

**Draft Kingston Planning Scheme Amendment C199king, and  
associated development plan and permit  
Proposed Kingswood Golf Course Redevelopment,  
Dingley Village**

**Advisory Committee Report: Volume 1**

*Planning and Environment Act 1987*

**18 March 2022**

*Planning and Environment Act 1987*

Advisory Committee Report: Volume 1 pursuant to section 151 of the PE Act

Draft Kingston Planning Scheme Amendment C199king, and associated development plan and permit

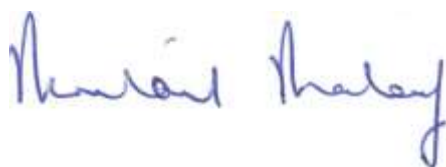
**18 March 2022**



Lester Townsend, Chair



Geoff Underwood, Deputy Chair



Michael Malouf, Member



Shelley McGuinness, Member

## About the Advisory Committee and this Report

### About the Advisory Committee

The Golf Course Redevelopment Standing Advisory Committee (Advisory Committee) was appointed by the Minister for Planning in August 2019 to review and provide advice on Planning *Guidelines* for Golf Course Redevelopment and to advise on proposals for redevelopment of golf course land.

The work and scope of the Advisory Committee is guided by its Terms of Reference presented in Appendix C.

### About this referral

On 9 May 2021 the Minister for Planning (the Minister) referred the proposed redevelopment of the Kingswood Golf Course to the Advisory Committee for consideration and advice.

Information on the referral and details of the Proposal (a draft combined planning scheme amendment and planning permit application, their supporting documents and a draft Development Plan) were listed in an Information Sheet from the Department of Environment, Land, Water and Planning (DELWP) dated June 2021.

The Proposal was initially placed on public exhibition for 30 business days between Monday 28 June and 11.59pm Friday 6 August 2021. This period was twice extended by the Minister for Planning to conclude on 3 September 2021.

Submissions were collected using Engage Victoria; 1650 submissions were lodged.

### About this Report

The Advisory Committee Report is presented in two volumes:

- Volume No. 1 provides the key considerations, findings and recommendations of the Advisory Committee. It includes:
  - Appendix A: Parties to the Hearing
  - Appendix B: Advisory Committee preferred version of Development Plan Overlay Schedule 8
- Volume No. 2 provides Appendices, including:
  - Appendix C: Terms of Reference
  - Appendix D: Letter of referral
  - Appendix E: Planning Guidelines for the Conversion of Golf Course Land to Other Purposes
  - Appendix F: Procedural issues
  - Appendix G: List of submitters
  - Appendix H: Document list.

This is Volume No 1.

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**Appendix B: Advisory Committee Preferred Development Plan Overlay Schedule**

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**Appendix C: Terms of Reference**

**Appendix D: Letter of referral**

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## Glossary and abbreviations

Advisory Committee	Golf Course Redevelopment Standing Advisory Committee
ASR	Aquifer storage and recovery project
BAO	Buffer Area Overlay
CBD	Central Business District
Council	Kingston City Council
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
DPO8	Schedule 8 to Clause 43.04 Development Plan Overlay
EES	Environmental Effects Statement
EPA	Environment Protection Authority
EVC	Ecological Vegetation Classes
GRZ	General Residential Zone
<i>Guidelines</i>	<i>Planning Guidelines for the Conversion of Golf Course Land to Other Purposes</i>
Head TfV	Head, Transport for Victoria
IPO	Incorporated Plan Overlay
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NAC	Neighbourhood Activity Centre
NDA	Net Developable Area
NRZ	Neighbourhood Residential Zone
PBN	Principal Bicycle Network
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
RGZ	Residential Growth Zone
Sqm	Square metres
TIA	Traffic Impact Assessment
UGB	Urban Growth Boundary
VCAT	Victorian Civil and Administrative Tribunal
VPO	Vegetation Protection Overlay
VPP	Victoria Planning Provisions
WSUD	Water Sensitive Urban Design



## Overview

### Amendment summary

The Amendment	Draft Kingston Planning Scheme Amendment C199king, and associated development plan and permit
Common name	Proposed Kingswood Golf Course Redevelopment, Dingley Village
Brief description	A proposal to facilitate the conversion of the former Kingswood Golf Course to residential development including, planning scheme changes, a Development Plan and planning permit
Subject land	The former Kingswood Golf Course at 179-217 Centre Dandenong Road, Dingley Village
The Proponent	AS Residential Property No. 1 Pty Ltd
Planning Authority	Minister for Planning
Exhibition	Monday 28 June to 3 September 2021
Submissions	Number of Submissions: 1650

### Advisory Committee process

The Advisory Committee	Lester Townshend, Chair Geoff Underwood, Deputy Chair Michael Malouf, Member Shelley McGuinness, Member
Directions Hearings	31 August 2021 by video conference 15 October 2021 by video conference
Advisory Committee Hearing	15, 16, 17, 18, 22, 23, 24, 25 26, 29, 30 November, 1, 20, 21, 22, 23 December 2021, by video conference
Site inspections	Unaccompanied 19 November 2022 Accompanied 14 December 2021
Citation	Proposed Kingswood Golf Course Redevelopment [2022] PPV
Date of this report	18 March 2022

## Executive summary

This report deals with the proposed conversion of the Kingswood Golf Course land in Dingley Village to residential purposes (the Proposal).

The Golf Course Redevelopment Standing Advisory Committee's (Advisory Committee's) Terms of Reference set out two purposes the second of which is to advise whether proposals for the rezoning of golf course land within the Urban Growth Boundary (UGB) of metropolitan Melbourne to facilitate redevelopment for urban purposes:

- satisfy the 'Planning Guidelines for the Conversion of Golf Course Land to Other Purposes' (the *Guidelines*)
- "*are consistent with state and local policy*".

As well as being activated by the Terms of Reference, Ministerial Direction 21 states:

In preparing an amendment to a planning scheme to enable the redevelopment of a golf course (including, but not limited to, changing planning controls applying to the land or the zoning of the land) the planning authority must:

- have regard to the *Guidelines*; and
- include in the Explanatory Report for the amendment an explanation of how the amendment addresses the *Guidelines*.

The conversion of golf course land to residential development is not new or novel in Melbourne and the history of previous conversions shows such proposals are capable of meeting planning policy.

The Proposal has garnered a large number of objections. The number of objections to a proposal is not a measure of its planning merits, but it is a measure of how upset a community is about a proposal. This could be because of misconceptions by the community of what is proposed, the planning merits of the proposal, or the way the Proponent has engaged with the community.

The Advisory Committee is tasked with assessing the planning merits of the Proposal. This assessment is guided by planning policy and the *Guidelines* which set out seven assessment steps.

The central consideration under planning policy is that a proposal balances conflicting objectives in favour of net community benefit (NCB) and sustainable development for the benefit of present and future generations. The *Guidelines* make it clear that NCB should be delivered to the community surrounding golf course land proposed for conversion.

The Advisory Committee notes that many resident submitters oppose the development because of what they say are the already overcrowded shops, the difficulty of finding a car park at Woolworths, the delay in getting a doctor's appointment, overcrowding in the Dingley Primary school and the lack of secondary schools, the at capacity kindergarten, the lack of public transport to service the area, traffic delays, or sports teams have nowhere to play. The Advisory Committee also notes that these same objectors "*love*" living in Dingley Village. Residents were concerned that the Proposal would exacerbate existing issues without reinforcing the positive aspects.

Exhibition of the Amendment and the hearing process took place during lockdowns in response to the COVID-19 pandemic. This restricted public meetings by the community, and required some delays in the Hearing process; it was only after lockdowns had eased that experts, and the Advisory Committee, could visit the site. The Advisory Committee thanks all participants for their participation in the process, especially in light of the difficulties presented by the lockdowns.

The Advisory Committee presents its assessment under the seven steps of the *Guidelines*.

### **Step 1: Consider whether the land should be redeveloped**

The sale and planning process has not addressed the fundamental question of Step 1 of the *Guidelines*: 'Consider whether the land should be redeveloped'.

There are three elements to this consideration:

- land tenure
- potential public uses
- policy settings.

The land tenure clearly allows for conversion, but there has been no real testing of the potential for public uses. Claiming the sale of the whole of the land on the open market does not, in the view of the Advisory Committee, fulfill this step. The *Guidelines* are explicit on what step 1 of this process should be. The Advisory Committee accepts that the land was purchased before the *Guidelines* were drafted and approved, but they are operational now.

The most common theme in submissions was the need for some of the land for a public use. To address this failing of process the Minister should undertake this element of step 1 before making a decision on the draft amendment, if only to put to bed ideas about potential public uses.

In terms of policy the key issue is whether policy supports retention of the land as a golf course or similar low intensity use, or whether it supports urban development, which in this case would be predominantly residential development.

Broadly speaking policy supports the efficient use of land within the UGB and so an urban use, subject to addressing site constraints, would be the 'default' position unless there were policy reasons to take a different view.

There are three potential policy drivers that might support maintaining the current golf course use:

- retention of the site for golf
- the character of Kingston
- the character of Dingley Village.

There is no strong policy support for the reestablishment of a private golf club on the land. If the land had not previously been used as a golf club there would be no reason to propose that this land should be developed for a golf course to support golf as an activity.

In terms of the broader character of Kingston, the transformation, and eventual, revegetation of the green wedge areas will set the character of the area; in the context of these transformations the role of this site will be relatively minor.

In terms of the impact of new development on the land on the character of Dingley Village, as opposed to its functionality, the Advisory Committee accepts that the development will create its own character.

In terms of the issues identified in the *Guidelines* Step 1 the Advisory Committee concludes:

- The land tenure clearly allows for conversion.
- The golf course is surplus to golfing.
- There are no economic alternatives to conversion to other land uses, but this does not of itself support residential development of the land in the manner proposed – conversion to an alternative low intensity use should not be ruled out.

- There is no strong policy reason for the land to remain as open space.

The Advisory Committee also concluded that the Proposal does not adequately address the following issues in the *Guidelines* Step 1:

- The land was not offered for acquisition by the Commonwealth and Victorian governments or local governments in any meaningful way, and so the potential for the land to serve a needed public purpose is untested. If the land is not needed for additional school facilities or is not appropriate to offset the rail stabling yards as part of the Suburban Rail Loop, as suggested by submitters, the government should publish reasons in the interests of transparency.

## **Step 2: Identify the strategic direction for the site**

The *Guidelines* say:

Establishing the strategic direction for the site is a key step to developing a concept for the site. Any concept for the site should begin with the question: what does policy say is the best use for this site?

In terms of the issues in the *Guidelines* Step 2 the Advisory Committee concludes:

- The site is relatively well located in the metropolitan context.
- There is no policy or strategy explicitly calling for an open space link across the site, and no obvious need for a link within the Chain of Parks project.
- The site has not been identified for active open space.
- Residential development of the site is an appropriate strategic direction if the site is to be developed, but the land is potentially suitable for uses other than housing, including a range of private institutional uses such as schools.

On the basis that inquiries with other agencies does not lead to a public use or an agreement for a non-public use of the land (or part of it), the land is suitable for residential development subject to adequately addressing site constraints.

## **Step 3: Determine what other assessment and approvals are required**

In relation to *Guidelines* Step 3 the Advisory Committee concludes:

- The documentation adequately identifies the permissions needed but does not always appreciate the potential impact these approvals may have on the proposal.

## **Step 4: Document site values, constraints and opportunities**

There has been extensive documentation of potential site constraints, many of which can be adequately addressed. The Advisory Committee concludes:

- Development of the site is an opportunity to address local flooding issues.
- The impact of aircraft noise and the need to address noise issues in development controls has been appropriately identified.
- The arboricultural value of trees has been adequately identified.
- Use of a combined retention value score for trees is problematic for translating into the design response.
- There are opportunities for protection and enhancement of the site's environmental values that may benefit National, State and locally significant species.
- Low scale residential development with appropriate transitions to adjoining properties is an opportunity for those parts not required for public purposes.

- The site presents good opportunities for improving the connectivity of the neighbourhood by extending existing open space and connecting to existing roads.
- The site presents good opportunities for delivering a new open space as envisaged by the Kingston Open Space Strategy.

However, the Advisory Committee believes that further work is required to:

- Explore opportunities for Water Sensitive Urban Design and continued use of the infrastructure to store and recover water from the aquifer (Aquifer Storage and Recovery).
- Develop a complete picture of water management for the site including flood mitigation, storm water quality, water reuse, and the precise nature of what is required for the functional layout of the stormwater system.
- Determine the ownership of drainage assets.
- Assess the contamination potential of the maintenance depot and chemical store before finalising the Development Plan.
- Properly assess the potential for wildlife strike on aircraft from water retention or treatment areas.
- Better describe environmental values including a review of the biodiversity strategic context and assessment of locally significant environmental values.
- Prioritise the environmental values and prepare a map of the priority values to enable a transparent transition from site analysis to design.
- Document the value of vegetation to adjoining lots and revise the assessment of tree retention value to place greater importance on the screening and amenity afforded by the vegetation.
- Better document the need to provide separation to existing dwellings.
- Update data on traffic volumes on the surrounding network before the road network and road network improvements are finalised.

While Melbourne Water has specified the performance outcome for the drainage infrastructure, the precise nature of what is required for its functional layout has not been resolved. Moreover, there is no complete picture of water management for the site including flood mitigation, storm water quality and water reuse. These issues need to be resolved with a greater degree of specificity than exists at present before master planning the site.

Contamination issues have been extensively addressed but there is a need to address potential contamination from the former maintenance depot and chemical store.

Birdstrike to aircraft is a potential constraint on the design of waterbodies and the Advisory Committee does not believe this has been properly explored.

There is also a need to better describe environmental values including a review of the biodiversity strategic context and an assessment of locally significant environmental values. This work should prioritise the environmental values and provide a map of the priority values to assist in providing a transparent transition from site analysis to design.

Most of the adjoining properties have a cyclone wire fence interface to the site and borrow landscape values from the golf course land. Many of these houses are set quite close to their rear boundary. Conventional development along with the rear of these properties would result in unacceptable amenity impacts on these surrounding houses. These impacts could be ameliorated to an acceptable level by siting new development back from the common boundary and taking

steps to preserve the existing screening vegetation. The Advisory Committee accepts this vegetation may not have ecological or arboricultural values but it certainly does have amenity values.

Traffic analysis was based on traffic volumes predicted to be the case with the opening of the Mordialloc Freeway. The Advisory Committee has not been able to reconcile the traffic evidence with lived experience of the surrounding residents. It would be prudent to revisit the traffic volumes on the surrounding network before the road network and road network improvements are finalised.

### **Step 5: Engage the community**

The *Guidelines* say:

Develop a comprehensive community consultation program and commence consultation before preparing detailed designs. The purpose of this consultation is to:

- assist the community to understand the need for the golf course land conversion
- allow the community to provide input to identification of site values and constraints
- allow the community to contribute to identification of opportunities and ideas for the golf course land conversion
- foster open channels of communication between the Proponents and the community.

The Advisory Committee is not convinced that the consultation process to date has been adequate.

The Advisory Committee concludes:

- A comprehensive engagement is warranted given the scale and impact of the development and community sentiment.
- The consultation process has not been adequate to build social license and achieve a high level of engagement with the community.
- Its support for the use of the land for residential development is likely to couch the consultation in a different frame than when parties were polarised.
- The Development Plan Overlay is the appropriate tool despite its lack of third party involvement in the approval of the Development Plan or the grant of permits.

The Advisory Committee also concludes that further work is need to:

- Explore the potential for uses other than housing, including a range of private institutional uses such as schools.

### **Step 6: Provide a land use concept that delivers net community benefit**

To deliver NCB the redevelopment needs to deliver something ‘the community can use’. It needs to reinforce the valued characteristics of Dingley Village and address its current shortcomings.

The Advisory Committee concludes that there are elements of the Proposal that require more work and refinement to:

- Include an integrated response to drainage and water issues. This will need to identify easements or rights of way for the major underground drainage pipes.
- Ensure all proposed drainage infrastructure works are undertaken in Stage 1.
- Retain more vegetation to protect environmental values well as contribute to amenity.
- Better document the impact of new plantings on the tree canopy in the long term.
- Ensure all the areas identified a contribution to the 20 per cent open space are usable.
- Contribute to active open space.

- Better offset the social cost of the development on the Dingley Village community. The Proponent and Council will need to negotiate how to do this.
- Better protect existing properties from the intrusion of new buildings by the use of increased setbacks and open space areas.
- Maintain the opportunity for a pedestrian link to the southeast that will require access and works adjacent to the subject land.
- Prioritise the consideration of cycling lanes to meet the objectives outlined in the Development Plan, the *Guidelines*, and any other Planning requirements in proposed major engineering infrastructure works including, proposed intersection treatments and the design of the waterbodies.
- Give further consideration to the provision of bicycle lanes on or off road in Centre Dandenong Road, Spring Road and McClure Road, in consultation with the Department of Transport (DoT) and Council.
- Determine the need to upgrade all the internal tracks to 3 metre shared pathways, in consultation with Council.
- Ensure it meets all of DoT's requirements.
- Update the Traffic Impact Assessment, when the development yield is known with more certainty, and at least 6 months has elapsed since the opening of the Mordialloc Freeway.
- Provide for contributions to community infrastructure.

A critical issue in assessing NCB is the notion, put by the Proponent, that the over-provision of open space or flood prevention infrastructure means that contributions to community infrastructure do not have to be made.

The need to address flooding issues is viewed by the Advisory Committee as a necessary prerequisite to developing the site; this will impose costs on the development above those expected if the site simply had to maintain the current levels of runoff. But this is not a relevant consideration. It is not realistic to think that drainage works on this site would not address downstream flooding.

The alternative to the Proponent paying for this work now is to wait until Melbourne Water allocates funds for the cost of works above what the Proponent thinks it ought to pay.

The *Guidelines* say:

To ensure net community benefit, the redevelopment of golf course land should achieve the following:

- at least 20 per cent of the land area to be developed is set aside as publicly accessible useable open space that contributes to an integrated open space network. This land may be encumbered by easements, reservations, heritage, vegetation or other conditions and make provision for land to be used for passive or active recreation
- enhance and protect state, regional and locally significant environmental assets and biodiversity corridors
- landscaping that delivers an appropriate amount of tree canopy cover (excluding active sporting areas) to mitigate urban heat effects and is at least equivalent to, or greater than the surrounding area
- active transport links are provided into the surrounding area and must be provided on the golf course land proposed for redevelopment.

The Advisory Committee concludes that the potential benefits of the Proposal include:

- improved management of flooding issues
- improved downstream water quality

- connecting to and extending existing parks
- the proposed internal open space network
- more diverse local housing
- affordable housing
- landscaped views into the site from surrounding roads and parks
- improved walking and cycling connectivity in the area
- increased population supporting more local services provide supply expands to meet demand.

The Advisory Committee concludes that the disbenefits of the current Proposal include:

- a loss of tree canopy
- increased demand for active recreation that may not be ameliorated by a contribution to facilities
- unacceptable amenity impacts on adjoining properties
- a decrease in the amenity for residents of Wolbers Road, Seaton Drive and Toorak Road
- increased impact on community services for which no contribution is made
- aircraft noise inside buildings, although that can be ameliorated
- aircraft noise outside of buildings.

The Advisory Committee concludes that development of the site broadly along the lines proposed is capable of delivering a NCB but:

- The proposal as presented does not deliver NCB.
- Further refinement of the Proposal is required.
- Until these elements are refined the Proposal should not be given approval.
- Some of these issues should be resolved before rezoning the land, others can be dealt with under the Development Plan Overlay.

### **Step 7: Deliver a quality outcome**

The key specifications for the Proposal are set out in the Schedule to the Development Plan Overlay (DPO). Five versions of the DPO were presented at the Hearing, three with multiple comments and track changes:

- the exhibited DPO which was ‘minimalist’
- the Proponent’s more fulsome Day 1 version (Document 26)
- Council’s suggested changes to this Day 1 version (Document 54)
- Council’s update to Document 54 (Document 171)
- the Proponent’s response (Document 182).

The Advisory Committee notes that in its final response the Proponent agreed with about half of Council’s suggested changes:

- agreeing with 28 changes
- agreeing in part or in principle with a further 15 changes
- disagreeing with 47 changes.

The critical issue for the Advisory Committee is whether the DPO provides sufficient guidance for a revised Development Plan. The Development Plan itself will necessarily be broad and some detailed plans will need to be delivered at the permit stage.



Because of the further work required it is not appropriate to approve the Development Plan or to issue a permit. Until a Development Plan is approved it is not possible to determine what permit conditions should apply to any approval.

## **Recommendations**

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




- 1. Before a decision is made to rezone the land:**
  - a) the Minister ask public entities whether they have a need or opportunity to use the land or part of the land for a public purpose (especially school facilities or open space to offset the loss of identified parkland for the Suburban Rail Loop train stabling facility)**
  - b) if a government agency expresses a requirement for a part of the land this requirement be appropriately addressed in the zoning plan and overlays as well as the specific text of any Development Plan Overlay.**
- 2. Before the land is rezoned the Minister for Planning and the Proponent agree:**
  - a) a program of further work and investigation addressing the further work identified by the Advisory Committee for Steps 4, 5 and 6 of the *Guidelines***
  - b) a future consultation process in respect of a revised Development Plan.**
- 3. Before the land is rezoned the Minister for Planning and the Proponent agree the text of a draft section 173 Agreement that specifies:**
  - a) the outcomes required from the drainage and integrated water management works**
  - b) the contribution to be made towards active recreation facilities**
  - c) the contribution to be made to community facilities**
  - d) the percentage and delivery mechanisms for affordable housing.**
- 4. Subject to the preceding recommendations the Minister for Planning prepare and approve a Planning Scheme amendment to:**
  - 4.1 Revise the Municipal Strategic Statement to:**
    - a) amend the plans at Clauses 21.01 (Vision and Strategic Framework) and 21.07 (Housing) to include the golf course land in an 'Incremental change area'**
    - b) amend Clause 21.02 (Settlement) to remove the golf course designation from the land**
    - c) amend Clause 22.01 (Sandbelt Open Space Project) to remove the subject land.**
  - 4.2 Rezone land not required for a public purpose pursuant to Recommendation 1 to General Residential Zone, with a schedule based on Schedule 2 but which specifies maximum height across the site of 3 storeys to avoid the need to know natural ground level when assessing a development. The Development Plan Overlay should restrict the maximum height to 2 storeys in specific locations.**
  - 4.3 Apply the Development Plan Overlay to the land with a Schedule in the form shown in Appendix B.**
  - 4.4 Apply Vegetation Protection Overlay Schedule 3 to the land, amended to require a permit for the removal of any vegetation withing 10 metres of a site boundary.**

- 4.5 Apply Buffer Area Overlay Schedule 1 to the area exhibited, amended to deal with the risks to subsurface structures.**
- 4.6 Apply Buffer Area Overlay Schedule 2 as exhibited.**
- 4.7 Apply the Environment Audit Overlay, extended to include the site of the diesel fuel above ground storage tanks, chemical storage shed, storage drums, and chemical wash down bay.**
- 5. The Minister for Planning does not:**
  - a) proceed with the proposal to make the Minister for Planning the Responsible Authority for the Development Plan Overlay**
  - b) approve the Development Plan in its current form**
  - c) issue a permit until a revised Development Plan is approved.**

# Part A: Introduction

## 1 What is proposed

### 1.1 The subject land

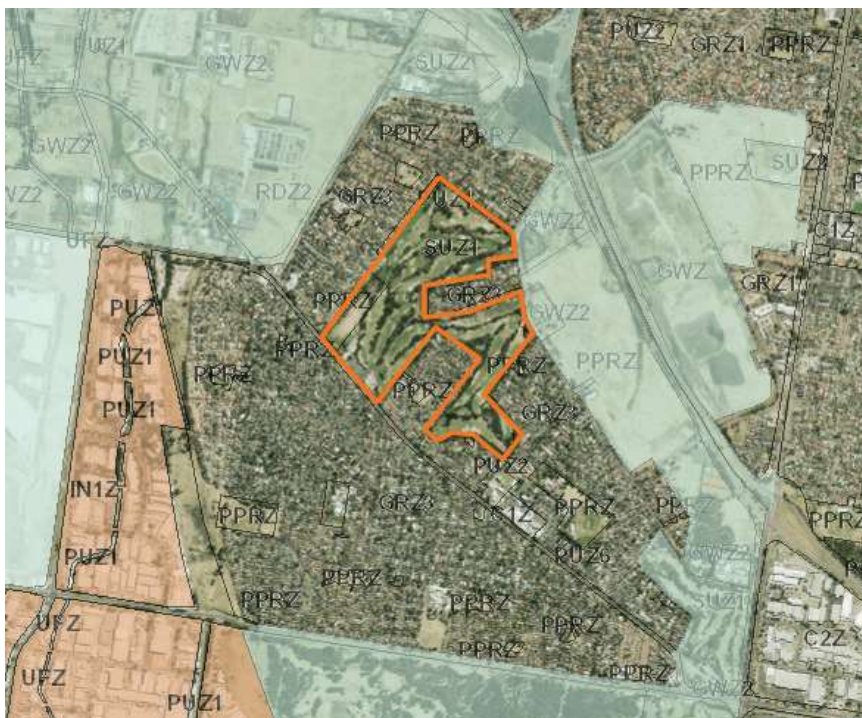
The subject land has an area of 53.35 hectares. From 1937 until 2018, the land was the site of the Kingswood Golf Club (Kingswood). When the course opened in 1937, the site was surrounded by market gardens. Now, as shown in Figure 1, the site, , sits within the urban area of Dingley Village surrounded by residential development and green wedge land, . Dingley Village itself is surrounded by green wedge land and industrially zoned land .

The site is (mainly) zoned Special Use Zone Schedule 1 that has the sole purpose:

To provide for the use and development of land as a golf course and associated uses.

Figure 1 confirms the evidence for Council<sup>1</sup> that the site is “*directly adjoined on most boundaries by existing houses [while] the existing vegetation creates a strong sense of enclosure*”.

**Figure 1:** The subject land



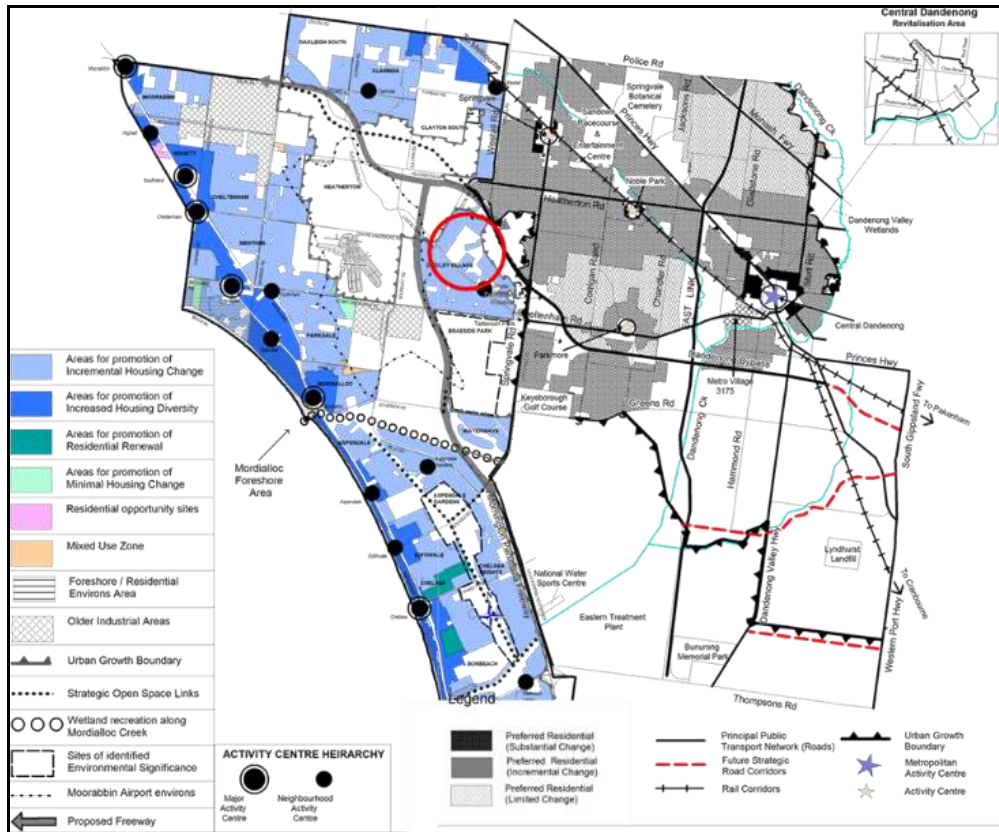
Source: prepared by the Advisory Committee from VicPlan

Dingley Village is identified as an area ‘for promotion of incremental housing change’ in local planning policy, the nearby residential area in the adjoining municipality of Greater Dandenong is identified as ‘limited change’ (See Figure 2).

<sup>1</sup> De Silva p100

The land is owned by AS Residential Property No. 1 Pty Ltd, a special purpose company, which was established to purchase and redevelop the subject land for residential purposes. AS Residential Property No. 1 Pty Ltd is a wholly owned subsidiary of the superannuation fund Australian Super. AS Residential Property No. 1 Pty Ltd is the Proponent for the Proposal.

**Figure 2: Location of the subject land in strategic context of Kingston and Greater Dandenong Planning Schemes**



## 1.2 What is before the Advisory Committee

The Proposal before the Advisory Committee includes:

- a draft Amendment: planning scheme changes to policy, zones and overlays – draft Kingston Planning Scheme Amendment C199king (the Amendment)
- a specific development approval comprising a development plan and a permit (the Approvals).

A similar proposal was subject to Amendment C151 to the Kingston Planning Scheme. That amendment was abandoned by Council in 2018 following consideration of submissions.

### (i) The Amendment

Specifically, the changes to the Planning Scheme and permissions that the Advisory Committee has been tasked to provide advice on include:

- identifying the strategic direction for the site by amending Clause 21.01, Clause 21.02 and Clause 21.07 to update maps in local policy
- identifying and managing site constraints by applying:
  - the Vegetation Protection Overlay Schedule 3 (VPO3) to the whole of the land to protect vegetation that has been identified as significant

- the Buffer Area Overlay Schedule 1 to all of the site addressing the potential use of groundwater which is contaminated in this area
- the Buffer Area Overlay Schedule 2 to part of the land that is potentially affected by land gas migration from a nearby former landfill
- an Environment Audit Overlay to a section of the site potentially affected by asbestos contamination from a shed which was demolished in the 1980s.
- allowing and guiding development by:
  - rezoning the land from the Special Use Zone and General Residential Zone Schedule 3 (which applies to a small part of the subject land) to General Residential Zone Schedule 2 to allow residential development
  - applying the Development Plan Overlay Schedule 8 (DPO8) to all of the land to require the preparation of an approved Development Plan (masterplan) for the site before a permit is issued allowing it to be developed for residential purposes.
- amending the Schedule to Clause 72.01 'Responsible Authority for this Planning Scheme' to make the Minister for Planning responsible for the approval of the Development Plan under the DPO8.

## **(ii) The Approvals required**

The material before the Advisory Committee that would authorise the Proposal includes:

- the Draft Development Plan
- a draft permit which is generally in accordance with the Development Plan and which allows:
  - subdivision
  - construction of single dwellings on lots less than 300 square metres
  - alteration of access to a road in a Road Zone Category 1
  - removal of native vegetation
  - buildings and works
  - reduction in car parking requirements<sup>2</sup>
  - use and development of land for the purpose of a 'display home centre'
  - food and drink premises (cafe) – associated with the sales office, but with standalone permission now sought in order to allow public use of this cafe, in addition to use by customers of the sales office<sup>3</sup>
  - on-site sale and consumption of liquor (generally associated with the sales office located within the former club rooms which are proposed to be refurbished)
  - construct and display signage
- proposed plans under condition 1 of the Permit:
  - 'Subdivision Plan' by DKO Architecture, 30 October 2020
  - 'Sales Suite, Display Village, Red Line and Signage Plans' by DKO Architecture, 4 November 2020
  - 'Stage Plan' by DKO Architecture, 6 November 2020
  - 'Design Guidelines' by DKO Architecture, August 2020
  - 'Tree Retention and Removal Plan' by Tract Consultants, November 2020
  - 'Framework Layout Plans ,FLP500 Rev A, FLP600 Rev A and FLP700 Rev A, Project No. 190407' by OneMileGrid

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<sup>2</sup> This permission is not pursued in the final form of the permit.

<sup>3</sup> Note that this inclusion was made in the Proponent's 'Day 1' version of the planning permit.

- 'Concept Layout Plan, Interim Access Road CLP100' by OneMileGrid
- 'Landscape Master Plan' by Tract, October 2020.

### 1.3 The Proposal

The Proposal is to allow residential development of about 823 lots. The planned development includes about 14 hectares of open space, walking and cycling paths, and improved stormwater retention infrastructure. The Proponent says<sup>4</sup> planned development "... aims to deliver an inclusive, attractive, high-quality residential neighbourhood that will enhance the area for everyone who calls Dingley Village home." Many submitters disagree with this characterisation of the planned development.

#### Revisions to the material

A revised subdivision plan prepared by the project architects DKO Architecture Pty Ltd<sup>5</sup> was presented at the Hearing as the preferred subdivision plan and became the basis of submissions.

In preparing for the Hearing, the Advisory Committee directed the Proponent and Council to confer about the form of both the DPO8 and the permit and its conditions.

During the Hearing, Council tabled further variations to the permit conditions.<sup>6</sup>

The variations to both documents make them significantly different from the exhibited forms. On the basis that the variations add specifications and detail to the documents, the Advisory Committee relies on these Day 1 versions of the permit and DPO8 for its deliberations.

After the Hearing, at the request of the Advisory Committee, revised versions of DPO8 were tabled. They were:

- Council's update to Document 54 (Document 171)
- the Proponent's response (Document 182).

#### What the permit allows

By agreement between the Proponent and Council, the preamble to the permit now states:

The permit allows:

Multi lot subdivision of land in stages, construction of single dwellings on each lot less than 300sqm, alteration of access to a road in a Road Zone Category 1, Removal of Native Vegetation, Removal of vegetation, Buildings and Works, use of land for a 'Display home centre' and 'Sales office', food and drink premises (cafe), construct and display signs and use of land to sell or consume liquor (Clause 52.27) generally in accordance with the plans endorsed under this permit and subject to the conditions set out in this permit.

The changed elements of the permit include within the permit preamble permission for a food and drink premises (cafe) in order to allow public access to the proposed cafe associated with the sales office as well as including operating times; requires the endorsed Design Guidelines to be implemented through a Plan of Restriction registered on each plan of subdivision; and updates conditions about the Construction Site Environmental Management Plan.<sup>7</sup>

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<sup>4</sup> [https://dingleyvillage3172.com.au/wp-content/uploads/2021/08/DingleyVillage\\_ThankYouDingleyVillage.pdf](https://dingleyvillage3172.com.au/wp-content/uploads/2021/08/DingleyVillage_ThankYouDingleyVillage.pdf)

<sup>5</sup> Document 81

<sup>6</sup> Document 55

<sup>7</sup> Taken from the Proponent's Part A submission document 39



## Site layout

Figure 3 shows the overall proposal. The revised subdivision plan, shown in Figure 4, maintained the essential structure of the exhibited subdivision with waterways, open space plus road access and egress, but revised and presented further and more detailed information about lot configuration and sizing, identification of small lots (lots less than 300 square metres), access arrangements to those lots from laneways, and, for the layout of the subdivision *“provides for two and three storey built form to directly align with the Framework Plan that is contained in the draft DPO8”*.<sup>8</sup>

The revised subdivision plan is the basis of the Advisory Committee’s considerations.

**Figure 3: Overview of proposal**



**Figure 4: Revised subdivision plan**



## On-site drainage works

The Proposal included significant on-site drainage works to address local flooding issues.

## Open space

There was no clear agreement as to the land budget for the Proposal and hence what percentage of the site had been delivered as open space as required under the *Guidelines*.

The areas of disagreement arise from lack of agreement on how to establish the Net Developable Area (NDA) of the site on which the percentage of open space is to be calculated. The difference lies in the approach of the experts for both the Proponent and Council who interpreted the approach used by the Victoria Planning Authority (VPA) in framing a land budget in a Precinct Structure Plan (PSP). The Advisory Committee can understand why the VPA approach is favoured, but the Proposal can be distinguished from a PSP process because of the scale of the project and the absence of major infrastructure works off-site.

<sup>8</sup> Evidence statement Sophie Jordan para 96 d42

The NDA is not critical for present purposes because:

- yield is not a decision guideline for assessing the proposal
- the statutory requirement for the supply of open space under the planning scheme is not an issue
- no development contributions are payable.

The Advisory Committee believes the most straight forward approach is to work from the Gross Developable Area (GDA), being the total area of the subject land, less the areas required for on-site drainage works and to deliver 20 per cent of this area as ‘usable accessible open space’ as set out in the *Guidelines*.

Usable accessible open space can include legally encumbered land provided that encumbrance does not stop it serving a genuine resort and recreation purpose. Narrow tree reserves, median strips and landscape buffers with no open space use is not to be counted as open space.

### **Affordable housing**

The Proponent offered 5 per cent of the number of dwellings as affordable housing up to a value of \$3.3M. There was no contest about the desirability of providing affordable housing on-site as part of this proposal.

The topic of affordable housing is dealt with in Chapter 8.5.3 of this report. The Advisory Committee notes that under the abandoned Amendment C151, the Proponent offered affordable housing to the value of \$5.225M.

### **Contributions to infrastructure**

The Proposal does not include contributions to community infrastructure. A central plank of resident submissions is that the development will overwhelm services and facilities in Dingley Village that are already strained. In summary, the submissions are that the Proposal will exacerbate the worst of the community infrastructure problems and improve none.

The previous offer of a cash contribution of \$7,525 per lot agreed under Amendment C151 is not continued under the Amendment or permit.<sup>9</sup>

## **1.4 Background**

### **The ‘merger’**

In 2013, Kingswood merged with the Peninsula Country Golf Club (Peninsula) to form the Peninsula Kingswood Country Golf Club with the view of selling the Kingswood site and using the proceeds to improve the facilities at Peninsula at Frankston. This has happened and the new facilities and upgraded courses are considered to be among the top courses in Australia.

The Advisory Committee notes that the process by which the former Kingswood Golf Club’s constitution was changed to allow for the sale of the site was subject to court challenges. Justice Whelan<sup>10</sup> wrote:

- 104 ... It seems to me that the idea that the directors could use the specific power to admit members nominated under clause 8 for the purpose of admitting *en masse* the entire membership of a different club with a view to then selling the existing golf course, adopting a

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<sup>9</sup> To confirm the previous arrangements, Council tabled two s173 Agreements; one about the supply of Affordable Housing on site, doc 128, one about Development Contributions doc 129

<sup>10</sup> *Falkingham v Peninsula Kingswood Country Golf Club Ltd* [2015] VSCA 16 (13 February 2015)



new Constitution (which did not require member approval for sale of the golf course), and changing the club's name, only has to be stated to be rejected.

Because of delays in taking action the challenged process was allowed to stand. It is not clear that time has healed the wounds that the merger process and subsequent legal challenge inflicted on the various parties.

### **The sale**

In September 2014 the Proponent signed a contract to purchase an operating golf course on land mostly zoned for the sole purpose of golf. The Proponent bought the land with the intention of closing the golf course and undertaking residential development. Ownership of the land was transferred in January 2019.

### **The closure**

In December 2018 the site ceased to be an operational golf course and was closed.

### **Amendment C151**

The Proponent first developed a masterplan for the site in 2016 and asked Kingston City Council to progress an amendment to the Kingston Planning Scheme to rezone the site for residential development. Amendment C151 was exhibited by Kingston City Council as the planning authority between July and August 2018.

The exhibited changes to the Planning Scheme were similar to those exhibited in the current Amendment but the form of the development was different. The proposal under Amendment C151 was for subdivision into 508 lots and 6 super lots; development of lots less than 300 square metres; creation of access to Road Zone Category 1; building and works (earthworks) and removal of native vegetation.<sup>11</sup>

The amendment generated over 8,000 submissions, mostly in opposition. After considering the submissions a Special Council Meeting on 17 October 2018, resolved to abandon Amendment C151. The minutes of the meeting do not record any discussion about the Proposal. No planning officer report accompanied the meeting agenda.<sup>12</sup>

The 2018 concept plan was provided in presentations for the Proponent and Council.

The Proponent explained the key differences between Amendment C151 and the Proposal stating:

While the overall framework now proposed is similar to the [Amendment] C151 proposal, include:

- a) the [Amendment] C151 proposal set aside 6 areas as 'super lots' intended for medium density housing to be approved at a future date
- b) the [Amendment] C151 proposal included housing directly abutting almost all the off-site residential interfaces, whereas the Proposal implements numerous linear open space reserves between existing dwellings and new development. This technique has been applied in locations where there are trees of high to moderate retention value which can be preserved within these linear spaces. This treatment, and the difference between the [Amendment] C151 scheme and the current proposal, is most pronounced when considering the way in which the Proposal abuts the existing subdivision associated with the Golfwood Close 'peninsula'
- c) the quantum of existing trees proposed to be retained has more than doubled (341 trees were retained in the Amendment C151 proposal compared with 851 now proposed)

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<sup>11</sup> Council's Part A submission para 6 doc 65

<sup>12</sup> Proponent Part A submission doc 39

- d) the quantum of open space provided has increased by approximately 3 hectares (C151 proposed 11 hectares, 20.7% of site area, whereas the current Proposal provides 13.85 hectares as open space, being 26% of site area)
- e) no cash development contributions are offered in relation to the Proposal on the basis of the over provision of other public benefits, particularly open space and drainage infrastructure.

Some variations are obvious such as the number of lots proposed and the configuration of the subdivision, open space areas and access points, but many differences were not enunciated before the Advisory Committee. For example, there was no explanation about:

- the difference in the number of trees said to be on-site at the time of Amendment C151 (approximately 1,348 trees and groups of trees)<sup>13</sup> against the current Amendment where the number of individual trees on-site is approximately 3,284<sup>14</sup>
- how the number of trees to be retained changes rises from 341 under Amendment C151 to a possible maximum of 856 trees
- why, if Amendment C151 foreshadowed the creation of 508 individual house lots and six larger 'super lots', the Proponent provided traffic information based on a proposed future yield of 800 dwellings which resembles the number of lots now proposed.

The matter of development contributions was a contested topic and the subject of substantive submissions and evidence. That matter is dealt with in Chapter 8.10.2 of this report.

### **Referral to the Golf Course Redevelopment Standing Advisory Committee**

On 20 November 2020, the Minister received a request from the Proponent to consider a draft combined planning scheme amendment, development plan and planning permit application to facilitate the redevelopment of the subject land.

To support the request, consultants for the Proponent lodged numerous reports that provided information about constraints and opportunities of the site dealing with the usual considerations for the development of a large parcel of land including vegetation, biodiversity, engineering matters particularly drainage and other hydrology issues, civil engineering and geotechnical issues, environmental sustainability issues, cultural heritage issues and traffic. The reports also considered the proposed built form including the architecture of buildings, urban design and landscape issues, acoustics and aviation issues, affordable housing, plus a social needs assessment as well as an assessment of any contributions to meet demand for community services generated by residential use of the site.

The planning report submitted with the request, and subsequently exhibited as part of the Amendment material, set out the Vision and Brief of the Proposal. The report stated:<sup>15</sup>

This proposal seeks to create a vibrant and sustainable urban in-fill community that is considered an exemplary urban renewal project. Future residents and the broader local community will benefit from high quality open spaces and streetscapes that seamlessly integrate with the existing Dingley Village neighbourhood.

Accordingly, the Proposal has been designed to satisfy the following brief:

- Develop a desirable and inclusive residential precinct which delivers high levels of community amenity.
- Provide a diverse range of housing options which appeal and responds to multiple household structures and budgets over an approximate 5-6 year delivery time frame.

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<sup>13</sup> From Kingston Council website on C151

<sup>14</sup> Kenyon evidence statement document 50

<sup>15</sup> Tract Planning Report section 2.4 exhibited doc 18

- Anticipate and respond to future trends in housing demand and provide a suitable product in terms of specifications and design.
- Integrate Environmentally Sustainable Development principles in the design of all open spaces, civil services and construction, as well as the future dwellings themselves (through the EnviroDevelopment UDIA 6-leaf accreditation).
- Celebrate and enhance the existing landscape provision, through respecting the interfaces to existing neighbourhood parks and providing quality spaces for the existing and new residents.

DELWP exhibited the Proposal for 10 weeks between 28 June to 3 September 2021. The exhibition period was initially scheduled to finish on 6 August 2021, however, the Minister granted two separate extensions to the exhibition period:

- on 2 August 2021, the Minister granted a two-week extension to the exhibition period with submissions to be received by 20 August 2021.
- on 19 August 2021, the Minister granted a further two-week extension to the exhibition period with submissions to be received by 3 September 2021.

DELWP published a Notification Report dated June 2021 to confirm the steps taken in the processing and exhibition. The notice was posted to 4,490 households in Dingley as well to government departments DELWP, Department of Innovation, Industry and Regional Development (DIIRD) and Department of Education and Training (DET); agencies including Public Transport Victoria (PTV), VicRoads, Transport for Victoria, Environment Protection Authority (EPA), Sustainability Victoria and Country Fire Authority; servicing authorities including Melbourne Water and South East Water; Kingston City Council, neighbouring municipalities, other stakeholders including electrical supply agencies and Telstra. Amendment material was also placed on display at the Council Offices and the Dingley library.

By letter dated 9 May 2021, the Minister referred the Proposal to the Advisory Committee.

This is the first referral of an individual proposal to the Advisory Committee. The Minister's letter of referral states that, in addition to the matters referred to in its Terms of Reference, the Advisory Committee is requested to:

- consider the following matters:
  - a. The draft Former Kingswood Golf Course Development Plan.
  - b. The draft planning permit application.
- include a draft planning permit in its written report.

## 1.5 Summary of issues raised in evidence and submissions

A total of 1,650 submissions were received during the exhibition period.

### (i) Council

Council's concerns expressed in its Part A Submission were twofold:<sup>16</sup>

9. ... there is little underlying policy support for residential development on the Land:
  - a) the Land is not required to be developed for housing for the municipality to meet its housing targets
  - b) the Land is not a strategic redevelopment site
  - c) the Land is poorly served by public transport

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<sup>16</sup> Document 138

- d) the Land is likely to increase the number of complaints experienced by Moorabbin Airport.
10. Even if the Land is approved for some form of rezoning, there is a litany of shortcomings with the Proposal:
- a) it proposes inadequate levels and standards of public open space
  - b) it has failed to avoid or even minimise the removal of native vegetation, impacting flora and fauna populations and urban heat effects
  - c) it fails to contribute to community infrastructure
  - d) it is at odds with the existing and preferred character for Dingley Village
  - e) it does not provide appropriate flood mitigation measures
  - f) it fails to deliver sufficient walking and cycling connectivity for active travel
  - g) it fails to provide sufficient affordable housing
  - h) the proposed ESD standards are inadequate.

## **(ii) Community**

Underpinning many of the community submissions was the scale of what is proposed compared to the existing Dingley Village. Dingley Village has defined borders; it is essentially surrounded by green wedge land. A number of submitters estimated that the Proposal would increase the population of Dingley Village by 20 per cent. The Advisory Committee considers this to be a reasonable estimate.

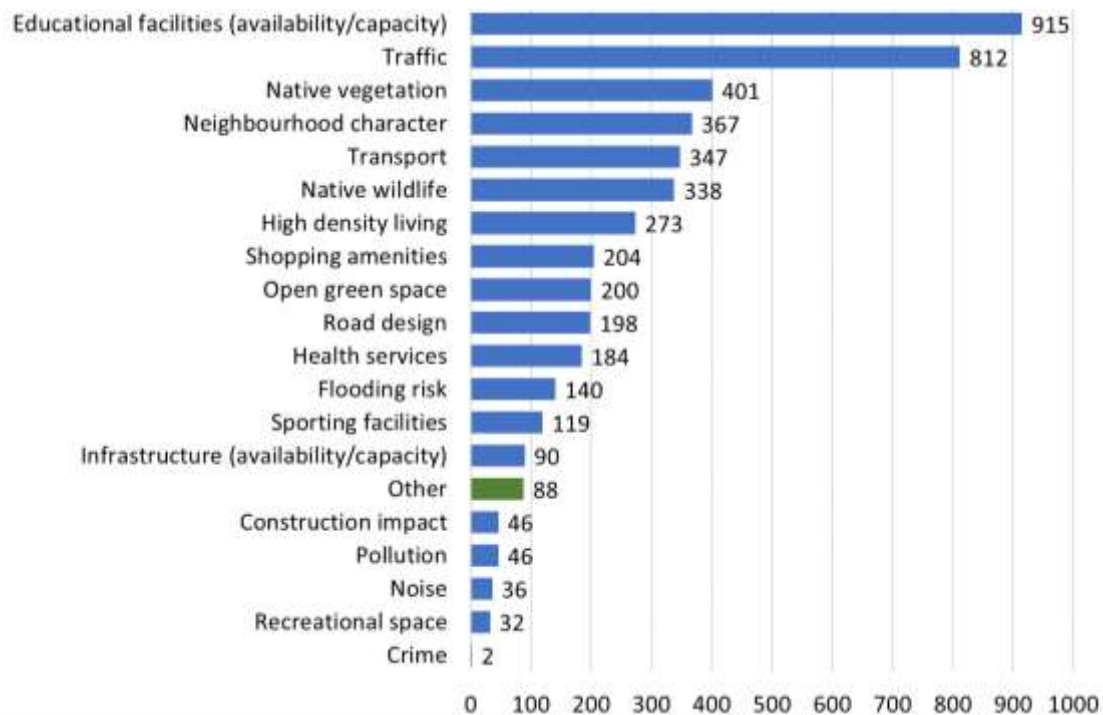
The Proponent's analysis was that 17 per cent of submissions expressed support for the Proposal, while the remaining 83 per cent expressed opposition.<sup>17</sup> In analysing the submissions, the Proponent submitted that concerns regarding the availability or capacity of educational facilities to accommodate the new population associated with the development was the most cited issue, with traffic increases and road capacity, native vegetation removal and neighbourhood character outcomes also frequently cited..<sup>18</sup> Figure 5 shows the relative frequency of issues in submissions.

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<sup>17</sup> Proponent's Summary of and Response to Community Submissions document 40

<sup>18</sup> *ibid*

**Figure 5: Issues raised in submissions**



Source: Advisory Committee graph of data presented by the Proponent in Document 40

The issues raised in submissions included:

- Social infrastructure, including:
  - Limited or restricted availability of educational facilities. In particular, submitters raised concerns relating to access to childcare, kindergartens and primary and secondary schools. Many submissions highlighted the lack of a public high school in Dingley Village commenting that children within the proposed area have to travel to Parkdale Secondary College and stated that this school was already at capacity.
  - Health services, particularly in relation to local doctors, GP's and maternal health services. Many submissions raised the fact that it is difficult to obtain an appointment with the local GP within a short time frame and that the Proposal would only worsen this due to an increased population. Submitters stated that with more families in the area, this would also mean that women and infants would generate a greater need for maternal health services, which are currently sparse.
- Traffic and transport issues including:
  - The impact of increased traffic volumes on the surrounding network was widely raised as a concern.
  - Submissions highlighted the lack of a train station in the immediate area and the fact that residents of the area need to drive to get to the nearest train station. Submitters also noted that more bus services were needed and that the buses were full with school children during peak hours. Submissions generally emphasised that many of the Dingley Village residents relied on car transport.
  - Submissions stated that the proposed roads are too narrow and there is not enough private and public car parking proposed.
- Vegetation, including:
  - Many submitters raised concerns regarding the loss of native vegetation, natural habitat, including hollow bearing trees, and the benefit the local wildlife has gained

from the golf course. Some submissions linked their discussion of native vegetation clearing with climate / carbon storage factors.

- Some submissions raised construction impacts as an issue, including a concern that the Proposal will take years to complete, causing a prolonged reduction in their quality of life and enjoyment of the neighbourhood during this period.
- Character issues, including:
  - The higher density character of the proposed development which was identified as a concern in submissions. Many submissions stated that the proposed 800+ dwelling yield is too dense for the site and that it would generate a significant increase in population as a proportion of the existing population of Dingley Village. Related to this, some submissions stated that the proposed lot sizes were too small.
  - The existing benefits of the site as open 'green' space were raised in many submissions. For example, some submissions referred to the site as the "*lungs*" of Dingley Village. Many submitters stated that the golf course should remain as open space for recreational use. Many also stated that if the Proposal is approved, it should provide a higher proportion of open space than proposed.
  - Neighbourhood character was identified as an issue in submissions. Submitters spoke of the "*village feel*" and how the proposed housing estate was out of character with the broader area. Submitters often stated that the design of the proposed houses, particularly 3 storey designs, were not respectful of Dingley Village's existing character.
- Shopping:
  - Submissions raised the concern that there is currently a lack of shopping amenities and any increase in population would only worsen this situation. Submissions included reference to there being only one small shopping strip and one supermarket in the locality. Many submitters stated there are always queues in the supermarket and it is difficult to find parking to do shopping.
- Open space:
  - Recreational space was raised as an issue with submitters stating that the golf course should be conserved for recreational use and/or if the development goes ahead there must be more recreational space set aside for public usage, including space for structured recreation, such as sports playing fields (like football/cricket).
  - The current lack of sporting facilities in Dingley Village and the increase in demand was raised as an issue with many submissions raising concern over the lack of publicly available sporting and recreational facilities, namely basketball courts and football ovals for junior sport. Submissions raised concerns that the Proposal should include a public oval.
- Development infrastructure, including:
  - Submissions highlighted that the site currently assists in aiding drainage in the area as it is pervious and reduces rainfall runoff in the area
  - Submissions were concerned that existing infrastructure will not be able to cope with the additional demand generated by the Proposal.

### **(iii) Relevant agencies**

Submissions were received from:

- the EPA which raised issues in relation to contamination

- Melbourne Water which set out conditions and requirements in relation to stormwater and flooding issues.

## 2 The Advisory Committee's approach

### 2.1 The Terms of Reference and referral letter

The Terms of Reference of the Advisory Committee set out two purposes, the second of which is to *“Advise whether proposals for the rezoning of golf course land within the UGB of metropolitan Melbourne to facilitate redevelopment for urban purposes satisfy the planning Guidelines and are consistent with state and local policy”*.

The Terms of Reference set out that a proposal may be in the form of changes to the planning scheme or a combined planning scheme amendment and planning permit.

The Terms of Reference set the scope for the Advisory Committee:

25. The Advisory Committee may inform itself in anyway it sees fit, and must consider all relevant matters, including but not limited to:
  - a. the suitability of the Proposal against the Planning Guidelines for Golf Course Redevelopment reviewed by the Advisory Committee

...

The letter from the Minister referring the Proposal to the Advisory Committee states:

In addition to the scope set out in Clause 25 of the Terms of Reference I request that the SAC [Advisory Committee] also consider the following matters:

- the draft former Kingswood Golf Course Development Plan
- the draft permit application

I also request that the written report include a draft planning permit.

As well as being activated by the Terms of Reference of the Advisory Committee, Ministerial Direction 21 states:

In preparing an amendment to a planning scheme to enable the redevelopment of a golf course (including, but not limited to, changing planning controls applying to the land or the zoning of the land) the planning authority must:

- have regard to the Guidelines; and
- include in the Explanatory Report for the amendment an explanation of how the amendment addresses the Guidelines.

The Explanatory Report for the Amendment C199 states:

The amendment is consistent with Ministerial Direction 21 – Golf Course Redevelopment. The amendment has been prepared having regard to the steps outlined in the Planning Guidelines for the Conversion of Golf Course Land to Other Purposes (June 2020).

...

The amendment directly responds to the 'Planning for golf in Victoria' discussion paper (June 2017), the Metropolitan Planning Strategy, Plan Melbourne 2017-2050 and its 'Implementation Plan', and the 'Planning Guidelines for the Conversion of Golf Course Land to Other Purposes' (June 2020).

In the view of the Advisory Committee the Explanatory report, and the exhibited reports, did not include an 'explanation' as required by the Ministerial Direction, or at least not an explanation that explicitly addresses the steps set out in the *Guidelines*.

### 2.2 State and local policy

State and local policy is set out in the Planning Policy Framework (PPF) in the Kingston Planning Scheme (the Planning Scheme). The Amendment proposes to change local policy.



Critical to understanding the appropriate approach to considering the Proposal is to recognise:

- in the first instance the Proposal is a planning scheme amendment, and not just a planning permit application – the principles that apply to planning permits cannot simply be applied to the Proposal
- while the site is within the UGB it is not in a growth area and the principles that apply to growth areas cannot simply be applied to the Proposal
- the site has not been identified in strategies for housing development, indeed the opposite is true.

Changes to policy to support a site specific proposal such as this run the risk of making ad hoc changes to well-considered strategies. Clause 01 of the Planning Scheme sets out its purpose:

- To provide a clear and consistent framework within which decisions about the use and development of land can be made.
- To express state, regional, local and community expectations for areas and land uses.
- To provide for the implementation of State, regional and local policies affecting land use and development.

The Advisory Committee believes it is not sufficient to show that the changes are consistent with broader state policy but that there is a need to demonstrate that the implications for more specific local strategies have been considered. Further, the Advisory Committee believes the changes should not be inconsistent with these local strategies and should not muddy the strategic basis of those strategies.

## 2.3 The role of the Guidelines

### Complying with the *Guidelines*

The Proponent questioned the need to comply with the *Guidelines* and submitted, in closing:

- 105 The 2014 unconditional sale of the site cannot be judged against the 2020 Guidelines which came into effect 6 years after that sale. ... [T]he Proponent was a bona fide purchaser of the land. It purchased the land with a view to its potential development six years before the Guidelines were published. The Proponent clearly had no power to require consultation with government prior to the decision by the Club to sell the land, nor could it have foreseen that the Guidelines might be published 6 years later.
- 106 An important legal principle is that legislation is presumed to not have retrospective operation. A new law should impose its conditions and requirements on the future, not on the past. The principle is based on the notion that retrospective operation of the law is unjust. If we are required to obey the law, we must be able to ascertain what the law is.
- 107 The same principle applies to the operation of policy and in this case, the operation of the Guidelines. Prior to a policy becoming known or published it is by its nature incapable of being understood and implemented.

This submission seems to imply that the relevant date for the application of policies is dependent on the Proponent's aspirations. The *Guidelines* apply to the conversion of golf course land, not the sale of golf course land. The Proponent bought an operating golf course fully aware that rezoning was required to progress its aspirations and that there is no 'right' to a rezoning.<sup>19</sup>

To the Advisory Committee the relevant test is the policies at the time advice is given, or a decision is made. In the first instance that is the report of this Advisory Committee, the second is any decision taken by the Minister.

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<sup>19</sup> The point was made by submitters

In any case the Terms of Reference of the Advisory Committee specifically require assessment against the *Guidelines*. This was pointed out at the Hearing and the Proponent invited the Advisory Committee to provide commentary of the role of the *Guidelines*. The Advisory Committee comments as follows:

- the speculative purchase of land does not give a purchaser some implied right to have their proposal assessed against the policies at the time they purchased the land but not later
- the *Guidelines* set out a robust framework for considering a proposal for the conversion of golf course land to other purposes and should be applied to any proposal to rezone the site.

### **What the Guidelines do**

The *Guidelines* set out a number of steps:

- Step 1: Consider whether the land should be redeveloped
- Step 2: Identify the strategic direction for the site
- Step 3: Determine what other assessment and approvals are required
- Step 4: Document site values, constraints and opportunities
- Step 5: Engage the community
- Step 6: Provide a land use concept that delivers net community benefit
- Step 7: Deliver a quality outcome.

These Guideline steps move consideration from broad issues to the specific. Similarly, the Proposal before the Advisory Committee can be viewed as involving a number of approval ‘steps’:

- Policy change
- Provision changes:
  - Zone change
  - Land management overlays (Vegetation Protection Overlay, Buffer Area Overlay, Environmental Audit Overlay)
  - Development Plan Overlay
- The draft Development Plan itself
- The draft permit, (which triggers the need for endorsed plans)
- The ‘Dingley Village Design Guidelines’ to be endorsed under the Permit.

It is not the case that accepting that the land ought to be redeveloped implies that the current proposal is acceptable. It is open to the Advisory Committee to support high level policy or zoning changes, but to recommend against the detailed approval contained in the Development Plan and permit.

At each of these ‘steps’ it is open to the Advisory Committee to find (and recommend accordingly):

- the Proposal is acceptable as exhibited
- the Proposal is acceptable subject to defined changes
- the Proposal is not currently acceptable and further work is required or a new proposal needs to be developed.

The letter of referral specifically asks for advice on permit conditions. The Advisory Committee has not included permit conditions in this report. This is because the Advisory Committee does not believe it is possible to properly settle permit conditions ahead of additional work to resolve conditions precedent to resolve the land available for development and matters to be included in an approved Development Plan.

Permits for subdivisions are common and it is not clear to the Advisory Committee that once the uncertainties around the development Plan are settled that a permit, or more typically permits for each stage, would need to depart from common practice and drafting. The difficulty in settling permit conditions now is that all the uncertainties around the development are carried into conditions resulting in an overly complex and uncertain permit.

## 2.4 Integrated decision making

A consideration of the Proposal requires the Advisory Committee to assess its NCB.

The Planning Scheme explains that society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Clause 71.02-3 (Integrated decision making) of the Planning Scheme sets out how to address issues:

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

The *Guidelines* specifically reference Clause 71.02-3 in the introduction, but add in Steps 6 and 7. Step 6 states:

Proposal to convert golf course land must provide a net community benefit and a high level of sustainability.

As well as an overall community benefit the Proposal should:

- deliver a net increase in public open space
- deliver improved environmental values
- deliver a net community benefit for the community surrounding any redeveloped course.

The *Guidelines* then set out factors that should be considered to determine if a proposal provides NCB and environmental benefit.

At Step 7 the *Guidelines* add:

Any proposal to convert golf course land must deliver a high quality outcome.

To ensure net community benefit, the redevelopment of golf course land should achieve the following:

- at least 20 per cent of the land area to be developed is set aside as publicly accessible useable open space ...
- enhance and protect state, regional and locally significant environmental assets and biodiversity corridors
- landscaping that delivers an appropriate amount of tree canopy cover (excluding active sporting areas) to mitigate urban heat effects and is at least equivalent to, or greater than the surrounding area
- active transport links are provided into the surrounding area and must be provided on the golf course land proposed for redevelopment.

Assessing whether a particular proposal will achieve NCB involves weighing up the benefits and disbenefits of a proposal having regard to relevant policies (and planning controls for a development plan approval or permit). Essentially this involves considering a ledger that balances

a column of benefits against a column of disbenefits. The Advisory Committee accepts that despite some entries in the disbenefit column, a proposal might still achieve NCB.

The *Guidelines* do not change the meaning of NCB, they essentially state that:

- in preparing the ledger of benefits and disbenefits, the benefit side must include a number of specific items
- if the geographic extent of a community is restricted to the community surrounding any redeveloped golf course the balancing still needs to deliver a net community benefit.

A number of submissions sang the praises of Dingley Village, but also listed a number of disbenefits (flooding, traffic, aircraft noise, difficulty getting a medical appointment, and more). The *Guidelines* recognise that benefits and disbenefits are community specific:

Proponents are encouraged to liaise closely with the planning authority in an iterative and negotiated process to arrive at a final position regarding the net community benefit of the Proposal.

Understanding the particular circumstances of Dingley Village is key to delivering NCB to this community.

Clause 71.03-2 of the Planning Scheme seeks ‘acceptable outcomes’:

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the Proposal will produce acceptable outcomes in terms of the decision *Guidelines* of this clause.

In *Western Water v Rozen & Anor* [2010] VSC 583, the Supreme Court stated:

The test of acceptable outcomes stated in the clause is informed by the notions of net community benefit and sustainable development. ...

The weight to be given to the various considerations which may be relevant on the one hand, and to particular facts bearing on those considerations on the other hand, is not fixed by the planning scheme but is essentially a matter for the decision maker ...

In weighting considerations, some elements of poor performance might be determined to be so ‘unacceptable’ that no amount of compensatory benefit can balance them. For example, in the Crib Point Project Inquiry, the Inquiry and Assessment Committee (IAC) found that the project would have unacceptable effects on the marine environment and should not proceed on this basis:

It has not been demonstrated that the likely and potential environmental impacts on the marine environment are able to be mitigated to an acceptable level and the cumulative impacts of the Project, specifically the impacts associated with the FSRU [Floating Storage and Regasification Unit], are considered unacceptable. In seeking to balance the role of the Port and the Project’s impacts on the sensitive marine environment, the IAC does not consider the impact on marine biodiversity and overall cumulative impacts would achieve an acceptable environmental outcome.

In this matter, the Advisory Committee has considered all written submissions made in response to the exhibition of the Proposal, observations from site visits, submissions, evidence, and other material presented to it during the Hearing. All submissions and materials have been considered by the Advisory Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

## 2.5 The ‘alternative’ plans

When criticising the Proposal, Council witnesses including Mr De Silva on planning issues, Ms Jeavons on open space planning and Ms Thompson on outdoor recreation and landscape design offered alternate subdivision patterns, concepts for the treatment of precincts within the site,

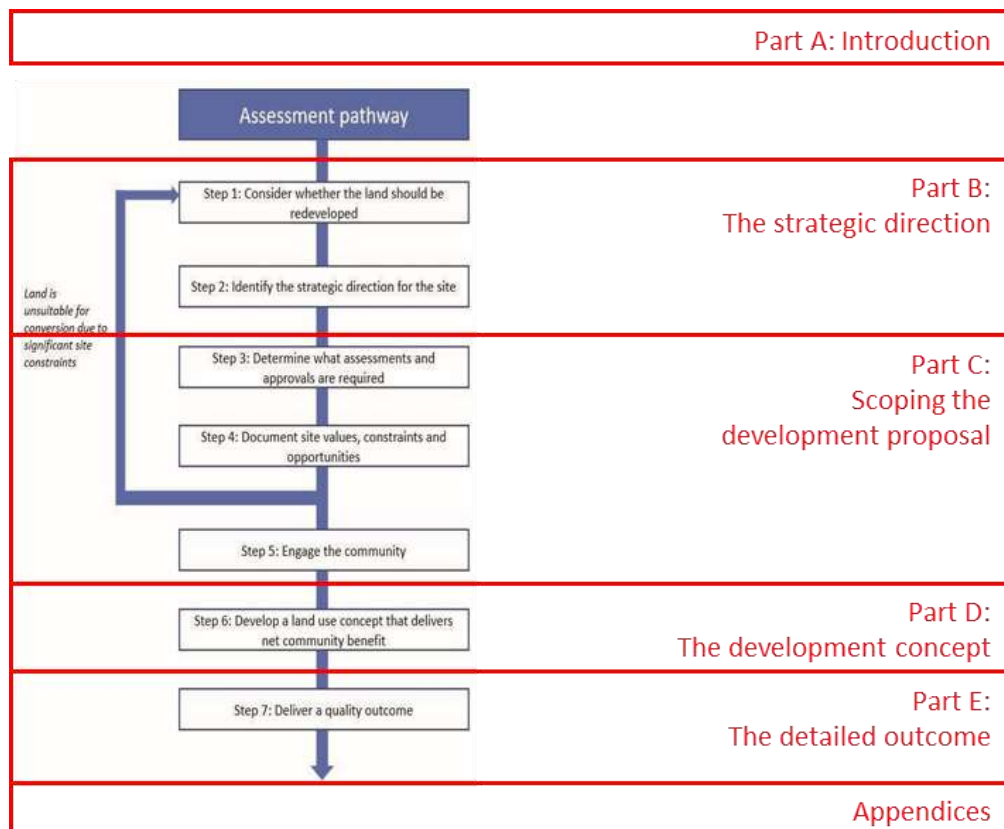
provision and treatment of open space, and the use of land based on the protection of vegetation or human safety. Council presented Mr De Silva's evidence with the caveat that it did not support any of the alternative forms of development presented by him. The Advisory Committee was told that Council remained opposed to development no matter the improvements to the form of development presented by Mr De Silva. The Advisory Committee accepted the evidence of Ms Jeavons and Ms Thompson on the same basis.

The variations to the concept plan put by each of them were received as options. Particularly useful in this regard was that the witnesses could explain their design thinking and how the solutions were developed, something that did not feature in the Proponent's case. As Ms Jordan put it in her evidence presentation when speaking about the draft planning permit, there are hundreds of ways to structure a multi-stage subdivision and hundreds of ways to achieve the same outcome. That approach underpinned the changes she recommended to the Proposal.<sup>20</sup> It is also the approach adopted by the Advisory Committee and a reason why no single option has been endorsed in this report. The Advisory Committee prefers the position where it identifies site opportunities and constraints to be addressed in evolving development concepts and in finalising matters for the Development Plan.

## 2.6 Issues covered in this Report

This Report adopts the structure of the *Guidelines*. Figure 6 shows the relationship between the process in the *Guidelines* and the part of this report.

**Figure 6:** How this report relates to the Planning Guidelines for the Conversion of Golf Course Land to Other Purposes



This Report deals with the issues under the following headings:

<sup>20</sup> Jordan evidence statement at para 112 doc 42

- *Guidelines* Step 1: Consider whether the land should be redeveloped
- *Guidelines* Step 2: Identify the strategic direction for the site
- *Guidelines* Step 3: Determine what other assessment and approvals are required
- *Guidelines* Step 4: Document site values, constraints and opportunities
  - Flooding and Water Sensitive Urban Design (WSUD)
  - Contamination
  - Safeguarding Moorabbin Airport
  - Arboricultural values
  - Biodiversity values
  - Amenity of adjoining properties
  - The character of the neighbourhood
  - Improved connectivity
  - A new green space
- *Guidelines* Step 5: Engage the community
  - Criticism of process
  - Issues going forward
- *Guidelines* Step 6: Provide a land use concept that delivers NCB
  - Drainage and water infrastructure
  - Environmental and Landscape Values
  - Open space and active recreation
  - Housing
  - Built environment
  - Traffic and transport
  - Community services and infrastructure
  - Aircraft noise
  - Summary of assessment
- *Guidelines* Step 7
  - Policy
  - The appropriate Zone and Schedule
  - Final form of the DPO8
  - Overlays
  - Should the Minister for Planning be the responsible for the approval of the Development Plan
  - The approvals

Appendix B presents the Advisory Committee's preferred DPO8.

# Part B: The strategic direction

## 3 Guidelines Step 1: Consider whether the land should be redeveloped

### What the *Guidelines* say

The following questions should be addressed in establishing whether golf course land should be converted to another use:

- Does the land tenure allow for conversion?
- Is the golf course surplus to golfing?
- Are there economic alternatives to conversion?
- Should the land remain as open space?

Proponents should confirm the ownership of the land and that it is available for conversion and document any title or legal restrictions on its future development.

To assess whether the golf course is surplus to the needs of golfing, a proponent will need to identify:

- Whether the course has been identified in a regional golf facility plan as a course that should remain or is a candidate for conversion to another use. If there is no relevant golf facility plan, consider:
  - the demand for golf courses in the region and whether the course is located in an area currently under-supplied or over-supplied with golf courses
  - whether there is capacity for the golf course to be improved to incorporate contemporary design standards and facilities.
- Whether the Proposal delivers improved golf facilities consistent with Victoria's Golf Tourism Strategy and any relevant golf facility plan.

The Proponent should commission independent economic advice on:

- whether golf is likely to remain viable at the course taking into account:
  - the course facilities and layout
  - the club patronage and financial status
- the broader economic implications of the Proposal.

Golf course land, particularly in metropolitan areas, presents a rare opportunity for governments to purchase a significant land parcel for community or public use. Where golf course land has been determined as being surplus to the needs of golfing, the land should be offered at first instance for acquisition to the Commonwealth and Victorian governments and local governments. This involves three considerations as outlined below:

- State-owned public golf course land will be offered under the Victorian Government Landholdings Policy and Guidelines (2017). All other golf course land owners should be encouraged to make genuine effort to investigate whether any government authorities are interested in acquiring the land by engaging with local and/or state government.
- Local government planning authorities should assess redevelopment proposals in accordance with strategic planning for the local area, including identification of future public land requirements.
- Local government planning authorities should identify the public land requirements generated by the proposed urban development made allowable as a result of the golf course land conversion.

### 3.1 Introduction

This section addresses the following questions in response to the *Guidelines*:

- Does the land tenure allow for conversion?
- Is the golf course surplus to golfing?
- Are there economic alternatives to conversion?
- Should the land remain as open space?
- Whether the land was offered for acquisition by the Commonwealth and Victorian governments or local governments.

### 3.2 Does the land tenure allow for conversion?

The Proponent submitted (Part A):

- 46 The site is privately owned.
- 47 The site is not subject to any property law restriction such as a restrictive covenant that would prevent the Proposal.<sup>21</sup>
- 48 The land is subject to a number of services easements in favour of authorities; however these are not an impediment to developing and using the land for residential purposes.<sup>22</sup>

The Advisory Committee accepts that the land tenure allows for the redevelopment.

The Advisory Committee concludes:

In terms of the issues identified in the *Guidelines* Step 1:

- the land tenure clearly allows for conversion.

### 3.3 Is the golf course surplus to golfing?

#### (i) Evidence and submissions

The Proponent submitted that as a golf course (Part A para 54):

- the site would require a redesign to become attractive in an already oversupplied local market
- a member only facility with limited associated tourism and 'add value' offer (such as accommodation, dining and bar facilities) falls short of current industry best practice for operating economically sustainable golf courses.

Submitters raised fundamental concerns that the strategic direction should be anything else but a golf course, and that the land could be repurposed as a public golf course.

This area of Melbourne is relatively well supplied with golf courses. There is an existing nearby public golf course as well as private facilities.

Submitters raised the issue of the need for a 'full size' public golf course. This was in contrast to what was said to be 'expensive and elitist' facilities. The Advisory Committee was told that Council had approached the Proponent with a view to discussing leasing the site for a public golf course. The reply to this request was 'commercial in confidence' and was not made public at the Hearing.

There is difference between the benefits that a golf course delivers to participants as a sport, and the benefits it delivers to a local area by way of amenity or habitat. Amenity and habitat issues are

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<sup>21</sup> See Application Document 2, Certificates of Title.

<sup>22</sup> Ibid.



considered in Chapter 3.5 under the consideration of whether the land should remain as open space.

## **(ii) Discussion and conclusion**

The Advisory Committee accepts that the land is not required for a club-based facility.

In terms of providing a public golf course it would be a matter for Council or the state government to purchase the land. The only thing that the Advisory Committee knows for sure about Council's proposal to lease the land for a public golf course is that it did not proceed.

The loss of the recreational opportunities of club members was the result of decisions taken by the club itself. The Advisory Committee notes:

- not all club members supported the merger
- in the process by which Kingwood merged with Peninsula, a majority of the club (63 per cent) voted to proceed with the merger.

The Advisory Committee concludes:

In terms of the issues identified in the *Guidelines* Step 1:

- the golf course is surplus to golfing.

## **3.4 Are there economic alternatives to conversion?**

### **(i) Evidence and submissions**

The Contour Golf Design Group Report (September 2020), appended to the Golf Business Advisory Services (GBAS) Report<sup>23</sup>, assesses the potential of the Kingswood site to return to use as a viable golf course. To provide a safe course, the earlier Ogilvy Report (2013) outlined that a redesigned course with a reduced length/par of 5170 metre/ par 68 (down from 6045 metre/ par 72) would be required. Commenting on this, the Contour Report stated:<sup>24</sup>

It has to be remembered that within ten kilometres of the Kingswood site are nine golf courses of very high quality and several that are amongst the highest rated in the world. For a par 68 or 69 course that is only 5200 odd metres long to be successful in that environment, it would need to be unique and excellent. This would most likely require a complete rebuild of the course.

According to submissions and evidence, it is not economical to re-establish the site to modern playing standards as a golf course including with design precautions for the safety of neighbouring residents and properties. The Contour Report estimated the costs of a course rebuild would be in the order of \$6-8M and would include provision of high boundary fencing.<sup>25</sup> There was no contrary evidence.

The Proponent, supported by Peninsula,<sup>26</sup> submitted that this indicative cost was beyond the means of the former Kingswood Club and, acting on advice, the Club resolved to merge with the Peninsula Country Club and relocate to and redevelop facilities at Frankston.

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<sup>23</sup> Exhibited document 26

<sup>24</sup> Contour Report, p 8

<sup>25</sup> Contour Report, p 8 (GBAS Report, pdf p 54)

<sup>26</sup> Document 96

## (ii) Discussion and conclusion

The Advisory Committee accepts that considerable work would be required to make the course safe and that this is not a viable economic alternative to conversion of the site to a non-golf use.

The Advisory Committee concludes:

In terms of the issues identified in the *Guidelines* Step 1:

- There are no economic alternatives to conversion, but this does not of itself support residential development of the land in the manner proposed. Conversion to an alternative low intensity use should not be ruled out.

## 3.5 Should the land remain as open space?

### (i) Evidence and submissions

Submissions and presentations sought to retain the subject land in an undeveloped state for public use. The reasons varied but resident submitters regard the subject land as open space; some call it the lungs of Dingley Village<sup>27</sup>; some have appropriated the land as additions to their backyards where properties abut<sup>28</sup>; some made submissions about the importance of the land as a contributor to broad environmental outcomes including flora and fauna preservation.<sup>29</sup> Council advocated for the return of the site as a golf course.

Mr Mark Dreyfus MP, Federal Member for Issacs, (Sub 1438), succinctly summarised a number of submitter concerns:

The City of Kingston has not identified the site as a strategic infill residential development opportunity. The opposite is true. The site is afforded protections under the City of Kingston's 2015 Golf Course Policy to be retained for present and future generations based on its considerable green and open space values.

...

I accept the idea that Victoria needs new housing stock to meet population growth. But I object to this proposal because it seeks to remove municipal planning protections safeguarding the site's high-quality open space and amenity values to facilitate densified residential development. Under the City of Kingston's 2015 Golf Course Policy, the site holds a 'special significance' status that should be retained for present and future generations based on its considerable green and open space values. As noted in the City of Kingston's 2015 Golf Course Policy, *"golf courses are protected through specific provisions under Schedule 1 to the Special Use Zone. This is the highest level of protection that can be provided and the purpose of the zone."*

Other municipalities might not take the same approach, preferencing golf course sites for infill residential development, but this is not the policy position of the City of Kingston. As the responsible authority, the Council has in-depth knowledge about the needs of its diverse neighbourhoods and communities. As a result, the Council produces extensive and detailed planning activities, policies, and strategic visions to benefit the community now and into the future.

The Proponent submitted:<sup>30</sup>

- 59 The land is not identified in any strategic plan as public open space. The land is not identified in any strategic plan as future public open space. Neither is it reserved by public acquisition overlay for public open space.

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<sup>27</sup> Proponent's response to submissions table, item 15, doc 40

<sup>28</sup> Presentations by submitter 901 and submitter 1483

<sup>29</sup> Submitter 1579, submitter 1626 and submitter 1201

<sup>30</sup> In its Part A submission document 39

- 60 There is no overriding environmental reason why the whole of the land needs to remain as open space.
- 61 Neither State nor local government has expressed a desire to acquire the land for public open space.
- 62 Dingley Village is currently well served by existing local and regional open spaces. Provision ratios of open space for Dingley Village residents greatly exceed the municipal averages, indicating very good access to open space currently.<sup>31</sup>
- 63 In any event, significant elements of the subject land will remain as open space, but with an important distinction. The open spaces provided as part of the Proposal will be open to the general public to enjoy for the first time. The Proposal 'over provides' on public open space judged against relevant benchmarks. The Proposal reserves 26 per cent of the site area, being 13.85 hectares, as open space. This figure is inclusive of waterbodies which are sometimes described as 'encumbered' open space. These waterbodies will clearly enhance the proposed subdivision and contribute substantially to its amenity (as well as deliver a crucial drainage / flood mitigation measure that will confer significant off-site community benefits which will be explored further at the hearing).
- 64 This provision of open space associated with the Proposal can be contrasted with:
- (a) Benchmarks set in the Kingston Planning Scheme at clause 53.01, being:
    - 5 per cent for most land in the municipality
    - 8 per cent benchmark for various activity centres
    - at least '8 per cent benchmark for 'Strategic Redevelopment Sites', and
  - (b) the 20 per cent aspiration in the *Guidelines*.
- 65 It is appropriate that some of the land remain as open space. The proportion of the site that will remain as 'open space', and indeed, become public, is generous and appropriate.

The Proponent responded in the submissions table by referring to the evidence of its consultants to conclude<sup>32</sup> *"the site will not be as 'green' in the future as it was as a golf course, but it will nonetheless be developed in a way that makes a very substantial public open space, landscaping and tree planting offer"*.

## **(ii) Discussion and conclusion**

The site is not identified in any open space strategy for additional open space, noting that this is an area where significant areas of land are identified for future open space.

The Advisory Committee accepts that the land is not public open space, but it is in the broadest sense open space and has been identified as such in a number of Council policies. The policies of a planning scheme do not just reflect the policies of the Council; they also reflect state policy.

The report of the Panel and Advisory Committee for the Kingston New Format Planning Scheme recognised the importance of golf courses to Kingston. It stated:

The MSS recognises the special significance of the Golf Courses of Kingston and acknowledges them as a key asset. Because there are so many courses within Kingston, they could be seen as part of the contributing character and "*specialness*" of the municipality and as such be recognised within the Special Use Zone. The Panel supports the inclusion of the golf courses in a Special Use Zone, however this could be further strengthened through additional recognition in the MSS.

It is important to consider the broad contribution the open nature of the site makes to the character of Dingley Village in particular and the region in general. This contribution includes:

- views to the course from the roadways and parks

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<sup>31</sup> Refer evidence statement of Peter Haack, Paul Shipp and Michael Barlow. See also the Kingston Open Space Strategy, Part Two (2012).

<sup>32</sup> footnote *ibid* item 15, doc 40

- the view of trees above rooftops
- the immediate outlook of adjoining properties
- the intangible sense of being in a 'green suburb'
- the recreational opportunity it afforded its members.

In terms of views to the course, the site does not have to remain completely undeveloped to maintain these more distant views to trees.

The most significant changes will be to the immediate outlook of adjoining properties that will have a golf course vista replaced with back fences. A number of houses are sited close to the golf course boundary, in the order of 4 to 5 metres but some closer, and have cyclone fences that afford a view of the golf course. These are interfaces that will need to be specifically addressed in a development concept but are not of themselves a reason to keep the entirety of land as open space.

The Advisory Committee accepts that the site contributes to an intangible sense of being in a 'green suburb' but notes that the area has also been one of sand extraction and landfill and these areas are now becoming parkland. While these new areas will take time to establish, the broader character of the area as an area with 'green spaces' will be carried forward. Of course, the approximately 20 per cent of the site that will be given over to open space will also contribute to this sense of green.

The Advisory Committee accepts that the cessation of the recreational opportunity the land afforded its members and its redevelopment will affect the broader qualities of Dingley Village. It also accepts that while the playing of golf will not recommence, the ability to walk in green spaces can be carried forward and be made available to a wider range of people. With appropriate design, this opportunity could be delivered so that people can use the walking paths on-site as part of their daily routines.

The Advisory Committee concludes:

In terms of the issues identified in the *Guidelines* Step 1:

- there is no strong policy reason for the land to remain as open space.

### **3.6 Whether the land was offered for acquisition by the Commonwealth and Victorian governments or local governments**

#### **(i) Evidence and submissions**

The Proponent contended that whilst the land was not specifically offered to Government for purchase on a first priority basis, the site was sold on the open market, meaning Government had equal opportunity to purchase it, stating:<sup>33</sup>

... Any individuals or organisations who wanted to purchase the Site and use it as a golf course and/or its associated uses had the opportunity to do so.

The Proponent made strident submissions about its obligation to comply with Step 1 in its Part C Submission.<sup>34</sup> It contended that "*the Minister's response to the Committee's report on the draft*

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<sup>33</sup> Proponent Part A para 66 document 39

<sup>34</sup> Document 169 para 102

*Guidelines explains that this requirement is not a mandatory threshold question, but a desirable step, to be embarked upon voluntarily”.*

At para 104, the Proponent cited the Minister’s response:

Recommendation: A ‘triage’ process to test the fundamental suitability of converting golf course land to another use prior to pursuing a redevelopment option. This first step includes consideration of whether golf course land can be acquired by government for public open space purposes.

Partially supported – The government supports including a step to test the suitability of a proposal to convert golf course land to another use, including requiring golf courses in public ownership to submit to a first right of refusal process to offer the land for government agency acquisition for community or public use. However, in line with landholder property rights, it does not support extending this as a mandatory requirement to golf course land in private ownership. The final Guidelines have been updated to encourage private owners to voluntarily explore whether any government agency has interest in acquiring the land.”

The underlining is the Proponent’s emphasis.

In its submission<sup>35</sup>, the Peninsula Kingswood Country Golf Club referred to the sale of the site, stating:

The land at Dingley was offered for sale via an EOI process managed by Ernst & Young. Australian Super, via its ASRP1 entity, emerged as the successful bidder and sale completed in September 2014. No bids were received from council, government or any party with a golfing purpose for the site.

Council submitted:<sup>36</sup>

64. If the Committee allows this Amendment and Proposal through, then the community’s and the Committee’s work on the Guidelines will have been for nothing. Future Applicants will know the Guidelines can be sidestepped and the golf courses around Melbourne can be purchased on the assumption that a rezoning is all but assured.

Submitters raised issues in regard to lack of capacity at surrounding schools suggesting at least part of the site should be used for school purposes. Submissions were also made that the site should be a substitute site for the land identified as a rail stabling yard at Cheltenham as part of the Suburban Rail Loop project.

The Explanatory Report at the time of exhibition of the Amendment asked the question How does the amendment address the views of any relevant agency? and answered it this way: The views of relevant agencies will be sought during consultation under section 20(5) of the Act.

The DELWP Background Submission that provided the Advisory Committee with background into the Golf Course Redevelopment SAC process and the draft Amendment did not convey any detail of consultation with agencies to canvass interest in the site. But, as the Advisory Committee noted on page 9 of this report, the DELWP Notification Report in June 2021 confirmed government departments, agencies, servicing authorities, neighbouring municipalities and other stakeholders were advised about the Amendment.

## **(ii) Discussion**

The Proponent makes two points about its position: first that the *Guidelines* did not exist when it purchased the site and thus it could not be expected to comply with unknown requirements; second, that it was not for the purchaser to canvass interest of public agencies in the site. Nonetheless, it is clear that this step in the *Guidelines* has not been met.

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<sup>35</sup> Document 96

<sup>36</sup> Part A submission document 65

The need for the subject land to serve a needed public purpose is untested. This is especially undesirable in the context of submissions that the land should be used for a public purpose.

The Advisory Committee is in no position to judge whether the land is needed for additional school facilities or could offset the rail stabling yards as part of the Suburban Rail Loop (SRL), as suggested by submitters.

There is a simple mechanism to address this issue: ask the relevant authorities.

### **(iii) Findings**

The Advisory Committee concludes:

The Proposal does not adequately address the following issues in the *Guidelines* Step 1:

- The land was not offered for acquisition by the Commonwealth and Victorian governments or local governments in any meaningful way, and so the potential for the land to serve a needed public purpose is untested.
- If the land is not needed for additional school facilities or is not appropriate to offset the rail stabling yards as part of the SRL, as suggested by submitters, the government should publish reasons in the interests of transparency.

The Advisory Committee recommends:

- 1. Before a decision is made to rezone the land:**
  - a) the Minister ask public entities whether they have a need or opportunity to use the land or part of the land for a public purpose (especially school facilities or open space to offset the loss of identified parkland for the Suburban Rail Loop train stabling facility)**
  - b) if a government agency expresses a requirement for a part of the land this requirement be appropriately addressed in the zoning plan and overlays as well as the specific text of any Development Plan Overlay.**

## 4 Guidelines Step 2: Identify the strategic direction for the site

### What the *Guidelines* say

Establishing the strategic direction for the site is a key step to developing a concept for the site. Any concept for the site should begin with the question: what does policy say is the best use for this site?

The strategic direction for a proposal should consider, the following:

- The level of access to transport and activity centres.
- The local open space network or wildlife network.
- Whether the proposed conversion is consistent with relevant policies and strategies including:
  - the Planning Policy Framework in the Victoria Planning Provisions or relevant planning scheme
  - Metropolitan Planning Strategy
  - any metropolitan open space strategy or regional open space strategy
  - the Yarra Strategic Plan, if adjacent to the Yarra River
  - any relevant waterway, catchment, or flooding strategy
  - any approved council open space strategy
  - any approved council housing strategy.
- Whether proposal has the potential to contribute to broader strategic priorities, such as:
  - Active Victoria Framework
  - Water for Victoria Water Plan
  - Any regional *Integrated Water Management Plan* or the achievement of water sensitive urban design principles
  - Victorian 30-Year Infrastructure Strategy
  - Protecting Victoria's Environment – Biodiversity 2037.

### 4.1 Introduction

This section addresses the following questions in response to the *Guidelines*:

- The level of access to transport and activity centres
- The open space network
- Potential uses.

### 4.2 The level of access to transport and activity centres

#### (i) Evidence and submissions

The closest Railway stations are Mordialloc, 7.1 kilometres by car to the southwest, and Springvale Railway station, 5.9 kilometres by car or bus to the north east.

There are three bus routes that provide access across the local area including Bus Routes 811, 812 and 828.

The Proponent submitted<sup>37</sup> that at a regional level, Dingley Village is close to a range of key employment nodes, including the Moorabbin Airport, the Monash National Employment and Innovation Cluster and the Dandenong National Employment and Innovation Cluster.

<sup>37</sup> Proponent Part A submission para 74, document 39

A number of submissions pointed out the poor public transport accessibility of the site. The draft *Southern Metro Land Use Framework Plan* identifies the Dingley Village, including the site as having 'very low' public transport accessibility, except within walking distance of Centre Dandenong Road where accessible rises to 'low'.<sup>38</sup>

In discussing the development potential in Dingley Village, the *Kingston Housing Strategy and Neighbourhood Character Study*, July 2020, says of its proposed approach:

The amount of Increased Change around the Dingley Village NAC has been contained to a 200 metre walkable distance along the Centre Dandenong Road frontage and along St Marks Close. The extent of Increased Change around this centre has been reduced from that indicated by the standard criteria for NACs, as a result of the very limited accessibility to services due to its location surrounded by the green wedge, minimal public transport access, and its remoteness from higher order Activity Centres.

The Proponent submitted<sup>39</sup> that:

- 71 The provision of infill housing on a large vacant site within an established urban (and residential) area of Melbourne is strongly supported by policy.

## **(ii) Discussion and conclusion**

The site has a number of constraints, and these are discussed in Chapter 6, but none of these constraints mean that no development is possible on the site. The Advisory Committee agrees that the site is relatively well located in a metropolitan context being a short trip from a range of facilities and services.

The strong attachment of the residents to Dingley Village is a testament to its attractiveness as a place to live (something residents were keen to preserve).

The Advisory Committee concludes:

In terms of the issues in the *Guidelines* Step 2:

- The site is relatively well located in a metropolitan context.

## **4.3 The open space network**

### **(i) Evidence and submissions**

The land is inside the UGB and Dingley Village is surrounded on three sides by green wedge land. In the green wedge, closed landfills are being converted to open space, though it will be some decades before they can be revegetated. The local area has a relatively high supply of open space, but a discontinuous street network means access to the spaces can be circuitous.

The 'Chain of Parks' is a project, initially proposed in 1994, to turn some historic landfills areas in Kingston's green wedge into a series of linked parks that offer a wide range of recreational facilities and open space.

The site is not part of the Chain of Parks but the Spring Road Reserve is. The Kingston Green Wedge Plan shows proposed and potential open space areas.

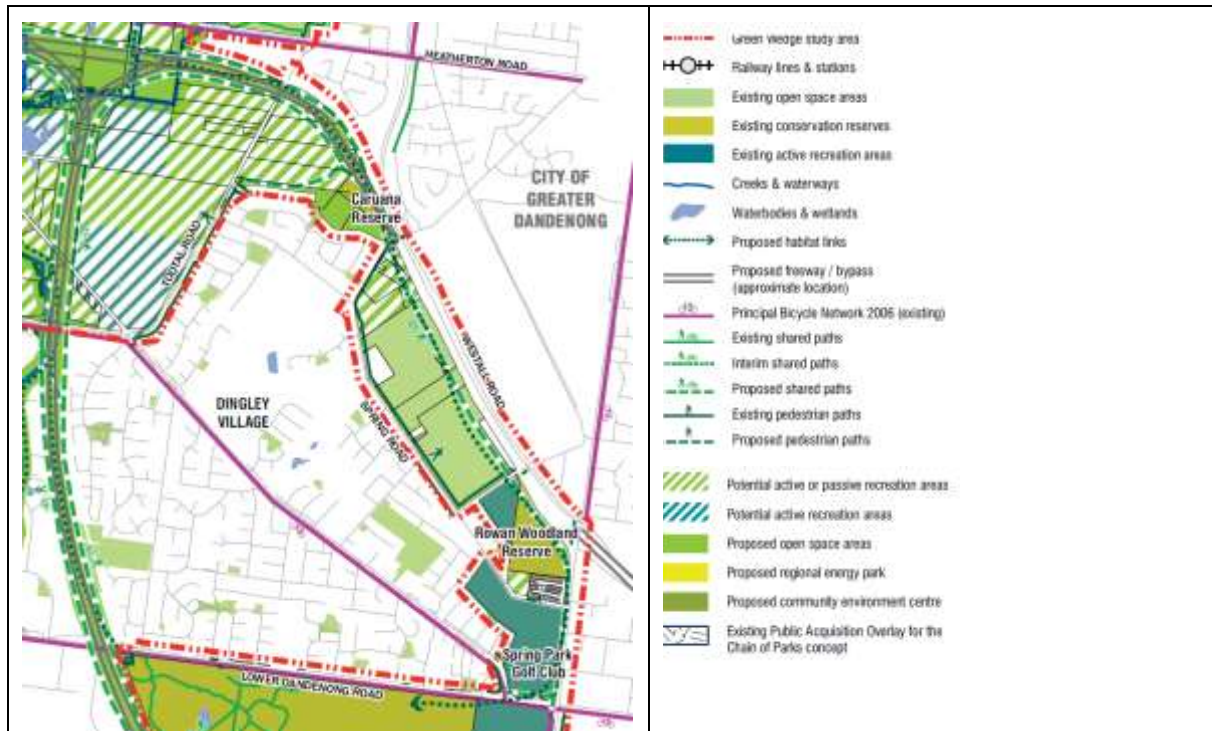
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<sup>38</sup> The plan identifies areas as being 'Very low', 'Low', 'Low to Medium', 'Medium', 'Medium to High', 'High', or 'Very High'

<sup>39</sup> Proponent Part A submission document 39



Figure 7: Extract of Kingston Green Wedge Plan, April 2012



Submissions raised the option for use of the site for organised active open space such as a sporting oval. Other submissions also raised the prospect of no development on the land to have it as open space.

## (ii) Discussion

Development of the site does not comprise the achievement of the Chain of Parks as a concept. Connection to the Chain of Parks is an opportunity for the site and the site has the potential to provide green connections to other parks.

In terms of the broader character of Kingston, the transformation (and eventual) revegetation of the green wedge areas will set the character of the area; in the context of these transformations the role of this site will be relatively minor.

It is not clear that the land is inherently suitable for public open space, especially compared to nearby green wedge land that is already identified.

## (iii) Conclusion

The Advisory Committee concludes:

In terms of the issues in the *Guidelines* Step 2:

- There is no policy or strategy explicitly calling for an open space link across the site, and no obvious need for a link within the Chain of Parks.
- The site has not been identified for active open space.

## 4.4 Potential uses

### (i) Evidence and submissions

The Proponent submitted<sup>40</sup> that:

- 72 The proposed residential use of the site:
- a) delivers upon *Plan Melbourne* and Planning Policy Framework objectives and strategies to provide housing near jobs and existing infrastructure, thereby limiting urban sprawl in comparatively less accessible and well serviced locations on the urban fringe
  - b) makes efficient use of existing infrastructure
  - c) strengthens existing communities, reconnecting neighbourhoods through new public open spaces, walking and cycling paths
  - d) facilitates significant private sector investment and multiplier economic benefits including significant job creation
  - e) will deliver affordable housing to Dingley Village.

...

- 76 Overwhelmingly, development of the site for residential purposes is a logical and optimal future outcome for the site assessed according to relevant planning policies.

Submissions were received supporting the Proposal or development in a revised form with housing at a reduced density, more open space and retention of more vegetation. Those submissions were in the minority.

The strongest supporter for conversion of the subject land for residential purposes was, as expected, the Proponent, who adopted the expert evidence of Mr Barlow who, after examining State and Local Policy in the Planning Scheme, submitted the conversion had policy support. He stated: “... it is evident that the site, if it is not to be used as a golf course, has several significant attributes that mark it out for residential development”. Those attributes included its size, its location, its serviceability by public transport and other considerations that made the “*proposed repurposing ... for residential development ... strategically appropriate*”.<sup>41</sup>

Mr De Silva for Council also supported a residential future if development were to happen. Mr De Silva gave evidence that:

41. Assuming that the land is offered to all levels of Government and it is not required for public purposes, I am of the view that an appropriate outcome is redevelopment of the land for residential purposes for the following reasons:
- other potential land uses such as industrial/employment would be unsuitable taking into account the site conditions and the potential amenity impacts
  - the surrounding land has a well-established suburban character and density
  - potential for significantly higher development densities is not supported by ready access to high capacity public transport (other than local buses) and/or proximity to a designated higher order activity centre and would be likely to raise amenity concerns
  - the subject land is not specifically identified as a preferred redevelopment site
  - the proposed form of development could enable retention of an increased proportion of the important site values and demonstration of a net community benefit.

In terms of the specific mix of uses a number of options were floated in submissions including oval, secondary school, retirement village. As the Dingley Village Community Association (DVCA) (Submission 1345) submitted: “*Not just, houses, houses, houses times 813.*”

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<sup>40</sup> Proponent Part A submission, document 39

<sup>41</sup> Barlow witness statement section 5.2.1 and paras 103-117 doc 41

## **(ii) Discussion**

The Advisory Committee accepts that the subject land is not identified as a strategic development site but this does not preclude the site being considered for housing. There are state policy provisions that support the use of land for residential purposes where land has the locational attributes of the type existing on the subject land as well as the opportunities presented by the site itself to achieve a development that creates its own amenity.

The Kingston Housing Strategy and Neighbourhood Character Study provides for the opportunities afforded by potential large infill sites:

‘Large Residential Opportunity Sites’ are recognised as important sources for housing diversity and medium to high density development. Many of these sites are already within the walkable catchment of Activity Centres or the Principal Public Transport Network (PPTN) and are appropriate for substantial change ...

The Strategy describes ‘Large Residential Opportunity Sites’ as follows:

Sites which exhibit a number of characteristics, including a generous size and a well serviced location, offer opportunities for urban renewal and increased residential densities. Generally speaking, these sites become available for redevelopment on an ad hoc basis and are dealt with on their merits at the time. Some characteristics that would be considered advantageous include:

- Over 3,000 square metres in lot size
- Located in a zone that permits residential use
- Not constrained by a development impediment
- Vacant, non-residential or occupied by housing at standard densities
- Located near public transport and community infrastructure.

The Strategy lists a number of opportunity sites including the Clayton Business Park, a 31 hectare site which was not included in the future supply analysis and states:

The potential capacity of the Clayton Business Park site to accommodate future population growth is significant. However, this cannot be relied upon until a planning scheme amendment process has been completed and the land rezoned for residential purposes. For this reason, possible future population growth associated with the redevelopment of this site has not been included within the capacity analysis undertaken for the Housing Strategy.

The Advisory Committee believes the land can be considered a large residential opportunity site. Given the period of time that has elapsed since the site was sold and the clear intention of the Proponent to pursue a residential development, it is perplexing that the golf course site was not considered in the review of the Kingston Housing Strategy and Neighbourhood Character Study undertaken in 2021.

The Advisory Committee agrees with Mr Barlow and Mr De Silva that, if the land is to be developed, development as a residential area, subject to preservation of important site values, would be the most appropriate.

However, the question of density of development will be a matter to be resolved from examination of the constraints and opportunities. For example, there will be a question mark as to whether the site is strategically suited to higher density development given the distance to public transport routes (noting planning for a bus route through the site), save potentially in the southern corner if improved access to the activity centre is created.

Because the subject land can be converted from a golf course to other purposes does not mean that the Advisory Committee must accept the Proposal as put before it at the Hearing. The question is ‘how might the site be developed’?

Concerns were expressed in a number of submissions about the density of new development especially the delivery of townhouses. The Advisory Committee observes:

- locations for higher density development are typically identified in a housing strategy after considering a range of factors, and the vast majority of the site has not been so identified
- there is benefit in having a diversity of housing on offer in an area, and so townhouses ought to be supported
- with an overall density of around 15 dwellings per hectare the Proposal is less than densities proposed in growth areas and much less than infill sites in established suburbs so it is not especially dense by contemporary standards.

### **(iii) Findings**

The Advisory Committee concludes:

In terms of the issues in the *Guidelines* Step 2:

- Residential development of the site is an appropriate strategic direction if the site is to be developed.
- The potential for uses other than housing, including a range of private institutional uses such as schools, could be considered in the land use mix, and if included could deliver broader community benefits.

# Part C: Scoping the development proposal

## 5 Guidelines Step 3: Determine what other assessment and approvals are required

### What the *Guidelines* say

All other applicable assessment and approvals for the proposal based on the relevant legislation should be identified. Consider all relevant legislation, including:

- *Aboriginal Heritage Act 2006*
- *Environment Effects Act 1978*
- *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*
- *Heritage Act 2017*

Determine:

- who are the relevant decision makers
- the level of effort and rigour required to document the site values and constraints
- the program for the preparation of documentation and engagement.

### (i) Proponent's response to the Step 3 of the Guidelines

The Proponent advised:<sup>42</sup>

- the proposal requires a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006*, and that CHMP prepared for the site was approved by Aboriginal Victoria on 27 March 2020<sup>43</sup> (paras 78, 79)
- referral to the Commonwealth Minister under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* (Cth) was not required<sup>44</sup> on the basis the project is not likely to have a significant impact on any of the eight listed matters of national environmental significance (para 82)
- in relation to State protected flora and fauna under the *Flora and Fauna Guarantee Act 1988* (Vic) (FFG Act):
  - There are confirmed records of one species (Grey-headed Flying-fox) listed as threatened and/or protected under the FFG Act. However, the study area is privately owned, and as such a permit under the FFG Act is not required. (para 84)
- before using the area of the site covered by the Environmental Audit Overlay (EAO) for dwellings, either a preliminary risk screen assessment or environmental audit will be required (para 88)
- other statutory approvals will be required for the project, for example:

<sup>42</sup> Proponent Part A submission document 39

<sup>43</sup> Archaeology at Tardis, 'Kingswood Golf Course Residential Development', 17 March 2020, Amendment Report 48.

<sup>44</sup> EHP Report, pp 32-34, Amendment Report 46.

- a) agreements and consents under the *Road Management Act 2004*
- b) permits and certificates under the *Building Act 1993*
- c) agreements and consents under the *Water Act 1989*
- d) potentially, consents and permits under Council local laws.

The Proponent advised that the 'other' approvals (para 94):

... deal with more detailed matters which are obtained after the resolution of the planning and environmental considerations that are the focus of the Committee's task. The Proponent does not intend to address these types of approval matters in presenting its case to the Committee.

DELWP (Submission 782) submitted that it was:

... not satisfied that the applicant has demonstrated steps to avoid and minimize the proposed native vegetation removal and that no feasible opportunities exist to further avoid and minimize impacts on native vegetation and habitat values without undermining the key objectives of the Proposal.

Offsetting native vegetation appears to have been considered as the jump off point when planning siting and design.

The potential for the retention, enhancement and protection of endangered EVCs, mature and hollow bearing trees and wetland habitat as part of designated conservation reserves has not been adequately considered as part of this application.

## **(ii) Discussion**

The Advisory Committee considers that the Proponent has identified the necessary approvals, but for reasons discussed in Chapters 6 and 8, has not always appreciated the impact those approvals might have on the design of the project. In particular, issues with dealing with flooding under the *Water Act* cannot be postponed until after the resolution of planning matters. Resolution of this issue is a condition precedent that will fundamentally affect the design of the proposal.

## **(iii) Findings**

The Advisory Committee concludes:

In relation to *Guidelines* Step 3:

- The documentation adequately identifies the permission need but does not always appreciate to potential impact of these approvals will have of the proposal.

## 6 Guidelines Step 4: Document site values, constraints and opportunities

### What the *Guidelines* say

The values, constraints and opportunities at the golf course land must be clearly documented. The values, constraints and opportunities will be identified by the proponent, relying on technical studies and feedback from community engagement.

The following matters should be considered, as relevant, when identifying the values and constraints of a site:

- the environmental values of the site, including biodiversity values, habitat connectivity and the strategic biodiversity significance or role of the site in the local or regional ecosystem, including the relevant bioregion
- the community values of the site, including community facilities providing for active or passive recreational pursuits, the catchment of the community using the site, whether the site is accessible to the public
- the open space values of the site, including whether the site is accessible to the public, or if it has broader landscape values through the provision of tree coverage and green areas
- any environmental hazards including hazards that are mitigated by the way the golf course land is currently managed, such as flooding or bushfire hazard
- the cultural heritage values of the site, including aboriginal heritage values and other cultural heritage values
- any contamination, including any known or likely sources of contamination that may exist due to historical uses or through the management of the golf course land
- the site's integration with existing infrastructure, such as transport networks (public transport, road, pedestrian and bicycle routes), stormwater infrastructure, electricity transmission links
- the site's relationship to nearby residential areas, rural or green wedge areas including its interface with residential development.

The opportunities for the site should consider:

- integration with existing open space networks and recreational facilities
- restoration of environmental values, including protection of biodiversity, native vegetation, water ways, water bodies and wetlands
- opportunities to increase resilience to climate change and natural hazards, including a design response that may increase the community's resilience to bushfire and flooding events and sea level rise
- additional community facilities
- educational and health facilities
- a range of dwelling types including affordable housing
- tourism facilities
- introduction of environmentally sustainable measures and design features, such as the generation of renewable energy, water sensitive urban design, wastewater reuse, and waste reduction.

### 6.1 Introduction

#### (i) Overview

Section 1 of the Development Plan synthesises the site's values, constraints and opportunities as identified in the supporting technical reports that accompany the Amendment and the Permit Application:

- the Landscape Masterplan by Tract (Application Document 10)

- the Planning Report by Tract, June 2021 (Amendment Report 18)
- the supporting technical reports themselves, in particular:
  - Infrastructure servicing (SMEC, Amendment Report 21)
  - Stormwater management (Cardno, Amendment Report 22)
  - Traffic and transport (One Mile Grid, Amendment Report 23)
  - Community infrastructure (ARS Research, Amendment Report 28)
  - Contamination (Senversa, Amendment Reports 30-39)
  - Aircraft and road traffic noise (Wilkinson Murray, Amendment Reports 40-41)
  - Aircraft operational impact (Rehbein Air Consulting, Amendment Reports 42-43)
  - Geotechnical suitability (Coffey, Amendment Reports 44-45)
  - Ecology (Ecology and Heritage Partners, Amendment Reports 45-46)
  - Aboriginal cultural heritage (Archaeology at Tardis, Amendment Reports 48-49)
  - Site survey (Hellier McFarland, Amendment Reports 50-51)
  - Arboriculture (Homewood, Amendment Report 52).

The Day 1 DPO Schedule sets the following requirement at Clause 4:

Application requirements and required technical analysis

The development plan submitted for approval should be accompanied by and respond to the recommendations of reports assessing the following matters relevant to the site and the proposed land use and development outcomes included in the development plan:

- Feature survey
- Landscaping
- Infrastructure and servicing
- Sustainability (for dwellings, public realm / infrastructure and travel)
- Affordable housing
- Aircraft noise
- Site Contamination
- Flora and Fauna
- Arboricultural
- Cultural Heritage
- Hydrology
- Traffic and transport.

## **(ii) Can development proceed?**

The *Guidelines* specifically contemplate that after the Step 4 assessment, consideration of development of a site might return to Step 1, rather than progress to the next step of community engagement on the basis that:

Land is unsuitable for conversion due to significant site constraints

As set out below, none of the identified constraints considered individually, or together, would prevent residential development of the scale envisaged from proceeding. The constraints do not force a rethink of the strategic direction for the site.

## **(iii) What this Chapter addresses**

This section addresses the following site values, constraints and opportunities in response to the *Guidelines*:

- Flooding and WSUD
- Contamination



- Safeguarding Moorabbin Airport
- Arboricultural values
- Biodiversity values
- Amenity of adjoining properties
- The character of the neighbourhood
- Improved connectivity
- A new green space.

## 6.2 Flooding and WSUD

### (i) Submissions and evidence

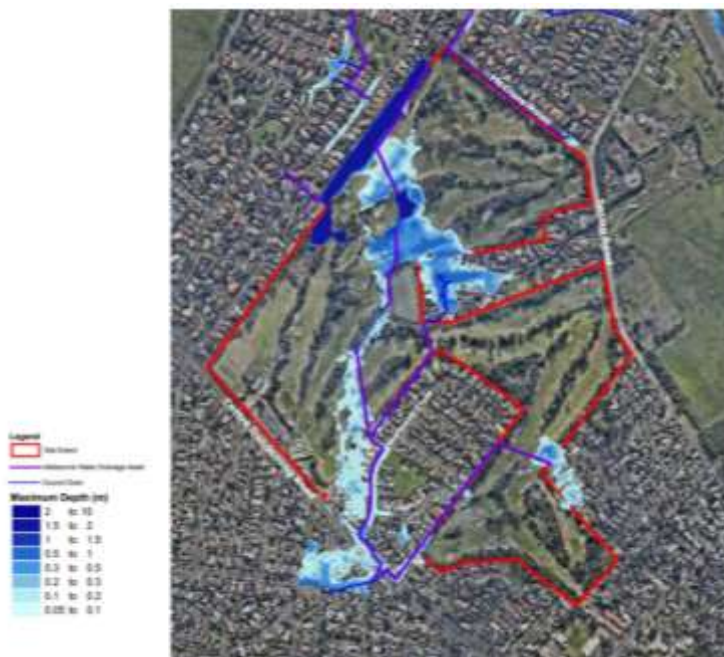
The land is currently intermittently inundated from overflow from the Melbourne Water detention basin in events greater than the 2 per cent AEP (Annual Exceedance Probability).

At the downstream end of the land, significant property flooding is experienced along Golfwood Close and Lee Andy Court. In the 1 per cent AEP event, a peak flow of 5.43m<sup>3</sup>/s is recorded as discharging off the western region of the former golf course.

Melbourne Water flood mapping shows that this affects approximately 70 properties downstream of the land. No flow is recorded entering the downstream properties from the eastern section of the former golf course. Figure 8, from the Development Plan, shows the extent of existing flooding using the revised surface and basin water level. The revised existing conditions model results in approximately 30,000 cubic metres spilling out of the existing Melbourne Water storage basin.

The subject land is the site of an aquifer storage and recovery (ASR) project. A publicly funded pilot program showed that it was possible to store up to 1.9 ML of storm water in the fractured rock aquifer beneath the golf course and to recover this water at a sufficient rate and quality to make an effective contribution to the irrigation and maintenance of the golf course landscape.

**Figure 8:** Area subject to inundation



## (ii) Discussion

Existing flooding is a clear constraint to development. The Proposal is capable of addressing this issue, but as discussed in Chapter 8.2, the details of the engineering solutions are not fully resolved.

The *Guidelines* in Step 4 include reference to any opportunities to increase resilience to climate change. Existing opportunities such as the ASR operation can be considered in this category, and how it may be incorporated into a WSUD response.

Step 4 also calls for the introduction of measures such as WSUD being documented.

## (iii) Findings

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- Development of the site is an opportunity to address local flooding issues.

Further work is needed to:

- Further explore opportunities for WSUD and continued use of the ASR infrastructure.
- Develop a complete picture of water management for the site including flood mitigation, storm water quality, water reuse, and the precise nature of what is required for the functional layout of the stormwater system.

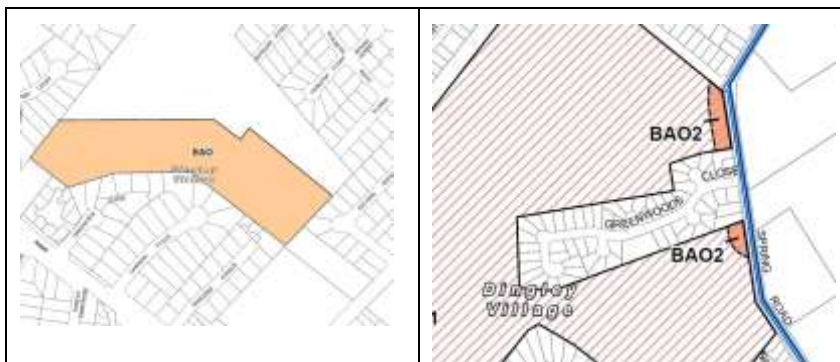
## 6.3 Contamination

### (i) Submissions and evidence

There are three contamination issues that need to be managed:

- Ground water – Buffer Area Overlay (BAO) 1 over the whole site
- Land fill gas – BAO2 near Spring Road
- Contaminated land – EAO on the old cannery site near Cannery Place.

**Figure 9: Proposed contaminated overlays**



The EPA submission <sup>45</sup>identified the following “*remaining issues*”:

54. For the purposes of the Hearing today, we intend to focus on several aspects of the Amendment which are the key issues for EPA.
55. These include:
  - Confirming the adequacy of the further assessment work which was undertaken following exhibition of the amendment

<sup>45</sup> Document 93

- Confirming EPA's position on BAO 1 and BAO2.
56. Confirming EPA's position on:
- The need for an environmental audit and overall consistency with the updated Planning Practice Note 30–Potentially Contaminated Land (DELWP, 2021) and the updated Ministerial Direction No. 1 (2021)
  - Application of the EAO and as such, deferral of the environmental audit
  - Application of the EAO to part of the land.

### **BAO1: Ground water**

The EPA submitted (para 66) that there appears to be a concern that groundwater conditions could impact on below ground structures and notes the recommendation by Mr Warren Pump of Salient GeoEnvironmental Consulting Pty Ltd<sup>46</sup> for the Proponent that:

Any subsurface structures (including concrete structures and steel-reinforced concrete structures, or others fabricated from unprotected steel) that are likely to come into long term contact with groundwater should be designed by suitably qualified engineer in accordance with material durability requirements set out in Australian Standard AS2159–Piling–Design and Installation.

The EPA submitted that to address this concern, the BAO1 could be further strengthened (redrafted) to address this risk, bearing in mind that the current focus on the controls appears to be on the use of groundwater for extraction and the associated risk to human health, and not on the potential risk to structures.

The EPA considered that dealing with the risk to subsurface structures within the controls of BAO1 is preferable to management via a Construction Environmental Management Plan (CEMP).

### **BAO2: Landfill gas**

The EPA submitted:

- 74. EPA is mindful that the use of the BAO as a planning tool is in its infancy and its application as part of this Amendment may be seen as setting precedent, and for this reason requested further data to ensure that the extent of the Overlay in this case would be accurate in regard to the risk.
- 75. EPA has now reviewed the Addendum to Appendix B of Mr Rehfish's expert report dated 25 October 2021 (Tabled Document 79) circulated on 19 November 2021 and agrees that the additional data suggests that the elevated carbon dioxide in bores in the southeast section of the site is not due to landfill gas migration.
- 76. This suggests that the extent of the Overlay as proposed is appropriate to manage risks of landfill gas.

### **Contaminated land**

There were differences of view as to whether the EAO should be applied to the maintenance depot and chemical store. Reference was made to the Planning Practice Note 30 to justify that the storage of chemicals at the site was 'minor'. The EPA submitted:

- 109 ... there have been several environmental assessments undertaken at the site to understand the extent and nature of contamination present. These can be used to inform, with a degree of certainty, the area that should be the subject of further assessment via an environmental audit.

### **(ii) Discussion**

The extent of contamination issues on the land has been adequately identified. The potential extent of contamination in relation to the chemical storage area has not been fully determined,

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<sup>46</sup> Document 77a

but dealing with any potential contamination is not likely to materially affect the layout of the development. The issues relate to the content and application of the Overlays and this is addressed in Chapter 9.4.

**(iii) Finding**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities further work is needed to:

- Assess the contamination potential of the maintenance depot and chemical store before finalising the Development Plan.

## **6.4 Safeguarding Moorabbin Airport**

**(i) Submissions and evidence**

The site is located about 1.5 kilometres east of Moorabbin Airport. Submissions raised concerns about aircraft noise and safety.

Moorabbin Airport is the second busiest airport in Australia and Australia's leading general aviation flight training airport. The airport is home to a range of general aviation activities including flying training, flight charter, aviation maintenance, general and recreation aviation operations.

Moorabbin Airport Corporation Pty Ltd (MAC) purchased a long term lease on the site from the Commonwealth Government in 1998.

Clause 18.02-7S (Airports and airfields) sets out a strategy for Moorabbin Airport:

Recognise Moorabbin Airport as an important regional and state aviation asset by supporting its continued use as a general aviation airport, ensuring future development at the site encourages uses that support and enhance the state's aviation industry, and supporting opportunities to extend activities at the airport that improve access to regional Victoria.

The National Airports Safeguarding Framework (NASF) aims to enhance safety, viability and growth of aviation operations and drive improvements in planning outcomes and supports the integration and co-ordination of planning related to airport operations. The state government agreed to the NASF in May 2012. In 2015, NASF was included as a reference document (now policy document) in the Victorian Planning Provisions (VPP) and relevant planning schemes.

The NASF covers a range of issues:

- aircraft noise
- risk of building generated windshear and turbulence at airports
- risk of wildlife strikes in the vicinity of airports
- risk to aviation safety of wind turbine installations (wind farms)/wind monitoring towers.
- risk of distractions to pilots from lighting in the vicinity of airports
- risk of intrusions into the protected operational airspace of airports
- protecting aviation facilities – communication, navigation and surveillance
- protecting strategically important helicopter landing sites
- managing the risk in public safety areas at the ends of runways.

Of these issues, aircraft noise and wildlife strikes are potential issues for the Proposal. The need to protect airspace will limit the height of buildings on the land but this limit would seem to be in the order of 25 metres above the existing ground level.

## Aircraft noise

Mr Cincotta went to some time and effort to provide the Advisory Committee with a huge amount of material, and provided fulsome submissions to the benefit of the Advisory Committee.

In Victoria, planning controls that manage airport noise use the Australian Noise Exposure Forecast (ANEF). The ANEF is a measure of annual noise exposure and considers amongst other things, average daily noise, noise intensity (level), duration and tonal content.

The ANEF does not readily translate to an understandable noise level in decibels – the standard measure for how ‘loud’ something is. Alternative noise metrics to the ANEF include:

- N contours (‘Number Above’ contours) – the average number of aircraft operations per day exceeding a particular decibel level
- Flyover numbers – the average number of aircraft operations per day using a designated flight path
- Respite time – the average number of hours per day during which there are no aircraft movements.

The 2015 approved masterplan, and 2021 preliminary draft masterplan present ANEF and N contour plans. The site is outside of the ANEF 20 contour (the level at which aircraft noise is managed under planning controls) but is affected by N contours in parts.

The Advisory Committee was provided with detailed material on aircraft movements and submissions about noise and noise complaints.

Wilkinson Murray Pty Limited in *Aircraft and Road Traffic Noise Assessment* (Amendment report 40 and 41) stated:

Although Wilkinson Murray is in general not in agreement with the recommendations of NASF Guideline A, given the above noise characteristics at the Site we are in agreement with the recommendations of the guideline that would be applied in this case. Namely that:

- acoustic attenuation should be conditioned for all residences constructed on the Site, to achieve the internal noise level set out in Table 3 of Australian Standard 2021 (notwithstanding that the Site is located in an area designated as “acceptable” under that Standard); and
- potential residents should be provided with appropriate disclosures at the point of sale in respect of forecast noise levels and numbers of overflights.

## Wildlife strike

This issue was investigated for the Proponent. The Rehbein *Aviation Assessment*<sup>47</sup> stated:

Clause 20 of NASF Guideline C states that it is also essential that new land uses and changes to land zoning within 13 km of the airport property are regularly monitored and have action plans created to mitigate any unacceptable increase in the risk of bird strike should it be determined to exist.

It is therefore recommended that a suitably qualified professional experienced in airport wildlife hazards undertake review of the proposed development concept, including the large waterbodies with respect to presence of a wildlife hazard risk to aircraft using Moorabbin Airport to comply with NASF Guideline C.

Ecology and Heritage Partners (EHP) prepared a report on wildlife strikes exhibited with the amendment.<sup>48</sup> It states that the decrease in the extent of open space and changes in land use are likely to limit the benefits provided by plantings, increased water cover and aquatic habitat improvements, and:

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<sup>47</sup> Exhibited documents 42 and 43

<sup>48</sup> Exhibited document 47

Once constructed, wetlands associated with the development are unlikely to modify bird movements throughout the locality, with larger and established wetlands in the broader landscape, such as those included in the Carrum Wetlands Important Bird Area, providing higher quality and more favourable habitats

The EHP report presents data from the Australian Transport Safety Bureau (ATSB) 2014 statistics and concludes:

Given the relatively low numbers of bird strikes recorded outside of the aerodrome confines between 2004 and 2013 (8 per cent) the risk of strikes occurring within the vicinity of the proposed development site are considered low.

This statement seems to misinterpret the meaning of 'aerodrome confines' which the ATSB reports that:

The majority of birdstrikes occur within the confines of an aerodrome, that is, within 5 km from the aerodrome or on the aerodrome.

This would include the subject land.

## **(ii) Discussion**

The Advisory Committee agrees that aircraft noise is a potential constraint on the land, but this constraint is not so great as to preclude development of the land. The Victorian planning system has an established set of controls to restrict development in areas affected by aircraft noise based on ANEF contours. It is not appropriate to introduce a higher standard for this land in the absence of a higher level policy change. Acoustic protection of dwellings to ensure that sound levels inside buildings are appropriate; so too is notice to prospective purchasers of the potential noise impacts.

The Advisory Committee is not satisfied that the issue of birdstrike from new wetlands or water bodies on the subject land have been adequately identified, and the implications for the drainage infrastructure design fully appreciated. This is especially the case as the Advisory Committee review of the relevant background report indicates that the relevant statistics were misinterpreted.

## **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- The impact of aircraft noise and the need to address noise issues in development controls has been appropriately identified.

Further work is needed to:

- Properly assess the potential for wildlife strike on aircraft from water retention or treatment areas.

## **6.5 Arboricultural values**

### **(i) Submissions and evidence**

There are existing trees on the land that warrant retention.

Homewood Consulting<sup>49</sup> conducted a preliminary assessment of the retention value of trees on the site in 2020 and gave arboricultural evidence for the Proponent. A High, Medium or Low retention value was allocated to individual trees and tree groupings on:

... their combined arboricultural characteristics of health, structure, Useful Life Expectancy (ULE), origin, dimensions and significance within the landscape and as an individual tree.

The approach is consistent with the *Australian Standard 4970-2009: Protection of trees on development sites*. Mr Kenyon of Homewood Consulting stated that arriving at a retention value for tree is a qualitative process, based on the arboricultural characteristics, and the arborist's experience.

Arbor Survey provided arboricultural evidence for Council. The Advisory Committee requested that the arborists review their respective evidence and identify areas of agreement and disagreement. The Arborist Conclave Report<sup>50</sup> submitted the following with regard tree retention values:

- the assessment of high and medium retention value trees was correct with some minor, but not significant anomalies
- there were some anomalies with the assessment of local retention value trees and some adjustment may be required
- the assessment of the high retention value groupings of trees was sound.

Environmental significance was not considered in the arboricultural assessment and it is not clear how the environmental significance of trees was considered in the design response. The Advisory Committee agrees with Ms Kristin Campbell of Biosis Pty Ltd for the Council<sup>51</sup>, that the tree retention plan should be informed by ecological values as well as arboricultural values.

## **(ii) Discussion**

The Advisory Committee considers that the assessment of the arboricultural characteristics of the site has followed the generally accepted approach.

The issue is that vegetation might also have habitat and amenity value that has not been adequately captured. For example, a hollow bearing tree that provides foraging and roosting habitat for Grey-headed Flying-fox or Swift Parrot would be highly valued from an ecological perspective but may be assessed as medium or low retention value due to its health or structure. Similarly, a tree that provides screening at the site interface is likely to be highly valued by an adjoining landholder, regardless of its environmental value.

The Advisory Committee considers that combining the arboricultural characteristics of each tree into a combined retention value score, is problematic for translating into the design response.

## **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- The arboricultural value of trees has been adequately identified.

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<sup>49</sup> Amendment Report 52 - Homewood Consulting Pty Ltd (2020) Assessment of trees located at 179-217 Centre Dandenong Road, Dingley Village

<sup>50</sup> Tabled Document 109 - Arborists Conclave - Record of Review

<sup>51</sup> Expert witness statement document 87



- Use of a combined retention value score for tress, is problematic for translating into the design response.

## 6.6 Biodiversity values

### (i) Submissions and evidence

The site potentially has ecological values.

The importance of the site's biodiversity values to the local community was a consistent theme in many submissions. Fauna, particularly birds, is highly valued. Ms McGuinness' (Submission 284) statement that "*the sound of nature is irreplaceable and once gone it will be gone forever*" encapsulates the significant value the community places on the site's biodiversity. Mr Hengstberger (Submitter 1601) provided this summary:

There is nothing earth shatteringly special about the Kingswood site, it has no threatened species, it's not part of a World Heritage Site, the native flora and fauna are not in a pure untainted corner of the world cut off from the encroachment of the developers to date.

It does, however, have intrinsic ecosystem value. It provides a home to thousands of birds and hundreds of other fauna. Their homes are the older mature trees, wooded clumps and scrubby understory. They breed in the old hollow trees, raise their offspring, teach them to fly and how to catch and make a meal of the literally zillions of bugs that otherwise we humans would need insect repellent and chemicals to control.

Mr Organ of EHP undertook an initial assessment of the ecological values of the site in 2020<sup>52</sup> and gave biodiversity evidence for the Proponent. The key findings of the assessment include:

One nationally significant fauna species (Grey-headed Flying-fox) was recorded within the study area during the 2015 field assessment.

One State significant fauna species (Hardhead *Aythya australis*) was recorded within the study area during the 2015 field assessment. Hardhead is listed as vulnerable in Victoria

No suitable habitat is considered to occur for any nationally significant [flora] species due to the highly modified condition of the study area.

No State significant flora species were recorded within the study area during this assessment.

Potentially suitable habitat is considered to occur for one State significant species (Veined Spear Grass *Austrostipa rudis subsp. australis*).

The study area supports four broad habitat types: patches of native woodland; corridors of planted trees and shrubs; artificial waterbodies and introduced grassland. Hollow-bearing trees are a prominent feature of the first two habitat types, with large numbers of these (more than 90) being counted during the previous 2015 field assessment.

While the trees and shrubs form strips by virtue of the study area being a golf course, they do not constitute a wildlife corridor as such (that is, not contiguous with larger areas of habitat in the local area). However, they are likely to act as a means of connectivity, providing habitat and facilitating the movement of species throughout the landscape as a 'stepping-stone'. The study area therefore contributes to the role that remnant native vegetation in the local area has in conserving fauna.

Ms Campbell of Biosis presented expert fauna evidence for Council and stated in regard the EHP assessment that it:

... does not consider impacts on species and communities at the local (municipal) level which is relevant to the City of Kingston. At this level 11 of the fauna species recorded are significant....

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<sup>52</sup> Amendment Report 26 - Ecology and Heritage Partners Pty Ltd (2020) Ecological Assessment for a proposed residential development: Former Kingswood Golf Course, 179-217 Centre Dandenong Road, Dingley Village, Victoria



Ms Campbell, while generally in agreement with the EHP assessment, stated that there were anomalies in the assessment criteria for a number of species including the nationally significant Grey-headed Flying-fox and Swift Parrot, the state significant Hardhead and other species such as the Powerful owl, Pied cormorant and Black-faced cormorant. It was Ms Campbell's view that the habitat value of the vegetation on the site required more consideration and stated:

The draft development plan states no FFG Act or EPBC Act listed species or habitat is present for flora but omits this for fauna, and the reader may assume that there is no habitat for FFG Act or EPBC Act listed species for fauna, however this is not the case.'

Dr Jeff Yugovic of Biosis presented expert flora evidence for Council. Dr Yugovic stated that:

The former Kingswood Golf Course supports considerable biodiversity in the City of Kingston context with 67 recorded indigenous flora species including 23 species of local significance in the municipality. Natural tree cover exceeds average natural tree cover in adjacent areas of the Kingston green wedge.

Friends of Braeside Park (Submission 1201) submitted that the site provides an important ecological function at the landscape scale.

There was general agreement that no National and State significant fauna species are resident or persist on the site and that the vegetation on the site acts as a stepping stone providing a connection to other habitat areas.

Mr Organ stated that in regard to the nationally significant Grey-headed Flying-fox and Swift Parrot that:

Based on the number and location of recent records, landscape context, habitat present within the study area and habitat requirements of these nationally significant species; most are considered unlikely to reside in or rely upon the study area, or to be significantly impacted upon by the proposed development.

DELWP submitted:

While DELWP agrees with EHP2020 that these Nationally significant species are unlikely to rely on the site for population persistence, the currently available habitat still provides temporal foraging, roosting and breeding opportunities.

Any loss of mature eucalypts will impact on the availability of this habitat. Those retained will provide limited habitat value due to noise, movement, lighting and vibration disturbance. Increased human activity, property maintenance activities and domestic pets, will also impact on foraging, roosting and breeding opportunities.

Regarding the State significant Hardhead *Aythya australis*, and other water dependent birds such as the Australasian Shoveler *Spatula rhynchotis*, Blue-billed Duck *Oxyura australis* and Eastern Great Egret *Ardea alba modest*, Mr Organ stated the birds:

... may occasionally use the waterbodies within the study area as foraging habitat and stop-over points when flying between areas of higher quality habitat. These species would not rely on the study area for survival or persistence locally or in the broader region.

Regarding the Plains Grassy Woodland and Swamp Scrub EVCs which are endangered in Victoria, Mr Organ stated:

The patches of Swamp Scrub and Plains Grassy Woodland are of low quality ...

As such, the proposed removal of these small modified patches of native vegetation is insignificant on a local, regional and State level.

DELWP submitted that:

The endangered status of these EVCs are indicative of their lack of representation in existing protected areas, and therefore incremental loss can have significant impacts at a regional scale.

## **(ii) Discussion**

The Advisory Committee agrees with Dr Yugovic, Ms Campbell and many submitters that the environmental values have not been adequately described. EHP appropriately provides an assessment of the site's environmental values against relevant legislation and *Guidelines* for vegetation removal. However, the *Guidelines* are asking for more and requires an assessment of:

- the environmental values of the site, including biodiversity values, habitat connectivity and the strategic biodiversity significance or role of the site in the local or regional ecosystem, including the relevant bioregion.

The assessment did not include a review of the biodiversity strategic context or an assessment of locally significant environmental values. The Advisory Committee considers that a review of the biodiversity strategic context would have assisted in establishing a clear set of objectives, priorities and opportunities for protection and enhancement of the site's biodiversity values, including locally significant values. A map that identifies the priority environmental values would also assist in providing a transparent transition from site analysis to design.

The Advisory Committee is of the view that the assessment has not adequately described the opportunities to protect and enhance the site's environmental values such as enhancement of foraging habitat for Grey-headed Flying-fox and Swift Parrot and the quality and extent of Swamp Scrub and Plains Grassy Woodland as well as retention and enhancement of habitat for locally significant fauna.

## **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- There are opportunities for protection and enhancement of the site's environmental values, that may benefit National, State and locally significant species.

Further work is needed to:

- Better describe environmental values including a review of the biodiversity strategic context or an assessment of locally significant environmental values
- Prioritise the environmental values or provide a map of the priority values which would assist in providing a transparent transition from site analysis to design.

## **6.7 Amenity of adjoining properties**

### **(i) Evidence and submissions**

Submitters whose properties interface the golf course place a very high value on the vegetation and the amenity that it provides. Ms Kidd (Submission 901) submitted that the golf course is an extension of her backyard and that while the biodiversity may not be ecologically significant, it has significant amenity value.

Mr Haack, providing landscaping expert evidence for the Proponent stated:

It is my opinion that in redeveloping a golf course as a residential development, greater consideration should be given to the potential sensitivities of adjacent residents, with existing trees to be retained where safe to do so, and where yield is not overly adversely affected.

There are limited number of locations along the subject site boundary with adjacent residences where trees classified as good or fair condition could be retained and be accommodated in private open space areas, typically rear yards. While not a large number,

it is my opinion that they would have a positive influence on the perceptions of neighbouring residents.

Only three tree groupings were identified by Homewood Consulting as providing a screening effect or having landscape value. During the site inspections, the Advisory Committee noted the golf course interface with residential properties was extensively vegetated. That aligned with what Mr Haack stated:

The boundaries of the subject site are lined with a reasonably dense band of trees which provide varying degrees of visibility into the site. The majority of adjacent residences back onto the subject site, with fences and taller vegetation, both on the subject site and in rear yards, projecting above and providing screening.

A key point of contention with the Proposal will be the change to the visual setting, with the “*borrowed*” views of the golf course landscape changing.

## **(ii) Discussion**

The Proposal has only really considered the height of development as an issue in relation to the impact on adjoining properties. The need to provide a setback of buildings from the existing dwellings that are constructed close to the golf course boundary has not been considered. Setbacks were proposed in revised versions of DPO8.

Given the importance of vegetation, particularly to adjoining landholders, the Advisory Committee agrees with Mr Haack that greater consideration be given to the screening and amenity afforded by the vegetation.

## **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities further work is needed to:

- Document the value of vegetation to adjoining lots and revise the assessment of tree retention value to place greater importance on the screening and amenity afforded by the vegetation.
- Better document the need to provide separation to existing dwellings.

# **6.8 The character of the neighbourhood**

## **(i) Evidence and submissions**

Submissions highlighted the existing dwelling form in Dingley Village as single dwellings on large lots with an absence of multi-storey housing. Submitters opposed the concept of three-storey buildings on lots of less than 300 square metres as contrary to the existing character of the suburb. The theme of the submissions is there is a sameness about the existing housing form that should be respected.

The visual importance of the site’s trees and their contribution to the character of Dingley Village was the subject of many submissions.

## **(ii) Discussion**

It is important for new development to respect the character of the surrounding area. State policy makes that a primary consideration with the consideration of permit applications. For a site that is large and can be planned to blend new development with existing, matching character is not the

imperative. Instead, where a site is sufficiently large to create its own amenity, the challenge is to complement the area while achieving a quality outcome.

Similarly, maintaining landscape on key road frontages will also complement character; the location of a significant publicly accessible and visually attractive open space on Centre Dandenong Road has the potential to improve the character of this location.

As to broader ideas about the village and its character, because the subject land is self-contained, the Advisory Committee accepts that the development will create its own character and the impact of new development on the land on the character of Dingley Village (as opposed to its functionality) is not critical.

The issue is whether the changes that new development will cause to the character of Dingley Village as a whole will undermine existing valued characteristics. An increase in numbers of people attending the shops, the library or meeting rooms can be a good thing. Increased numbers of people attending facilities can be an issue where there are finite capacities. But that is what cash contributions can help offset.

At the outset it must be said that an existing lack of housing diversity, a sameness of built form, is not seen, from a policy perspective as a valued characteristic. For a range of reasons, policy supports housing diversity. Building townhouses on the subject land will not decrease the supply of larger houses in the surrounding area, and will not undermine this characteristic that submitters value. To the extent that development of diverse housing on the subject land takes the pressure off unit development in the surrounding area, it might support this characteristic. Smaller lots on the land will add to diversity; this is seen as a valued characteristic under planning policy. The Advisory Committee notes with approval the design approach proposes larger lots opposite existing larger lots to mediate the transition into the new development.

As to the quality and aesthetics of the new development, the extent to which the redevelopment will respect the existing character will depend on a number of factors that can be addressed in the built form guidelines.

Having said this, the development need not simply copy the adjoining character; the desirability of characteristics should be assessed. For example, the Advisory Committee observes that the existing streets have wide pavements (more asphalt) and relatively small street trees. These are not characteristics the Advisory Committee would expect to be replicated in the new development where narrower pavements and larger trees would be expected.

The Melbourne Water retarding basin as well as the other proposed waterways present an opportunity to add to the surrounding residential and open space character, but this has not been fully resolved. The Advisory Committee believes it may be possible to attract users to enjoy constructed facilities that are safe and secure.

Not all the characteristics of Dingley Village that were expressed in submissions can, or should, be replicated in the development, but the development does need to address its current shortcomings.

### **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- Low scale residential development with appropriate transitions to adjoining properties is an opportunity for those parts not required for public purposes.

## 6.9 Connectivity and traffic

### (i) Submissions

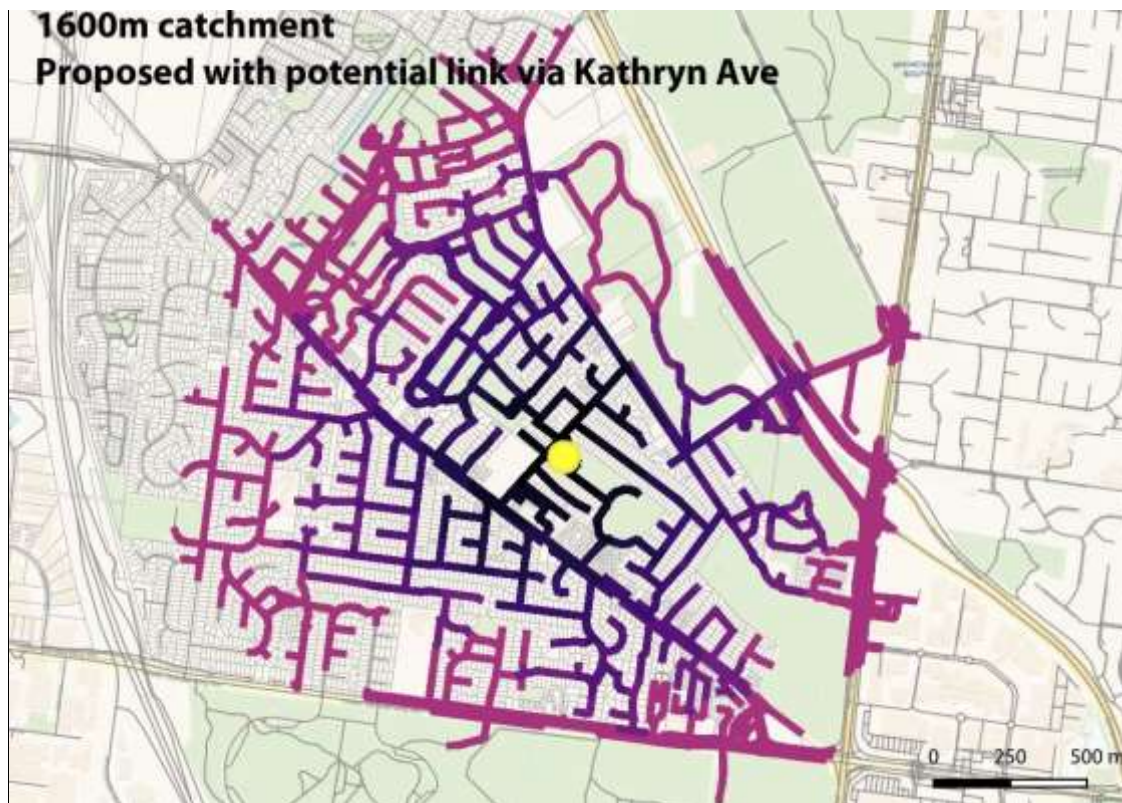
Many submissions raised concerns about traffic and the capacity of the surrounding road network and intersections to cope with additional traffic.

At the Hearing the potential for additional pedestrian links from the site to the surrounding area were explored. The Proponent submitted:

- 136 With a through link at Kathrin Avenue, which is a very desirable inclusion if it could be facilitated, nearly all of the site is within 1600 metres (that is, a 20 minute walk) of the Dingley Village Library.
- 137 Without the Kathrin Avenue link about two thirds of the site is within a 20 minute walk, however all of the site is well within a 20 minute cycle of the NAC and abutting community facilities.

The Proponent presented Figure 10<sup>53</sup> at the request of the Advisory Committee.

**Figure 10: Possible improved walkable catchment**



### (ii) Discussion

Traffic analysis have been based on traffic volumes predicted to be the case with the opening of the Mordialloc Freeway. The Advisory Committee has not been able to reconcile the traffic evidence with lived experience of the surrounding residents. It would be prudent to revisit the traffic volumes on the surrounding network before the road network and road network improvements are finalised.

<sup>53</sup> Document 123

The Advisory Committee notes that the traffic distribution has made assumptions about which direction vehicles will travel that may not reflect what will eventuate. Some journeys to the north may be quicker by initially travelling south on the Dandenong Bypass before taking Eastlink north. The traffic reports have assumed these journeys will travel north from the beginning. This has implications for the intersection of Westall Road extension and Rowan Road that may not have been fully explored.

There is a significant opportunity to improve pedestrian connectivity in this part of Dingley Village with new connections as planned to existing open space and streets that abut the site. There is a further opportunity with a more direct connection to the Library and Activity Centre.

### **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- The site presents good opportunities for improving the connectivity of the neighbourhood by extending existing open space and connecting to existing roads.

Further work is need to:

- Update data on traffic volumes on the surrounding network before the road network and road network improvements are finalised.

## **6.10 A new green space**

### **(i) Submissions and evidence**

The subject land is in Area 5B of the *City of Kingston Open Space Strategy Update Part 2: Open Space Analysis and Actions Final Version June 2012*. The strategy sets out a recommendation:

Provide better access to a major social family recreation space in the north of this locality/  
acquire a major social, family recreation space in the vicinity of Spring Road.

### **(ii) Discussion**

The subject land presents an ideal opportunity to deliver on the open space strategy recommendation.

### **(iii) Findings**

The Advisory Committee concludes:

In terms of site values, constraints and opportunities:

- The site presents good opportunities for delivering a new open space as envisaged by the Kingston Open Space Strategy.



## 7 Guidelines Step 5: Engage the community

### What the *Guidelines* say

Develop a comprehensive community consultation program and commence consultation before preparing detailed designs. The purpose of this consultation is to:

- assist the community to understand the need for the golf course land conversion
- allow the community to provide input to identification of site values and constraints
- allow the community to contribute to identification of opportunities and ideas for the golf course land conversion
- foster open channels of communication between the proponents and the community.

### 7.1 Criticism of the process

#### (i) The issue

The issue is the adequacy of the community engagement.

#### (ii) Evidence and submissions

The Proponent did not call community engagement expert evidence. Hugh Jones Media (HJM) prepared a report<sup>54</sup> documenting the community engagement activities conducted between 2015 and 2019. In its Part C Submission, the Proponent restated the position documented in the HJM report that it:

... believes its community engagement over more than five years has been consistent with those recommended in the Guidelines.

The following summary has been drawn from information documented in the HJM report:

- engagement was undertaken to identify community values and concerns and comprising:
  - two community information sessions in 2015/2016
  - an online survey and photographic survey
- one community information session was held in 2016 as part of the exhibition of the draft Masterplan
- one community information session was held as part of the exhibition of Amendment C151 in 2017
- various online, email and hard copy information resources were prepared and made available and direct contact with landholders was made through e-letters, letters, brochures and flyers
- meetings with individual landholders and community groups were also held
- local residents campaigned against development of the golf course, and the Save the Kingswood Golf Course group was established – Amendment C151 received around 8,000 submissions
- in 2019, the Proponent undertook engagement to:
  - build social licence to achieve community support for the project to proceed, minimising risk of opposition to a redrafted proposal

<sup>54</sup> Amendment Document 27 Hugh Jones Media (2020) Report into the community engagement activities conducted 2015-2019 for the proposed residential redevelopment of the former Kingswood Golf Course site at 179-217 Centre Dandenong Road, Dingley Village.

- seek involvement and input from the community and stakeholders on key negotiable project elements to deliver the best possible outcomes for all
- explain reasons for golf club departure
- the engagement comprised three community drop-in sessions and online, email and hard copy information resources continued to be made available
- in July 2021 an online information session was held, including presentations from experts and the opportunity for questions and answers – the purpose of the session was to provide the community with information on the revised proposal to develop the site as part of the Amendment.

Many submitters were critical of what they saw as insufficient community consultation, including opportunities to identify the values of the golf course that were important to the community and contribute their ideas to be considered in the development.

Submitters were of the view that the community consultation sessions were conducted as information sessions presenting a pre-determined outcome rather than genuine engagement to elicit and consider community views.

Submitters also felt that they did not receive adequate responses to the issues they raised or explanations for why some of their suggestions were not incorporated into the development proposal.

A common sentiment expressed by submitters was that Dingley Village was a place with a strong community identity that offered a unique lifestyle that is highly valued by the residents. The strong attachment of residents to Dingley Village was evident in submissions and the Advisory Committee acknowledges that the sale and proposed development of the subject land is a source of significant community angst.

The approach taken to engagement is summed up in the following quote from Fiona Dunster, Australian Super Senior Investment Director from the July 2021 online information session provided by the DVCA:

On the basis of the processes that have happened before, there obviously are a couple of groups in the community who are against anything happening at the Golf Course, we are very much aware of that. We didn't feel it was appropriate to, or helpful, to be honest with you, to try and engage in a whole lot of dialogue with those parties. Rather what we wanted to do is just make as much information available to the community at the time we were allowed to within the process and allow the community to draw their own conclusions...so that is the approach we have taken, I know there is some criticism, as I'm reading now about perhaps not doing enough, but I think that for us it was all about making sure that the way we provide information and the way we communicated out is done in an appropriate manner. So that is the way we are managing it and as I said before, at the end of the day we are hoping that everyone who is interested will take the time to go to our website where everything is factual about what we are trying to do is contained.

The effectiveness of the community engagement program is summed up by the Proponent's Part C Submission:

- 194 It is also respectfully submitted that many objectors did not demonstrate that they properly understood what was proposed or what its impacts might be. Again, this makes 'engagement' in the sense of an exchange of ideas as between fully informed persons, very difficult. Further, an important part of engagement which is reflected in the step 5 of the *Guidelines* is to assist the community to understand the Proposal.
- 197 There are many reports running to hundreds of pages of material that underpin the Proposal and it is not a criticism that busy lay people have not taken the opportunity to read all of them. Misunderstandings are always possible in a case like this.



### **(iii) Discussion**

The Advisory Committee acknowledges that given the strong community sentiment associated with the sale of the golf course and Amendment C151, engaging with the community would be challenging; a comprehensive community engagement plan was warranted to build social licence and foster open channels of communication.

The Advisory Committee is of the view that three drop-in sessions and online information does not constitute a comprehensive engagement program for a development of this scale and impact. The engagement program leading up to the Amendment was not adequate to build social licence and community support for the project and the Advisory Committee agrees with submitters that the engagement was primarily information sharing.

No evidence was provided to the Advisory Committee that the community of Dingley Village is incapable of considering and understanding a well presented and thorough proposal, and the Advisory Committee has certainly not formed that view.

Submissions referred to a contemptuous tone in the communications from the Proponent to the community. This perception was unhelpful and may have exacerbated the depth of community sentiment towards the Proposal. This example is taken from the Proponent's proposal website:<sup>55</sup>

Q: Is the site the 'lungs of Dingley'?

A: There has never been any indication that the former golf course was vital to provide oxygen to Dingley Village. Any future masterplan will seek to retain a high proportion of trees designated with a high to moderate retention value and plant even more.

The Advisory Committee acknowledges that until the future use of the site is settled, community engagement as an input to the development design will be challenging and agree with the observation in the Proponent's Part C Submission:

199 It is difficult to see how any further iteration of the Proposal could be informed by submissions which firmly urge that no subdivision should occur.

If the Minister accepts the recommendation of the Advisory Committee and the site is rezoned, then there is an opportunity for the Proponent and the community to reset and establish a more positive working relationship.

### **(iv) Conclusions**

The Advisory Committee concludes:

The Proposal does not adequately address the issues in the *Guidelines* Step 5, and that:

- A comprehensive engagement is warranted given the scale and impact of the development and community sentiment.
- The consultation process has not been adequate to build social license and achieve a high level of engagement with the community.
- The Advisory Committee support for the use of the land for residential development is likely to couch the consultation in a different frame than when parties were polarised.

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<sup>55</sup> <https://dingleyvillage3172.com.au/questions-and-answers/>

## 7.2 Issues going forward

### (i) The issue

There is no scope for formal input in the approval process of a Development Plan and no third party rights for a permit application generally in accordance with a Development Plan.

### (ii) Relevant legislation and controls

Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlays (November 2018) explains:

The differences between the overlays decide where they should be used.

- The IPO requirement for a planning scheme amendment to incorporate or change the plan enables third parties to be involved in the process of making or changing the plan. For this reason, the IPO should normally be used for sites that are likely to affect third-party interests and sites comprising multiple lots in different ownership. Most redevelopment of existing urban land will fall into this category, particularly where the surrounding land use is residential.
- Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.
- In some situations, on large self-contained sites, both overlays can be used. The IPO can be used to manage the strategic development framework, and the DPO can be used to specify the conditions and require a plan to specify the form for the detailed development of parts of the site or individual development stages.

### (iii) Discussion

For the reasons set out in Chapter 8, the Advisory Committee is recommending that the Development Plan be reworked. There is no formal process for the community consultation in the approval process of a Development Plan. On the other hand, the Incorporated Plan Overlay (IPO) provides a formal process, namely the planning scheme amendment process, to incorporate a plan.

The Advisory Committee considered whether there was merit in applying an IPO in place of the DPO. The Advisory Committee is not persuaded that the IPO is an appropriate tool in this instance because of the lack of flexibility once the incorporate plan is approved.

Ultimately the level of consultation around a revised development plan will depend on the Proponent and the responsible authority (Council or the Minister). The Advisory Committee considers that this consultation could explore the potential for uses other than housing, including a range of private institutional uses such as schools.

### (iv) Conclusions and recommendations

The Advisory Committee concludes:

- The DPO is the appropriate tool despite its lack of third party involvement.

Further work is need to:

- Explore the potential for uses other than housing, including a range of private institutional uses such as schools.

The Advisory Committee recommends:

- 2. Before the land is rezoned the Minister for Planning and the Proponent agree:**
  - a) a program of further work and investigation addressing the further work identified by the Advisory Committee for Steps 4, 5 and 6 of the *Guidelines***
  - b) a future consultation process in respect of a revised Development Plan.**

# Part D: The development concept

## 8 Guidelines Step 6: Provide a land use concept that delivers net community benefit

### 8.1 Introduction

#### What the *Guidelines* say

Proposal to convert golf course land must provide a net community benefit and a high level of sustainability.

As well as an overall community benefit the Proposal should:

- deliver a net increase in public open space
- deliver improved environmental values
- deliver a net community benefit for the community surrounding any redeveloped course.

[the *Guidelines* identify a number of relevant factors for consideration. These are presented where relevant in the appropriate sections of this Chapter]

Proponents are encouraged to liaise closely with the planning authority in an iterative and negotiated process to arrive at a final position regarding the net community benefit of the Proposal.

#### (i) Scope

The *Guidelines* call for a consideration of “*whether a proposal ... delivers improved golf facilities and whether these are accessible to the public*”.

Mr Barlow gave evidence that:

190. The essential issue to be determined is whether the redevelopment of the site for a new residential community will on balance create a ‘net community benefit’. Put another way, would the approval and redevelopment provide benefits that outweigh potential disbenefits or unreasonable impacts on the community. The Planning Guidelines for Conversion of Golf Course Land to Other Purposes also requires the provision of a land use concept that delivers a ‘net community benefit’. ...

It was submitted that this means that the Advisory Committee should explicitly consider the community benefits from the new facilities at Frankston. The Ministerial response to the Advisory Committee’s report on the golf course guidelines did not support the recommendation that:

Evaluation of net community benefit, where a proposal involves relocating a golf course, should consider the total proposal, comprising the closed golf course site and future golf course site.

This was on the basis that:

The government wishes to ensure the beneficial outcomes required by the Guidelines accrue to the immediate community of any golf course proposed for redevelopment.

It is clear that the *Guidelines* call for a NCB for the community surrounding the land. If this can be delivered it is clear that, in this case, there would also be a NCB to the broader Melbourne community. The Advisory Committee does not think that it would be appropriate to deliver a net disbenefit to the community of Dingley Village on the basis that a community in Frankston was better off, unless this choice had to be made. It does not.

**(ii) What are the potential benefits and disbenefits?**

**Submissions and evidence**

There was competing evidence and submissions as to what might be considered to be a benefit of the Proposal.

The Peninsula Kingswood Country Golf Club submitted:

The Club believes that the Proposal will bring significant community benefits to the City of Kingston, the residents of Dingley Village and broader Metropolitan Melbourne by delivering:

- Significant new public open spaces for the entire community to enjoy. These spaces will include parks, gathering places and playing areas that are connected with existing public open spaces and freely available.
- The general public (as opposed to the current situation where the land is privately owned and inaccessible).
- The retention of existing high value trees and areas of native flora and fauna within the Site.
- The planting of thousands of new trees.
- Significant flood mitigation works to alleviate off-site flooding impacts and protect downstream areas from flooding events.
- Preservation of green vistas and amenity in buffer zones within and around the boundary of the Site.
- The provision of a variety of lot and dwelling sizes to cater for all sectors of the community.
- The proposed residential development will include a portion affordable housing, a scarce resource in the Melbourne metropolitan area and an important policy objective for both local and state governments.

The availability of new housing will bring more residents to Dingley Village and provide new demand for local businesses, service providers and community organisations. This can only improve the viability of all local businesses and generate a 'multiplier effect' of additional income flowing through the community. The local community will prosper in the short and long term from development of the site under this plan,

On closing, the Proponent submitted:

- 16 In cross-examination, the following matters were put to Mr De Silva together with the proposition that they represent the community benefits of the Proposal.
- a) Connecting and extending existing parks.
  - b) Making open space on the land available to the general public for the first time.
  - c) Making the broader neighbourhood more permeable for pedestrian and vehicle traffic – facilitating a 20 minute neighbourhood and facilitating access to the activity centre.
  - d) Implementing Council's Open Space Strategy – particularly through the provision of a 'major social family recreation space' and addressing the problem identified in the Open Space Strategy of 'poorly connected neighbourhood playgrounds' with 'access to playgrounds limited by residential neighbourhood design and the number of golf courses present.'
  - e) Mitigating the miserable impact of floods and addressing a regional issue associated with current flooding problems.
  - f) Effectively gifting land to Melbourne Water for the above purpose.

- g) Introducing water quality measures that will improve the quality of storm water that ultimately flows to the Bay and in so doing addressing a regional problem.
- h) Providing a range of housing to meet current demographic needs in an area where there is currently relatively little diversity of housing.
- i) Providing affordable housing.
- j) Creating housing on or close to the PPTN (Centre Dandenong Road).
- k) Post subdivision and development of housing, generating significantly greater rate income for the Council – which can in turn be spent on worthwhile projects and services.<sup>56</sup>
- l) Creating hundreds of jobs (direct and indirect) in the construction phase.

Community submitters presented a range of potential disbenefits (see Chapter 1.5 for the summary of these).

### **(iii) What this Chapter addresses**

This Chapter addresses the following elements of land use concept to assess whether it delivers NCB in response to the *Guidelines*:

- Drainage and water infrastructure
- Environmental and landscape values
- Open space and active recreation
- Housing
- Built environment
- Traffic and transport
- Community services and infrastructure
- Aircraft noise.

The Chapter concludes with an overall assessment.

## **8.2 Drainage and water infrastructure**

### **8.2.1 Introduction**

#### **(i) What are the potential benefits and disbenefits, and what needs to be resolved?**

The proposed drainage infrastructure and WSUD has the potential to deliver a NCB and lead to a quality outcome.

The key issues are:

- Required flood storage
- The precise nature of the WSUD proposals
- Whether the ownership, required standards and maintenance requirements of the proposed drainage infrastructure have been clarified
- Whether the proposed Staging and Interim works deliver acceptable drainage outcomes.

#### **(ii) Relevant policy**

The *Guidelines* include:

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<sup>56</sup> The Advisory Committee Chairman queried this proposition having regard to the rating cap applied by the Minister for Local Government which is in turn administered by the Essential Services Commission.

- a reference to State Planning Policy Clause 12.03-1S (River corridors, waterways lakes and wetlands):

Clause 12.03-1S River corridors, waterways lakes and wetlands seeks to protect and enhance river corridors, waterways, lakes and wetlands by ensuring that development is sensitively designed and sited in order to respond to and respect the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands. Growth in established settlements must only be facilitated where water and wastewater can be managed

- a reference to Clause 13.03-1S (Floodplain management):

... seeks to protect life, property and community infrastructure from flood hazard, the natural flood carrying capacity of waterways, the flood storage function of floodplains and waterways and floodplain areas of environmental significance or importance by avoiding inappropriately located use and development

- at Step 2: Identify the strategic direction for the site:

- requires consideration be given to any relevant flooding strategy and whether the Proposal has the potential to contribute to any Integrated Water Management plan or the achievement of WSUD principles

- at Step 4: Document site values, constraints and opportunities:

.... the current use of the golf course land to partially contain flooding must be considered  
Opportunities include:

- opportunities to increase resilience to climate change and natural hazards, including a design response that may increase the community's resilience to bushfire and flooding event
- introduction of environmentally sustainable measures and design features, such as the water sensitive urban design

- at Step 7: Deliver a quality outcome:

- flood risk assessment that identifies the risk of flooding, predicted impacts of sea level rise and identified appropriate mitigation measures.

The planning scheme sets out relevant policy in Clause 19.03-3S (Integrated water management). The policy in relation to flood plains that the Advisory Committee was taken to by the Proponent is less relevant. Relevant policy in Clause 19.03-3S includes:

**Objective**

To sustainably manage water supply, water resources, wastewater, drainage and stormwater through an integrated water management approach.

**Strategies**

Plan and coordinate integrated water management, bringing together stormwater, wastewater, drainage, water supply, water treatment and re-use, to:

- Take into account the catchment context.
- Protect downstream environments, waterways and bays.

...

- Minimise flood risks.

...

Ensure that development protects and improves the health of water bodies including creeks, rivers, wetlands, estuaries and bays by:

- Minimising stormwater quality and quantity related impacts.
- Filtering sediment and waste from stormwater prior to discharge from a site.

...

- Manage stormwater quality and quantity through a mix of on-site measures and developer contributions at a scale that will provide greatest net community benefit.

...

- Ensure land is set aside for water management infrastructure at the subdivision design stage.
- ...
- Ensure that the use and development of land identifies and appropriately responds to potential environmental risks, and contributes to maintaining or improving the environmental quality of water and groundwater

### 8.2.2 Required flood storage

#### (i) The issues

The issues are:

- whether the proposed drainage infrastructure meets required standards and mitigates flooding on and downstream of the site to an acceptable level, including through proposed retardation basins and associated underground pipe connections
- whether the proposed drainage infrastructure materially affects the proposed subdivisional layout.

#### (ii) Evidence and submissions

Numerous submitters raised concerns with the existing flood situation, supported by photos of roads and properties under water. Their concern was that the proposed development was only going to make the situation worse.

Save Kingswood Group Incorporated made several submissions on the matter of flooding and drainage. Its tabled Document 133 dealt exclusively with the flood situation, identifying:

- the Proponent and Melbourne Water have grossly under calculated the current floods
- there are kilometres of drains that will be removed
- the aquifer system capacity and function has been ignored by the Proponent's experts in addition to the green soak
- the site is a flood plain
- the past practice of managing floods when predicted will be no longer available
- the Proponent is ignoring the benefits of the ASR project
- numerous visual examples of flooding on properties and roads.

The submission concluded:


Expect a class action from Dingley Village Residents when flood management is proven wrong!

Engineering firm Cardno undertook a Flood Management Strategy for the Proponent before exhibition that recognised that a serious flooding problem existed on the site and downstream of the site:

The Site is currently partially inundated from overflow from an existing Melbourne Water detention basin in events greater than the 2% AEP. At the downstream end of the Site and external to the Site, significant property flooding is experienced along Golfwood Close, Lee Andy Court, Campbell Grove and Timms Crescent. In the 1% AEP event a peak flow of 5.43 m<sup>3</sup>/s is recorded as discharging off the Site with Melbourne Water flood mapping showing that this affects approximately 70 properties downstream of the Site.

Cardno identified a flood storage of approximately 62,000 cubic metres was required to meet Melbourne Water's target of providing a 1 per cent AEP with a stormwater discharge no less than 3.3 cubic metres per second (m<sup>3</sup>/s). Cardno also estimated that a storage volume of 11,800 cubic metres would be required if the site was only required to detain for increases in impervious areas as part of its redevelopment.



Cardno identified that the additional storage was to be provided in three retardation basins  as shown in Figure 11 below. Drainage pipe works will be required to facilitate safe flow between the basins and the Melbourne Water outfall drains. Cardno provided no reference to WSUD in its flood management estimations.

**Figure 11: Concept Drainage System**



SMEC provided a 'Servicing Report' as part of the exhibited documents<sup>57</sup> supporting the Amendment. It undertook detailed modelling of the site levels to establish the volumes of the retardation basins for drainage retention.

It stated that discussions with Melbourne Water and Council Engineers confirm that the Proposal responds to the Melbourne Water requirement that:

- ... the future development must contain all discharge offsite to less than 3.3 m<sup>3</sup>/s [requiring]
- ... 62,000 cubic metres of storage, in addition to the existing basin, to be provided on-site

SMEC also confirmed that the internal road system will form part of the drainage response to move any overland flows to the retardation basins and assist in preventing the flooding of properties and the major road network. It referred to the major pipe system between the basins as yet to be designed but expressed confidence that the combination of the retardation basins, the underground pipes and the road's flooding capacity, flooding will be mitigated to the desired requirements.

SMEC provided in Appendix B to its Report, a series of cross sections for each retardation basin.

The cross sections show a 'normal water level' – the water level in the waterbody in non-flood periods and – and the 'total water level' (TWL) which represents the 1% AEP flood level to be retained. The depth of water below the normal water level (NWL) will be established by the outlet drainage pipe invert. The TWL is approximately 2 metres above the NWL and the cross section indicates a vertical wall retaining to the flood level.

<sup>57</sup> Exhibited document 21

The Exhibited Development Plan and the Day 1 version submitted by the Proponent reflect the work undertaken by Cardno and SMEC.

Melbourne Water (Submission 1170) submitted:

- Melbourne Water accepts the Proposal described within the above referenced documents on the basis that an addendum is made to clarify with further detail on potential flooding related impacts on the subject property and onto neighbouring downstream land.
- As part of the design development of stormwater drainage assets, the following considerations should be investigated to avoid substantial changes to the subdivision layout/Master Plan:
  - The boundaries to new lots will need to be considered against adequate provision for safety and maintenance of basins, which in the absence of information at this time, should be in the order of a distance greater than 30 metres;
  - Stormwater quality performance for best practice will need to be provided via further modelling, and considered with adequate provision for maintenance, including the future owner of these ongoing obligations

Melbourne Water had no objection to the planning permit application on the basis that its conditions are included in a permit.

Ms Valerie Mag of Stormy Water Solutions gave evidence for the Proponent. She stated:

- she undertook an assessment to determine if enough drainage reserve land had been set aside to meet the requirements of Melbourne Water and Council, noting that WSUD was not included in the Cardno Flood Strategy, but referred to in the SMEC report which she interpreted to mean that sediment ponds and wetlands will be required in the base of each basin
- terrain modelling undertaken by SMEC verified that the flood modelling would achieve the required storage capacity and the proposed drainage infrastructure which will relieve a major flooding issue in the and around the site
- the SMEC modelling does not show how both the wetlands function and the retardation function volumes will be apportioned within the assets, and to incorporate a wetland function into each retardation basin airspace of between 200-350 millimetres will be required above the NWL, or 10 per cent of the flood retention volumes is required for wetland treatment
- any proposed sediment ponds or wetlands will be required to treat large upstream catchments
- she understood that Melbourne Water would accept the vertical retaining wall 'subject to appropriate maintenance agreements with Council'
- the wetland /retarding basin combination can fit in the allocated space if vertical walls are approved, or it can be modified slightly from the current proposals to incorporate batters and wetland storage
- In recalculating the storage capacity required she concluded that 56,000 cubic metres was required.

In summary she concluded:

... through independent site and hydrological analysis, I conclude that the land set aside as drainage reserves is enough space to accommodate all flood retardation and WSUD elements required to meet the planning permit drainage conditions currently advocated by Council and MWC

Council in its Part B Submission<sup>58</sup> outlined a number of design aspects that remain uncertain, including basin levels and depths, the use of batters versus vertical walls, the extent and nature of wetlands, the introduction of sediment ponds, the design footprint breaching setback requirements of 30 metre, uncertainty of ownership and maintenance, lack of resolution of key design aspects to address both volume and flow rates, and the likely need of safety fencing.

Council challenged Ms Mag's confidence that the areas set aside in the conceptual design are adequate to accommodate the required volumes stating:

... her calculations pre-suppose the introduction of multiple different design elements not considered in the conceptual work. Further, these calculations do not utilise the actual conditions of Melbourne Water downstream network, which have been prone to blockages. Thereby, reliance on Ms Mag's calculations is overconfident, particularly given the existing flooding to neighbouring properties.

Council in its cross examination of Ms Mag confirmed that she had not seen plans detailing wetland design functions.

Council submitted on other key drainage elements:

- Melbourne Water's request for a minimum setback of 30 metres, will need to be considered against adequate provision for safety and maintenance, noting that currently the minimum setback from the entry reserve water body is approximately 10.5 metres while the setback from the northern water body is 5.3 metres
- There is a series of difficulties in relation to stormwater on the site. Cardno and Ms Mag's work represent preliminary assessments which mean that the difficulties in delivering solutions have not been addressed
- Ms Mag sidestepped the Melbourne Water requirement for 62,000 cubic metres of storage. Her objective was to meet the flow discharge requirement of 3.3 m<sup>3</sup>/s and assessed the capacity required is 10 per cent less than the 62,000 cubic metres
- Melbourne Water's submission requested an addendum be made to the Proposal to provide clarification on the required flood storage
- There is a need for these issues to be resolved as a precondition.

The Proponent, in response to questions from the Advisory Committee, confirmed that the addendum requested by Melbourne Water had not been prepared.

The Proponent in its Part C Submission responded in detail to the key questions raised in the Hearing:

- Melbourne Water's 30 metre setback is "*something of a mystery*". It is not mentioned in its design manual and the setbacks are not visible on the current basin
- Ms Mag's evidence is that there is more than enough space allocated to accommodate the flood storage
- The draft planning permit conditions along with a suggested addition ensures that an approved set of drainage plans must be in place before construction can commence
- Ms Mag's evidence is "*unequivocal, credible and unchallenged*" that there is ample space on the site within the designated water basin areas. That there will be no need to change the subdivision layout irrespective of which edge treatment is required
- Melbourne Water's Wetland Design Manual was relied upon to suggest a setback of 15 metres was acceptable and provided detail to better understand batter requirements and impacts on slope, and therefore flood storage capacity

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<sup>58</sup> Document 167

- Analysis was undertaken by the Proponent, using the Wetland Design Manual to indicate that a 15 metre setback could be accommodated without change to the subdivision layout.

The Advisory Committee had the opportunity to question Ms Mag. In response to the Advisory Committee's questions Ms Mag gave evidence to the effect that:

- the basin's designed vertical walls would require the Council to own the asset
- whether batters or vertical walls or a combination of both were used or whether additional wetlands storage was required, or whether Cardno's and Melbourne Water's storage estimates proved correct, she was confident that engineering techniques were available (such as optimisation pipes and drop pits) that indicated the development proposal could get by with much less volumes than 62,000 cubic metres
- the 30 metre Melbourne Water setback requirement was a case of "*Melbourne Water being conservative*" and that it could depend on who you dealt with in Melbourne Water.

The Advisory Committee also questioned Council on how the proposed major underground drainage pipes (connecting the western retardation basins), that are currently shown as under the residential development, could be legally accommodated without the possibility of an easement. Council provided some acceptable options, but noted these would have to be technically resolved at the design stage as they are large pipes on a gravity system.

### **(iii) Discussion**

The Advisory Committee acknowledges there is a serious flooding problem on the site and its surrounds due to Melbourne Water's inadequate drainage system. Approximately 70 properties downstream of the site and adjacent roads are regularly flooded. Mr Poulter's submission, amongst others, leaves no doubt as to this.

The importance of addressing this issue through the Proposal is understood by the Advisory Committee. It is clear to the Advisory Committee that the Proponent is being asked by Melbourne Water to carry the burden for mitigating the flood risk.

The Advisory Committee accepts that at this point in the design process, Cardno's flood storage estimate and Melbourne Water's requirement of 62,000 cubic metres is the flood storage required to achieve Melbourne Water's outfall flow rate and achieve the 1% AEP flood requirement. It also accepts that SMEC have acceptably designed this storage into its plans and cross sections.

Further, it accepts that 11,800 cubic metres of this storage is required to manage the proposed development's stormwater to predevelopment levels and that the three retardation basins, the site works, and the on-road drainage capacity are an acceptable response to achieving the 1% AEP mitigation.

The Advisory Committee notes that the Cardno flood management strategy calculates flood storage only and that no provision or mention is made of any WSUD elements or wetlands. Similarly, SMEC have designed its response based on the flood storages provided by Cardno and that there is no provision for a wetland component in its design.

The Advisory Committee accepts that the SMEC cross sections indicating vertical walls are a legitimate engineering means to contain the flood storage areas, as are batters and a combination of batters and walls.

Melbourne Water provided advice to the Proponent in August 2021 that it accepted the Proposal as described to it BUT it was on the basis that an addendum is made to clarify with further detail.

SMEC confirmed that an addendum is appropriate and that it will be prepared. Unfortunately, it was not prepared in time for the Advisory Committee to consider it. Melbourne Water also advised that to avoid substantial changes to the subdivision layout a setback of more than 30 metres is required for the provision of safety and maintenance.

The Proponent and its experts appeared to overlook this requirement until Ms Mag was questioned on the matter. It would have been highly beneficial for this matter to have been resolved with Melbourne Water before the Hearing.

The Proponent's detailed submissions on the matter and Ms Mag's instinctive response was considered by the Advisory Committee, but it has little choice but to consider the 30 metre setback, a Melbourne Water requirement at this time.

The matter of whether the retardation basins are constructed with vertical walls or using verges is unresolved. It appears that Melbourne Water are seeking to resolve this issue with Council. Council have indicated they will not be taking ownership or responsibility for the open space or interfaces with the water bodies.

If vertical walls were used in the construction of the basins there would be more certainty as to the basins meeting flooding storage requirements. If sloping batters are used, a compromised flood storage may result if the subdivision layout is approved with its current layout. Complicating these considerations is the fact that Ms Mag has estimated that an amount of flood storage of up to 350 millimetres (or approximately 10 per cent) above NWL will be required for a wetland function to be added.

The Proponent referred to Melbourne Water's Wetland Design Manual to seek guidance on several matters. The Advisory Committee has since reviewed that document and consideration of the document suggests:

- A number of other criteria could be applied to the wetlands design including: a requirement for a maintenance track around the entire sediment pond, hard standing areas for turning vehicles to adjacent to an access ramp, access to wetlands around 50 per cent of the wetland perimeter, as well as other matters.
- The retardation basin verges may be of different finish and require different maintenance requirements to a purely wetlands area. Retardation basins could use grass with mower safety and efficiency paramount in dictating acceptable slopes. They may have also different requirements for access.
- Flatter slopes will require the flood storage to be compromised further by moving further into the water body if the layout was to be retained.

Ms Mag was confident that there are means available to manage these compromises and not affect capacity, but in the absence of further detail being provided, the Advisory Committee adopts a conservative approach and takes the view that the subdivisional layout must compensate for the storage losses.

There is certainly room on-site to deliver the flood storage as required by Melbourne Water no matter what design requirements are placed on the Proponent. But changes may have to be made to the subdivision layout to achieve the required flooding outcome – these changes may be substantial.

The significant proposed underground pipe and pit network connecting the western basins do not appear to be supported by a conceptual assessment or analysis. The Advisory Committee understands that this is an issue that could be resolved at a later stage in the process. If Ms Mag's

alternative design response to allow a flood storage reduction is to be progressed the pipe and pit components of the drainage system will require significantly more detailed analysis.

The Advisory Committee agrees with Council's submission:

As the drainage and open space areas form a crucial part of this development and, unlike other amendments this Proposal, if approved, will result in a permit, there is a need for these issues to be resolved as a precondition.

The Advisory Committee is grateful for the submission of Mr Poulter and other submitters on this matter. Unfortunately, the Advisory Committee did not have the benefit of any independent expert advice to assist it in analysing Mr Poulter's claims.

The identification of the aquifer and its ARS operation was of interest to the Advisory Committee for two reasons. Firstly, it provides an opportunity to retain a highly valued sustainability initiative and secondly its interaction and role within the flood mitigation system.

The Advisory Committee has found no evidence to support the claim that kilometres of drains will be removed. It should also point out that roads flooding in major flood events is part of the function of a road.

It is difficult for the Advisory Committee to accept that Cardno, Melbourne Water and Ms Mag could underestimate the flood volumes to the extent expressed by Mr Poulter, but it does raise another uncertainty and the Proponent is urged to review Mr Poulter's Flooding information (Document 133) and respond accordingly as part of any steps to amend the drainage strategy.

### **8.2.3 Water sensitive urban design**

#### **(i) The issues**

The issues are:

- whether the proposed drainage infrastructure and WSUD deliver NCB and lead to an appropriate water quality outcome
- whether the proposed drainage infrastructure deliver appropriate WSUD and Integrated Water Management outcomes.

#### **(ii) Evidence and submissions**

This issue has also been partly covered in Chapter 8.2.2 and the associated evidence and submission summary is not repeated here.

Council in its Part B Submission highlighted the risk that a wetland area within the proposed waterbodies may create by attracting wildlife close to Moorabbin Airport.

The Proponent in its Part C Submission referred to the SMEC report which stated that the proposed development will be required to meet current standards for stormwater quality under Clause 22.12 of the Kingston Planning Scheme.

The Proponent submitted that it and Melbourne Water have proceeded on the understanding that wetlands will be accommodated within the footprint of each of the identified drainage reserves. Melbourne Water did not require a wetland concept design in order to support the grant of a permit. This approach is consistent with the Proponent's experience that a wetland concept design is not typically prepared in support of planning permit application:

In fact the pertinent enquiry is whether there is sufficient land area and topography to accommodate the relevant detention and treatment functions,

Ms Mag gave evidence that if sediment ponds and wetlands (with assumed gross pollutant traps at pipe entries) in the proposed retarding basins were introduced significant treatment will occur where very little was previously occurring. Further, that this treatment will be required to treat the large upstream catchments and not just stormwater from the site.

### **(iii) Discussion**

The Advisory Committee notes that the exhibited Development Plan, Cardno and SMEC reports did not include any WSUD plans, even at the conceptual level. This was confirmed by Ms Mag.

The Advisory Committee notes the Proponent's experience that a wetland concept plan is not necessarily required at this point. However, the Advisory Committee considers that the proposed development would have benefited from having the WSUD conceptually integrated from the start as part of the proposed Development Plan. Particularly, in the context of a golf course land conversion to a proposed residential development.

Inclusion of WSUD at the Development Plan stage would have also assisted the Advisory Committee in discharging its responsibilities to assess the golf course conversion against the *Guidelines*. The Advisory Committee does understand that in more conventional circumstances there are State and Council policies that must be complied with and the planning permit process will ensure the desired result is achieved.

The spatial requirements of the WSUD elements are required to determine whether there is sufficient land set aside to accommodate the drainage infrastructure, the flood storage, and to determine any potential impacts on the proposed subdivision layout.

Equally, the retardation basins/wetlands are intended to be valuable aesthetic features of the Proposal and a key connection to the public open space networks. The proposed public open space areas will need to form around the requirements of the retardation basins/WSUD features. Melbourne Water's preferred WSUD systems, its design, construction and maintenance considerations, access tracks, hard standing areas, safety features, odour controls will all impact on how the adjacent public open space is designed and managed.

The Advisory Committee considers that a WSUD proposal at the concept level is important to the Advisory Committee when assessing NCB.

A WSUD conceptual design should inform the preparation of the Development Plan. This should be accompanied by an agreement of WSUD principles with Melbourne Water, which outlines a WSUD strategy and targets, and preferred WSUD systems, preliminary design, construction, and maintenance considerations.

A site assessment similar to what SMEC have undertaken should inform the concept design.

The Advisory Committee understands that the wetlands and sedimentation ponds can be added to the retardation basin and accepts Ms Mag's analysis and that the details can be finalised at the planning permit stage; however, Melbourne Water may have a different opinion of what should be included.

## **8.2.4 Ownership and maintenance of water assets**

### **(i) The issue**

Whether the ownership, required standards and maintenance requirements of the proposed drainage infrastructure have been clarified.

## **(ii) Evidence and submissions**

This issue has also been partly covered in Section 8.2.2 and the summary of evidence and submissions is not repeated here.

Council in its opening submission<sup>59</sup> sought clarification:

There is no certainty as to which public authority (Melbourne Water or Council) is to own which basin area and the extent of ownership of any adjoining open space. Nor is there any clarity as to which body will assume ongoing maintenance obligations.

SMEC in its Site Services Report:<sup>60</sup>

The land required for the wetlands / retarding basins will be vested in Melbourne Water as shown shaded blue below. Due to the upstream catchment sizes and the requirements for the downstream drainage capacity, Melbourne Water is best placed to ensure the management of the basins.

Council in its Part B Submission queried whether Melbourne Water or Council would be expected to own and maintain the basin area and how that may interact with adjoining public open space.

Ms Mag's response under cross examination was that historically anything that has a catchment greater than 60 hectares is usually negotiated between Council and Melbourne Water as being a Melbourne Water asset and anything less is a Council asset. On this basis she would assume the two larger western basins would be vested in Melbourne Water and the smaller basin would vest in Council.

Council submitted that there is no legal basis for Ms Mag's rationale and that Council's view is that all three proposed basins and major connection infrastructure should vest in Melbourne Water and be maintained by Melbourne Water.

Further, that the construction of the basins and pipelines were a response to a Melbourne Water condition. Ms Mag gave evidence:

It is my understanding that MWC have indicated that they will accept retaining walls subject to appropriate maintenance arrangements with Council.

Council in its cross examination on this matter was able to establish Ms Mag's understanding was based on a verbal conversation with SMEC and not Melbourne Water. Also, it confirmed the view that Melbourne Water usually try to divest maintenance responsibilities on vertical walls to councils.

Council further submitted that the Proponent had not properly consulted with Council's open space team and that Council, based on current conceptual plans, do not wish to be the owner or entity maintaining the vertical structure.

The Proponent in its Part C Submission note SMEC's position that all three basins will vest in Melbourne Water but did accept that there is some exiting confusion on at least the smaller south east basin.

## **(iii) Discussion**

The Advisory Committee considers that this is another matter causing uncertainty and at this stage is a major unresolved issue.

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<sup>59</sup> Document 65

<sup>60</sup> Document 21



The Advisory Committee considers that all three basins and all associated infrastructure, including pipes, walls, verges, etc should vest in Melbourne Water.

As Council submitted, Melbourne Water is imposing the drainage solution. The Proponent is proposing to fund the entire flood and drainage solution, in excess of its own site requirements.

The smaller south eastern basin connects to Council's local drainage system for only a short distance, before entering Melbourne Water's system. In addition, Cardno identified this basin as contributing to the overall flood storage requirements of 62,000 cubic metres.

The Advisory Committee on this basis considers the south eastern basin should also vest in Melbourne Water.

It is unfortunate that this matter was not clarified or resolved prior to the Hearing. It may be that Melbourne Water will have no concerns with owning and maintaining these assets but Council is rightly seeking clarification to assess its risks. It would be unwise to approve the Proposal without an understanding of who was to own the assets, and hence whether they meet the future owner's requirements.

### 8.2.5 Staging

#### (i) The issue

The issue is:

- whether the proposed Staging and Interim works deliver acceptable drainage outcomes.

#### (ii) Evidence and submissions

The Exhibited Development Plan and the Day one version included the following Staging Plan. The Exhibited Draft Planning Permit included a more detailed Staging Plan prepared by DKO.

**Figure 12: Proposed Staging Plan**



**Figure 13: Draft Planning Permit -Staging Plan**



In response to questions from Council and the Advisory Committee, Ms Mag gave evidence that it would be prudent to construct the western side drainage infrastructure as part of the first stages of development.

Council submitted that it would not want to see the first stage inundated by a 1 in 100-year flood.

### **(iii) Discussion**

The Advisory Committee noted that the Staging Plan included in the Development Plan is fundamentally different to that included in the draft Planning Permit DKO plan.

In particular the sequence of staging in the north west section of the proposed development, where the clockwise arrow 2 in the Development Plan is reversed to an anticlockwise sequence in the DKO plan.

This has the important result of constructing the south western basin in Stage 1 but the north western basin is delayed until Stage 7. It is unclear how the north west basin and its existing drainage system will be managed to allow this to occur with major flooding risks to downstream stages and existing properties left unresolved.

The Advisory Committee agrees with Council and Ms Mag that all major proposed drainage works on the western side of the site should be constructed as part of Stage 1 to remove any increased risks to the existing downstream properties and any new residences.

The risk of flooding is a very significant concern for residents and under no circumstances should the staging of this development make matters worse.

### **8.2.6 Conclusions**

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- The drainage solution is not fully realised and does not have approval from Melbourne Water. This has the potential to affect subdivision layout.
- As far as practicable, drainage and water issues need to be resolved as part of an integrated response, before finalising the subdivision layout. This should include:
  - consideration of retaining the use of the aquifer for its drainage or sustainability benefits
  - a WSUD concept design given WSUD is a requirement of State and Council policy. The proposed development would have benefitted from a WSUD Concept design being included in the Development Plan
  - resolving who has ownership, who sets design standards, and who takes responsibility for maintenance of the proposed drainage and WSUD infrastructure
  - revising the current staging proposal as it relates to the proposed drainage infrastructure requires clarification.

The Proposal needs to be refined to:

- Include an integrated response to drainage and water issues. This will need to identify easements or rights of way for the major underground drainage pipes.
- Ensure all proposed drainage infrastructure works are undertaken in Stage 1.

In terms of NCB:

- Potential benefits of the Proposal subject to refinement include:
  - improved management of flooding issues-
  - improved downstream water quality.

## 8.3 Environmental and landscape values

### 8.3.1 Introduction

#### (i) What are the potential benefits and disbenefits, and what needs to be resolved?

Concerns were raised about:

- whether the proposed design response has responded adequately to the biodiversity values of the site
- removal of vegetation and proposed development will result in a loss of tree canopy and an increase in the heat island effect.

#### (ii) Relevant policy

The *Guidelines* say

Step 6: Provide a land use concept that delivers net community benefit

Proposal to convert golf course land must provide a net community benefit and a high level of sustainability.

As well as an overall community benefit the Proposal should:

.....

- deliver improved environmental values

The following factors should be considered to determine if, the Proposal provides a net community benefit and environmental benefit:

- whether a proposal:

...

- protects and enhances the wider open space network and ecological connectivity

Step 7: Deliver a quality outcome

Any proposal to convert golf course land must deliver a high quality outcome.

To ensure net community benefit, the redevelopment of golf course land should achieve the following:

...

- enhance and protect state, regional and locally significant environmental assets and biodiversity corridors

...

- landscaping that delivers an appropriate amount of tree canopy cover (excluding active sporting areas) to mitigate urban heat effects and is at least equivalent to, or greater than the surrounding area.

Relevant planning policy includes:

- 12.01 Biodiversity
- 12.01-1S Protection of biodiversity
- 12.01-2S Native vegetation management
- 12.03-1S River corridors, waterways, lakes and wetlands
- 12.05-1S Environmentally sensitive areas
- 21.01-3 Strategic Vision
- 21.03-1 Biodiversity
- 22.13-2 Environmentally Sensitive Development.

Clause 56 sets the following standards with regard environmental values in residential subdivision:

- Standard C6 Subdivision should - Protect significant vegetation and site features
- Standard C12 - The landscape design should:

- Maintain significant vegetation where possible within an urban context.
- Protect and enhance any significant natural and cultural features.
- Protect and link areas of significant local habitat where appropriate..

### 8.3.2 Vegetation removal

#### (i) The issue

The issue is the impact of the proposed native vegetation removal.

#### (ii) Evidence and submissions

Figure 14 summarises the native vegetation proposed to be removed by the development from information provided by EHP<sup>61</sup> and the Tree Retention and Removal Plan.<sup>62</sup> The Proposal will result in the removal of 94 per cent of the native vegetation currently on the site. This includes 43 per cent of the endangered Plains Grassy Woodland and 100 per cent of the endangered Swamp Scrub. All significant trees will be retained by the development. Fifty per cent of high retention value trees and 69 per cent of moderate retention value trees will be removed.

**Figure 14: Removal of native vegetation (from EHP (2020) and the Tree Retention and Removal Plan (2020))**

	Extent/number on site	Extent/number proposed for removal	Removed as a % of total
<b>From EHP report</b>			
Total native vegetation	5.238 hectares	4.932	94%
EVC and conservation status of vegetation			
- Plains Grassy Woodland (Endangered)	0.525 hectares	0.227	43%
- Swamp Scrub (Endangered)	0.006 hectares	0.006	100%
- Damp Sands Herb-rich Woodland (Vulnerable)	4.707 hectares	4.699	21%
Wetland	(Area of existing wetlands was not provided)	0.274 hectares	
<b>From Tree Retention and Removal Plan</b>			
Significant value trees	10	0	0%
High retention value trees	274	136	50%
Moderate retention value trees	1,045	720	69%
Low retention value trees	1,924	1,546	80%
Total	3,253	2,402	

There was broad agreement from the arboricultural experts as to the potential impacts of the tree removal, as shown in Table 1.

<sup>61</sup> Tabled Document 47 Ecology and Heritage Partners (2021) Expert Evidence for a Proposed Residential Subdivision at the Former Kingswood Golf Course, 179-217 Centre Dandenong Road, Dingley Village, Victoria

<sup>62</sup> Amendment Document 11 Tract (2020) Tree Retention and Removal Plan

**Table 1:** Extract from the arborists' conclave report<sup>63</sup>

Issue	Record of discussion and outcomes
Review of Impact Assessment of Potential tree loss from proposed subdivision	It was agreed that, there would be loss of trees in allotments, road reserves, and in areas of public open space where there was a high degree (generally over 30 per cent) of encroachment into the tree protection zones of trees.  It was also agreed that, there is possible retention of trees in allotments and in open space, however, more detail is required to determine what could be retained. This level of detail is unknown at this stage.
Review of Impact Assessment of issues to determine tree retention at Development Plan or subdivision stage	It was agreed that, not enough information is available at this stage and with the materials available to determine the impact to trees.  It was generally agreed that Homewood Consulting could only assess tree loss from the subdivision plan and could only consider tree loss based on encroachment percentages.  Arbor Survey considers that further consideration could be given to tree retention in allotments and Homewood Consulting considers that they could only assess based on the materials provided (that is, subdivision layout).
Review of Impact Potential for Tree retention over site	It was agreed that there is plenty of scope for tree retention over the site, provided more detailed design is provided.  It was also agreed that to make a thorough assessment of the impact, detail design needs to be provided.

Homewood Consulting recommended retaining:

- high retention value trees:  
All reasonable efforts should be made to incorporate them in final design plans and to protect them during construction activities.
- moderate retention value trees:  
As many of these as possible should be incorporated into the design however, if designing around some of these trees is not feasible or practical, removal and replacement may be an acceptable compromise.

Homewood Consulting considered that there are:

... some 100 trees proposed for retention in the Tree Retention and Removal Plan that will have a high degree of encroachment and may not be able to be retained.

### (iii) Discussion

The Advisory Committee agrees that the development will result in removal of a significant amount of native vegetation.

The arborists as well as Mr De Silva and Ms Thompson noted trees proposed to be retained in public open space may be lost in the future due to the impacts of development and significant encroachment of the tree protection zones. However, the impact is difficult to assess due to the lack of detailed design information and level of encroachment of tree protection zones. Ms Campbell observed that the best habitat in the Melbourne Water retarding basin will be removed

<sup>63</sup> Tabled document 108 Arborists Conclave - Record of Review 12464478 v 2-1

as part of development and that without detailed designs, it is difficult to determine whether the new wetland will provide quality habitat. Mr Reynolds noted that changes to the topography and drainage and watering regime may impact the survival of retained trees.

The issues in assessing the impact of the development on environmental and landscape values is not so much the assessment of what trees will be lost, but the implications of these losses for amenity and biodiversity values. These issues are discussed below.

### **8.3.3 Response to the biodiversity value of the site**

#### **(i) The issue**

The issue is whether the proposed design response has responded adequately to the biodiversity values of the site.

#### **(ii) Evidence and submissions**

##### **impacts on specific species**

DELWP submitted in relation to nationally significant fauna:

Grey-headed Flying-fox and Swift Parrot are highly likely to at least opportunistically utilize the site.

While DELWP agrees with EHP2020 that these Nationally significant species are unlikely to rely on the site for population persistence, the currently available habitat still provides temporal foraging, roosting and breeding opportunities.

Any loss of mature eucalypts will impact on the availability of this habitat. Those retained will provide limited habitat value due to noise, movement, lighting and vibration disturbance.

Increased human activity, property maintenance activities and domestic pets, will also impact on foraging, roosting and breeding opportunities.

DELWP agreed that the State significant Hardhead and other waterbirds Australasian Shoveler, Blue-billed Duck and Eastern Great Egret are likely to opportunistically utilise waterbodies within the site, but stated:

The siting and design of any development has the potential to significantly impact on the functionality of the habitat for these species.

The proximity of the residential development, including recreation zones, will introduce light and noise pollution. Increased human activity, including property maintenance activities and domestic pets, will also impact on foraging and breeding opportunities.

No protected refuge areas or buffer zones between the residential development/public access areas and wetland habitat zones appear to have been considered in the siting and design.

Dr Yugovic agreed that the development is unlikely to impact nationally or state significant flora species.

Ms Campbell agreed that removal of habitat from the site is unlikely to result in a decrease in populations of the Grey-headed Flying-fox or the Swift Parrot. Ms Campbell stated, however, that:

Removal of native vegetation on the site will have a significant impact on local foraging habitat for these species and that a significant impact self-assessment under the *Environment Protection and Biodiversity Conservation Act 2020* Significant Impact Guidelines<sup>64</sup> is warranted.

Ms Campbell stated in relation to Grey-headed Flying-fox:

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<sup>64</sup> Department of Environment (2013) *Environment Protection and Biodiversity Conservation Act 2020* Significant Impact Guidelines

The removal of high quality foraging habitat available for this species should be considered in context of the remaining foraging habitat available within the Doveton camp foraging range ... I generally agree that the proposed removal of habitat from within the study area is unlikely to result in a decrease to the Doveton camp population, however, on a local level within the Kingston City Council area this is a large amount of habitat removal for a species listed as threatened at the national, state and local level.

In relation to the Swift Parrot, Ms Campbell stated:

I consider the species highly likely to utilise the suitable foraging habitat present within the study area ... On a local scale the site provides a significant area of Swift Parrot habitat.

### **Broader impacts**

There were competing assessments as to the broader ecological impacts.

Ms Campbell was of the view that trees in public open space are managed primarily for amenity, not to protect and enhance biodiversity or habitat values and that it was not clear whether trees identified for retention had been chosen for their environmental value. She noted that it appears an emphasis has been made on amenity value and the arborist's health scoring rather than ecological values to fauna. Given the significant area of habitat for Swift Parrot and Grey-headed Flying-fox is underreported in the EHP (2020) report it is unlikely that the tree retention strategy addresses habitat retention for these species.

In regard to the Development Plan, DELWP submitted:

- 1.1.6 Ecological values: Does not articulate the role of the site in providing an ecological 'stepping-stone' or its value in providing opportunistic foraging, roosting and breeding for common and threatened species.
- 1.1.7 Landscape values: Focusses on the visual importance of vegetation and the need to locate open space to address visual amenity. No consideration has been given to siting and design of open space areas to maximize habitat connectivity or to retaining vegetation that has the highest biodiversity values.
- 2.3.2 Open space network: This network has been designed to accommodate public use and visual amenity. No consideration has been given to the retention and protection of habitat values or functional habitat connectivity.
- 2.3.3 Tree retention principles: While these principles recognize the importance of prioritizing the retention of trees with significant ecological value (wherever possible), there is no clear commitment to do so. Tree Protection Zones (TPZ)s are proposed for the protection of trees but these will only apply during construction and will not prevent loss of native vegetation due to consequential access to exemptions. Trees are intended to be retained where they can be "practically integrated within the development". This indicates that rather than applying an avoid and minimize strategy as part of siting and design considerations, offsets are being used as the jump off point in development considerations.

and the Landscape Masterplan

Has a clear focus on public use and visual amenity. No consideration appears to have been given to avoiding and minimizing impacts to native understorey or wetland vegetation as part of the siting and design of the development or the landscaping of the open spaces.

Ms Campbell echoed these concerns:

It is unclear whether the trees chosen for retention have been considered on the basis of retaining current habitat functionality that is provide within the study area. To maintain a somewhat degraded level of the habitat value the following principles would need to be applied:

- retention of large hollow bearing trees connected through canopy plantings throughout the development area
- retention of multiple stands of Swift Parrot habitat (predominantly Spotted Gum)
- retention of a mix of eucalypt species to ensure year round flowering events to continue providing high quality habitat for Grey-headed Flying-fox.



Mr Organ noted that direct impact of the development will include:

- loss of or disturbance to artificial waterbodies, which provide habitat for several common aquatic and semi-aquatic fauna
- mortality, injury and disturbance of common fauna species and removal of their habitats which may impact on local populations.

In terms of potential benefits, Mr Barlow stated that:

144. The proposed reserves (and smaller nodes) will form part of an integrated open space network that:

...

- Will create connected wildlife corridors that can be enhanced with indigenous planting and enhance the enlarged water bodies to perform a wetland function.

Mr Organ summarised the following ecological improvements from the Proposal:

- Opportunities have been taken to locate, design and manage the proposed development to minimise impacts on biodiversity from the removal of native vegetation, and there is sufficient evidence that any further actions to minimise impacts on biodiversity from the removal of native vegetation will undermine the key objectives of the Proposal or materially increase the cost of the Proposal.
- A large number of indigenous species will be used as part of the revegetation of open spaces and provide habitat for locally common native fauna species.
- The provision of ground debris (logs, timber) in appropriate locations throughout the open space areas, which will provide habitat for a range of native fauna species, primarily ground dwelling species (e.g. reptiles, frogs and invertebrates).
- Although it is recognised that nest boxes do not always provide a direct replacement for the removal of tree hollows, various types and sizes of nest boxes will be installed throughout the proposed development. Nest boxes will provide suitable roosting and nesting habitat for a range of locally common fauna (principally mammals such as Common Brush-tail Possum, Common Ringtail Possum and insectivorous bats, woodland birds, and other birds reliant on hollows).
- The large waterbody along the study area's western boundary will be more than doubled in size and two more large waterbodies will be created as part of the development and planted with indigenous aquatic and riparian species so they resemble wetlands, thereby providing habitat for fauna that live within and around these features.
- Nature strips and open spaces which people will use for recreational purposes (i.e. outside the revegetation areas) will be planted with a range of trees and shrubs, with a strong emphasis on indigenous species; and
- The open spaces have been designed to enable five existing adjoining open spaces to become part of the study area's open space network, thereby converting these five relatively small and isolated existing open spaces into a much larger network.

Mr Yugovic identified disbenefits:

The development plan includes the proposed clearing of native vegetation which represents a significant reduction in native vegetation in the City of Kingston. This would be the largest clearing of natural patch vegetation this century.

There would be a 90 per cent reduction in native vegetation (5.322/5.883 ha removed).

The development plan does not meet the Planning guidelines for the conversion of golf course land to other purposes (DELWP 2020) which state that the redevelopment of golf course land should 'enhance and protect state, regional and locally significant environmental assets'. There are numerous locally significant assets that are not clearly recognised or identified and they do not appear to have influenced the development design.

Mr De Silva pointed to the difficulty in understanding how design decisions had been made. He gave evidence that:

105 The lack of transparency in the transition from site analysis to vision and design response is particularly evident in relation to which trees have been selected for removal and retention and how the visual sensitivity has been taken into account.



- 108 Little information is provided in relation to tree/vegetation protection objectives and the draft Development Plan does not include nomination of trees for retention/removal (by size and type) notwithstanding that the planning report notes that 3,203 trees are estimated to be on the land and of those trees only 861 are proposed for retention (26%).
- 109 Section 2.3.3 on page 35 refers to 'tree protection principles' but no mapping of trees has been included nor have other site values been overlayed to assess their relevance.
- 110 Comments such as 'scattered native trees with a high arboricultural or ecological value will be retained where they can be practically integrated within the development' infers that such trees have not been given the highest priority for retention.
- 111 Under the heading 'Trees in open spaces' on page 36 it simply states that 'All trees have been retained where possible'.
- 112 It is also proposed that some trees will be retained within road reserves and that some trees will be retained within lots – a response which is considered to be completely unsustainable.
- 113 Notwithstanding the lack of documentation of trees to be retained or removed and the rationale for the adopted approach the draft Development Plan includes a description of tree protection zone requirements but these have not been met in the plan of subdivision.

DELWP was also concerned about the design process, submitting that it was:

... not satisfied that the applicant has demonstrated steps to avoid and minimize the proposed native vegetation removal and that no feasible opportunities exist to further avoid and minimize impacts on native vegetation and habitat values without undermining the key objectives of the Proposal.

Offsetting native vegetation appears to have been considered as the jump off point when planning siting and design.

The potential for the retention, enhancement and protection of endangered EVCs, mature and hollow bearing trees and wetland habitat as part of designated conservation reserves has not been adequately considered as part of this application.

Ms Thompson made the following comments regarding the Proposal:

- 2.3.14 From a landscape and tree canopy cover perspective, it is concerning that only half the high value trees are retained in the existing urban design layout. The layout also shows road reserves extending into what appears more than 10 per cent of the TPZ of some of the high value trees identified to be retained, which suggests that not all of the retained trees will necessarily survive the construction of the proposed layout.
- 2.3.15 Proposes a series of 3 metre wide shared paths through the stands of existing trees around the perimeter of the site. This is also proposed along the with other features including play and fitness stations encroaching into the TPZ's of existing trees. Overall, there appears to be too little open space set aside for recreation purposes in addition to the open space set aside to the protect the significant, high and medium value trees.
- 2.3.16 Two of the largest of these trees is a Remnant River Red Gum and a large planted Southern Mahogany Gum in the Entry Reserve which I consider have not been adequately protected and integrated into the open space network.
- 2.5.4 There is potential that an alternative proposal could be developed and achieve a much improved outcome for a diverse, well-integrated and sustainable open space network. This would prioritise the protection of existing mature canopy trees, particularly those that have 60 plus years of growth and maturity and space for the remnant trees. ... Secondly the extent of open space would be designed to protect the trees and provide space for a diverse range of unstructured recreation and informal uses without compromising the retention and health of the mature canopy trees.

The quantum of trees in new plantings is not specified in the Development Plan or the Landscape Masterplan. Mr Haack in his evidence stated "*2,685 new trees are proposed to be planted in public realm areas of the Proposal*". This is the same number of trees stated in the Tract Planning Report.<sup>65</sup>

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<sup>65</sup> Exhibited document 18

### (iii) Discussion

The Advisory Committee agrees with DELWP that:

- offsetting native vegetation appears to have been considered as the jump off point when planning siting and design
- the potential for the retention, enhancement and protection of endangered EVCs, mature and hollow bearing trees and wetland habitat as part of designated conservation reserves has not been adequately considered as part of this application.

The impacts of the development are difficult to determine without detailed designs of the open spaces and waterbodies. The Landscape Masterplan does not specify:

- any environmental objectives
- the total extent of new plantings and the proportion of new plantings within parks
- nature strips and other spaces
- the proportion of indigenous plants to be used in new plantings
- the vegetation to be used in and around the waterbodies.
- how retained vegetation will be protected and enhanced to support its ecological function.

The Advisory Committee draws attention to the following statements from the *Guidelines*, and in particular the words improved, enhance and protect, with regard to environmental values:

As well as an overall community benefit the Proposal should:

...

- deliver improved environmental values
- enhance and protect state, regional and locally significant environmental assets and biodiversity corridors (emphasis added).

The Advisory Committee has not been provided evidence that the extent of native vegetation removal combined with the proposed revegetation will deliver improved, enhanced and protected environmental assets. The following statement from Mr Organ suggests that these outcomes were not central to the design response:

Opportunities have been taken to locate, design and manage the proposed development to minimise impacts on biodiversity from the removal of native vegetation, and there is sufficient evidence that any further actions to minimise impacts on biodiversity from the removal of native vegetation will undermine the key objectives of the Proposal or materially increase the cost of the proposal.

The Advisory Committee received evidence of opportunities to reduce the amount of vegetation to be removed from:

- the Arborists Conclave Report which concluded that:  
...there is plenty of scope for tree retention over the site, provided more detailed design is provided.
- Mr De Silva, through his alternative design response, who demonstrated that there are opportunities to increase the amount of vegetation retained on the site through realignment of roads and house lots
- Mr Haack who noted:  
The potential for the retention of some smaller trees in private open space along interfaces with existing residences, where those trees do not constitute a hazard or significantly impact on yield.

The Advisory Committee agrees that the opportunities to protect and enhance the site's environmental values have not been fully explored. DELWP, Dr Yugovic and Ms Campbell noted the following opportunities to enhance environmental values:

- protect and enhance patches of endangered EVCs (Plains Grassy Woodland and Swamp Scrub)
- enhance the ecological connectivity of the site, including its current function as an ecological 'stepping stone' in the landscape
- protect and enhance foraging and roosting vegetation for the nationally significant Grey-Headed Flying-fox and Swift Parrot
- retain more hollow bearing trees as nesting boxes are not a replacement for tree hollows, they are a supplement only and require ongoing management.
- protect locally significant vegetation and fauna habitat, such as patch of Herb-rich Woodland which Ms Campbell stated was the best fauna habitat on the site
- tailoring the proposed planting palette to enhance habitat for local species and EVCs.

The Advisory Committee agrees with the findings of Mr De Silva that there is a lack of transparency in the translation of environmental values into the design response. This is due in part because the design response was not informed by the biodiversity strategic context to establish a clear set of objectives, priorities and opportunities for protection and enhancement of the site's biodiversity values. In addition, there is no consolidated plan showing the location of, and prioritisation of environmental values on the site. It also stems from the approach to environmental assessment which focused on assessment for the purposes of offsetting native vegetation clearance, rather than identifying opportunities for environmental protection and enhancement.

The Advisory Committee agrees with the recommendation of Ms Campbell that a Fauna Management Plan be prepared to monitor and manage impacts on fauna during construction, including terrestrial and aquatic fauna.

#### **8.3.4 Tree canopy and the heat island effect**

##### **(i) The issue**

The issue is:

- whether removal of vegetation and proposed development will result in a loss of tree canopy and an increase in the heat island effect.

##### **(ii) Evidence and submissions**

Mr Barlow concluded (para 192) that the Proposal provided the following benefit:

The proposed landscaping will retain a significant part of the established canopy trees, particularly in areas 'shared' with neighbouring properties and allow for the planting of new vegetation that will develop with the new residential community. The overall landscape concept for the completed development will enable an increase in the extent of tree canopy coverage on the site to 32.13 per cent of the total site area. This is significantly greater than that found in the existing residential areas surrounding the site (15.13 per cent) and on the subject site itself (25.88 per cent).

Mr Barlow concluded (para 193) that the Proposal delivered the following disbenefits:

The Proposal will result in the loss of canopy trees. The Proposal will require the removal of trees principally within the interior of the site to permit its redevelopment. However, the Proposal has been designed to retain as many of the trees as possible according to their importance and their role (for example, providing a landscape buffer to a boundary interface or utilising the trees to create a boulevard). As set out above the new development will ultimately increase tree canopy cover.

Mr Haack stated:

One of Councils' Street and Park Tree Management Strategies (2019) core objectives is to increase canopy cover in the municipality to 30 per cent.

2,685 new trees are proposed to be planted in public realm areas of the Proposal. When mature, these new trees, combined with the 851 retained trees, will result in an overall canopy coverage which is 109 per cent of the current coverage.

Total proposed tree coverage, retained and proposed, will result in a 32.12 per cent canopy coverage of the overall site area (Concept Tree Coverage Plan, Tract, 10/09/2021).

By comparison, an analysis by Tract of the existing tree canopy cover for the surrounding Dingley Village area, within 2 km of the centre of the subject site, finds the existing tree canopy coverage is 15.13 per cent (Existing Tree Canopy Plan, Tract, 16/09/2021).

Council submitted (Submission 1343):

The Proposal does not align with Council's expectations for the provision for canopy trees, particularly considering Council's adopted Urban Cooling Strategy. Council is also developing an Urban Forest Strategy which aims to increase the retention of canopy and significant trees, rather than reduce them.

A large number of submitters expressed concern that removal of vegetation and proposed development will result in a loss of tree canopy and an increase in the heat island effect. Mr Edwards (Submission 587) for example stated:

These trees are the "*lungs*" cooling, filter and oxygen production for Dingley Village.

Ms Sise (Submission 494) was concerned at the length of time before the proposed tree planting will contribute to the tree canopy:

The 2,685 new trees won't be of much use as habitat or canopy cover for at least 20 years.

Mr Dreyfus (Submission 1438) identified that:

An urban heat and tree mapping analysis could not be found in the package of submitted documents by the Proponent that considers this, the Council's Urban Cooling Strategy or the Planning Guidelines concerning the effects of urban heat.

### **(iii) Discussion**

At the request of the Advisory Committee the Proponent prepared a tree canopy plan within a reduced study area, excluding reserves such as Spring Road Reserve in the adjoining green wedge (Figure 15). This assessment found:

- the existing site tree canopy coverage to be 25.9 per cent
- the existing study area tree canopy coverage to be 12.5 per cent.

The development will result in the removal of 2,402 trees from the site (Figure 14). Mr Haack stated that 2,685 new trees are proposed to be planted in public realm areas. When combined with the 851 retained trees the Advisory Committee agrees that this will result in a 109 per cent increase in the number of trees. The extent to which the tree canopy is increased is not clear as the Landscape Plan does not specify the number of each species that will be planted or provide an urban heat and tree mapping analysis.

The Advisory Committee agrees that in the short term, the extent of native vegetation removal will have a significant impact on the tree canopy on the site. It agrees that there is not sufficient information to determine what impact new plantings will have on the tree canopy in the long term.

**Figure 15: Tree canopy plan<sup>66</sup>**



### 8.3.5 Conclusions

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- The Proposal does not deliver improved environmental values or ecological connectivity.
- Detailed design is required to assess the full impacts on vegetation removal.
- The development in the short term will result in a loss of canopy.
- There is insufficient information to determine what impact new plantings will have on the tree canopy in the long term.

The Proposal needs to be refined to:

- Retain more vegetation to protect environmental values well as contribute to amenity.
- Better document the impact of new plantings on the tree canopy in the long term.

In terms of NCB:

- A disbenefit of the Proposal includes:
  - A loss of tree canopy.

## 8.4 Open space and active recreation

### 8.4.1 Introduction

**(i) What are the potential benefits and disbenefits, and what needs to be resolved?**

Concerns were raised about:

- the proportion of the site nominated as public open space
- the design of the open space elements
- whether the Proposal makes adequate provision for active recreation

<sup>66</sup> Tabled Document 73 Tract (2021) Tree Canopy Coverage Plan

- whether the site is usable for golf.

**(ii) Relevant policy**

*Guidelines* which say:

The following matters should be considered to determine if, the Proposal provides a new community benefit and environmental benefit:

- whether a proposal:
  - ...
  - provides additional public open space, sporting or recreational facilities or makes financial contributions to improve or develop regional or local sporting facilities and open space

Relevant policy includes:

- 15.01-2S Building design
- 15.01-3S Subdivision design
- 15.01-4S Health neighbourhoods
- 15.01-4SR Metropolitan Melbourne
- 19.02-6R Open space - Metropolitan Melbourne
- 19.02-6S Open space
- 19.03-2S Infrastructure design and provision
- 21.02-4 Open space
- 56.05-1 Integrated open space
- 56.05-2 Public open space provisions
- 56.06-2 Walking and cycling network.

## **8.4.2 The quantum of open space**

**(i) The issue**

The issue is whether the nominated open space meets the guideline requirement that it is usable and accessible open space.

**(ii) Submissions and evidence**

Mr Paul Shipp of Urban Enterprise Pty Ltd gave evidence for the Proponent where he summarised the open space to be provided by the development:

25. A total of 9.72 hectares of unencumbered open space is proposed which equates to 19.75% of the contribution area
26. ... Unencumbered open space is proposed to comprise:
  - four 'Large Nodes' (with improvements such as play-spaces, shelters, picnic tables, feature paving, kick-about areas, retention of existing trees, seating and bike racks)
  - eleven Pocket parks and green links (landscape connections with walkway, seating and retention of existing trees).
27. A total of 4.13 hectares of land is designated as 'encumbered open space'. This comprises 4.01 hectares of wetlands and 0.12 hectares of encumbered open space within the 1 in 100 year flood extent.

Mr De Silva concluded the nomination of open space as encumbered or unencumbered contribution was incorrect because:

151. The plan which is referenced to arrive at the distinction between 'encumbered open space' and 'unencumbered open space' clearly shows that the land that has been defined as unencumbered open space is in fact substantially encumbered by existing vegetation save

for some of the land at the front of the project (see page 8 of Urban Enterprise evidence statement).

Mr Barlow concluded (para 192) that the Proposal provided the following benefit:

It provides significant additional public open space (26 per cent of the site) for the Dingley Village area and integrates the currently disparate series of parks and reserves that surround the site. The new open space will be available to all the community, as compared to the former golf course which was only available to members and their guests.

Ms Thompson stated:

- 2.5.1 In conclusion, while the open space in the proposed Former Kingswood Golf Club Development Plan meets the minimum 20 per cent of the site area to be provided as open space, as per the Guidelines for Conversation of Golf Course Land, approximately 60 per cent of the proposed open space network does not provide passive and active recreation.
- 2.5.2 I have made recommendations to address the key issues identified with the existing proposal which are:
- The high proportion of encumbered open space.
  - The main open space directly adjoins the arterial road with the main recreation facility located on the corner of the arterial and collector road.
  - The poor urban interface to selected open spaces.

Many submitters were concerned that the development will result in an unacceptable loss of high value 'open space' while some submitters, such as the Keysborough Golf Club (Submitter 1194) submitted that only through redevelopment does a portion of the land become publicly available open space.

Ms Thompson and Mr De Silva made the following suggestions to enhance the usability and accessibility of the proposed open space elements:

- extending existing reserves and creating direct connections to the linear open space network
- realigning roads or reorienting development to increase accessibility and usability of open space, improve and passive surveillance, and achieve better connectivity
- widening selected perimeter tree reserves to provide adequate space for shared paths outside the tree protection zone, or alternatively accommodating shared paths in the adjoining road reserves
- providing additional open space within the Entry Reserve, Northern Reserve and Cannery Place to improve connectivity to the adjoining open space and street network
- contribute to the improvement of the existing open space reserves that directly adjoin the site. This includes:
  - Christina Crescent Reserve
  - Greenwood Close Reserve
  - Coughlan Reserve
  - Cannery Place Reserve
  - Golfwood Close Walkway.

### **(iii) Discussion**

The Development Plan has nominated 26 per cent of the gross site area to be developed as open space; of this, 18 per cent is unencumbered open space and 8 per cent encumbered open space. The Development Plan Land Budget adopts the definition of encumbered land from the Growth

Areas Authority Precinct Structure Planning Guidelines.<sup>67</sup> There the definition is “*encumbered land is land constrained for development purposes and includes easements, transmission lines, sewers, gas, waterways/drainage, retarding basin/wetlands; landfill; conservation and heritage areas. This land may be used for a range of activities e.g. walking trails, sports fields*”.

The Advisory Committee’s view is that this definition is relevant to greenfield sites. The subject land is an infill site and the *Guidelines* say:

To ensure net community benefit, the redevelopment of golf course land should achieve the following:

- at least 20 per cent of the land area to be developed is set aside as publicly accessible useable open space that contributes to an integrated open space network. This land may be encumbered by easements, reservations, heritage, vegetation or other conditions and make provision for land to be used for passive or active recreation.

### 8.4.3 Usability of open space

#### (i) The issue

The issue is whether nominated open space is usable and accessible.

#### (ii) Evidence and submissions

Ms Jeavons of @Leisure Planners included in her evidence conclusions that:

- 4.3.1 There appears to be significant areas of encumbered land in the plan of subdivision which in my view could not be considered either as "useable or accessible" public open space or “*suitable for the intended use*” as required by Clause 56 of the Planning Scheme. The additional capacity provided in wet retarding basins to serve areas outside the development should not be considered a higher priority than providing active open space to serve the immediate Site.
- 4.3.2 The Development Plan open space scheme may address conversation, visual amenity, and contemplation in reserves created for flood retardation, tree preservation, and environmental and utility management. However, providing large spaces for drainage and conservation does not negate the need for adequate land being allocated to active open space on which residents will depend, and design concepts addressing these needs through adequate proportioned space and infrastructure, that will encourage physical activity or sport.

Dr Kate Kerkin of K2 Planning for Council, Ms Jeavons and Mr De Silva were of the view that some of the nominated open spaces elements, such as the central linear reserve and green link proposed for the south eastern interface with the Golfwood, Reserve, were too small, poorly connected or encumbered by vegetation to be considered usable or accessible.

In discussion with the Advisory Committee, Ms Jeavons opined that to be accessible and usable a tree reserve would need to be at least 10 metres deep, incorporate a shared path and be part of a loop or circuit trail to be considered usable and accessible open space. Ms Jeavons also stated that in her opinion, shared paths should be a minimum of 3 metres wide to encourage a wide range of recreation activities that include people of all ages and abilities and accommodate uses not permitted on roads such as wheeled toys and mobility scooters.

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<sup>67</sup> Growth Areas Authority Precinct Structure Planning Guidelines, Part 2, Preparing the Precinct Structure Plan, Revised 2013



### (iii) Discussion

In determining which elements of the site qualify as a contribution to open space the Advisory Committee returns to the *Guidelines*' use of 'usable and accessible'. The land budget has included waterbodies and landscape features as part of open space areas.

The Advisory Committee agrees with Ms Jeavons that not all of the areas set aside from development constitute usable and accessible as open space. They constitute landscape areas, tree reserves, or amenity buffers which are valuable in themselves but are not useable and accessible open space.

A water feature could be counted as part of open space if it serves a genuine open space purpose as well as a more functional purpose. The primary function of water bodies in the Proposal is water treatment and retardation. While they may be an attractive landscape element, they may not be publicly accessible or usable, and in this case, they should not be counted towards the 20 per cent open space.

#### 8.4.4 Active recreation

##### (i) The issue

The issue is:

- whether the Proposal makes adequate provision for active recreation.

##### (ii) Submissions and evidence

Ms Jeavons summarised the active open to be provided by the development as comprising three kick about spaces, one fitness hub and three spaces with shared perimeter paths, of which one is more than 500 metres in length. Ms Jeavons concluded that:

- 6.1.1 There is insufficient evidence to suggest that open space as outlined in the Development Plan is adequate to accommodate active recreation.
- 6.1.2 The Development Plan does not illustrate if the provision of active open space can meet the required objectives. These objectives include *"To provide a network of quality, well-distributed, multi-functional and cost-effective public open space that includes local parks, active open space, linear parks and trails, and links to regional open space"; "To encourage healthy and active communities"* and *"To provide adequate unencumbered land for public open space..."*.
- 6.1.3 The Development Plan, similarly, does not illustrate a scheme for open space that achieves *"Active open space of a least 8 hectares within 1 kilometre of 95 percent of all dwellings that is"*:
  - Suitably dimensioned and designed to provide for the intended use, buffer areas around sporting fields and passive open space
  - Sufficient to incorporate two football/cricket ovals
  - Appropriate for the intended use in terms of quality and orientation
  - Located on flat land (which can be cost-effectively graded)
  - Suitable for the intended use
  - Be of an area and dimensions to allow easy adaptation to different uses in response to changing community active and passive recreational preferences.

This being the case, there is clearly a need to address active open space needs off-site.

Mr Barlow concluded (para 193) that the Proposal delivered the following disbenefits:

- The proposed use of the site for residential purposes removes the opportunity for the site to be fully utilised for other recreation or sporting purposes. As noted in the body of my assessment the area is already provided with significant land holdings, in public ownership, that could equally be utilised for a range of recreation and sporting facilities.

Further there will additional open space and recreational opportunities created within the green wedge area (Chain of Parks) as landfills are fully rehabilitated. This green wedge land cannot be used for housing but can be utilised for sporting facilities as demonstrated by the Hawthorn Football Club proposal.

In respect of open space, Mr Shipp noted the ASR Research report found that:

- Despite the additional demand generated for structured sport, the subject site is not considered a suitable location for a new outdoor sports reserve.
- It is not intended that any cash contribution will be made in this case because of the significant over supply of public open space that will be made on site.
- The provision of existing high ball indoor recreation centres and Council indoor and outdoor aquatic leisure facilities within, or close to the catchment area is considered to be adequate, both in terms of supply and proximity.

Mr De Silva found that:

29. ... I note that the Development Plan does not contain a community or active open space needs analysis.
30. Such analysis for a future community of approximately 2,000 persons should be undertaken.
31. Irrespective of the need for additional active open space land, it is appropriate for the subject land to be liable for payment of development contributions for certain categories of infrastructure.

A number of Submitters (300, 499, 911, 915, 924, 1201, 1490) stated that local sporting club facilities (football, netball, basketball and cricket) are at capacity and there are not sufficient grounds for practise and competition. Others noted that there will be ample sporting facilities once the proposed Hawthorn Football development is completed. One submission (Submission 1216) stated that there is no shortage of recreation space in Dingley Village citing junior football in Dingley which is experiencing a decline in participation and has more than ample ground space for current teams.

A large number of submitters were concerned that the Proposal does not provide community facilities like sporting ovals.

Mr De Silva noted that the Development Plan does not include an active open space needs analysis and that such an analysis is required to satisfactorily address the *Guidelines*.

In the absence of this information and for the purposes of this discussion, the Advisory Committee have relied on Ms Jeavons estimates of the active open space needs generated by the development (Figure 16).

**Figure 16: Projected likely number of residents of the site who may use active recreation facilities, by type of facility<sup>68</sup>**

Active recreation facility type	Project no of users likely*
Off-road trail	1600+
Outdoor sports court	200+
Outdoor playing field	850
Skate, roller sport facility	300
Golf course/range	101
Lawn bowls green	26

<sup>68</sup> Tabled Document 88 - Ms Jeavons, @leisure Planners (2021) Former Kingswood Golf Course Residential Development: Active Open Space Expert Witness Statement

Indoor sports courts	300
Aquatic centre	550
Indoor gym, fitness, dance studio	1000+
Dog exercise/socialisation area	450
Play space	247

\* Based on at least once a year, extrapolated from age-specific AusPlay state participation rates by activity and combined into facility types.

Based on these expected rates of participation, Ms Jeavons concluded:

- 5.1.1 ...there will be considerable demand for active recreation on the Site. Some 145 sport and physical activities were considered. The size of the demand illustrates the population could support fields of play for several sports.

The development will create demand for active open space. Mr Barlow was of the view that demand generated by the development can be met by existing off-site facilities and open space opportunities including:

- 158 ... the Spring Road Reserve that could (subject to EPA approval) be upgraded to provide a significant active open space resource whilst also retaining the dog park. Further the nearby green wedge area, which includes the Chain of Parks concept, can be utilised for a wide range of sporting and recreational purposes.
159. It is also noted that Council has recently invested in the Hawthorn Football Club facility in Tootal Road (located approx. 500 metres from the western edge of the subject site). This facility will include two full size ovals, a multi-purpose training area with a potential running track and soccer field and two additional ovals.

Council advised that, as a former landfill, the Spring Road Reserve cannot be developed for active open space in the short to medium term because levelling would require significant quantities of fill to bench the area and playing surfaces would also suffer from ongoing settlement and methane migration, requiring regular reconstruction and grading and resulting in high costs.

Therefore, the question remains as to whether the proposed active open space on the site can meet demand. Ms Jeavons concluded from her assessment of demand that:

- 5.1.2 Most of those sport and physical activities identified as being participated in within Kingston ... and that require purpose-built infrastructure are not proposed in the Development Plan or provided for within the development, in the open space proposed. In addition, based on the current proposal as set out in the Development Plan, many social active recreation needs of the residents will be sought to be met off-site.
- 5.1.3 An increase in the number of people wanting to participate in these activities outside the Site will increase the use and may exceed the capacity of some existing facilities provided by the Council.

The development proposes to provide three kick about spaces, one fitness hub and three spaces with shared perimeter paths, of which one is more than 500 metres in length. The development Plan does not include any outdoor playing fields, sports courts for social play or practice facilities such as hit up walls or cricket nets.

Ms Jeavons identified three types of facilities required to meet demand from the development:

- social sporting and physical activities that need to be close to home and suitable for people of all ages and abilities
- off-road shared trails
- sports and aquatic facilities that include competition and club-based sports facilities.

Ms Jeavons concluded that the proposed active open spaces are inadequate to meet demand and do not meet the active open space policy requirements. In regard to social sports and active recreation Ms Jeavons concluded:

- 5.2.3 ... the Maintenance Schedule does not include these facilities. Therefore, they may only be references to the general type of facilities to be provided. For these types of facilities to be considered more than "play", hard courts would be expected to be a full-sized basketball court, and multi marked for basketball/futsal/tennis, etc.
- 5.2.3.1 I note that the Planning Permit conditions do not currently specify the provision of suitably turfed and irrigated grass for social sports or suitably dimensioned hardcourts and recreational infrastructure which would be desirable.
- 5.2.3.2 in my opinion, some further provision for active recreation by way of hard courts, irrigated turf for ball games and other recreational infrastructure should be possible to include within identified social/family recreation spaces, distributed throughout the Site, and should be required. These spaces will need suitable buffers from housing and other uses of public open space.

Ms Jeavons recommended:

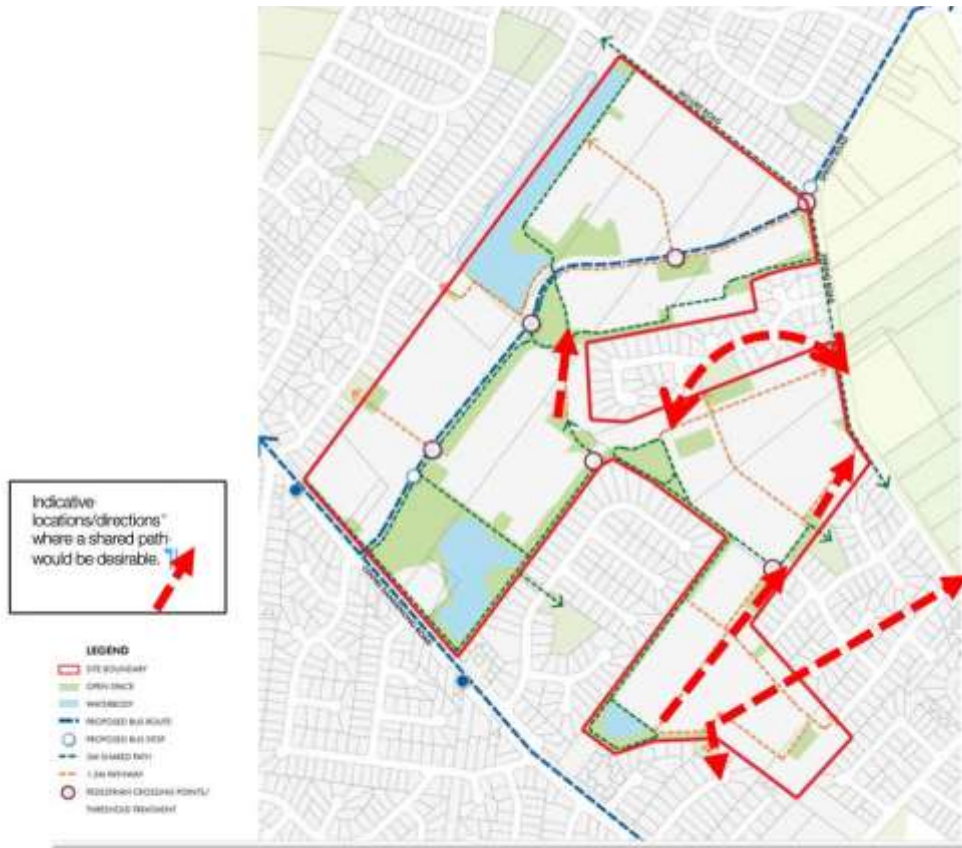
- 6.1.6 A design review should identify three hubs for social/family recreation that in line with Council's Open Space Plan incorporating active open space in conjunction with the social, and environmental activities required. The social sports facilities that theoretically could be integrated into a residential development of this size should include paved and grassed facilities and equipment to ensure accessibility and a diversity of opportunities and accommodate a range of different activities and age groups. These should include at least multisport hard court, practice facilities and a small, grassed playing field areas.

In regard to off-road shared trails, Ms Jeavons acknowledged that the difficult pattern of residential subdivision surrounding the site makes a preferred connection with the school and the activity centre challenging even though they are very close to the development. The Development Plan highlights one 3 metre shared path through the site to the Spring Road frontage. However, this trail does not service the southern/eastern area (and therefore does not meet the equitable distribution policy objectives and connects to more regional green space with trail and dog exercise areas).

- 5.4.9 In my opinion, three-metre-wide shared paths are important to be able to encourage a wide range of recreation activities and that include people of all ages and abilities. In recent pandemic conditions many shared paths networks have been found to be at capacity and therefore a 3 metre width is recommended. The permit conditions currently specify at Open Space 35.f., a lesser width: *“f. Construction of a 2.5 metre shared pathway connecting and linking into any other surrounding paths or points of interest.”*
- 6.1.7 ...that the 3 metre wide off-road trail circuit be extended around the site, and to community facilities outside the site, and that the larger reserves have perimeter paths for exercise.

Ms Jeavons demonstrated that upgrading proposed footpaths to shared trails may create a better, more continuous network of trails and provide opportunities for active recreation (Figure 17).

**Figure 17:** Indicative locations where shared paths could meet the objectives of equitable distribution and connection to adjacent open space



Base Map Source: Fig. 22 Walking and Cycling Tract 2020  
Source: Document 88

### (iii) Discussion

The Advisory Committee notes the opportunity presented by the proposed Hawthorn Football Club facility. However, in the absence of a comprehensive active open space needs analysis, the implications of the facility on regional supply of active open space and the active open space needs of the development cannot be assessed.

In the absence of a comprehensive active open space needs analysis the Advisory Committee accepts Ms Jeavons conclusion that:

- 4.2.5 Very little demand stimulated by the development can be met by available facilities outside the Site, largely because of the distance to these facilities and the size of existing parks. Kingston's population is also growing, and further needs for active open space will need to be met in existing facilities. Few additional active open spaces or new competitive sports facilities have been provided in the vicinity of the Site since the golf course closed.

The Advisory Committee does not accept the proposition of Mr Barlow that the development makes an over-provision of open space and that this negates the need to make any provision towards active open space. Nor does it accept that if the site was to provide space for organised sport that this would need to be 'offset' by reducing areas identified for passive open space. Policy is clear in terms of active open space requirements. Clause 56.05-2 Public Open Space provision objectives, Standard C13, requires active open space of a least 8 hectares in the area within 1 kilometre of 95 percent of all dwellings that is:

- suitably dimensioned and designed to provide for the intended use, buffer areas around sporting fields and passive open space
- sufficient to incorporate two football/cricket ovals
- appropriate for the intended use in terms of quality and orientation
- located on flat land (which can be cost-effectively graded)
- be suitable for the intended use
- be of an area and dimensions to allow easy adaptation to different uses in response to changing community active and passive recreational preferences.

If the site is unable to meet this requirement, then an open space contribution needs to be made to sports facility provision off site. The Advisory Committee accepts Ms Jeavons' opinion that the contribution be based on:

- ... the likely number of people who may use a facility to calculate a proportion of a "*field of play*" directly attributable to the development population and costing these, or
- ... an equivalent value such as the cost of providing one sports park, as required in Clause 56 of the Planning Scheme (cost of construction or land take).

#### 8.4.5 Conclusion

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- That 20 percent of the developable area, in the order of 10 hectares, is required as publicly accessible useable open space that contributes to an integrated open space network. The Advisory Committee considers:
  - wetland areas for water treatment and permanent water bodies should be excluded as open space unless they are relatively small components of the open space that hosts them
  - open space strips narrower than 10 metres, or located in median strips should also be excluded as open space – these are more appropriately considered as 'tree reserves' or part of the road, rather than usable open space.
- The proposed active open spaces are inadequate to meet demand created by the development and do not meet the active open space policy requirements. As the development is unable to meet the Clause 56.05-2 Public Open Space provision objectives, Standard C13 requirement for active open space, then a contribution needs to be made to sports facility provision off site.

The Proposal needs to be refined to:

- Ensure all the areas identified a contribution to the 20 per cent open space are usable.
- Contribute to active open space.

In terms of NCB:

- Potential benefits of the Proposal include:
  - Connecting and extending existing parks
  - The proposed internal open space network
- A potential disbenefit of the Proposal includes:
  - Increased demand for active recreation that will not be ameliorated by making a contribution to facilities.

## 8.5 Housing

### 8.5.1 Introduction

#### (i) What are the potential benefits and disbenefits, and what needs to be resolved?

Concerns were raised about:

- development of the site will provide housing in excess of the housing need
- the level of affordable housing offered is insufficient and poorly secured.

#### (ii) Relevant policy

The *Guidelines* say:

The following factors should be considered to determine if, the Proposal provides a net community benefit and environmental benefit:

- whether a proposal:
  - contributes to achieving state or local government policy objectives and strategies

Relevant policy includes:

- 11.01-1S Settlement
- 11.01-1R Green wedges - Metropolitan Melbourne
- 11.02-1S Supply of urban land
- 11.02-2S Structure planning
- 11.02-3S Sequencing of development
- 16.01-1S Integrated housing
- 16.01-1R Integrated housing - Metropolitan Melbourne
- 16.01-2S Location of residential development
- 16.01-2R Housing opportunity areas - Metropolitan Melbourne
- 16.01-3S Housing diversity
- 16.01-3R Housing diversity - Metropolitan Melbourne
- 16.01-4S Housing affordability
- 21.02 Settlement
- 21.07 Housing

### 8.5.2 Housing supply

#### (i) The issue

The issue is:

- whether development of the site will provide housing in excess of the housing need and is not required to meet City of Kingston housing targets.

#### (ii) Submissions and evidence

Mr Barlow outlined benefits of the Proposal. He concluded (at para 192) that the Proposal provided the following benefits:

The Proposal provides an increase in the supply and variety of housing ... The extent of housing (823 dwellings) will contribute to the ongoing demand for housing in Kingston and achieves the outcomes desired by planning policy including:

- The use of under-utilised land in the established urban area and increasing residential densities to help consolidate urban areas.

- Providing diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.

Council, in its Part B Submission stated the land is not required to meet the City of Kingston's housing targets:

20. The Land is not classified in the Southern Metro Plan as a 'Growth Area', but instead as an 'Urban Area'. The planning policy in Kingston is to direct population growth to Growth areas such as the Cheltenham Southland activity centre, a major activity centre where rail, services and infrastructure are available:
21. Dingley Village:
  - a) is not a major activity centre;
  - b) is not an urban renewal area;
  - c) is not a Suburban Rail Loop precinct;
  - d) is not a housing investigation area; and
  - e) is not a Greenfield growth area.
22. Dingley Villages is not prioritised for housing growth.
26. The Land was not identified in the Housing Strategy or Character Study for housing and is excluded from the analysis of the Dingley Village area.
27. The Dingley Village area more broadly is identified as an 'incremental change' area:  
Incremental change – allows for modest levels of change in areas where built form constraints from historical planning controls have resulted in a predominantly 1-2 storey built form, and where access to services and public transport is limited within the residential hinterland.

Council submitted that the Kingston Housing Strategy and Neighbourhood Character Study 2020 recommends that moderate housing growth in the form of townhouse and apartment development be limited to the 200 metre walkable distance of the Centre Dandenong Road frontage as a result of the very limited accessibility to services due to its location surrounded by the green wedge, minimal public transport access, and its remoteness from higher order Activity Centres.

Mr De Silva stated that:

No density objectives are specified in the Development Plan and little information is provided in relation to housing diversity and/or preferred locations for diverse housing options.

In his Clause 56 assessment, Mr De Silva found that with respect to Clause 56.04 Lot Design that:

The Proposal complies with the Objectives and Standards of this Clause.

The Proposal will deliver a range of lot sizes and types to suit a variety of dwelling and household types. Diverse lot types are distributed throughout the subject site.

### **(iii) Discussion**

The Development Plan proposes detached housing on conventional density lots and detached housing and townhouses on medium density lots. While the Plan does not specify the yield objectives, the yield summary from the subdivision plan shows that around 30 per cent of housing will be conventional density, 21 per cent medium density detached and 49 per cent townhouses. The Advisory Committee notes these figures do not include the club house lot which, on one assessment, may provide about additional 25 lots.<sup>69</sup>

This outcome appears to the Advisory Committee to be consistent with the housing need identified by the Kingston Housing Strategy:

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<sup>69</sup> Dr Kerkin's evidence document 91



A key issue in Kingston is the traditionally dominant community desire to own a detached house in this historically outer-Melbourne area. However, given Kingston's exceptional access to Melbourne CBD and surrounds, lack of greenfield opportunities and comparative lack of substantial environmental constraints, opportunities for growth exist for appropriately designed infill and higher density types of development. This type of housing stock reflects the increasing proportion of smaller household sizes, allows for opportunities for ageing in place and options for residents who cannot afford Kingston's increasing property prices

Objective:

Provide a diversity of housing stock for all residents of Kingston to enable a wide range of housing choice.

Actions

...

Continue to advocate for a diversity of housing stock in new developments in negotiations with developers, builders and the State Government, where required. This is particularly important in the delivery of super lots for medium density developments.

The Advisory Committee accepts the findings of Mr De Silva's Clause 56 assessment, that the development will deliver a range of lot sizes and types to suit a variety of dwelling and household types.

### 8.5.3 Social housing

Dr Kerkin gave evidence that there is a need for social housing in the City of Kingston. The Development Plan does not propose to provide social housing. The Urbanxchange (2020) report stated that social housing is not justified on the site because:

Social Housing is unlikely to be utilised or be able to be accessed by the demographic group that has been identified as in need in the municipality...The site is not well serviced by public transport ... [and] amenities are not within easy walking distance.

However, Dr Kerkin observed that:

The Applicant has noted a range of locational features of the subject site that highlight the suitability of the site for social housing including proximity to: neighbourhood and principal activity centres, primary and secondary schools, regional community retail services, significant commercial areas and employment opportunities, major arterial roads, Principle Public Transport Networks, three bus routes, and a high quality pedestrian and bicycle network

The Advisory Committee agrees that provision of social housing would be of considerable benefit to the Kingston community, however it is not a mandatory requirement.

### 8.5.4 Affordable housing

#### (i) The issues

The issues are:

- whether the Proposal provides adequate affordable and social housing and the housing typology will meet the demonstrated need
- whether the proposed mechanism adequately secure the delivery of affordable housing?

#### (ii) Submissions and evidence

There was no contest about the desirability of providing affordable housing on-site as part of this proposal.

The Proponent offered 5 per cent of the number of dwellings as affordable housing up to a value of \$3.3M. Council seeks to apply its Social and Affordable Housing Strategy July 2020 which it said

has a minimum percentage requirement of 9.79 per cent affordable housing across the City of Kingston, including 2 per cent social housing.

Though there was no disagreement with the provision of affordable housing, Council and the Proponent differed on the quantum and the mechanics. Evidence was presented by both parties about the demand for various forms and sizes of dwellings as well as the timing of delivery. The Proponent relied upon the Affordable Housing Assessment Report prepared by Urbanxchange, October 2020,<sup>70</sup> and the evidence of Michael Barlow about the nature of the housing, including rejecting the provision of social housing. Council relied upon the evidence of Dr Kerkin to press its submission.

Mr Barlow stated:

It is also proposed that 5 per cent of the dwellings provided within the new development will be allocated for affordable housing. Based on the proposed plan of subdivision this will provide 41 affordable dwellings – a significant number in an area that has few affordable options. The supply of 5% is considered to be appropriate given:

- The actual number of dwellings to be provided.
- The form of the housing to be provided being townhouses and possibly smaller detached dwellings.
- It is consistent with the provision of affordable housing in other developments that have repurposed land for residential uses such as the East Village redevelopment in Bentleigh East (5% AH), Lilydale Quarry Redevelopment (5% AH) and Precinct 15 Redevelopment in Altona (5% AH).

Mr Barlow stated with regard the means of delivering affordable housing that:

I have reviewed the five options presented in the Urbanxchange report and consider the proposed approach provides for a varied but linked range of affordable housing outcomes including an affordable pathway to home ownership – which is to be commended. The recommended staging of the provision of the affordable housing is realistic and ensures that the housing is provided over the life of the project (and is not back ended). I support the proposed milestones that:

- Prior to the issue of the Statement of Compliance for stage 3 the Developer must identify the parts of the Parent Title Land on which the affordable housing will be delivered and the nature of the options of the affordable housing tenure.
- The Developer must ensure that the affordable housing obligation has been met prior to 90% of the dwellings being completed.

Mr Barlow concluded (para 192) that the Proposal provided the following benefit:

The Proposal provides an increase in the supply and variety of housing, that will include more affordable housing types (such as townhouses) as well as 'funded' affordable housing. ....The extent of housing (823 dwellings) will contribute to the ongoing demand for housing in Kingston and achieves the outcomes desired by planning policy including:

- ...
- The provision of affordable housing (41 dwellings – equivalent to 5% of dwellings in the development) as part of the overall supply of the range of housing.

Dr Kerkin stated:

The City of Kingston Social and Affordable Housing Strategy July 2020 provides strategic justification for a minimum percentage requirement of 9.79% affordable housing across the City of Kingston, including 2% social housing.

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<sup>70</sup> Exhibited document 29 Urban Exchange (2020) Former Kingswood Golf Course 179-217 Centre Dandenong Road Dingley Village. Affordable Housing Report

Dr Kerkin concluded that the demographic analysis undertaken by Urbanxchange resulted in an incorrect characterisation of the target group for affordable housing and the required housing typologies. She stated:

No consideration is given to the possible need for dwellings that will support family formation amongst those aged 20 – 45 years resulting in demand for larger dwellings.

Research conducted for the City of Kingston shows that the following social groups are experiencing the highest levels of rental stress across the municipality:

- Lone person households
- Couple family with no children
- One parent families
- Couple family with children

Population forecasts show that the Dingley Heatherton Planning area will be home to high proportions of households that are:

- Couples without dependents
- Couples with dependents
- Lone persons

Dwelling types that would support the needs of the above households identified as living in housing stress include:

- 1-bedroom dwellings allowing people to live alone
- 2-bedroom dwellings allowing people to live alone or with a carer or with capacity for visitors etc
- 3 – 4-bedroom dwellings supporting the needs of single parent families, couple families with dependents, couple families with no dependents as they move through future life style stages

Dr Kerkin presented evidence that rent to buy, affordable housing for purchase with covenants and build to rent mechanisms are not effective in achieving affordable housing.

All experts agreed that provision of affordable housing is voluntary and delivery of affordable housing would be a benefit to the community arising from the development.

The author of the Urbanxchange report was not called to give evidence but the Proponent relied on its content to not support the value capture mechanism as the policy was not in place at the time the land was purchased, and therefore the affordable housing contribution was not factored into the price of the land.

Urbanxchange nominated 5 per cent of the dwellings be provided within the new development for affordable housing. The 5 per cent of dwellings was nominated based on precedence from recent developments including: Precinct 15 (City of Hobsons Bay) 5 per cent (in planning controls); East Village (City of Glen Eira) 5 per cent (Section 173 agreement); Fishermans Bend (City of Melbourne and City of Port Phillip) – 6 per cent % (in planning controls); City of Knox 5 per cent (Affordable Housing Action Plan).

Dr Kerkin provided recent examples of Council policy and developments that have provided higher levels of affordable housing of up to 20 per cent.

### **(iii) Discussion**

The Advisory Committee agrees that provision of affordable housing is voluntary. The question is therefore what amount of affordable housing to be provided by the development is reasonable and could be considered to contribute to NCB.

There is no legal obligation for the provision of affordable housing in Victoria. The provisions in the PE Act that facilitate the provision of affordable housing depend upon voluntary agreements made between a municipality and a landowner. From time to time the Minister has emphasised the voluntary nature of such agreements. Under this Proposal, the Proponent is offering to enter into an agreement under s173 of the PE Act. While some planning schemes apply requirements under overlays controlling development of land for the supply of affordable housing, no control applies under the Planning Scheme nor was there a provision in the exhibited version of DPO8. Thus, the specifics of the agreement are yet to be resolved between the parties, and the outcome will depend on the negotiating skills of their delegates.

The provision of affordable housing has a metropolitan wide housing supply issue as well as a local community diversity issue. In their witness statements, both Mr Barlow and Dr Kerkin addressed the types of dwellings on offer and what types and numbers of dwellings might be desired to satisfy demand. There was no direct request to the Advisory Committee to adjudicate on these points. Nor does the Advisory Committee see it as its role to determine what should be settled according to the needs of the community at a point in time closer to provision. That time is not near.

The Advisory Committee agrees affordable housing should be provided on-site.

The Kingston Social and Affordable Housing Strategy (2020) recommended value capture to facilitate affordable housing supply from private development. The premise being that land value uplift is created by planning decisions such as rezoning or development approvals that exceed as-of-right limits. Council can seek to capture part of this value to benefit the broader community. The Advisory Committee agrees with the Proponent that it would be inappropriate to apply the value capture policy retrospectively.

The Advisory Committee accepts the 9.79 per cent or 6,175 dwellings as the estimated demand for affordable housing established by the Kingston Social and Affordable Housing Strategy (2020). The Strategy also identifies that in 2016 there were 1,485 social dwellings in Kingston, indicating a shortfall of 4,690 affordable dwellings, or 7.43 per cent of all households. But the strategy does not propose this figure as a target for affordable housing on the site. The strategy explicitly states<sup>71</sup> that for brownfield sites and ad hoc rezonings:

Anticipated [affordable housing] contribution as 50 per cent of land value uplift generated by the rezoning, being the difference between the existing use value of the site (EUV) and the residual land value (RLV) after the rezoning.

The Advisory Committee is of the view that providing 5 per cent of the dwellings in new development for affordable housing is a generous contribution.

### **8.5.5 Secure delivery of affordable housing**

#### **(i) Evidence and submissions**

None of the Development Plan, the Planning Permit, or the DPO specifies the mechanisms to be adopted to secure delivery of affordable housing on the site. Urbanxchange listed five options for delivery of affordable housing:

- rent to buy
- purchase with covenants
- shared equity

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<sup>71</sup> Page 39

- build to rent
- land is gifted to a Registered Housing Association (RHA).

Mr Barlow submitted that any of these approaches would be appropriate and in cross examination emphasised that in his experience successful programs were delivered with the involvement of Council, accommodated flexibility to respond to changes over time, and specified a delivery schedule.

Dr Kerkin's evidence included an assessment of the proposed delivery mechanisms and identified the following limitations about the effectiveness of the proposed mechanisms:

1. Rent-to-buy deals typically do not result in successful home ownership
2. No examples of successful rent-to-buy deals
3. Affordability requirements will expire due to limited duration of affordability covenants
4. Affordability covenants belong among the new, "hybrid", public/private land use devices that straddle traditional property law and public land use law and are at risk of judicial invalidation unless they are supported by state enabling legislation
5. Shared equity agreements may struggle to find a mortgage lender, limiting financial options
6. Shared equity mortgages are long-term investments, and are generally not suitable to the short-term
7. Build to rent developments themselves will not necessarily deliver affordable housing
8. Evidence from the existing build-to-rent developments suggests that rents will be more expensive than traditional renting arrangements.

It was Dr Kerkin's view that:

Mechanisms for achieving the provision of affordable housing evident in existing Affordable Housing Agreements under Section 173 of P&E Act 1987 are:

1. Entering into a binding agreement with a Registered Housing Agency for unencumbered ownership of part of the Land capable of supporting 10% of the Total Residential Yield of the Land
2. Transfer of Land to Council
3. Sale of Affordable Housing Dwellings at Discounted Price including sale of a maximum of 3% of Dwellings to Eligible Households under a not-for-profit managed Shared Equity Home Ownership Arrangement Dwellings to Eligible Households under a not-for-profit managed Shared Equity Home Ownership arrangement.

## **(ii) Discussion**

The Advisory Committee does not have a preferred view of the mechanism for delivery of affordable housing. The Advisory Committee notes that the Proponent as a superfund has a large ongoing investment portfolio that might distinguish it from other developers. Innovative delivery mechanisms should be considered.

### **8.5.6 Conclusions**

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- The development will address the need for greater housing diversity particularly medium and higher density housing.
- Provision of 5 per cent of the dwellings as affordable housing is voluntary and would contribute to the community benefit of the development.

- It would be preferable that affordable housing include a diversity of dwelling types, including 1, 2 and 3-4 bedroom dwellings that will support the highest need groups having the highest needs.

In terms of net community benefits:

- A potential benefit of the Proposal includes:
  - More diverse local housing.
  - Affordable housing.

## 8.6 Built environment

### 8.6.1 Introduction

#### (i) What are the potential benefits and disbenefits, and what needs to be resolved?

Resident submitters complained that the introduction of a high density living on small lots in contemporary style housing, including up to three-storeys, was contrary to the neighbourhood character seen across Dingley Village. That the Proposal was against *“the Village feel”* was a common theme from resident submitters.

#### (ii) Relevant policy

Relevant policy includes:

- 15.01 Built Environment
- 15.01-1R Urban design - Metropolitan Melbourne
- 15.01-1S Urban design
- 15.01-3S Subdivision design
- 15.01-4R Healthy neighbourhoods - Metropolitan Melbourne
- 15.01-4S Healthy neighbourhoods
- 15.01-5S Neighbourhood character
- 15.02 Sustainable Development
- 15.02-1S Energy and resource efficiency
- 15.03 Heritage
- 54.02 Neighbourhood Character
- 56.03 Liveable & Sustainable Communities.

### 8.6.2 Impacts on adjoining properties

#### (i) The issue

The issue is the impacts of the development on adjoining residential lots.

#### (ii) Submissions and evidence

The Proponent’s consideration of submissions is set out in the Response Table<sup>72</sup> where its responses are presented under headings including High Density Living and Neighbourhood Character.

The Proponent submitted that:

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<sup>72</sup> Documents 40 and 174

- Where there is a back fence abuttal, new development is limited to two-storeys with a defined minimum setback
- Where small lots are proposed, they do not directly abut existing housing.

To support its submission, the Proponent tabled an Interface Report<sup>73</sup> to illustrate housing forms and street presentations of other estates that it submitted were samples of what to expect under the Proposal.

The Proponent relied on the Tract Planning Report, the evidence of Ms Jordan and particularly the evidence of Mr Barlow who concluded (para 193) that the Proposal delivered the following benefits:

The Proposal will introduce development adjacent to areas that have enjoyed views across open spaces and landscaping. It is acknowledged that the view will change for some dwellings with the removal of existing landscaping. The views will then be similar to that found in other parts of Dingley that do not adjoin the golf course. Many of the boundaries of the site will maintain landscaped setbacks ranging between 15 - 30 metres in depth.

Also relevant is a document (No 136) tabled by the Proponent presenting a view line analysis prepared for the Council as part of its consideration of Amendment C151. This report was prepared to analyse view lines into the subject land from surrounding streets and open space areas. The Proponent submitted the work showed views were accentuated from abutting open space but limited by existing houses when viewed from the streets.

The witness statement by Ms Thompson is relevant in so far as it proposes a built form along part, but not all, of the Centre Dandenong Road frontage to restrict views into the site.

The construction of dwellings of the style shown in the Interface Report along the frontage will change the presentation of the site. While the current chain mesh fence and vegetation do not present as an attractive view along the frontage, the perception of change created by housing will be too much for some residents.

### **(iii) Discussion**

The Development Plan addresses the critical relationship of new buildings to existing property. On one count, there are over 140 abutting properties.<sup>74</sup> Site inspections confirm that most of them embrace the relationship with the openness of the golf course. Few properties hide behind solid fences. As noted, the Development Plan installs a setback from the boundary of an existing property to a new building and a landscape setback along some boundaries.

The Advisory Committee has already concluded that the assessment of tree retention values should have placed greater importance on the screening and amenity afforded by the vegetation.

For example, the Advisory Committee believes that maintaining amenity benefits to adjoining lots (by use of open space or tree protection areas in lots) will go some way to maintaining the contribution of the land to the amenity and character of the area.

The Advisory Committee believes the way subdivision is planned near existing dwellings needs to be revisited. Matters to consider include:

- increased setbacks to avoid new housing close to existing (and farther setback than the current intention perhaps with the installation of open spaces links along boundaries)

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<sup>73</sup> Document 136

<sup>74</sup> The number differs from source to source but for present purposes, nothing turns on the true number

- retention of vegetation as a means of screening new buildings whether or not the vegetation has a high retention value
- reconsideration of vegetation to be retained and integration of open space with the adjoining streets.

Also, as noted, the Advisory Committee supports the designation of two storey development abutting existing properties. The result will help ameliorate the intrusion of new buildings. But the approach should go further than currently shown. The present proposal makes winners of some property owners but not all abutting owners. The Advisory Committee sees it as desirable to retain the height limitation and to increase the setbacks.

### **8.6.3 Broader impacts**

#### **(i) Submissions**

The Proponent submitted that:

- Smaller houses are in demand to cater for changed demographics
- A range of housing types on varying lot sizes is strongly supported by planning policy
- The classification of the density as High density housing the wrong way to describe medium density housing
- Replication of the existing housing form would not be supported by planning policy.

#### **(ii) Discussion**

Any development on the site will change the complexion of the subject land when viewed from outside the site. As most of the subject land is not visible from off site, the question is whether special controls should be applied to require the new built form to respect the character of Dingley Village.

The subject land has a frontage of 395 metres to Centre Dandenong Road. Under the Proposal, a Display Village is to be built on the western part of the frontage and the balance of the land left without an identified form of development. The land is labelled as a 'super-lot' in the development plan with evidence anticipating the land area could be subdivided to create 25 lots.

The Advisory Committee sees merit in opening up the frontage to Centre Dandenong Road. The Proposal attaches the display village, and subsequent long term built form, to abutting properties in Christina Terrace. That is acceptable. In the opinion of the Advisory Committee, leaving the balance of the frontage without building and enhanced by open space will assist with opening up the site. A view to open space is likely to generate a sense that the former golf course is now open to the public.

Similarly, quality landscaping on the key road frontages will help maintain the sense of character of a significant parcel of publicly accessible and visually attractive open space on Centre Dandenong Road. That outcome has the potential to improve the character of this location.

### **8.6.4 Conclusions**

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

The Proposal needs to be refined to:

- Better offset the social cost of the development on the Dingley Village community. The Proponent and Council will need to negotiate how to do this.



- Better protect existing properties from the intrusion of new buildings by the use of increased setbacks and open space areas.

In terms of NCB:

- A potential benefit of the Proposal includes:
  - Landscaped views into the site from surrounding roads.
- A potential disbenefit of the Proposal includes:
  - Adverse amenity impacts on adjoining properties.

## **8.7 Traffic and transport**

### **8.7.1 Introduction**

#### **(i) What are the potential benefits and disbenefits, and what needs to be resolved?**

Concerns were raised about:

- the impact of traffic on the surrounding road network
- the pedestrian connectivity of the proposal to the surrounding area
- provision of bicycle paths.

#### **(ii) Relevant policy**

Relevant policy includes:

- 18.02-1S Walking
- 18.02-2S Cycling
- 18.02-2R Cycling – Metropolitan Melbourne
- 18.02-3S Public transport
- 18.02-3R Principal Public Transport Network
- 18.02-4S Roads.

### **8.7.2 Walking and cycling connections**

#### **(i) The issues**

The issues are:

- whether the proposed bicycle connections deliver connected bicycle paths and general improvement to cycling connectivity to the development itself, public open space, the surrounding land uses, infrastructure, and services.
- whether the proposed bicycle network delivers NCB and a quality outcome.

#### **(ii) Evidence and submissions**

A number of local open spaces and roads abut the site and the Proposal includes pedestrian connections to these by way of extension to the local open spaces or local road connections. The potential for increased connectivity to the southeast is discussed in Chapter 6.9.

The exhibited Development Plan emphasised the importance of bicycle lanes to the access and circulation of the proposed development and included a number of typical cross sections (for each different road function).

It set out<sup>75</sup> that:

the proposed road and pedestrian network had been designed to provide a number of pedestrian / cycle connections linking existing neighbourhoods providing a net community benefit. Linkages between existing reserves will provide for significant improvements to walking and cycling opportunities for new and existing residents.

A combination of shared paths and formal footpaths will be provided on all roads to provide for a high level of pedestrian and cyclist amenity. Of particular note, the main connector road will include an on-road bicycle lane in both directions. These connections and provision of shared paths will provide for both commuter and recreational cyclists.

A view of the proposed road network is provided in Figure 18, and the proposed pedestrian and cycle network in Figure 19.

**Figure 18: Proposed road network**



**Figure 19: Proposed pedestrian and cycling network**



The Day 1 version of the Development Plan was submitted by the Proponent included a number of material amendments related to cycling.

Provide a highly permeable road network that provides safe and efficient access for all and prioritises walking and cycling.

For walking and cycling access, the following design principles should apply: -Provide for a shared path network that is interconnected and linked to the surrounding footpath, cycling and open space network. -Shared paths should be designed and located to provide efficient movement of pedestrians and cyclists. -Shared paths should have a minimum width of 3m, unless otherwise agreed to by responsible authority. -Provide for pedestrian and cyclist priority over vehicular traffic. -Provide safe and convenient crossing points at all intersections and on key desire lines. -Provide direct and convenient walking access to public transport services.

DPO8, in Clause 4, listed a requirement for the Development Plan, that it must 'provide pedestrian and bicycle networks into and throughout the site'.

The Proponent called expert evidence on traffic engineering from Mr Jason Walsh of Traffix Group. Mr Walsh gave evidence that he supported the cycling connections identified in Figure 19. However, in his view the proposed shared paths on the frontages of the site to Centre Dandenong Road, Spring Road and McClure Road are not necessary as they do not connect to existing or planned paths, and in the circumstances of Spring and McClure Roads shared paths will not fit easily within the existing road reservations.

<sup>75</sup> Document 27, Proponent's marked up Development Plan

He concluded:

The Walking and Cycling figure within the Development Plan should be amended by inclusion of a standard footpath along the external road frontages, rather than a shared path

- Subject to this change, the Development Plan proposes a logical and connected walking and cycling network.

Mr Walsh reviewed the exhibited internal road typical road cross sections, with bike path widths, and concluded that they were all appropriate.

OneMileGrid (OMG), in the exhibited documents supporting the Amendment, identified that the percentage of Kingston residents using a bicycle to commute to work was in the order of 0.7 per cent compared to the greater Melbourne average of 3.0 per cent.

OMG identified that the site is well connected by bicycle facilities, and to Centre Dandenong Road which is designated as an informal route along the frontage of the site, improving to an off-road shared path to the west of Tootal Road. In addition, Westall Road is provided with formal paths adjacent to the reservation.

OMG provided functional designs of all proposed new traffic infrastructure. In each case it has allowed for bicycle paths, signals, and line marking.

The Proponent sought to amend the exhibited Development Plan by correcting the relevant connector road cross sections and drawings shown in Figures 17 and 18 of the Development Plan to replace the 1.5 metre path through open space with a 3 metre shared pathway as originally intended.

Council in its Part A Submission, identified a 'litany of shortcomings' about the Development Plan:

It fails to deliver sufficient walking and cycling connectivity for active travel

Council in its Part B Submission, provided more detail:

- The use of open space to accommodate encumbrances limited its potential. There is insufficient space for the shared paths:  
Put simply, there is insufficient space for the shared paths, Council submits that you need a clear area between any obstructions/vertical element of 4 metres, and where there is no safety guard rails you need a minimum of 1:5 graded bank. This issue applies to shared paths proposed adjacent to and around all the open water bodies in the Proposal.
- Centre Dandenong Road is part of the Principal Bicycle Network (PBN) and if the opportunity to improve connectivity for cyclists is not taken it probably never will be. It recommended that Mr Walsh's evidence to support deleting the component of the cycle lane in Centre Dandenong Road be rejected
- The development should include a 3 metre shared pathway along Spring Road. Spring Road is part of the Municipal Cycling Network and can provide connections to the PBN via Tootal Road or Springvale Road.

Mr Martin Pakula MP, State Member for Keysborough (Submission 1036) acknowledged that the proposed bike and pedestrian network does seek to improve accessibility and deliver some benefits to the local area.

A number of other submissions were positive towards the proposed cycling and pedestrian paths.

Ms Hengstberger submitted (Submission 1483) that Dingley Village did not have any segregated and off-road cycle paths in the village and there is little bike path connectivity outside of Dingley Village.

### (iii) Discussion

Reasonably good connection into the surrounding area is proposed by way of connections to the surrounding areas by existing roads and open spaces will ensure. This is a positive feature of the Proposal.

The connections to the exiting open spaces are not well-resolved on the subdivision plan creating a number of awkward corners. These would need to be addressed in any final layout.

Issues with connection occur in the southern corner of the site where houses could be built relatively close to facilities 'as the crow flies' but much further by actual walking distance.

Amendment C151 included a narrow open space abutting the boundary to a Kathrin Avenue lot that could have provided an opportunity for a link, but that was not progressed as part of this Proposal.

The opportunity for a new link was discussed in Chapter 6.9.

The Advisory Committee agrees with the Proponent that such a link is "*very desirable*". Because it would require acquisition or development of land in Kathrin Avenue its precise location could not be established until land was acquired. This means that development along that boundary should be held back until access on an adjoining parcel is secured. The Advisory Committee is open as to how that might be secured and recognises that the link might take some years to complete.

The Advisory Committee considers that strategically (or at the functional level) the proposed bicycle layout plans amended in the Proponent's Day 1 Development Plan provide a positive element to the proposed development and its new residents and an improvement to the cycling connectivity to Dingley Village residents. It provides them with opportunities to connect to new open space areas and the broader neighbourhood.

The bicycle lanes and shared footpaths provide a safe, logical, and effective network, connecting all open spaces within the proposed development and connecting to the main frontages of Centre Dandenong Road, Spring Road and McClure Road utilising either 3 metre off-road shared pathways or acceptable 1.7 metre width on-road cycling lanes.

The Advisory Committee agrees with Mr Walsh that the exhibited typical cross sections, indicating bicycle lane widths in different sections of the development, as amended in the Development Plan, meet acceptable standards.

The Advisory Committee also notes that all proposed traffic infrastructure functional designs have accommodated bicycle lanes and their ancillary signage and line marking. As these plans progress to a more detailed form the DPO8 and Planning Permit conditions will require a continued focus on compliance with standards.

The proposed network also adds an additional safe access points for both cyclists and pedestrians to more safely cross Centre Dandenong Road.

The Advisory Committee's default position is to support the Council's request that a 3 metre shared pathway be provided, if it can be accommodated within the existing road reserve; however, the issue does require further consideration. Centre Dandenong Road is on the PBN and as such it will attract a number of high speed commuter cyclists who often pose a safety risk to pedestrians. A potential solution may be to include a protected, dedicated bicycle lane on the edge of the pavement. This will separate the two uses and provide protection to cyclists and will enable it to more easily be merged into the existing bicycle lanes entering and exiting the site's frontage. It will, however, require a review of the on-road parking arrangements.

The Advisory Committee notes the Day 1 Development Plan includes, an Access and Circulation Plan which indicates a 'trail' network connecting northwest into Christina Terrace through two existing parks. To the southeast, three connections through existing parks into the adjacent residential neighbourhoods have been provided. Only one of these 'trails', through Coughlan Reserve, provides for a 3 metre shared pathway.

All other trails appear to be 1.5 metre walkways. It is highly likely that cyclists will use these trails which presents potential safety issues for pedestrians.

The Advisory Committee therefore considers that all access point to existing parks should be a shared 3 metre width. This will enhance the safety and permeability of the development, and improve its access and circulation benefits.

Council raised the issue of the proposed shared pathways immediately adjacent to the waterbodies. The Advisory Committee considers this a valid issue that will need to be resolved as part of the retarding basin design along with WSUD, Melbourne Water Council/ Council ownership requirements, discussed elsewhere in this report.

The Advisory Committee considers that the interim access and staging provisions of the Proposal adequately covers how and when the cycling tracks will be provided.

The Advisory Committee believes that whilst the proposed bicycle network is a good response to the Guideline's objectives and that it will provide a benefit, there are a number of considerations provided above that may provide a higher quality outcome.

### **8.7.3 Internal road network**

#### **(i) Evidence and submissions**

The internal road network was designed with a collector road spine providing the major access to the site via a proposed signalised intersection with Centre Dandenong Road, north to a proposed roundabout at Spring Road. A secondary access will link from the collector thorough to a T-intersection at Spring Road, whilst two minor connections will be provided by an extension of Wolbers Road and Toorak Drive.

A number of laneways are proposed to supplement the road hierarchy.

The OMG TIA includes an access and road layout plan, reproduced at Figure 20.<sup>76</sup>

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<sup>76</sup> OMG TIA Figure 29, page 45

**Figure 20: OMG access and road layout plan**



The exhibited documents include a set of typical cross sections, with the main connector road indicating a road reserve width of 25 metres providing for a single traffic lane in each direction, a bicycle lane and a parking lane in each direction. Where the collector road abuts open space, the footpath is relocated to the within the open space.

Three types of access streets are proposed. Level 1 streets comprise a 15 metre road reserve and a 5.5 metre pavement with indented car parking on one side, allowing for two-way traffic. With parking on both sides one through lane is available.

Laneways, of an 8 metre reservation with a 6 metre pavement, are provided to service the rear access of rear loaded townhouses.

The Proponent's Day 1 amended Development Plan highlighted that road narrowing will be provided where internal roads connect with existing residential streets to minimise the impacts of through traffic.

A number of submitters expressed concern about the suitability of the proposed pavement widths, and whether the roads could accommodate parking on both edges of the pavement and still adequately allow for through traffic including buses

## **(ii) Discussion**

The Advisory Committee is broadly comfortable with the proposed road layout, the road hierarchy, road reserve and pavement widths and the typical cross sections of connector and local roads and laneways.

The Advisory Committee accepts that the proposed design widths meet acceptable standards, including the allowance for a bus capable connector road with an unobstructed through width of two 3.5 metre traffic lanes which is consistent with DoT minimum standards. Parking lanes of 2.3 metres and on-road bicycle lanes of 1.7 metres are also appropriate.

#### 8.7.4 External road impacts

##### (i) Evidence and submissions

The exhibited Development Plan indicated that the site has connectivity to the surrounding area and the Melbourne Central Business District (CBD) via major arterials including the Nepean Highway, Princes Highway, Eastlink and the Monash Freeway.

The Dingley Bypass was recently completed, and the Mordialloc Bypass has recently been opened. Both will reduce congestion in the Dingley Village area and improve its connectivity with nearby bayside suburbs as well as to the CBD.

Mr Walsh added to the abovementioned infrastructure works:

The OMG (One Mile Grid Traffic Impact assessment) report also identifies improvements to the existing roundabout intersection of Centre Dandenong Road/Old Dandenong Road/Kingston Drive/Tootal Road to provide a second approach lane from the south-east (Centre Dandenong Road). This is done with some minor road widening and line marking.

Mr Walsh gave evidence that Centre Dandenong Road is a State Arterial Road, under the responsibility of DoT, that Spring Road is a major local road, and that McClure Road is a local road, both under the responsibility of the Council.

The Mordialloc Freeway is a Major Roads Project Victoria State Government funded Freeway that is to provide a link from the Dingley Bypass at the north and the Mornington Peninsula Freeway at the south.

The Advisory Committee was advised that the Freeway opened officially on 13 December 2021.

Based on traffic modelling undertaken as part the Mordialloc Freeway Environmental Effects Statement (EES), Mr Walsh expected traffic volumes to reduce overall volumes on Centre Dandenong Road east of Boundary Road, as it provides for an alternative north-south route for passenger vehicles and trucks. The two-way traffic volumes on Centre Dandenong Road frontage of the site could be reduced by up to 2300 vehicles per day (vpd). However, growth of up to 1800 vehicles is expected on Centre Dandenong Road west of Tootal Road.

Mr Walsh reviewed the Traffic Modelling study at key intersections surrounding the site, undertaken by OMG in August 2017. Covid restrictions prevented more recent counts being undertaken and Mr Walsh concluded:

I am not aware of any reason why the data presented by OMG would be otherwise inappropriate for use.

Adopting this information, he assessed that all roads were currently operating within their daily capacities.

He also assessed any future growth on the road network and made the following conclusions:

- Mordialloc Freeway modelling suggest that there will be a 17 per cent reduction in volumes by 2031.
- On this basis he chose not to apply growth to volumes on the Centre Dandenong Road site frontage
- There is a level of growth expected on the Centre Dandenong Road west of Tootal Road, north east legs but reductions or no change on all other legs
- The proposed development would generate 577 vehicle movements in peak hour, based on an evidence-based assumption of 0.7 vehicles movements per dwelling



- All existing intersections within the study area appeared to be operating generally under 'excellent conditions', except for the roundabout at Centre Dandenong Road and Tootal Road which is operating under 'good conditions'
- an analysis of the impacts of the proposed development and its proposed traffic infrastructure had been undertaken which identified *"the primary signalised site access from Centre Dandenong Road has been appropriately designed to accommodate development traffic and the future growth of the network"*
- DoT had indicated that its support for the signalised nature of the intersection may change if there is even a moderate decrease in yield from the development as part of this Amendment process and that volumes in Centre Dandenong Road were likely to decrease
- All Spring Road accesses /intersections, the proposed roundabout at McClure Road, the T-intersection at the new southern access road, and the intersections with Seaton Drive and Toorak Drive will continue to operate well within acceptable targets
- The proposed Spring Road roundabout at the connector will appropriately manage conflicts and vehicular safety
- Traffic impacts on the Marcus Road intersections were acceptable
- Additional traffic movements through the Centre Dandenong Road / Christina Terrace can adequately be accommodated
- The traffic generation data at the Centre Dandenong Road / Tootal Road roundabout required further analysis. He considered two options – with and without mitigating works. The impacts of the additional volumes (from primarily the Mordialloc Freeway), without mitigating works, results in a Degree of Saturation of 0.93 in the AM peak. This reduces to 0.75 with mitigating works. That with the mitigating works the intersection will be operating at an acceptable level.
- While there will be a noticeable change in traffic volumes to local residents in Wolbers Road, Seaton Drive and Toorak Drive:  
... it is a better outcome to provide these local connections, as it provides for a more connected community and the impact, whilst noticeable, will be manageable.

Even though the additional works required at the roundabout do not directly result from the development -the Proponent has resolved to deliver the works

Mr Walsh undertook an assessment of the internal design parameters of the connector road, local roads and laneways and concluded that all proposed cross sections are appropriate, including, the connector road providing 3.5 metre wide traffic lanes, 2.3 metre parking lanes and 1.7 metre bicycle lanes.

DoT submitted (Submission 1576):

- Centre Dandenong Road is a road Zone Category 1 for which the Head, TfV is the responsible road authority
- it provides in principle support to the signalised intersection of Centre Dandenong Road and the site's major access road and Kubis Crescent, however:
  - the signals should only be installed as a last resort given their adverse impact on travel times
  - a moderate decrease in yield from the site may reduce the need for signals
  - the intersection layout be changed so that the left access lane does not include right turn movements
  - final approval will part of the future planning permit process



- additional land will need to be set aside to allow space for the new turn lanes and reinstatement of road features such as footpath and verge – this land is to be vested in Head, TfV
- a bus stop must be provided on the departure side of the new site access intersection. A bus shelter will also be required on the southwestern side of the road
- mitigating works to the existing roundabout at Centre Dandenong Road /Tootal Road including widening the northwestern approach to Centre Dandenong Road to allow for two lanes of traffic to enter the roundabout which will require a relocation of a power pole and modification to the shared user path.

DoT provided a detailed set of planning permit conditions to support its requirements.

Council chose not to provide traffic evidence but submitted that while it accepted the submissions of the local residents and accepts the concerns of the local community, it had no reason not to accept the expert evidence of Mr Walsh. Council accepted that the traffic conditions experienced by the community will be worsened and submitted that the Advisory Committee gives this matter 'great weight' when considering the NCB of the Proposal.

Mr Pakula expressed his concern that the size of the proposed redevelopment will place significant strain on the local roads. He acknowledged that the Proponent has sought to improve traffic flows in Centre Dandenong Road and Spring Road but states that further improvements need to be considered.

Mr Gainger, (Submission 533), identified difficulty when exiting Golfwood Close with a right turn into Centre Dandenong Road. He underlined his concerns in peak hour when school buses add to the complexity.

Mr Wood, (Submission 834), submitted that with only three entries or exits to the site, there will be traffic chaos. That cars will be funnelled through Toorak Drive, a presently quiet residential street. That the proposed roundabout at Spring Road and McClure Road *"is a recipe for disaster"* as vehicles attempt to either move through it to access Westall Road, which is currently *"almost impossible to enter"*.

Mr Se Young Kim, (Submission 723), stated that it currently takes 10-15 minutes turning right into Morris Road (presumably from Centre Dandenong Road).

Ms Jones, (Submission 703), submitted that in peak hours, in her experience, it sometimes takes up to one hour to travel through Dingley Village. She also highlighted that the proposed through roads of Wolbers and Toorak Road will become *"rat races"*.

Ms Daniell, (Submission 561) highlighted the community's lack of proximate rail transport infrastructure and emphasised the need for this community to *"drive everywhere"*. She emphasised the high car ownership in the area.

Mr Hartley, (Submission 527) highlighted that accessing Westall Freeway from Spring Road during peak hours is *"just about impossible"*. Exiting McClure Road onto Tootal Road sees a build up of traffic at all hours and that the existing roundabout is a *"constant traffic jam"*.

Ms Hartley, (Submission 525) made the point that all traffic concerns will be exacerbated by the Hawthorn Football Club and Aqua Park Development as well as the additional traffic rolling off the Mordialloc Freeway at Centre Dandenong Road and the Dingley Bypass.

Mr Walton, (Submission 507) questioned whether the Proponent had tried entering Westall Road from the north end of Spring Road during peak hours and that *“hopefully they are aware of the death trap intersection at Rowan and Westall Roads”*.

Mr Hall, (Submission 508), again emphasised the existing delays at the entry/exit sites especially Spring Road /Westall and Rowan /Westall extension. That Tootal Road heading south to the Centre Dandenong Road roundabout is regularly banked up, almost as far back as McClure Road:

Adding approximately 20 per cent population and related vehicle traffic is only adding to an already frustrating and often dangerous problem

Mr Dreyfus emphasised that the Traffic Impact Assessment data was from 2017. He said *“the data is four years old, going onto five”* and *“with still two years to commence development the development will be relying on data that is 6 years old”*.

Ms Hengstberger, (Submission 1483) in her presentation to the Advisory Committee raised her concern that Centre Dandenong Road was only a single lane of traffic both ways, with no plans for widening. She highlighted the Rowan and Westall Roads intersection where she referred to multiple accidents and a fatality.

Mr Williams, (Submission 568) when presenting to the Advisory Committee emphasised his concerns with the Rowan /Westall Roads intersection where he claimed that there had been 4 deaths over the past 5 years.

Mr Walsh gave evidence pertaining to DPO8. He identified matters in Clause 4 related to traffic and transport:

- provide a road network design that encourages safe and efficient neighbourhood level traffic
- provide for primary vehicle access to the land from Centre Dandenong Road and Spring Road; and
- provide pedestrian and bicycle networks into and throughout the site.

In addition to the exhibited documents, the Proponent tabled a response to submissions<sup>77</sup> including commentary on submissions and expert witness comment. Mr Walsh gave his opinion that this document makes no material changes from a traffic perspective.

Mr Walsh also gave evidence on the matter of Development Staging and the provision of temporary access. He identified that the first two stages as proposed in the Staging Plan prepared by DKO Architects for the permit application will service approximately 106 lots. He referred to the OMG traffic report which indicated a temporary access via a new T-intersection at Centre Dandenong Road west of the future proposed signalised intersection. Delivery of the traffic signals is proposed prior to the occupation of Stage 3.

Access to the Spring Road and the new roundabout will be at Stage 4, and at the end of Stage 11 the second access to Spring Road will be provided.

Dot submitted that it did not object to the construction and use of a temporary site access point to the northwest of the future signals in the event that it is not possible to deliver the signalised intersection before the development commences, but design modifications were required.

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<sup>77</sup> Document 40

## **(ii) Discussion**

The Advisory Committee had considerable difficulty in reconciling the issues and concerns raised by the community in approximately 1,350 submissions, with the conclusions arrived at by OMG in the exhibited documents and in the evidence provided by Mr Walsh.

The Advisory Committee accepts the need for an intersection treatment at the site's primary access road in the location as proposed, with Centre Dandenong Road and Kubis Crescent. It accepts DoT's in principle support, to the intersection being signalised. It also accepts DoT's requirement to amend the intersection layout such that the new access road's left lane out does not include right turn movements.

However, it notes DoT's word of caution that the intersection's threshold for being signalised, relies upon the proposed development yield being achieved. If the development yield reduces by even a moderate amount and if the traffic volumes on Centre Dandenong Road decrease as expected as a result of the Mordialloc Freeway opening, then a signalised intersection may not be required. Mr Walsh highlights that the existing traffic volumes in Centre Dandenong Road on the frontage of the site, could decrease by up to 2300 vpd offsetting the expected growth in volumes. It is assumed that DoT took this into account, but it is not evident.

There was no evidence provided as to what would occur if the signalisation thresholds were not met. A roundabout could be considered at the proposed access road location, with Kubis Crescent, however if this is not DoT's preferred option, the access road may need to be relocated to elsewhere on the Centre Dandenong Road frontage; that will impact the site layout.

It is suggested that a further review of this proposed intersection occur once the development yield has more certainty and traffic volume counts can be taken, post the Mordialloc Freeway opening.

The Advisory Committee accepts that land acquisition may be required to facilitate the final intersection works but at no cost to the Head TfV.

The Advisory Committee accepts the evidence of Mr Walsh in supporting the mitigating works proposed by the Proponent at the existing roundabout at Centre Dandenong Road/Tootal Road/Kingston Drive intersection. It notes however that DoT have indicated some ancillary works will be required, at no cost to it. The Advisory Committee notes that this design is predicated on the predictions of the Mordialloc Freeway EES assessment.

A post Mordialloc Freeway opening volume count is recommended to validate this design.

The Advisory Committee also accepts Mr Walsh's evidence that based on the traffic data available, that the Spring Road access points - the proposed new roundabout at McClure Road, the new T-intersection at the southern access road, the intersections with Seaton Road and Toorak Drive, will all continue to operate within acceptable targets.

The Advisory Committee does have reservations regarding some aspects of the proposed development and the Proponent's inadequate response to some of the community's traffic/transport submissions.

For example, the difficulty undertaking a right turn from Golfwood Close into Centre Dandenong Road in the AM peak hour was raised. The AM peak includes a number of school buses. Would the proposed signalised intersection mitigate this concern?

Similarly, peak hour assessments of intersections of Spring Road with Westall Road and Rowan Road with Westall Road have not been included in the traffic study area. A number of submitters indicated that a number of fatalities had occurred at the Rowan Road/Westall Road intersection.

These were a few of the common themes amongst submitters that do not appear to be responded to. A 20 per cent increase in the population of Dingley Village, a commensurate increase in peak hour traffic, by an area that has high car ownership and usage, does warrant a review of these identified traffic concerns. Even if issues are identified with these intersections, it is unlikely to be the responsibility of the Proponent to resolve, but at least the Council and DoT can be engaged to find a resolution.

The Advisory Committee accepts Mr Walsh's evidence that the intersections of Spring Road with Seaton Drive and Toorak Drive can comfortably operate, however it is sympathetic to the residents in these streets who will experience an approximate increase of 50 per cent in traffic movements as a result of the proposed development. The Advisory Committee agrees with Council that this decrease in amenity should be given weight in the Advisory Committee's benefit assessment.

In trying to reconcile the gap between the submitters and the expert traffic opinion the Advisory Committee considered the submission from Mr Dreyfus. A potential gap of 6 years between the gathering of the data and the commencement of the development does raise some questions, particularly with the impacts of Covid and the opening of the Mordialloc Freeway having occurred in this period.

Mr Walsh has relied upon the Mordialloc EES traffic modelling which is most likely accurate, however the impacts on Dingley Village could be different if the predictions prove to be not entirely accurate.

The Advisory Committee therefore suggests that a full TIA be undertaken after the development yield is finalised and prior to the planning permit process. The TIA should address all matters raised above, including an expansion of the traffic study area to respond to the matters raised by submitters that were not addressed.

The Advisory Committee accepts Mr Walsh's evidence in regard to the internal design aspects of the proposed development.

The Advisory Committee accepts DoT's request for new bus stops to be provided on the departure sides of the site access intersection with Centre Dandenong Road. Whilst there are existing bus stops in reasonably close proximity to the site access and an extra bus stop will increase bus travel time, the community is poorly serviced by public transport options and this location will provide pedestrian access to a bus stop option for a sizeable population within the proposed development. It may also be that DoT will reconfigure or rationalise existing routes and bus stops to better accommodate a 20 per cent increase in potential patronage.

The Committee accepts DoT's requirements for the temporary site access in Centre Dandenong Road, and its associated permit conditions. DoT have indicated a preference for the signalised intersection to be constructed as early as possible and if possible before the temporary construction access.

The Advisory Committee's abovementioned suggestion for a new TIA may assist in achieving an improved construction access outcome, particularly if DoT changes its position on a signalised intersection.

### 8.7.5 Conclusion

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- That the proposed development, at the Development Plan level, results in a broadly acceptable walking and cycling bicycle network that encourages connectivity within the open space area of the development, and access to and from adjacent neighbouring residential areas.
- That all of the relevant off-road and on-road typical cross sections for cycling lanes meet an acceptable safe standard.
- That the proposed development, generally, results in acceptable traffic and transport outcomes considering the road layouts, typical cross sections, and the proposed traffic management improvements.
- That the exhibited plans will require modification to meet all of DoT's requirements:
  - At the proposed signalised intersection in Centre Dandenong Road, Kubis Crescent and the primary site access road, including design modifications and land acquisition.
  - Proposed additional traffic mitigation measures at the existing roundabout at Centre Dandenong Road and Tootal Road, including all ancillary works identified by DoT
  - Additional departure side bus stops at the Centre Dandenong Road signalised intersection.
- That the temporary site access location and design as modified to suit DoT requirements and the approach for staging the installation of the traffic signals and other traffic mitigation works set out in DoTs submission, is acceptable.
- A new TIA needs to be undertaken at an appropriate time, when the development yield is known with more certainty, and at least 6 months has elapsed since the opening of the Mordialloc Freeway, but prior to the Planning Permit process. The TIA:
  - should address whether the proposed new signalised intersection, to the site in Centre Dandenong Road still meets the thresholds for signalisation
  - respond to all key matters raised in the community's submissions, in particular the impacts on the intersections of Spring Road and Westall Road and Rowan Road with Westall Road
  - provide the basis for review of the other proposed traffic mitigation works.
- That while the road extensions into Wolbers Road, Seaton Drive and Toorak Road are of an acceptable standard to cater for the increased traffic volumes, there will be a decrease in the amenity of residents which will be included within the benefit calculation section of this Report. It is suggested the Proponent liaise with Council on potential traffic calming measures in these streets.

The Proposal needs to be refined to:

- Maintain the opportunity for a pedestrian link to the southeast that will require access and works adjacent to the subject land.
- Prioritise the consideration of cycling lanes to meet the objectives outlined in the Development Plan, the *Guidelines*, and any other Planning requirements in proposed major engineering infrastructure works including, proposed intersection treatments and the design of the waterbodies.
- Give further consideration to the provision of bicycle lanes on or off-road in Centre Dandenong Road, Spring Road and McClure Roads, in consultation with the DoT and Council.

- Determine the need to upgrade all the internal tracks to 3 metre shared pathways, in consultation with Council.
- Ensure it meets all of DoT's requirements.
- Update the Traffic Impact Assessment, when the development yield is known with more certainty, and at least 6 months has elapsed since the opening of the Mordialloc Freeway

In terms of NCB:

- A potential benefit of the Proposal includes:
  - Improved walking and cycling connectivity in the area.
- A potential disbenefit of the Proposal includes:
  - Adverse amenity impacts on the residents Wolbers Road, Seaton Drive and Toorak Road.

## 8.8 Community services and infrastructure

### 8.8.1 Introduction

#### (i) What are the potential benefits and disbenefits, and what needs to be resolved?

Concerns were raised about increased demand on community facilities and how these would be met.

#### (ii) Relevant policy

Relevant policy includes:

- 19.02 Community Infrastructure
- 19.02-1S Health facilities
- 19.02-1R Health precincts - Metropolitan Melbourne
- 19.02-2R Education precincts - Metropolitan Melbourne
- 19.02-4S Social and cultural infrastructure.

### 8.8.2 Community services

#### (i) The issue

The issue is

- whether the Proposal be rejected because an additional 2,100 people will increase demand for those services and facilities.

#### (ii) Submissions and evidence

The Advisory Committee received material about the social impact of the Proposal from the Proponent and evidence for Council. ASR Research addressed the social impact of the Proposal for the Proponent<sup>78</sup> and Dr Kerkin gave evidence on her review of the material. Mr Barlow considered the impact of the development on community facilities and Mr Shipp considered the impacts in formulating his opinion about the need for contributions.

The Proponent addressed submissions in the Response Table; it submitted any impacts would be staged over the life of the development and therefore mitigated. In its general submissions, the

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<sup>78</sup> Exhibited document 28

Proponent also stated that impacts could be offset by contributions but the time had not arrived to negotiate on what to pay for and how much.

Council supported the resident submitters concern at the impact on existing services and facilities.

The DVCA and the Save Kingswood Group Incorporated made substantive submissions and presentations to the Hearing to press the point about the impact of the development on the community. Scores of submissions added to the issue.

### **(iii) Discussion**

Submitters oppose the development because the additional population will impose additional demand on existing shops and facilities.

The Advisory Committee notes that resident submitters oppose the development because the shops are already overcrowded, the difficulty of finding a car park at Woolworths, the delay in getting a doctor's appointment, overcrowding in the Dingley Primary school and the lack of secondary schools, the kindergarten is full, the lack of public transport to service the area, clogged roads and traffic delays, sports teams have nowhere to play, but despite all this they "love" living in Dingley Village.

On the broader issue of social impact, the Advisory Committee considers that there is no strong reason to reject the Proposal on social grounds. There is a need, however, to check whether any of the site is required to deliver public services such as schools.

The Advisory Committee anticipates that local providers will be able to respond to increased demand to deliver those services delivered by the private sector. To the extent that there is a shortage of services this is a market opportunity that the Proponent or private enterprise might want to address.

## **8.8.3 Community infrastructure**

### **(i) The issue**

The issue is:

- what the demand of the future residents on community infrastructure will be.

### **(ii) Submissions and evidence**

Submissions raised concerns about the lack of capacity of existing community infrastructure (including primary and secondary schools, kindergartens, childcare, sporting facilities, maternal health, sporting facilities, aged care) to accommodate increased population arising from the development

There was broad agreement that the Proposal would generate a demand for social infrastructure. This was assessed by ASR Research and Dr Kerkin.

While the experts were confident that the local schools could meet the increased demand for students (refer Table 2) this was the most common concern raised in submissions.

**Table 2: Community facility requirements**

Service Area	Benchmark Assessment	Applicants response (ASR 2020)	Dr K Kerkin response (September 2021)
Three and Four Year Old Kindergarten Programs	95 sqm indoor and 204.6 sqm outdoor	15 additional four year old and 17 additional three year old kindergarten enrolments that is one kindergarten room  There appears to be merit in investigating the need for an additional Kindergarten room in Dingley Village  Monitor community needs and demands	Provision is required for kindergarten space for children of the proposed redevelopment:  - 95 sqm indoor and 204.6 sqm outdoor
Playgroups	0.3 Playgroups 30 sqm	1 additional playgroup session does not generate sufficient demand to warrant a new playgroup venue within Dingley	Provision is required for community space to support these needs associated with the Proposed development:  - 115 sqm community space (early years and library services)
Occasional Child Care Centres	1.9 places 6 sqm	No additional provision required within Dingley Village	



Service Area	Benchmark Assessment	Applicants response (ASR 2020)	Dr K Kerkin response (September 2021)
Centre Based Libraries	0.1 libraries 117 sqm	given Council's commitment to upgrading the existing Dingley Village Neighbourhood Centre and other adjoining facilities at the Dingley Village Hub	

Service Area	Benchmark Assessment	Applicants response (ASR 2020)	Dr K Kerkin response (September 2021)
Multi-purpose Community Centres/ Neighbourhood House	0.1 centres 63 sqm	Council has commenced work on a \$3.25 million redevelopment of Dingley Village facilities. Council has indicated it does not support new or relocating existing community services and facilities to the subject site	Provision is required for community space to support these needs associated with the Proposed Redevelopment: - 63 sqm community centre space
Long Day Child Care Centres	71	Potential need and opportunity to seek private market interest in establishing a facility as part of the proposed development of the subject site	Agree

Service Area	Benchmark Assessment	Applicants response (ASR 2020)	Dr K Kerkin response (September 2021)
Health and Community Centres	79	No new infrastructure priorities in the vicinity of the subject site	Agree
Justice, Police & Emergency Services	NA	No new infrastructure priorities in the vicinity of the subject site	Agree
Residential and Community Aged Care	31.6 beds	seek expressions of interest from private / community based residential aged care providers to establish a new facility within the subject site	Agree
Government Primary Schools	Between 0.2 & 0.3 primary schools	Existing schools will be able to satisfy the additional enrolment demands	Agree
Government Secondary Schools	0.1 secondary schools		
Total	461 indoor and 204.6 outdoor	No floorspace proposed/nil contribution	273 sqm indoor and 204.6 sqm outdoor

### (iii) Discussion

The Advisory Committee has already recommended that the issue of the need for part of the site for a school be addressed by a formal approach to the relevant agencies under Step 1 of the *Guidelines*. The Advisory Committee expects this consideration would look at the capacity of the existing schools.

There was no real challenge to the proposition that the Proposal would increase demand for community infrastructure. Instead, it was submitted by the Proponent that no contribution to meet this demand was required. This is addressed in the next section.

#### 8.8.4 Who should pay?

##### (i) The issue

The issue is:

- whether the Proposal should make a contribution to community infrastructure.

**(ii) Evidence and submissions**

Submissions raised concerns that there is no proposal for the Proponent to make a contribution to community infrastructure.

The absence of a contribution was a major issue; competing submissions occupied considerable time during the Hearing. The core of the submissions by residents was that the Proponent is not contributing to offset the problems they see will result from development of the land and the introduction of 2,100 people into the Dingley Village community. Council submitted the Amendment should be abandoned because no cash contributions had been offered.<sup>79</sup>

Council relied on its experts Dr Kerkin, Mr De Silva and Ms Jeavons who gave evidence supporting the need for development contributions particularly in relation to community infrastructure and open space.<sup>80</sup>

The Proponent submitted that it should not have to make a contribution to social infrastructure on a number of grounds, stating in its closing submission:

- 245 Returning to the suggested development contributions, they are not only unfair as a consequence of the 'over contribution' referred to above, they are contrary to fundamental principles of need, nexus, equity and accountability and particularly equity and accountability.<sup>81</sup> Further, planning scheme amendments should have a sound strategic basis. There is simply insufficient information to support an infrastructure contribution of the kind Dr Kerkin urges because:
- (a) Council has no existing plan for any infrastructure to be provided through money Dr Kerkin proposes be provided
  - (b) It is not realistic to expect that Council will ever prepare or implement a plan to expand the existing library by 117 square metres or develop a new library of 117 square metres. The library has just been refurbished (a fully funded and completed project). A Council cannot, via a Development Contributions Plan (DCP), attempt to fund a project which already has funding (or has already been completed). This principle should apply here
  - (c) Likewise, there is no proposal to develop a single kindergarten room, 6 square metres of occasional child care space or 63 square metres of multi-purpose community space
  - (d) Dr Kerkin's evidence does not provide any confidence that any infrastructure will be provided if funds are collected, or that the money will be spent in Dingley.
- 246 As to the need for a kindergarten room, a legion of three year old children will not descend on Dingley the moment a permit is granted (should a permit be granted). The subdivision will be developed in stages and there will be more than sufficient time for providers to respond to the gradual increase in demand. The proposition that kindergartens located to the north-east of the Westall Road extension are not accessible is simply not sustainable.

Council's broad conclusions about development contributions are set out in its Part C submission.

The headings used in the submission summarise Council's attitude that:

- the Proposal fails to provide sufficient community infrastructure
- the Proposal fails to offer sufficient development contributions
- the Proposal fails to provide sufficient useable active open space.

Council submitted that:

- 74 Infrastructure space provided by way of development contributions will be required to support the needs of new residents of the Proposal to access appropriate Early Years

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<sup>79</sup> Council Part B (closing) submission para 89, doc 167

<sup>80</sup> Council Part B (closing) submission para 78, doc 167

<sup>81</sup> See and Standard Development Contributions Advisory Committee, Report 1, 'Setting the Framework', 17 December 2012 ("SDAC Report 1, 2012").

Services and General Community Services such as meeting rooms, neighbourhood house activities and library services

.... and:

- 81 If the Proposal were to be approved, Council considers a contribution should be made, and recommends it be achieved through the imposition of a financial contribution on a per dwelling basis via a section 173 agreement. In cross-examination, Paul Shipp agreed that this would be a suitable mechanism.

### (iii) Discussion

The Advisory Committee finds the argument that contributions are not appropriate because “Council has no existing plan for any infrastructure” to be self-serving. Why would Council have planned to meet the needs of a development which itself is unplanned? In the earlier Amendment C151, Council did address this issue by proposing a contribution as part of the rezoning – the redevelopment of the land and provision for community services was planned together. For a development of this size, it is appropriate to plan the community infrastructure as part of the overall planning of the development.

As to the other points raised by the Proponent:

- The claim that “*It is not realistic to expect that Council will ever prepare or implement a plan to expand the existing library by 117 square metres*” is untethered from any assessment of the physical possibilities of expansion of the current Library. Expansion of the current Library to meet increased demand is not “*unrealistic*.” The Library is well located to serve the needs of the development and there is ample room on the land for an expansion
- There are unfunded plans to expand kindergarten services in Dingley Village which is readily apparent from a review of the FAQs about the proposed expansion of the existing facility that was the subject of submissions:

#### **When will Stage 2 be built?**

In the absence of confirmed funding, there are no clear timeframes for construction. However, we anticipate pressure on early years' service will reach a pinch point around 2026, so we hope to have works underway prior to then.

- It is not for Dr Kerkin to provide confidence that any infrastructure will be provided. As Dr Kerkin stated, her role is to assess the demand, not identify how it can be supplied.

In response to principles of “*need, nexus, equity and accountability*” it is worth returning to the VCAT decision<sup>82</sup> that articulated these and note that it said (emphasis added):

Community facilities are those for which the community which will be constituted by the wider planning unit will generate a need. Thus, where a particular subdivision or development will form part of that community as part of a cumulative development process so should that subdivision or development contribute part of the cost of providing those facilities. Thus the condition must fairly and reasonably relate to the total development of which the specific development in question is a part. The sorts of questions which may be asked in testing this proposition are:

- Will the community benefit collectively from the infrastructure?
- Will the community suffer costs if the infrastructure is not provided?
- To what extent will the capacity to use facilities throughout the community be reciprocal?

While the tests were set out for permit applications as opposed to strategic planning exercises, the Advisory Committee observes:

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<sup>82</sup> Eddie Barron Constructions Pty Ltd v Shire of Pakenham & Anor [1990] 6 AATR 10, quoted in *Standard Development Contributions Advisory Committee*, Report 1, 17 December 2012, Page 16

- there is a clear need for the infrastructure
- that need is a direct result of the proposed development – there is a nexus – and there are local opportunities to provide the infrastructure in a location that would serve the development
- it would be unfair to expect the ratepayers of Kingston to fund increased community infrastructure that flows from a development that runs counter to its existing plans to cater for growth
- there is nothing to suggest that the any contribution would not be dealt with in an accountable way.

The issue of ‘over contribution’ is addressed in Chapter 8.10.

### 8.8.5 Conclusions

The Advisory Committee concludes:

In terms of providing a land use concept that delivers NCB:

- Development will generate community infrastructure requirements that cannot be met by current facilities.

The Proposal needs to be refined to:

- Provide for contributions to community infrastructure.

In terms of NCB:

- A potential benefit of the Proposal includes:
  - Increased population supporting more local services provide supply expands to meet demand.
- A potential disbenefit of the Proposal includes:
  - Increased impact on community services for which no contributions is made.

## 8.9 Aircraft noise

### (i) What are the potential benefits and disbenefits, and what needs to be resolved?

Concerns were raised about the impact of aircraft noise; these are discussed in Chapter 6.4.

### (ii) Relevant policy

Relevant policy includes:

- 13.05-1S Noise abatement
- 1 8.02-7S Airports and airfields.

### (iii) Submissions and evidence

Mr Barlow concluded (para 193) that the Proposal delivered the following disbenefits:

- The Proposal will introduce new housing into an area affected by aircraft noise. It is noted that the site lies well outside the areas where aircraft noise impacts are such that housing cannot be built. All of Dingley Village is affected by aircraft noise, however the measures to be put in place for the development ensure that the new housing will be constructed to control the impacts of aircraft noise – unlike much of the earlier construction in the area.

**(iv) Discussion**

The Advisory Committee agrees with Mr Barlow that the aircraft noise is a disbenefit, but that it can be ameliorated to a degree inside buildings.

**(v) Conclusion**

In terms of NCB:

- A potential disbenefit of the Proposal includes:
  - Aircraft noise inside buildings which can be ameliorated.
  - Aircraft noise outside of buildings.

## **8.10 Summary of assessment**

### **8.10.1 Threshold issues**

**(i) What counts as a benefit?**

In cross examination for the Proponent, Mr De Silva had trouble conceding that some of the benefits delivered were in fact benefits. The reasons behind his answers were not abundantly clear but seemed to rest on the quality of the benefit provided. It seemed that he did not accept what he saw as small positive benefits as benefits. From a strictly 'rational' perspective this might not make sense but it is a reasonable enough proposition when considering real world outcomes.

**Discussion**

Distinguishing between 'outputs' and 'outcomes' can clarify the issue. Focussing on outputs (what is delivered by the development) all benefits should be counted; for example, a relatively narrow piece of open space with no clear sightlines would be counted as a benefit. Focussing on outcomes (the real world benefits delivered to the community) such a space might not be counted because it will not function well enough to deliver benefits.

The issue for the Advisory Committee is how to weigh these considerations in an assessment of NCB. It seems to the Advisory Committee that a benefit needs to be of an acceptable standard to count as a benefit – defects in the delivery of a benefit might undermine the benefit itself. For example, the narrow strip of open space might deliver a landscape benefit, but not an active open space benefit because it provides no recreation experience beyond that of walking a local street (albeit an attractive street).

This approach also means that encumbered land can provide open space benefits depending on the design treatment. The focus is on the outcomes delivered. This is especially relevant when assessing the open space contribution of the stormwater management assets. Properly designed (for example, Figure 21) they could deliver open space benefits, but there is simply not enough detail to be sure this will be the case.

**Figure 21:** Example of open space in Portland, Oregon, which also manages stormwater during flood events



Source: Arden Structure Plan

The Advisory Committee stresses that what counts is a benefit to the community, not a benefit assessed in an abstract process. If a facility delivered as part of a ‘community benefit’ does not engage the community then it will not be a benefit. In this regard Mr De Silva’s reluctance to accept some benefits reflects his judgement that the benefit is not sufficiently refined to be sure that it will work on the ground. One can accept this as a general proposition without agreeing with Mr De Silva on the merits of the various elements of this proposal.

## **(ii) The value of a benefit**

### **Submissions and evidence**

There were submissions about the cost and benefit of delivering specific benefits that were said to be associated with the Proposal.

### **Discussion**

The Advisory Committee considers that cost to the development of delivering a benefit is a relevant consideration, but it is not determinative. The costs of delivering a benefit ought to be considered if only to ensure unreasonable demands are not placed on developers. The reverse of this is that a planning authority might seek (or a proponent offer) ‘more’ of a specific benefit because the marginal cost of delivering that benefit is relatively small.

The cost of addressing a disbenefit is not a measure of the impact of that disbenefit. Typically, infrastructure has a benefit cost ratio above 1:1, so each dollar spent delivers more than a dollar of benefit. This means that failure to provide critical infrastructure may impose costs on the community far in excess of the cost of provision.

Assessing ‘overs’ and ‘unders’ in purely financial terms only makes sense if the decision maker can be assured that all necessary things will ultimately be delivered. This is (or ought to be the case) in a growth area, but is not the case for a site specific rezoning.

All this points to a practical, outcomes focussed approach to considering NCB. In the words of the *Guidelines*, “an iterative and negotiated process”.

Part of the issue with this Proposal is that the Proponent and the Council are so far apart in their approaches that there are no accepted parameters on which to begin such a negotiation.

## **(iii) Mechanism for collecting contributions**

### **Evidence and submissions**

The Proponent tabled evidence from Mr Shipp, a person very experienced in the preparation of development contribution plans, and relied upon his evidence that there was no legal requirement to make a contribution because there is no provision in the Planning Scheme.



In addition to cross examination by Council, Mr Shipp was asked questions by the Advisory Committee. Given the agreed starting position that there is no legal basis for requiring contributions, the Advisory Committee was keen to explore how impacts from the development as identified by the Proponent's witnesses could be offset without a cash contribution. Mr Shipp's response reiterated that there was no basis for further contributions because of the over-provision of other works and land, especially meeting Melbourne Water's requirements, and the supply of open space. Mr Shipp was adamant on that but did concede if any contribution was to be offered, a s173 Agreement was the appropriate mechanism.

### **Discussion**

The fact that there is no existing mechanism for collection of contributions would only carry weight if the land were already identified for urban development. Requirements for development contributions are typically applied when land is identified for development. It would be poor planning if Council had identified the land as a source of development contributions given the current zoning.

### **Conclusion**

Development contributions should be applied using a section 173 Agreement method.

## **8.10.2 Treatment of 'over-provision' of benefits**

### **Submissions and evidence**

The Proponent submitted in its Part C Submission:

- 242 The Advisory Committee has heard in some detail (through evidence and submissions thus far) as to why the Proponent considers it unfair that it be required to make monetary contributions. It is simply unfair because it is 'over contributing'

The Proponent relied on Mr Shipp's evidence that while a voluntary contribution could be made to offset the demand for kindergarten space and active open space facilities generated by the development, any such contribution should first account for the over-provision of other infrastructure that was being provided.

Mr Shipp detailed what he regarded as the over-provision of open space, drainage contributions, transport, and the value of a contribution for affordable housing, to balance a contribution.<sup>83</sup>

Central to Mr Shipp's evidence and the Proponent's stance is that the cost of meeting Melbourne Water's requirement to undertake works at the Proponent's cost to improve the existing stormwater infrastructure in the catchment to stop flooding outside the site, should be credited against any contribution.<sup>84</sup>

Council did not agree with the proposition of over-provision and claiming credits. It submitted:<sup>85</sup>

The drainage requirements are imposed by a proposed Melbourne Water planning permit condition. Arguably, it is like the road infrastructure required through the planning permit which the Proponent also seeks to characterise as a developer contribution when the traffic works and drainage arise through a planning permit."

### **Discussion**

The Advisory Committee notes the following position statement about drainage issues and Melbourne Water's requirements published during exhibition of Amendment C151. In a post on

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<sup>83</sup> Section 5.7 Shipp witness statement doc 48

<sup>84</sup> Submission 1170 and cited in presentations

<sup>85</sup> Footnote Council Part B submission para 98, doc 167

the Council website about that amendment, in a question-and-answer section, the following question was asked and answered:

4. How will flooding be dealt with on site?

Melbourne Water has advised that they require onsite treatments that will reduce the current flooding impacts experienced downstream of the site by existing residential properties. Hydraulic modelling undertaken by the Proponent's drainage engineers has used a model provided by Melbourne Water, which is based on the Mordialloc Settlement Drain Flood Mapping project.

The applicant's Drainage Strategy will be formally referred to Melbourne Water for assessment, which may, or may not, specify further requirements or conditions that would need to be satisfied in order to achieve their support for the Proposal. Council's drainage engineers will also review the Proposal further and provide additional advice as required.

The requirements in 2018 under Amendment C151 remain as the basis of Melbourne Water's stance in this proposal. Faced with similar prospects in 2018, the Proponent offered a development contribution for community infrastructure. There appears to be little justification to make no offer with this Proposal.

The Advisory Committee does not accept the submissions of the Proponent on this issue or the evidence of Mr Shipp for three reasons:

- First, the need to address flooding issues is viewed by the Advisory Committee as a necessary prerequisite to developing the site – that is, it is a condition inherent to the land or proposal that the developer must deal with. Meeting this prerequisite will impose costs on this development above those expected if the site simply had to maintain the current levels of runoff. It is not realistic to think that drainage works on this site would not address downstream flooding, and the proponent may well have obligations to do this under the *Water Act*
- Second, better drainage cannot substitute for a lack of kindergarten space. In a greenfield situation, or in an area identified for change, an over contribution in one type of infrastructure might be balanced by under contribution in another. But this is essentially an accounting approach – the infrastructure provisions do not substitute for one another. The approach taken is an expedient way of delivering all the necessary infrastructure across all the private parties who are on the hook to deliver it. This is not a greenfield site. In this case there is only one party, and it should deliver the needed infrastructure consistent with principles of need and nexus
- Third, the suggested approach is unfair. The parties that benefit from the 'overprovision' of drainage infrastructure are different to the parties who will suffer if community infrastructure is not provided. If the increased drainage contributions are used to decrease community infrastructure contributions it will essentially mean a cross subsidy from the ratepayers of Kingston to Melbourne Water. The alternative to the Proponent paying for this work now is to wait until Melbourne Water allocates funds for the cost of works.

Though Council submitted<sup>86</sup> the Amendment should be abandoned, it posed alternate ways of obtaining cash contributions through a Development Plan Contributions Overlay if a subsequent amendment is proposed or a s173 Agreement as occurred with C151.

Given the conclusion of the Advisory Committee that Melbourne Water requirement must be met if development of the land would be permitted (in other words they a condition precedent),

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<sup>86</sup> Council's Part B submission, para 89, document 167

the Advisory Committee does not accept the proposition that the costs can be credited as a contribution to the community. They are simply a cost of developing this land.

### 8.10.3 Net Community Benefit assessment

In Chapter 6 the Advisory Committee concluded in relation to the documentation of site values and constraints that there was a need to:

- Further explore opportunities for WSUD and continued use of the ASR.
- Develop a complete picture of water management for the site including flood mitigation, storm water quality, water reuse, and the precise nature of what is required for the functional layout of the stormwater system.
- Assess the contamination potential of the maintenance depot and chemical store before finalising the Development Plan.
- Properly assess the potential for wildlife strike on aircraft from water retention or treatment areas.
- Better describe environmental values including a review of the biodiversity strategic context or an assessment of locally significant environmental values
- Prioritise the environmental values or provide a map of the priority values which would assist in providing a transparent transition from site analysis to design
- Document the value of vegetation to adjoining lots and revise the assessment of tree retention value to place greater importance on the screening and amenity afforded by the vegetation
- Better document the need to provide separation to existing dwellings
- Update data on traffic volumes on the surrounding network before the road network and road network improvements are finalised.

The Advisory Committee has also concluded that there are elements of the Proposal that require more work, specifically, that the Proposal needs to be refined to:

- Include an integrated response to drainage and water issues.
- Ensure all proposed drainage infrastructure works are undertaken in Stage 1.
- Retain more vegetation to protect environmental values well as contribute to amenity.
- Better document the impact of new plantings on the tree canopy in the long term.
- Ensure all the areas identified a contribution to the 20 per cent open space are usable.
- Contribute to active open space.
- Better offset the social cost of the development on the Dingley Village community. The Proponent and Council will need to negotiate how to do this.
- Better protect existing properties from the intrusion of new buildings by the use of increased setbacks and open space areas.
- Maintain the opportunity for a pedestrian link to the southeast that will require access and works adjacent to the subject land.
- Prioritise the consideration of cycling lanes to meet the objectives outlined in the Development Plan, the *Guidelines*, and any other Planning requirements in proposed major engineering infrastructure works including, proposed intersection treatments and the design of the waterbodies.
- Give further consideration to the provision of bicycle lanes on or off road in Centre Dandenong Road, Spring Road and McClure Roads, in consultation with the DoT and Council.

- Determine the need to upgrade all the internal tracks to 3 metre shared pathways, in consultation with Council.
- Ensure it meets all of DoT's requirements.
- Update the Traffic Impact Assessment, when the development yield is known with more certainty, and at least 6 months has elapsed since the opening of the Mordialloc Freeway
- Provide for contributions to community infrastructure.

Until these elements are refined the proposal should not be given approval. Some of these issues should be resolved before rezoning the land, others can be dealt with under the DPO.

## **(i) Evidence and submissions**

Mr Barlow made a comprehensive assessment of what he saw as the benefits and disbenefits of the Proposal, he noted:

194. The potential disbenefits are principally ones associated with the process of change or the management of potential impacts on the new residences (for example, noise). These will be ameliorated through the development itself and new landscaping. The 'competition' between the use of the land for a golf course, another sporting activity or some other use and that of new housing falls significantly in favour of the latter use.
195. The locality, unlike many other parts of metropolitan Melbourne has many options to provide sporting and recreational activities on existing parkland and nearby green wedge land. This can never be used for housing. By contrast urban land is an increasingly scarce resource (hence the push to new greenfield sites and increasing intensity in the more built-up parts of the city) that needs to be wisely used. In this instance, a well-designed residential precinct with generous open space is the best use of the site.
196. Further the proposed redevelopment achieves the four critical matters identified in the Planning Guidelines for Conversion of Golf Course Land to Other Purposes required to ensure net community benefit being:
  - At least 20% of the land area to be developed is set aside for publicly accessible usable open space.
  - The retention of key stands of trees and new planting will retain and enhance biodiversity corridors.
  - The retained landscaping and the new planting will deliver a tree canopy cover of 32.13% which is more than double that found in the surrounding area (15.13%) and contribute to the mitigation of urban heat affects.
  - Active transport links are provided across the site and into the surrounding areas.
197. On balance, I consider the Proposal will deliver a net benefit to the community for current and future generations.

Many submissions from residents reached a diametrically opposed position concluding that the proposal would not deliver NCB essentially concluding that the proposal would remove the current benefits associated with the land, fail to reinforce the positive aspects of Dingley Village, but instead would exacerbate the negative aspects.

## **(ii) Discussion**

The Advisory Committee has concluded that the benefits of the Proposal include:

- improved management of flooding issues
- improved downstream water quality
- connecting and extending existing parks
- the proposed internal open space network
- more diverse local housing
- affordable housing

- landscaped views into the site from surrounding roads
- improved walking and cycling connectivity in the area
- increased population supporting more local services provide supply expands to meet demand.

The Advisory Committee has concluded that the disbenefits of the current Proposal include:

- a loss of tree canopy
- increased demand for active recreation that will not be ameliorated by making a contribution to facilities
- adverse amenity impacts on adjoining properties
- adverse amenity impacts on the residents Wolbers Road, Seaton Drive and Toorak Road
- increased impact on community services for which no contributions is made
- aircraft noise inside buildings, which can be ameliorated
- aircraft noise outside of buildings.

Table 3 summarises this assessment.

**Table 3: Advisory Committee Net Community Benefit assessment**

Deliverable benefits	Potential disbenefits that can be ameliorated
More diverse local housing	Worse traffic congestion
Affordable housing	Aircraft noise inside buildings
Active transport links and improved pedestrian connectivity	Increased demand for community infrastructure
Connecting and extending existing parks	Increased demand for active recreation
Making open space on the land available to the general public for the first time implementing Council's Open Space Strategy – particularly through the provision of a 'major social family recreation space'	Impacts on adjoining properties (with some residual disbenefits)
	An adverse impact on environmental values
Potential benefits subject to refinement	Residual disbenefits
Reduction in downstream flooding	Canopy and landscape loss for the next 20 to 30 years
Improved downstream water quality	Aircraft noise outside buildings
More residents in Dingley Village providing new demand for local businesses, service providers and community organisations, improving the viability of local businesses	Decrease in the amenity of residents Wolbers Road, Seaton Drive and Toorak Road
Improved pedestrian access to the Library and Activity Centre	
The proposed internal open space network	

The Advisory Committee does not accept the following 'benefits' claimed by the Proponent:

- *"Effectively gifting land to Melbourne Water..."*. This not a separate benefit to fixing the flooding issues and only a benefit to Melbourne Water if it were proposing to expend money to obtain the land
- Creating housing on or close to the PPTN (Centre Dandenong Road). Delivering housing is a broad benefit, but does not rise above that status
- Creating hundreds of jobs (direct and indirect) in the construction phase. The development will not 'create' jobs in the same way that a new industry moving to a

regional centre creates jobs. If this proposal does not proceed it is not credible that there will be fewer jobs in the subregion

- Post subdivision and development of housing, generating significantly greater rate income for the Council – which can in turn be spent on worthwhile projects and services. This misunderstands how Victoria's rating system works.

The Advisory Committee does not give much weight to the 'benefit' identified by Mr Barlow that :

- The development of the site will result in the removal of potential site contamination (asbestos) and consequently improve the local environment. It is not clear to the Advisory Committee that the current contamination is a risk and it is something that needs to be managed during construction and as part of a change of use, but it is not something that is a current issue. If it were, the Advisory Committee expects that the Proponent would be obliged to clean it up regardless of whether development proceeded or not.

The Advisory Committee does not accept the following benefits made by some submitters:

- The retention of existing high value trees and areas of native flora and fauna within the Site. Overall, on the numbers, the development removes vegetation.
- Preservation of green vistas and amenity in buffer zones within and around the boundary of the site. Under the Proposal, and without the changed setback provisions the Advisory Committee recommends, many interfaces will be worse than they currently are.

The Advisory Committee does not give much weight to the 'disbenefit' identified by Mr Barlow that

- The Proposal will place housing near to a former landfill (Spring Road) with the potential for impacts from landfill gas. Again, this is something that needs to be managed, but when properly managed in accordance with the proposed Overlay and EPA's requirements, will not adversely impact future residents.

#### **8.10.4 Conclusions and recommendation**

The Advisory Committee concludes that the land is capable of delivering NCB as envisaged by the *Guidelines* but:

- Further work is required to refine the Proposal
- The Proposal does not deliver NCB in its current form.

There is a need to reset the parameters of the proposal to achieve an acceptable outcome. The revised parameters for the proposal can be specified in the DPO, but there is also a need to address the following fundamental issues before rezoning the land:

- drainage and integrated water management
- the contribution to be made towards active recreation facilities
- the contribution to be made to community facilities
- the percentage and delivery mechanisms for affordable housing.

The Advisory Committee believes that rezoning the land without resolving these issues would essentially approve a proposal that failed to meet the *Guidelines*.

The Advisory Committee recommends:

- 3. Before the land is rezoned the Minister for Planning and the Proponent agree the text of a draft section 173 Agreement that specifies:**

- a) the outcomes required from the drainage and integrated water management works**
- b) the contribution to be made towards active recreation facilities**
- c) the contribution to be made to community facilities**
- d) the percentage and delivery mechanisms for affordable housing.**

# Part E: The detailed outcome

## 9 Guidelines Step 7

### 9.1 Policy

#### (i) The issue

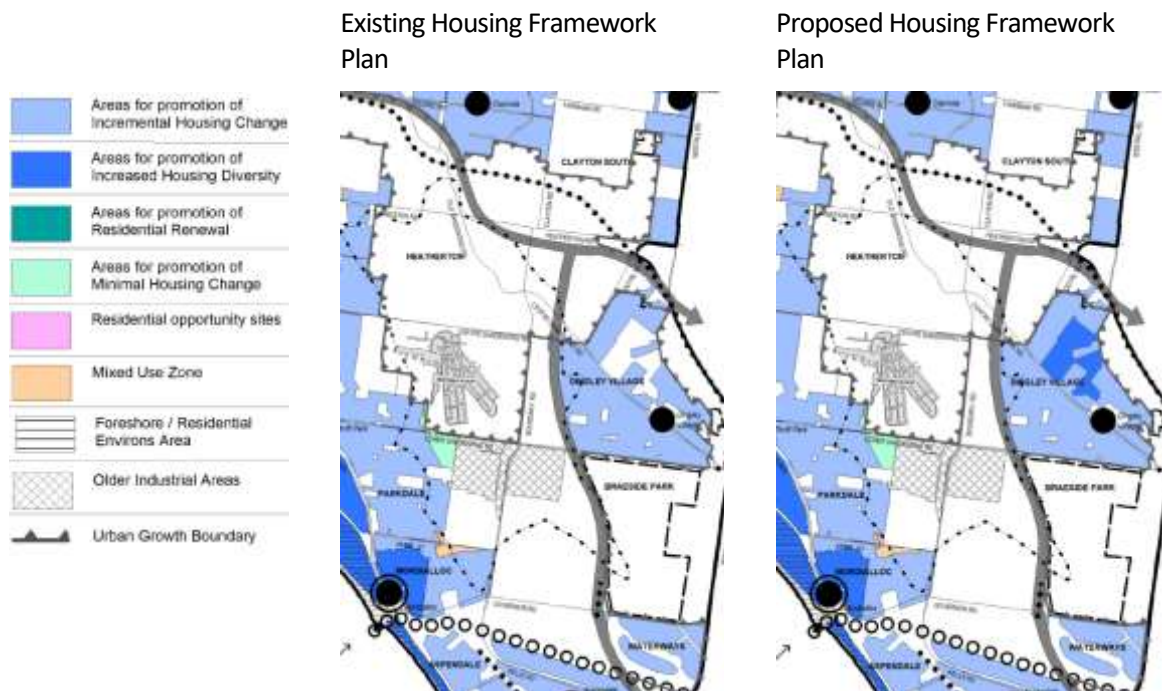
The issue is what changes to the PPF are appropriate.

#### (ii) Evidence and submissions

The Amendment proposes to amend

- Clause 21.01 (Vision and Strategic Framework) and Clause 21.07 (Housing) include the golf course land in an area identified for the promotion of Increased Housing Diversity
- Clause 21.02 (Settlement) remove the golf course designation from the land.

Figure 22: Housing Framework Plan



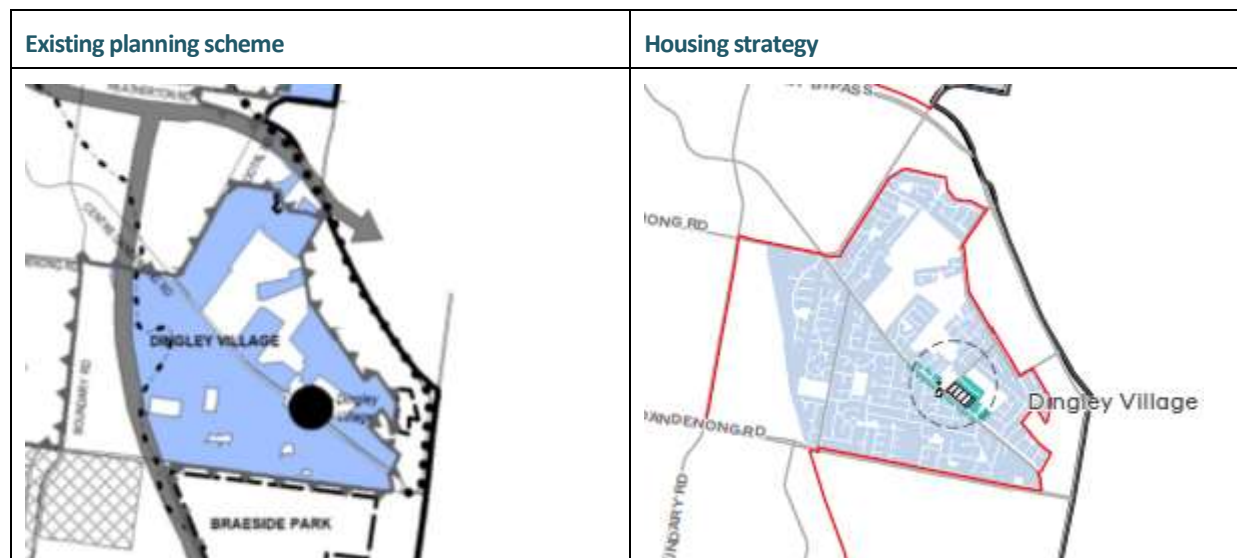
The Advisory Committee has already concluded that the subject land meets the definition of a 'Large Residential Opportunity Site.' The Advisory Committee notes that the description of 'Large Residential Opportunity Sites' includes references to the Dingley Village, Aspendale Gardens, Chelsea Heights, the Waterways and The Heath. The Framework Plan does not include 'Large Residential Opportunity Sites' in the legend; all the identified areas appear to be shown as 'Incremental housing change areas'.

The new strategy shows adds a 'substantial change' category while the existing terms are renamed (with some boundary adjustments) as follows:



- Increased housing diversity → Increased change
- Incremental housing change → Incremental change
- Minimal Change → Limited change.

**Figure 23: Incremental change areas map**



The extent of the housing change area around the Dingley Village Neighbourhood Activity Centre (NAC) has been contained, according to the strategy, to a 200 metre walkable radius because of the limited accessibility to services in Dingley Village.

The Proponent described Kingston's Housing strategy and submitted in closing:

- 153 Adopting the usual structure for such plans, the Housing Strategy then goes on to identify a hierarchy of change areas, being 'limited', 'incremental', 'increased' and 'substantial' change areas. Land beyond 200 metres from a Neighbourhood Activity Centre, such as the Dingley Neighbourhood Activity Centre, is earmarked for 'incremental change' [Figure 23].
- 154 For incremental change areas, the Strategy states:  
Incremental Change Areas will comprise of mixed future housing in the form of detached houses, dual occupancies, townhouses and apartments. New housing will generally be up to two storeys consistent with the preferred neighbourhood character of the area.
- 155 This is, in effect, the type of housing proposed (save for apartments which are not proposed). It is a good use of land proximate to a Neighbourhood Activity Centre and abutting the Principal Public Transport Network.

### (iii) Discussion and recommendation

Considering the clear analysis in the new strategy, a designation of 'incremental' is appropriate.

There is a disconnect between the Proponent's closing submission supporting a designation of 'Incremental change' and the draft Amendment which proposes 'Increased housing diversity'.

The Advisory Committee noted at the Hearing that the policy at Clause 22.01 (Sandbelt Open Space Project) will also require updating.

The Advisory Committee recommends:

- Subject to the preceding recommendations the Minister for Planning prepare and approve a Planning Scheme amendment to:**
  - Revise the Municipal Strategic Statement to:**

- a) amend the plans at Clauses 21.01 (Vision and Strategic Framework) and 21.07 (Housing) to include the golf course land in an 'Incremental change area'
- b) amend Clause 21.02 (Settlement) to remove golf course designation from the land
- c) amend Clause 22.01 (Sandbelt Open Space Project) to remove the subject land.

## 9.2 The appropriate zone and schedule

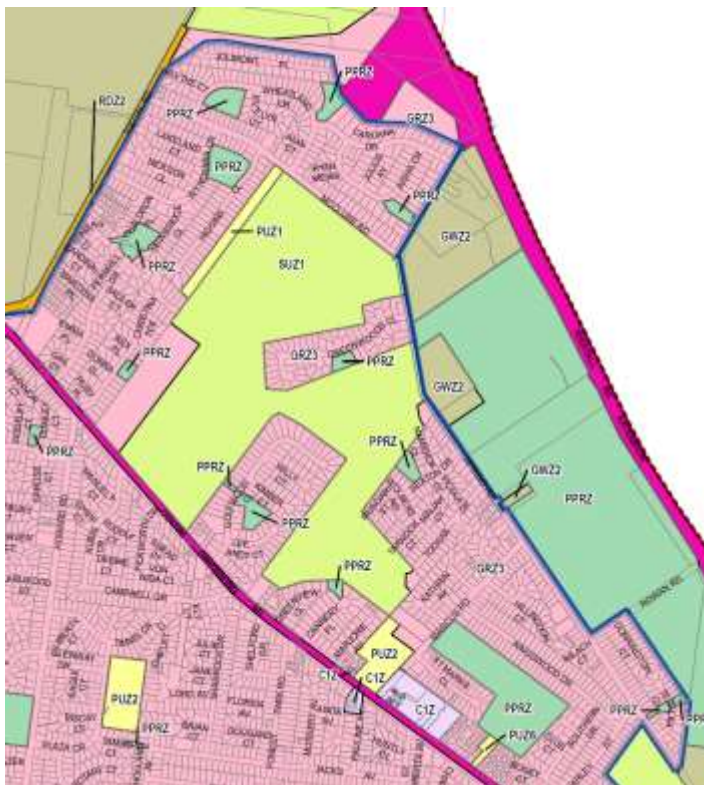
### (i) The issue

Has the most appropriate zone and schedule been applied?

### (ii) Evidence and submissions

The Amendment proposes to rezone the land to GRZ2. The surrounding residential area (and small part of the subject land) is GRZ3.

Figure 24: Existing zoning



GRZ2 and GRZ3 are mostly similar. But there are some key differences.

Key similarities are that in both schedules:

- neighbourhood character objectives are NOT specified
- the construction or extension of a dwelling or residential building is NOT exempt from the minimum garden area requirement
- a permit is NOT required to construct or extend one dwelling on a lot of between 300 and 500 square metres
- a permit is NOT required to construct or extend a front fence within 3 metres of a street associated with a dwelling on a lot of between 300 and 500 square metres

- the front fence height is lowered to 1.2 metres from the default 1.5 metres for streets not in a Transport Zone
- no additional application requirements specified
- no additional decision *Guidelines* are specified.

Key differences are shown in Table 4.

**Table 4: Differences between the proposed GRZ2 requirements and surrounding GRZ3 requirements.**

	Standard	GRZ2 requirements proposed for the site	GRZ3 requirements that apply to the surrounding area
Site coverage	A5 and B8	60 per cent (the default in ResCode)	50 per cent
Private open space	A17	An area of 80 square metres or 20 per cent of the area of the lot, whichever is the lesser, but not less than 40 square metres. Secluded private open space of at least 25 square metres and with a minimum dimension of 3 metres. (the default in ResCode)	
	B28	An area of 40 square metres. Secluded private open space of at least 25 square metres, with a minimum dimension of 3 metres. (the default in ResCode)	An area of 40 square metres, plus 20 square metres for a third or fourth bedroom. Secluded private open space of at least 40 square metres, with a minimum dimension of 5 metres.
Maximum building height		11 metres (12 metres on a sloping site) or 3 storeys – certain exemptions apply (the default in the zone)	9 metres (10 metres on a sloping site) – does not apply to extensions, rebuilding and existing building permits.

### (iii) Discussion

The provisions of the GRZ2 are almost identical to the default setting of the zone. Schedules are used to ensure new development respects the character of its context. For much of the site the development will create its own character and so the default values of the zone (with the lower front fence height) are appropriate. Where the development has a direct interface with existing area the DPO can address character issues.

The Advisory Committee notes that the building height is specified above natural ground level, but in this Proposal finished ground level will be the relevant starting point. Specifying the number of storeys for dwellings and residential buildings, rather than metres, will overcome this problem.

The Advisory Committee recommends:

#### **Subject to the preceding recommendations:**

- 4.2 Rezone land not required for a public purpose pursuant to Recommendation 1 to General Residential Zone, with a schedule based on Schedule 2 but which specifies maximum height across the site of 3 storeys to avoid the need to know natural ground level when assessing a development. The Development Plan Overlay should restrict the maximum height to 2 storeys in specific locations.**

## 9.3 Final form of the Development Plan Overlay Schedule 8

### 9.3.1 General approach

There are five versions of the DPO, three with multiple comments and track changes:

- The exhibited DPO which was ‘minimalist’
- The Proponent’s more fulsome Day 1 version (Document 26.)
- Council’s suggested changes to this Day 1 version (Document 54)
- Council’s update to Document 54 (Document 171)
- The Proponent’s response (Document 182).

The Advisory Committee notes that in its final response the Proponent agreed with about half of Council’s suggested changes:

- agreeing with 28 changes
- agreeing in part or in principle with a further 15 changes
- disagreeing with 47 changes.

The Advisory Committee’s preferred version of the DPO is presented in Appendix B.

The critical issue for the Advisory Committee is whether the DPO provides sufficient guidance for a revised Development Plan. The Development Plan itself will necessarily be broad and some detailed plans will need to be delivered at the permit stage. In this regard the Advisory Committee agrees with submissions from the Proponent, including for example:

The Development Plan should not go so far as to contain a Tree Management Plan. That should be prepared several steps later – pursuant to permit conditions. A meaningful tree management plan needs much more detailed design than is appropriate at the Development Plan stage.

Importantly the DPO should not try to lock in conformity with plans that are not part of the planning scheme as this is a legally unsound approach.<sup>87</sup>

The Advisory Committee has restricted its comments on the drafting to those issues where there is the greatest difference between the Proponent and the Council or where the Advisory Committee has introduced new text. It explains it reasons in term of changes from the Day 1 version.

### 9.3.2 Objectives

The Advisory Committee proposes the following changes<sup>88</sup> from the Day 1 version of Schedule 8 tabled by the Proponent:

- To ~~acknowledge and respond to contamination and~~ address local flooding hazards; and ~~traffic impacts associated with the site’s future use.~~ deliver best practice integrated water management to achieve community and environmental benefit.
- ~~To deliver a net increase in public open spaces that are connected by pedestrian and cycling paths, integrated with adjoining public open spaces (where such opportunity exists), integrate important infrastructure such as stormwater management facilities and which protect and enhance canopy tree cover and ecological values.~~
- To deliver at least 20 per cent of developable site area as accessible usable open space.
- To ~~provide for land use and development which capitalises on~~ respect the ecological, landscape, and amenity values of the site ~~taking account of its natural and man-made features, topography, water features, vegetation and canopy trees.~~

<sup>87</sup> *Spire Group Pty Ltd v Monash City Council [2016] VSC 801*

<sup>88</sup> Text level changes in sentences are tracked, but not changes to the order of sentences

- To create a high level of permeability through the site, ~~and integration with surrounding land,~~ for pedestrians, cyclists, public transport and private vehicles. integration with surrounding land and the neighbourhood and mitigation of adverse traffic impacts.
- To provide a range of lot sizes and dwelling ~~types~~ diversity to cater for a variety of housing needs, ~~whilst ensuring new~~ including affordable housing ~~adjacent to existing one and two storey residential areas is of an appropriate scale.~~

The exhibited DPO did not contain objectives. The Advisory Committee considers that the objectives should provide a high level view of what is trying to be achieved. Critically the objectives should highlight the need to:

- deal with water management
- deliver at least 20 per cent open space
- respect ecological and landscape values
- integrate with the surrounding area
- deliver housing diversity.

The Advisory Committee notes that Council proposed breaking some objectives into further dot points. The Advisory Committee understand this falls foul of DELWP's drafting requirements. One cannot circumvent the limit of five objectives by using dot points.

### 9.3.3 Requirement before a permit is granted

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

Before a development plan has been prepared to the satisfaction of the responsible authority, a permit may be granted for:

~~• Minor buildings and works.~~

- Use of, or additions or alterations to, an existing building.
- Subdivision of land into superlots or to realign property boundaries.
- Creation, variation or removal of easements.
- Any buildings and works associated with the remediation of the land in accordance with or for the purpose of obtaining an environmental audit statement under Part 8.3 of the *Environment Protection Act 2017*.
- Buildings and works to improve stormwater management or address flooding issues.
- Works to remove, destroy or lop vegetation, including dead vegetation.
- Any other land use or development that the responsible authority considers will not prejudice the desired outcomes for the land as set out in this schedule.

In considering an application, the responsible authority must have regard to whether the proposal:

- Will prejudice the future preparation of a development plan; ~~and~~
- Is generally consistent with the Framework Plan at Map 1 of this schedule.

These changes are seen as more operational and technical to allow reasonable works ahead of approval of the Development Plan. From time to time, permits may be needed to manage trees (including native trees) on the site. Such permits should be allowed to be applied for, as needed, prior to approval of a Development Plan. This ability was not included in the exhibited or Day 1 DPO Schedule simply by oversight.<sup>89</sup> The Advisory Committee notes that the proposed VPO3 will create a permit trigger for non-native trees too.

<sup>89</sup> Advice of Proponent Document 182



### 9.3.4 Conditions and requirements for permits

#### (i) Application requirements machinery text

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

~~Unless otherwise agreed to by the responsible authority, an application for the use and/or development of land must include, where relevant:~~

An application must be accompanied by the following information, as appropriate.

If in the opinion of the responsible authority an application requirement is not relevant to the evaluation of an application, the responsible authority may waive or reduce the requirement.

The Advisory Committee makes these changes on the following basis:

- The introductory text could be clearer.
- The Advisory Committee does not agree, as Council suggested that these reports should be to 'to the satisfaction of the responsible authority'. This would mean that every report needs to be approved and could be individually the subject of review by VCAT. This is not the role of 'application requirements'. If the Council is dissatisfied with information submitted supporting a permit application it can:
  - request additional information under Section 54 of the PE Act
  - refuse the permit application, on the basis the permit applicant has not proven up acceptable outcomes.
- The Advisory Committee has adopted the language of the GRZ at Clause 32.08-11 in respect of waiving or reducing application requirements.

#### (ii) Application requirements required reports

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

- A report that demonstrates that the proposal is generally in accordance with the approved development plan and the proposed Design Guidelines.
- An Integrated Stormwater Management Plan that shows:
  - Flood modelling and mapping (pre and post development conditions) for the 1 per cent Annual Exceedance Probability (AEP) and 20 per cent AEP events.
  - Proposed stormwater quality and water sensitive urban design.
  - Staging of the delivery of the stormwater infrastructure.
  - How wetland design will respond to the safeguarding of Moorabbin Airport by addressing issues of attracting birds that could pose an unacceptable risk of aircraft birdstrike.
- A Vegetation Retention and Landscape report and plans that includes:
  - A plan showing existing vegetation to be retained and removed and applicable Tree Protection Zones, and identifies how they will be impacted by the development.
  - A Landscape Masterplan that shows:
    - The proposed landscape design ~~and plant~~.
    - Vegetation retention.
    - Setback areas.
    - Open space areas.
    - A replanting schedule for all public open space, streetscapes ~~and~~, water retention areas ~~and~~.
    - General maintenance ~~arrangements-intentions~~.
    - Proposed environmental sustainable design features and initiatives.

- An ~~Arborist~~Arboricultural Impact Report in accordance with Australian Standard AS4970:2009 – Protection of Trees on Development Sites that assesses the retention value of all ~~trees~~vegetation on the land, including their ~~health~~;
  - Biodiversity value, including local significance and habitat value.
  - Health.
  - Life expectancy ~~and contribution to the landscape.~~
  - Landscape value including their screening and amenity value.
- An assessment of any proposal for vegetation removal in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017~~2~~).
- A Flora and Fauna assessment of the development proposal that identifies the biodiversity values of the site, including:
  - Assesses the biodiversity values of the site including locally significant biodiversity values environmental values and the habitat values of the site.
  - Identifies opportunities to protect and enhance biodiversity values, including ecological connectivity.
  - Identifies prioritises the biodiversity values environmental values for protection and enhancement including consideration of their significance, habitat value and contribution to ecological connectivity.
  - Assesses the risks that development poses to the biodiversity values
  - Includes a Fauna Management Plan detailing timing and methods of habitat removal, including vegetation and water bodies, that including any proposed salvage and translocation and harm minimisation
- A Traffic Impact Assessment setting out proposed vehicle access arrangements, traffic generation, proposed parking, loading and end of trip provisions, relevant upgrades and mitigation measures.
- A copy of any approved Cultural Heritage Management Plan.
- Design Guidelines that illustrate how future dwellings will be delivered to achieve:
  - High quality architectural responses.
  - Preferred character outcomes and acceptable amenity between dwellings and to the public realm.
  - Environmentally sustainable outcomes.
  - Building heights limited to 2 storeys in accordance with the Framework Plan at Map 1 of this Schedule.
  - ~~An Acoustic Report assessing design of dwellings to respond to aircraft noise~~
  - Acceptable internal amenity in response to aircraft noise.
- A Weed Management Plan.
- A Staging Plan illustrating the proposed staging of the development, including proposed connectivity between stages, staging of the proposed local pedestrian/cycling network, public open space and infrastructure delivery.

The Advisory Committee makes these changes on the following basis:

- Getting the Stormwater Management right is critical to this project. This needs to be considered in an integrated way dealing with all relevant factors including:
  - flood modelling and mapping
  - stormwater quality and water sensitive urban design
  - staging
  - the risk of attracting birds that could pose an unacceptable risk of aircraft birdstrike.
- There needs to be a holistic approach to landscape and vegetation retention.
- The Advisory Committee does not support Council’s suggestion that the Landscape Plan incorporate “existing trees identified as having moderate or greater tree retention value”. This is seeking to lock in the retention of specific trees. Not every moderate or higher

retention value trees will be able to be retained. In any case this is an application requirement and so cannot legally achieve this outcome.<sup>90</sup>

- Providing greater clarity of the flora and fauna assessment will help guide the development of a revised Development Plan.
- The Design Guidelines should address all relevant design issues.
- There is an agreed need for a Weed Management Plan.

### (iii) Conditions on permits

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

Except with the consent of ~~Unless otherwise agreed to by~~ the responsible authority, the following conditions ~~apply to permits, where reasonable and appropriate~~ must be included in permits, as relevant:

- Infrastructure Contributions

Before the first plan of subdivision is certified the Owner of the land must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987 specifying agreed infrastructure contributions to community infrastructure and active open space, such payment set out in the agreement, payable on a per dwelling basis, subject to indexation.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Affordable housing

The Owner of the land must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987, which provides for the provision of ~~5%~~ per cent of dwellings as affordable housing as defined under the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Advice on Aircraft Noise

~~Prior to the certification of~~ Before the Plan of Subdivision for each stage of the subdivision ~~is certified~~, the landowner must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 (Vic). The agreement must relate to and be registered on the title of each of the lots created by the Plan(s) of Subdivision. The agreement must require the landowner to notify all future owners and occupiers of the subdivided lots that:

- ~~a)~~ The land is classified as being within the N Contours of the Moorabbin Airport operations; ~~and~~
- ~~b)~~ The land will be exposed to aircraft noise.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Construction management

Before works start, a Construction Site Environmental Management Plan (CSEMP) must be submitted to and approved by the Responsible Authority to address the potential impacts of construction works. The CSEMP must be generally in accordance with the City of Kingston Construction Management Guidelines and address methods for decommissioning remnant infrastructure, noise, dust, erosion and sediment control, waste and chemical management, flora/fauna/tree protection, vegetation retention, weed control, and archaeological/heritage impacts.

~~Prior to commencement of~~ Before works start, all personnel on site must be inducted into the CSEMP and all flora and fauna conservation requirements.

The approved CSEMP must be implemented to the satisfaction of the Responsible Authority.

<sup>90</sup> *Spire Group Pty Ltd v Monash City Council [2016] VSC 801*



- Tree Management Plan (TMP) & Tree Protection Plan (TPP)  
A TMP and TPP must be prepared by a suitably qualified arborist, submitted and approved by the Responsible Authority prior to the commencement of works on site.
- Fauna Management Plan (FMP)  
A FMP must be prepared by a suitably qualified zoologist detailing the timing and methods of habitat removal, including aquatic habitat, and the proposed salvage, translocation and harm minimisation of terrestrial and aquatic fauna during construction
- Subdivision  
Each plan of subdivision must include a mechanism, to the satisfaction of the responsible authority, requiring compliance with:
  - The Design Guidelines.
  - Conditions relating to Tree Protection Zones for trees identified for protection.
  - Vesting of reserves.Before any plan of subdivision is certified, land set aside for open space, drainage or other public purpose for that stage must be designated as a reserve on that plan for vesting in the Council or relevant authority.

The Advisory Committee makes these changes on the following basis:

- The development needs to make a contribution to community infrastructure and active open space. An agreement with the responsible authority under section 173 of the Planning and Environment Act 1987 is the appropriate mechanism.
- Permits conditions should explicitly address tree protection and management and fauna management.
- The Proponent agreed to Council's suggestion for a condition relating to subdivision, but submitted that there was no need for a s173 agreement as sufficient control was imposed by way of permit condition(s) to be discharged prior to statement of compliance. On this point, the Advisory Committee agrees with the Proponent.

### 9.3.5 Requirements for development plan

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

#### **Staging**

The development plan must be prepared for the entire site. ~~However, the site may be developed in stages.~~

#### **Consistency with Framework Plan**

A development plan ~~should~~must be generally in accordance with the Framework Plan at Map 1 of this schedule.

The change of 'should' to 'must' was agreed by Council and the Proponent.

#### **(i) Application requirements and site analysis**

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

#### **Application requirements and ~~required~~ technical analysis**

The development plan submitted for approval should be accompanied by and respond to the recommendations of reports assessing the following matters relevant to the site and the proposed land use and development outcomes in the development plan:

- Feature survey.
- Site Contamination.

- Hydrology and stormwater management, including consideration of any regional Integrated Water Management Plan or the achievement of Water Sensitive Urban Design Principles.
- Landscaping.
- Arboricultural.
- Flora and Fauna.
- Traffic and transport.
- Infrastructure and servicing.
- Aircraft noise.
- Cultural Heritage.
- Affordable housing.
- Sustainability (for dwellings, public realm ~~and~~ infrastructure and travel).
- Social Impact and Community and Social infrastructure

The development plan should include a concise synthesis of the findings of these reports. These reports should inform the development plan's site analysis and design response.

The traffic and transport report should be based on traffic surveys that take into account the Mordialloc Freeway and identify areas of local road congestion and Department of Transport requirements.

#### Site analysis and design response

The development plan must respond to a site analysis and design response demonstrating a response to site opportunities and constraints, with particular regard to:

- Physical site conditions.
- The need to address flooding, stormwater and water sensitive urban design issues.
- Landscape ~~and~~ ecological and biodiversity values.
- ~~• Urban design vision and principles~~
- ~~The development plan should include~~ An urban design vision and accompanying principles that identify:
  - The development objectives and outcomes that are sought.
  - Preferred neighbourhood character outcomes.
  - The key elements of the public realm when viewed external to the site especially from roads and public spaces.
- ~~• Subdivision~~
- ~~• The development plan should show or make provision for:~~
  - Interface and connections with adjoining and nearby land uses and developments, including in relation to open space, ~~built form character, amenity impacts,~~ roads and pedestrian and cycling connections.
  - Interface to adjacent residential development, including in relation to character and amenity impacts.
- Public open space.
- A concept subdivision layout which shows:
  - Areas for dwellings, roads, open space and reserves.
  - Proposed staging arrangements ~~—~~ including staging of infrastructure and open space delivery.
  - Variety in lot sizes to provide for a diversity of housing options.

The Advisory Committee makes these changes to improve clarity and ensure:

- there is one coherent site response
- flooding issues are properly addressed
- social impact issues are addressed
- traffic studies use data that reflect traffic volumes take into account the recently opened Mordialloc Freeway.

## (ii) Hydrology

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

### Hydrology

The development plan should show ~~the indicative a~~ stormwater management concept for the site, approved by Melbourne Water, and Council to achieve appropriate water quality and quantity targets, including indicative sizing and location of water management infrastructure, such as retarding basins, wetlands and pipe flows between water bodies (if any) ~~and setbacks from water bodies.~~

The Advisory Committee makes these changes on the following basis:

- It is critical that the development Plan is based on an approved stormwater management concept.

## (iii) Landscaping, open space and circulation

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

### Landscaping concept and principles plan

The development plan should include a landscape concept plan, with associated principles that identify:

- A vision and preferred character.
- A concept plan which shows the locations and preferred outcomes for open spaces, water bodies, green links and streetscapes, allowing for passive and informal active recreation.
- Open space connections to adjoining public open space and linkages to neighbouring streets.
- Location of pedestrian and bicycle networks into and throughout the site.
- Proposed planting themes including the use of native and indigenous species to strengthen existing canopy tree cover, ecological values and habitat links.
- Tree and vegetation retention principles applicable to open spaces, trees in road reserves and trees ~~within~~ and vegetation in residential lots, working on the first principles that:
  - Trees of the highest significance and highest retention value should be retained.
  - Vegetation with amenity values that adjoin exiting lots should be retained.
- ~~Tree~~ Guidance on landscaping in the private realm.
- Vegetation retention principles.

### Open space

~~In relation to open space,~~ The development plan should show or make provision for:

- Open space that:
  - Is integrated into the site which includes not less than 20 per cent of the developable area of the site as useable and accessible public open space ~~that contributes to an integrated open space network.~~ This land may be encumbered by easements, reservations, heritage, vegetation or other conditions. Strips less than 10 metres wide should not be counted as open space.
  - Contributes to an integrated open space network, integrates with existing public open spaces abutting the site, maintaining view lines and site permeability.
  - Provides for unstructured passive and active uses and supporting infrastructure and embellishments appropriate to intended function.
  - Provides safe or restricted access and buffers around water bodies.

### Circulation and movement

The development plan should show or make provision for:

- A road network design that encourages safe and efficient neighbourhood level traffic and an ability to accommodate a public transport (bus) service.

- Primary vehicle access to the land from Centre Dandenong Road and Spring Road.
- Pedestrian and bicycle networks into and throughout the site.
- Proposed road hierarchies within the site.
- Indicative mitigation works required on the road network ~~for safe entry / exit from the site.:~~
  - [For safe entry to and exit from the site.](#)
  - [Address local congestion.](#)
- Connections to adjoining land, especially adjoining public open space.
- Indicative road cross sections.
- Links to existing nearby public transport services.

The Advisory Committee makes these changes on the following basis:

- improved clarity on what the landscape concept should show
- clarity that open space must be useable and accessible and that strips less than 10 metres wide will meet this test for open space.

#### (iv) Housing

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

##### **Housing**

The development plan must show or make provision for:

- A range of lot and dwelling sizes and associated indicative housing typologies including provision for detached and medium density housing, to cater for a variety of housing needs.
- Affordable housing.
- ~~Building heights generally~~[A limitation on the height of dwellings of 9 metres and 2 storeys above finished ground levels](#) in accordance with the Framework Plan at Map 1 of this schedule.
- Guidance on [building envelopes for lots less than 300 square metres.](#)
- [A minimum setback from the rear boundary on the periphery of the site where abutting existing dwellings, of the greater of:](#)
  - [5 metres from the rear boundary.](#)
  - [9 metres from an existing dwelling \(excluding the outbuildings and works normal to that dwelling\).](#)
- [Guidance on the interface treatments of dwellings addressing public open space to promote positive integration and passive surveillance.](#)
- [Guidance on the interface treatments of dwellings addressing public open space to promote positive integration and passive surveillance as well as for screening and amenity purposes within setback areas.](#)
- [Requirements for](#) acoustic design treatments that will be required for dwellings to address the impact of aircraft noise ~~and achieve the internal noise level set out in Table 3 of Australian Standard AS2021-2015, "Acoustics—Aircraft Noise Intrusion—Building Siting and Construction or equivalent.~~
- Design principles for dwellings to achieve high quality architectural responses, preferred character outcomes and acceptable amenity between dwellings and to the public realm.
- Garden area requirements for dwellings that are intended to apply in lieu of those set by any other provision of the planning scheme.
- [Design Guidelines to the satisfaction of the responsible authority that illustrate how future dwellings will be delivered.](#)

The Advisory Committee makes these changes on the following basis:

- Given the extent of earth works proposed, and the changes to topography over the years, the dwelling height limit should be to finished ground level not natural ground level as this may not be known
- The issue of the need to setback dwellings from existing properties was discussed at the Hearing. Council suggested 5 metres and the Proponent agreed to 3 metres. The Advisory Committee adopts 5 metres. This is to avoid adverse amenity impacts on the existing properties and to allow for a usable space. A setback of 9 metres from existing dwellings is proposed by the Advisory Committee to ensure privacy setbacks required under ResCode can be achieved, and that new dwellings minimise impacts on existing dwellings.

#### (v) Social impact

The Advisory Committee proposes the following changes from the Day 1 version of Schedule 8 tabled by the Proponent:

##### Social Impact and Community and Social Infrastructure

The development plan must identify:

- The likely social impacts of the demand for community and social infrastructure resulting for the proposed development.
- Projects on and off site that may be suitable for funding through infrastructure contributions.
- Possible funding and implementation mechanisms for the provision of community infrastructure.

The Advisory Committee makes these changes on the following basis:

- The development Plan will have clear idea of the yield of the proposal. It is appropriate to determine what the social and community infrastructure impacts will be.

#### 9.3.6 Recommendation

Based on the specific recommendations in this section the Advisory Committee recommends:

**Subject to the preceding recommendations:**

**4.3 Apply the Development Plan Overlay to the land with a Schedule in the form shown in Appendix B**

## 9.4 Overlays

### 9.4.1 Vegetation Protection Overlay Schedule 3

It is intended to apply VPO 3 to the whole of the land to protect vegetation that has been identified as significant.

VPO3 sets out:

#### **Vegetation protection objectives to be achieved**

To protect and conserve existing vegetation which contributes to the visual amenity of the area.

To prevent the incremental loss of vegetation.

#### **Permit requirement**

A permit is required to remove, lop or destroy any vegetation other than: a tree with a trunk diameter less than 25 centimetres measured at breast height; or

- a multi-stemmed tree where the diameter of its exterior stems measured at breast height is less than 25 centimetres; or
- a tree planted as a requirement of a prior planning permit.

A permit is not required to remove dead vegetation or to remove, lop or destroy vegetation which is considered an environmental or noxious weed.

There was some discussion at the Hearing as to whether the VPO was the right tool to protect vegetation. The Advisory Committee considers that it is the appropriate tool, and notes that the purposes accord precisely with the issues at play on the subject land:

- To protect areas of significant vegetation.
- To ensure that development minimises loss of vegetation.
- To preserve existing trees and other vegetation.
- To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.
- To maintain and enhance habitat and habitat corridors for indigenous fauna.
- To encourage the regeneration of native vegetation.

The Advisory Committee has noted that the vegetation on the boundary of the subject land serves an amenity function so this landscape should also require a permit for its removal.

The Advisory Committee recommends:

**Subject to the preceding recommendations:**

**4.4 Apply Vegetation Protection Overlay Schedule 3 to the land, amended to require a permit for the removal of any vegetation withing 10 metres of a site boundary.**

#### **9.4.2 Buffer Area Overlay Schedule 1 and Schedule 2**

BAO1 applies to land where there may be groundwater issues. The EPA submitted (para 66) that there appears to be a concern that groundwater conditions could impact on below ground structures and notes the recommendation by Mr Pump that:

Any subsurface structures (including concrete structures and steel-reinforced concrete structures, or others fabricated from unprotected steel) that are likely to come into long term contact with groundwater should be designed by suitably qualified engineer in accordance with material durability requirements set out in Australian Standard AS2159–Piling–Design and Installation.

The EPA submitted that to address this concern, the BAO1 could be further strengthened (that is, redrafted) to address this risk bearing in mind that the current focus on the controls appears to be on the use of groundwater for extraction and the associated risk to human health, and not on the potential risk to structures.

The EPA considered that dealing with the risk to subsurface structures within the controls of BAO1 is preferable to management via a CEMP.

The Advisory Committee supports the EPA's position. There will be an ongoing need to manage this issue and the construction management plan will be tied to the initial development.

The Advisory Committee recommends:

**Subject to the preceding recommendations:**

**4.5 Apply Buffer Area Overlay Schedule 1 to the area exhibited, amended to deal with the risks to subsurface structures.**

**4.6 Apply Buffer Area Overlay Schedule 2 as exhibited.**

#### **9.4.3 Environmental Audit Overlay**

There were differences of view as to whether the EAO should be applied to the maintenance depot and chemical store, or indeed the whole site.

Reference was made to the Planning Practice Note 30 to justify that the storage of chemicals at the site was 'minor'. The EPA responded:

87. Whilst 'minor' could be considered a subjective term, EPA understands the intent of this qualifying word in the Practice Note was for inconsequential storage of chemicals such as a residential dwelling storing a tin of petrol for the mower or can of insecticide for flies.
88. Appendix D: Site Photographs of the Preliminary Site Investigation (May, 2012) shows uses of the land that include diesel fuel above ground storage tanks, chemical storage shed, storage drums, chemical wash down bay. EPA would not consider these would fit the qualifier of 'minor', thus meaning that the land is nested under 'medium' potential for contamination under Planning Practice Note 30 (PPN30).

EPA distinguished between the technical and policy issues with the application of the EAO.

106. From an assessment point of view, there are several advantages to applying the EAO to the whole of the site:
  - It allows the auditor to consider all risks of contamination associated with site,
  - It gives recognition to contaminating activities that have the potential to migrate across a site, and
  - It removes the need to 'justify' a position that the extent of the EAO can be reduced; potentially reducing the number of assessment(s) needed to support a planning scheme amendment.
107. EPA encourages those seeking to apply the EAO to part of a site not to overlook the proportionality afforded to audits that comes with scoping and in fact, EPA considers the scoped audit well-suited to situations whereby only a portion of a site is potentially contaminated.
108. In drawing its recommendations, the Advisory Committee should be aware of the recommendations made in the Planning Panel Report for Brimbank Planning Scheme Amendment C212 whereby the application of the EAO to areas that differ from the cadastral boundaries was not supported.
109. That said, EPA recognises that there have been several environmental assessments undertaken at the site to understand the extent and nature of contamination present. These can be used to inform, with a degree of certainty, the area that should be the subject of further assessment via an environmental audit.

The Advisory Committee agrees with the EPA that the potential contamination of the site of diesel fuel above ground storage tanks, chemical storage shed, storage drums, chemical wash down bay is not minor. It is appropriate to apply the EAO to this land.

In terms of whether the EAO should be applied to the whole of the site the Advisory Committee agrees in principle that where there is doubt about the extent of waste or fill in contact with waste on a property and the location of any sensitive developments on those properties cannot be known at this time, it is a reasonable and prudent approach to include the entire property in the EAO if the property is potentially subject to contamination. This is not the case here. The site is large and the areas of contamination are confined to discreet areas.

The Advisory Committee recommends:

**Subject to the preceding recommendations:**

- 4.7 Apply the Environment Audit Overlay, extended to include the site of the diesel fuel above ground storage tanks, chemical storage shed, storage drums, and chemical wash down bay.**



## 9.5 Should the Minister for Planning be the responsible for the approval of the Development Plan

### (i) The issue

Should the Minister be the responsible authority for approving the Development Plan?

### (ii) Evidence and submissions

The Amendment proposes to make the Minister the responsible authority for matters required to be approved or done to the satisfaction of the responsible authority in relation to:

- The approval and amendment of any development plan, pursuant to Clause 43.04-4, in relation to Schedule 8 to the Development Plan Overlay (Former Kingswood Golf Course).

### (iii) Discussion

The Victorian planning system provides for a hierarchy of decision makers across amendment and permit process:

- Council officers with delegated powers
- The Council CEO in respect of VicSmart applications
- Determining referral authorities
- Council, as responsible authority or planning authority
- The Minister for Planning, as responsible authority or planning authority.

The system also has processes of review: VCAT in relation to responsible authority actions, and for planning scheme amendments, ultimately the Parliament of Victoria.

As a general principle planning decisions should be dealt with at the most immediate (or local) level that is consistent with their resolution.

The Advisory Committee notes that the Amendment did not contemplate making the Minister the responsible authority for the proposed permit. Of course, the permit was intended to be delivered in association with the Amendment, but this would still have left Council responsible for secondary consents and enforcement.

The Advisory Committee does not support the approval of the Development Plan without further work and changes. If the Development plan is not suitable for approval as part of this process, then there seems to be little advantage in making the Minister the responsible authority. This is likely to further complicate an already complicated process.

Maintaining Council as the responsible authority for the Development Plan would also help ensure adequate consultation of a revised Development Plan is undertaken.

### (iv) Recommendation

The Advisory Committee recommends:

**Subject to the preceding recommendations:**

#### 5. The Minister for Planning does not:

- a) proceed with the proposal to make the Minister for Planning the Responsible Authority for the Development Plan Overlay



## 9.6 The approvals required

The Advisory Committee has concluded that further work is required before a Development Plan could be approved. These reasons are set out in the proceeding chapters and are not repeated here. Without approval of the Development Plan the permit cannot issue.

The Advisory Committee recommends:

**Subject to the preceding recommendations:**

- 5 The Minister for Planning does not:**
  - b) approve the Development Plan in its current form**
  - c) issue a permit until a revised Development Plan is approved.**

## Appendix A: Parties to the Hearing

Submitter	Represented by
Minister for Planning (Department of Environment, Land Water and Planning)	Hayley Presnell
City of Kingston (Council)	Matthew Townsend of Counsel instructed by Russell Kennedy Lawyers, who called expert evidence on: <ul style="list-style-type: none"> <li>- Planning from Chris De Silva of Mesh Planning</li> <li>- Arboriculture from Mark Reynolds of Arbor Survey</li> <li>- Flora/ecology from Jeff Yugovic of Biosis</li> <li>- Fauna (including birdlife) from Kirstin Campbell of Biosis</li> <li>- Active/sports recreation from Sally Jeavons of @leisure Planners</li> <li>- Community infrastructure/affordable housing from Kate Kerkin of K2 Planning</li> <li>- Outdoor recreation from Joanna Thompson of Thompson Berrill Landscape Design</li> </ul>
AS Residential No. 1 Pty Ltd (Proponent)	Paul Connor QC and Sean McArdle of Counsel, instructed by Norton Rose Fulbright, who called expert evidence on: <ul style="list-style-type: none"> <li>- Town planning and urban design from Michael Barlow of Urbis</li> <li>- Ecology from Aaron Organ of Ecology and Heritage Partners</li> <li>- Drainage and stormwater from Valerie Mag of Stormy Water Solutions</li> <li>- Golf industry from Ben Telley of Eastern Golf Club</li> <li>- Development contributions from Paul Shipp of Urban Enterprise</li> <li>- Traffic engineering from Jason Walsh of Traffix</li> <li>- Arboriculture from Ben Kenyon of Homewood</li> <li>- Landscaping from Peter Haack of Peter Haack Consulting</li> <li>- Contamination from Michael Rehfisch of Senversa</li> <li>- Statutory planning from Sophie Jordan of Sophie Jordan Consulting</li> </ul>
Environment Protection Authority Victoria (EPA)	Trisha Brice
Department of Infrastructure, Transport and Regional Development	Cindy McTaggart
Churchill Waverley Golf & Bowls Club	Megan Schroor of S&K Planning Lawyers and Geoff Ellis
Dingley Village Community Association (DVCA)	Leigh Gridley
Friends of Braeside Park Incorporated	Judith Sise and Margaret Hunter
Green Wedges Coalition	Rosemary West OAM

Keysborough Golf Club	Joseph Monaghan of Holding Redlich and Darrell Swindells
Peninsula Kingswood Country Golf Club	Ben Fenwick and Heath Wilson
The Save Kingswood Group Incorporated (SKGI) and various submissions listed in Appendix G in Volume 2.	Kevin Poulter
Ashleigh Jenkins	David Zalstein
Barry Lowe	
Connie McGuinness	
Danny Dobell	
David Madill	
David McGuinness	
David Zalstein	
Desmond Williams	
Don Hyatt	
Hannah Oakley	
John Cincotta	
Joseph Giarrusso	
Kevin Widmann	
Kylie Kidd	
Mark Dreyfus MP	
Michael Benjamin	
Nina and Brian Earl	
Rizwan Sheikh Nasir	
Roy McCartney	
Sean McAleer	
Simone Hardham and Sachine Chanaka Jayawickrame	Simone Hardham
Simon Fong	
Suzanne Hengstberger	

## Appendix B: Advisory Committee Preferred Development Plan Overlay Schedule

### 1.0 OBJECTIVES

- To address local flooding hazards and deliver best practice integrated water management to achieve community and environmental benefit.
- To deliver at least 20 per cent of developable site area as accessible usable open space.
- To respect the ecological, landscape, and amenity values of the site.
- To create a high level of permeability through the site for pedestrians, cyclists, public transport and private vehicles, integration with surrounding land and the neighbourhood and mitigation of adverse traffic impacts.
- To provide a range of lot sizes and dwelling diversity to cater for a variety of housing needs, including affordable housing.

### 2.0 REQUIREMENT BEFORE A PERMIT IS GRANTED

Before a development plan has been prepared to the satisfaction of the responsible authority, a permit may be granted for:

- Use of, or additions or alterations to, an existing building.
- Subdivision of land into superlots or to realign property boundaries.
- Creation, variation or removal of easements.
- Any buildings and works associated with the remediation of the land in accordance with or for the purpose of obtaining an environmental audit statement under Part 8.3 of the *Environment Protection Act 2017*.
- Buildings and works to improve stormwater management or address flooding issues.
- Works to remove, destroy or lop vegetation, including dead vegetation.
- Any other land use or development that the responsible authority considers will not prejudice the desired outcomes for the land as set out in this schedule.

In considering an application, the responsible authority must have regard to whether the proposal:

- Will prejudice the future preparation of a development plan
- Is generally consistent with the Framework Plan at Map 1 of this schedule.

### 3.0 CONDITIONS AND REQUIREMENTS FOR PERMITS

Except for a permit issued for a land use or development that may be granted before a development plan is approved as provided for in clause 2.0, the following conditions and/or requirements apply to permits:

#### Application requirements

An application must be accompanied by the following information, as appropriate.

If in the opinion of the responsible authority an application requirement is not relevant to the evaluation of an application, the responsible authority may waive or reduce the requirement.

- A report that demonstrates that the proposal is generally in accordance with the approved development plan and the proposed Design Guidelines.
- An Integrated Stormwater Management Plan that shows:
  - Flood modelling and mapping (pre and post development conditions) for the 1 per cent Annual Exceedance Probability (AEP) and 20 per cent AEP events.
  - Proposed stormwater quality and water sensitive urban design.
  - Staging of the delivery of the stormwater infrastructure.
  - How wetland design will respond to the safeguarding of Moorabbin Airport by addressing issues of attracting birds that could pose an unacceptable risk of aircraft birdstrike.

- A Vegetation Retention and Landscape report and plans that includes:
  - A plan showing existing vegetation to be retained and removed and applicable Tree Protection Zones, and identifies how they will be impacted by the development.
  - A Landscape Masterplan that shows:
    - The proposed landscape design.
    - Vegetation retention.
    - Setback areas.
    - Open space areas.
    - A replanting schedule for all public open space, streetscapes, water retention areas.
    - General maintenance intentions.
    - Proposed environmental sustainable design features and initiatives.
  - An Arboricultural Impact Report in accordance with Australian Standard AS4970:2009 – *Protection of Trees on Development Sites* that assesses the retention value of all vegetation on the land including their:
    - Biodiversity value, including local significance and habitat value.
    - Health.
    - Life expectancy.
    - Landscape value including their screening and amenity value.
  - An assessment of any proposal for vegetation removal in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, 2017).
- A Flora and Fauna assessment of the development proposal that identifies the biodiversity values of the site, including:
  - Assesses the biodiversity values of the site including locally significant biodiversity values environmental values and the habitat values of the site.
  - Identifies opportunities to protect and enhance biodiversity values, including ecological connectivity.
  - Identifies prioritises the biodiversity values environmental values for protection and enhancement including consideration of their significance, habitat value and contribution to ecological connectivity.
  - Assesses the risks that development poses to the biodiversity values.
  - Includes a Fauna Management Plan detailing timing and methods of habitat removal, including vegetation and water bodies, that including any proposed salvage and translocation and harm minimisation.
- A Traffic Impact Assessment setting out proposed vehicle access arrangements, traffic generation, proposed parking, loading and end of trip provisions, relevant upgrades and mitigation measures.
- A copy of any approved Cultural Heritage Management Plan.
- Design Guidelines that illustrate how future dwellings will be delivered to achieve:
  - High quality architectural responses.
  - Environmentally sustainable outcomes.
  - Preferred character outcomes and acceptable amenity between dwellings and to the public realm.
  - Building heights limited to 2 storeys in accordance with the Framework Plan at Map 1 of this Schedule.
  - Acceptable internal amenity in response to aircraft noise.
- A Weed Management Plan.
- A Staging Plan illustrating the proposed staging of the development, including proposed connectivity between stages, staging of the proposed local pedestrian/cycling network, public open space and infrastructure delivery.

### Conditions on permits

Except with the consent of the responsible authority, the following conditions must be included in permits, as relevant.

- Infrastructure Contributions

Before the first plan of subdivision is certified the Owner of the land must enter into an agreement with the responsible authority under section 173 of the Planning and Environment Act 1987 specifying agreed infrastructure contributions to community infrastructure and active open space, such payment set out in the agreement, payable on a per dwelling basis, subject to indexation.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Affordable housing

The Owner of the land must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987, which provides for the provision of 5 per cent of dwellings as affordable housing as defined under the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Advice on Aircraft Noise

Before the Plan of Subdivision for each stage of the subdivision is certified, the landowner must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 (Vic). The agreement must relate to and be registered on the title of each of the lots created by the Plan(s) of Subdivision. The agreement must require the landowner to notify all future owners and occupiers of the subdivided lots that:

- The land is classified as being within the N Contours of the Moorabbin Airport operations.
- The land will be exposed to aircraft noise.

The Owner must pay the Responsible Authority's reasonable costs associated with the preparation and registration of the agreement.

- Construction management

Before works start, a Construction Site Environmental Management Plan (CSEMP) must be submitted to and approved by the Responsible Authority to address the potential impacts of construction works. The CSEMP must be generally in accordance with the City of Kingston Construction Management Guidelines and address methods for decommissioning remnant infrastructure, noise, dust, erosion and sediment control, waste and chemical management, flora/fauna/tree protection, vegetation retention, weed control, and archaeological/heritage impacts.

Before works start, all personnel on site must be inducted into the CSEMP and all flora and fauna conservation requirements.

The approved CSEMP must be implemented to the satisfaction of the Responsible Authority.

- Tree Management Plan (TMP) & Tree Protection Plan (TPP)

A TMP and TPP must be prepared by a suitably qualified arborist, submitted and approved by the Responsible Authority prior to the commencement of works on site.

- Fauna Management Plan (FMP)

A FMP must be prepared by a suitably qualified zoologist detailing the timing and methods of habitat removal, including aquatic habitat, and the proposed salvage, translocation and harm minimisation of terrestrial and aquatic fauna during construction

- Subdivision

Each plan of subdivision must include a mechanism, to the satisfaction of the responsible authority, requiring compliance with:

- The Design Guidelines.
- Conditions relating to Tree Protection Zones for trees identified for protection.
- Vesting of reserves.

Before any plan of subdivision is certified, land set aside for open space, drainage or other public purpose for that stage must be designated as a reserve on that plan for vesting in the Council or relevant authority.

## **4.0 Requirements for development plan**

### **Staging**

The development plan must be prepared for the entire site.

### **Consistency with Framework Plan**

A development plan must be generally in accordance with the Framework Plan at Map 1 of this schedule.

### **Application requirements and technical analysis**

The development plan submitted for approval should be accompanied by and respond to the recommendations of reports assessing the following matters relevant to the site and the proposed land use and development outcomes in the development plan:

- Feature survey.
- Site Contamination.
- Hydrology and stormwater management, including consideration of any regional Integrated Water Management Plan or the achievement of Water Sensitive Urban Design Principles.
- Landscaping.
- Arboricultural.
- Flora and Fauna.
- Traffic and transport.
- Infrastructure and servicing.
- Aircraft noise.
- Cultural Heritage.
- Affordable housing.
- Sustainability (for dwellings, public realm, infrastructure and travel).
- Social Impact and Community and Social infrastructure.

The development plan should include a concise synthesis of the findings of these reports. These reports should inform the development plan's site analysis and design response.

The traffic and transport report should be based on traffic surveys that take into account the Mordialloc Freeway and identify areas of local road congestion and Department of Transport requirements.

### **Site analysis and design response**

The development plan must respond to a site analysis and design response demonstrating a response to site opportunities and constraints, with particular regard to:

- Physical site conditions.
- The need to address flooding, stormwater and water sensitive urban design issues.
- Landscape and ecological biodiversity values.
- An urban design vision and accompanying principles that identify:
  - The development objectives and outcomes that are sought.
  - Preferred neighbourhood character outcomes.
  - The key elements of the public realm when viewed external to the site especially from roads and public spaces.
  - Interface and connections with adjoining and nearby land uses and developments, including in relation to open space, roads and pedestrian and cycling connections.
  - Interface to adjacent residential development, including in relation to character and amenity impacts.
- Public open space.
- A concept subdivision layout which shows:
  - Areas for dwellings, roads, open space and reserves.
  - Proposed staging arrangements including staging of infrastructure and open space delivery.
  - Variety in lot sizes to provide for a diversity of housing options.

## Hydrology

The development plan should show a stormwater management concept for the site, approved by Melbourne Water, and Council to achieve appropriate water quality and quantity targets, including indicative sizing and location of water management infrastructure, such as retarding basins, wetlands and pipe flows between water bodies (if any) and setbacks from water bodies.

## Landscape concept plan

The development plan should include a landscape concept plan, with associated principles that identify:

- A vision and preferred character.
- A concept plan which shows the locations and preferred outcomes for open spaces, water bodies, green links and streetscapes, allowing for passive and informal active recreation.
- Open space connections to adjoining public open space and linkages to neighbouring streets.
- Location of pedestrian and bicycle networks into and throughout the site.
- Proposed planting themes including the use of native and indigenous species to strengthen existing canopy tree cover, ecological values and habitat links.
- Tree and vegetation retention principles applicable to open spaces, trees in road reserves and trees and vegetation in residential lots, working on the first principles that:
  - Trees of the highest significance and highest retention value should be retained.
  - Vegetation with amenity values that adjoin exiting lots should be retained.
- Guidance on landscaping in the private realm.
- Vegetation retention principles.

## Open space and landscape

The development plan should show or make provision for:

- Open space that:
  - Is integrated into the site which includes not less than 20 per cent of the developable area of the site as useable and accessible public open space. This land may be encumbered by easements, reservations, heritage, vegetation or other conditions. Strips less than 10 metres wide should not be counted as open space.
  - Contributes to an integrated open space network, integrates with existing public open spaces abutting the site, maintaining view lines and site permeability.
  - Provides for unstructured passive and active uses and supporting infrastructure and embellishments appropriate to intended function.
  - Provides safe or restricted access and buffers around water bodies.

## Circulation and movement

The development plan should show or make provision for:

- A road network design that encourages safe and efficient neighbourhood level traffic and an ability to accommodate a public transport (bus) service.
- Primary vehicle access to the land from Centre Dandenong Road and Spring Road.
- Pedestrian and bicycle networks into and throughout the site.
- Proposed road hierarchies within the site.
- Indicative mitigation works required on the road network:
  - For safe entry to and exit from the site.
  - Address local congestion.
- Connections to adjoining land, especially adjoining public open space.
- Indicative road cross sections.
- Links to existing nearby public transport services.

## Housing

The development plan must show or make provision for:



- A range of lot and dwelling sizes and associated indicative housing typologies including provision for detached and medium density housing, to cater for a variety of housing needs.
- Affordable housing.
- A limitation on the height of dwellings of 9 metres and 2 storeys above finished ground levels in accordance with the Framework Plan at Map 1 of this schedule.
- Guidance on building envelopes for lots less than 300 square metres.
- A minimum setback from the rear boundary on the periphery of the site where abutting existing dwellings, of the greater of:
  - 5 metres from the rear boundary.
  - 9 metres from an existing dwelling (excluding the outbuildings and works normal to that dwelling).
- Guidance on the interface treatments of dwellings addressing public open space to promote positive integration and passive surveillance.
- Guidance on the interface treatments of dwellings addressing public open space to promote positive integration and passive surveillance as well as for screening and amenity purposes within setback areas.
- Requirements for acoustic design treatments that will be required for dwellings to address the impact of aircraft noise.
- Design principles for dwellings to achieve high quality architectural responses, preferred character outcomes and acceptable amenity between dwellings and to the public realm.
- Garden area requirements for dwellings that are intended to apply in lieu of those set by any other provision of the planning scheme.
- Design Guidelines to the satisfaction of the responsible authority that illustrate how future dwellings will be delivered.

#### **Social Impact and Community and Social Infrastructure**

The development plan must identify:

- The likely social impacts of the demand for community and social infrastructure resulting for the proposed development.
- Projects on and off site that may be suitable for funding through infrastructure contributions.
- Possible funding and implementation mechanisms for the provision of community infrastructure.