melbourne* - the metropolitan planning strategy, particularly as relate to 20 minute neighbourhoods and housing diversity.

The following components of Local Policy were also referred to:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.03-3 Rural Townships (now Clause 21.03-4)
- Clause 21.07 Local Areas (in part now Clause 21.08) and Clause 21.07-7 in particular that relates to Koo Wee Rup (now Clause 21.08-3).

There were no submissions which disagreed with the Council submission concerning relevant policy except for bushfire planning policy. The Panel does not address the policy context further except as relates to bushfire issues at the Hearing.

The Explanatory Report also discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments). That discussion is acceptable and is not repeated here.

For the reasons set out in the following chapter, the Panel concludes that the Amendment as modified in the Council presentation to the Panel in response to submissions is supported by, and implements, the relevant sections of the policy framework, and is consistent with relevant Ministerial Directions. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing some outstanding specific issues raised in submissions and by the Panel as discussed in the following chapter of this Report.

1.7 The Council process

As noted, exhibition of the Amendment attracted a small number of submissions:

- South East Water had no objection.
- Environment Protection Authority (EPA) had concerns about urban development intruding into the buffer area around the waste water treatment plant which is located some 600 metres south of the existing residential areas and made general submissions about the need for care with respect to site contamination in introducing residential use of former industrial land. Protection of industrial land from residential intrusion or abuttal was another concern. These concerns are either not relevant to the Amendment which does not rezone land for residential purposes or fall outside of the scope of the present Amendment.
- Mick Dwyer, who is the principal landowner in the DPO24 area³, put in a personal submission and another via his planning consultant objecting to the DPO24 component of the Amendment. Mr Dwyer had concerns about roads and open space being located on his land and his having already made an open space contribution, at least for the land at 9A Supreme Close. It was said that the DPO would inhibit the opportunity for him to successfully develop his land; that the lot sizes were unreasonable; that the drainage of the land meant that open space would be more appropriately developed at the southern end of the precinct where it could double as flood storage; the road layout was unworkable and inconsistent with earlier approved roading for a subdivision; and the preparation of a Development Plan was an onerous expense.

The Council at its meeting of 18 May 2019 considered the four submissions which had been received by that time, resolved that it would make no changes to the Amendment in response to them and that the appointment of a Panel would be requested.

The Panel understands that Council officers then met with Mr Dwyer's consultants with a view to accommodating or ameliorating some of his concerns.

A late submission was then received by the Council from the CFA on 14 July 2020. The CFA raised concern that the Development Plan Overlay schedules did not adequately address bushfire hazard. In particular it was noted that part of the township area is in a Bushfire Prone Area (BPA) and the CFA was concerned that the Council had not specifically addressed

³ He owns four lots – two in Rossiter Road (390 and 394), and one in each of Sims Lane (22) and Supreme Close (9A).

the Bush Fire Planning Policy at Clause 13.02-15 of the Planning Scheme. It was submitted that the reason for the inclusion of bushfire requirements in DPO24 but not in other areas was not clear. The CFA also suggested that more expansive bushfire requirements should be included in both the DPO schedules and they should call for a Bushfire Management Plan indicating protection measures that would be undertaken. Various particular suggestions for inclusion in the DPOs were made including requirements to show that a construction standard of BAL 12.5 will be achievable. Reference was also made to appropriate landscaping management measures and use of perimeter roads.

1.8 The Panel process and approach

Following the Panel Directions Hearing, as encouraged by the Panel, Ms Hazendonk for the Council and Ms Johnston for the CFA met to discuss the CFA submission. At the Hearing, the Panel was advised that the discussions had settled most of the CFA concerns. This included the reinstatement of bushfire provisions earlier recommended for removal by DELWP prior to exhibition, and other modifications and additions to the DPO requirements in the exhibited Amendment.

Ms Hazendonk presented revised DPO schedules as appendices to the Council's revised submissions to the Panel arising from those discussions (Document 3 - Appendix 14 revised and Appendix 15 for revised DPO24 schedule and Concept Plan respectively; and Appendices 18 and 19 for DPO23 and its Concept Plan). She also presented separate Bushfire Hazard Assessments for both of the DPO areas. Appendix C to this Report includes the revised schedules, with the further changes discussed at the Hearing, included in post-Hearing correspondence, and as suggested in this Report by the Panel⁴.

Ms Johnston indicated to the Panel that except for a few matters, the CFA was broadly content with the revised documentation which incorporated changes recommended by the CFA.

After the Hearing, the CFA forwarded an unsolicited email discussing the matter of the width of the defendable space for the northern boundary of the DPO24 area. This had remained in contention at the Hearing. As it was matter remaining to be resolved, the Panel accepted the email and allowed comment by the Council. Ms Hazendonk responded by email on 10 November 2020 and also suggested further revisions to the wording of DPO23 as had been discussed at the Hearing.

Ms Cussen of Nobeliuss Land Surveyors, acting for Mr Dwyer who is the principal landowner in the DPO24 area, also attended the Panel Hearing. She provided no written submission and instead advised that after the discussions with the Council officers, her client was now generally content with the Amendment and DPO24 in particular.

The Panel made a thorough inspection of the township area before the Hearing to assess the appropriateness of the Amendment generally, and to better understand the issues.

⁴ There are also very some minor typographic edits by the Panel such as capitalisation, correction of clause numbers, italicization of references to legislation, and inclusion of missing prepositions..

All submissions and materials received have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in this Report.

The Panel, while it has considered and commented on the content and drafting of the proposed new schedules, has not scrutinised the content of the Township Strategy itself and the Urban Design Guidelines in any detail, as they have already been adopted as policy and/or have been introduced by another amendment as a part of the Planning Scheme.

The Panel has reviewed the content and drafting of the DDO schedules and is satisfied that they are soundly based and generally acceptably drafted. Comments on some limited drafting issues are made.

The Panel's focus has been on the DPOs given the issues in contention relate to these growth areas. The issues that remain for the Panel's consideration relate primarily to the appropriateness of the scheduled requirements especially in terms of bushfire hazard and intended general site layout.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme, noting that in integrated decision making:

Planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Broadly, the Panel considers that the Amendment is well founded and strategically justified, and it should proceed in amended form as generally recommended by the Council submissions following discussions with the submitters. This is discussed in the following chapter of this Report.

2 Consideration of the issues

2.1 Drafting of Design and Development Overlay Schedule 8: Koo Wee Rup Established Residential Areas

2.1.1 The issue

So far as the DDOs are concerned, no submissions related to these areas and the Panel is satisfied that their content is soundly based in the background studies.

The Panel itself has a number of comments on the drafting of DDO8 but considers DDO9 relating to the town centre to be free of the same problems.

2.1.2 Discussion

(i) Decision guidelines

The description of the DDOs in Section 1.5 above notes that both of the DDO schedules include decision guidelines additional to those in Clause 43.02 as is envisaged by Clause 43.02-6.

As noted earlier, DDO9 includes additional decision guidelines which apply to consideration of applications varying from that schedule's built form requirements. It requires consideration of:

- Whether a proposal achieves the design objectives set out in Clause 1.0 of this Schedule⁵.
- Whether a proposal achieves the design requirements set out in Clause 2.0 of this Schedule.
- Whether a proposal that is below the minimum building height or exceeds the maximum building height still achieves the design objectives of this schedule.
- Whether a proposal that seeks to vary a built form requirement can still achieve the design objectives of this schedule ...

DDO8 does not include the same approach to the decision guidelines. Rather DDO8 refers to the actual content of the design objectives in Clause 1.0.

Those objectives are:

- To encourage development and subdivision that maintains and enhances the existing township character.
- To ensure new development is responsive to existing building heights and setbacks.

The reference to them in the Clause 6.0 decision guidelines is as follows:

⁵ Inconsistent capitalisation of 'schedule' in exhibited version requires correction.

- How the development responds to the existing character of the surrounding area, including building heights and setbacks.

While the Panel accepts that the wording in the DDO8 decision guideline may suffice in terms of achieving the appropriate consideration against the objectives, the approach taken in DDO9 is preferable as it strengthens the considerations by requiring a positive outcome. The decision guidelines in DDO8 also fail to pick up the objective of enhancing character. The Panel further considers that there would be benefit in this component of the two schedules being expressed in the same way, so that any legal 'nit picking' arising from the different expression would be avoided.

(ii) Departures from requirements

The Panel notes that DDO8 Clause 3.0 relating to subdivision requirements is also expressed differently to the way requirements are imposed on buildings and works in Clause 2.0. This same issue does not arise in the case of DDO9.

Clause 2.0 of DDO8 provides:

The following buildings and works requirements apply to an application to construct a building or construct or carry out works ...

Clause 3.0 provides:

A permit to subdivide land **must** meet the following requirements ...[Panel emphasis]

In the circumstances that Clause 43.02 enables permits to be granted which depart from the requirements of a schedule '*unless the schedule specifies otherwise*', it is somewhat unclear as to whether the introductory part to Clause 3.0 is intended to be such a statement, specifying that there can be no departure from the subdivision requirements.

If it is the case that no departure is intended to be allowed, it would be clearer if, after the requirements are set out, this was directly said, such as:

No permit can be granted for subdivision not in accordance with this/these requirement(s).

If it is intended that departures are allowable, the introductory part to Clause 3.0 should be amended.

(iii) Typological errors

The Panel also notes some spelling and other grammatical errors in the DDO8 schedule including the use of 'setback' (a noun) when set back (a verb) is intended; 'stories' rather than 'storeys'; and some missing prepositions such as in the subdivision clause.

2.1.3 Recommendations

The Panel recommends:

- 1. Amend the decision guidelines at Clause 6.0 of DDO8 relating to applications proposing departures from the requirements of the schedule by wording them more consistently with the same guidelines in DDO9 Clause 6.0.**
- 2. Clarify whether the subdivision requirements of DDO8 are intended to be mandatory or able to be varied with a permit, and amend wording to clarify.**
- 3. Correct spelling and other typographic errors in DDO8.**

2.2 Development Plan Overlay Schedule 23: Moody Street Residential Precinct

2.2.1 The issues

The main issue in relation to the exhibited DPO23 schedule is whether its content is appropriate in terms of bushfire provisions.

2.2.2 Bushfire policy context

The policy context for planning and bushfires is set out in Clause 13.02-1S. The following components of that clause are relevant to the issues in this case:

This policy must be applied to all planning and decision making under the *Planning and Environment Act 1987* relating to land that is:

- Within a designated bushfire prone area;
- Subject to a Bushfire Management Overlay; or
- Proposed to be used or developed in a way that may create a bushfire hazard.

The objective of the clause is:

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

The strategies include:

Protection of human life

Give priority to the protection of human life by:

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
- Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making **at all stages of the planning process**. [Emphasis added]

Bushfire hazard identification and assessment

Identify bushfire hazard and undertake appropriate risk assessment by:

- ...
- 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**. [Panel emphasis]

Settlement planning

Plan to strengthen the resilience of settlements and communities and prioritise protection of human life by:

- ...
- Achieving no net increase in risk to existing and future residents, property and community infrastructure, through the implementation of bushfire protection measures and where possible reducing bushfire risk overall.
- 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 that has, or will on completion have, more than a BAL-12.5

rating under AS 3959-2009 *Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009).

Areas of biodiversity conservation value

Ensure settlement growth and development approvals can implement bushfire protection measures without unacceptable biodiversity impacts by discouraging settlement growth and development in bushfire affected areas that are important areas of biodiversity

2.2.3 Submissions

As noted earlier, the CFA made a late submission about the exhibited Amendment after the Council had considered submissions. Broadly the submission was that the Amendment was inadequate in terms of the attention given to bushfire hazard and the relevant policies of the Planning Scheme.

As also noted, discussions between Council and CFA officers following the Panel Directions Hearing led to a number of changes being proposed to the Amendment in response to the CFA concerns.

Ms Hazendonk presented the revised schedules for both DPOs at the Panel Hearing as well as a Bushfire Hazard Assessment for each area which demonstrated that a BAL of 12.5 could be easily achieved. She also suggested a further revision to the provisions of DPO23 after the Hearing relating to removal of particular stands of trees.

The CFA submissions at the Hearing generally supported the revisions to the schedules, and the new matters included in the DPO23 schedule suggested by the Council after the Hearing were a further response to matters that were discussed at the Hearing (see Section 1.8).

2.2.4 Discussion

(i) Bushfire issues and defendable space

This DPO23 area near the northern part of the township boundary is currently largely used for semi-rural or low density residential purposes. It sits between two developed residential areas where two east-west roads (Blackfish Drive and Milla Way) have been sited so as they might connect together via an east-west road through the DPO area. There is currently a single internal road running north from Moody Street into the DPO area which connects to a small section of what would be the east-west connecting roadway (also called Blackfish Drive) with a small number of houses at conventional densities built on its northern side which back onto public land along the Southern Boundary Drain.

The DPO area is located on the town side of this major drain and Boundary Drain Road which runs along the northern side of that drain. Together, the drain and road would act as a suitable fire buffer between the residential areas to the south and the agricultural land to the north except that there is an extensive stand of scrub/trees growing on mounded dredged material from the drain running along most of the length of its northern and southern sides. The drain, spoil, and roadway, together with a further grassed strip of land running parallel on the southern side, all form part of the 66 metre wide road reserve. There are also some substantial stands of cypress and pittosporums on part of the road reserve south of the southern line of scrub. The private land in the DPO area is mostly cleared.

The township is not included in the Bushfire Management Overlay of the Planning Scheme but some areas (including part of the DPO24 area) are included in a Bushfire Prone Area

(BPA) under the Building Regulations. In these areas, a bushfire assessment will be required as part of the development approval process. The DPO23 area is not in the BPA.

The revised version of DDO23 presented at the Hearing (Appendices 18 and 19 to the Council's revised submission, Document 3), prepared after the Council and CFA discussions, makes a much stronger mitigation response to potential bushfire hazard in the planning of this area than does the exhibited document. It requires the preparation of a bushfire management assessment and a bushfire hazard site assessment, and specifies some of the broader bushfire mitigation measures required to be included in the Development Plan.

The Panel considers that notwithstanding the area itself is neither in a BPA nor a Bushfire Management Overlay, it is appropriate that the Development Plan should be required to respond to the bushfire hazard along the northern boundary, noting that the road reserve as well as land further north is included in the BPA. The Panel was persuaded by the presentations by the Council and CFA that the 'low scrub' planting on the spoil along the main drain as well as the other vegetation nearby could act as fingers leading the fire into the urban area.

The Panel supports the changes to the schedule specifying particular bush fire protection mitigation measures, notwithstanding that a further bushfire hazard assessment would be required to support the Development Plan. The proposed changes in the schedule would make it clear what would be expected when the Development Plan process is undertaken.

The Panel was persuaded that it would be inappropriate to remove or require modification of the scrub along the drain itself, as it serves as wildlife habitat including for the Southern Brown Nose Bandicoot⁶. Instead, it supports the proposal that defensible space should be created on the part of the road reserve south of the southern scrub line, and on the private land in the DPO area.

The Panel also agrees with the changes proposed to the DPO23 which suggest that a northern perimeter roadway and/or a wetland be created in this defensible space area together with the requirements for management of vegetation south of the scrub line in a fire safe manner.

The Panel further supports the Council's suggestion that it would be appropriate that the tall pittosporums and cypresses in the north-east of the area be removed, and the area might be replanted with vegetation which presents a lesser bushfire hazard.

While the revised plan and wording of DPO23 as presented at the Hearing did not include reference to the tree removal in the north-east part of the area, after the Hearing, Ms Hazendonk provided an appropriately worded clause for inclusion.

The Panel notes that the roadway along the northern boundary of the DPO area would need to deviate southwards around the small group of houses abutting the central section of the northern boundary and to connect to the already-constructed section of east-west roadway servicing those houses (Blackfish Drive) in that location. The Council's suggested revised Concept Plan to be included in the DPO schedule which would serve as a guide to the

⁶ Listed as an endangered species under relevant national legislation and as near-threatened in Victoria.

preparation of the Development Plan shows the defensible space area along the northern boundary and the revised road layout.

At the Hearing, the only real issue remaining in contention between the Council and the CFA was whether a particular width of 19 or 27 metres should be specified for the northern defensible space, with CFA preferring the greater depth.

Essentially the difference in preferred width arose because of some disagreement or confusion over references to the classification of the type of vegetation along the drainage line and the applicability of the relevant parts of the 2009 Australian Standard⁷ in the Planning Scheme (and Planning Practice Note 64), and in the current version of that Standard from 2018.

While, at the Hearing, the Council and CFA disagreed about the precise width for the defensible space required in relation to the scrub along the drainage line to the north with the Council maintaining that 19 metres met the Standard, the Council ultimately recommended that no distance should be specified.

After the Hearing, the CFA sent in an uninvited submission dealing further with the issue of the width of the defensible space pointing to consistency between the 2009 and 2018 versions of the Standard and the Planning Scheme in terms of requiring 27 metres in this case.

The Council's reply by email to the CFA post-Hearing submission on 10 November 2020 was as follows:

Council conveyed concern at the hearing about specifying a particular defensible space distance in the DPO schedules, whether 19 metres or 27 metres, because the schedules require another bushfire hazard assessment to be carried out when the future Development Plan is being prepared. When that future bushfire hazard assessment is carried out, the requirements at Clause 13.02-1S may be different, the bushfire hazard may be different, and the mitigation measures including the defensible space distance may be different, which we have already seen between two different iterations of AS3959-2009.

It therefore remains Council's position that, while the DPO schedules should be updated to improve the requirements for the future bushfire hazard assessment that must be carried out, as well as depicting the location of potential perimeter roads and the location of defensible space at the interface with the current bushfire hazard, it is Council's preference that particular distances of defensible spaces are not specified in the DPO schedules as these may change over time. It would be unreasonable to expect the person preparing the future Bushfire Hazard Assessment and Development Plan to carry out another planning scheme amendment to simply change the defensible space distance specified in the DPO Schedules.

It is also Council's position that a requirement be included in the DPO Schedules for the future Bushfire Hazard Assessment to be referred to the CFA for comment before the responsible authority makes a decision on the approval of the Development Plan.

The Panel accepts that it is adequate that a requirement for a defensible space be flagged in the DPO schedule but that no particular width be included. The Panel considers it

⁷ AS3959-2009 *Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009)

preferable to omit any specified depth given that a subsequent contemporary bushfire assessment would be required and would determine the depth of the space.

The Panel suggests that the defensible space width, which will arise from the bushfire hazard assessment as input to the Development Plan, should nevertheless be to the satisfaction of the responsible authority upon the advice of CFA so as to enable CFA input. Words have been added to the Council's revised draft of DPO23 at Appendix C to this effect and the references to 19 metres have been deleted. On the Concept Plan at Figure 1 of DPO23, the 19 metre reference should again be deleted and a note inserted that the width will be determined by the bushfire hazard assessment required as input to the Development Plan.

The Panel does not agree, however, with the suggestion by the Council that, if a defensible space dimension were to be included in a DPO schedule, it could not be departed from in the final Development Plan without the Planning Scheme being further amended. Ms Hazendonk was at pains to point out in relation to DPO24 that there was flexibility in how a Development Plan responded to the Planning Scheme requirements. The Panel nevertheless also suggests a further change below to the wording of the Development Plan requirements of DPO23 which relates to this matter of flexibility of response to the scheduled requirements.

(ii) Drafting issues

In response to Panel questions at the Hearing, the Council clarified that the references in the exhibited schedule to vegetation applied to all types of vegetation and modified the drafting in the revised schedule to improve clarity.

The Panel was also advised by the Council that considerable changes were required by DELWP to the drafting of the proposed schedule before authorisation to bring its structure and wording more in line with that of DPO Schedule 22 (DPO22) which had recently been added to the Planning Scheme in July 2019.

Ms Hazendonk expressed some reservations about the changes that had been required. This was based on the fact that DPO22 relates to an area in single ownership, which ownership arrangement does not apply in the DPO23 area. She also said that the intended layout of that development area was rather more advanced at the time of the Planning Scheme amendment which introduced the DPO schedule than is the case in the Moody Street area. In this respect she suggested that perhaps the Development Plan requirements in the proposed DPO23 for an indicative lot layout and indicative building envelopes in the Development Plan was rather too prescriptive.

The Panel does not consider this to be the case as the Development Plan calls for indicative layouts rather than final layouts. The Development Plan is in any case likely to be prepared at the time closer to when subdivision is to be undertaken and final lot layouts and the like will already be under consideration.

The Panel suggests, however, that the introductory words to Clause 4.0 relating to the Development Plan content should be changed to affirm Council discretion in terms of

considering Development Plan departures from the Concept Plan and other scheduled requirements - as occurs in DPO22.

It is suggested that the introductory words in Clause 4.0⁸ would better read:

A Development Plan must include the following requirements to the satisfaction of the responsible authority:

The Development Plan must be generally in accordance with the Concept Plan labelled Figure 1 to this Schedule.

The Panel has added these words to the Panel recommended draft of DPO23 in Appendix C.

For consistency, the Panel has also added reference to compensation for land acquisition above the required 8 per cent open space contribution as being based on development values, as was proposed in the Council amended version of DPO24.

2.2.5 Recommendation

The Panel recommends:

- 4. Adopt the Panel-preferred revised version of DPO23 included in Appendix C to this Report subject to further amending the Concept Plan at Figure 1 to remove reference to a 19 metre width for the defensible space, inserting a note that the space is not to scale and its width will be determined by the bushfire hazard assessment required by the schedule, and retitling the diagram as 'Concept Plan'.**

2.3 Development Plan Overlay Schedule 24: Sims Lane Residential Precinct

2.3.1 The issue

The issue is whether the revised schedule and its Concept Plan prepared by the Council after discussions with Mr Dwyer's representatives and CFA are appropriate.

2.3.2 Bushfire policy context

This is set out above in Section 2.2.2.

2.3.3 Submissions

As earlier noted, the Council officers conducted discussions with submitters including Ms Cussen acting for Mr Dwyer (the principal landowner) prior to the Panel Hearing.

So far as the issues raised by Mr Dwyer and his consultants are concerned, Ms Cussen advised the Panel that they had largely been satisfied by Council advice and the agreement to change some of the content of the DPO24. The changes included relocation of required and indicative access roads and a changed location for the central open space area so that it would occupy part of three rather than two lots. The open space contribution concerns were also principally resolved by amended DPO provisions that indicated that any repayments for land acquired above the required 8 per cent open space contribution would

⁸ Adopted from DPO22

be at development values. There nevertheless remained some concern that the three affected lots would be required to contribute as much as 18 per cent for the open space. The Council also indicated a reduction would be made to the size of the open space area shown on the Concept Plan as open space contributions had already been paid for some lots in the development area. The amount of open space to be shown on the Concept Plan would be reduced from 7300 square metres to 5613 square metres.

It is recorded that, so far as the DPO24 changes proposed in response to the late CFA submission are concerned, no objection was taken to them by Ms Cussen on behalf of Mr Dwyer.

The CFA submission responded to the Bushfire Hazard Assessment for the DPO24 area that had been prepared by Ms Hazendonk for the Panel Hearing and proposed changes to the exhibited schedule. The submission included:

CFA broadly agrees with the landscape description outlined in Section 17 of the Bushfire Hazard Assessment that describes the localised bushfire landscape as follows:

- The subject land is located on the south-western edge of Koo Wee Rup Township.
- Vegetation immediately to the west, north and north-east is low threat vegetation within urban development. Vegetation beyond 150 metres is also low threat vegetation.
- Vegetation immediately to the south and east is grassland. Vegetation beyond 150 metres is also grassland.
- Although the grassland is grazed and periodically slashed, the vegetation may at times not be managed in a minimum fuel condition.
- Bushfire can approach the site from two aspects - from the south and east.
- Immediate access is available to a place that provides shelter from bushfire in Koo Wee Rup central township.
- The type and extent of vegetation is unlikely to result in neighbourhood scale destruction of property.

The CFA submission went on to identify options for bushfire protection measures as follows:

- Setbacks from classified vegetation that will lead to a BAL 12.5 construction standards via good urban design outcomes.
- Requirements for vegetation to be managed to reduce bushfire risks.
- Landscaping to be of a bushfire responsive design.
- Incorporating a perimeter road in areas that are adjacent to areas of vegetation or bushfire hazards.
- Multiple access and egress options.
- Building envelopes.
- Non-combustible fencing.
- Dwellings to front the perimeter road.

In relation to the application of these measures in DPO24, the submission further said:

At this stage, Council has identified some of these measures in the bushfire assessment for Sims Lane, however it appears that there is a disconnect between the prepared bushfire assessment and capturing the appropriate bushfire protection measures within the policy contained within DPO24 ...

Given the above, CFA maintains some concerns that the appropriate bushfire policy response is still outstanding ...

CFA recommends that proposed Development Plan Overlay Schedule 24 include the following:

- 19 metre defendable space along the southern and eastern boundaries of the Sims Lane Residential Precinct. This is to be shown as a perimeter road.
- Lots directly abutting the perimeter road are to front the perimeter road.
- The proposed road network includes multiple points for access and egress ensure the road network is adequate in the event of an emergency.
- Vegetation within the setbacks for defendable space are to be managed in accordance with Table 6 of Clause 53.02 Bushfire Planning.
- Any lot located within the 19 metre defendable space along the southern and eastern boundaries of Sims Lane must include building envelopes to ensure no development occurs within the defendable space.

These bushfire matters were addressed in the Council revised version of the DPO24 schedule (updated Attachment 14 to its revised submission at Document 3) as discussed below.

2.3.4 Discussion

The Panel understands that parts of the DPO24 area are included in a BPA. Bushfire protection measures are clearly required and were included in a limited fashion in the exhibited version of the schedule. Expanded bushfire provisions were accepted as appropriate by all parties to the Panel Hearing.

The changes which were proposed to DPO24 as a result of Council and CFA discussions included expanded requirements for the preparation of a bushfire management assessment and bushfire hazard site assessment - similar to those required in DPO23 - and specification of boundary roads to form part of a defendable area to the east and south.

The Panel supports the revised bushfire provisions in the schedule.

The Panel has retained the specified defendable space width (of 19 metres) in the case of this DPO. There was no opposition to its inclusion, and development in this location would appear to be more imminent than in the DPO23 area, and therefore likely to proceed in the same legislative context as applies at present and continue to generate an approximate 19 metre width for the defendable space⁹. Nevertheless, as was commented above, the Panel does not agree that that width could not be modified if the later required bushfire management assessment as input to the Development Plan determined that a different width was appropriate.

The Panel also suggests that the introductory part of Clause 4.0 relating to the requirements for the Development Plan should be amended in the same manner as recommended for DPO23, so as to affirm flexibility in the design of the Development Plan in response to the requirements; and to refer to the Concept Plan at Figure 1 of the schedule. These changes have been made to the recommended draft of DPO24 in Appendix C to this Report.

The Panel considers that with clarity now around the compensation for a land contribution for open space above the standard 8 per cent as being at a 'highest and best use' value, that the open space provisions in the Development Plan requirements should not be further amended except to reduce the size of the open space referred to on the DPO24 Concept Plan to recognise that open space payments have already been made for land in the

⁹ 19 metres was derived from Ms Hazendonk's initial bushfire risk assessment.

Development Plan area. The Panel considers that it is not inappropriate that the land upon which the open space is to be sited should contribute more than the standard 8 per cent, as development level compensation is ensured and will be paid within a short time. The Panel agrees with the Council that joint usage of a drainage reserve at the eastern end of the DPO area would not meet the intention for unencumbered open space provision. The Panel supports the slightly revised central location of the unencumbered open space area.

The Panel-preferred revised version of the DPO24 schedule is included in Appendix C to this Report¹⁰.

The Concept Plan at Figure 1 of the DPO schedule will require further minor revision to refer to the reduced size of the open space of 5613 square metres. It should also show the changed roading arrangements which have been agreed following discussions with Mr Dwyer's consultants.

2.3.5 Recommendation

The Panel recommends:

- 5. Adopt the revised version of DPO24 included in Appendix C to this Report subject to further amending the Concept Plan at Figure 1 to refer to the reduced size of the open space area and show the changed roading arrangements as agreed with the principal landowner (Mr Dwyer).**

2.4 Other matters

2.4.1 The issue

As noted in Section 1.1(ii), on 20 November 2020, Amendment C250 amended the local policy content of the Planning Scheme and made other consequential changes with implications for this Amendment. The present Amendment requires updating of clause numbers in response to Amendment C250. The changes introduced by Amendment C250 included introduction of two new 'Further strategic work' projects which referred to the preparation of Development Plans for the two areas which are the subject of DPOs under the present Amendment.

2.4.2 Recommendation

The Panel recommends:

- 6. Remove the two 'Further strategic work' projects relating to the DPO23 and DPO24 areas from Clause 21.08-3.**

¹⁰ In addition to the changes mentioned, the Panel-preferred version includes some other very minor typographic edits by the Panel to correct capitalisation, numbering etc.

Appendix A Submitters to the Amendment

| No. | Submitter |
|-----|--|
| 1 | South East Water |
| 2 | Environment Protection Authority |
| 3 | Mick Dwyer |
| 4 | Nobelius Land Surveyors Pty Ltd for Mick Dwyer |
| 5 | Country Fire Authority |

Appendix B Document list

| No. | Date | Description | Provided by |
|-----|------------|---|------------------------------|
| 1 | 28/10/2020 | Council Part A and B submission with 15 attachments | Ms Hazendonk for the Council |
| 2 | 28/10/2020 | CFA submission | Ms Johnston for CFA |
| 3 | 2/11/2020 | Revised Council Part A and B submission with further attachments, including revised DPO schedules and Concept Plan for DPO23 | Ms Hazendonk |
| 4 | 2/11/2020 | Clause 13.02-1S Bushfire Hazard Assessment Development Plan Overlay 23 - Moody Street Residential Precinct Koo Wee Rup Version 1 (revised), 1 November 2020 | Ms Hazendonk |
| 5 | 2/11/2020 | Post-Hearing email from CFA about the required width of the defensible area in DPO23, attaching AS 3959—2009 Construction of buildings in bushfire prone areas and AS 3959:2018 Construction of buildings in bushfire prone areas | Ms Johnston |
| 6 | 10/11/2020 | Invited Council response to CFA post-Hearing email including further revision to DPO23 schedule | Ms Hazendonk |

Notes:

Documents 1-4 were received by email before the remote Hearing on 2 November 2020 and Documents 5 and 6 were both received via email post-Hearing on the dates shown. No other documents were presented during the Hearing.

Appendix C Revised DPO schedules preferred by the Panel

These schedules are based on those presented to the Panel at the Hearing by the Council after discussions with CFA and Mr Dwyer's representatives, but incorporate further changes as discussed at the Hearing and addressed in post-Hearing correspondence. The Panel has also made some minor edits for clarity and consistency across the two schedules, as referred to in this Report.

DD/MM/YYYY
Proposed
C240card**SCHEDULE 23 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY**Shown on the planning scheme map as **DPO23**.**MOODY STREET KOO WEE RUP RESIDENTIAL PRECINCT****1.0 Objectives**DD/MM/YYYY
Proposed
C240card

- To integrate new development with the surrounding area by responding to existing neighbourhood character, enhancing the public realm and existing street and pedestrian networks.
- To ensure choice and diversity of housing that achieves a high quality of amenity and urban design.
- To ensure the stormwater is managed on site up to the 1 in 100 year ARI storm event to pre-development flow rates.

2.0 Requirement before a permit is grantedDD/MM/YYYY
Proposed
C240card

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority if the responsible authority is satisfied that the permit will not prejudice the future integrated use and development of the land.

3.0 Conditions and requirements for permitsDD/MM/YYYY
Proposed
C240card

The following conditions apply to permits:

- Any application for additional dwellings or subdivision of No. 90 Boundary Drain Road or 16 Blackfish Drive include the following condition:
 - ... must construct a sealed road with kerb and channel to the closest side and underground drain to match the existing sealed road.
- Building envelopes that achieve the front and side building setbacks required by this schedule and the approved development plan are implemented in the form of a Restriction on the certified Plan of Subdivision, or an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*, which is recorded on the Certificate of Title of the land. The owner of the land or permit holder must pay all reasonable costs of the preparation, execution and registration of the restriction or agreement, including the reasonable costs of the Responsible Authority.
- Construction of the internal road network to the satisfaction of the responsible authority, including upgrades to Moody Street that include kerb and channel, road pavement widening, underground drainage and footpath construction.

4.0 Requirements for development planDD/MM/YYYY
Proposed
C240card

A Development Plan must include the following requirements to the satisfaction of the responsible authority:

The Development Plan must be generally in accordance with the Concept Plan labelled Figure 1 to this Schedule.

Subdivision Layout

- An indicative lot layout showing how the subdivision encourages a range of dwelling types to cater for a variety of housing needs and addresses the size, dimension and orientation of lots and includes:
 - The provision of a range of lot sizes.
 - The provision of 70 percent of the lots greater than 700 square metres and range up to 1,000 square metres.

- The avoidance of smaller lots of less than 600 square metres.
- Lots with a minimum width of 18 metres where possible.
- A transition to green wedge land to the north with larger lots of greater than 1000 square metres.
- An indicative building envelope for each lot providing:
 - A minimum front setback of 7 metres or no less than the average setback of the adjoining two dwellings.
 - Minimum side and rear setbacks of 2.5 metres.
 - Setbacks for defendable space from bushfire where required.
- A road link from Blackfish Drive to Milla Way, with an altered priority T intersection to identify the separation between these two streets.

Staging

- Details on the anticipated sequencing and timing of development of the precinct, including road delivery.

Environment and Landscaping

- An **Environmental Management Plan** that addresses vegetation and trees to be retained and how vegetation removal on site will be avoided, and if it cannot be avoided, minimised or offset, including roadside vegetation, measures to protect the trees which includes buffer and tree protection zones, and provides:
 - A **flora and fauna assessment** (including a habitat hectare assessment) of the site must be prepared to the satisfaction of the responsible authority, that:
 - Provides an assessment of the flora and fauna on site including Ecological Vegetation Classes.
 - Assesses suitable habitat for threatened species on site.
 - Provides a flora listing of each habitat patch.
 - An **arboricultural assessment** of all vegetation prepared by a suitably qualified person(s) that identifies any significant trees or vegetation on the land, any existing street trees, roadside vegetation and grassed verges.
 - A targeted survey of threatened species (including but not limited to the Southern Brown Bandicoot) must be prepared by a suitably qualified person(s) where suitable habitat is found on site in consultation with the Department of Sustainability and Environment and the Department of Environment, Land, Water and Planning.
- A **Landscape Plan** showing:
 - The location, preservation and protection of significant trees/vegetation, existing street trees, roadside vegetation and grassed road verges. Including maintaining the long term, sustainable health and condition of existing vegetation to be retained.
 - The location, preservation and protection of any threatened species.
 - Removal of the row of pine trees and other trees located in the road reserve to the rear of 85 Moody Street whilst retaining and protecting the 8 metre wide low vegetation strip along the southern side of the Southern Boundary Drain.
 - Removal of the row of pittosporum trees and other trees located in the road reserve to the rear of 73 Moody Street whilst retaining and protecting the 8 metre wide low vegetation strip along the southern side of the Southern Boundary Drain.
 - Removal of trees located in the road reserve to the rear of 90 Boundary Drain Road and 57 Moody Street whilst retaining and protecting the 8 metre wide low vegetation strip along the southern side of the Southern Boundary Drain.
 - The location of landscaped areas.
 - Details of any landscape themes.
 - Landscape design incorporating a consistent streetscape theme.
 - New plantings consistent with existing species of vegetation from connecting roads and reserves.

- The provision of street trees (minimum pot size of 45L when planted) for shade and aesthetic quality at an early stage of development – to be planted or bonded to the satisfaction of the responsible authority prior to Statement of Compliance of a subdivision.
- Defendable space for bushfire purposes in accordance with Table 6 of Clause 53.02 (Bushfire Planning) of the Cardinia Planning Scheme to ensure development is exposed to a radiant heat flux of less than 12.5 kilowatts/square metre. See CFA's publication 'Landscaping for Bushfire, Garden Design and Plant Selection' for assistance with plant selections within perimeter roads that are located within the defendable space via this link: https://www.cfa.vic.gov.au/documents/20143/72271/landscaping_for_bushfire.pdf/1c6084e1-159e-a820-b0b3-6dc077e661c0.

Bushfire

- A **bushfire management assessment**, including a bushfire hazard site assessment, prepared by a suitably qualified person. The bushfire management assessment is to include details of how development will respond to 'Clause 13.02-1S Bushfire Planning' of this planning scheme and demonstrate that development is exposed to a radiant heat flux of less than 12.5 kilowatts/square metre. The bushfire management assessment must be to the satisfaction of the responsible authority upon the advice of CFA.
- The **bushfire hazard site assessment** must be based on hazard proposed to form part of the completed development, including final landscape treatments on the site and along the adjoining grassland, and must include the following:
 - the provision of a perimeter road along the northern precinct boundary where development will interface with the bushfire hazard (scrub) located along each side of the Southern Boundary Drain within the Boundary Drain Road reserve, to form part of an area of defendable space;
 - if any defendable space is required on private lots, building envelopes must be provided to provide an area of defendable space of a width to the satisfaction of the responsible authority on the advice of CFA and vegetation within the defendable space within private lots must be managed in accordance with Table 6 of Clause 53.02 (Bushfire Planning).
- Before a statement of compliance is issued under the *Subdivision Act 1988*, the land owner must enter into an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987* to provide for the above mentioned requirements. The land owner must pay the reasonable costs of the preparation, execution, and registration of the Section 173 Agreement.
- Defendable space may also be achieved through:
 - the construction of a wetland system for the purpose of stormwater retention that is well maintained.
 - land to be vested in Council for the purpose of a local park and will be maintained by Council.

Aboriginal Cultural Heritage

- An Aboriginal cultural heritage assessment/archaeological survey must be prepared by a suitably qualified person(s).
- Location(s) and protection of any Aboriginal cultural heritage on the land in accordance with a Cultural Heritage Management Plan (CHMP), if required by the *Aboriginal Heritage Act 2006*.

Traffic and Transport

- An **Integrated Transport and Impact Assessment** prepared to conform with arterial road access management policies to the satisfaction of the responsible authority.
- A **Traffic Impact and Design Assessment** to the satisfaction of the responsible authority, showing arrangements for vehicle ingress and egress to the development, including the road layout, construction standards, traffic management which includes waste and emergency vehicle access.
- A clear legible and convenient pedestrian, bicycle and road network that:

- Connects and integrates with existing networks, including a pedestrian and bicycle path along Moody Street, and creates new opportunities for improved local permeability in the future.
- Provides for pedestrian and bicycle pathways in locations adjacent to any public open space.
- Provides internal street widths of 7.5 metres between invert of kerbs, with underground drainage, and generous footpath and nature strip widths.
- Discourages cul-de-sacs, and if used they are connected through to other streets by a wide reserve and path for safe pedestrian and bicycle access.
- Provides only one vehicle crossover or access point per lot. Provides traffic management devices for roads with lengths over 180 metres.
- New roads are designed having regard to the standard cross sections in the VPA (GAA) Engineering Design and Construction Manual.

Infrastructure and Drainage

- Provision of utility services infrastructure required to service the development and details of the arrangements for the provision of the infrastructure.
- Provision of a reticulated sewerage system.
- A **Fill Plan** which identifies the depth of fill material, and staging in a manner and time designed to minimise any adverse impacts on the amenity of nearby areas, to the satisfaction of the responsible authority and the relevant water authority.
- A **Drainage Strategy** for the subdivision showing filling of residential lots with roads providing for overland flows and/or raised minimum floor levels for development, to the satisfaction of the relevant water authority and the responsible authority.

Public Open Space

- Provision of at least 8% of the development plan area as unencumbered public open space for the purpose of a local park, to be provided in equal parts by No. 73 and No. 85 Moody Street.
- Land parcels that are not required to contribute land for the purpose of unencumbered public open space as shown in Figure 1, are required to make a cash contribution equivalent to 8% of the value of the land.
- Land parcels that are required to contribute land for the purpose of unencumbered public open space that exceeds 8% of the land area as shown in Figure 1, will receive monetary compensation for that portion above 8% following a valuation based on development values (highest and best use of the land) that is carried out within 28 days of the statement of compliance by a Council approved property valuer.
- Public open space should be adjacent to a road on all sides and pedestrian and bicycle linkages.
- Provision of a pedestrian access way of 6 metres in width from the proposed open space to the southern boundary drain that will allow Council maintenance vehicles to access the drain.
- The ability for a future pedestrian link to the Koo Wee Rup Football and Recreation Reserve located on the north side of Boundary Drain Road.

Urban Design and Character

- A high level of quality in the design and construction of new buildings which responds to the existing built form character of the Koo Wee Rup Township.
- Configure dwellings to maximise retention of existing vegetation and allow only one access driveway to a lot.
- Avoid front fences, if lots are fenced in front of building line provide low front fences no more than 1.2 metres high.
- Any lots adjoining public open space should provide low and transparent fencing.
- New road treatments and street furniture should be consistent with the existing styles of road treatments and street furniture found in Koo Wee Rup Township.

- Provide footpaths with a minimum width of 1.8 metres.
- The interface between development and grassland must be responsive to bushfire risk.

5.0 Figure 1

DD/MM/YYYY
Proposed
C240card

The land parcels affected by this schedule are identified as:

- No. 16 Blackfish Drive
- Nos 90 and 120 Boundary Drain Road
- Nos 51-53, 55, 57, 65, 67, 73 and 85 Moody Street.

Figure 1 Concept Plan



DD/MM/YYYY
Proposed
C240card**SCHEDULE 24 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY**Shown on the planning scheme map as **DPO24****SIMS LANE KOO WEE RUP RESIDENTIAL PRECINCT****1.0****Objectives**DD/MM/YYYY
Proposed
C240card

- To integrate with the surrounding area by responding to the existing neighbourhood character, enhancing the public realm and existing road networks.
- To ensure choice and diversity of housing appropriate to the setting that achieves a high quality of amenity and urban design.
- To ensure the stormwater is managed on site up to the 1 in 100 year ARI storm event to pre-development flow rates.

2.0**Requirement before a permit is granted**DD/MM/YYYY
Proposed
C240card

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority if the responsible authority is satisfied that the permit will not prejudice the future integrated use and development of the land.

3.0**Conditions and requirements for permits**DD/MM/YYYY
Proposed
C240card

The following conditions and/or requirements apply to permits:

- Building envelopes that achieve the front and side building setbacks required by this schedule and the approved development plan are implemented in the form of a Restriction on the certified Plan of Subdivision, or through an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987*, which is recorded on the Certificate of Title of the land. The owner of the land or permit holder must pay all reasonable costs of the preparation, execution and registration of the restriction or agreement, including the reasonable costs of the responsible authority.
- Construction of the internal road network to the satisfaction of the responsible authority, including upgrades to Sims Lane to a local access street with a sealed road, kerb and channel, 7.5 metre wide road pavement between invert of kerbs, and underground drainage.

4.0**Requirements for development plan**DD/MM/YYYY
Proposed
C240card

A Development Plan must include the following requirements to the satisfaction of the responsible authority:

The Development Plan must be generally in accordance with the Concept Plan labelled Figure 1 to this Schedule.

Subdivision Layout

- An indicative lot layout showing how the subdivision encourages a range of dwelling types to cater for a variety of housing needs and addresses the size, dimension and orientation of lots and includes:
 - The provision of a range of lot sizes.
 - The provision of 70 percent of the lots greater than 700 square metres and range up to 1,000 square metres.
 - The avoidance of smaller lots of less than 600 square metres.
 - Lots with a minimum width of 18 metres where possible.

- A transition to the green wedge land to the south through larger lots of greater than 1000 square metres.
- Lots addressing Supreme Close, Sims Lane and the green wedge land to the south.
- An indicative building envelope for each lot providing:
 - A minimum front setback of 7 metres or no less than the average setback of the adjoining two dwellings.
 - Minimum side and rear setbacks of 2.5 metres.
 - Setbacks for defendable space from bushfire where required.
- Provides either a minimum 12 metre wide looped service road or 10 metre wide tree reserve adjacent to the Road Zone 1 (Rossiter Road).
- Provides access to new lots facing Rossiter Road via an internal loop road that connects from Supreme Close to Sims Lane.
- Provides a perimeter road adjacent to the green wedge land to the south.
- Provides driveway access to new lots from Sims Lane.
- No new vehicle crossovers or road access from Rossiter Road.

Staging

- Details on the anticipated sequencing and timing of development of the precinct including the delivery of roads and open space.

Environment and Landscaping

- An **Environmental Management Plan** that addresses vegetation and trees to be retained and how vegetation removal on site will be avoided, and if it cannot be avoided, minimised or offset, including roadside vegetation, measures to protect the trees which includes buffer and tree protection zones, and provides:
 - A **flora and fauna assessment** (including a habitat hectare assessment) of the site prepared to the satisfaction of the responsible authority.
 - Provides an assessment of the flora and fauna on site including Ecological Vegetation Classes.
 - Assesses suitable habitat for threatened species on site.
 - Provides a flora listing of each habitat patch.
 - An **arboricultural assessment** of all vegetation prepared by a suitably qualified person(s) that identifies any significant trees or vegetation on the land, any existing street trees, roadside vegetation and grassed road verges.
 - A targeted survey of threatened species (including but not limited to the Southern Brown Bandicoot) must be prepared where suitable habitat is found on site in consultation with the Department of Sustainability and Environment and the Department of Environment, Land, Water and Planning.
- A **Landscape Plan** showing:
 - The location, preservation and protection of significant trees/vegetation, existing street trees, roadside vegetation and grassed road verges. Including maintaining the long term, sustainable health and condition of existing vegetation to be retained.
 - The location, preservation and protection of any threatened species.
 - The location of landscaped areas.
 - Details of any landscape themes.
 - Landscape design incorporating a consistent streetscape theme.
 - New plantings consistent with existing species of vegetation from connecting roads and reserves.
 - The provision of street trees (minimum pot size of 45L when planted) for shade and aesthetic quality at an early stage of development – to be planted or bonded to

the satisfaction of the responsible authority prior to Statement of Compliance of a subdivision.

- Defendable space for bushfire purposes in accordance with Table 6 of Clause 53.02 (Bushfire Planning) of the Cardinia Planning Scheme to ensure development is exposed to a radiant heat flux of less than 12.5 kilowatts/square metre. See CFA's publication 'Landscaping for Bushfire, Garden Design and Plant Selection' for assistance with plant selections within perimeter roads that are located within the defendable space via this link:

https://www.cfa.vic.gov.au/documents/20143/72271/landscaping_for_bushfire.pdf/1c6084e1-159e-a820-b0b3-6dc077e661c0.

Bushfire

- A **bushfire management assessment**, including a bushfire hazard site assessment, prepared by a suitably qualified person. The bushfire management assessment should include details of how development will respond to 'Clause 13.02-1S Bushfire Planning' of this planning scheme and demonstrate that development is exposed to a radiant heat flux of less than 12.5 kilowatts/square metre.
- The **bushfire hazard site assessment** must be based on hazard proposed to form part of the completed development, including final landscape treatments on the site and along the adjoining grassland, and must include the following:
 - the retention and construction of Sims Lane within the existing 20 metre wide road reserve which will act as a perimeter road along the eastern precinct boundary;
 - the provision of a perimeter road along the southern precinct boundary to form part of minimum 19 metre wide area of defendable space, along the entire southern boundary is preferable; and,
 - if any defendable space is required on private lots, building envelopes must be provided to provide a minimum 19 metre wide area of defendable space, and vegetation within the defendable space within private lots must be managed in accordance with Table 6 of Clause 53.02 (Bushfire Planning).
- Before a statement of compliance is issued under the *Subdivision Act 1988*, the land owner must enter into an agreement with the responsible authority under Section 173 of the *Planning and Environment Act 1987* to provide for the above mentioned requirements. The land owner must pay the reasonable costs of the preparation, execution, and registration of the Section 173 Agreement.
- Defendable space may also be achieved through the construction of a wetland system for the purpose of stormwater retention that is well maintained.

Aboriginal Cultural Heritage

- An **Aboriginal cultural heritage assessment/archaeological survey** must be prepared by a suitably qualified person(s).
- Location(s) and protection of any Aboriginal cultural heritage on the land in accordance with a Cultural Heritage Management Plan (CHMP) required by the *Aboriginal Heritage Act 2006*.

Traffic and Transport

- An **Integrated Transport and Impact Assessment** prepared to conform with arterial road access management policies to the satisfaction of the responsible authority. The assessment must include but not limited to:
 - Expected number of trips generated by the site, how this would impact on the existing and future operation of nearby intersections on Rossiter Road, and mitigating treatment options if necessary.

- A **Traffic Impact and Design Assessment** prepared to the satisfaction of the responsible authority, showing arrangements for vehicle ingress and egress to the development, including the road layout, construction standards, traffic management which includes waste and emergency vehicle access.
- A clear legible and convenient pedestrian, bicycle and road network that:
 - Connects and integrates with existing networks, including a pedestrian and bicycle path along Sims Lane and Rossiter Road to connect with the existing path network at Townley Road, and creates new opportunities for improved local permeability in the future.
 - Provides for pedestrian and bicycle pathways in locations adjacent to any public open space.
 - Avoids traffic impacts that would generate any significant upgrade to the Denhams Road-Sims Lane, and Rossiter Road-Koo Wee Rup-Longwarry Road intersection. This must be taken into consideration when determining the layout of the local road network within this area.
 - Provides internal street widths of 7.5 metres between invert of kerbs. with underground drainage, and generous footpath and nature strip widths.
 - Discourages cul-de-sacs, and if used they are connected through to other streets by a wide reserve and path for safe pedestrian and bicycle access.
 - Provides only one driveway per lot.
 - Includes construction of Sims Lane to a local access street with a sealed road, kerb and channel with at least 7.5 metres between invert of kerbs, and underground drainage.
- New roads are designed having regard to the standard cross sections in the VPA (GAA) Engineering Design and Construction Manual.

Infrastructure and Drainage Provision of utility services infrastructure required to service the development and details of the arrangements for the provision of the infrastructure.

- Provision of a reticulated sewerage system.
- A **Fill Plan** which identifies the depth of fill material, and staging in a manner and time designed to minimise any adverse impacts on the amenity of nearby areas, to the satisfaction of the responsible authority and the relevant water authority.
- A **Drainage Strategy** for the subdivision showing filling of residential lots with roads providing for overland flows and/or raised minimum floor levels for development, to the satisfaction of the relevant water authority and the responsible authority.

Open Space

- The provision of at least 8% of the development plan area as unencumbered public open space for the purpose of a local park, with 1,380 square metres to be provided on No. 30 Sims Lane and the remainder provided on No. 9A Supreme Close and No. 22 Sims Lane.
- Land parcels that are not required to contribute land for the purpose of unencumbered public open space as shown in Figure 1, are required to make a cash contribution equivalent to 8% of the value of the land.
- Land parcels that are required to contribute land for the purpose of unencumbered public open space that exceeds 8% of the land area as shown in Figure 1, will receive monetary compensation for that portion above 8% following a valuation based on development values (highest and best use of the land) that is carried out within 28 days of the issue of a statement of compliance by a Council approved property valuer.
- The public open space (local park) should be bounded by a road on all sides.

Urban Design and Character

- Configure dwellings to maximise retention of existing vegetation and allow only one access driveway to a lot.
- Avoid front fences. If lots are fenced provide low front fences no more than 1.2 metres high.
- Dwellings interfacing with public open space should give consideration to issues of safety and passive surveillance. Lots adjoining public open space should be avoided. Any lots adjoining public open space should provide no, or low and transparent fencing.
- New road treatments and street furniture should be consistent with the existing styles of road treatments and street furniture found in Koo Wee Rup Township.
- Provide footpaths with a minimum width of 1.8 metres.

The interface between development and grassland must be responsive to bushfire risk.

5.0 Figure 1

The land parcels affected by this schedule are identified as:

- 390, 394, 400 and 404 Rossiter Road,
- 22, 30 and 34 Sims Lane, and
- 9A, 23 and 25 Supreme Close.

