

Government Land Standing Advisory Committee

Tranche 10 Report

Tyntynder Lane, Bright

28 December 2017

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List of Abbreviations

BAL	Bushfire Attack Level
BMO	Bushfire Management Overlay
CFA	Country Fire Authority
DELWP	Department of Environment, Land, Water and Planning
FZ	Farming Zone
GRZ	General Residential Zone
PCRZ	Public Conservation and Resource Zone
UFZ	Urban Floodway Zone

About this report

On 6 August 2017, the Minister for Planning referred the following sites to the Government Land Standing Advisory Committee as Tranche 10:

- 30 Jarrah & 41 Pearce Streets, Wodonga
- Part C 14L, Section C, Parish of Bright, referred to as Tyntynder Lane, Bright.

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for Tyntynder Lane, Bright.



Brett Davis, Chair

28 December 2017

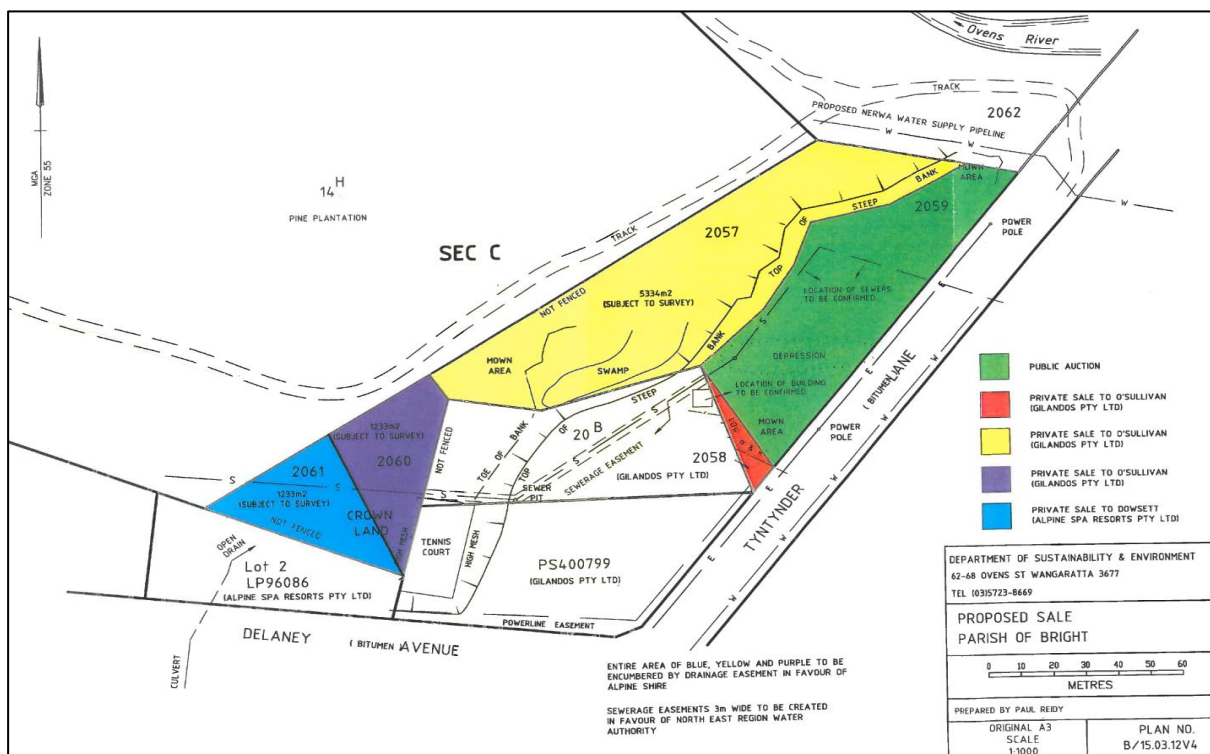
1 Summary and recommendation

1.1 The site

The subject land is approximately 1.4 hectares in area. It comprises of two distinct landforms which require quite different land management approaches because of their geography:

- A lower tier which is located in the Ovens River floodplain shown in Figure 1 as the yellow, purple and blue land.
- An upper tier which adjoins Tyntynder Lane shown in Figure 1 as the green and red land.

Figure 1 Site location



Lower tier land

The lower tier land is land locked and not accessible by public road due to:

- the escarpment that runs from north east to south west
- existing residential development to the south fronting Delaney Avenue
- the HVP Plantation to the north-west which is currently zoned Farming Zone (FZ)
- the Ovens River to the north of the site which is Public Conservation and Resource Zone and includes walking tracks and forest.

The lower tier land is flood prone and contains a drain easement which includes an outfall for stormwater running off Delaney Avenue.

Much of the land, particularly to the north, is in poor condition with large areas of dense weeds. Other parts of the land are being informally managed by neighbours. There is a

container on site and structures have been erected to form an adventure playground and it is clear some effort has been made to manage weeds.

Upper tier land

The upper tier of the land abuts Tyntnder Lane. It is generally flat with sparsely disbursed mature trees and grasses. There has been no previous development on this land.

1.2 Issues raised in submissions

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

Submissions addressed:

- buffer distances for the adjacent HVP Plantation
- bushfire risk
- drainage infrastructure and flooding
- sale process
- adjacent anomalous Public Conservation and Resource Zone (PCRZ) land that is in private ownership.

1.3 Committee conclusion

The site owner proposes to rezone the subject land from PCRZ to part FZ and part General Residential Zone (GRZ). The Committee agrees that this is an appropriate zone if the land is to be sold. The proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the *Ministerial Direction on The Form and Content of Planning Schemes*.

Table 1 Existing and proposed controls

Current planning scheme controls	Proposed planning scheme controls	Advisory Recommendation	Committee
Public Conservation and Resource Zone	Part Farming Zone and part General Residential Zone	Change to part Farming Zone and part General Residential Zone as proposed	
Bushfire Management Overlay	Bushfire Management Overlay	Retain as proposed	

1.4 Recommendation

The Committee recommends that:

For Tyntynder Lane, Bright:

A planning scheme amendment be prepared and approved to:

- a) Rezone the subject site to the part Farming Zone and part General Residential Zone as proposed.**
- b) Retain the Bushfire Management Overlay as proposed.**

2 Process issues for this site

2.1 Process summary

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

Table 2 Proposal summary

Proposal summary	
Tranche and site reference	Tranche 10: site reference FT100-1b
Site address	Part of Crown Allotment 14L, Section C, Parish of Bright referred to as Tyntynder Lane, Bright
Previous use	Vacant
Site owner	Department of Environment, Land, Water and Planning
Council	Alpine Shire Council
Exhibition	25 September– 3 November 2017
Submissions	8

Table 3 Proposed planning scheme changes

Existing controls	Proposed changes
Public Conservation Resource Zone	Part Farming Zone and part General Residential Zone – Schedule 1
Bushfire Management Overlay	Retain

Table 4 Committee process

Committee process	
Members	Brett Davis, Chair
Information session	18 October 2017
Hearing	30 November 2017
Site inspections	30 November 2017
Appearances	Department of Treasury and Finance on behalf of Department of Environment, Land, Water and Planning, represented by Mr Nick Vlahandreas of Mountain Planning. HVP Plantations represented by Warwick Williams
Date of this Report	28 December 2017

2.2 Process issues

(i) Process for selling land

Mrs Kerry Palmer (Submission 6) raised concerns about the manner in which the sale of the surplus government land is proceeding. This concern was also raised at the information session by several other community members who own land adjacent to the subject land that is for sale.

The specific concern of Mrs Palmer was that the proposed changes to the planning scheme:

... appears to support a predetermined range of sales options, including sales to specified parties ... I strongly believe land use planning should identify potential changes in land uses, not predetermined sales options. From this can follow sales options.

The role of the Committee, as outlined in its Terms of Reference, is to recommend appropriate planning controls for surplus government land prior to it being sold. The Committee determines this under the *Planning and Environment Act 1987* in consideration of the most appropriate zone for the land, should it be sold. It does not consider the potential purchasers of the land as part of this process but the most appropriate planning tools to facilitate orderly development of the land.

(ii) Adjoining PCRZ zoned land

Crown Allotment 20B, Section C, Parish of Bright sits between 113 Delany Avenue, Bright and the subject land (to the south of the subject land). The land is owned by Gilandos Pty Ltd, however, it is zoned Public Conservation and Resource.

Mrs Palmer queried why this parcel of land had not been rezoned at the time that the land was sold by the State Government some years ago, and why the opportunity was not being taken through this current process to rezone the land to a more appropriate zone.

This anomalous zoning was identified in the initial planning report prepared by Oxley and Co for the site owner that said:

The zoning of this parcel should be amended as privately owned land should not be affected by a public zone. We have discussed this issue with Council who advised that they are aware of this anomaly and it will be rectified in a future planning scheme amendment.

The Committee agrees with Mrs Palmer that there is merit in rezoning the parcel. The Committee supports correcting the anomaly. However, as this change was not exhibited, to recommend this change could be viewed as a transformation of the Amendment. Additionally, Council did not raise this issue in its submission. The Committee suggests that Council separately approach DELWP with a mind to run a technical correction Amendment.

The Committee concludes:

- There is merit in rezoning Crown Allotment 20B, Section C, Parish of Bright, but not as part of this process as it would be considered transformational.

- Consideration should be given to correcting the anomalous zoning of the Crown Allotment 20B, PCRZ to a more appropriate zone as part of a separate planning scheme amendment.

(iii) Matters to be dealt with by a Section 173 Agreement

Various statutory authorities and HVP Plantations identified planning matters that a future purchaser of the land needs to be aware of and potentially act on. All considered, these matters could be dealt with via a Section 173 Agreement and the site owner and Council have agreed to enter into a Section 173 Agreement to deal with these matters.

They include:

- Protect the drainage function of the land at the rear of 111 Delany Avenue, Bright (to meet the requirements of Goulburn-Murray Water).
- Prohibit the construction of buildings on the lower tier of the subject land (to meet the requirements of Goulburn-Murray Water and North East Catchment Management Authority).
- Require the establishment and maintenance of the 32 metres of defensible space as shown in Figure 2 (to meet the requirements of the Country Fire Authority (CFA)).
- Inform future owners of the adjoining forestry operations (to assist in addressing HVP concerns).

Figure 2: Defendable space requirement



The Committee agrees that a Section 173 Agreement is an appropriate tool to ensure that future purchasers are aware of these issues and the constraints they place on the land. The Committee concludes, prior to the sale of land, a Section 173 Agreement be prepared to:

- protect the drainage function of the land at the rear of 111 Delany Avenue, Bright
- prohibit the construction of buildings on the lower tier of the subject land
- require the establishment and maintenance of the 32 metres of defensible space as shown in Figure 2 of this report
- inform future owners of the adjoining forestry operations.

3 Site constraints and opportunities

3.1 Zoning context

The following Figures show the current and proposed zones.

Figure 2 Current zoning

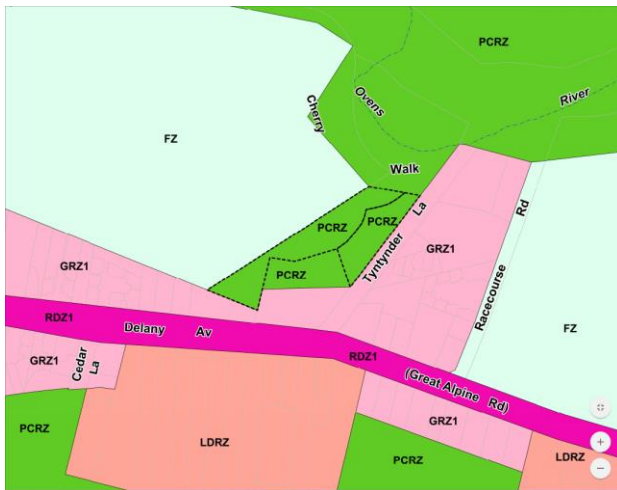
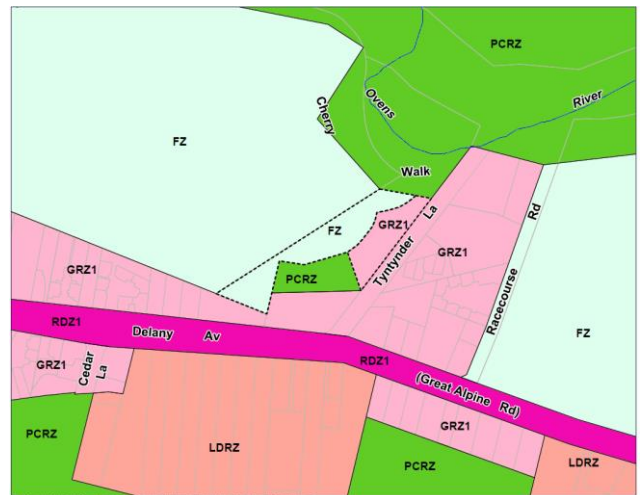


Figure 3 Proposed zoning



3.2 Site history and conditions

(i) The site

The land has been in public ownership for many years, along with most of the land surrounding the township of Bright. As demand for residential land has grown, this land has been sold off and fragmented over the years, creating an anomalous pocket that is the subject of this process.

(ii) Current site conditions

The subject land is approximately 1.4 hectares and comprises of two distinct landforms: a lower tier which is located in the Ovens River floodplain; and, an upper tier adjoining Tyntnder Lane.

The lower tier of the land is located within the Ovens River floodplain and part of the land is an outfall of a drain that goes under Delany Avenue and runs along the eastern side of 111 Delany Avenue, Bright.

The area of the subject land is poorly managed at present and comprises, in areas, dense woody weeds. The current state of this land presents a bushfire risk to the adjoining residential area. To the south of the lower tier, a number of structures including shipping containers and exercise equipment have been erected on the land. There is a small dam to the north of the lower tier land.

The upper tier of the land is relatively flat and sparsely covered with maintained grasses and scattered trees. It has a frontage of 145 metres to Tyntnder Lane.

3.3 Physical constraints

(i) Flooding

Part of the subject land is flood prone. This land is on the lower tier of the subject land (the west). Both Goulburn-Murray Water and North East Catchment Management Authority raised this issue in submissions. North East Catchment Management Authority advised the extent of flooding is in the process of being mapped as part of a joint project between North East Catchment Management Authority and councils within the catchment.

North West Catchment Management Authority advises that a likely outcome of this process will be the application of a Land Subject to Inundation Overlay to part of the subject land which would prohibit buildings from being constructed on the land subject to flooding.

The site owner and North West Catchment Management Authority have discussed this issue and agree that a Section 173 agreement should be entered into prior to the sale of the land to prohibit future building on the flood prone land. This is discussed further in this report.

(ii) Asset and drainage easements

The land at the rear of 111 Delany Avenue, Bright is used for drainage as an outfall to drainage infrastructure which captures water from Delany Avenue and passes it underneath the road, to the east of the house on 111 Delany Avenue and discharges it to the area at the rear of 111 Delany Avenue. The water then dissipates overland to the Ovens River or is permeated through the river gravel into the groundwater system.

The site owner, submitted that Council indicated there are no plans to change this drainage system. As such, it was submitted must be protected from inappropriate development that could impact on the drainage function or development which could be impacted by drainage.

The site owner and Council have discussed this issue and agree that a Section 173 agreement should be entered into prior to the sale of the land to protect the drainage infrastructure. This is discussed further in this report.

(iii) Interface with surrounds

The surrounding land comprises a mix of residential development, at a range of densities, pine plantation and public land.

To the north of the subject land is the Ovens River. Alongside both banks of the river, in this location, is the popular Cherry Walk trail. The Cherry Walk trail is a 3 kilometre loop that commences from Centenary Park in the centre of town. This section of river is also popular for kayaking and fishing.

Immediately south of the subject land is 111 and 113 Delany Avenue, Bright (Bright Chalet) which are used for residential and accommodation purposes.

Bright Chalet (113 Delany Avenue) is located on approximately 3,977 square metres of land and comprises a number of lots. The chalet also owns Crown Allotment 20B, Section C, Parish of Bright which it purchased from the State Government and this parcel remains in a

public zone as outlined elsewhere in the report. Further south, beyond Delany Avenue, is a series of elongated Low Density Residential zoned allotments that extend up the hillside.

East of the subject land, on the other side of Tyntynder Lane, is land in the GRZ that comprises a mix of residential development at a range of densities. To the west of the subject land is a pine plantation which is managed by HVP Plantations. Separating the subject land and the pine plantation is an 8 metre wide gravel road.

(iv) Access

The higher land to the north of 111 Delany Avenue, Bright can be accessed from Tyntynder Lane. Access to the lower tier land, on the west of the subject site, is not possible by public road due to the sharp drop of the land. Vehicular access would only be obtainable by accessing the dirt road running around the perimeter of the pine plantation. This is not legal access as there is no road reserve covering the dirt road and this road is part of the HVP Plantation licence.

4 Issues with the proposed changes

4.1 What zone is suitable

4.1.1 Evidence and submissions

(i) Lower tier land

Mrs Palmer submitted that the proposed zoning of the lower tier land to FZ was illogical as the land would never be used for farming. She submitted that a “RZ” with a flood overlay and a Section 173 Agreement to prevent development of the land would be more suitable. While not totally clear from Mrs Palmer’s submission, the Committee understands Mrs Palmer is using RZ to describe a residential zone.

(ii) Upper tier land

HVP Plantations (HVP) objected to the proposed GRZ which would allow for residential development on the land for two reasons. They submitted that the GRZ created a conflict between the existing plantation forest and future residents of this land. HVP submitted that the whole of the land should be zoned FZ to provide for a buffer between the plantation operations and residents.

HVP Plantations considered development should not occur on any of the land, including the upper tier land, given the proximity of the plantation, and the behaviour of fires in pine plantations. HVP raised ongoing amenity issues should the land be rezoned, citing operations starting at 4am and noise. They argued that truck traffic is an inevitable part of the business and concerns about having large trucks in small suburban streets.

4.1.2 Discussion

(i) Lower tier land

The lower tier land has several significant constraints. It is not accessible by a public road, it is flood prone, it contains a drainage easement and outflow and it directly abuts the HVP pine plantation, which is zoned FZ. At the moment it acts as an informal buffer between the HVP Plantation operations and nearby residential uses.

The Committee agree with Mrs Palmer that it is not likely to be used as farming land, unless HVP Plantations wish to extend their operations onto the land.

The question is, what is the right zone for this land? No options other than FZ were explored at the Hearing.

Mrs Palmer’s suggestion of a residential zone made in her submission cannot be supported by the Committee because of the constraints on the land identified above. There is no benefit to be gained by zoning this parcel of land to a residential zone and then placing restrictions on the land which mean it will never be developed.

The Urban Floodway Zone (UFZ) would be a suitable zone, however, the proposed Section 173 achieves the same level of control to prevent development that the Urban Floodway

Zone does, and the application of the UFZ would introduce a new zone into the Alpine Planning Scheme for little benefit.

The FZ proposed for this land naturally extends onto the FZ applying to the balance of the lower tier land used by HVP Plantations to the north-west.

(ii) Upper tier land

The two issues that arise on the upper tier land are buffers to the pine plantation, and bushfire risk.

Buffers to the pine plantation

HVP Plantations described the type of conflicts timber plantations generate with residential development including noise, dust, truck movements and light spill during harvesting time. In addition, when plantations are harvested, there is often community displeasure that plantation areas are no longer able to be used for recreational purposes like walking, running and mountain biking and the naked slopes are seen to be a visual eyesore.

To the Committee's mind, these are all legitimate concerns that must affect all timber plantations that are in proximity to residential areas. HVP Plantations has submitted that there is a growing expectation on it to maintain buffers on its land rather than rely on publicly zoned land surrounding its plantations as it has been able to do in the past.

The issue of how buffers around resources like timber plantations are identified and managed has not been resolved at a state level, although it is becoming a more and more pressing issue across the state as settlements grow.

HVP Plantations submitted that:

The maintenance of an effective buffer between the plantation and the residential area is a more significant objective for the subject land than the creation of two or three house lots.

HVP Plantations provided no data or evidence to substantiate this submission.

While the Committee has sympathy with the HVP Plantation's position, it is not convinced that the addition of two or three house lots on Tyntynder Lane will cause any additional problems in relation to the residential / plantation conflicts than currently exist in this area. When the Committee asked HVP whether or not they agreed that there are other residential areas, at far higher densities closer to their plantations across the State, Mr Williams replied:

Putting 3 houses on Tyntynder lane is not going to change the world but it adds to our management burden and reputation in the community.

A buffer will still be maintained on the lower tier land which is proposed to be zoned FZ. Future landowners of the upper tier land will be made aware of the impact of the HVP Plantation operations prior to purchase and can make their own decision.

The issue of the proper identification and management of buffers around timber plantations (and other state resources) is one the Committee encourages HVP Plantations to address strategically for all of its assets in partnership with the State Government and affected Councils.

Bushfire risk

The site owner submitted that:

The subject land is covered by the Bushfire Management Overlay (BMO), as is the whole of the Bright township. It is not proposed to alter the BMO; however, it is important to consider the BMO especially for the land proposed to be rezoned GRZ to ensure that residential development is possible in the future.

Based on the provisions of Clause 52.47 Planning for Bushfire, the site owner has assessed whether it is feasible for the upper tier land to be developed for housing. He concluded:

the defensible space required, based on the pine plantation containing Forest vegetation and the land consisting of a downslope of 0-5 degrees, would be 32m for a BAL (Bushfire Attack Level) 29. The land to be rezoned GRZ has the potential to be subdivided into two or three allotments and therefore a BAL 12.5 or BAL 19 construction standard could be applied to the land. However, in our experience it is best to construct buildings to a BAL 29 on the edge of the Bright township where there is an interface with vegetation.

The CFA is satisfied with the site owners' calculations and are supportive of the amendment based on these.

While HVP Plantations may argue that it is unreasonable to introduce additional housing on the upper tier due to bushfire risk, the assessment against the Victoria Planning Provisions by the site owner shows that it is reasonable. HVP Plantations has not provided any evidence to contradict this. On this basis, the Committee can support a GRZ for this land.

4.1.3 Conclusion

The Committee concludes:

- the FZ is the most suitable zone for the lower tier land and the GRZ1 is the most suitable zone for the upper tier land as proposed by the site owner.

4.2 What overlays are suitable

4.2.1 Evidence and submissions

The BMO applies to the entirety of the site and this control is not proposed to change.

As part of the preparation of the Amendment, the CFA has been consulted and they are supportive of the Amendment in its current form, including the defensible space of 32 metres to the north-west that is proposed to be included in a Section 173 Agreement.

While having bushfire concerns as covered above, HVP Plantations do not object to the application of the BMO.

4.2.2 Discussion and conclusion

There is no challenge to the continued application of the BMO on the land.

4.3 Recommendation

For Tyntynder Lane, Bright:

A planning scheme amendment be prepared and approved to:

- a) Rezone the subject site to the part Farming Zone and part General Residential Zone as proposed.**
- b) Retain the Bushfire Management Overlay as proposed.**

Appendix A: About the Government Land Standing Advisory Committee

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

The Minister for Planning approved revised Terms of Reference for the Committee in July 2017.

The purpose of the Committee is:

... to advise the Minister for Planning on the suitability of changes to planning provisions for land owned, proposed to be owned in the future, or to facilitate the delivery of priority projects by the Victorian Government.

The Committee consists of:

- Chair: Lester Townsend
- Deputy Chairs: Brett Davis and Mandy Elliott
- Members: Gordon Anderson, Alan Chuck, Jenny Fraser, Rachael O’Neill, John Ostroff, Tania Quick, Cazz Redding and Lynn Sweeney.

The Committee is assisted by Ms Emily To, Project Officer with Planning Panels Victoria.

The Committee’s Terms of Reference state:

25. *The Standing Advisory Committee must produce a written report for the Minister for Planning providing:*
 - *An assessment of the appropriateness of any changes of planning provisions, in light of the relevant planning scheme and State and Local Planning Policy Frameworks.*
 - *An assessment of whether the proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes.*
 - *An assessment of whether planning scheme amendments could be prepared and adopted in relation to each of the proposals.*
 - *An assessment of submissions to the Standing Advisory Committee.*
 - *Any other relevant matters raised in the course of the Standing Advisory Committee Hearing.*
 - *A list of persons who made submissions considered by the Standing Advisory Committee.*
 - *A list of persons consulted or heard.*

Appendix B: List of Submitters

No.	Submitter
1	North East Catchment Management Authority
2	Goulburn-Murray Water
3	Department of Treasury and Finance
4	CFA
5	North East Water
6	Kerry Palmer
7	HVP Plantations
8	Alpine Shire Council

Appendix C: Document list

Documents Presented to Hearing (No.)	Description	Presented By
1	Panel submission, Tyntynder Lane Bright	Nick Vlahandreas, Mountain Planning
2	Submission by HVP Plantations to the Government Land Standing Advisory Committee, meeting at Bright, 30 November 2017	Warwick Williams, HVP Plantations
