

Planning and Environment Act 1987

Panel Report

**Swan Hill Planning Scheme Amendments C58, C60, C61,
C62, C63 and C64
South West Development Precinct**

9 February 2016

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Swan Hill Planning Scheme Amendments C58, C60, C61, C62, C63 and C64

South West Development Precinct

9 February 2016

A handwritten signature in blue ink that reads "Rodger Eade". The signature is written in a cursive style with a large, sweeping 'R' and 'E'.

Rodger Eade, Chair

A handwritten signature in black ink that reads "Debra Butcher". The signature is written in a cursive style with a large, looping 'D' and 'B'.

Debra Butcher, Member

Contents

	Page
Executive Summary	1
1 Introduction.....	4
1.1 Panel process.....	4
1.2 The proposal.....	5
1.3 Background to the proposal.....	9
1.4 Amendment issues	10
1.5 Procedural issues.....	10
1.6 Issues dealt with in this report.....	11
1.7 Recommendations	11
2 Planning context	12
2.1 Policy framework.....	12
2.2 Planning scheme provisions	16
2.3 Ministerial Directions and Practice Notes.....	17
2.4 Discussion	18
2.5 Conclusions.....	18
3 Proposed Planning Framework for the South West Development Precinct	19
3.1 The issue	19
3.2 Submissions	19
3.3 Discussion	21
3.4 Conclusions.....	22
3.5 Recommendations	22
4 Planning Issues in the South West Development Precinct.....	23
4.1 Environmental assessment requirements	23
4.2 Intersection with Sea Lake - Swan Hill Road	27
4.3 Provision for commercial and community uses.....	28
4.4 Further possible rezonings	31
4.5 Interface issues with the Industrial 1 Zone and the proposed buffer	34
4.6 Proposed buffers to the adjacent Farming Zone and Low Density Residential Zone	38
4.7 Funding of required infrastructure	40
4.8 Other road infrastructure issues	42
4.9 Funding for open space	44
4.10 Cultural heritage issues	46
4.11 Recommendations	48
5 Development Plan Overlay Schedule 6.....	49
5.1 The issue	49
5.2 Submissions	49
5.3 Discussion	50
5.4 Conclusions.....	53
5.5 Recommendations	53

Appendix A	Submitters to the Amendment
Appendix B	Document list
Appendix C	Panel recommended version of DPO Schedule 6

List of Tables

	Page
Table 1 Parties to the Panel Hearing.....	4
Table 2 Land parcels proposed not to be rezoned	9

List of Figures

	Page
Figure 1 South West Development Precinct	5
Figure 2 Land to which Amendment C58 applies	5
Figure 3 Land to which Amendment C60 applies	6
Figure 4 Land to which Amendment C61 applies	6
Figure 5 Land to which Amendment C62 applies	6
Figure 6 Land to which Amendment C63 applies	7
Figure 7 Land to which Amendment C64 applies	7

List of Abbreviations

DPO	Development Plan Overlay
EPA	Environment Protection Authority
FZ	Farming Zone
GMW	Goulburn Murray Water
GRZ	General Residential Zone
IN1Z	Industrial 1 Zone
IN3Z	Industrial 3 Zone
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
ODP	Outline Development Plan for the South West Development Precinct
SHPS	Swan Hill Planning Scheme
SPPF	State Planning Policy Framework
SWDP	South West Development Precinct
UDP	Urban Development Program

Overview

Amendment Summary

The Amendment	Swan Hill Planning Scheme Amendments C58, C60, C61, C62, C63 and C64
Common Name	South West Development Precinct
Subject Site	Land broadly bounded by the Sea Lake - Swan Hill Road to the north, Dead Horse Lane and Farming Zone land to the west, Farming Zone land to the south and existing urban areas of Swan Hill to the east
Planning Authority	Swan Hill Rural City Council
Authorisation	C58 - A03059 authorised on 12 May 2015 C60 - A03107 authorised on 29 July 2015 C61 - A03108 authorised on 29 July 2015 C62 - A03109 authorised on 29 July /2015 C63 - A03110 authorised on 29 July 2015 C64 - A03111 authorised on 29 July 2015
Exhibition	C58 was exhibited from 26 May to 30 June 2015 C60, C61, C62, C63 and C64 were exhibited from 13 August to 14 September 2015
Submissions	Submitters to each of the six Amendments are listed in Appendix A

Panel Process

The Panel	Rodger Eade (Chair) and Debra Butcher
Directions Hearing	The Grain Shed 2-8 King Street Swan Hill on 10 November 2015
Panel Hearing	Ibis Styles Motel, 405-415 Campbell Street Swan Hill on 10 and 11 December 2015
Site Inspections	Unaccompanied, on 10 November and 9 and 10 December 2015
Date of this Report	9 February 2016

Executive Summary

(i) Summary

Amendments C58, C60, C61, C62, C63 and C64 to the Swan Hill Planning Scheme seek to rezone land in the South West Development Precinct to the General Residential Zone to accommodate future population growth in Swan Hill. Development of this precinct to accommodate residential growth is based on a number of years of strategic planning and will provide for greater choice for future residents of Swan Hill. It will complement new residential development already occurring in the adjoining Tower Hill precinct. These two precincts together with limited infill development constitute the major urban growth areas for Swan Hill.

The Amendments as exhibited were each accompanied by separate but similar Schedules to the Development Plan Overlay. Council subsequently proposed that these be replaced by a single Schedule which refers to areas covered by the six Amendments as 'sub-precincts'. As exhibited, the Schedules proposed to collect contributions towards required infrastructure through a series of agreements reached under section 173 of the *Planning and Environment Act 1987*. Subsequently Council proposed to delete this requirement and proposed that infrastructure required in each sub-precinct and listed in the Schedule be required by a condition on a planning permit.

Submitters generally supported the Amendments and the subsequent changes to them outlined above. Submissions made and supported at the Hearing were mainly focussed on matters of detail in both the Draft Master Plan and the Schedule(s) to the Development Plan Overlay. The issues raised are addressed in the body of this report.

The Panel supports the proposed rezonings and draws the following broad conclusions:

- The Amendments are strategically justified and will provide land needed for residential development to 2030 and beyond
- The application of the General Residential Zone to the land is appropriate
- The replacement of the six Schedules to the Development Plan Overlay by a single Schedule which refers to six sub-precincts within the South West Development Precinct is supported
- Schedule 6 to the Development Plan Overlay should include a Master Plan for the South West Development Precinct broadly based on the approved version 8 of the Master Plan for the South West Development Precinct but with amendments as identified in this Report
- Schedule 6 to the Development Plan Overlay as proposed by Council should be amended to address a number of issues raised by submitters and as recommended by the Panel.

(ii) Recommendations

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

Swan Hill Planning Scheme Amendments C58, C60, C61, C62, C63 and C64 be adopted as exhibited subject to the following:

1. **Retain the existing Schedule 1 to the Development Plan Overlay.**

2. **Rezone to Road Zone Schedule 2 land indicated as RDZ2 on the exhibited Map 39.**
3. **Delete exhibited Schedules 6, 7, 8, 9, 10, and 11 to the Development Plan Overlay. Apply a new Schedule 6 to the Development Plan Overlay, as shown in Appendix C.**
4. **Adopt version 8 of the *Master Plan for the South West Development Precinct*, revised as recommended as follows:**
 - a) **Delete the area to be rezoned to Commercial 1 Zone.**
 - b) **Add the following note:**

Subject to retail demand analysis, a lot or lots for the purpose of a commercial area generally in accordance with the area depicted, may be shown in the plan of subdivision for the relevant stage of the development of Sub-Precinct 2. Such lot or lots must not be used for purposes other than for commercial purposes, to the satisfaction of the responsible authority. Once identified on a plan of subdivision, such land may be rezoned from the General Residential Zone to a commercial zone.
 - c) **Delete Note 1 which refers to medical centre, child care centre and aged care facilities.**
 - d) **Delete Note 2 which refers to open space provision.**
 - e) **Amend the note 'Buffer width 20m' adjacent to 7 Dead Horse Lane to be 'Buffer width 10m'.**
 - f) **Amend the note 'Minimum of 1000sqm lots' to say 'Minimum of 800sqm lots' for the land abutting the Low Density Residential Zones and land in the south of areas covered by Amendments C58, C60 C62 and C63 which abuts land designated for further residential use in the Draft Master Plan for the South West Development Precinct.**
 - g) **Amend the area of land shown in Stage 1 to include land for the alignment of the collector road, which provides connectivity between Amendment areas C60 and C62, land for intersection #12 as set out in the *South West Development Precinct Contribution to Infrastructure*, and land extended to accommodate a single row of lots to the west of the north-south collector road, and to the south of the east-west collector road.**
 - h) **Include the intersection numbers and locations as set out in the *South West Development Precinct Contribution to Infrastructure*.**
 - i) **The six sub-precincts should be delineated and the sub-precinct numbers included.**
 - j) **Shade the land to the south of the Stage 1 land (which is currently shown as also being included in the General Residential Zone) as Farming Zone, with the note 'Possible future residential development'.**
 - k) **Include a note associated with all of the lots proposed to be retained in the Farming Zone along the west side of Gray Street as 'Possible future residential development' subject to the requirements of clause 52.10 being met to ensure the on-going operation of the existing industrial land uses to the east of Gray Street.**

- I) Delete Note 3 in relation to the Master Plan implementation.
Delete Note 4 in relation to amendments to the Master Plan.**
- 5. Amend the area of land covered by Amendment C60 to include land for the alignment of the collector road which provides connectivity between Amendment areas C60 and C62, land for intersection number 12 as set out in the *South West Development Precinct Contribution to Infrastructure*, and land to accommodate a single row of lots to the west of the north-south collector road, and to the south of the east-west collector road in the extended area.**
- 6. Adopt Schedule 6 to the Development Plan Overlay as set out in Appendix C and include in it the amended *Master Plan for the South West Development Precinct*.**

1 Introduction

1.1 Panel process

Swan Hill Planning Scheme Amendments C58, C60, C61, C62, C63 and C64 (the Amendments) were prepared by the Swan Hill Council as Planning Authority. As exhibited, the Amendments propose to rezone land for substantially residential purposes in the South West Development Precinct (SWDP) of Swan Hill.

Amendment C58 was placed on public exhibition between 26 May and 30 June 2015, with no opposing submissions but a number of changes to the Amendment were requested.

Amendments C60-C64 were placed on public exhibition between 13 August and 14 September 2015, with one opposing submission received to each Amendment and a number requesting changes to the Amendment.

At its meeting of 20 October 2015, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendments was appointed under delegation from the Minister for Planning on 28 October 2015 and comprised Rodger Eade (Chair), and Debra Butcher.

A Directions Hearing was held in relation to the Amendments on 10 November 2015. Unaccompanied site inspections were undertaken on 10 November, 9 and 10 December 2015.

The Panel then met in Swan Hill on 10 and 11 December 2015 to hear submissions to the Amendments. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Swan Hill Rural City Council	Mr Ian Pridgeon of Russell Kennedy, Lawyers ,who called the following expert witness: - Don Robertson, traffic engineer, of the Traffix Group
VicRoads	Mr Jim Mensforth
James Golsworthy Consulting for various land owners	Mr Paul Chiappi of Counsel, instructed by Equipe Lawyers, who called the following expert witnesses: - Mr Paul Shipp urban economist, Urban Enterprise. - Mr David Graham, traffic engineer, GTA Consultants (did not appear but provided written evidence)
Housing Industry Association	Mr Mike Hermon
Rosaia Family	Ms Fi Cotter of Provincial Matters

1.2 The proposal

(i) The subject area

The Amendments apply to land on the south west perimeter of the Swan Hill urban area and are part of the SWDP. The area is substantially farmland currently and abuts the existing urban area of Swan Hill to the north and east and farm land to the west and the south. The SWDP is illustrated in Figure 1.



Figure 1 South West Development Precinct

The Amendments apply to abutting parcels in the north and east of the SWDP and are represented in Figure 1 as the Stage 1 rezoning areas. The land to which each of the Amendments applies is shown in Figures 2-7.



Figure 2 Land to which Amendment C58 applies



Figure 6 Land to which Amendment C63 applies



Figure 7 Land to which Amendment C64 applies

(ii) Amendment description

The Amendments propose to:

C58

- Rezone Farming zoned land to General Residential Zone
- Rezone Public Park and Recreation zoned land to General Residential Zone
- Introduce a new Schedule 6 to Development Plan Overlay to clause 43.04
- Apply Schedule 6 to the Development Plan Overlay to land affected by this Amendment
- Make a minor technical adjustment to Schedule 1 to Development Plan Overlay in clause 43.04 and replace the existing Schedule 1 with a new Schedule 1
- Amend Planning Scheme Maps 36 and 39 Zones
- Amend Planning Scheme Maps 36DPO and 39DPO.

C60

- Rezone Farming zoned land to General Residential Zone
- Rezone Farming zoned land to Commercial 1 Zone
- Insert a new Schedule 7 to the Development Plan Overlay (clause 43.04)
- Apply Schedule 7 to the Development Plan Overlay to land affected by this Amendment

- Amend Planning Scheme Map 39 Zones
- Amend Planning Scheme Map 39DPO.

C61

- Rezone Low Density Residential zoned land to General Residential Zone
- Insert a new Schedule 8 to the Development Plan Overlay (clause 43.04)
- Delete Schedule 2 to the Development Plan Overlay from land affected by this Amendment
- Apply Schedule 8 to the Development Plan Overlay to land affected by this Amendment
- Amend Planning Scheme Map 39 Zones
- Amend Planning Scheme Map 39DPO.

C62

- Rezone Farming zoned land to General Residential Zone
- Insert a new Schedule 9 to the Development Plan Overlay (clause 43.04)
- Apply Schedule 9 to the Development Plan Overlay to land affected by this Amendment
- Amend Planning Scheme Map 39 Zones
- Amend Planning Scheme Map 39DPO.

C63

- Rezone Low Density Residential zoned land to General Residential Zone
- Insert a new Schedule 10 to the Development Plan Overlay (clause 43.04)
- Delete Schedule 2 to the Development Plan Overlay from land affected by this Amendment
- Apply Schedule 10 to the Development Plan Overlay to land affected by this Amendment
- Amend Planning Scheme Maps 39 and 40 Zones
- Amend Planning Scheme Maps 39DPO and 40DPO.

C64

- Rezone Low Density Residential zoned land to General Residential Zone
- Insert a new Schedule 11 to Development Plan Overlay (clause 43.04)
- Delete Schedule 2 to the Development Plan Overlay from land affected by this Amendment
- Apply Schedule 11 to the Development Plan Overlay to land affected by this Amendment
- Amend Planning Scheme Maps 39 and 40 Zones
- Amend Planning Scheme Maps 39DPO and 40DPO.

A number of parcels within the SWDP study area, as set out in Figure 1 are proposed to be excluded from rezoning. These parcels, and Council's reasons for excluding them, are set out in Table 2.

Table 2 Land parcels proposed not to be rezoned

Land	Current Zone
69 and 71 Sea Lake – Swan Hill Road, Swan Hill (Lot 1 LP81008 and Lot 1 TP99093 respectively)	Farming Zone - to maintain a 100 metre setback from industrial activities as per requirements of clause 52.10 of the Swan Hill Planning Scheme.
219 Gray Street, Swan Hill (Lot 1 PS405842)	Farming Zone - to maintain a 100 metre setback from industrial activities as per requirements of clause 52.10 of the Swan Hill Planning Scheme.
183-187 Gray Street, Swan Hill (Lot No. 1 TP 614559H)	Low Density Residential Zone - to maintain a 100 metre setback from industrial activities as per requirements of clause 52.10 of the Swan Hill Planning Scheme.
Part of 183-187 Gray Street, Swan Hill (Lot No. 1 TP 519005)	Low Density Residential Zone - to maintain a 100 metre setback from industrial activities as per requirements of clause 52.10 of the Swan Hill Planning Scheme.
A 70 metre wide and 140 metre long strip of land along Gray Street, Swan Hill (Lot 2 PS405842)	Farming Zone - to maintain a 100 metre setback from industrial activities as per requirements of clause 52.10 of the Swan Hill Planning Scheme.
7 Dead Horse Lane, Swan Hill (Lot 1 TP243546)	Farming Zone - pending Environmental Audit justifying the suitability of the land for residential uses.
Ken Harrison Reserve (Lot 1 TP187649), Yana Street, Swan Hill	Public Park and Recreation Zone – to be retained for public open space and recreational requirements for the SWDP.

(iii) Purpose of the Amendments

The purpose of the Amendments is to rezone land to provide a significant urban growth front for Swan Hill to accommodate a steady rate of population growth. The Urban Development Program Report 2013 (UDP) identifies an average of 108 residential building approvals per year from July 2006 to July 2012. There are currently infill development opportunities within the existing urban area of Swan Hill and significant development capacity in the Tower Hill precinct which abuts the Amendment C58 area to the north.

The UDP identifies the total dwelling requirements for the Swan Hill Statistical Local Area from 2011 to 2031 to be an average of 91 dwellings per annum. The Amendments will provide residential land and limited commercial land to provide for the projected residential growth to 2031 and beyond.

1.3 Background to the proposal

It was initially proposed that the land covered by the Amendments be rezoned as part of a single Amendment, C58. That Amendment would be supported by infrastructure requirements which it was proposed would be addressed by means of agreements under section 173 of the *Planning and Environment Act 1987*. Agreement with landholders was

not able to be reached on the details of a section 173 agreement to fund infrastructure, so it was decided to split the single Amendment into six separate Amendments each with its distinct but similar Schedule to the Development Plan Overlay (DPO). Each DPO Schedule would outline infrastructure needed to support residential development and this was proposed to be facilitated by a series of section 173 agreements with the relevant land owners in each Amendment area.

Between the Directions Hearing and the Panel Hearing, Council proposed to simplify the approach to the Amendments by combining the six Schedules proposed under the Amendments into a single Schedule, DPO6. As part of this simplification, each of the Amendment areas was to be referred to in the revised DPO6 as a sub-precinct. A further change proposed by Council as part of its submission at the Hearing was that reference to infrastructure requirements being provided under a section 173 agreement would be deleted from DPO6 and replaced by text indicating that infrastructure for each of the six sub-precincts would be required as a condition on permit.

As exhibited, each of the DPO Schedules included the *Master Plan for the South West Development Precinct*, (Master Plan) version 7, as approved by Council. Subsequent to exhibition, Council approved version 8 of the Master Plan at its meeting of 20 October 2015. At the Hearing, Council proposed that the Master Plan would not be included in the new DPO6 but that a Development Master Plan, generally in accordance with the Council approved *Master Plan for the South West Development Precinct*, version 8, would be required. A detailed Development Plan would be required for each sub-precinct before development could proceed. This proposed approach to higher level planning for the SWDP is addressed by the Panel in Chapter 3.

1.4 Amendment issues

Amendment C58 proposed that Schedule 1 to the DPO be deleted. Mr Pridgeon acknowledged that this Schedule does not apply in this area and that Council did not wish to pursue this aspect of the Amendment. The Panel accepts this.

In closing, Mr Pridgeon indicated that a minor rezoning to the Road Zone Schedule 2 was indicated on the exhibited plans for Amendment C61, but had inadvertently been omitted from the description of the Amendment. He indicated that this land is part of the existing alignment of Gray Street and that no land holder would be impacted by this aspect of the Amendment and that no submission had been received about it. The Panel accepts this and supports the proposed rezoning.

1.5 Procedural issues

A number of issues resulting in proposed changes to version of DPO6 tabled at the Hearing (tabled document 1) were raised at the Hearing by Mr Chiappi on behalf of a number of land owners and Ms Cotter on behalf of the Rosaia family. As a result, the Panel issued the following post Hearing Directions:

Council to prepare two documents as follows:

- 1. a revised Schedule 6 to the Development Plan Overlay, based on a clean copy of the revised version tabled at the Hearing (tabled*

document no. 1,) with tracked changes showing further proposed changes to the Schedule in response to submissions and evidence at the Hearing, and;

- 2. a brief document outlining proposed changes to other Amendment documentation and maps in response to submissions and evidence at the Hearing.*

These should be circulated electronically, in Word form where possible, to the Panel and to all submitters by the close of business on Tuesday 22 December 2015, for comment.

Submitters who wish to comment on the two documents prepared and circulated by Council as outlined in Direction 1 should send comments to the Panel and copied to Council, by close of business on Wednesday 6 January 2016. Comments may be by way of further tracked changes, comment boxes on the circulated documents, or if necessary separate documents.

These directions were complied with.

1.6 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of the SWDP and surrounding areas, including the Tower Hill development.

This report addresses with the issues under the following headings:

- Planning context
- Proposed planning framework for the South West Development Precinct
- Planning issues in the South West Development Precinct
- Development Plan Overlay Schedule 6.

1.7 Recommendations

The Panel recommends:

Retain the existing Schedule 1 to the Development Plan Overlay.

Rezone to Road Zone Schedule 2 land indicated as Residential Development Zone Schedule 2 on the exhibited Map 39.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the exhibited Explanatory Report.

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

The Amendments help to implement the objectives of planning in Victoria as outlined in the *Planning and Environment Act 1987* and in Swan Hill Planning Scheme (SHPS) under 'Objectives of Planning in Victoria'.

In particular, the Amendments will:

- Provide for the fair, orderly, economic and sustainable use and development of land within the SWDP
- Secure a pleasant, efficient and safe working, living and recreational environment for future residents and visitors to Swan Hill
- Conserve and enhance those buildings, areas or other places which are of special cultural value
- Protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the current and future communities of Swan Hill
- Facilitate future developments in an orderly manner within the SWDP
- Balance the present and future interests of communities in the municipality.

2.1 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 11 Settlement

Rezoning the selected parcels within the SWDP is a proactive response by Council to meet the needs of existing and future communities. The proposed rezonings will provide appropriately zoned and serviced land for housing. It will also generate direct and indirect employment opportunities during development, and will enhance the recreation and open space facilities, facilitate the provision of commercial and community facilities and necessary infrastructure for future communities.

The Amendments will not only provide for the future residential land requirements, but also safeguard existing Industrial 1 Zone (IN1Z) and Farming Zone (FZ) land adjacent to the SWDP. The recognition of the surrounding land use supports existing and future employment opportunities within these areas and the broader economy of Swan Hill.

Clause 12 Environmental and Landscape Values

The land is largely cleared and predominantly used for agriculture, rural living and recreational (Pony Club) activities. As such there are no known significant environmental (flora and fauna) features to be affected by the Amendments.

Clause 13 Environmental Risk

The Master Plan excludes rezoning land within 100 metres of the adjacent IN1Z. In addition, land that may be potentially contaminated requires an environmental assessment to demonstrate the suitability of the land for sensitive (residential) use.

The land is not subject to a Wildfire or Bushfire Management Overlay. Any bushfire risk would be addressed at the building permit stage with construction standards enforced through the Building Code of Australia.

Clause 14 Natural Resource Management

The SWDP provides larger lot sizes at the urban interface to protect the impact of agricultural land uses on the surrounding land. The land is largely cleared and used for agriculture, rural living and recreational (Pony Club) activities and there are no known significant environmental (flora and fauna) features that would be affected by the Amendments.

Clause 15 Built Environment and Heritage

The Master Plan provides a framework to support the creation of sustainable and liveable community.

There are no known Aboriginal cultural heritage significance areas within the SWDP.

Clause 16 Housing

The Amendments will facilitate the provision of diverse and affordable housing choices to local communities and will ensure the efficient provision and use of supporting infrastructure.

Clause 17 Economic Development

The Amendments will have positive impact on the local economy. There will be direct and indirect job opportunities created during the construction of future developments. In addition, the proposed retail activity area, will bring permanent employment opportunities to Swan Hill.

Clause 18 Transport

The Master Plan provides for a collector road network across the development precinct. It also identifies the need and allocates land for the provision of six bus stops (on three key locations) along the main collector road that runs through the SWDP.

Clause 19 Infrastructure

The Master Plan provides directions for the orderly land use and development outcomes of the precinct. It proposes and will facilitate the provision of necessary development infrastructure and encourages the timely, cost effective and efficient use of existing infrastructure (such as reticulated services, drainage, stormwater and recreation reserves) that service the Swan Hill Township. In particular, it shows the proposed collector roads, key intersections, proposed shared paths, street trees, areas for future bus stops and locations for gateway features.

The Master Plan shows the proposed locations for the Lower Murray Water and Goulburn Murray Water (GMW) pump stations and indicated that the GMW channel will be decommissioned.

The SWDP is located adjacent to the Swan Hill Primary School and the exhibited Master Plan makes reference to social and community infrastructure, and an area suitable for neighbourhood activity centre (C1Z).

(ii) Local Planning Policy Framework

Council submitted that the Amendments support the following local planning objectives as set out in the Municipal Strategic Statement at clause 21:

Clause 21.02 Key Influences and Issues

The clause notes the key influences and issues for the municipality, including the need to facilitate residential and economic development and maximise the use of existing infrastructure. It specifically notes the following key issues:

- The need for an alternative to Tower Hill in Swan Hill as a new residential development front for the municipality
- The need to co-ordinate residential growth in Swan Hill so that infrastructure is provided equitably between the developer and the community.

Clause 21.04 Settlement and Housing

The rezoning will support the municipality's objectives for settlement by facilitating residential use and development which is encouraged in the major regional centre of Swan Hill. The Amendments fulfil this requirement.

Clause 21.04-4 Orderly growth of towns and settlements

Clause 21.04-4 Highlights the need for an Outline Development Plan (ODP) for the SWDP to facilitate future residential development. The Amendments fulfil this requirement.

Clause 21.07 Built environment and heritage

The clause outlines importance of new development to improved character and visual amenity of the town. The Master Plan will aid in contributing to the outcomes sought, however the design elements will be predominantly addressed at the subdivision level or as part of the building approvals.

Clause 21.08 Economic Development

The Amendments support Council's economic development objectives by encouraging limited non-residential uses within the SWDP. In addition, direct and indirect job opportunities will be created during the development of the SWDP.

Clause 21.09 Infrastructure and transport

The clause discusses the importance of providing the appropriate utility, service and community infrastructure to support development and notes that developers should contribute to the cost of providing the infrastructure. Strategy 1.3 requires developers to contribute to the provision of infrastructure via the use of the Development Contributions Plan Overlay.

Clause 21.10-1 identifies SWDP as the area for long-term urban development opportunities. It emphasises the need for a structure plan providing directions for future development of the area. The Master Plan provides this framework and will direct orderly development outcomes for the SWDP.

(iii) Other planning strategies or policies used in formulating the Amendment

Swan Hill Residential Growth Strategy 2006-2030

The *Swan Hill Residential Growth Strategy* prepared in 2006 provided the framework for residential growth in Swan Hill to 2030. It planned for a population ranging between 11,433 and 13,000 in 2030. This requires between 1531 and 2277 new dwelling by 2030. It examined land requirements to meet this projected demand and identified the south west of Swan Hill as a location appropriate for urban development. It indicated that an ODP and Development Contributions Plan would be required to facilitate this development.

Swan Hill ODP- South-West Development Precinct

Following on from the residential growth strategy an ODP was prepared for Council in 2008 by David Locke and Associates. The ODP established a planning framework and process for the future planning and development of the SWDP. It sets out a physical framework plan, an appropriate road hierarchy, service infrastructure requirements and a framework for protecting the natural and cultural environments. There was no reference in the ODP to community infrastructure. The physical framework plan set out is not dissimilar to that proposed in the Master Plan.

Review of the Swan Hill Residential Strategy 2006-2030

The *Review of the Swan Hill Residential Strategy 2006-2030* was undertaken for Council by Isis Planning in 2013. The focus of the review was to update the original strategy prepared in 2006, and briefly discussed above. The review examined the land budget projections for 2030 and developed seven options to address future residential land needs to 2030. In its recommendations, the review supported continuing development in the Tower Hill precinct and rezoning the SWDP. The review noted that all options considered include land supply which exceeds 2030 projections. It further noted that development south of Werril Street relies heavily on development in the SWDP to provide infrastructure, particularly sewerage infrastructure, to support development.

Swan Hill Reserves Master Plans

This includes a master plan for the Ken Harrison reserve adjacent to the SWDP and identifies some \$2 million of future projects. It notes development contributions from the SWDP as one source revenue for this work.

Loddon Mallee North Regional Growth Plan

The *Loddon Mallee North Regional Growth Plan 2014* is a Reference Document at clause 11.11 of the SHPS. It supports incremental expansion of Swan Hill and the provision of infrastructure to facilitate population and economic growth, including improvements to transport infrastructure to service regional industries. It emphasises the need for integrated strategic planning to support growth and enable healthy and supportive communities.

The Regional Growth Plan recognises Swan Hill as a regional centre that services a wider catchment beyond its municipal boundaries and its stronger relationships with New South Wales, South Australia and adjoining Victorian regions.

The Regional Growth Plan provides particular reference to the SWDP as the identified growth area and encourages new residential development to accommodate future growth. The development outcomes of the rezoned area will contribute to strengthen Swan Hill as a strong regional centre.

Protection of agricultural land, environmental assets and sustainable communities is also encouraged within the Regional Growth Plan. While the SWDP provides for future residential land requirements, it also looks to protect existing FZ land. It does this by providing larger lot sizes at the urban interface to reduce potential conflict in land uses.

Master Plan for the South West Development Precinct

As indicated in section 1.3, Council has approved a *Master Plan for the South West Development Precinct*. The most recent version is version 8, approved by Council on 20 October 2015.

The Master Plan provides a development framework for the area, consistent with the orderly planning policy objectives. The Amendments only relate to the initial rezoning stage of the Master Plan, whilst recognising the long-term land supply that the area will provide, and provide for the sequencing of development that is timely and cost effective. The Master Plan also identifies the location of some core infrastructure requirements to enable the development of the initial rezoning stage.

The Master Plan defines the development framework for the SWDP. It identifies Ken Harrison Reserve (the Reserve) as the primary open space/recreation area, with most development within the amendment areas being less than one kilometre from the Reserve. DPO6, as exhibited requires compliance with the open space contribution requirements of the *Subdivision Act 1988*. This will allow a financial contribution to be collected to manage and develop open space within the SWDP. The Council initially supported the provision of a large recreation/open space rather than many small pocket parks.

The appropriateness of the Master Plan within the context of the higher level strategic planning framework for the SWDP is discussed in Chapter 3.

2.2 Planning scheme provisions

(i) Zones

It was proposed that the General Residential Zone (GRZ) be applied to the large majority of the land in the SWDP with a small amount of land proposed for the Commercial 1 Zone (C1Z) to facilitate the development of a small neighbourhood activity centre near the Reserve. Land proposed to be rezoned through the Amendments is currently substantially in the FZ, Low Density Residential Zone (LDRZ) or Public Park and Recreation Zone.

(ii) Overlays

The exhibited Amendments proposed to insert six new Schedules into the DPO. This proposal was subsequently revised by Council to inserting one new combined DPO6. This is discussed further in Chapter 3.

Schedule 2 to the DPO was proposed to be removed from any area affected by the Amendments and to which it currently applies.

It was proposed to amend Schedule 1 to the DPO. This was later withdrawn as that Schedule does not apply in the area covered by the Amendments.

(iii) Particular provisions

Particular Provisions of relevance to the Amendment are:

- clause 52.01 Public Open Space Contribution and Subdivision
- clause 52.10 Uses with Adverse Amenity Potential
- clause 56 Residential Subdivision.

(iv) General provisions

There are no General Provisions of direct relevance to these Amendments.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted that the Amendments meet the relevant requirements of the following Ministerial Directions:

Ministerial Direction No 1 - Potentially Contaminated Land

The issue of potentially contaminated land is addressed in section 4.1

Ministerial Direction No 11 – Strategic Assessment of Amendments

The Amendments are consistent with Ministerial Direction No 11

The Amendments are consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.

(ii) Planning Practice Notes

Planning Practice Note PPN30 – Potentially Contaminated Land, June 2005

This practice note has been considered in the discussion in relation to potentially contaminated land in section 4.1.

Planning Practice Note PPN78 – Applying the Residential Zones

The majority of the land in the SWDP is proposed to be rezoned to the GRZ

2.4 Discussion

The Panel is satisfied that the Amendments are strategically justified and support the relevant sections of the SPPF and LPPF. The need for further residentially zoned land is supported both by the projections of future demand to 2030 and by the need to ensure that there is an appropriate level of competition in the supply of residential land. The Amendments are the culmination of some 10 years of planning and strategic studies to support the development of future residential land in urban Swan Hill. Subject to the discussion and recommendations of the Panel in later sections of this report, the Panel supports the proposed rezonings.

The Panel concludes the application of the GRZ is appropriate and that Ministerial Directions and Planning Practice Notes have been appropriately adhered to.

2.5 Conclusions

The Panel concludes that:

- The Amendments are strategically justified
- There is a demonstrated need for more residentially zoned land in urban Swan Hill to meet the needs of projected population growth
- The application of the General Residential Zone to the majority of the land in the Amendment areas is appropriate
- Planning Practice Notes and Ministerial Directions have been appropriately complied with.

3 Proposed Planning Framework for the South West Development Precinct

3.1 The issue

Council exhibited six Amendments, each proposing a separate Schedule to the DPO which were intended to implement aspects of the SWDP Master Plan, which had been adopted by Council. Each of the proposed Schedules was to have the Council endorsed Master Plan included in it.

During the Hearing, Council proposed combining the six exhibited Schedules into one and to make other changes to the Schedule and the hierarchy of plans to apply to the South West Development Precinct. Council proposed these changes for both simplicity and to improve transparency.

This chapter of the report (see page 20) examines the approach proposed by Council. It is noted that there is some 'cross-over' between this section of the report and Chapters 4 and 5. This Chapter is intended to only deal with the 'big picture' issues around the restructure of the Schedule, with the discussion of key points of differences between submitters and Council, and the detailed wording of the Schedule itself, discussed in Chapters 4 and 5 respectively.

3.2 Submissions

At the outset of its submission, Council tabled a revised Schedule 6 to the Development Plan Overlay. Council advised that the revised Schedule had been circulated to the other submitters appearing at the Hearing, the day before and that the revised Schedule had been prepared to demonstrate how a slightly different approach, in terms of a planning framework, could be taken to the six amendments.

This different approach, and the changes to the Schedule (at a very broad level), can be described as follows:

- The use of one DPO Schedule, instead of six, for the six areas included in each of the Amendments. These six areas were then referred to as 'sub-precincts' in the revised Schedule.
- The deletion of the requirement for development contributions via the DPO Schedule and thus the deletion of the requirement for a section 173 agreement.
- The proposed expansion of Tables 1 and 2, which relate to new infrastructure to be provided and existing infrastructure to be upgraded, respectively, to include the requirements of each sub-precinct.
- The deletion of the *Draft Master Plan for the South West Development Precinct* from inclusion in the Schedule.
- The addition of a new requirement for a 'Development Master Plan' to be approved by Council, to be generally in accordance with the 'Draft Master Plan for the South West Development Precinct, October 2015'.
- The addition of a requirement for a 'Detailed Development Plan' to be prepared for each sub-precinct. In the case of the Detailed Development Plans, the accompanying

information requirements generally reflected the requirements included in the exhibited DPO Schedules for the various Amendments.

Thus the key outcome of the changes proposed was to provide one DPO Schedule for all of the sub-precinct areas. In doing so, this resulted in a 'restructuring' of the Schedule to require approval of an overriding 'Development Master Plan' covering all of the six Amendment areas, with the detailed information requirements still sitting at the Development Plan approval stage for each of the sub-precincts. By requiring this Development Master Plan, there then became no need for the inclusion of the *Draft Master Plan for the South West Development Precinct, October 2015*, within the Schedule itself.

Council submitted that the revised Schedule that had been prepared was primarily for discussion purposes, to demonstrate how one Schedule for all the sub-precincts could work, and that it still needed a detailed review by all parties.

However, Council further submitted that whilst the detail of the Schedule needed further work, and that there were still key points of difference in relation to that detail from the various submitters, at a 'big picture' level the restructure worked, and the various parties appeared to be in agreement over the general approach proposed via the revised Schedule.

In submission, Mr Chiappi, on behalf of the Amendment C58 and C60 landowners, confirmed that '*no issue is taken with Council's proposal to reduce the number of Schedules to a single schedule*'.

However, Mr Chiappi advised that he did have concerns around some matters of detail in the revised Schedule.

Mr Chiappi raised a concern around the requirement for a Development Master Plan. He was of the view that the *Draft Master Plan for the South West Development Precinct, October 2015* should be retained in the revised Schedule and that the requirement for a Development Master Plan was thus unnecessary. This view was maintained in the post hearing submission from Mr Natoli on behalf of the landowners, where the tracked changes version of the Schedule deleted the requirement for a Development Master Plan.

The Panel will deal with the matters of detail raised by Mr Chiappi in the following sections of this report. However, for the purpose of this discussion around the Planning Framework for the amendments it is fair to say that Mr Chiappi was in agreement with the use of one schedule for all six precincts and was also in agreement over the deletion of the requirement for development contributions via the DPO Schedules.

Ms Cotter, on behalf of the Rosaia Family, advised of her support for the removal of the requirement for development contributions via the Schedule. In relation to the use of one Schedule for all six sub-precincts, Ms Cotter advised that she didn't object '*in principle*' to the proposal however had a series of concerns around matters of detail in the Schedule. Ms Cotter did not provide specific comment at the Hearing on whether she supported Council's proposed approach to requiring a Development Master Plan.

As with Mr Chiappi's matters of detail, the Panel will deal with these more site specific issues raised by Ms Cotter in the following sections of this report. However, it was clear from Ms Cotter's submission that at a 'big picture' level she was accepting of the proposed

restructure, providing the matters of detail associated with her client's land could be resolved.

3.3 Discussion

At the outset, the Panel would like to say that the work undertaken by Council between the Directions Hearing and the Panel Hearing in developing this planning framework and revised Schedule 6 was of great assistance to the Panel and is leading to a better planning outcome.

The Panel considers that the use of six different schedules for the various sub-precincts cumbersome and repetitive and therefore supports the consolidation of the schedules into one Schedule as proposed by Council and supported by other parties.

The Panel also supports the deletion of the development contribution requirements and section 173 agreement requirements from the Schedule. The reasons for the Panel's support for this are discussed further in Chapter 5.

Whether the *Master Plan for the South West Development Precinct*, version 8 should be included within Schedule 6, or whether there should be a requirement in the Schedule for a separate Development Master Plan to be prepared and approved to the satisfaction of the Responsible Authority, is open to debate. The Panel can see the advantages and disadvantages of both sides of the debate.

On the one hand, the clear advantage of including the *Master Plan for the South West Development Precinct* within Schedule 6 is, as highlighted by Mr Chiappi, that no further approvals are required for the sub-precinct land owners to move forward with the detailed development plans for their individual precincts.

On the other hand, the Panel can also see the advantage to the approach proposed by Council. Whilst it does result in the need for the 'approval' of another plan, which in itself could be time consuming, it does also mean that any changes can be made to the plan in the future without the need for a Planning Scheme amendment.

The Panel is aware of the desire of both Council and landowners to 'move' the development of the SWDP along, given the time that has passed from when the development of this area was first contemplated, until now. This is supported by the Panel.

The Panel also notes that there appears to be general agreement amongst the landowners and Council about the road layout and overall development 'structure' of the precinct – notwithstanding the various points of difference discussed in the next chapter – as a result of the lengthy planning process that has occurred for the Precinct and the consultation undertaken during that process.

In this regard the Panel is of the view that should the *Draft Master Plan for the South West Development Precinct* be included within Schedule 6 – subject to the changes recommended in Chapters 4 and 5 following – there are unlikely to be any significant changes required to the plan in the immediate future.

Thus, whilst the concern around the need for a planning scheme amendment to change the *Draft Master Plan for the South West Development Precinct* plan is valid, the Panel is of the view that it is unlikely to be an immediate issue.

The Panel also notes that the conceptual nature of the Draft Master Plan (subject to the recommended changes) combined with the appropriate application by Council of the requirement for the sub-precinct development plans to be 'generally in accordance with' the *Master Plan for the South West Development Precinct*. This should ensure adequate flexibility is available for the more detailed sub-precinct development plans.

Therefore, on balance, the Panel supports the continued inclusion of the *Master Plan for the South West Development Precinct* within Schedule 6 (subject to changes as identified in this Report) and is of the view that this will provide an appropriate framework for planning to proceed for the individual sub-precincts in a timely manner. In the Panel's view the word 'Draft' should be deleted from its title as it now becomes the adopted Master Plan.

In relation to the matters of detail insofar as they relate to Mr Chiappi's and Ms Cotter's clients, the Panel is of the view that some of these concerns are able to be resolved through further revisions to the Schedule, as discussed in Chapter 5 of this report.

3.4 Conclusions

The Panel concludes that:

- The proposed restructure of the amendment to use one Schedule for the six sub-precincts included in Stage 1 of SWDP is appropriate
- The development contributions and section 173 Agreement requirements included in the exhibited Schedules should be deleted
- The revised Schedule 6 should continue to include version 8 of the *Master Plan for the South West Development Precinct*, subject to changes being made to the Plan as identified in Chapters 4 and 5 of this Report
- The revised Schedule 6 should continue to include the requirement for a Development Plan for each Sub Precinct that must be generally in accordance with the *Master Plan for the South West Development Precinct*.

3.5 Recommendations

The Panel recommends:

Delete exhibited Schedules 6, 7, 8, 9, 10, and 11 to the Development Plan Overlay. Apply a new Schedule 6 to the Development Plan Overlay, as shown in Appendix C.

Adopt version 8 of the *Master Plan for the South West Development Precinct*, revised as recommended.

4 Planning Issues in the South West Development Precinct

This chapter examines the unresolved issues which were raised in submissions or by the Panel and which were addressed in submissions and evidence at the Hearing.

4.1 Environmental assessment requirements

(i) The issues

All of the Development Plan Overlay Schedules exhibited as part of the Amendments required the provision of environmental audit and soil assessments. There are two issues related to this requirement.

The first issue is whether there is a need for such a requirement to be included in the Schedule taking into account Minister's Direction No. 1 '*Potentially Contaminated Land*' and General Practice Note 30 '*Potentially Contaminated Land, June 2005*' (PPN30). The second issue is, if there is a need to include such a requirement, is it appropriately worded and does it require the correct level of information and assessment work in accordance with the relevant Minister's Direction and Practice Note?

(ii) Submissions

It was Council's submission that, as the predominant land use within the SWDP is agriculture, there is medium to low potential for there to be contamination. On this basis Council submitted that, in accordance with PPN30, the appropriate level of assessment is to require a site assessment and that if the site assessment identifies a high potential for contamination, an environmental audit would be required.

Council also tabled at the Hearing some revised wording for the clause requiring a site assessment and proposed further wording changes as part of its post Hearing submission.

Mr Chiappi, on behalf of the C58 and C60 landholders, did not raise any concerns with the requirement for site assessments to be undertaken. However he did make various suggestions about the wording of the relevant clause in a revised version of Schedule 6 (Documents 15 and 16) submitted at the Hearing as well as in the post Hearing tracked changes version of Schedule 6 submitted by Mr Natoli, the instructing solicitor for the landowners.

Ms Cotter advised in her submission to the Panel that:

'Point 3.1.5 seems to require an Environment Audit, which is an onerous and expensive undertaking. There does not appear to be any reason why such a requirement should apply to the subject land which has been used for farming and residential purposes.'

Ms Cotter went on to say that based on an assessment of PPN30:

'there appears to be no trigger for this audit requirement for this land. We suggest that the reference to the requirement for an audit be removed from the DPO Schedule'.

(iii) Discussion

At the outset of this discussion in relation to contaminated land assessments, it should be noted that Schedule 6 to the DPO, exhibited as part of Amendment C58, included slightly different wording in relation to environmental assessments to that included in exhibited Schedules 7 to 11 as part of Amendments C60 to C64.

This appears to be as a result of a written submission made by the EPA to Amendment C58, requiring a wording change to the clause. This wording change was subsequently included in exhibited Amendments C60 to C64 and the EPA did not provide further comment on the environmental assessment requirements for Amendments C60 to C64.

Thus, using exhibited Schedule 7 as an example, the following was required to form part of the Development Plan for the area affected by Schedule 6:

3.1.5 Preliminary Environmental Audit

- *A preliminary environmental audit and soil assessment for the entire land identified in this schedule must be undertaken by a suitably qualified person and should be submitted to the Responsible Authority for assessment. The assessment must be undertaken in accordance with the General Practice Note for Potentially Contaminated Land (Department of Sustainability and Environment, June 2005) demonstrating the extent of any contamination and contaminated soil that may exist on the subject land. A Certificate of Environmental Audit should be provided where an audit has been undertaken, and submitted to the relevant authority through the Responsible Authority to demonstrate that the site is suitable for its intended use.*
- *If any contamination detected, a more detail (sic) assessment outlining the location of the contaminated soil, the type of contaminants detected, and the strategies required to be undertaken to decontaminate the affected areas will be required. More information in relation to environmental audit and soil assessment could be obtained from Environment Protection Authority (EPA Victoria).*

In determining whether there is a need to require some form of environmental assessment of the land proposed to be rezoned, the Panel refers firstly to the requirement of Minister's Direction No. 1. The Direction defines potentially contaminated land as follows:

In this Direction, potentially contaminated land is considered to be land used or known to have been used for:

- *Industry;*
- *Mining; or*
- *The storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land).*

The effect of the storage definition ((c) above) is to ensure that the storage of normal ancillary wastes, chemicals or fuel on, for example, a farm, a home, or a school does not automatically define that land as potentially contaminated for the purpose of this direction. It is nevertheless true that in some cases, the ancillary storage of these matters could result in contamination and planning authorities should be aware of this.

The Direction goes on to state that if potentially contaminated land is proposed to be rezoned to allow (amongst other land uses) a residential use, that planning authorities must deliberately satisfy themselves that the environmental conditions of the land are suitable for those uses. The ways in which planning authorities may satisfy themselves is then identified, including the ability for a planning authority to require a certificate or auditor's statement post exhibition of an amendment, prior to the commencement of a sensitive use.

Thus the Minister's Direction No. 1 does not include agricultural land in its definition of potentially contaminated land, however does note the potential for the ancillary storage of chemicals, gas, wastes or liquid fuel as having the potential to result in contamination.

PPN30 is a General Practice Note with the intent of providing guidance as to how to identify if land is potentially contaminated and the appropriate level of assessment of contamination for a planning scheme amendment or a planning permit application.

The Practice Note includes at Table 1 the types of uses that may have the potential to contaminate land, broken into the categories of High, Medium and Low potential.

Medium potential for contamination can include: chemical storage, fuel storage, waste disposal and filling (imported soil).

Table 2 of the Practice Note provides an assessment matrix to enable a decision to be made as to what level of environmental assessment is required for a planning scheme amendment or planning permit application. The identified levels of assessment are:

- Require an environmental audit which is a statutory audit undertaken by an environmental auditor under the *Environment Protection Act 1970*. The outcome of that is either a Certificate of Environmental Audit or a Statement of Environmental Audit; and
- Require a site assessment which is a preliminary review of site history (including current and previous uses and activities) by a suitably qualified environmental professional.

In the case of land which is proposed to be used for dwellings, Table 2 identifies that if there is Medium potential for contamination then a site assessment is recommended, if there is insufficient information available to determine if an audit is appropriate.

In the case of land proposed for dwellings where there is a Low potential for contamination, Table 2 identifies that there is a general duty of care required pursuant to the relevant sections of the *Planning and Environment Act 1987*.

Thus there is no explicit requirement via either the Minister's Direction or PPN30 to require a site assessment or environmental audit to be undertaken for land used for agricultural purposes – as agricultural land use is not specifically listed as having High or Medium contamination potential.

However, if there is the potential for contaminating activities that are ancillary to the agricultural land uses to have occurred on the land, then, in accordance with Table 2 of the Practice Note, this results in the need for a site assessment to be undertaken.

The Panel notes that there was no detailed information provided at the Hearing about the potential, or otherwise, for the land proposed to be rezoned to be contaminated. There were simply different views put by Council and Ms Cotter as to whether an assessment is required pursuant to the Practice Note on the basis of the land being used for (primarily) agricultural purposes.

Keeping the above in mind, the Panel is of the view that there is inadequate information available to be sure that there is only Low potential for contamination. Therefore, taking a cautionary approach, the Panel considers that the requirement for a Site Assessment should remain in the Schedule on the basis that there is the potential for Medium level contamination to be present on the site.

However, the Panel is also of the view that the requirement for such an assessment needs to be reworded and clarified in the Schedule as, certainly in the case of the exhibited schedules, there appears to be confusion between requiring an Audit versus undertaking a Site Assessment.

The Schedule needs to be amended to comply with the directions of PPN30 and to require, as a first step, a Site Assessment to be undertaken in accordance with the Practice Note. If contamination is found, there would be subsequent steps requiring the need for either a Certificate or Statement of Environmental Audit in accordance with the requirements of the EPA and the Responsible Authority.

The proposed wording changes to address this issue are discussed in Chapter 5.

(iv) Conclusions

In relation to the Environmental Assessment requirements, the Panel concludes that:

- In the Development Plan Overlay Schedule it is appropriate to retain the requirement for a Site Assessment to be carried out in accordance with the requirements of PPN30
- In retaining such a requirement, the wording and language of the clause needs to be amended to clearly identify a two-step process of, firstly, requiring a Site Assessment to be undertaken, and, secondly, only if contamination is found, subsequently going through a Certificate or Statement of Environmental Audit process
- The heading at clause 3.1.5 'Preliminary Environmental Audit' of the exhibited Schedule 6 to the DPO be deleted and replaced with the heading 'Environmental Assessment'
- At exhibited clause 3.1.5 of Schedule 6 to the DPO, delete the two dot points and replace with the following two dot points:
 - A site assessment must be undertaken in accordance with the General Practice Note Potentially Contaminated Land (Department of Sustainability and Environment, June 2005) demonstrating the extent of any contamination and contaminated soil that may exist on the subject land, to the satisfaction of the responsible authority.
 - If contamination is detected, a Certificate of Environmental Audit or Statement of Environmental Audit must be provided in accordance with the requirements

of the Environmental Protection Authority Victoria to the satisfaction of the responsible authority.

4.2 Intersection with Sea Lake - Swan Hill Road

(i) The issue

The issue addressed by the Panel is the location and form of an intersection between a collector road in the area covered by Amendment C58 and the Sea Lake - Swan Hill Road.

(ii) Evidence and submissions

Mr Pridgeon submitted that:

The traffic evidence from both experts is to the effect that the requirements imposed by VicRoads as to the type of intersection appropriate for the connection between the internal collector road within the C58 land and the Sea Lake – Swan Hill Road are not supported.

At the request of the Panel, the traffic experts, Mr Don Robertson of Traffix for the Council and Mr David Graham of GTA for a group of land owners, met prior to the Hearing and the report from them concluded:

The proposed new intersection on the Sea Lake – Swan Hill Road is appropriate and will not detrimentally affect the safety or operation of the Sea Lake – Swan Hill Road.

The intersection proposed is a T-intersection with full left and right turns from the development and left turn into the development from the Swan Hill direction and right turn into the development from the Sea Lake direction. An auxiliary left turn lane from the Swan Hill direction is proposed. In his evidence, Mr Robertson makes reference to the relevant *Guide to Road Design Part 4A: Unsignalised and Signalised Intersections (Austroads, 2009)*. Mr Graham states:

There are a number of other existing intersections and property accesses along Sea Lake – Swan Hill Road at relatively frequent intervals which allow full turning movements and a new intersection which is separated by approximately 300m from the adjacent intersections would not be inconsistent with the existing treatments along the road.

In its written submission, VicRoads supported the Amendments provided that:

No direct vehicular access will be permitted from Sea Lake - Swan Hill Road to these lands except either by providing:

- a. Provision of a new intersection on the Sea Lake – Swan Hill Road allowing only left in and left out or,*
- b. Provision of a one way service road located entirely on the subject land with a new access road intersecting with, and terminating onto, the one way service road.*

At the request of the Panel, Mr Mensforth from VicRoads attended the Hearing to explain the VicRoads position which had not changed in light of the expert evidence. In his submission before the Panel, Mr Mensforth stated that VicRoads position is consistent with the SPPF requirements with respect to service, safety and amenity. He also *cited Austroads Guide to Traffic Management Part 5: Road Management*, and tabled a relevant extract. He concluded by reiterating VicRoads initial position. Mr Mensforth outlined a history of the discussions with Council about the intersection. He provided a detailed explanation of why providing a service road, from which a right turn in the Swan Hill direction provided a superior safety outcome, compared with a right turn directly from the access road to the development.

(iii) Discussion

The Panel notes that it has no particular traffic engineering expertise. That said, it has not been presented with convincing evidence that the intersection as proposed by Council will constitute an unacceptable safety or service risk. In saying this, the Panel understands that VicRoads can and should be cautious in such matters and that because similar intersections already exist along this section of road as pointed out by Mr Graham, is not reason enough to support the proposed intersection. The Panel accepts that the service road option as discussed by Mr Mensforth will provide a superior outcome in terms of safety but notes that traffic volume on the Sea Lake – Swan Hill Road is only of the order of 800 vehicles per day and not expected to grow significantly.

The Panel notes that as a referral authority, VicRoads will be required to comment on a specific proposal for the intersection at a future time.

(iv) Conclusions

The Panel concludes that:

- It was presented with no convincing evidence that the proposed uncontrolled intersection of a collector road in the proposed development and the Sea Lake – Swan Hill Road would not operate effectively and safely.

4.3 Provision for commercial and community uses

(i) The issue

The issue addressed in this section of the report is the appropriateness of provision for commercial and community uses.

(ii) Submissions

In the exhibited version of the Master Plan and Amendment C60, a small parcel abutting the east west collector road and nearby the Reserve was proposed to be rezoned to Commercial 1 Zone (C1Z). In his initial submission, Mr Golsworthy estimated the size of the parcel proposed for the C1Z as being in the order of 3000 square metres. He submitted that this was too small to accommodate the proposed use and the associated car parking and setbacks etc.

At the request of the Panel, Council provided details of an existing small neighbourhood centre in north Swan Hill near the corner of Chapman and Thurla Streets. The Panel subsequently visited this centre and observed that it did not appear to be a vibrant centre and there were both vacant premises and non-retail uses occupying shop fronts.

In closing, Mr Pridgeon whilst not commenting on the size of the parcel, acknowledged that fixing it in place at this stage could cause some practical difficulties. He submitted that the land could be placed in the GRZ at this stage and the issue of the future provision of land for commercial purposes in this vicinity could be addressed in the Schedule to the DPO.

This was further followed up in Council's Part C submission dated 22 December 2015:

The proposed Commercial 1 Zone land may be initially rezoned to General Residential Zone, however the general area proposed to be C1Z should be identified on the approved Development Master Plan. The exact boundaries of the land to be rezoned for commercial purposes may then be identified in the plan of subdivision of the stage that includes that land. A notation as follows could be included in the Master Plan for the South West Development Precinct - version 8 20 October 2015:

A lot or lots for the purpose of a commercial area generally in accordance with the area depicted must be shown in the plan of subdivision for the relevant stage of the development of Sub-Precinct 2. Such lot or lots must not be used for purposes other than for commercial purposes, to the satisfaction of the responsible authority. Once identified on a plan of subdivision, such land may be rezoned from the General Residential Zone to a commercial zone.

In the post Hearing submission, Mr Natoli submitted that no demand assessment has been undertaken to determine the need for commercial uses in the precinct and that land should be provided following such an assessment being undertaken by Council.

In relation to community facilities, the Panel notes that the approved version 8 of the Master Plan includes the following note:

- 1. Medical Centre, Childcare Centre and Aged Care Facilities are encouraged within the precinct.*

There is no further accompanying text. Medical Centre (subject to conditions) and Residential Aged Care facility are permit not required uses in the GRZ and a permit is required for a Child Care Centre. The Panel requested assurance from the Council that adequate facilities across the range of community uses are available to meet the needs of the future residential population of the precinct.

(iii) Discussion

The Panel agrees that rezoning a specific parcel for commercial purposes at this stage is premature. The Panel is of the view that more work needs to be undertaken to determine exactly what type of centre is required, how it would fit with the Swan Hill retail hierarchy and the interest of appropriate developers in providing retail facilities in this location. The Panel observes that small neighbourhood activity centres can struggle to establish and thrive

and the existing centre at the corner of Chapman and Thurla Streets is some evidence of this. Until further detail is clear on the nature and extent of facilities and therefore the specific land requirement, it is appropriate that the land be placed in the GRZ.

The Panel agrees with Mr Pridgeon's proposal for the addition of a note to version 8 of the Master Plan, with wording as suggested by Mr Pridgeon, amended as follows:

Subject to retail demand analysis, a lot or lots for the purpose of a commercial area generally in accordance with the area depicted, may be shown in the plan of subdivision for the relevant stage of the development of Sub-Precinct 2. Such lot or lots must not be used for purposes other than for commercial purposes, to the satisfaction of the responsible authority. Once identified on a plan of subdivision, such land may be rezoned from the General Residential Zone to a commercial zone.

With respect to the provision of community facilities, the Panel regards the note indicating that such uses are 'encouraged' in the precinct does not constitute proper planning for such uses. It is unclear to the Panel whether the references in Note 1 is to the provision of facilities on a commercial basis by the private sector but it is assumed that this is possible. In this case retaining Note 1 is acceptable but not likely to serve any real purpose.

It is unclear to the Panel what thresholds apply for the provision of facilities such as maternal child health, schools or other government provided community facilities in Swan Hill nor the capacity of existing facilities to accommodate the increased population. It is not clear to the Panel whether new facilities might be needed or existing facilities expanded. Population growth appears likely to be relatively slow, so it would appear that there is time to address these needs, if indeed they exist.

(iv) Conclusions

The Panel concludes that:

- Rezoning of a specific parcel of land for Commercial purposes at this stage is premature and area proposed to be rezoned Commercial 1 Zone in the Draft Master Plan for the South West Development Precinct should be deleted.
- The following note should be added to the *Master Plan for the South West Development Precinct*:

Subject to retail demand analysis, a lot or lots for the purpose of a commercial area generally in accordance with the area depicted, may be shown in the plan of subdivision for the relevant stage of the development of Sub-Precinct 2. Such lot or lots must not be used for purposes other than for commercial purposes, to the satisfaction of the responsible authority. Once identified on a plan of subdivision, such land may be rezoned from the General Residential Zone to a commercial zone.

- Note 1 on version 8 of the Master Plan in relation to medical centre, child care centre and aged care facilities should be deleted.

4.4 Further possible rezonings

(i) The issues

Two issues relating to possible future rezoning were discussed during the Hearing. These were:

- A possible alternative zoning for three parcels of land (Nos 69 and 71 Sea Lake-Swan Hill Road and No. 219 Gray Street), which are currently proposed to be retained in the FZ and which sit outside the area of the Amendments. These land parcels were proposed to be retained in the FZ as a result of their proximity to established industrial land uses on the east side of Gray Street.
- Rezoning of land to the south of Amendment C60 and south west of Amendment C62 (external to the exhibited rezonings) to facilitate connectivity of the east west and north south collector roads through the areas proposed to be rezoned.

Each of these alternative zoning proposals is addressed below.

(ii) Submissions

Land on the south west corner of Sea Lake - Swan-Hill Road and Gray Street

The Panel raised the retention of these land parcels in the Faming Zone (FZ) at the Directions Hearing as a matter for Council to address in its Part B submission. In response to that Direction, Council submitted that it was proposed to retain these land parcels, some of which are currently used for residential purposes, in the FZ to preserve the status of the existing uses within that zone.

The Panel notes that the Planning Report prepared by Council stated at page 6 that:

...it is believed that these properties are located within the minimum set back requirements specified in clause 52.10 of the Swan Hill Planning Scheme to the existing industrial activities on the east side of Gray Street. This 100 metres set back was measured from the polystyrene products operation at No. 2-4 McAllister Road, Swan Hill. As such these land cannot be rezoned (sic) for residential purposes and will be retained FZ.

Council's submission noted that the FZ could, nonetheless, restrict potential uses that would be appropriate within the SWDP and acknowledged that *'including the FZ areas in the GRZ while retaining buffers that relate to existing uses may be appropriate'*.

There were no other submissions specifically in relation to these land parcels. Nonetheless, whilst Mr Chiappi did not specifically address these land parcels, his comments in relation to the Gray Street buffer proposed for the eastern portion of his client's land at Lot 2 PS 405842S (where it fronts Gray Street), and the Panel's view in relation to this issue, are of relevance in relation to the potential future rezoning options for these three land parcels outside the Amendment areas. These issues are discussed further at section 4.5.

Land to the south of Amendment C60 and south west of Amendment C62

The issue of extending the Amendment C60 rezoning to include land to the south was proposed to enable the connection of the main east-west collector road through the SWDP

with the north-south connector road running through the south-east portion of the C60 land.

In addressing this issue Mr Chiappi submitted:

An alternative approach would be to extend the rezoning to cover the whole of the road (Sensibly, this would require the rezoning of land on either side of the road to justify the cost of construction).

Mr Chiappi advised in submission that the land to which this further rezoning would apply is also owned by his clients and that they support the extension of Amendment C60 to facilitate this connectivity.

In his closing submission for Council, Mr Pridgeon indicated that expanding the rezoning to include that land would be acceptable to Council. In Council's subsequent post Hearing submission this was further confirmed, with Mr Pridgeon recommending that:

'The Master Plan for the South West Development Precinct – version 8 20 October 2015, be modified to include a minimum additional area of GRZ land in the vicinity of intersection #12, to encourage a connection in the collector street between Precinct 2 and Precinct 4. The additional GRZ land may allow for a single row of lots on either side of the collector street'.

In the post Hearing material lodged by Mr Natoli, it was submitted that:

Council's proposed extension of the rezoning area to include land around the collector road is accepted. A single row of lots, however, is unlikely to be viable. The submitters suggest that the southern boundary of sub-precinct 2 be aligned with the southern boundary of the sub-precinct sitting to the south of the Ken Harrison Reserve.

(iii) Discussion

Land on the south west corner of Sea Lake – Swan-Hill Road and Gray Street

The Panel is aware of the challenges that exist when rezoning areas for residential development, in proximity to established industrial areas, and the need to protect existing industrial land uses.

Thus in the case of the lots proposed to be retained in the FZ, the Panel understands the concerns of Council around the potential for these lots to be subdivided and subsequently developed if the land is rezoned to the GRZ, resulting in a greater number of dwellings being located in proximity to the established industrial land uses.

Nonetheless, the Panel does not believe that the long term retention of these lots in the FZ is a sensible solution given:

- a) a number of the lots currently appear to be used for residential purposes; and
- b) the lots are highly unlikely to be used in the future for agricultural purposes given their area, the existing dwellings and buildings on the lots and the abuttal of the lots to existing and future residential development.

So, what is the solution? In the first instance, the Panel notes that there is no immediate solution available as part of this current amendment process to rezone the land from the FZ

to a more appropriate zone as these land parcels were not included as part of the Amendments. The owners of these land parcels were not submitters to the Amendments and nor were there any submissions from businesses located in the neighbouring industrial area.

While the Panel is of the view that the retention of these land parcels in the FZ does not constitute good planning, any rezoning of the land would need to be part of a new planning scheme amendment process.

However, further consideration should be given as part of a new planning scheme amendment process to rezoning these land parcels – to remove the anomaly that will result upon approval of these current amendments where a small parcel of FZ land remains, surrounded by General Residential and Industrial zoned land.

In this, from a strategic planning perspective, the most appropriate future zone for the land would be the General Residential Zone. This should only occur if it is possible to put in place appropriate restrictions on the subdivision, use and development of those land parcels to ensure that the existing industrial land uses can continue to operate and that there is no increase in the number of dwellings located on the land (unless it can be demonstrated that an increased number of dwellings is acceptable in the context of the industrial land uses).

For such a rezoning to occur, further, more detailed, work would need to be undertaken in relation to the existing industrial land uses, to understand the nature of such uses and the extent of restriction on residential development that will be required to be implemented should the land be rezoned to the GRZ.

Land to the south of Amendment C60 and south west of Amendment C62

The Panel is of the view that from a practical perspective the proposed extension of the rezoning to include the land in the vicinity of intersection #12, and thus provide the ability for connectivity across the whole of Stage 1 of the SWDP, is an appropriate planning outcome.

Nonetheless, as with the FZ land discussed above, this 'extension' was not exhibited as part of the current Amendments.

However, unlike the FZ land, the owner of the land where the 'extension' is proposed was a submitter to the Hearing and has actively sought to facilitate this extension. In addition, the Panel is of the view that the proposed extension is unlikely to have any negative impacts to neighbouring landowners but rather offers some significant advantages to the broader area in providing a connected road network as part of Stage 1 of the SWDP.

The Panel therefore supports the inclusion of the extension of the Amendment C60 land to enable the connection of the east-west and north-south collector roads to occur.

In terms of the exact extent or area of the 'extension', the Panel agrees with the view put by Council in its post Hearing submission (with some minor changes to clarify the boundaries) and recommends that the extension makes allowance for a single row of lots on either side of the collector street. The Panel does not believe it is appropriate or warranted to extend the rezoning to align with the south boundary of the Amendment C62 land, as submitted by Mr Natoli in his post Hearing submission.

(iv) Conclusions

The Panel concludes that:

- Consideration should be given to a new planning scheme amendment to facilitate the rezoning of the land on the corner of Sea Lake – Swan-Hill Road and Gray Street to the General Residential Zone, with appropriate restrictions to be put in place to ensure the on-going operation of the existing industrial land uses to the east is not restricted. This will require further investigation and analysis of the existing industrial land uses located to the east of Gray Street.
- The Amendment C60 zoned land should be extended to include an area of land to its south in the General Residential Zone and Development Plan Overlay Schedule 6. The extension area should be limited to include the alignment of the proposed collector roads, intersection #12 as set out in the *South West Development Precinct Contributions to Infrastructure*, and land able to accommodate a single row of lots to the west of the north-south collector road and to the south of the east-west collector road.

4.5 Interface issues with the Industrial 1 Zone and the proposed buffer

(i) The issues

As discussed in section 4.4, to the east of the Amendment C58 land, is an area of land included in the Industrial 1 Zone (IN1Z), which accommodates a range of established industrial land uses.

There are two issues associated with this industrial land. The first issue is whether the nature of the existing industrial land uses warrant the provision of a buffer (or some other form of restriction) on the Amendment C58 land and, if so, to what extent.

The second issue is, if a buffer is indeed warranted, what form should it take? Is it necessary or appropriate to retain the buffer land in the FZ, or is it appropriate to restrict development in another way?

(ii) Submissions

In relation to the issue of buffer distances to the industrial area abutting the SWDP, the EPA included a request in its written submission to Amendment C58, that section 1.1 of DPO6 'Detailed Development Plan':

should include reference to clause 52.10 'Uses with Adverse Amenity Potential and EPA publication 1518, Recommended Separation Distance for Industrial Residual Air emissions'. This will aim to ensure that adequate separation distances would be able to be achieved from any existing industry.

The EPA did not provide specific comment on the separation distances that might be required for the existing industrial uses and did not question or comment on the 70 metre buffer shown on the SWDP Master Plan, along the Gray Street frontage of the C58 land.

Council's submission in relation to this issue, stated that the provision of a buffer of 70 metres to the neighbouring IN1Z land was appropriate and submitted that the implementation of such a buffer sought to minimise land use conflicts within both the SWDP and the industrial land. Council submitted that the use of a buffer would also reduce the

potential for new uses within the IN1Z land to be constrained as a result of clause 52.10 issues.

The Panel notes that the Council Planning Report accompanying the amendments specified that a 100 metres threshold distance was required to the Amendment C58 land as a result of the polystyrene products produced at Nos 2 to 4 McAllister Road (the industrial use that also resulted in the retention of the land on the corner of Sea Lake - Swan Hill Road and Gray Street in the FZ). As a result, the Planning Report concluded that a setback of 70 metres would be required inside the Amendment C58 land to meet the threshold distance of clause 52.10.

Mr Chiappi submitted that the proposed 70 metres deep buffer was based on Council incorrectly characterising the industrial operations on the east side of Gray Street and that his client was of the view that a distance of no more than 50 metres would provide an appropriate separation.

Mr Chiappi presented material to support this view (Document 17), prepared by his client and Mr Golsworthy, which provided details of the nature of existing land uses within the industrial precinct. The Table also identified the required threshold distances pursuant to clause 52.10 of the Planning Scheme for each of the existing industrial land uses and an estimation of actual distance from the site boundary of the use to the site boundary of Amendment C58 land.

In relation to the industrial land uses along Gray Street, the table identified that the existing land use along Gray Street requiring the largest buffer is the Ellwaste Recycle Centre. In addition, the Table identified that there is currently a distance of 25 to 37 metres from the boundary of the Ellwaste site to the C58 boundary, and that pursuant to clause 52.10 a threshold distance of 100 metres is recommended. The Table also identified that a threshold distance of 50 metres is required from the industrial land use at 4 McAllister Road (listed as Grizzly Engineering in the Table) where Council was of the view that a threshold distance of 100 metres applies.

Included with the Table of offsets was an aerial photograph showing the 'preferred' buffer arrangement of Mr Chiappi's client, comprising a 15 metres wide treed buffer with a further 35 metres 'non habitable room exclusion zone'. Based on the letter accompanying the aerial photograph, the Panel understands that the intent of the proposed buffer is that there could be no buildings and works constructed in the tree zone, that outbuildings could be established in the 35 metres set back beyond the tree buffer but that there could be no habitable buildings constructed within the 50 metres buffer.

Mr Chiappi went on to state that dividing land that is within one Certificate of Title or lot into different zones is not a desirable outcome and that retaining the FZ in this particular instance would ignore the surrounding land use context of existing and future residential development.

In concluding his submission on this issue, Mr Chiappi advised that the land should be rezoned to the General Residential Zone and that any restriction on use to protect the amenity of existing industry could be done by requiring setbacks to habitable buildings.

In the Council's reply, Mr Pridgeon reiterated that Council did not support the rezoning of the land to the General Residential Zone and instead suggested that it might be appropriate to rezone the land to the Industrial 3 Zone (IN3Z) which is intended to act as a buffer between the IN1Z and local communities.

Thus whilst it was generally accepted by all parties that a buffer (or restriction of some form) was required, it was the extent and nature of the buffer (in terms of zoning) that was the subject of debate.

(iii) Discussion

When considering the interface issues between the existing IN1Z land and the SWDP, the Panel is mindful of the policy direction at clause 17.02-1 of the State Planning Policy Framework to *'Protect industrial activity in industrial zones from the encroachment of unplanned commercial, residential and other sensitive uses which would adversely affect industry viability'* and the need to balance such a policy against the strong policy support for the development of this important growth area in Swan Hill.

As noted in section 4.4 the Panel is mindful of the potential for residential development to encroach and impact on established industrial land uses.

Keeping the above in mind, the first element of this issue relates to the provision of a buffer (or some form of other land use or development restriction) on the Amendment C58 land and what the appropriate extent of that buffer is.

In terms of understanding why there is a need for a buffer, the work undertaken by Mr Chiappi's clients in listing the nature of the existing industrial land uses in the area and nominated threshold distances pursuant to clause 52.10 was helpful in giving the Panel an overview of the existing operations within the neighbouring industrial precinct.

It was this work that was then used by Mr Chiappi to argue that a reduced buffer (by 20 metres), and a different approach to the buffer (ie the 15 metres tree reserve and a 50 metres non habitable building exclusion zone rather than the retention of the land in the FZ) was an appropriate approach to take.

The Panel does not support the concept of a 'reduced' buffer distance, or the revised approach suggested by Mr Chiappi in relation to the buffer treatment, as it does not feel that adequate information was provided to demonstrate that such an approach would appropriately protect the existing industrial land uses or represent an appropriate amenity outcome for future residents of the land fronting Gray Street.

In this regard, the Panel notes that the analysis of land uses within the industrial area was made via submission and was not the subject of expert evidence. In addition, no information was presented around the nature of potential emissions from the industrial land uses and what the extent of those emissions might be. It is not clear to the Panel whether the existing industrial land uses could (or do) result in odour issues, or noise impacts, or indeed some other form of impacts to the surrounding area. Indeed, there has been no risk assessment done (by any party) to try and understand the potential impacts of the existing industrial area on adjoining, future, residential development.

Without such information it is impossible for the Panel to know whether a setback of habitable buildings only from, for example, the Ellwaste site, is a reasonable approach to take when it will mean that private open space areas to new future dwellings will sit within the buffer area identified on the exhibited Master Plan.

This sort of information would have played an important role in giving the Panel some comfort that the future development of the buffer area land for residential purposes would not impact on the existing industrial land uses and that appropriate amenity levels for new residential development could be ensured with the reduced and revised buffer approach.

Given that no such assurance has been given, the Panel does not support either a reduction in the overall buffer distance or the revised approach of requiring setbacks to habitable buildings only. The Panel is therefore of the view that a setback of 70 metres needs to be maintained to residential development on the C58 land as exhibited as part of the amendment and as reviewed and (by inference) supported by the EPA.

Keeping the above in mind, the Panel is also of the view that for the purpose of these current amendments, the buffer land should remain in the FZ. Whilst the Panel agrees with Mr Chiappi that the 'splitting' of land in one lot or Title into different zones is undesirable, the fact remains that the 'buffer' area land did not form part of the amendment area exhibited as part of Amendment C58. Whilst the land is clearly shown as being located in the 'Study Area' of the Master Plan for the SWDP, it was not proposed for rezoning and nor was it proposed for inclusion within exhibited DPO6.

In addition, there were no submissions from businesses located in the neighbouring industrial area and it is these business that have the potential to be most impacted by a reduction in the buffer distance and the development of dwellings closer to their boundaries than proposed in the exhibited documentation.

Notwithstanding the above, and as discussed at section 4.4 in relation to the FZ land to the north, the Panel is of the view that the retention of the buffer land in the FZ does not constitute a good, long term, strategic planning outcome and therefore is of the view that further consideration should be given to rezoning this land as part of a future planning scheme amendment process.

The two zoning options suggested to the Panel for the Amendment C58 buffer land were the GRZ with appropriate restrictions and the IN3Z.

In relation to the IN3Z, the Panel acknowledges the Zone's intended 'role' as a buffer between land in the IN1Z and local communities. However, given the limited land area that would be included in the IN3Z, and thus the limited opportunity in the future for it to be developed for industrial purposes, the Panel is not convinced that this would be the most appropriate approach to take.

In relation to the suggestion of the GRZ, as discussed at section 4.4, the Panel is of the view that it could be an appropriate future zone. This is appropriate only if it is possible to put in place appropriate restrictions to ensure that the existing industrial land uses can continue to operate and that there is no increase in the number of dwellings located on the land.

Thus, again as outlined at section 4.4, any proposed rezoning of the land to the GRZ would require more detailed work to be undertaken in relation to the existing industrial land uses.

This is needed to understand the nature of such uses and the extent of restriction on residential development that will be required to be implemented should the land be rezoned to the GRZ.

(iv) Conclusions

The Panel concludes that:

- The exhibited 70 metres wide buffer along Gray Street should be retained in the FZ and should continue to be shown on the Master Plan for the SWDP as a buffer area, to ensure the appropriate protection of existing industrial land uses.
- Consideration should be given to commencing a new planning scheme amendment process to facilitate the rezoning of the buffer land to the General Residential Zone, with appropriate restrictions to be put in place to ensure the on-going operation of the existing industrial land uses to the east of Gray Street. This will require further investigation and analysis of the existing industrial land uses located to the east of Gray Street.

4.6 Proposed buffers to the adjacent Farming Zone and Low Density Residential Zone

(i) The issue

The issue addressed in this section of the report is whether the proposed buffers to the FZ are appropriate and are needed.

(ii) Submissions

Council has proposed a 20 metre tree buffer be provided along the full length of boundaries which abut the FZ. In addition it was proposed that land abutting the FZ to the west and south of the SWDP have a minimum lot size of 2,000 square metres where it abuts the FZ and that lots along the southern boundaries of the land covered by Amendments C58, C60, C62 and C63 have a minimum lot size of 1,000 square metres. These lots will only abut the FZ until land in the southern section of the SWDP is rezoned for residential purposes at a later date. Lots abutting existing LDRZ land were also proposed to have a minimum lot size of 1000 square metres.

Mr Chiappi submitted that the proposed buffer to 7 Dead Horse Lane be reduced to 10 metres because the current use on that site is required to maintain a 10 metre buffer. A further 10 metres buffer on his client's land would provide a 20 metre buffer overall. Council subsequently revised its position to accept this.

Mr Chiappi further submitted that:

The proposed 20 metre buffer on land abutting the Farming Zone is not warranted:

- The land on the south west corner of the Sea Lake Road (sic) and Gray Street is used for residential purposes, and actually has a landscaped buffer.*
- The stage 2 land is identified for future residential use.*

Mr Chiappi submitted that the requirement for 1,000 square metre lots to the periphery of Stage 1 and to the LDRZ is opposed, as lots within the subdivision may be at 800 square metres and that there is little difference between 800 square metre lots as opposed to 1000 square metre lots. He submitted that his clients take no issue with the 2000 square metres minimum lot size along Dead Horse Lane as this is accepted as the long term boundary between residential development and the FZ.

Mr Chiappi accepted that habitable buildings not be permitted in the buffer areas but in his follow up submissions on behalf of their clients, Mr Natoli submitted that non habitable buildings should be allowed. Council had no opportunity to respond to this particular proposal.

An additional buffer requirement is proposed for the lots abutting the FZ in the southern part of the land covered by Amendment C64 where version 8 of the Master Plan requires that habitable buildings are required to be located in the northern half of the minimum 2000 square metre lots. Ms Cotter submitted that:

... the requirement to set building envelopes and any dwellings in the northern part of any lots is unnecessary and may not result in a suitable design outcome and potentially make any lots difficult to develop.

In its follow up submission post Hearing, Council accepted that the minimum lot size for the strips of land shown in the Master Plan as having a minimum size of 1000 square metres be reduced to show a minimum lot size of 800 square metres. This includes the buffer to the south of the SWDP where land to the south of this is proposed for future residential use in the Master Plan, and the land abutting the existing LDRZ. Council accepted that the buffer on the subject land with an abuttal to 7 Dead Horse Lane could be reduced to 10 metres.

In her post Hearing submission, Ms Cotter maintained her position that residential development abuts the FZ in many locations and that it is unnecessary to restrict lot sizes in this situation.

(iii) Discussion

In the case of new residential lots that will abut land in the FZ, the Panel does not support the provision of a 20 metres wide tree buffer along the full length of the abutting boundary. The Panel is of the view that this is unnecessary, particularly where the land in the FZ will ultimately be developed for residential purposes as part of Stage 2 of the SWDP.

The Panel supports the reduction of the buffer to 7 Dead Horse Lane to 10 metres as proposed by Mr Chiappi and agreed to by Council.

The Panel accepts the Council position of a reduction in minimum lot sizes to 800 square metres for the land abutting the LDRZ and to the south of the land covered by Amendments C58, C60, C62 and C63, that is where it abuts land designated in the Master Plan for future residential use. This interface with the FZ is temporary, albeit it is likely that it will be some years before the land in Stage 2 of the SWDP will need to be rezoned.

The Panel does not understand the logic behind the Council position of requiring buildings in the interface with the FZ in Ms Cotter's client's land being required to be located in the

north of the blocks. However the Panel does not accept that a convincing case has been made for it to recommend a change to this requirement.

The Panel does not accept that any case has been made to allow any buildings within the buffer areas.

(iv) Conclusions

The Panel concludes that:

- The requirement for a 20 metres wide tree buffer to be provided on residential lots that directly abut the FZ land is not supported and dot points 3,4 and 5 in clause 2.0 of exhibited Schedule 6 to the DPO, under the heading 'Conditions to be included on all lots that abut to the Farming Zone', should be deleted.
- The reduction of the buffer to 7 Dead Horse Lane to 10 metres (from 20 metres) is supported and the requirement should be amended on the Master Plan and under clause 2.0 in the Schedule to the DPO, 'Conditions to be included on all lots that abut No. 7 Dead Horse Lane Swan Hill', replace the reference to 20 metre buffers in dot points 2 and 4 with 10 metres.
- The minimum lot size for land abutting the Low Density Residential Zones and land in the south of areas covered by Amendments C58, C60 C62 and C63 which abuts land designated for further residential use in the *Master Plan for the South West Development Precinct*, should be 800 square metres.
- No change should be made to the requirements for land at the south of the area covered by Amendment C64 where it abuts the Farming Zone.

4.7 Funding of required infrastructure

(i) The issue

The issue addressed in this section is whether the approach to the funding of road intersection and drainage infrastructure is appropriate and equitable.

(ii) Evidence and submissions

Council initially proposed one Amendment with a single section 173 agreement across all relevant land owners in the SWDP to cover the provision of infrastructure requirements as set out in the *South West Development Precinct Contribution to Infrastructure*, which detailed and costed the required road intersection infrastructure. Council was not successful in reaching voluntary agreement and decided to split the single Amendment into six separate Amendments. The exhibited Schedules to the DPO listed the road, intersection temporary turning circles and drainage infrastructure to be provided within the Amendment area and indicated in clause 1.2 that development contributions are required and that an owner may enter into a section 173 agreement for the provision of that infrastructure.

In the revised version of DPO6 tabled at the Hearing, clause 1.2 was deleted. New and upgraded infrastructure requirements for each of the six sub precincts were listed in Tables 1 and 2. This was now to be required via a condition on permit. Mr Pridgeon submitted that this approach was being adopted as the Council was of the view that the infrastructure

required for each sub precinct was broadly in proportion to the size of each sub-precinct and therefore equitable.

In response, Mr Chiappi submitted:

The Revised schedule removes clause 1.2 but leaves in place the specific obligation to construct intersections. The submitters accept the revised arrangement. The advice of Paul Shipp is that the revised arrangement provides for a broadly equitable sharing across landowners of the cost of providing infrastructure.

Mr Chiappi called Mr Shipp to give verbal evidence to this effect as his written evidence statement predated the revised Council position. Mr Shipp described the approach as 'seemingly equitable'. He indicated that he had only had an opportunity to briefly examine the proposal and was comfortable with it, given the layout of the land. He indicated that he had taken a network approach to his brief analysis to ascertain whether there were items which should be apportioned across the whole area. He determined that this was not required.

Mr Shipp indicated that he was satisfied that the approach was equitable as far as Amendment C58 and C60 were concerned, that is the areas owned by his clients. Mr Shipp further indicated that he had only had a brief look at the other Amendments and had no specific view as to the equity of the approach for them.

The Panel requested that Council provide it with some assurance that the approach was broadly equitable across each of the Amendments.

Mr Hermon, on behalf of the HIA, was of the view that the funding of infrastructure should not be required via section 173 agreements and was therefore supportive of Council's proposed revised approach to infrastructure funding.

(iii) Discussion

The Panel has been presented with no evidence that the approach is not equitable but has some concerns that no clear assurance could be given with respect to the equity associated with infrastructure provision in the areas covered by Amendments C61 to C64. The Panel accepts the assurances of Mr Shipp with respect to Amendments C58 and C60 but notes that the final configuration and therefore cost associated with the intersection with the Sea Lake – Swan Hill Road could have an impact on the equity in these two sub-precincts. The Panel has not undertaken its own analysis as the *South West Development Precinct Contribution to Infrastructure* does not include costings for all infrastructure listed in DPO6. In particular costings for drainage infrastructure is not included.

While the Panel supports the revised approach taken by Council it is concerned about the 'planning on the run' approach that has occurred here and the lack of time for a detailed examination of the approach and its potential outcomes. The risk for Council is that one or more areas bear a significantly greater than proportion of the cost of infrastructure and that this increased cost burden effectively sterilises the development of this land for a period of time because it can't be developed competitively. Having said this, the Panel notes that

there is no evidence that this is the case, simply that there is no evidence to the contrary either.

In summary, the Panel accepts the position that has been put to it that this approach is satisfactory. In doing this it notes that it is not its role to approve or not approve this approach as the funding of the provision of infrastructure no longer falls under the Amendments. Because of this the Panel sees no grounds on the infrastructure funding issue to not support the Amendments.

(iv) Conclusions

That Panel concludes that it was presented with no evidence that the funding of infrastructure through a permit condition is inappropriate and likely to be inequitable.

4.8 Other road infrastructure issues

(i) The issues

The issues addressed in this section are the provision and standards of other road and path infrastructure raised by Mr Chiappi in his submission.

(ii) Evidence and Submissions

In his submission, Mr Chiappi proposed the following changes to the provision and standards of some of the proposed road and path infrastructure:

1. That collector streets be provided in accordance with the Infrastructure Design Manual should be deleted from the Schedule, as this is an issue to be addressed at subdivision stage.
2. A section 173 agreement with respect to the maintenance of temporary turning circles is not warranted as the matter can be appropriately dealt with as a permit condition.
3. The requirement for a shared path along the Sea Lake – Swan Hill Road should be deleted as the development on both sides of the road will back onto the road and the path will go nowhere as it does not provide connectivity.
4. The requirement to upgrade Gray Street is impractical and unreasonable as the land has a limited frontage to the street.
5. Feldtmann Lane should not be constructed to collector road standard at this stage as demand for this at collector road standard is a long way off.
6. The requirement to construct Dead Horse Lane to collector road standard if development fronts the road is an unreasonable burden given the function it currently serves.

It is noted that neither Mr Robertson nor Mr Graham made specific comment on any of these issues in either their written or verbal evidence. The background traffic reports prepared to support the Amendments and exhibited with them provide no information on any of the issues raised by Mr Chiappi, other than projected traffic volumes on internal collector roads.

In his response, Mr Pridgeon submitted that the Infrastructure Design Manual is a guideline which is not binding and which has been adopted by a number of Councils. He proposed that the reference to it could become 'generally in accordance with'.

Mr Pridgeon submitted that it was necessary to have a section 173 agreement in place to ensure that there is adequate maintenance of temporary turning circles. No submissions were made on other issues raised by Mr Chiappi in either the right of reply or in the follow up Part C submission from Council, dated 22 December 2015.

(iii) Discussion

The Panel accepts the Council position on an appropriate reference to the Infrastructure Design Manual and notes Council's assurance that it is not binding.

The Panel notes that because of the likely pace of development that temporary turning circles may be in place for a number of years in some instances. For this reason there is a need to ensure that they are adequately maintained and accepts that a section 173 agreement is appropriate.

With respect to the shared path along the Sea Lake – Swan Hill Road, the Panel accepts the point made by Mr Chiappi about connectivity. The Panel has been presented with no plans to show that it will connect to existing or planned paths. For this reason the Panel is of the view that the requirement should be deleted.

The Panel notes that the frontage to Gray Street is limited and that the area opposite the proposed development is industrial. Whilst the requirement for an upgrade of Gray Street is not unreasonable in principle, the Panel was presented with no information that could lead it to conclude that the required upgrade would form part of a planned upgrade for a longer section of Gray Street. For this reason, the Panel is of the view that this requirement should be deleted.

The Panel accepts that because of the pace of development Feldtmann Lane may not be required to be constructed to collector road standard for many years. However, the same conclusion may be drawn about other sections of proposed collector roads. Traffic forecasts in Feldtmann Lane in the long term and set out in the background report entitled *South West Development Precinct Traffic Impact Assessment*, prepared for Council by Traffix, show traffic volumes which justify the collector road status of Feldtmann Lane. There are no broader proposals about interim and ultimate outcomes for road construction and for this reason the Panel is of the view that consistent with the approach to all collector roads, Feldtmann Lane should be constructed to collector road standard when constructed.

The Panel notes that the standard of construction of Dead Horse Lane is likely to be hypothetical, as it is likely that any development will back onto the road and have a frontage internal to the development. However if development in the area covered by Amendment C58 and the land further to the south which is subject to future rezoning is also developed with a frontage to Dead Horse Lane, then it would appear to the Panel that this road may carry significant traffic and construction to collector road standard justified. The Panel notes that the traffic forecast for this road are very low and it is assumed that this is based on all development having a frontage internal to the development. In drawing this conclusion the

Panel notes that Dead Horse Lane is subject to investigation for a future by-pass road, presumably at a higher standard again.

(iv) Conclusions

The Panel concludes that:

- Reference to the Infrastructure Design Manual in Schedule 6 to the Development Plan Overlay should be retained and construction should be 'generally in accordance with' its requirements.
- Reference to a section 173 agreement with respect to the maintenance of temporary turning circles should be retained in Schedule 6 to the Development Plan Overlay.
- Reference to the requirement for a 2.5 metres wide shared path along the Sea Lake – Swan Hill Road should be deleted.
- Reference to the requirement to upgrade Gray Street should be deleted.
- Reference to Feldtmann Lane being constructed to collector road standard should be retained in Schedule 6 to the Development Plan Overlay.
- Reference to Dead Horse Lane being constructed to collector road standard if development has a frontage to Dead Horse Lane should be retained in Schedule 6 to the Development Plan Overlay.

4.9 Funding for open space

(i) The issue

The issue is whether it is reasonable for all public open space contributions for the SWDP to be used to undertake upgrade works to the Ken Harrison Reserve which is located centrally within the Precinct, as proposed by both the exhibited and the later version 8 of the Master Plan for the SWDP.

(ii) Submissions

Mr Pridgeon outlined to the Panel the work undertaken by Council in 2007 in the preparation of Master Plans for four of Council's recreation reserves, including the Ken Harrison Sporting Complex.

Mr Pridgeon highlighted the importance of the existing Reserve for structured activities and the desire, identified in the Master Plan prepared for the Reserve, to increase the role of the Reserve for non-sporting, unstructured informal recreation activities. The need to integrate the Reserve with surrounding residential development was also highlighted.

Mr Pridgeon then went on to note that Council has the ability to seek a public open space contribution pursuant to Section 18 of the *Subdivision Act 1988*, and that it is the intention of Council to:

Preferentially take cash contributions for public open space for the purpose of funding improvements to the Ken Harrison Sporting Complex, consistent with the master plan for the reserve.

Mr Pridgeon highlighted the requirement of an (undated) Playgrounds Asset Management Plan prepared by Council, which recommended playgrounds within 400 to 500 metres walking distance of houses within main townships and advised that:

The plan at Appendix C suggests that local playgrounds may be warranted in parts of the SWDP not currently served by existing facilities.

A balance between using POS funds for upgrading existing facilities and providing new local facilities (land and embellishment) may be appropriate.

The Panel notes that in its post Hearing submission, Council appears to still seek to 'preferentially' take cash contributions to be used at the Ken Harrison Reserve - as outlined in the revised 'Note 2' proposed by Council to be included on the Master Plan for the SWDP which states:

The Swan Hill Rural City Council intends that public open space obligations arising from the subdivision of the land within the catchment of the Ken Harrison Reserve (as generally depicted in the Swan Hill Rural City Council Playgrounds Asset Management Plan (Appendix C), prepared by Swan Hill Rural City Council) will be taken in the form of a cash payment and used for purposes associated with the Ken Harrison Reserve, including projects identified in the Swan Hill Reserves Master Plans report dated October 2007, prepared by Swan Hill Rural City Council and Stratcorp Consulting Pty Ltd (as may be amended from time to time).

In relation to the issue of public open space, Mr Chiappi submitted that it is inappropriate to include a note on the Master Plan directing where public open space funding should be directed. He submitted that it is a matter that is more appropriately considered pursuant to the requirements of clause 56 of the Planning Scheme and as part of the design of the development plans and future subdivision applications.

In the post Hearing submission by Mr Natoli, Mr Chiappi's submission was reiterated, as follows:

The public open space note proposed by Council is not necessary. Open space is dealt with at subdivision stage by clause 52.01 and clause 56 Use of public open space contributions for the upgrade of the Ken Harrison Reserve might be appropriate at the time land within the catchment is developed – or it might not be. There has been no evidence presented to this Panel that this is an outcome that is so necessary that it should be set in stone within this schedule. Further, leaving out any note as to open space avoids uncertainty as to which land falls within the intended catchment.

(iii) Discussion

The Panel agrees that including a note on the SWDP Master Plan directing a cash contribution for open space to be used wholly for the Ken Harrison Reserve does not represent an appropriate or reasonable planning outcome.

It is clear from even a cursory review of the SWDP Master Plan that using a 400 metre radius for public open space provision will result in large areas in the western and south-eastern

portions of the SWDP not having access to public open space as recommended by clause 56.05-2 of the SHPS.

The Panel acknowledges the significant, regional, recreational resource that is offered by the Ken Harrison Reserve, and appreciates Council's desire to improve that asset.

Nonetheless, clause 56 of the SHPS requires the provision of a hierarchy of public open spaces, serving different roles, to service new residential communities. Whilst the location of a regional reserve within the SWDP will be a great asset to future residents of the area, the fact remains that additional open space will also be required above and beyond the Ken Harrison Reserve to adequately service the new residential area.

The Panel is therefore of the view that there should not be any reference included on the SWDP Master Plan to the public open space contributions and the way in which contributions should be used. The Panel considers that such matters should be informed by the requirements of clause 56 and should be given further, more thorough, consideration as part of the future approval processes associated with the development plans and subdivision planning permit applications that will be required for the Precinct.

(iv) Conclusions

The Panel concludes that:

- It is inappropriate to include a note on the SWDP Master Plan relating to public open space contributions.
- The consideration of public open space contributions should be informed by the requirements of clause 56 of the Swan Hill Planning Scheme to ensure that appropriate areas, locations and types of public open space are provided for as part of the future development of the SWDP.

4.10 Cultural heritage issues

(i) The issue

Each of the exhibited DPO Schedules applying to land in the SWDP included a clause entitled 'Cultural Heritage Related Requirements'.

The clause specifies notes to be included in permits which seek to ensure the protection of all Aboriginal Cultural Heritage including Aboriginal Places, Aboriginal Objects and Aboriginal Human remains.

The issue is whether it is appropriate, or necessary, to include these requirements in the Schedule to the DPO.

(ii) Submissions

The issue as to whether this clause should be included was raised by Ms Cotter in relation to Amendment C64, Schedule 11.

Ms Cotter submitted that as her client's land *'is not subject to Cultural Heritage Sensitivity'* there is no need for the requirement to be included in the Schedule. Ms Cotter also noted that the provision replicates the requirements of the *Aboriginal Heritage Act 2006* and

therefore does not need to be in the Schedule or, indeed, included as a condition on any planning permit that may ultimately issue for her client's land.

Whilst the other parties did not make any specific submissions in relation to the Cultural Heritage provision, the Panel notes that in the 'tracked changes' schedules submitted to the Panel post the Hearing, Mr Chiappi proposed the deletion of this clause from the Schedule.

(iii) Discussion

The Panel agrees with Ms Cotter that it is the *Aboriginal Heritage Act 2006* that is primarily intended to protect and manage Aboriginal cultural heritage matters in Victoria.

Clause 15.03-2 of the Planning Scheme specifically refers to Aboriginal Cultural Heritage and specifies that planning must consider the requirements of *the Aboriginal Heritage Act 2006*.

The Panel also notes that, as part of any planning permit application process for the subdivision of land forming part of the SWDP, the Council is required to consider matters of Aboriginal Cultural Heritage where:

- a site is located in whole or part within an area of cultural heritage sensitivity; and
- a proposal is considered to be a 'high impact activity' (as defined in the Aboriginal Heritage Regulations 2007, which includes the subdivision of land into three or more lots in particular circumstances).

Thus, the Panel agrees with Ms Cotter that the clause at 3.1.7 of exhibited Schedule 11 replicates requirements dealt with in other legislation and thus it is not necessary to specifically include it in the Schedule.

The Panel does, however, note, that cultural heritage matters (along with other matters such as flora and fauna considerations) are typically considered early on as part of a site analysis assessment undertaken when preparing development plans for new residential areas.

In this regard the exhibited Schedule to the DPO requires the consideration of cultural heritage matters via the Environmental Management Plan requirement at clause 3.1.6. The Panel is of the view that the retention of such a requirement somewhere in the Schedule is appropriate as it will ensure that cultural heritage matters are appropriately considered as part of the early planning and design stages for the sub-precinct development plans in the SWDP.

(iv) Conclusions

The Panel concludes that:

- The requirements at clause 3.1.7 of the exhibited Schedules should be deleted from the Schedule.
- The requirements for consideration to be given to cultural heritage matters as part of the EMP required by clause 3.1.6 of the exhibited Schedules should be retained.

4.11 Recommendations

The Panel recommends:

The following changes be made to version 8 of the *Master Plan for the South West Development Precinct*:

- a) Delete the area to be rezoned to Commercial 1 Zone.
- b) Add the following note:

Subject to retail demand analysis, a lot or lots for the purpose of a commercial area generally in accordance with the area depicted, may be shown in the plan of subdivision for the relevant stage of the development of Sub-Precinct 2. Such lot or lots must not be used for purposes other than for commercial purposes, to the satisfaction of the responsible authority. Once identified on a plan of subdivision, such land may be rezoned from the General Residential Zone to a commercial zone.

- c) Delete Note 1 which refers to medical centre, child care centre and aged care facilities.
- d) Delete Note 2 which refers to open space provision.
- e) Amend the note 'Buffer width 20m' adjacent to 7 Dead Horse Lane to be 'Buffer width 10m'.
- f) Amend the note 'Minimum of 1000sqm lots' to say 'Minimum of 800sqm lots' for the land abutting the Low Density Residential Zones and land in the south of areas covered by Amendments C58, C60 C62 and C63 which abuts land designated for further residential use in the Draft Master Plan for the South West Development Precinct.
- g) Amend the area of land shown in Stage 1 to include land for the alignment of the collector road which provides connectivity between Amendment areas C60 and C62, land for intersection #12 as set out in the *South West Development Precinct Contribution to Infrastructure*, and land extended to accommodate a single row of lots to the west of the north-south collector road, and to the south of the east-west collector road.

Amend the area of land covered by Amendment C60 to include land for the alignment of the collector road which provides connectivity between Amendment areas C60 and C62, land for intersection number 12 as set out in the *South West Development Precinct Contribution to Infrastructure*, and land to accommodate a single row of lots to the west of the north-south collector road, and to the south of the east-west collector road in the extended area.

5 Development Plan Overlay Schedule 6

5.1 The issue

At the commencement of the Hearing, Council tabled a revised version of DPO6 which effectively combined the exhibited DPO6 to DPO11 and made some other modifications. As a result of the submissions presented at the Hearing, Council subsequently proposed further changes to DPO6 and circulated these for comment after the Hearing. A number of submitters took the opportunity provided by the Panel to make further post Hearing comments. This section examines the proposed changes to DPO6 both as a result of comments by submitters and as a result of the Panel's examination of other issues in Chapter 4 of this report as well as providing an overview of any resultant changes to the Master Plan.

The Panel notes that this section does not go through each 'round' of changes proposed to the Schedule but rather focusses on the final changes proposed by Council post Hearing and the submitters response to those changes.

5.2 Submissions

Council advised in its post Hearing submission in relation to Schedule 6 to the DPO the following.

- Further changes are proposed to DPO6 (from those proposed in Council's original modified version – Document 1). These changes included additional changes suggested by Mr Chiappi at the Hearing and also sought to rectify an error whereby Intersections Number 3, 4, 12 and 13 had been left out of the exhibited schedules.
- It is proposed that the plan titled *Master Plan for the South West Development Precinct – version 8 20 October 2015* should be amended and subsequently approved under clause 3.0 of the revised Schedule 6 to the DPO as the Development Master Plan, but not included in the Schedule. Other identified amendments related to the open space notation on the plan, the designation of Commercial 1 Zone land, a change in minimum lots sizes from 1000 square metres to 800 square metres in nominated locations, and the inclusion of intersection #12 and adjoining land as part of the SWDP.
- The matter of the land shown as Road Zone Schedule 2 in the exhibited planning scheme maps, without any further reference to the rezoning elsewhere in the amendment documents, was a procedural matter.

Council attached with its submission a tracked changes version of DPO6 for consideration and comment by submitters.

On behalf of the Amendment C58 and C60 landholders, Mr Natoli submitted the following:

- Further changes are required to the post Hearing version of the DPO6 circulated by Mr Pridgeon.
- These changes should address a range of matters including: conformity of language; changes to the Master Plan to include only Stage 1 of the SWDP (if the submitters objection to it being separate document is not supported by the Panel); the removal of specific triggers associated with the timing of infrastructure works; the ability to allow

non-habitable buildings to be located within tree buffer areas (if the submitters' objections to tree buffers are not supported by the Panel).

- Changes should also be made to the Master Plan including: deletion of the Public Open Space note; amendments to Council's note relating to commercial development to make it more general; removal of reference to minimum lot sizes of 800 square metres along the southern boundary of Stage 1 of the SWDP; extension of the additional area to be included around intersection #12 to align with the southern boundary of the Amendment C62 land; the intersection numbers referred to in the Schedule to also be included on the Master Plan; and, if the Panel supports the inclusion of the buffer area along Gray Street being included in the General Residential Zone, the inclusion of that land within the Master Plan boundary.

On behalf of the C64 landholders, Ms Cotter's post Hearing submission in relation to the revised Schedule 6 to the DPO can be summarised as follows:

- That there have been improvements made to DPO6, nonetheless, Ms Cotter's primary issues of concern raised in her previous submission to the Panel remain.
- These remaining issues can be summarised as: the retention of requirements for work to be undertaken in the Development Plan stage that Ms Cotter submits would be more appropriately included at the planning permit stage; the retention of unnecessary requirements insofar as they relate to the Amendment C64 land; the requirement for a single Environmental Management Plan for the whole SWDP; the requirement for a section 173 agreement to maintain tree buffers on land abutting the FZ; the restriction on lot sizes on land abutting the FZ; and the acceptance of the setbacks to the Goulburn Murray Water surface infrastructure.

A submission was also lodged by Mr Phil Joyce on behalf of Greengrove Properties Pty Ltd in relation to Amendments C60 and C63. Mr Joyce submitted that there should be no requirement for section 173 agreements to be entered into regarding temporary turning circles and the 20 metres tree buffer proposed along the boundary to the FZ should be deleted.

5.3 Discussion

For simplicity, the Panel will step through each of the key issues raised in the post Hearing submissions relating to revised DPO6 and the Panel's view in relation to those issues. It is noted that in some instances the comments will refer back to earlier sections of this Report where those issues have already been addressed.

(i) Proposed amendments to Schedule 6

There are a range of changes proposed to the exhibited Schedule 6, both changes that were discussed at the Hearing, and changes proposed in the post Hearing submissions. The Panel has included at Appendix C¹ its recommended version of DPO6 which incorporates the various changes proposed by Council and submitters that the Panel supports as well as a

¹ The recommended version of DPO6 at Appendix C is based on the Council version of DPO6 circulated to parties on 22 December 2015. It has been presented this way rather than based on the exhibited version because of the significant structural changes to DPO6 since the exhibition of the Amendments.

number of other changes proposed by the Panel to assist in ensuring consistency and clarity in the Schedule and to respond to conclusions of the Panel as outlined in this Report.

In this section of the Report the Panel does not propose to comment on every detailed change that has been (or is now) proposed to the Schedule. However, the key changes requested by Council and submitters, and the Panel's response to these, are discussed briefly below:

- The inclusion of all intersections in the Schedule is supported, as is the reference to such works being undertaken so that they are *'generally in accordance with the Infrastructure Design Manual as updated'* (refer section 4.8 for a more detailed discussion of this issue). The Panel notes that in regard to the Infrastructure Manual, the Panel has proposed to include that requirement 'up front' in clause 2 of the Schedule (prior to the two tables) to avoid it being included for every piece of infrastructure listed in Tables 1 and 2.
- The Panel supports the adoption of conformity of language changes as suggested by Mr Natoli and identified in the various tracked changes versions of the Schedule submitted to the Panel post Hearing.
- The deletion of specific triggers for infrastructure work and the adoption of wording that provides for work to be done *'to the extent reasonably required to service the land the subject of the permit to the satisfaction of the responsible authority'* as submitted by Mr Natoli is supported by the Panel.
- The Panel supports the deletion of the requirement for a 20 metre tree buffer where the SWDP land abuts the FZ and the LDRZ.
- The Panel supports the reduction of the buffer to 7 Dead Horse Land from 20 metres to 10 metres.
- The Panel understands Ms Cotter's concerns in relation to the level of detail required at the sub-precinct Development Plan stage in reference to matters such as infrastructure and drainage (in particular) which, in her view, would be more appropriately provided at the subdivision permit stage of the approvals process. The Panel agrees that there are some detailed design aspects of the requirements that would often be required at a later stage rather than the Development Plan approval stage. Keeping this in mind, the Panel recommends a series of wording amendments to Schedule 6 in relation to the Infrastructure, Drainage and Traffic Plan requirements so that each of the clauses associated with the Plans specify matters that 'should' be provided (rather than 'must'); each of the clauses include the sentence *'unless it can be demonstrated that such information would be more appropriately provided at the subdivision stage of development'*; and the deletion of the word *'detailed'* where it is used in association with a number of requirements. The Panel is of the view that this will provide Council with an appropriate level of discretion in relation to the extent of information it requires at the Development Plan approval stage.
- Amendments to the Development Plan requirement to have specific requirements for each sub-precinct is not supported. The Panel understands Ms Cotter's concerns in relation to this issue and the 'one size fits all' approach and can appreciate that that there are some Development Plan requirements that may be more relevant to some sub-precincts than others. The Panel considers that this issue can be addressed by the wording changes described above. This will mean that if the landowner does not believe

a certain piece of work or study is warranted a case for that exclusion can be mounted and considered by Council.

- The Panel agrees with Ms Cotter that it is inappropriate to require an Environmental Management Plan for the whole of the SWDP and that there should be the ability to include such a Plan on a precinct by precinct basis.
- The Panel supports the retention of the setbacks required by Goulburn Murray Water in relation to its infrastructure running through the site.

The Panel recommended version of DPO6 with the exception of the Master Plan is at Appendix C and reflects the Panel's comments noted above.

(ii) Proposed amendments to the Master Plan for the South West Development Precinct – version 8

Stepping through each of the specific changes requested by Council and the various submitters, the Panel's response is as follows:

- The notation in relation to open space should be removed from the Master Plan (refer section 4.9 for the more detailed discussion of this issue).
- The wording proposed by Council to be included on the Master Plan in relation to the Commercial 1 Zone land is supported subject to the addition of further words requiring a retail demand analysis (refer section 4.3 for a more detailed discussion of this issue).
- The Panel supports the retention of a minimum lot size for land along the southern boundaries of Amendments C58, C60, C62 and C63 but agrees that this should be reduced from 1000 square metres to 800 square metres as proposed by Council (refer section 4.6 for a more detailed discussion of this issue).
- The Panel supports the inclusion of intersection #12 and the land adjoining it as part of the Amendment C60. The Panel does not support the extent of land proposed for inclusion by Mr Natoli and recommends that the additional area of land should be extended to a single row of lots to the west of the north - south collector road and the south of the east – west collector road (refer section 4.4 for a more detailed discussion of this issue).
- The Master Plan should be retained in Schedule 6 and thus should not take the form of a Development Master Plan (refer Chapter 3 for a more detailed discussion of this issue). Mr Natoli submitted that the Master Plan should only encompass land covered by Stage 1. The Panel is of the view that the master Plan should cover the whole SWDP but that the land proposed for Stage 2 should be designated for future residential use rather than GRZ as indicated in the version 8. Given that it is recommended that the Master Plan be retained in DPO6, notes 3 and 4 are considered redundant.
- The six sub-precincts should be delineated on the Master Plan together with the sub-precinct numbers.
- The intersection numbers referred to in Schedule 6 should be included on the Master Plan.
- The buffer area of the Amendment C58 land fronting Gray Street should continue to be included in the Master Plan study area.
- The minimum lot size of 2000 square metres shown in the south western portion of the Amendment C64 land, where it abuts Werril Street, should be retained (refer section 4.6 for a more detailed discussion of this issue).

The Panel is conscious that given the changes made to both DPO6 and the Master Plan for the South West Development Precinct at and after the Hearing and as recommended in this report that it is possible that anomalies still exist between the two documents. The Panel does not believe that there are any remaining anomalies but to the extent that there are, the recommended DPO6 should prevail.

5.4 Conclusions

The Panel concludes:

- Schedule 6 to the DPO should be adopted including the changes identified in Chapters 3, 4 and 5 and as detailed at Appendix C.
- The *Master Plan for the South West Development Precinct* should be amended as per the changes identified in Chapters 4 and 5 of this report and should subsequently be included in the revised Schedule 6 to the DPO.

5.5 Recommendations

The Panel recommends:

Adopt Schedule 6 to the Development Plan Overlay as set out in Appendix C and include in it the amended Master Plan for the South West Development Precinct.

In addition to the changes to version 8 of the *Master Plan for the South West Development Precinct* already recommended in Chapter 4, the following further changes should be made:

- a) Include the intersection numbers and locations as set out in the *South West Development Precinct Contribution to Infrastructure*.**
- b) The six sub-precincts should be delineated and the sub-precinct numbers included.**
- c) Shade the land to the south of the Stage 1 land (which is currently shown as also being included in the General Residential Zone) as Farming Zone, with the note 'Possible future residential development'.**
- d) Include a note associated with all of the lots proposed to be retained in the Farming Zone along the west side of Gray Street as 'Possible future residential development subject to the requirements of clause 52.10 being met to ensure the on-going operation of the existing industrial land uses to the east of Gray Street.**
- e) Delete Note 3 in relation to the Master Plan implementation.**
- f) Delete Note 4 in relation to amendments to the Master Plan.**

Appendix A Submitters to the Amendments

No.	Submitter Amendment C58
1	VicRoads
2	Lower Murray Water
3	Housing Industry Association
4	Goulburn-Murray Water
5	EPA Victoria
6	Department of Environment, Land, Water and Planning
7	Department of Economic Development, Jobs, Transport and Resources
8	R J and J M Pearson, River Street Investments Pty Ltd, Piranox Pty Ltd, and John Monahan Family Trust
9	Swan Hill Pony Club

No.	Submitter Amendment C60
1	VicRoads
2	Department of Economic Development, Jobs, Transport and Resources
3	Department of Environment, Land, Water and Planning
4	EPA Victoria
5	Goulburn-Murray Water
6	Housing Industry Association
7	Lower Murray Water
8	North Central Catchment Management Authority
9	Mr Simon Slater and Dr Mary Slater Pye Street Veterinary Clinic
10	R J and J M Pearson, River Street Investments Pty Ltd, Piranox Pty Ltd, and John Monahan Family Trust
11	Greengrove Properties

No.	Submitter Amendment C61
1	VicRoads
2	Department of Economic Development, Jobs, Transport and Resources
3	Department of Environment, Land ,Water and Planning
4	EPA Victoria
5	Goulburn-Murray Water
6	Housing Industry Association
7	Lower Murray Water
8	North Central Catchment Management Authority
9	Mr Simon Slater and Dr Mary Slater Pye Street Veterinary Clinic

No.	Submitter Amendment C62
1	VicRoads
2	Department of Economic Development, Jobs, Transport and Resources
3	Department of Environment, Land, Water and Planning
4	EPA Victoria
5	Goulburn-Murray Water
6	Housing Industry Association
7	Lower Murray Water
8	North Central Catchment Management Authority
9	Mr Simon Slater and Dr Mary Slater, Pye Street Veterinary Clinic

No.	Submitters Amendment C63
1	VicRoads
2	Department of Economic Development, Jobs, Transport and Resources
3	Department of Environment, Land, Water and Planning
4	EPA Victoria
5	Goulburn-Murray Water
6	Housing Industry Association
7	Lower Murray Water
8	North Central Catchment Management Authority
9	Mr Simon Slater and Dr Mary Slater, Pye Street Veterinary Clinic
10	Greengrove Properties

No.	Submitters Amendment C64
1	Department of Economic Development, Jobs, Transport and Resources
2	Department of Environment, Land, Water and Planning
3	EPA Victoria
4	Goulburn-Murray Water
5	Housing Industry Association
6	Lower Murray Water
7	North Central Catchment Management Authority
8	Mr Simon Slater and Dr Mary Slater, Pye Street Veterinary Clinic
9	VicRoads
10	The Rosaia Family

Appendix B Document list

No.	Date	Description	Presented by
1	10/12/15	Revised tracked changes Schedule 6 to the DPO	Mr Pridgeon
2	10/12/15	SWDP Maps	Mr Pridgeon
3	10/12/15	Report from traffic conclave from Mr Don Robertson and Mr David Graham	Mr Pridgeon
4	10/12/15	Recent planning permits of relevance to the Amendments	Mr Pridgeon
5	10/12/15	Swan Hill Residential Development Strategy 2006 – 2030, June 2006	Mr Pridgeon
6	10/12/15	Swan Hill ODP South West Development Precinct, June 2008	Mr Pridgeon
7	10/12/15	Extract from the Loddon Mallee North Growth Plan - Maps 1, 7, 10 and 12	Mr Pridgeon
8	10/12/15	Review of the Swan Hill Residential Development Strategy 2006-2030, March 2013	Mr Pridgeon
9	10/12/15	Part B Council submission	Mr Pridgeon
10	10/12/15	Council file note regarding aerodrome management, 1 October 2015	Mr Pridgeon
11	10/12/15	Swan Hill Reserves Master Plan, October 2007	Mr Pridgeon
12	10/12/15	VicRoads submission	Mr Mensforth
13	10/12/15	Tower Hill Development Plan, July 2012	Mr Pridgeon
14	11/12/15	Submission on behalf of C58 and C60 landowners	Mr Chiappi
15	11/12/15	Tracked changes to Document 1 on behalf of C58 and C60 landowners	Mr Chiappi
16	11/12/15	Version of Document 15 but with changes accepted	Mr Chiappi
17	11/12/15	Table of industrial land uses and section 52.10 offset requirements and associated letter and aerial photograph.	Mr Chiappi
18	11/12/15	HIA submission	Mr Hermon
19	11/12/15	Submission on behalf of C64 landowners	Ms Cotter

Appendix C Panel recommended version of DPO Schedule 6

SCHEDULE 6 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO6**

SWAN HILL SOUTH WEST DEVELOPMENT PRECINCT (STAGE 1)

This schedule applies to land comprising the six sub-precincts within Stage 1 of the South West Development Precinct shown in the Master Plan for the South West Development Precinct (the Master Plan) at Clause 3.0 of this Schedule.

1.0 Requirement before a permit is granted

A planning permit may be granted for the following before a Development Plan(s) is approved, subject to the responsible authority being satisfied that the grant of a planning permit will not prejudice the implementation of Master Plan for the South West Development Precinct:

- A single dwelling on an existing allotment (provided the requirements of Clause 3.5 of this Schedule are satisfied in respect of the land the subject of the permit, and the threshold distances set out in Clause 52.10 – Uses with Adverse Amenity Potential in this scheme, and the Environment Protection Authority’s Publication 1518-Recommended Separation Distance for Industrial Residual Air Emissions are considered and met to the satisfaction of the Responsible Authority).
- Buildings or works and extensions and modifications associated with an existing use in accordance with the provisions of Clause 63 of this Scheme.
- Excision of an existing dwelling. The excision should be limited to the dwelling and any outbuildings and works associated with the dwelling to the satisfaction of the Responsible Authority.
- An outdoor advertising sign/structure.
- A minor utility installation and access to it.
- Boundary realignment.

2.0 Conditions and requirements for permits

- A permit for subdivision must include the following conditions and requirements.
- Infrastructure works - General

Prior to the issue of a Statement of Compliance the developer must provide the infrastructure in accordance with the relevant approved Infrastructure Plan prepared under this Schedule.

- The provision of infrastructure
Infrastructure must be provided or upgraded in accordance with Table 1 and Table 2 below, generally in accordance with the standards specified in the Infrastructure Design Manual Version 4.4.2, dated 15 October 2015 (and as updated from time to time), to the extent reasonably required to service the land the subject of the permit, all to the satisfaction of the responsible authority.

Table 1 Infrastructure to be provided

Description of infrastructure	Location	Details of Requirements	Comments & Timing
Sub-Precinct 1			
Intersection 10 shown on the Master Plan.	Sea Lake – Swan Hill Road intersection with new collector road.	To the satisfaction of the responsible authority.	
Intersection 13 shown on the Master Plan.	Intersection of the two new collector roads.	Single lane roundabout.	

Sub-Precinct 2			
Intersection 13 shown on the Master Plan.	Intersection of the two new collector roads (within Sub-Precinct 1)	Single lane roundabout. Only required if development of Sub-Precinct 2 precedes the development of Sub-Precinct 1.	
Intersection 12 shown on the Master Plan.	Intersection of the two new collector roads to the south of Sub-Precinct 2.	Single lane roundabout.	
Sub Precinct 3			
Gravity Outfall Drain	Gray Street at main access street to service the above identified land.	Outfall drain from the Main Drain to the main access street to service the above identified land.	
Intersection 6 shown on the Master Plan.	Intersection of Gray Street with a new internal road to service the majority of Sub-Precinct 3.	Construction of left and right turn lanes on both internal road and Gray Street.	
Sub-Precinct 4			
Intersection 4 shown on the Master Plan.	Intersection of Yana Street with new collector road.	Single lane roundabout.	Full intersection only required when the intersection becomes a cross road.
Sub-Precinct 5			
Intersection 4 shown on the Master Plan.	Intersection of Yana Street with new collector road.	Single lane roundabout.	Full intersection only required when the intersection becomes a cross road.
Sub-Precinct 6			
Intersection 3 shown on the Master Plan.	Intersection of Coronation Avenue with new collector road.	Single lane roundabout.	This intersection must be completed prior to the issue of a Statement of Compliance for that stage of the development which brings the total developed area in the sub-precinct to more than 50% of the total developable area of the sub-precinct unless otherwise

			agreed in writing by the responsible authority.
All Precincts as applicable			
Collector roads and associated infrastructure such as shared paths as shown on the Master Plan.	Proposed collector roads as shown on the Master Plan.	Collector roads with shared path on both sides of the street.	If interim development is only on one side of a collector road, only one shared path is required at that time.
Temporary Turning Circles.	Wherever a stage of construction finishes at any point other than at an intersection.	Turning circle must be provided for emergency, garbage collection vehicles and street sweepers.	A gravel turning circle must be provided within the property on land still to be developed. The landowner must enter into a S173 agreement with Swan Hill Rural City Council for the ongoing maintenance of the court bowl. Where this cannot be achieved a fully constructed court bowl must be provided within the developed land to the satisfaction of the Responsible Authority.
Drainage retardation basins, pumps stations, rising mains.	As per the Drainage Management Plan approved under this Schedule.		
Other infrastructure e.g. access streets (including pavement, kerb and channel, footpaths and underground drainage), street lighting, street trees, street furniture, landscaping	In accordance with the applicable planning permit.		

Table 2 Existing infrastructure to be upgraded

Description of existing infrastructure	Location	Details of upgrading	Comments & Timing
Sub-Precinct 1			
Feldtmann Lane	Full length of subject land fronting Feldtmann Lane (Existing length only)	Widen road reserve to 24m. Construction of west half of Feldtmann Lane to collector road standard	If the east side of Feldtmann Lane is not constructed at the time of this work, the minimum pavement width must be 6.2m with a 1m gravel shoulder on the east side. The upgrade is required prior to the issue of a statement of compliance for a subdivision that relies upon access directly on to Gray Street or relies upon access via Gray Street (whichever comes first) unless otherwise agreed in writing by the Responsible Authority.
Dead Horse Lane	Full length of subject land fronting this road.	2.5m wide shared path along the boundary of the subject land. Kerb and channel along the boundary of the subject land. Pavement (and seal) width 6.2m plus 1m gravel shoulder.	This requirement applies only if any development or dwellings have frontage to Dead Horse Lane.
Sub-Precinct 2			
Intersection 7 shown on the Master Plan.	Gray Street Feldtmann Lane intersection.	Upgrade to include the construction of a right turn lane in Gray Street and right and left turn lanes in Feldtmann Lane.	This upgrade is required prior to the issue of a Statement of Compliance for the first stage of the residential subdivision within the Sub-Precinct, unless otherwise agreed in writing by the Responsible Authority.
Feldtmann Lane	Full length of east side of Feldtmann Lane	Construction of east half of Feldtmann Lane to	If the west side of Feldtmann Lane is

	(Existing length only)	collector road standard	<p>not constructed at the time of this work the minimum pavement (and seal) width must be 6.2m with a 1m gravel shoulder on the west side.</p> <p>This upgrade is required prior to the issue of a Statement of Compliance for the first stage of the residential subdivision within the Sub-Precinct, unless otherwise agreed in writing by the Responsible Authority.</p>
Sub-Precinct 4			
Yana Street	Full length of the identified land in this Schedule fronting Yana Street.	Upgrade to collector road standard including 2.5m shared path on the west side of Yana Street only.	Collector road standard will only be achieved when development on both sides of Yana Street is completed. Design must allow for a future single lane roundabout to be constructed at the intersection of the Collector Street and Yana Street by others.
Sub-Precinct 5			
Yana Street	Full length of the identified land in this Schedule fronting Yana Street.	Upgrade to collector road standard, including 2.5m shared path on the west side of Yana Street only.	<p>Collector road standard will only be achieved when development on both sides of Yana Street is completed. The design must allow for a future single lane roundabout to be constructed at the intersection of the Collector Street and Yana Street by others.</p> <p>This upgrade is required prior to the issue of a Statement</p>

			of Compliance for the first stage of the residential subdivision within the Sub-Precinct, unless otherwise agreed in writing by the Responsible Authority.
Sub-Precinct 6			
Coronation Avenue	Full length of the identified land in this Schedule fronting Coronation Avenue.	Upgrade to collector road standard including 2.5m shared path on the west side of Yana Street only.	Collector road standard will only be achieved when development on both sides of Coronation Avenue is completed. Design must allow for a future single lane roundabout to be constructed at the intersection of the Collector Street and Coronation Avenue by others.
Werril Street	Full length of the identified land in this Schedule fronting Werril Street.	Upgrade to collector street standard including 2.5m shared path on the north side of Werril Street only.	Collector road standard will only be achieved when development on both sides of Werril Street is completed.

- Conditions to be included on all lots that abut No 7 Dead Horse Lane Swan Hill (Sub-Precinct 1)
 - The owner of the land will enter an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987* requiring:
 - An acknowledgement of the non-residential uses and activities at No. 7 Dead Horse Lane.
 - Prior to the issue of a Statement of Compliance a 10 metres wide tree buffer along the full length of the abutting boundary to No. 7 Dead Horse Lane must be provided by the developer to the satisfaction of the Responsible Authority.
 - The landowners must maintain the tree buffer at all times to the satisfaction of Responsible Authority (maintenance of tree buffer allow trimming and pruning for safety reasons).
 - No habitable or other buildings to be constructed within the 10 metre tree buffer area.
- Conditions to be included on residential lots that abut land within the Farming Zone
 - The owner of the land will enter an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act 1987* requiring:
 - An acknowledgement of the non-residential uses and activities conducted on the adjoining Farming Zone land.

The agreement ends upon the cessation of non-residential uses and activities on the adjoining Farming Zone land.

3.0 Requirements for a Development Plan

A Development Plan must be prepared for each sub-precinct to the satisfaction of the responsible authority. A Development Plan must:

- Provide for the use and development of land to be generally in accordance with the Master Plan included at this Clause.
- Provide for orderly development that will create a liveable place for the current and future communities of Swan Hill and incorporates Sustainable Design and Healthy by Design principles.
- Encourage higher density development along the collector roads.
- Provide for appropriate traffic, drainage, transport, recreational, community and necessary social infrastructure to service the community.
- Seek to ensure that future land use and development does not impact detrimentally on the flow and quality of surface water and ground water.
- Ensure the threshold distances set out in Clause 52.10 – Uses with Adverse Amenity Potential in this scheme, and Environment Protection Authority’s Publication 1518 - Recommended Separation Distances for Industrial Residual Air Emissions are considered in designing the future residential development.
- Ensure that a 30 metres setback provided for buildings or works from any Goulburn-Murray Water surface infrastructure (including open irrigation channels and drains), a 10 metre setback from any other structure (such as culverts, drainage inlets, subways, syphons), and a 5 metres setback from any below surface infrastructure (including pipelines), located on any GMW freehold, easements or reserves, all to the satisfaction of the responsible authority.
- Address the requirements of clauses 3.1 to 3.6.

INSERT MASTER PLAN HERE

3.1 Site analysis and subdivision layout

The Development Plan must be drawn to scale and should include the following to the satisfaction of the responsible authority:

- A site analysis plan showing existing conditions on the subject land and adjoining and opposite properties, contours at 0.1 metres and existing infrastructure, vegetation, buildings and any other structures.
- A subdivision layout that:
 - Creates a safe, convenient and legible street layout design that ensures development fronts streets and public open space.
 - Is sympathetic and appropriately responds to developments that are already established within the adjoining land parcels. Internal streets must provide linear connections within and adjoining properties, precincts and existing streets and cul de sacs should be avoided where appropriate.
 - Avoids court bowls within developments in situations where there is opportunity to continue streets to provide linear connection and encourage walking.
 - Provides for a mix of lot sizes that can offer diverse residential development choices and affordable housing options, including small lots on corner properties where appropriate.
 - Provides for lot orientation that is consistent with the requirements of Sustainable Design Guidelines including solar efficiency where and as appropriate.
 - Is consistent with the requirements of Safer Design Guidelines to create passive surveillance to public areas including streets and open spaces.
 - Provides for a minimum lot size of 2000m² abutting Dead Horse Lane as specified in the Master Plan.
 - Provides for a minimum lot size of 800m² abutting Farming Zone land where shown on the approved Master Plan.
 - Provides for a 10 metre wide tree buffer along the full length of the boundary of No. 7 Dead Horse Lane must be shown.

- Incorporates where appropriate *Healthy by Design* principles to encourage walking, cycling and active living by design.
- Identifies vegetation that is to be retained and/or to be removed.
- Identifies existing and proposed infrastructure.
- Identifies existing buildings, works and structures that are to be removed or to be relocated.

3.2 Infrastructure Plan

An Infrastructure Plan for the land identified under this Schedule must be prepared to the satisfaction of the responsible authority.

The Infrastructure Plan must be prepared and should address the following, unless it can be demonstrated that such information would be more appropriately provided at the subdivision permit application stage of the planning approval process, to the satisfaction of the responsible authority:

- The provision, staging and timing of stormwater drainage works both internal and external to the precinct.
- The provision, staging and timing of road works (including allocation of land for the proposed bus stops, associated works, and shared paths).
- The provision and staging of the implementation of all recommendations identified in an approved Traffic Impact Assessment prepared for the development.
- Any other infrastructure or related matters reasonably requested by the Responsible Authority associated with the development of the land.

3.3 Drainage

A Drainage Management Plan for the land identified under this Schedule addressing the management of the quantity of stormwater must be prepared to the satisfaction of the Responsible Authority. The Plan should take into account the Swan Hill South West Development Precinct Drainage Strategy version 2, 23 July 2015 (or as amended thereafter) and must then be approved by the Responsible Authority.

A Drainage Management Plan must be prepared and should address the following, unless it can be demonstrated that such information would be more appropriately provided at the subdivision permit application stage of the planning approval process, to the satisfaction of the responsible authority:

- Provision for stormwater arriving from upstream, passing through, and moving downstream from the site.
- An assessment of the existing surface and subsurface drainage conditions on the site by a suitably qualified professional and the potential impacts on the proposed development, including any measures required to mitigate the impacts of groundwater coming to the ground surface on the development and the impact of the development on drainage.
- Geotechnical and hydrological analysis and design of any retardation basins and their proximity to any groundwater table and in particular how groundwater infiltration will be addressed and how accessions to the water table will be addressed to the satisfaction of the Responsible Authority.
- Computations and stormwater modelling to demonstrate that there will be no adverse impacts to the operation of the Swan Hill Main Drain in a 100 year ARI rainfall event by any discharge from the drainage system serving the precinct to the Swan Hill Main Drain.
- The natural direction of overland flow paths for stormwater to ensure that overland flows will be primarily along road reserves and will avoid overland flow drainage reserves wherever possible.
- The provision, staging and timing of drainage infrastructure serving land identified in this Schedule.
- A conceptual landscape plan for any retardation basin constructed showing the proposed landscape treatments, tree planting, footpaths around the basins and access to and around the basins for maintenance in accordance with the standards specified in the Infrastructure Design Manual (as updated).

- Siting of any retardation basin to ensure a minimum of 40% of the perimeter of the retardation basin has frontage to a road/s to allow overland flows to enter the basin unless otherwise agreed in writing by responsible authority.
- The approved drainage connection points to Swan Hill Rural City Council's existing drainage infrastructure.
- Consideration of fence design provisions in relation to the interface with retardation basin areas to maximise passive surveillance.
- Approval from all relevant service authorities whose assets or land may be affected by surface or pipe flow discharge. In particular, it should be noted that a separate permit (Works on Waterway) from the relevant Authority may be required if:
 - There is a direct connection to a waterway.
 - There is a bridge or culvert over a waterway; and
 - Construction of a retardation basin.
- Any other requirements as reasonably requested by the Responsible Authority associated with the development of the land.

3.4 Traffic

A Traffic Impact Assessment Report that is generally consistent with the report titled "Swan Hill South West Development Precinct Traffic Impact Assessment" dated May 2015, (or as revised thereafter), and the Swan Hill South West Development Precinct Traffic Strategy dated February 2015 (or as revised thereafter) must be prepared for the land identified in this Schedule, to the satisfaction of the Responsible Authority.

The Traffic Impact Assessment Report should address the following, unless it can be demonstrated that such information would be more appropriately provided at the subdivision permit application stage of the planning approval process, to the satisfaction of the responsible authority:

- Appropriate access and circulation of vehicles on the existing and future road network.
- Appropriate integration with the existing or proposed subdivision of adjoining properties including through alignment and configuration of the street network and landscape character.
- The identification of existing and proposed public transport routes, bus stops (as shown on the approved Master Plan for the South West Development Precinct) and associated infrastructure.
- The identification of existing and proposed pedestrian and cycling networks and shared paths including provision for safe and convenient linear access to public transport infrastructure.
- The works necessary to accommodate traffic generated by the development and to mitigate the impact of that traffic on the development.
- The road and intersection design to ensure that it creates efficient clearance of traffic, activity areas including around public facilities. The proposed road network should not overload or detrimentally affect existing or proposed residential streets and intersections.
- Road layouts that provide for natural traffic speed control, appropriate to the street category. The introduction of specific speed control devices should be considered only as a secondary option.
- Road layouts should be designed for all road users appropriate to the street type, including service vehicles, emergency vehicles, waste collection vehicles and street-sweepers. Bus routes need to be considered when developing road networks and be based on the Department of Environment Land Water and Planning publication titled '*Public Transport Guidelines for Land Use Development*' (or a replacement document by the Department).
- Road reserve widths must be adequate for the intended road type, and should comply with requirements of the Infrastructure Design Manual (as updated).
- Typical cross-sections of differing road types, detailing the intended function of the road, e.g. bike lanes, drainage and landscaping.

3.5 Environmental Assessment

- A site assessment must be undertaken in accordance with the –General Practice Note Potentially Contaminated Land (Department of Sustainability and Environment, June 2005) demonstrating the extent of any contamination and contaminated soil that may exist on the subject land.
- If contamination is detected, a certificate of Environmental Audit or Statement of Environmental Audit must be provided in accordance with the requirements of the Environment Protection Authority Victoria to the satisfaction of the responsible authority.

3.6 Environmental Management Plan

An Environmental Management Plan must be prepared to the satisfaction of the Responsible Authority. The Plan then must be approved by the Responsible Authority.

The Environmental Management Plan should address the following, to the satisfaction of the responsible authority:

- The location of any significant environmental, cultural heritage and/or ecological (faunal and/or floral) features including fauna and remnant native vegetation.
- A flora and fauna survey, which among other things, identifies the health and habitat value of all native vegetation.
- Developments on land that are will be reclaimed as a result of decommissioning of the Goulburn-Murray Water Channel infrastructure. Such development will require further investigation undertaken by suitably qualified persons to demonstrate the suitability of the land to use and develop for residential and other purposes to the satisfaction of the responsible authority.
- Demonstration of how any significant features can be protected within the area.