

**Hume Planning Scheme  
Referral 31: 140-204 Western Avenue, Westmeadows**

**Priority Projects Standing Advisory Committee Report**

*Planning and Environment Act 1987*

**11 October 2023**

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

*Planning and Environment Act 1987*


Priority Projects Standing Advisory Committee Report pursuant to section 151 of the PE Act

Hume Planning Scheme

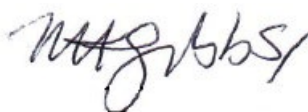
Referral 31: 140-204 Western Avenue, Westmeadows

11 October 2023

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Con Tsotsoros, Chair



Dr Meredith Gibbs, Member

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## Glossary and abbreviations

Biodiversity assessment	Biodiversity assessment for a proposed industrial development at 140-204 Western Avenue, Westmeadows, Victoria (December 2022), Ecology & Heritage Partners
Biofiltration guidelines	Biofiltration Systems in Development Services Schemes Guidelines (September 2020), Melbourne Water
BPEM	EPA Publication 788.3 Best Practice Environmental Management Siting, Design, Operation and Rehabilitation of Landfills
Council	Hume City Council
the Creek	Moonee Ponds Creek
DDO6	Design and Development Overlay Schedule 6
DEECA	Department of Energy, Environment and Climate Action
DELWP	Department of Environment, Land, Water and Planning (closed)
DTP	Department of Transport and Planning
EP Act	<i>Environment Protection Act 2017</i>
EPA	Environment Protection Authority
EPA guidance	EPA Publication 1642 Assessing planning applications within the buffer of a landfill
FoMPC	Friends of Moonee Ponds Creek
GED	general environmental duty under the EP Act
IN3Z	Industrial 3 Zone
Melbourne Airport	Australia Pacific Airports (Melbourne) Pty Ltd
PE Act	<i>Planning and Environment Act 1987</i>
PPRZ	Public Park and Recreation Zone
Senversa report	Environmental Summary Report 140 -204 Western Avenue, Westmeadows (2022), Senversa
Stormwater strategy	Stormwater Management Strategy 140-204 Western Avenue, Westmeadows (April 2023), Dalton Consulting Engineers
subject land	140-204 Western Avenue, Westmeadows
TTTDAG	Terminate Tulla Toxic Dump Action Group

# 1 Overview

## (i) Referral summary

Referral summary	
Referral date	16 July 2023
Members	Con Tsotsoros (Chair), Meredith Gibbs
Committee assisted by	Chris Brennan, Senior Project Officer, Office of Planning Panels Victoria
Referral description	Subdivide and develop the subject land for industrial and commercial uses
Subject land	140-204 Western Avenue, Westmeadows
Site inspection	Unaccompanied, 31 August 2023
<b>Amendment</b>	<b>Hume C269hume</b>
Description	Seeks to rezone the subject land to part Industrial 3 Zone and part Public Park and Recreation Zone
Planning Authority	Minister for Planning
Proponent	MAB Corporation Pty Ltd
Exhibition	19 April to 10 May 2023
<b>Planning permits</b>	<b>PA2302140, PA2302142 and PA2302143</b>
Description	Collectively, the planning permit applications seek to: <ul style="list-style-type: none"> <li>- use and develop the subject land for a data centre and a warehouse</li> <li>- display signage and reduce the standard car parking requirements</li> <li>- subdivide the subject land into 34 lots including a stormwater bioretention area</li> <li>- remove part of a drystone wall and remove native vegetation</li> </ul>
Permit Applicant	MAB Corporation Pty Ltd

**(ii) Committee process**

Committee process	
Directions Hearing	8 August 2023
Hearing	4, 5, 7, 12 and 15 September 2023
Parties	<p>MAB Corporation Pty Ltd, represented by Peter O'Farrell and Jordan Wright of Counsel, instructed by Rhodie Anderson of Rigby Cooke Lawyers, who called expert evidence on:</p> <ul style="list-style-type: none"> <li>- flora and fauna from Aaron Organ of Ecology and Heritage Partners</li> <li>- industrial land supply from Rhys Quick of Urbis</li> <li>- landscaping from Barry Murphy of Murphy Landscape Consultancy</li> <li>- planning from John Glossop of Glossop Town Planning</li> <li>- stormwater and drainage from Chris Beardshaw of Afflux</li> <li>- traffic from John Kiriakidis of Stantec</li> </ul> <p>Hume City Council represented by Allison Tansley of Harwood Andrews Lawyers</p> <p>Friends of Moonee Ponds Creek Inc represented by Kaye Oddie</p> <p>Terminate Tulla Toxic Dump Action Group represented by Helen van den Berg</p> <p>Carolyn Layton</p> <p>Cherine Fielder</p> <p>Graeme Hodgson</p> <p>Greg Hunt</p> <p>Dr John Knowles</p> <p>Julie Law and Kim Westcombe</p> <p>Kaylene Wilson</p> <p>Peter Barbetti</p> <p>Renae Kenessy</p> <p>Roy Ellis</p>
Citation	Priority Projects Standing Advisory Committee Referral 31 [2023] PPV
Date of this report	11 October 2023

## 2 Executive summary

The land at 140-204 Western Avenue, Westmeadows (subject land) is strategically located at Melbourne's international gateway next to Melbourne Airport. It is near the Tullamarine Freeway entrance which provides access to a freeway network within Metropolitan Melbourne, Victoria and interstate. Wright Street separates the transport, commercial and industrial activities to the west (north of Western Avenue) and residential areas to the east.

The Farming Zone anomalously applies to the subject land, being land within Melbourne's Urban Growth Boundary. Hume City Council (Council) has not identified a future zone for the subject land or sought to rezone it to an urban zone through one of its Planning Scheme reviews since the nearby Tullamarine landfill ceased to operate in 2008. During that time, there have been numerous proposals seeking to rezone the land for urban purposes which Council has resolved to:

- not authorise amendment proposals in 2009 and 2010
- abandon Amendment C160 in 2012, Amendment C202 in 2015 and Amendment C250hume in 2022.

### (i) The proposal and the referral

In August 2022, MAB Corporation (the Proponent) submitted a new proposal to the Development Facilitation Program to:

- use and develop the subject land for industrial development incorporating warehouses and a data centre
- provide 3.57 hectares of public open space along the Moonee Ponds Creek corridor with a stormwater bioretention area
- include a 40-metre-wide landscape area along the eastern boundary (Wright Street).

The Proponent seeks to achieve this through a combined application comprising:

- draft Amendment C269hume to:
  - rezone the subject land within the Urban Growth Boundary from Farming Zone to Industrial 3 Zone
  - rezone the proposed public open space reserve to Public Park and Recreation Zone (except for the bioretention area which will remain Public Use Zone)
  - apply a new Design and Development Overlay Schedule 6
- draft Permit PA2302140 to use and develop the subject land for the purpose of warehouses generally in accordance with the endorsed plans
- draft Permit PA2302142 to subdivide the subject land, use and develop a utility installation (stormwater bioretention area), remove drystone wall, and remove native vegetation in accordance with endorsed plans
- draft Permit PA2302143 to use and develop the subject land for a utility installation (data centre).

The Department of Transport and Planning exhibited the proposal from 19 April to 10 May 2023 and received 83 submissions. On 16 July 2023, the Minister for Planning referred specific issues raised in these submissions to the Committee for its advice and recommendations. They relate to industrial warehouse supply, rezoning, stormwater discharge into the Moonee Ponds Creek,



wildlife impact, native vegetation, contaminated land, legacy remediation, air and dust pollution, design, 'buffer' preference, traffic and congestion.

## **(ii) Findings to referred issues**

The combined Amendment and permits are supported by a well prepared and comprehensive proposal which appropriately considers relevant issues and provides robust evidence-based information.

To better understand the referred issues, the Committee has informed itself through:

- technical reports which accompanied the proposal
- submissions from Council, community associations, and members of the community concerned about the potential impact associated with developing the subject land
- submissions from the Proponent
- expert evidence.

Collectively, this information persuaded the Committee that the Amendment and permits would benefit from changes requested by the Proponent, Council, other parties and expert witnesses. These changes are reflected in the Committee's findings and recommended Design and Development Overlay Schedule 6 and permit conditions.

## **Strategic issues**

The Amendment is strategically justified and appropriately applies the Industrial 3 Zone, Public Park and Recreation Zone and Design and Development Overlay Schedule 6.

There is demand for more industrial land supply in this region of Melbourne, particularly near Melbourne Airport and the freeway network. Industrial 3 Zone is appropriate for the subject land because its provisions will ensure that future industry responds sensitively to the neighbouring residential area east of Wright Street.

The Amendment should be prepared and progress because it:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is well founded and strategically justified
- appropriately applies the zones and overlay in the Victoria Planning Provisions.

## **Stormwater**

The proposed stormwater strategy, with changes recommended by Mr Beardshaw, is appropriate to manage stormwater flows on the subject land and to the Moonee Ponds Creek. The proposed bioretention system should have an eastern outfall and include appropriate valves at the detailed design stage to better protect against polluted stormwater from pollution incidents on the subject land.

## **Wildlife and native vegetation**

The comprehensive biodiversity assessment has appropriately considered the proposal's potential impact on wildlife and native vegetation on the subject land, abutting creek corridor and surrounding open space environs. The proposal will result in an acceptable impact on wildlife and native vegetation. It would benefit from the subdivision permit requiring a Kangaroo Management Plan.

## **Contamination**

The subject land has been subject to previous contamination investigations into risks from legacy landfill contamination, including an environmental audit. They found groundwater about 25 metres below the surface was contaminated, but no soil contamination or landfill gas impacts. The audit determined the subject land is suitable for the proposed uses subject to conditions prohibiting groundwater from being extracted for certain uses and requiring monitoring wells on the subject land as part of the closed landfill aftercare program.

The proposal is unlikely to disturb contaminated land or negatively impact human health and the environment due to the presence of contamination. The proposal appropriately responds to legacy remediation issues subject to requiring a section 173 agreement with the responsible authority to ensure ongoing access to the monitoring wells on private land for as long as they are needed.

From a legacy contamination perspective, the subject land does not need to remain vacant and there is no reason why the Amendment and permits should not proceed.

## **Landscape response**

The proposal provides an appropriate landscape design response including:

- mitigation of visual and other amenity impacts of the proposed industrial use
- visual integration of the subject land and its proposed uses with the Moonee Ponds Creek and environs.

There should be a permit condition requiring the Landscape Masterplan to be finalised in consultation with Council.

Regarding the Wright Street landscape area, Design and Development Overlay Schedule 6 should:

- explain in the relevant design objective that the area is needed to soften the appearance of and filter views to industrial built form from Wright Street
- require multilayered planting to maintain neighbourhood amenity along Wright Street.

There is no landscape design reason why the Amendment and permits should not proceed.

## **Built form design**

The proposed design appropriately responds to the subject land and the surrounding area but would benefit from further changes. Specifically:

- Planning Permit PA2302142 (subdivision) should require plans for future buildings on Lots 22, 23, 24, 25, 39 and 40, to use muted tones on external surface and façade materials (excluding glazing) and to avoid highly reflective surfaces.
- Planning Permits PA2302140 (warehouses) and PA2302143 (data centre) should require any solar panel on the building to be designed and oriented to minimise the risk of glint and glare that may visually distract pilots.
- All three planning permits should require external lighting to be installed or baffled so it does not cause light to spill above the horizontal plane.

There is no built form design reason why the Amendment and permits should not proceed.

## Buffer

The subject land is not identified or needed as a buffer between the closed landfill to its west and the residential area east of Wright Street. The Industrial 3 Zone provides an appropriate planning framework for ensuring future uses are compatible with the nearby residential area and do not negatively affect the safety and amenity of adjacent residents.

The 58-metre separation between future industry and the closest residential property boundary is beyond the 30-metre threshold specified for certain land uses in the Industrial 3 Zone and beyond what is needed to manage potential off-site amenity impacts.

While the subject land is not needed as a buffer, there are two important factors which will minimise potential impact on residents east of Wright Street:

- the Industrial 3 Zone provisions which “*ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses*”
- 58-metre separation between industry and residential properties, including the 40-metre-wide landscape area along Wright Street which will set back built form.

There is no buffer related reason why the Amendment and permits should not proceed.

## Traffic

The traffic reports are accurate and current enough to assess the three permit applications. Based on figures in these reports, the local road network has enough capacity to manage additional traffic generated by the proposed use and development. The proposal is not responsible for improving existing traffic issues, noting that one intersection currently operates beyond capacity during afternoon peak time. The proposed use and development, with road network improvements required through conditions in Planning Permit PA2303142 (subdivision) will:

- result in a reasonable impact on the local road network and safety
- improve the operation of two intersections during afternoon peak time
- result in no intersection operating beyond capacity during peak times.

Future roundabout works to the Western Avenue / Hillcrest Avenue intersection should restrict B-double trucks from accessing Hillcrest Avenue. PA2303142 Conditions 16 and 17 (see Appendix D:3) requiring traffic upgrade works should be further investigated to determine whether:

- it is possible to require works outside the subject land
- there is an alternative suitable mechanism such as a section 173 agreement if a permit condition is found to be unsuitable.

There is no traffic related reason why the Amendment and permits should not proceed.

## (iii) Recommendations

The Priority Projects Standing Advisory Committee recommends the Minister for Planning:

1. **Request that Hume Planning Scheme Amendment C269hume be prepared as exhibited subject to:**
  - a) **revising Design and Development Overlay Schedule 6, as shown in Appendix D:1**
  - b) **applying the revised Design and Development Overlay Schedule 6 to land south of Western Avenue and land proposed to be Lots 4, 5, 6 and 7 on the Plan of Subdivision.**

2. **Approve Hume Planning Scheme Amendment C269hume with changes in Recommendation 1, pursuant to section 20(4) of the *Planning and Environment Act 1987*.**
3. **After approving Hume Planning Scheme Amendment C269hume, approve:**
  - a) **Permit PA2302140 regarding warehouses, as shown in Appendix D:2**
  - b) **Permit PA2302142 regarding subdivision, as shown in Appendix D:3**
  - c) **Permit PA2302143 regarding the data centre, as shown in Appendix D:4.**

## 3 Introduction

### 3.1 Terms of Reference and referral letter

The Minister for Planning appointed the Priority Projects Standing Advisory Committee (the Committee) on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference dated 9 September 2023 (Appendix E) to:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Minister for Planning approved a revised Terms of Reference (Version 2) for the Committee part way through the Hearing process. The Committee advised parties of the updated Terms of Reference on 12 September 2023. The revised Terms of Reference do not alter the task of the Committee for this referral.

#### (i) Issues referred to the Committee

The Minister for Planning provided a referral letter dated 16 July 2023 to the Lead Chair of the Committee which requires the Committee's advice on specified issues. Table 1 outlines these issues and the relevant chapters with the Committee's response.

**Table 1 Requested advice and relevant report chapters**

Requested advice and recommendations	Relevant report chapter
<b>Advice on referred issues</b>	
Oversupply of industrial warehouses	6.1 Industrial land supply
Rezoning from Farming Zone to Industrial 3 Zone	6.2.2 Industrial 3 Zone
Stormwater discharge into the Moonee Ponds Creek	7.1 Stormwater
Impacts to wildlife and native vegetation removal	7.2 Wildlife and native vegetation
Disturbance of contaminated land	7.3 Contamination
Issues arising from contamination of land	7.3 Contamination
Legacy remediation issues of the site	7.3 Contamination
Air and dust pollution	7.3 Contamination
Poor design response	8 Design response
Preference for the land to remain as a 'buffer' between residential establishment and existing landfills in the area	9.1 Buffer
Traffic and congestion	9.2 Traffic
<b>Recommendations</b>	
Should the Minister for Planning approve the Amendment?	6.3 Amendment strategic justification
Should the Minister for Planning approve the permits?	2(iii) Recommendations to the Minister for Planning

**(ii) Issues not referred to the Committee**

The Committee has not considered issues raised in submissions which were not listed in the referral letter, including:

- financial compensation
- compulsory land acquisition
- cultural heritage
- planning authority or responsible authority for the subject land
- rezoning land along the Moonee Ponds Creek corridor to Public Park and Recreation Zone (PPRZ)
- transferring part of the subject land to Hume City Council (Council) as public open space.

**3.2 Proposal background**

Background summary	
2008	Tullamarine landfill west of the subject land ceased to operate
2009 and 2010	Planning scheme amendment proposals on subject land and adjacent land which were not authorised for exhibition
2012	Council abandoned Hume Amendment C160 which proposed to rezone the subject site to the Commercial 2 Zone and apply the Development Plan Overlay
2015	Council abandoned Hume Amendment C202 which proposed to rezone the subject land to the Comprehensive Development Zone for warehousing, industry and office uses
<b>2022</b>	
2022	Council abandoned Hume Amendment C250hume which proposed to rezone the subject land and adjacent land in Wright Street to Industrial 1 and General Residential, and apply the Development Plan Overlay, before reviewing submissions
Aug	Proponent formally submitted the proposal to the Development Facilitation Program
28 Oct	Clause 12.03-1S (corridors, waterways, lakes and wetlands) updated the Healthy Waterways Strategy [Amendment VC224]
Sep – Dec	Development Facilitation Program referred proposal for comment to various government agencies
<b>2023</b>	
3 Mar	Development Facilitation Program confirmed recommendation to proceed to priority assessment  Melbourne Industrial and Land Use Plan (MILUP) (Department of Environment, Land, Water and Planning, 2020) was introduced in the Planning Policy Framework [Amendment VC215]
20 Mar	Clause 18.02-7R (Melbourne Airport) was amended to reference the Melbourne Airport Master Plan 2022 (Australia Pacific Airports (Melbourne) Pty Ltd) [Amendment VC229]
19 Apr – 10 May	Draft Amendment and permits were publicly exhibited and attracted 83 submissions
8 May	Council resolved to forward a submission objecting to the proposal

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15 Jun	Municipal Planning Strategy and local policies in the Planning Policy Framework replaced Clauses 21 and 22 [Amendment C257hume]
16 Jul	Minister for Planning referred the proposal to the Committee

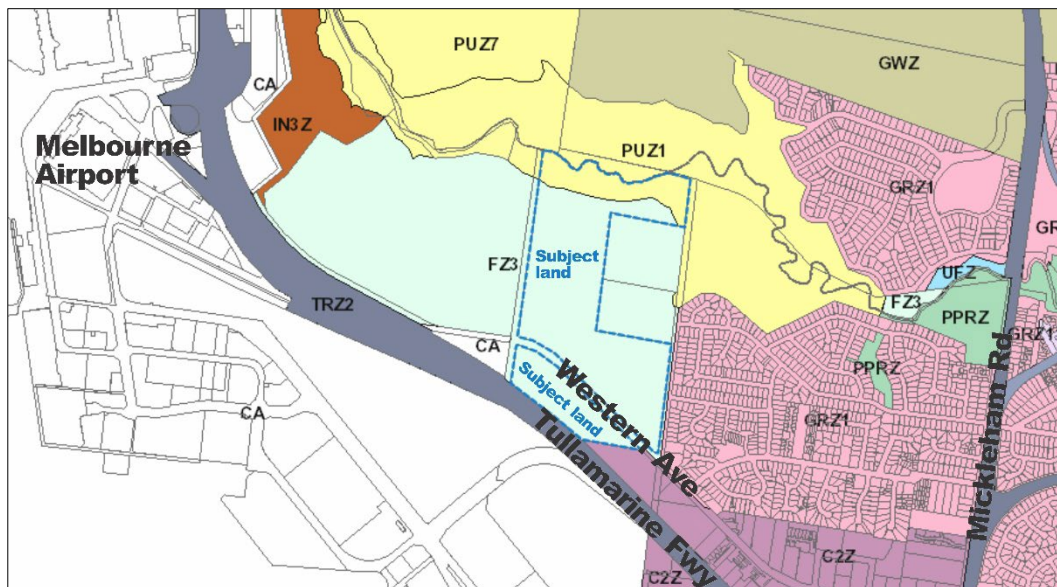
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## 4 Subject land and planning context

### 4.1 The subject land and surrounds

- Address:** 140-204 Western Avenue, Westmeadows (see Figure 1) comprising Lots 1 and 2 on Title Plan TP512682
- Zone:** Farming Zone and Public Use Zone 1 (see Figure 1)
- Overlays:** Environmental Significance Overlay (part)  
Environmental Audit Overlay (part)  
Land Subject to Inundation Overlay (part)  
Melbourne Airport Environs Overlay (part).
- Surrounding land:** Public Use Zone 1 on land to the north (Moonee Ponds Creek environs)  
Farming Zone on land to the west (closed landfill) and land to the east on Wright Street  
General Residential Zone on land to the east (Westmeadows Estate)  
Commercial 3 Zone on land to the east (Western Avenue and Global Drive Business Park)  
Transport Zone 2 to the south (Tullamarine Freeway)  
Commonwealth land to the south associated with Melbourne Airport (no zone applicable)

**Figure 1** Existing Planning Scheme Zones



Source: VicPlan and Planning Panels Victoria

### 4.2 Planning Scheme and context

The Committee has reviewed the draft Explanatory Report, the Proponent's Part A submission, and the exhibited Planning Report in preparing the below list of relevant permit triggers and other provisions, planning policy, ministerial directions, and practice notes. These documents identify why the Amendment and permits are consistent with the Planning Scheme and context, which the Committee has not repeated.



**(i) Permit triggers and other provisions**

The permit triggers and provisions set out in Table 2 are relevant to the subject land.

**Table 2 Subject land planning permit triggers including proposed provisions**

Provisions	Permit trigger
Industrial 3 Zone (proposed)	<p>A permit is required to:</p> <ul style="list-style-type: none"> <li>- use part of the land for a utility installation (data centre)</li> <li>- subdivide land</li> <li>- construct a building or construct or carry out works</li> </ul> <p>A permit is not required to use the proposed buildings for a 'warehouse' if IN3Z Section 1 conditions are met</p>
Public Park and Recreation Zone (proposed)	<p>A permit is required to:</p> <ul style="list-style-type: none"> <li>- subdivide land</li> <li>- construct a building or construct or carry out works</li> </ul>
Public Use Zone 1	<p>A permit is required to:</p> <ul style="list-style-type: none"> <li>- use land for a utility installation</li> <li>- subdivide land</li> <li>- construct a building or construct or carry out works</li> </ul>
Design and Development Overlay Schedule 6 (proposed)	<p>A permit is required to:</p> <ul style="list-style-type: none"> <li>- subdivide land</li> <li>- construct a building or construct or carry out works</li> </ul>
Environmental Significance Overlay	<p>A permit is required to:</p> <ul style="list-style-type: none"> <li>- construct a building or construct or carry out works</li> <li>- remove, destroy or lop native vegetation (not otherwise exempt by the Planning Scheme)</li> </ul>
Land Subject to Inundation Overlay	A permit is required to subdivide land
Melbourne Airport Environs Overlay	A permit is required to subdivide land
Clause 52.06 (Car parking)	A permit is required to reduce the number of car parking spaces required
Clause 52.17 (Native vegetation)	A permit is required to remove native vegetation
Clause 52.33 (Post Boxes and Dry Stone Walls)	A permit is required to remove part of a dry stone wall
<b>Provisions which do not trigger a permit for the proposed development but are relevant</b>	
Overlays	- Clause 45.03 (Environmental Audit Overlay)
Particular provisions	<ul style="list-style-type: none"> <li>- Clause 52.29 (Land adjacent to the principal road network)</li> <li>- Clause 53.01 (Public Open Space Contribution and Subdivision)</li> <li>- Clause 53.18 (Stormwater Management in Urban Development)</li> </ul>

**(ii) Planning Policy Framework**

**Clause 2 (Municipal Planning Strategy)**

- 02.02 (Vision - Hume)
- 02.03 (Strategic directions)
  - 02.03-1 (Settlement)
  - 02.03-2 (Environmental and landscape values)
  - 02.03-4 (Natural resource management)
  - 02.03-5 (Built environment and heritage)
  - 02.03-7 (Economic development)
  - 02.03-8 (Transport)
  - 02.03-9 (Infrastructure)

**Clause 11 (Settlement)**

- 11.01-1S (Settlement)
- 11.02-1S (Supply of urban land)
- 11.02-3S (Sequencing of development)

**Clause 12 (Environmental and landscape values)**

- 12.01-1S (Protection of biodiversity)
- 12.01-2S (Native vegetation management)
- 12.03-1S (River and riparian corridors, waterways, lakes, wetlands and billabongs)

**Clause 13 (Environment risks and amenity)**

- 13.04-1S (Contaminated and potentially contaminated land)
- 13.07-1S (Land use compatibility)

**Clause 14 (Natural resource management)**

- 14.02-2S (Water quality)

**Clause 15 (Built environment and heritage)**

- 15.01 (Built environment)
  - 15.01-1S (Urban design)
  - 15.01-1L-04 (Industrial areas and business parks)
  - 15.01-2S (Building design)
  - 15.01-2L-03 (Environmentally sustainable development – Hume)
  - 15.01-3S (Subdivision design)
- 15.03-2S (Aboriginal cultural heritage)

**Clause 17 (Economic development)**

- 17.01-1S and 17.01-1R (Diversified economy)
- 17.03-1S (Industrial land supply)

**Clause 18 (Transport)**

- 18.01-2S (Transport system)
- 18.02-5S (Freight links)
- 18.02-7S (Airports and airfields)
- 18.02-7R (Melbourne Airport)

**Clause 19 (Infrastructure)**

- 19.02-6S (Open space)

- 19.02-6R (Open space – Metropolitan Melbourne)
- 19.03-3S (Integrated water management)

#### **Plan Melbourne**

- Policy 1.1.5 – Support major transport gateways as important locations for employment and economic activity
- Policy 1.1.6 – Plan for industrial land in the right locations to support employment and investment opportunities
- Policy 2.4.2 – Facilitate the remediation of contaminated land, particularly on sites in developed areas of Melbourne with potential for residential development

#### **(iii) Directions, practice advice, guidelines and other documents**

##### **Ministerial directions**

- Ministerial Direction 1 (Potentially Contaminated Land)
- Ministerial Direction 9 (Metropolitan Planning Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 19 (The Preparation and Content of Amendments that may Significantly Impact the Environment, Amenity and Human Health)

##### **Planning Practice Notes and guide**

- Planning Practice Note 30 (Potentially Contaminated Land)
- Planning Practice Note 46 (Strategic Assessment Guidelines)
- Writing Planning Permits (Department of Transport and Planning, May 2023)

##### **Other relevant documents**

- Melbourne Industrial and Commercial Land Use Plan 2020
- Hume Corridor Integrated Growth Area Plan Spatial Strategy (Hume City Council, 2015).

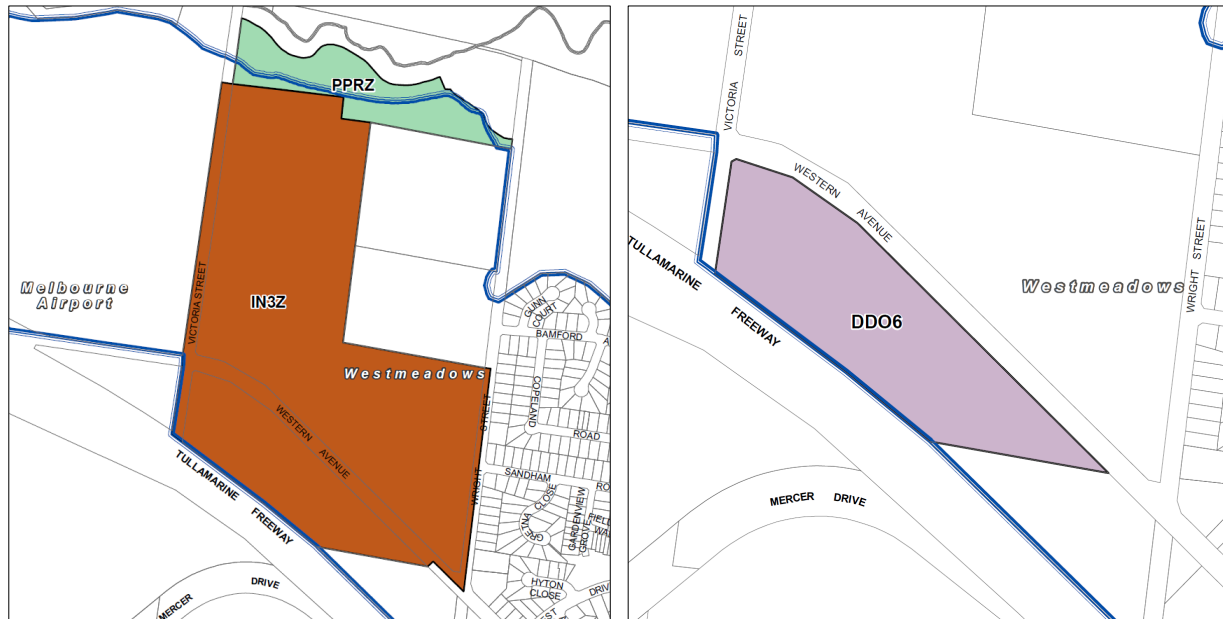


## 5.1 Amendment C269hume

Hume Planning Scheme Amendment C269hume, as shown in Figure 3, seeks to:

- rezone the subject land to part Industrial 3 Zone (IN3Z) and part PPRZ
- apply Design and Development Overlay Schedule 6 (DDO6) to land south of Western Avenue.

**Figure 3** Proposed rezoning and DDO6



## 5.2 Planning permits

### (i) Permit PA2302140 (warehouses)

The permit applies to proposed Lots 2 and 3 in the updated Plan of Subdivision (Document 53) south of Western Avenue and will enable:

- the land to be used for warehouses
- staged development of three warehouses:
  - across the two lots ranging in size between 4,190 and 4,593 square metres
  - with a maximum height of 13.7 metres
  - with mezzanine levels and ancillary offices
  - with carparking and perimeter landscaping on both lots
- reduced car parking requirements generally in accordance with the endorsed plans.

### (ii) Permit PA2302142 (subdivision)

The permit applies to the whole subject land and will enable:

- a staged multi lot subdivision of 40 industrial lots varying in size with internal roads
- upgrade of existing roads and connections
- preparation, construction and use of a utility installation (stormwater bioretention area and outfall to Moonee Ponds Creek)
- part removal of an existing dry stone wall
- removal of native vegetation in accordance with endorsed plans
- landscaping.

**(iii) Permit PA2302143 (data centre)**

The permit applies to proposed Lot 38 in the updated Plan of Subdivision (Document 53) and will enable:

- the land to be used and developed for a utility installation (data centre) of about 15,262 square metres and a height of 21 metres and associated office, generally in accordance with the endorsed plans
- car parking, hardstand and loading areas, and perimeter landscaping.

## 5.3 Supporting documents

The Amendment and permits are supported by background reports and technical documents<sup>1</sup>. The Proponent's Part A submission provided an updated version of these documents. Supporting documents include:

- Amendment documents including instruction sheet, explanatory report, ordinance and zone and overlay maps
- background reports including biodiversity assessment, environmental audit report and statement, environmental summary report, town planning report, traffic reports, arboricultural assessment, stormwater management strategy, sustainability management plans, and heritage advice on the dry stone wall
- technical documents and plans including feature and level survey, architectural plans and renders for the warehouses and data centre, bioretention maintenance schedule, drystone wall removal plan, landscape plan, civil drawings, roadworks plan, monitoring wells location plan and waste management plans.

## 5.4 Responses to agency referrals

The proposal was referred to authorities and agencies for preliminary comments.

Country Fire Authority had no notable concern with the proposal.

Environment Protection Authority (EPA) stated in its preliminary and subsequent submission:

- the Statement of Environmental Audit (2014) concluded the subject land is suitable for the proposed use
- both conditions in the Statement of Environmental Audit should be included in the permits to ensure:
  - groundwater is not used for specified reasons
  - access to landfill monitoring bores is maintained
- the planning authority should satisfy itself the monitoring permit condition will ensure ongoing access to the monitoring bores
- EPA Publication 1739.1 and other publications cited in its submission may assist the planning authority in considering and assessing stormwater management including conditions.

Heritage Victoria noted the subject land has:

- no place currently listed in the Victorian Heritage Register

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<sup>1</sup> Documents 4 to 46

- one site listed in the Victorian Heritage Inventory (H7822-0352 Victoria Road Homestead Ruins) which will require consent to authorise works than may affect historical archaeological values at the site.

Australia Pacific Airports (Melbourne) Pty Ltd (Melbourne Airport) which operates Melbourne Airport said it had insufficient information to thoroughly assess the proposal. It requested detailed permit conditions for each permit relating to airport safeguarding considerations including:

- aircraft noise
- gas / particulate emissions
- landscaping
- lighting
- prescribed airspace.



## 6 Strategic issues

### 6.1 Industrial land supply

#### (i) The issue

The issue is whether it is appropriate and justified to rezone the subject land to increase industrial land supply.

#### (ii) Evidence and submissions

A few submissions considered there was no need for more industrial land because:

- nine warehouses along Western Avenue and Global Drive have been vacant for over a year
- 12 warehouses in a neighbouring street have been vacant for at least five years.

Mr Quick considered the Amendment and permits will generate local and regional economic benefits. He stated:

- there is an industrial land supply shortage in key regions of Melbourne that is expected to become more acute if demand remains at the elevated levels experienced in recent years
- with limited capacity for new supply in industrial areas such as the west and south where demand has been greatest, demand will shift to new industrial land elsewhere, particularly the north
- high demand and limited supply lead to increased land values and rents, which can increase operational business costs passed on to the consumer
- new supply into the market can help to control land occupation costs
- at a local level:
  - there is very little available land to support further development in the substantial industrial areas surrounding Melbourne Airport
  - the available land is within the Melbourne Airport boundary and is therefore not suitable for several user groups
  - there are low levels of vacancy and few established properties for sale or lease, limiting options for tenants
- the proposed mix of industrial lots would provide opportunities including leasehold and freehold occupation near an existing international freight terminal, with excellent connection to established industrial precincts and major freeways and other arterial roads
- the level of market interest in the proposed industrial subdivision reflects:
  - the strong locational attributes of the subject land for industrial use
  - the imbalance of industrial supply relative to demand in the Tullamarine/Melbourne Airport corridor and key industrial areas of Melbourne
- there is a strong need and demand for additional industrial land close to Melbourne Airport
- the proposed development:
  - may attract occupiers to the Tullamarine/Melbourne Airport corridor who would otherwise have to locate outside the region due to lack of suitable sites
  - would deliver 'fit-for-purpose' industrial warehouses



- use industrial land more efficiently than older stock
- will create significant employment during its construction and operational phases, both of which will create indirect benefit through the rest of the economy
- will be attractive in the market and occupied quickly because of limited land supply for new development
- other benefits from the facilitation of modern, fit-for-purpose industrial premises in this precinct could include further infrastructure development, technological advancements, potential on-shoring of manufacturing activities, and increased revenue generation for state and local government.

Having had regard to Mr Quick's evidence, the Proponent submitted there is strong demand for industrial land in this location to justify the proposed subdivision.

### **(iii) Discussion**

At the Hearing, no party pursued industrial land supply as a key issue or asked Mr Quick any relevant question. The PE Act and state policy seek to plan for present and future generations. This involves a longer-term horizon. Casual observations of short-term vacancies in an area does not achieve this. Mr Quick provided evidence-based information to better understand past, present and future industrial demand and supply. There was no competing evidence or information to challenge his methodology or findings.

The Committee agrees with Mr Quick that there is demand for industrial land in the Tullamarine/Melbourne Airport corridor and in the broader Hume region. Based on his figures, there is enough demand to justify the extent of industrial land proposed on the subject land.

### **(iv) Findings**

The Committee finds it is appropriate and justified to rezone the subject land to increase industrial land supply because there is an evident need for industrial land in the Tullamarine/Melbourne Airport corridor.

## **6.2 Zones and overlay**

### **6.2.1 The issues**

The issues are whether it is appropriate and strategically justified to:

- rezone most of the subject land to the IN3Z, noting there is demand for industrial land and the subject land is near residential land
- rezone the remainder of the subject land to Public Park and Recreation Zone
- apply Design and Development Overlay Schedule 6 to part of the subject land.

### **6.2.2 Industrial 3 Zone**

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

There were submissions opposed to the subject land being rezoned to IN3Z because:

- it should remain as open space and never be developed
- it is the overwhelming view of residents and Council
- there is uncertainty regarding environmental issues associated with the closed landfill

- the subject land still has high levels of toxic chemicals and developing it would risk the community's health
- all concerns need to be explained, understood and addressed first.

Several submissions opposed the rezoning without explaining why.

Mr Glossop considered it appropriate and strategically justified to rezone the subject land to IN3Z and he supported the rezoning. He explained:

- planning policy (Clauses 14.01-1S and 14.01-1R) seeks to protect productive farmland and Melbourne's green wedges and peri urban areas – these do not apply to the subject land
- it is unusual to have the Farming Zone within the Urban Growth Boundary and it appears to be a 'leftover' holding zone rather than a zoning choice to achieve agricultural purposes
- agriculture or farming is not mentioned in Hume's Municipal Planning Strategy or local planning policy apart from broad references in two paragraphs in Clause 02.03-1
- the loss of agricultural land within this context is an insignificant issue and is acceptable
- the future land use should be for urban purposes
- the Planning Scheme and other relevant strategic documents do not clearly identify the subject land's ultimate land use and zoning
- the broader strategic context is relevant in selecting the subject land's ultimate land use and zoning.

Mr Glossop considered the IN3Z to be most appropriate because:

- it is drafted as a buffer zone with a purpose to ensure that *"uses do not affect the safety and amenity of adjacent, more sensitive uses"*
- the subject land is separate to the Commercial 2 Zone land (Global Business Park) to the southeast
- IN3Z applies to land further west
- the Commercial 2 Zone is a potentially viable alternative but on balance, IN3Z is more appropriate given:
  - the subject land in comparison to Commercial 2 Zone land to the southeast has fewer sensitive interfaces
  - there is logic in providing a larger localised industrial precinct which connects the subject land with the existing IN3Z land further west.

Mr Glossop referred to Clause 15.01-1L-04 (Industrial areas and business parks) which applies to, among other things, land in the IN3Z. This would be relevant to the subdivision permit after the subject land is rezoned.

The Proponent submitted that IN3Z was chosen because it is designed to:

- manage the interface between industrial and residential land
- ensure industrial land uses do not detrimentally affect the safety and amenity of adjoining sensitive land uses.

The Proponent added:

- the Environmental Audit Overlay applied to the subject land

- the proposed industrial land use is not a sensitive land use so does not trigger the need for an environmental audit<sup>2</sup> or assessment
- an environmental audit was conducted voluntarily and concluded the subject land could be developed for industrial uses, commercial uses and recreation and open space uses conditional on:
  - not extracting groundwater for specified uses – potable water supply, agriculture, parks and gardens, stock watering industry, and primary contract recreation
  - maintaining and enabling accessible groundwater monitoring wells.

## **(ii) Discussion**

The Planning Scheme provides little strategic direction regarding how the subject land, or its surrounds, should be used or zoned. Council replaced the Municipal Strategic Statement in its Planning Scheme in October 2009, October 2017 and in June 2023. After three Municipal Strategic Statement reviews since 2009, the Planning Scheme does not provide specific strategic insight regarding the anomalous Farming Zone located within the Urban Growth Boundary. Council has not sought to identify all the subject land for public open space.

The Committee has considered the proposed rezoning on its merits based on:

- other existing Planning Scheme policy and the need for integrated decision making in the interest of net community benefit
- on evidence of demand for industrial land in Hume
- the subject land not being productive agricultural land.

IN3Z is appropriate for the subject land because its provisions:

- provide a framework to sensitively interface industry with the adjacent residential area
- prohibit sensitive land uses such as accommodation which may impact Melbourne Airport's operations and be impacted by industrial uses abutting its western boundary.

IN3Z is consistent with the zone applied to land west of the closed land fill, within the Urban Growth Boundary. The Commercial 2 Zone could similarly achieve such an outcome, however information presented to the Committee did not strategically justify the extent of retail uses that would be accommodated in that zone.

The PE Act and Victoria Planning Provisions enable land to be rezoned even if there may be potential environmental issues, subject to these issues being flagged. Where potential contamination is identified, the Environmental Audit Overlay is applied to ensure appropriate checks are carried out before certain uses commence on the land. This process does not stop the land from being rezoned. Planning Practice Note 30 (Potentially contaminated land) envisages industry and warehouse as a future land use on potentially contaminated land.

The IN3Z would not affect the subject land's ability to:

- meet environmental legislation and processes
- achieve the environmental audit conditions, noting they are mostly relevant to permit conditions associated with future land use, buildings and works.

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<sup>2</sup> Audit under section 53X of the Environment Protection Act 1970

### **6.2.3 Public Park and Recreation Zone**

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

Mr Glossop considered it appropriate to rezone part of the subject land from Farming Zone and Public Use Zone 1 to PPRZ. He considered the rezoning to be logical given its proximity to Moonee Ponds Creek and the PPRZ purpose:

- To recognise areas for public recreation and open space.
- To protect and conserve areas of significance where appropriate.

Mr Glossop addressed the issue of removing the Farming Zone in his justification for IN3Z. He considered PPRZ to be more appropriate than Public Use Zone 1 because the latter is intended for public utility and community services and facilities which do not exist on this part of the subject land. He noted the proposed bioretention system would remain on Public Use Zone 1 land.

The Proponent relied on the evidence of Mr Glossop and submitted the Amendment is strategically justified. It submitted the PPRZ land would be substantially improved with significant landscaping, as outlined in the Landscape Masterplan, before being transferred to the Hume public at no cost.

#### **(ii) Discussion**

The PPRZ purpose aligns with what is sought to be achieved by this part of the subject land. Its rezoning would not result in the loss of productive farming land. The Committee agrees with Mr Glossop that it is appropriate to rezone future public open space to PPRZ.

### **6.2.4 Design and Development Overlay Schedule 6**

#### **(i) Background**

DDO6, as exhibited, was intended to apply only to land south of Western Avenue, with provisions seeking an appropriate gateway response along the subject land's interface with the Tullamarine Freeway. Since exhibition, DDO6 was expanded to apply to Lots 4 – 7 which interface with the residential area east of Wright Street.

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

No submission objected to DDO6 being applied to part of the subject land to achieve design and development outcomes, though some of them sought changes discussed later in this report.

The Proponent explained that since exhibition, the Amendment proposed to apply DDO6 to Lots 1 – 7 on the Plan of Subdivision for two reasons:

- ensure appropriate design outcomes on Lots 1 – 3 because they are adjacent to the Tullamarine Freeway and the need for an 'arrival experience' for people travelling into metropolitan Melbourne
- to set minimum requirements for the 40-metre-wide landscape area on Lots 4 – 7 which abut Wright Street.

The DDO6 title was revised from 'Tullamarine Freeway – Gateway to Melbourne' to '140-204 Western Avenue, Westmeadows' to reflect its expanded role.

Mr Glossop considered the proposed DDO6 to be appropriate for achieving design and built form outcomes on the subject land. He referred to:

- Clause 15.01-1L-04 which seeks:  
To create attractive park-like settings in the City's business parks focussing on ample landscaped open areas complemented by high quality architecture and urban design.
- The Design and Development Overlay head provision:  
To identify areas which are affected by specific requirements relating to the design and built form of new development.

Mr Glossop explained that DDO6 is strategically justified because:

- the subject land abuts Tullamarine Freeway and residential properties
- it is appropriate and effective for controlling built form outcomes at these edges.

The Proponent relied on the evidence of Mr Glossop and submitted the Amendment is strategically justified.

### (iii) Discussion

The design of any future development on the subject land, particularly for buildings up to 13.7 metres tall, needs to:

- recognise its strategic location at Melbourne's international gateway next to Melbourne Airport
- sensitively interface with the residential area east of Wright Street.

The Design and Development Overlay has the appropriate provisions to achieve this outcome and it enables a schedule, in this case the proposed DDO6, to respond to local circumstances.

The Committee supports the post-exhibition changes to apply DDO6 to an expanded area including Lots 4 – 7 in addition to the exhibited Lots 1 – 3 and to revise the DDO6 to simply refer to the property address.

### 6.2.5 Findings

The Committee finds it is appropriate and strategically justified to:

- rezone most of the subject land to the Industrial 3 Zone, noting there is demand for industrial land and the subject land is near residential land
- rezone the remainder of the subject land to Public Park and Recreation Zone
- apply DDO6 with changes shown in Appendix D:1 to Lots 1 – 7 on the Subdivision Plan.

## 6.3 Amendment strategic justification

### (i) The issue

The issue is whether the Amendment is strategically justified and should progress.

### (ii) Evidence and submissions

The Proponent submitted the Amendment is strategically justified and it is appropriate to rezone the subject land to IN3Z and PPRZ and to apply DDO6. Its reasons are outlined in Chapters 6.1 and 6.2 and not repeated here. The Proponent relied on the evidence of Mr Glossop who considered the Amendment has been appropriately prepared and is strategically justified having regard to planning policy, relevant practice notes and ministerial directions.

Council and submitters requested the Amendment not progress. Terminate Tulla Toxic Dump Action Group (TTTDAG) submitted the impacts of the Amendment must weigh *"in favour of net*

*community benefit and sustainable development for the benefit of present and future generations*”, as specified in Planning Scheme Clause 71.02-3. It considered the Amendment would negatively impact the community because:

- there is a considerable number of vacant industrial sites nearby so there is little need for industrial subdivision
- economic benefits might be slow to realise
- potential human health risks from the land contamination would undermine economic benefits.

### **(iii) Discussion**

The proposed three permits rely on the Amendment to rezone the subject land to IN3Z. The Committee has found there is demand for industrial land in Hume and it is appropriate to rezone the land to IN3Z. TTTDAG questioned whether the Amendment will achieve net community benefit.

TTTDAG has not appropriately responded to what is sought by Clause 71.02-3 (Integrated decision making). This clause states:

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.<sup>3</sup>

For example, if the subject land had productive agriculture, there may be a policy tension between the objective to protect agriculture with another seeking employment land. The land is not used for agricultural purposes so there is no policy objective conflict.

TTTDAG considers there will be competing policy objectives between human health and economic development. However, there is no information to support the claim that rezoning the subject land will result in health issues. As explained later in this report, the subject land does not have identified landfill gas or soil contamination and no proposed permit:

- would disturb soil near the contaminated groundwater more than 25 metres below the surface
- seeks to restrict access to onsite wells which monitor groundwater conditions.

The Amendment will:

- result in net community benefit and sustainable development for the benefit of present and future generations
- provide the opportunity to capture demand on the subject land to bring employment opportunities in Melbourne’s northwest
- provide an appropriate framework, subject to other recommended changes, for considering future permit applications
- ensure any future development appropriately and sensitively interfaces with the residential area east of Wright Street through the proposed DDO6.

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Committee emphasis

**(iv) Findings and recommendations**

The Committee finds the Amendment should be prepared and progress because it:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is well founded and strategically justified
- appropriately applies the zones and overlay in the Victoria Planning Provisions.

The Committee recommends the Minister for Planning:

**Request that Hume Planning Scheme Amendment C269hume be prepared as exhibited subject to:**

- a) revising Design and Development Overlay Schedule 6, as shown in Appendix D:1**
- b) applying the revised Design and Development Overlay Schedule 6 to land south of Western Avenue and land proposed to be Lots 4, 5, 6 and 7 on the Subdivision Plan.**

**Approve Hume Planning Scheme Amendment C269hume with changes in Recommendation 1, pursuant to section 20(4) of the *Planning and Environment Act 1987*.**

## 7 Environmental risks and amenity

### 7.1 Stormwater

#### (i) The issue

The issue is whether the proposal appropriately addresses potential impacts of stormwater discharge within the subject land and on the Moonee Ponds Creek.

#### (ii) Background

The northern part of the subject land abutting the Moonee Ponds Creek and environs is proposed to become:

- a drainage reserve (Public Use Zone 1) containing a bioretention system in the northeast corner used to treat stormwater before it is discharged into the Moonee Ponds Creek (1.124 hectares)
- a public open space reserve (PPRZ) used as a public park (3.564 hectares)
- part of Council's assets.

The proposed IN3Z land will abut the proposed reserves.

The proposed public open space and drainage reserve areas, and northern part of the proposed IN3Z land, slope down to the Moonee Ponds Creek. Grades across the subject land are, on average, approximately 1:10 to 1:20.

A stormwater drainage and management strategy (stormwater strategy<sup>4</sup>):

- was prepared by Dalton Consulting Engineers and exhibited with the proposal
- comprises the proposed bioretention system, a series of minor underground pipelines and diversions, and overland flow directly to Moonee Ponds Creek
- complies with Australian Rainfall and Runoff 2019 (ARR19) and reflects industry best practice approaches.

A separate Bioretention Maintenance Schedule<sup>5</sup> was also exhibited.

The Proponent's Part A documents included:

- an amended bioretention system proposal (Bioretention System Plan and Sections, Revision K, prepared by Dalton Consulting Engineers on 23 August 2023)
- an email from Melbourne Water to the Proponent dated 28 August 2023 regarding an alternate proposal for the bioretention system outfall (eastern outfall option)<sup>6</sup>.

#### (iii) Evidence and submissions

There were submissions which recognised Moonee Ponds Creek as significant for its biodiversity, landscape, cultural and social values. They considered the proposal:

- did not align with recent initiatives to protect and enhance Moonee Ponds Creek
- would negatively impact their deep connection with the Creek and its environs.

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<sup>4</sup> Document 33

<sup>5</sup> Document 8

<sup>6</sup> Document 66



Submissions explained the stormwater discharge would negatively impact the Moonee Ponds Creek through:

- the quality of stormwater entering the Creek, including whether the bioretention system would prevent polluted stormwater (particularly from pollution incidents on the subject land) reaching the Creek
- increased stormwater flows to the Creek, including during high rainfall events which will increase with the impacts of climate change
- environmental degradation of the Creek resulting from the above impacts
- the proposed stormwater strategy not providing volumetric reductions.

Council referred to provisions and policies which seek to protect and manage the waterway including:

- Environmental Significance Overlay Schedule 2 which applies to the northern part of the subject land
- Planning Scheme Clause 12.03-1R (Waterways of the West)
- Waterways of the West Action Plan.

The Proponent called evidence on stormwater and drainage from Chris Beardshaw of Afflux. Mr Beardshaw found the stormwater strategy meets (and exceeds) required water quality standards. He recommended additional measures to meet Clause 53.18-4 (Stormwater management objectives for subdivision and associated standards) and Clause 53.18-6 (Site management objectives and associated standards). These include:

- plumbing rainwater tanks to all lots with adequate controls to ensure they are used
- further investigation of infiltration of evaporation opportunities
- dry retention basins or other attenuation methods to mitigate peak flows
- a management system for directing and controlling overland flows to avoid uncontrolled sheet flow to Moonee Ponds Creek
- redirecting the major overland flow network
- installing a diversion pipe to control treatable, and possibly larger flows, from the Wright Street Gully to the ultimate outfall
- installing a gross pollutant trap at Wright Street Gully.

Mr Beardshaw provided a concept plan for his recommended flow diversions and macro pipe layout for the subject land, as shown in Figure 4.

**Figure 4** Mr Beardshaw's recommended stormwater concept plan

Source: Mr Beardshaw's expert witness report

GPT: gross pollutant trap | LSIO: Land Subject to Inundation Overlay

Mr Beardshaw stated:

- stormwater flows could be managed to ensure minimal change in flow regime to Moonee Ponds Creek and minimise risk (including risk of erosion) to the Creek if his recommended measures were implemented
- the bioretention system would act as slow infiltration for polluted stormwater
- a valve system in the outlet pipe could be added at the detailed design stage to manage polluted stormwater from pollution incidents.

Mr Beardshaw considered three options for locating the bioretention system outfall to Moonee Ponds Creek. He preferred an eastern outfall to Moonee Ponds Creek because:

- it avoids vegetation, is located along modified (mown) land and discharges to an open part of the Creek
- the other two options would result in greater negative impacts such as vegetation removal and increased risk of erosion of the banks of the Creek.

There were submissions which supported the eastern outfall option, though Council was concerned this option had not been fully assessed.

When questioned about the need for volumetric reduction which may not be able to be achieved, Mr Beardshaw stated:

- the most important issue is creek protection
- volumetric reduction will not have a material impact on flows to the Creek
- EP Act requirements and the general environmental duty (GED) require minimisation of the highest risks
- the industry is working towards volumetric reduction but it may not be practicable here.

Council submitted:

- it should have a say in the stormwater design because it should not be left with infrastructure that does not meet its standards
- concern about the complexity of the proposed bioretention system and gross pollutant trap that it would own and manage into the future
- relevant provisions of Melbourne Water's *Biofiltration Systems in Development Services Schemes Guidelines* (biofiltration guidelines) had not been met in the design of the bioretention system and this would impede Council's ability to maintain the bioretention system particularly in terms of safety and adequate access for maintenance vehicles.

Council referred to:

- the exhibited Permit PA2302142 (subdivision) which specified a bioretention system maintenance period of five years
- the Proponent revising the five years to a minimum civil construction maintenance period of two years and a landscape maintenance period of three years for the bioretention system in the Permit PA2302142 Day 5 version.

Council did not agree with this change because the five-year period:

- was proposed by the Proponent during stakeholder engagement in November 2022
- is necessary to ensure enough time for the landscape to establish and the civil components to operate.

In response to Council's concern about having both a bioretention system and gross pollutant trap, Mr Beardshaw said his recommendation for both was made to meet the GED. He stated:

- the gross pollutant trap would be chosen from Council's approved list and Council is aware of the ongoing management requirements
- the proposed stormwater infrastructure is appropriate for the subject land
- much of the detail would be worked out at the detailed design stage and the Permit PA2302142 (subdivision) Day 1 version conditions were appropriate to give effect to his recommendations
- the 'Soil Erosions and Sodic Soil Assessment' and the 'Environmental and Geomorphological Impact Assessment' required by the Permit PA2302142 (subdivision) conditions would feed into, and interact with, the final stormwater strategy (which is to be prepared to the satisfaction of the responsible authority, in consultation with

Melbourne Water and Council) to ensure the final design is appropriate for site conditions

- the stormwater strategy was designed to accommodate higher intensity rainfall events that could be expected due to climate change in some respects (freeboard in the bioretention system, drainpipe diameters) and climate change sensitivity analysis would be undertaken at the detailed design stage before finalising the stormwater strategy.

The Proponent submitted the proposal complies with all current standards, and it would be unreasonable to apply climate change mitigation requirements that go beyond current legislation.

Council requested the stormwater strategy be completed to its satisfaction (as well as the responsible authority). This was in addition to being consulted on the strategy. It explained this is required if it is to own and manage the stormwater system.

Council submitted significant further work remains to be done on the stormwater strategy and as a minimum the matters specified by Melbourne Water<sup>7</sup> (which included management of construction impacts on Melbourne Water land) should be included as conditions in Permit PA2302142 (subdivision).

Council supported the Soil Erosions and Sodic Soil Assessment and Environmental and Geomorphological Impact Assessment as recommended by Mr Beardshaw. Council submitted they should be extended to assessment of the proposed public open space area to ensure infrastructure such as pathways, seats and the proposed viewing area would be appropriately designed for site conditions.

Friends of Moonee Ponds Creek (FoMPC):

- supported Mr Beardshaw's proposed flow management bund (shown as the red dotted line in Figure 4) and gross pollutant trap at Wright Street Gully
- requested "*fail-safe mechanisms*" be incorporated into the bioretention system, flow management bund and gross pollutant trap so that a pollution event on the subject land is contained and does not enter the Moonee Ponds Creek
- supported the requirement for rainwater tanks coupled with design guidelines and controls for their use.

Council did not support rainwater tanks unless Permit PA2302142 (subdivision) includes an appropriate mechanism to ensure their maintenance and use.

TTTDAG supported the fail-safe mechanisms sought by FoMPC. It requested a permit condition to require zinc-free roofing because stormwater from this type of roofing is toxic to the growling grass frog.

#### **(iv) Discussion**

The Committee acknowledges concern regarding the management of stormwater impact on the Moonee Ponds Creek, including water quality and flows. The section of the Creek adjacent to the subject land, while somewhat degraded, is in a relatively natural state compared to other sections of the Creek which are concreted and highly modified. This is reflected in relevant state and local planning and water management policies. It is therefore essential that stormwater flows to the

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<sup>7</sup> Document 66

Creek are managed carefully to protect the Creek from erosion and contaminated stormwater, including that uncontrolled sheet flow to the Creek is avoided.

The Committee accepts the evidence of Mr Beardshaw that, with his recommended changes to the stormwater strategy:

- the impacts of stormwater on the Moonee Ponds Creek can be adequately managed in terms of both water quality and flow to the Creek
- the objectives set out in Clause 53.18-4 and Clause 53.18-6 can be met.

The proposed flow management bund will be essential to ensuring that overland flows are directed to the proposed bioretention system, and from there through the outfall pipe to the Creek, rather than directly to the Creek. A requirement for appropriate valves should be included at the detailed design stage, as suggested by Mr Beardshaw, to provide an added layer of protection against polluted stormwater from pollution incidents on the industrial lots.

The stormwater strategy will clearly benefit from further input from Melbourne Water and Council before being finalised. However, the Committee considers it would be unworkable to have two authorities (the responsible authority and Council) approving the final stormwater strategy, as suggested by Council.

The Committee has heard Council's concerns about the stormwater infrastructure it will inherit and be responsible for, including the complexity and design of the bioretention system. The Committee considers Council has an appropriate level of expertise to manage the bioretention system and gross pollutant trap. Further, given that Council, along with Melbourne Water, must be consulted during the detailed design stage (refer Condition 57 of Permit PA2302142 (subdivision)), there is an appropriate mechanism to ensure its concerns are addressed and matters such as compliance with Melbourne Water's biofiltration guidelines are achieved. Further, the responsible authority, Melbourne Water and Council can ensure appropriate climate change sensitivity testing is done at the detailed design stage.

Having said this, the Committee considers it appropriate that the Proponent be required to maintain the bioretention system for the five years that it originally proposed before being handed over to Council. This provides reasonable time for:

- the bioretention system to demonstrate its operational effectiveness and that landscaping is well established over seasonal and longer-term climatic conditions such as drought or flood
- the Proponent to implement (and incentivises) any required fine tuning to the system.

The bioretention system should have an eastern outfall to the Creek. There was no real challenge to this option.

Melbourne Water's requirements regarding the proposed eastern outfall option can be adequately dealt with through consultation with Melbourne Water as part of the consultation required before the stormwater strategy is finalised. They do not need to be included as permit conditions, as requested by Council.

While the Committee would have preferred to have seen greater resolution of potential volumetric reduction strategies, it agrees with Mr Beardshaw that volumetric reductions may not be reasonably practicable on the subject land, and the highest risks to the Moonee Ponds Creek have been appropriately addressed in the stormwater strategy. The GED will continue to apply at

the detailed design stage to ensure the Proponent explores a range of volumetric reduction measures and implements those that are reasonably practicable.

Permit PA2302142 (subdivision) Condition 57 requires the stormwater strategy to provide for rainwater tanks to all lots when buildings are constructed for those lots. Rainwater tanks may benefit from stormwater management even though there is no mechanism to ensure their ongoing maintenance and use. Given the Proponent is proposing this requirement, there is no planning reason to remove it from the stormwater strategy.

The Committee does not support a permit condition requiring zinc-free roofing because submissions and evidence did not persuade it otherwise.

#### **(v) Findings**

The Committee finds:

- The proposed stormwater strategy, with changes recommended by Mr Beardshaw, is appropriate to manage stormwater flows on the subject land and to the Moonee Ponds Creek.
- The bioretention system should have an eastern outfall.
- Appropriate valves should be included at the detailed design stage for the bioretention system to better protect against polluted stormwater from pollution incidents on the subject land.

## **7.2 Wildlife and native vegetation**

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

The issue is whether the proposal's potential impacts on wildlife and native vegetation are acceptable.

#### **(ii) Background**

Ecology & Heritage Partners completed a biodiversity assessment which was exhibited with the proposal (biodiversity assessment)<sup>8</sup>. It covered the subject land, the Moonee Ponds Creek corridor, the Wright Street reserve and Victoria Street reserve and encompassed desk top analysis, field work and collated ecological assessments undertaken on the subject land from 2008 to 2022. It included:

- one season of targeted surveys for the nationally significant growling grass frog in November 2019
- three seasons of targeted surveys for the nationally significant golden sun moth during the species' flight periods in 2008/09, 2012/13 and 2019/20.

The biodiversity assessment found:

- fifty-five flora species (16 indigenous and 39 non-indigenous) and 81 fauna species (10 mammals, 65 birds, three reptiles and three frogs) on the subject land
- the survey area supports approximately 0.930 hectares of native vegetation, including three small patches of Grassy Woodland ecological vegetation class (EVC) (EVC 175), nine

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<sup>8</sup> Biodiversity assessment for a proposed industrial development at 140-204 Western Avenue, Westmeadows, Victoria, December 2022, Document 7

patches of treeless Plains Grassy Woodland EVC (EVC 55\_61), a patch of Aquatic Herbland EVC (EVC 653) and Creekline Grassy Woodland EVC (EVC 68) along Moonee Ponds Creek and tributary

- the patches are fragmented and highly modified
- Plains Grassy Woodland provides habitat for a diversity of native species
- areas of Creekline Grassy Woodland provide suitable habitat for the nationally listed growling grass frog, but no individuals were observed during the surveys
- one small, scattered river red-gum is present in the centre of the subject land
- planted exotic hedgerows and scattered specimens, including noxious weeds provide foraging and breeding habitat for several common bird species
- grassland containing pasture grasses:
  - dominates the subject land, including exotic species commonly associated with urban and rural environments
  - provides little fauna habitat
  - is suitable for common urban-adapted native birds and introduced birds
- no state or nationally significant (under the *Flora and Fauna Guarantee Act 1988* and *Environment Protection and Biodiversity Conservation Act 1999* (Cth) respectively) flora or fauna species, or threatened ecological communities, were recorded during the field assessments, nor are they likely on the subject land
- the proposal does not trigger the *Environment Effects Act 1978*.

The biodiversity assessment concluded the subject land does not support any significant ecological values.

### **(iii) Evidence and submissions**

Submitters expressed concern about:

- the impact of the proposal on wildlife (including kangaroos)
- loss of native vegetation
- impacts on the Moonee Ponds Creek environs as habitat
- environmental degradation and loss of environmental amenity
- proposed fencing would impede wildlife movement
- whether the proposed landscaping measures would adequately reduce the detrimental environmental impacts of the proposal.

Mr Organ supported the proposal based on the biodiversity assessment, re-stating its conclusion that the subject land does not support any significant ecological values. He said it is not possible to avoid the proposed vegetation clearance due to the engineering and road safety standards required for the proposed access roads. He said the impacted vegetation is generally of low value.

Mr Organ said the proposed removal of 0.256 hectares of native vegetation requires a planning permit under Planning Scheme Clause 52.17 and assessment under the intermediate assessment pathway of the *Guidelines for the removal, destruction or lopping of native vegetation* was required. He stated:

Based on the current development plan and the extent of proposed native vegetation removal there is an offset requirement of 0.033 general habitat units with a minimum strategic biodiversity score of 0.415 to compensate for the proposed removal of native vegetation



His search of the Department of Energy, Environment and Climate Action (DEECA) native vegetation credit register showed 35 suitable offset sites available to satisfy the general habitat unit offset requirements. As a result, Mr Organ considered the Proponent would be able to secure the required offset without difficulty.

Mr Organ preferred the proposed eastern outfall alignment for the bioretention system because:

- it minimises native vegetation clearance and will not impact the growling grass frog
- only a small area of native vegetation would be removed at the end of the outfall and the location is not breeding habitat for the frog
- he was confident this could be dealt with as a secondary consent, though the native vegetation clearance assessment for this small area had not been completed
- the addition would not change the assessment pathway and the minimal additional offset required would be easily obtained, noting the additional clearance was an order of magnitude lower in size than the vegetation clearance proposed overall.

Mr Organ considered:

- the proposed bioretention system could benefit the growling grass frog, delivering additional suitable breeding and foraging habitat, provided best practice standards including Melbourne Water's biofiltration guidelines were implemented at both the design (the pools need to be deep enough to support breeding) and landscaping stages of the bioretention system
- the proposed public open space area would also provide additional terrestrial habitat for the species
- it is highly probable the frog will move into the bioretention system for breeding.

Mr Organ recommended several best practice mitigation measures which he was comfortable had been addressed in DDO6 and Permit PA2302142 (subdivision).

Mr Organ supported the proposed Kangaroo Management Plan as a condition of Permit PA2302142 (subdivision). He explained:

- this is important to ensure kangaroos were not landlocked and able to move through to the Moonee Ponds Creek corridor
- there is adequate habitat nearby to support the kangaroo population
- the proposed fencing design would allow clear fauna passage within and beyond the subject land.

Mr Organ concluded:

- under the biodiversity legislation and policy framework, there is no justification to refuse the Amendment and permits on ecological grounds
- the environmental loss is expected to be minimal and considering the entire proposal, there could be an overall net benefit.

DEECA was satisfied<sup>9</sup>:

- native vegetation to be removed and the offset requirements, should permits be approved, had been adequately described and the information requirements of Clause 52.17 satisfied

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<sup>9</sup> Submissions 65 and 66



- the Proponent had taken steps to avoid and minimise removal of native vegetation having the most value within the subject land
- the proposed location and layout of the bioretention system will not interfere with the suitability of the riparian habitat for local native animals (including threatened species) or affect habitat value for wildlife which use Moonee Ponds Creek as a corridor for movement, subject to relevant conditions proposed to be included in Permit PA2302142 (subdivision).

The Proponent submitted:

- the bioretention system is primarily stormwater management infrastructure to treat captured rainwater before it reaches the Moonee Ponds Creek
- the bioretention system is not expected to contain permanent water bodies
- the extent that the bioretention system provides habitat for the growling grass frog is a positive benefit of the proposal.

The Proponent explained that fencing is only proposed in locations necessary to provide a safety barrier and most of the bioretention system would remain unfenced. Accordingly, movement of wildlife through the subject land would not be impeded.

#### **(iv) Discussion**

The subject land abuts a creek corridor with open space environs which warrants an understanding of the proposal's potential impact on wildlife and native vegetation. Having carefully reviewed submissions and evidence on these issues, the Committee agrees with the evidence of Mr Organ that:

- the subject land does not support any significant ecological values
- the proposal meets current legislative requirements which largely protect threatened and endangered species and ecosystems.

DEECA is satisfied the Proponent has taken steps to avoid and minimise removal of native vegetation having the most value and, subject to specified conditions, the bioretention system will not interfere with the suitability of riparian habitat for local native animals (including threatened species) or affect habitat value for wildlife which use Moonee Ponds Creek as a corridor for movement. The conditions specified by DEECA are reflected in Permit PA2302142 (subdivision).

Given only general habitat units with a minimum strategic biodiversity score of 0.415 and the relatively modest size of the offset required, the Committee agrees with Mr Organ that:

- the Proponent would be able to secure the required offset without difficulty
- accordingly, under the applicable biodiversity legislation and policy framework, there is no justification for the proposal to be refused on ecological grounds.

Nonetheless, the interface between the northern portion of the subject land, including the proposed public open space and the bioretention system is important. It must be managed to avoid or minimise adverse impacts on the values of the Moonee Ponds Creek, including biodiversity and habitat for the growling grass frog. The Committee has found the proposal will adequately manage both water quality and stormwater flow impact on the Moonee Ponds Creek and its environs. The proposed open space, bioretention system and landscaped setbacks and strips within the subject land will provide more native vegetation than currently exists, and if properly maintained, is likely to result in a net increase in biodiversity.

The bioretention system may potentially deliver positive outcomes for the growling grass frog, though the Committee has not given this aspect of the proposal notable weight.

The bioretention system eastern outfall has not been fully assessed, however from an ecological perspective, this option is clearly preferred because it will result in only minor additional native vegetation clearance. The Committee agrees with Mr Organ that the eastern outfall will not change the required assessment pathway and the Proponent will be able to obtain any additional offset required without difficulty.

There is benefit in requiring the proposed Kangaroo Management Plan through the Permit PA2302142 (subdivision) conditions. The Committee agrees with Mr Organ that the proposed fencing allows clear fauna passage through the subject land. No changes are required in this respect.

#### **(v) Findings**

The Committee finds the proposal will result in an acceptable impact on wildlife and native vegetation.

### **7.3 Contamination**

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

The issues are whether the proposal:

- will lead to disturbance of contaminated land
- will lead to adverse impacts on human health and the environment due to the presence of contamination
- appropriately responds to any legacy remediation issues (including monitoring).

#### **(ii) Background**

The subject land:

- is within 120 metres of the (closed) cells of the Tullamarine landfill which closed in 2008
- has been subject to previous contamination investigations and reports which have focussed on the risks to the subject land from legacy landfill contamination.

Reports include:

- Environmental Audit Report (section 53X) and Statement of Environmental Audit: 140 to 204 Western Avenue, Cardno Lane Piper, 2014 (environmental auditor: Anthony Lane) (EPA CARMS Ref: 71120-1) (Audit)<sup>10</sup>
- Environmental Summary Report 140 -204 Western Avenue, Westmeadows, Senversa, 2022 (Senversa Report)<sup>11</sup>.

The Audit, which was conducted voluntarily:

- considered the risks to the subject land of landfill gas and contaminated groundwater migrating from the landfill, together with potential contamination of the soil

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<sup>10</sup> Document 13

<sup>11</sup> Document 14

- concluded there was no unacceptable risk to the subject land or its occupants (inside or outside buildings used for residential, commercial or industrial purposes) from contamination.

The Statement of Environmental Audit provides the subject land is suitable for agricultural, sensitive (high density and other), recreation/open space, commercial and industrial uses, subject to:

**Condition 1:** The groundwater is contaminated and unsuitable for the extractive beneficial uses: potable mineral water supply, agricultural, parks and gardens, stock watering, industrial and primary contact recreation. Consequently, no groundwater shall be extracted at this site for such uses.

**Condition 2:** Groundwater Monitoring Wells ... must be maintained and remain accessible for the purpose of ongoing monitoring by the party responsible for the aftercare of the Closed Tullamarine Landfill.

The Statement of Environmental Audit states, as 'other related information':

- A Certificate of Environmental Audit was not issued due to the presence of polluted groundwater derived from sources off-site.
- The auditor concluded that groundwater has been cleaned up to the extent practicable.
- The EPA may identify a Groundwater Quality Restricted Use Zone.
- The party responsible for the aftercare of the Closed Tullamarine Landfill will require access to the site in order to carry out the ongoing monitoring of groundwater monitoring bores (listed in Condition 2 of the statement).

The closed landfill:

- is managed under a post-closure pollution abatement notice
- is subject to ongoing monitoring and audits
- has been the subject of several post closure audits (under the previous EP Act regime, section 53V) (GHD 2019, Senversa 2020 and Senversa 2021) and technical reviews (Cardno 2016 and Klienfelder 2016).

### **(iii) Evidence and submissions**

There were submissions which considered:

- contamination of the subject land will impact its occupants and nearby residents
- residents had suffered serious health problems because of the landfill, citing the mixture of toxic chemicals accepted by the landfill when in operation
- works associated with the proposal would disturb the subject land and expose toxic chemicals, release toxic gases, create dust and contaminated stormwater, and negatively impact human health and wildlife
- the subject land should remain vacant as a buffer to the landfill
- there should be continued access to groundwater monitoring wells on the subject land
- future owners of the subject land should be given adequate notice of the wells and access obligations.

TTTDAG provided two health studies<sup>12</sup> which it prepared with Western Regional Environment Centre which it said supported claims regarding impact on surrounding residents. It submitted

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<sup>12</sup> Documents 88a and 88b

that workers on the subject land would be exposed to the same “*toxic chemical cocktail emissions*”.

Mr Rehfish considered there is a low risk of contamination affecting the proposed uses, based on previous investigations including completion of the Audit. He said the Audit:

- was the “*gold standard*” of environmental audits
- could still be relied on as representing the conditions at the subject site, though completed in 2014
- met the requirements of:
  - EPA Publication 788.3 Best Practice Environmental Management Siting, Design, Operation and Rehabilitation of Landfills (BPEM)
  - EPA Publication 1642 Assessing planning applications within the buffer of a landfill (EPA Guidance).

Mr Rehfish stated there is sufficient and appropriate information about the contamination risks of the subject land. He referred to EPA’s confirmation<sup>13</sup> that a suitable environmental audit of the subject land had been completed which had considered landfill gas and contamination risks as required.

Mr Rehfish concluded there was no risk from groundwater contamination to the users of the proposed public open space and the bioretention system would not be impacted by contaminated groundwater. He explained:

- future contact with groundwater is unlikely during construction works or future occupation given the groundwater:
  - was on average more than 25 metres below the subject land
  - is well below the depth to rock and the depth to which future excavation works may extend
- the Statement of Environmental Audit provided that no groundwater be extracted and this is reflected in a Groundwater Quality Restricted Use Zone affecting the subject land.

Mr Rehfish stated there is no known contaminated soil on the subject land, noting that some localised soil contamination and rubbish had been removed. He considered no measures were required for landfill gas risks and usual construction site measures for dust control and stormwater management were all that would be required.

Referring to the closure and aftercare audits of the landfill, Mr Rehfish found:

- the risk to the subject land from the landfill is low
- other than maintenance of, and access to, the landfill’s groundwater monitoring well network situated on the subject land, there are no works relating to the aftercare of the landfill required on the subject land.

Mr Rehfish explained the ongoing monitoring of groundwater:

- is not required to ensure the continued suitability of the subject land for the proposed uses (that had already occurred through the Audit process)
- is required to monitor the level of contamination of groundwater as part of the aftercare program of the landfill.

He said groundwater contamination will normally reduce over time.

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<sup>13</sup> Documents 48 and 48a

Regarding the monitoring wells, Mr Rehfish stated:

- physical access would require access for a small vehicle (like a ute) and would be achieved by a combination of the subdivision layout and moving monitoring wells (that is, decommissioning the existing well and constructing a new well in an accessible location) as shown on Document 56
- the access route did not require exclusive possession
- the auditor responsible for the aftercare audits of the landfill would need to approve the relocation of wells, which is likely
- access to wells was required for as long as the wells are needed, but did not comment on the exact mechanism as this was outside his expertise
- people need to know where the wells are and what obligations apply so that they are not forgotten.

On the issue of whether a 'buffer' to the landfill was needed, Mr Rehfish clarified that the reference in his expert witness report to a buffer was in the context of the BPEM and EPA Guidance which set required distances from a proposed sensitive land use to the edge of the closest landfill cell. He said the potential for subsurface landfill gas migration to impact on a proposed development within this area must be considered and this has occurred through the Audit.

EPA advised<sup>14</sup> the completion of the Audit satisfies requirements of Planning Practice Note 30 and Planning Scheme Clause 13.04-1S which seeks to "*ensure contaminated or potentially contaminated land is or will be suitable for the proposed use, prior to the commencement of any use or development*". EPA did not object to the proposal provided the two Statement of Environmental Audit conditions are included as conditions in relevant permits.

The Proponent submitted:

- it intends to move as many monitoring wells as practical to public land (existing and future road reserves), subject to auditor approval
- relocation to public land would obviate the need for access arrangements and notice to future owners
- where it is not possible or practical to relocate wells to public land, its proposed permit conditions would ensure ongoing, enduring access to the monitoring wells for as long as they were needed.

Specifically, the Proponent referred to its proposed conditions:

- Condition 5 of Permit PA2302142 (subdivision):  
Before the endorsement of plans, the provision of a Groundwater Monitoring Wells Plan to the responsible authority showing the location of all monitoring wells on the subject land, including the location of any relocated wells, together with the alignment and dimensions of any access paths to the wells (which must be at least 3 metres wide).
- Condition 6 of Permit PA2302142 (subdivision):  
Before the issue of a Statement of Compliance, evidence that a suitable ongoing access arrangement has been entered into between the owner of the subject land and the party responsible for the aftercare of the closed Tullamarine Landfill to provide ongoing access to the groundwater monitoring wells, for the lifetime of those wells, must be provided to the satisfaction of the responsible authority.

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<sup>14</sup> Document 48b

Permit PA2302140 (warehouse) and Permit PA2302143 (data centre) contain a proposed condition similar to Condition 6 of Permit PA2302142.

The Proponent submitted that a section 173 agreement registered on the subject land title was not required to secure access to the wells because the Proponent:

- has a contractual obligation to Cleanaway (the current landfill owner) to provide *“ongoing reasonable and unobstructed access”* to the subject land for groundwater monitoring and sampling of groundwater and soil
- is contractually obliged to ensure that any future purchasers of the subject land (including lots in the proposed subdivision) enter a deed with Cleanaway on the same terms and conditions as those that bind the Proponent.

The Proponent submitted that these requirements address Council and community concerns about securing access and providing notice to future owners affected by monitoring wells.

Council’s objection to the proposal included:

In exercising a duty of care to the community, the land should be retained as a buffer to ensure the monitoring obligations of contamination continues to be carried out properly, and that unencumbered land is easily available should additional offsite remediation measures be required in the future.

Council was concerned about how prospective and future landowners would receive notice of obligations to provide access to monitoring wells. It submitted a section 173 agreement was required because the required level of transparency would not be achieved by the proposed permit conditions.

#### **(iv) Discussion**

The Audit, conducted voluntarily, determined the subject land can have a range of uses, including the proposed uses, provided the Statement of Environmental Audit conditions are met. The proposal does not include sensitive uses, so it did not trigger the Environmental Audit Overlay requirement for an assessment under the EP Act to determine the suitability of the proposed land uses.

However, the proposed rezoning and development of the subject land needed to be further investigated because it is within the ‘buffer’ distance (as that term is used in the BPEM and EPA Guidance) from the closed Tullamarine landfill. The investigation was required to assess the potential impacts of any off-site migration of landfill gas and the amenity impacts of the landfill on the subject land.

Aligning with the EPA’s position, the Committee agrees with Mr Rehfish that:

- the Audit meets the requirements of the BPEM and EPA Guidance
- the Audit specifically addressed the risks of landfill gas and contaminated groundwater to development on the subject land
- no further investigation is required for the proposal to proceed.

Given the result of the Audit, from a contamination perspective, there is nothing that requires the subject land to remain vacant as a ‘buffer’. It can be developed for the uses specified in the Statement of Environmental Audit, subject to the specified conditions.

The Committee acknowledges the community’s concern about legacy contamination and potential impact on human health on future occupants of the subject land and nearby residents. The Audit and subsequent investigations have confirmed no known soil contamination on the subject land.

The Committee agrees with Mr Rehfisch that usual construction site management measures can appropriately address dust and stormwater impacts and Permit PA2302142 (subdivision) contains appropriate conditions to this effect. There is a very low risk that soil disturbance on the subject land from earthworks or other activities will negatively impact human health or wildlife, on or off-site, including by creating contaminated dust. The Committee agrees with the evidence that landfill gas will not be a risk to occupants of the subject land and that no measures are required to manage landfill gas risks.

Contaminated groundwater is generally 25 metres below the surface of the subject land and will not be disturbed by the construction proposed for the industrial land or the usual use of the land for industrial purposes. The groundwater level rises nearer to the Moonee Ponds Creek, however the Committee agrees with Mr Rehfisch that:

- it poses no risk to the users of the proposed public open space
- the bioretention system would not be impacted by contaminated groundwater.

EPA has established a Groundwater Quality Restricted Use Zone which restricts use of the groundwater below the subject land. This, together with the proposed condition on all three planning permits prohibiting the use of groundwater, implements Statement of Environmental Audit Condition 1. The existing Groundwater Quality Restricted Use Zone also provides notice to potential groundwater users of contaminated groundwater.

The Committee acknowledges the importance of ensuring ongoing access to the person responsible for the aftercare of the landfill (currently Cleanaway) to groundwater monitoring wells, as required by Statement of Environmental Audit Condition 2. It is important that prospective and future owners of any lots with monitoring wells are given notice of the requirement to provide access to those wells. Therefore, the question before the Committee is not whether access to, and notice of, wells must be ensured, but rather what mechanism is most appropriate to achieve this.

The Proponent proposed a condition on each permit requiring evidence that a suitable ongoing access arrangement has been entered into before a Statement of Compliance is issued, or in the case of the warehouse and data centre permits before occupation of the development permitted under the permits. Once the responsible authority is so satisfied, this permit condition is spent. If a landowner then did not provide access as required under the arrangement, this would not be a breach of the permit condition (because the permit requirement is to provide satisfactory evidence of the access arrangement) and the responsible authority would have no ability to enforce the access obligation.

Similarly, if the ongoing access arrangement is contractual in nature, such as currently exists between Cleanaway and the Proponent, it could be changed in a way contrary to Statement of Environmental Audit Condition 2 at any time by the parties without that being a breach of the permit condition. If that were to occur, there would be no planning mechanism in place to ensure ongoing access to the wells (should that still be required).

From a planning perspective, the mechanism must ensure the future use and development of the subject land does not affect the ability of future lot owners to meet the Statement of Environmental Audit conditions. The mechanism must be enforceable by the responsible authority because the auditor has determined the subject land can only be used if the Statement of Environmental Audit conditions are met.

An agreement under section 173 of the PE Act between the responsible authority and the landowner would best achieve these goals because such an agreement:

- binds future owners of relevant land without the need for future owners to do anything (such as entering into a deed), thereby providing a high degree of certainty that future owners are bound to provide access to wells as required by Statement of Environmental Audit Condition 2
- allows the responsible authority or other third party to enforce the requirement to provide access to the wells directly (whereas a contractual agreement between the party responsible for the aftercare of the landfill and a landowner can only be enforced by the parties to the contract), again providing a high degree of certainty for the responsible authority and the community that appropriate access will be ensured
- is not 'spent' in the same way that a permit condition can be and would remain on title for as long as access to the wells is required, providing a high degree of certainty
- is registered on title thereby providing clear, unambiguous notice to prospective owners which is an additional benefit.

The Committee acknowledges that it may be possible for the responsible authority to enforce Statement of Environmental Audit Condition 2 through the EP Act because:

- not providing access to the wells would likely be a breach of the duty to manage contaminated land (section 39)
- compliance with the duty could be enforced by the EPA, or potentially by the responsible authority where the EPA fails to act and it was in the public interest (section 309).

However, it would be simpler and quicker for the responsible authority to directly enforce a section 173 agreement.

The Committee agrees with Council that there should be conditions for all three permits requiring the landowner to enter into a section 173 agreement with the responsible authority regarding access to monitoring wells.

As a minimum, the section 173 agreement should:

- include the identification of groundwater monitoring wells on the subject land
- require the owner to ensure that groundwater monitoring wells (except for those in proposed public land) are accessible by the party responsible for the aftercare of the closed Tullamarine Landfill for the lifetime of the well
- align with the evidence of Mr Rehfish regarding the requirements for physical access.

The risk of adverse impacts from legacy contamination on the subject land has been adequately investigated and can be managed appropriately through the proposed permit conditions, section 173 agreement and other available regulatory tools.

## **(v) Findings**

The Committee finds:

- The proposal:
  - is unlikely to disturb contaminated land
  - is unlikely to lead to negatively impact human health and the environment due to the presence of contamination
  - appropriately responds to legacy remediation issues subject to requiring each lot owner with a monitoring well on their land to enter into a section 173 agreement with the responsible authority to ensure ongoing access to the monitoring wells for as long as they are needed.



- There is no contamination related reason why the Amendment and permits should not proceed.

## 8 Design response

### 8.1 Landscape design

#### (i) The issues

The issue is whether the proposal provides an appropriate landscape design response including:

- mitigation of visual and other amenity impacts of the proposed industrial use
- the interface with the Moonee Ponds Creek and environs.

#### (ii) Background

The subject land is adjacent to the Moonee Ponds Creek corridor to the north, Wright Street residential area to the east, the Tullamarine Freeway to the south and Victoria Street (and beyond that, the closed landfill) to the west. The proposed IN3Z area is largely elevated compared to the Moonee Ponds Creek corridor and residential areas across the Creek. The proposed public open space and drainage reserve areas, and northern part of the proposed IN3Z land, slope down to the Moonee Ponds Creek.

The Landscape Masterplan accompanying the proposal was revised after being exhibited to Revision 7 and included in the Day 1 documents<sup>15</sup>. Landscape Masterplan Revision 7 includes:

- landscaping for the proposed bioretention system
- planting for the proposed open space reserve (which was absent from the previous (exhibited) version)
- a 40-metre-wide landscape area along the interface with Wright Street to the east
- street planting with predominantly exotic tree species
- landscaping around the proposed building envelopes for the proposed warehouse and data centre.

#### (iii) Evidence and submissions

Submissions considered:

- the proposal would lead to an unacceptable loss of amenity and neighbourhood character, particularly visual amenity, and the loss of green space
- the development will not be in harmony with the adjacent Moonee Ponds Creek
- the proposed public open space:
  - is too small and too narrow to meet the environmental and landscape strategies of Planning Scheme Clause 02.03-2 and Clause 12.03-1S and should be increased
  - does not provide appropriate public access
  - should be planted with indigenous species
- the proposed landscape area along Wright Street is insufficient to ameliorate visual and noise impact on Wright Street residents
- street planting should provide for indigenous rather than exotic trees
- planting in the proposed landscape areas should include canopy, sub-canopy and ground level species.

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<sup>15</sup> Document 61

**FoMPC submitted:**

This is a significant part of the Creek – in its natural form of chain of ponds, rocks, banks, old remnant River Red Gum trees, high biodiversity, habitat and landscape values.

...

Indigenous plant species should be mandated in the amendment's permits. The setting of the Western Avenue block is against significant indigenous vegetation, including along the Moonee Ponds Creek, Woodlands Historic Park and The Tarnuk. Importantly, ... the vegetation supports high habitat and biodiversity. The amendment should respect and enhance the indigenous vegetation, biodiversity and habitat.

Mr Murphy generally supported the Landscape Masterplan and recommended changes. He considered it provides:

- streetscapes of an appropriate scale to the development
- proposed species size appropriate to the scale of the streets and the future built form within the lots.

Mr Murphy recommended:

- evergreen native tree species rather than exotics in certain areas
- higher density planting and a broader range of species in the 40-metre landscape area
- additional landscaped areas on the subject land.

More generally, Mr Murphy considered:

- the proposed bioretention system would integrate well into the landscape, both in terms of the way the areas would step down the valley slopes and be planted with species from Melbourne Water's biofiltration guidelines
- climate change impacts (such as reduced rainfall) were not of concern because species would be chosen from the relevant EVC and so had the best chance for success
- the choice of specific species would occur in the next stage of the subdivision process in consultation with the responsible authority who could ensure they are tolerant to sporadic and low-level rainfall
- built form should be subject to design controls that ensure that building materials avoid highly reflective surfaces and light colours to minimise visual impacts on the Moonee Ponds Creek corridor
- an appropriate mechanism to ensure ongoing compliance should be included.

Mr Murphy considered the landscape proposals together with his recommendations:

- respond to the subdivision and future industrial built form proposed for the subject land
- ensure the development can sit as a 'good neighbour' to the Moonee Ponds Creek valley linear open space and allow it to be visually integrated into that open space
- provide a strong visual buffer between the eastern residential areas and the proposed industrial uses
- provide for the physical and visual integration of the stormwater cleansing bioretention system into the valley landscape.

**Tree species**

To improve the visual outcome of the proposal, Mr Murphy recommended the street trees in areas shown as A, B and C in Figure 5 and in the proposed public open space, be large evergreen native trees (not necessarily indigenous) to:

- match the character of the Moonee Ponds Creek valley (Area A)

- provide an appropriate visual experience for visitors arriving in Melbourne and soften the buildings year-round (Area B)
- create continuity of character along Western Avenue, where possible (Area C).

**Figure 5** Street Tree Masterplan recommended changes



Source: Mr Murphy's expert witness report, p13

Mr Murphy said canopy trees around the perimeter of the subject land should be native canopy trees to provide shade and cooling.

Mr Murphy did not support a permit condition requiring planting of indigenous, as distinct from native, trees. He said there are not enough suitable indigenous street trees but plenty of suitable native species.

Mr Organ recommended that site indigenous species sourced from a local provenance be used rather than exotic deciduous trees and shrubs. When questioned whether trees could be native rather than indigenous, Mr Organ said:

- trees in the public open space area should be indigenous to the general area of the subject land (not necessarily just the EVC of the subject land) to provide habitat for woodland birds as well as nectar feeding birds
- trees in streetscapes should be primarily indigenous but could include natives.

The Proponent was content to provide either indigenous or native tree species but submitted that only species listed as 'suitable' in the Melbourne Airport Planting Guidelines<sup>16</sup> should be used to avoid planting vegetation that attracts bird and bat species which can pose safety risks to aircraft. The Proponent provided proposed permit conditions to this effect.

<sup>16</sup> Document 109

Council submitted that the area marked 'A' in Figure 5 and the proposed public open space area should be planted with indigenous evergreens rather than natives, relying on Mr Organ's evidence that adequate indigenous species are available. For all streets other than area 'A', Council submitted native tree species are appropriate and would *"provide for species diversity, are resilient to climate change and provide incidental habitat and biodiversity benefits"*. Council provided proposed permit drafting to this effect.

FoMPC supported the use of indigenous species, relying on Mr Organ's evidence.

### **Wright Street landscape area**

Mr Murphy supported the proposed 40-metre-wide landscape area on lots abutting Wright Street. He explained:

- it is generally appropriate to create a strong vegetative buffer between the residential area and the proposed industrial buildings and uses
- adopting a more densely planted 7.5-metre buffer adjacent to Wright Street backed up by a further 32.5 metres of intermittently tree planted zone is a good approach.

Mr Murphy stated the overall density should be higher than depicted in the Landscape Masterplan and recommended a minimum density of 1:100 square metres in his expert witness report which he amended to 1:66 square metres in his oral evidence. He recommended a broader range of species than specified in the Landscape Masterplan to ensure a strong visual buffer between the residential and industrial land uses. They did not extend to ground storey species which he considered too difficult to establish and maintain.

Mr Organ considered the vegetation in the landscape area should have canopy, sub-canopy and lower storey plants, and a diversity of species.

Mr Murphy supported a mechanism be included as a condition on Permit PA2302142 (subdivision) to ensure ongoing maintenance of landscaping and replacement of trees that may die.

Council supported the 40-metre-wide landscape area *"as an appropriate response to the residential properties on the opposite side of Wright Street"*. It submitted:

- the plants should be multilayered (that is, groundcover, mid and upper storey planting), and requested that DDO6 be revised to this effect
- the Proponent should be required, through a section 173 agreement, to maintain the setback, including replacing any dead or diseased vegetation
- the DDO6 design objective regarding the Wright Street landscape area should add *"that softens the appearance of and filters views to industrial built form from Wright Street"* to describe what is sought to be achieved.

FoMPC supported indigenous species and multilayered planting and relied on Mr Organ's evidence.

### **Additional landscaped areas**

Mr Murphy considered some of the proposed retaining walls within the proposed subdivision required additional landscaping to mitigate their visual bulk and help future built form integrate better into the Moonee Ponds Creek valley landscape. He recommended:

- a six-metre-wide tree planting area at the northern end of each of Lots 22, 25 and 39
- a minimum four-metre-wide tree planting area along the northern boundaries of each of Lots 23, 24 and 40.

The Proponent and several submitters generally supported these additional landscape areas.

### **Public open space**

In response to submissions that the public open space proposed was insufficient, the Proponent submitted the public open space was adequate and would result in an increase in access to public open space in the general area of the subject land:

A consequence of the Proposal, and only if the Proposal proceeds, will be that a significant area of land along the Moonee Ponds creek corridor, and immediately adjacent to the Creek, will be gifted to the public in a substantially improved condition.

On any assessment, that is a substantial benefit to the community, and consistent with the policy objectives in the Scheme related to biodiversity, river and riparian corridors and native vegetation management. If the Proposal does not proceed, that land will remain in private hands and not be of any benefit to the community or the Moonee Ponds Creek corridor.

Regarding the public open space area, Council supported the revised Landscape Masterplan subject to ensuring the proposed infrastructure would be constructed to Council standards. Council requested:

- the proposed Environmental and Geomorphological Impact Assessment and Soil Erosions and Sodic Soil Assessment include the proposed public space area to inform the Landscape Masterplan works, including planting, revegetation, soil stabilisation and the location and construction of physical infrastructure (such as paths and seating)
- planting in the public open space area be multilayered.

The Proponent agreed to extend the assessments to the public open space area through the permit conditions.

### **(iv) Discussion**

Much of the subject land that will house the future industrial estate is considerably higher than the Moonee Ponds Creek corridor. Future built form will be visible from the Creek corridor and residential areas across the Moonee Ponds Creek because the permits will enable<sup>17</sup> warehouses and a data centre with a height of 13.7 and 21 metres respectively. The landscape design response must ensure the schedule's objectives are achieved including:

- To ensure that the scenic qualities and visual character of the waterway corridor are not compromised by the inappropriate siting of buildings, the placement of fill, or lack of screening vegetation.

The Committee agrees with Mr Murphy that the terracing of the bioretention system areas will allow the bioretention system to sit well within the sloped land leading down to the Moonee Ponds Creek corridor and with the proposed landscaping will result in a highly vegetated area of the valley.

Noting the evidence of Mr Organ that indigenous trees species are preferable to native to provide suitable habitat for woodland birds, the Committee supports the use of indigenous trees where possible and particularly in areas that interface with the Moonee Ponds Creek corridor. In this respect, it supports Council's submission that the area marked 'A' in Figure 5 and the proposed public open space area should be planted with indigenous evergreens rather than natives. With

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<sup>17</sup> Through Condition 1 requiring plans to be generally in accordance with the amended plans prepared by Watson Young, Drawing Numbers TP01 – TP24, dated October 2022

this planting, the views across the Moonee Ponds Creek corridor will not be compromised and the interface with the Moonee Ponds Creek and environs will be appropriately resolved.

It is important that design controls for development to ensure building materials minimise visual impacts from the Moonee Ponds Creek corridor are included. The Committee supports the proposed permit conditions to this effect.

The Committee agrees with Council that the design objective for the Wright Street landscape area should describe what is sought to be achieved and agrees with its proposed wording.

The Wright Street landscape area will provide strong amenity buffer between the residential area and the proposed industrial uses. The Committee considers that both from a visual and biodiversity perspective, it is important the planting in this area include ground level, mid and upper-canopy planting and supports a control to this effect. It also considers the proposed condition on Permit PA2302142 (subdivision) to ensure maintenance of the landscape setback through a section 173 agreement is appropriate. With these changes, the Committee considers that the neighbourhood amenity along Wright Street will be maintained and, once the planting reaches maturity, probably enhanced.

The Committee notes the importance of ensuring only species listed as 'suitable' in the Melbourne Airport Planting Guidelines are used within the subject land and supports the proposed permit conditions to this effect.

The final public open space area, bioretention system area and the industrial built form will sit comfortably within its context and ensure the Environmental Significance Overlay Schedule 2 objectives are met. This outcome is reliant on:

- the addition of Mr Murphy's recommendations to mitigate the visual impact of the proposal's likely built form such as the additional landscaped four and six-metre-wide strips to soften retaining walls
- increased density of the proposed Wright Street landscape area and building material controls, as modified by the Committee's findings as to areas of indigenous and native trees and multilayered planting.

The Committee has given weight to the fact that the subject land sits within the Urban Growth Boundary and that an urban outcome is appropriate. There is no planning justification for the subject land to remain 'green open space'.

The Committee has considered the total area of public open space and increase in vegetated areas to be delivered by the proposal. The public open space is adequate and will result in a meaningful addition to public open space along a largely unmodified section of the Moonee Ponds Creek. It will provide public access by a shared pathway from both the future industrial estate and from existing open space to the east to an area that would not otherwise be available to the public.

Considering Council's submissions regarding the standard of infrastructure to be provided within the proposed open space area, the Committee supports the extension of the proposed Environmental and Geomorphological Impact Assessment and Soil Erosions and Sodic Soil Assessment to include the proposed public space area. Further, because Council will have ultimate responsibility for this infrastructure, Council must be consulted in the finalisation of the Landscape Masterplan. This will allow it to ensure that its requirements with respect to planting, and the location and construction of physical infrastructure (paths, seating, and so on) are addressed.

## **(v) Findings**

The Committee finds:

- The proposal provides an appropriate landscape design response including:
  - mitigation of visual and other amenity impacts of the proposed industrial use
  - visual integration of the subject land and its proposed uses with the Moonee Ponds Creek and environs.
- Regarding the Wright Street landscape area, Design and Development Overlay Schedule 6 should:
  - explain in the relevant design objective that the area is needed to soften the appearance of and filter views to industrial built form from Wright Street
  - require multilayered planting to maintain neighbourhood amenity along Wright Street.
- There should be a permit condition requiring the Landscape Masterplan to be finalised in consultation with Council.
- There is no landscape design reason why the Amendment and permits should not proceed.

## **8.2 Built form design**

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

This issue is whether the proposed built form design appropriately responds to the subject land and surrounding area.

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

There were submissions concerned about how future built form would appear when viewed off-site.

Mr Murphy recommended that building materials and colours be controlled to those which sit comfortably into the valley landscape, avoiding light colours and highly reflective surfaces. Council supported this recommendation. It requested a permit condition which requires plans submitted for endorsement to show external surface and façade materials with muted tones and to avoid highly reflective surfaces on any future buildings on Lots 22, 23, 24, 25, 39 and 40. The Proponent agreed to this condition subject to excluding glazing.

The Committee asked the Proponent to confirm whether any conditions requested by referral authorities have been included on the planning permits, and if not, explain why. In its Part C submission, the Proponent noted Melbourne Airport is not a referral authority, did not object to the proposal, but requested conditions relating to minimising glare from the roofed area, lighting and solar panels.

Melbourne Airport noted the subject land is partially in light control Zone C (150cd) and Zone D (450cd) which reflect the degree of interference ground lights can cause as a pilot approaches to land. It stated:

Accordingly, all roofed areas of the proposed buildings must be coloured in non-reflective muted tones or constructed of suitable materials that absorb light rather than creating unnecessary glare.

...



Prior to any external lighting being installed a lighting impact assessment is to be prepared and submitted to Melbourne Airport for approval. External lighting (including but not limited to street lighting and internally illuminated signage) must be installed or baffled such that it does not cause light spillage above the horizontal plane or beyond the subject site to prevent potential visual distraction to pilots.

In response, the Proponent submitted:

- PA2302142 (subdivision)
  - the permit only relates to subdividing land and creating of roads
  - no issues arise about matters referred to by Melbourne Airport, except for baffling street lighting which has been addressed in a new permit condition
- PA2302140 (warehouses) and PA2302143 (data centre)
  - the proposed building heights are well under the relevant PANS-OPS airspace heights, and noise issues don't arise given the industrial uses
  - new conditions have been included on each permit to respond to Melbourne Airport's requested conditions relating to lighting, glare, emissions and solar panels.

### **(iii) Discussion**

Mr Murphy's recommendation to control how building colours and materials sit within the landscape, Council's proposed permit condition and the Proponent's revised version of the condition generally align with each other. The Committee agrees that muted tones should not refer to glazing. The latter part of the proposed condition would ensure that any future glazing is not highly reflective.

The Proponent's proposed permit conditions appropriately respond to conditions sought by Melbourne Airport and should be included in the permits. The proposed permit condition regarding solar panels for the data centre and warehouse permits would minimise risk of glint and glare if it was later decided to install them.

### **(iv) Findings**

The Committee finds:

- The proposed design appropriately responds to the subject land and the surrounding area but would benefit from further changes.
- Planning Permit PA2302142 (subdivision) should require plans for future buildings on Lots 22, 23, 24, 25, 39 and 40, to use muted tones on external surface and façade materials (excluding glazing) and to avoid highly reflective surfaces.
- Planning Permits PA2302140 (warehouses) and PA2302143 (data centre) should require any solar panel on the building to be designed and oriented to minimise the risk of glint and glare that may visually distract pilots.
- All three planning permits should require external lighting to be installed or baffled so it does not cause light to spill above the horizontal plane.
- There is no built form design reason why the Amendment and permits should not proceed.

## 9 Other issues

### 9.1 Buffer

#### (i) The issue

The issue is whether the subject land should be a buffer between the closed landfill to its west and the residential area to its east.

#### (ii) Evidence and submissions

Numerous submissions considered:

- the proposed development would increase noise and negatively impact the amenity of residents on adjoining residential properties
- there would be increased noise from heavy and commercial traffic and loading areas
- the subject land should not be developed so it can continue to buffer residential areas from the closed land fill located to the west
- it is not good to build factories so close to houses in this ‘modern age’.

Council submitted that it “*strongly*” objected to the proposal having regard to its physical context and the significant concerns of the community. It explained:

- the community has fought to protect the health and wellbeing of residents near the closed landfill
- residents desire a healthy and safe place to live
- the community desires for the subject land to provide a ‘buffer’ between the residential area east of Wright Street and the closed landfill.

Having reviewed the environmental audit completed for the subject land in 2014 and Environmental Summary Report (Senversa, 2022), EPA did not object to the Amendment or to the permits being issued.

Mr Glossop considered it appropriate to rezone the subject land to IN3Z because the zone is drafted as a ‘buffer’ zone with a purpose which ensures “*uses do not affect the safety and amenity of adjacent, more sensitive uses*”.

The Proponent considered the concept of the subject land operating as a ‘buffer’ for whatever reason was not a relevant concept or term. It submitted the subject land:

- is not required under any legislation to operate as a buffer between the residential area and the closed landfill site
- physically separates the residential area from the closed landfill, which will not be altered when the land is developed
- does not need to be vacant to separate the residential area from the closed landfill.

The Proponent added that it would be unreasonable and unnecessary to expect privately owned urban land to remain vacant and underused when there is no planning control or legislative requirement seeking that outcome. Regarding Council’s submission, it added:

Council is fully aware that there has been a comprehensive environmental audit of the subject land, which concluded that the land is suitable to be developed for any beneficial use; and is also fully aware that there is no legal basis to the proposition that the subject land is, or is required to be, a ‘buffer’ of any sort.

Council should have properly acknowledged these matters, and the consequences of them in terms of the limited relevance of contamination issues to the acceptability of the Proposal. Doing so would have been of benefit to community members, and to the SAC, by placing those issues into their proper context. It is unfortunate that the local government authority has chosen not to do so in this case.

### **(iii) Discussion**

Many submissions expressed their preference for the subject land to be some form of 'buffer'. Confusingly, submissions referred to the subject land as 'buffer land'. At the Hearing, it became apparent there were different perspectives on what was meant by a buffer. The most common request was for the subject land to retain monitoring wells for monitoring groundwater conditions. Some others wanted the subject land to remain vacant to provide open views.

#### **Why is a buffer needed and what can they include?**

Planning Scheme Clause 13.07-1S (Land use compatibility) seeks to *"protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts"*.

A way to achieve this objective is to manage the location and siting of certain land uses to help minimise potential conflicts. The area in which this consideration occurs is commonly referred to as a buffer.

Clause 13.07-1S refers to a relevant EPA policy document<sup>18</sup>. Both the clause and EPA publication envisage compatible land uses on adjoining properties. Neither require a property to remain vacant or undeveloped to achieve a compatible relationship.

#### **Land use separation**

The subject land creates a separation distance of about 500 metres between the closed landfill and the residential area east of Wright Street (sensitive land use). Developing the subject land will not change the separation distance for existing residents, therefore there will be no encroachment between two incompatible land uses.

#### **Contamination and access to monitoring wells**

No landfill gas or soil contamination has been identified on the subject land and the contaminated groundwater is on average more than 25 metres below the surface. There is no proposal to disturb soil at this depth. Therefore, there is no contamination reason to leave the subject land vacant.

The Committee has acknowledged that any future use and development on the subject land needs to retain the monitoring wells, consistent with the environmental audit condition. The proposed development will not affect the ability for small parts of the subject land to continue their monitoring role. Future development can co-exist with the monitoring wells through design and appropriately drafted permit conditions and associated section 173 agreements.

If the subject land was needed as a buffer (which it is not), the Committee is likely to have similarly supported the proposed use and development. This is because a buffer can be developed with compatible land uses which co-exist with the sensitive land uses it is buffering.

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<sup>18</sup> Recommended separation distances for industrial residual air emissions (Publication 1518, Environment Protection Authority, March 2013).

There is no strategic or statutory reason for the subject land to buffer residents from the closed landfill. Nonetheless, the IN3Z provisions will ensure:

- only industries and associated uses compatible with the nearby community are established on the subject land
- uses do not affect the safety and amenity of adjacent, more sensitive land uses east of Wright Street.

### **Future land use compatibility**

As discussed in Chapter 6.2.2, applying IN3Z on the subject land will ensure land uses on the subject land are compatible with the residential area east of Wright Street. The IN3Z purpose and provisions will ensure that heavier and more offensive industry does not locate on the subject land.

The IN3Z provisions require a responsible authority to assess the potential impacts (such as noise and other off-site impacts) of a proposed industrial use:

- within 30 metres of a residential zone, or
- listed in Clause 53.10 on the residential area east of Wright Street.

A decision guideline requires the responsible authority to consider:

The effect that the use may have on nearby existing or proposed residential areas or other uses which are sensitive to industrial off-site effects, having regard to any comments or directions of the referral authorities.

The proposal provides separation beyond the 30-metre permit threshold specified in the IN3Z provisions. When developed, there would be about 58 metres separating future industry from the closest residential property, comprising:

- a 40-metre-wide landscape area on the subject land along Wright Street
- 18-metre-wide Wright Street road reservation.

There are examples in Melbourne, including the Hume municipality, where IN3Z land directly abuts the fences of residential land.

### **Is the subject land needed as a buffer?**

The subject land is not identified or needed as a buffer to the closed landfill. No authority or expert has recommended this designation and there is no apparent reason to do so. Even if the land was needed as a buffer, the use and development proposed on the subject land would be a compatible use and development between the landfill and the residential area.

Nonetheless, the subject land will:

- continue to separate residents east of Wright Street from the closed landfill
- continue to provide access to the monitoring wells
- will have IN3Z provisions which will ensure compatible land uses.

Council's carefully worded submission regarding this issue refers to *"the community has fought"*, *"the community is frustrated"*, *"significant concerns of the community"* and *"the community's desire"*. The Committee process would have benefitted from Council reconciling these views with the planning and legislative frameworks and findings in reports and audits – none of which require the subject land to remain undeveloped for health or contamination reasons.

#### **(iv) Findings**

The Committee finds:

- The subject land is not identified or needed as a buffer between the closed landfill to its west and the residential area east of Wright Street.
- The Industrial 3 Zone provides an appropriate planning framework for ensuring future uses are compatible with the nearby residential area, without affecting the safety and amenity of adjacent residents.
- The 58-metre separation between future industry and the closest residential property boundary is beyond the 30-metre threshold specified for certain land uses in the Industrial 3 Zone and beyond what is needed to manage potential off-site amenity impacts.
- While a buffer is not needed, the Industrial 3 Zone provisions, 58-metre separation between industry and residential properties including the 40-metre-wide landscape area along Wright Street which will set back built form, will minimise the potential impact on residents east of Wright Street.
- There is no buffer related reason why the Amendment and permits should not proceed.

## **9.2 Traffic**

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

The issues are:

- whether the traffic reports are accurate and current enough to assess the three permit applications
- whether the local road network has enough capacity to manage additional traffic generated by the proposed use and development
- whether the proposed use and development will result in an unreasonable impact on the local road network and safety.

#### **(ii) Background**

Three separate traffic reports were prepared on 19 August 2022 for the data centre, subdivision and warehouse permit applications. They concluded:

- the subdivision will generate 418 trips during the peak period and will have manageable impacts on the road network if identified mitigation works are achieved
- the proposed data centre and warehouses will not adversely impact the local road network.

Mr Kiriakidis included a proposed street layout plan in his expert witness report, as shown in Figure 6.

**Figure 6 Proposed street layout plan**

Source: Mr Kiriakidis expert witness report, p18

### (iii) Evidence and submissions

There were submissions which considered:

- existing heavy-duty vehicle traffic and congestion disrupts traffic flow in the area, and is unacceptable
- rezoning the subject land would worsen existing traffic circumstances and would be more dangerous for residents
- Western Avenue is not constructed to withstand the additional traffic
- workers would park in residential streets
- there is an unreasonable volume of vehicles queuing during peak times to access Mickleham Road from Western Avenue, Hillcrest Avenue and Bamford Avenue
- there is no state government funding for the Attwood Connector referred to by the Proponent to reduce traffic on Mickleham Road

- there is no public transport in the area bounded by Western Avenue, Wright Street, Mickleham Road and the Moonee Ponds Creek, and the closest bus stop is 2 kilometres away
- the traffic reports are outdated and inadequately represent the local road conditions which have changed significantly since the surveys were conducted
- the traffic survey was conducted only on one day, the Wednesday after a Monday public holiday so people would have taken the week off
- traffic generation figures for peak times vary by 20 per cent between traffic consultants – Impact which estimates 418 vehicles and Stantec with 336 vehicles
- mitigation works will require land acquisition from properties at the north-west and south-west corners of the Western Avenue / Mickleham Road intersection.

In its Part C submission, the Proponent provided plans which showed that mitigation works could be undertaken at the Western Avenue / Mickleham Road intersection entirely within the road reserve and without the need to acquire private land.

To address their issues, submissions requested:

- a new traffic report
- alternative access at the residential area to ease traffic burden
- any future permit include conditions which:
  - prohibit additional airport parking businesses until a connection to Melbourne Airport is completed
  - prohibit lots in the development having access off Western Avenue (they should be restricted to internal roads within the development).

Council objected to the proposal because associated traffic would impact an already congested area. It submitted:

- the local community has serious concern about existing safety and traffic congestion
- residents currently experience lengthy delays to exit from Western Avenue to Mickleham Road during morning peak
- the proposed subdivision:
  - does not include a mechanism to prevent or discourage the use of residential streets
  - requires new road infrastructure and upgrades to existing road infrastructure, given the potential traffic impacts without them
- traffic impact is one of the community concerns that will affect its health and wellbeing.

Council requested that Permit PA2302142 (subdivision) include:

- conditions for all traffic mitigation works identified in the Traffic Impact Report 2022 for the Western Avenue / Mickleham Road intersection
- a condition requiring the proposed roundabout at the Western Avenue / Hillcrest Drive intersection be designed to prevent large B-double trucks from using the left-hand turn into Hillcrest Drive
- a new condition which requires:

All roads will have a capacity to ensure the safe and efficient movement of public and private transport. The minimum pavement width will be 12.2 metres invert to invert for all roads excluding a service road which can be reduced to 10.0 metres invert to invert with parking on one side only. Court heads shall have sufficient capacity for all anticipated traffic types to turn without impediment, minimum radius 16.0 metres invert to invert with 4.0 metre verge setback from property boundary.

The Proponent called evidence on traffic from Mr Kiriakidis of Stantec. He assessed:

- existing conditions including volume and capacity around the subject land's road network
- the impact on the network if the subject land was developed
- the proposed development's impact on the network if certain road improvements were achieved.

**Table 3** Traffic impact assessment

Intersection	Peak hour	Existing			Post development (No road upgrades)			Post development (With improvements)		
		DOS	Ave delay	Ave queue	DOS	Ave delay	Ave queue	DOS	Ave delay	Ave queue
Mickleham Road / Western Avenue / Rylandes Drive Signalised Intersection	AM	0.90	39s	201m	0.98	44s	209m	0.92	43s	211m
	PM	0.96	39s	114m	1.46	85s	432m	0.87	41s	117m
Mickleham Road / Gladstone Park Drive / International Drive Signalised Intersection	AM	0.96	43s	208m	0.99	49s	238m	0.99	48s	238m
	PM	1.06	53s	192m	1.08	57s	211m	0.93	40s	156m
Mickleham Road/ Broadmeadows Road Roundabout	AM	0.92	9s	59m	0.98	18s	83m	0.98	16s	87m
	PM	0.77	6s	31m	0.78	6s	33m	0.71	6s	25m
Mickleham Road/ Hillcrest Drive Unsignalised Intersection	AM	0.67	0s	9m	0.68	0s	33m	0.68	0s	37m
	PM	0.55	0s	1m	0.56	0s	1m	0.57	0s	1m
Mickleham Road/ Bamford Avenue/ Forman Street Unsignalised Intersection	AM	0.62	2s	6m	0.63	2s	6m	0.63	2s	6m
	PM	0.65	4s	6m	0.73	5s	7m	0.75	5s	8m

Source: Mr Kiriakidis evidence | DOS: Degree of saturation

Mr Kiriakidis was satisfied traffic from the proposed rezoning can be accommodated on the surrounding road network if road improvement works are delivered. He could not find traffic or parking reasons to not issue the planning permits for the proposed development subject to recommended works which included:

*Mickleham Road/Western Avenue/Rylandes Drive Signalised Intersection*

- widen the Western Avenue (west) approach to enable two 95-metre right turn lanes with an 80-metre storage length and 15-metre taper
- a left turn slip lane on the Rylandes Drive (east) approach
- an additional 40-metre right turn lane with a 25-metre storage length and 15-metre taper on the Rylandes Drive (east) approach
- change the traffic signal phasing to run the Western Avenue and Rylandes Drive vehicle movements in separate phases

*Mickleham Road/Broadmeadows Road Roundabout*

- an additional 60-metre traffic lane on the Mickleham Road (south) approach
- reconfigure the lane movements on the Mickleham Road (south) approach to enable two through lanes and a separate right turn lane



*Mickleham Road/Gladstone Park Drive/International Drive Signalised Intersection*

- minor changes to the phase timings at the signalised intersection during the weekday afternoon peak hour to deliver a more balanced intersection performance.

Mr Kiriakidis stated:

- analysis found intersection improvement works would provide similar or better network performance outcomes compared to existing pre-development performance levels
- the road improvement works can be included as a condition on the subdivision planning permit (PA2302142)
- providing 137 car spaces for the proposed warehouse (PA2302140) satisfies the statutory car parking requirement of 113 car spaces
- the proposed data centre (PA2302143) does not have a statutory car parking rate, but empirical estimates suggest peak demand for 52 car spaces, therefore the proposed 55 car spaces would satisfy the demand
- the proposed car parking and vehicle access layout of the warehouse use on Lots 2 and 3 and the data centre on Lot 38 is consistent with the dimensional requirements in the Planning Scheme and, where appropriate, the relevant Australian Standards
- bicycle parking (for the warehouse and data centre) is proposed for staff and visitors, with showers and change room facilities for staff, even though there is no statutory requirement to provide these
- staff and visitor bicycle parking space dimensions (warehouses) satisfy the Planning Scheme
- visitor bicycle parking space dimensions (warehouses and data centre) satisfy the relevant Australian Standard
- it is recommended the staff bicycle storage layout (data centre) be revised to provide 1.2-metre-long vertical storage spaces (the length satisfies the relevant Australian Standard) with a 1.5-metre manoeuvring distance behind the spaces
- the recommended design revision can be achieved through a permit condition
- he was satisfied the proposed waste collection and loading arrangements of the warehouse and data centre will adequately accommodate expected activity.

In response to a question from Council at the Hearing, Mr Kiriakidis said the Hillcrest approach to the future Western Avenue / Hillcrest roundabout referred to in the traffic report could be narrowed to restrict access only to smaller vehicles. The Proponent proposed a new Condition 15 to address the issue:

The upgrade works in respect of the intersection of Western Avenue and Hillcrest Drive are to include design measures intended to limit access to Hillcrest Drive from Western Avenue by large commercial vehicles (other than vehicles commonly required to meet residential needs).

The Proponent also introduced a new requirement into DDO6 (Day 1 version) which states:

Vehicle access must not be provided to Wright Street.

#### **(iv) Discussion**

The traffic reports are accurate and current enough to assess the permit applications because:

- they sourced and reviewed Department of Transport Sydney Coordinated Adaptive Traffic System data for 2021 and 2022 comparable with the existing traffic conditions survey date of 30 May 2019

- there has been a small decrease in traffic volumes during morning and afternoon peaks in 2021 and 2022 compared to 30 May 2019 so the 2019 dataset is suitable for assessing potential impacts.

The relevant road manager is responsible for resolving existing traffic conditions. The proposed use and development on the subject land should reasonably impact the local road network, however it should not have to resolve existing issues.

The proposed use and development will increase traffic volume on the local road network during peak times. Without improvements, they would:

- unreasonably impact the Mickleham Road / Western Avenue Signalised Intersection during afternoon peak
- slightly worsen the currently oversaturated Mickleham Road / Gladstone Park Drive / International Drive Signalised Intersection during the afternoon peak.

The figures in Table 3 show that, with improvements recommended by Mr Kiriakidis and required through proposed permit conditions, the proposal would:

- result in minor to moderate increased intersection delays and queuing, though none are likely to reach full saturation
- result in no impact on one intersection, an additional second's delay during afternoon peak (no change to its morning delay) at another, and additional delays at other intersections ranging from two to seven seconds
- reduce the degree of saturation for the Mickleham Road / Western Avenue Signalised Intersection during afternoon peak
- improve the performance of the Mickleham Road / Gladstone Park Drive / International Drive intersection (currently beyond saturation during afternoon peak) by reducing its degree of saturation to 0.93 and reducing 13 seconds from the average delay.

Many drivers would experience little to no difference to existing conditions, depending on which intersection they use during morning or afternoon peak times.

There is no evidence the increased traffic volume will unreasonably impact the safety of neighbouring residents. Safety factors may include road speed limits, road design including traffic control points and the location of crossings and access points. Increased traffic volume alone does not cause safety issues.

To minimise impact on the residential area, there should be no vehicle access on the subject land at Wright Street. The Committee agrees with the Proponent's DDO6 requirement to achieve this. The DDO head provisions enable the owner to apply for a permit to vary this requirement. However, the 40-metre-wide landscape area proposed on the subject land will physically restrict lots from accessing Wright Street and thereby avoid direct interaction with the residential area. The proposed subdivision layout provides the ability to restrict lot access from the development's internal roads rather than Western Avenue. There is no clear reason this restriction should appear as a permit condition.

It is important that large vehicles such as B-doubles avoid the residential area when travelling between Mickleham Road and the subject land. The Committee therefore agrees with Council and Mr Kiriakidis that the Western Avenue / Hillcrest Drive intersection should be designed to restrict B-doubles from accessing Hillcrest Drive. The Proponent's proposed condition would achieve this outcome by requiring restricted access to Hillcrest Drive be included in future intersection upgrade works within six months of issuing a Statement of Compliance.

At the Hearing, no party questioned whether it is possible or appropriate to include a permit condition requiring works on land beyond the subject land. Generally, a section 173 agreement would be used in such a circumstance. This should be further investigated before the permit is finalised and approved. The Committee has included Permit PA2302142 (subdivision) Conditions 16 and 17, which relate to off-site traffic upgrade works, pending this further investigation.

Council owns the local roads between the subject land and Mickleham Road so it can implement measures such as signs which prohibit trucks from accessing the residential streets until the roundabout is completed at Hillcrest Drive.

The Committee agrees with submissions that the subject land has limited access to public transport. The traffic report identifies the most accessible bus stop about 1.2 kilometres east of the subject land, which is not a convenient walkable distance. While the proposed development would have benefitted from convenient access to public transport, this factor is not determinative to issuing the permits. The proposed number of car park spaces and bicycle facilities appropriately respond to the subject land's limited access to public transport.

#### **(v) Findings**

The Committee finds:

- The traffic reports are accurate and current enough to assess the three permit applications.
- The local road network has enough capacity to manage additional traffic generated by the proposed use and development.
- The proposed use and development, with road network improvements required through conditions in Planning Permit PA2303142, will result in a reasonable impact on the local road network and safety.
- Future roundabout works to the Western Avenue / Hillcrest Avenue intersection should restrict B-double trucks from accessing Hillcrest Avenue.
- Permit PA2303142 (subdivision) Conditions 16 and 17 requiring traffic upgrade works should be further investigated to determine whether:
  - it is possible to require works beyond the subject land
  - an alternative suitable mechanism such as a section 173 agreement if a permit condition is found to be unsuitable.
- There is no traffic related reason why the Amendment and permits should not proceed.

## 10 Drafting

This chapter focuses on drafting related issues including drafting comments received from parties in their tracked documents and during discussion at the Hearing. The Committee made directions which enabled:

- the Proponent to provide its final preferred version of the Amendment clauses and permit conditions
- drafting discussion at the Hearing
- the opportunity for a party to provide comments on the Proponent's preferred version
- the Proponent to provide its final response to drafting changes requested by parties.

The Committee directed that any comments only relate to drafting. Comments on the merits of the Amendment and permits are considered in earlier chapters and not have been included in this chapter.

### 10.1 Design and Development Overlay Schedule 6

References in Table 4 are to the Day 1 version.

**Table 4** DDO6 requested drafting changes and responses

Requested by	Details	Responses
<b>1.0 Design objectives</b>		
Mr Glossop	<b>Objectives 1 and 2</b> – combine the first and second design objectives because there are six and Ministerial Direction 7(5) does not enable more than five objectives	Included in Day 1 version
Council	<b>Objective 3</b> – relocate to be the first	Proponent agreed in principle
Mr Glossop	<b>Objective 5</b> – delete (To ensure that the design, siting and appearance of buildings and works within the industrial zone is of high quality) because it is not needed, but if it was retained, delete “ <i>within the industrial zone</i> ” because it is confusing	Objective 5 deleted in Day 1 version
FoMPC	add a new objective – <i>To provide a high quality public open space landscape zone between the Moonee Ponds Creek and the industrial buildings and infrastructure on the IN3Z land.</i>	Proponent: Disagree. DDO6 does not apply to the public open space so this is inappropriate
<b>2.0 Buildings and works</b>		
<b>Lots with frontage to Tullamarine Freeway</b>		
Mr Glossop	Refer to “ <i>Direct vehicle access must not be provided to the Tullamarine Freeway</i> ” for lots fronting the freeway with because “ <i>the site</i> ” is confusing	Included in Day 1 version

Requested by	Details	Responses
<b>1.0 Design objectives</b>		
FoMPC	Add a new built form requirement – <i>Roof tops visible by pilots using Melbourne Airport must be constructed using non-reflective materials.</i>	Proponent: Unnecessary because dealt with in PA2302140 (warehouses) and should be addressed in permit; not DDO6
<b>4.0 Signs</b>		
Mr Glossop	Delete 'Advertising' given Planning Scheme Clause 52.06 is 'Signs'	Included in Day 1 version

The Committee agrees with changes included in the Day 1 version and Council's request to reorder the design objectives.

## 10.2 Permit conditions

### (i) Background

During the drafting discussion, the Committee referred to Writing Planning Permits (Department of Transport and Planning, May 2023). The document advises:

#### Introduction

A planning permit creates obligations that must be complied with by the permit holder for as long as the permit is relied upon. These obligations may be enforced by a responsible authority or any person. For these reasons it is important to ensure that every planning permit is:

- Lawful
- Easy to understand (clearly written, concise and unambiguous)
- Enforceable.

#### Writing effective conditions

General principles for drafting conditions are:

- Ensure the condition is within power.
- Use plain English.
- Use the active voice, not the passive voice.
- Use simple words and avoid problematic expressions.
- Use technical expressions carefully and purposefully.

...

The three basic building blocks of a condition are:

- The WHAT: WHAT is the obligation or requirement that must be met?
- The WHEN: WHEN must the obligation or requirement be met?
- The HOW: HOW must the obligation or requirement be satisfied?

Every condition must include a WHAT. Not every condition will include a WHEN or a HOW.

The Writing Planning Permits document provides examples of expressions to be generally avoided or used carefully:

- replace 'prior to' with 'before' – it is not plain English
- never use 'shall' – it is not plain English and ambiguous because it is not clear if the obligation is mandatory or discretionary: Alternative: must / are to

- replace 'should' with 'must' – it is unclear whether the obligation is mandatory or discretionary: Alternative: 'must' where an obligation is to be applied.

The Committee has reviewed permit conditions according to guidance in the Writing Planning Permits document.

## (ii) General drafting

### Responsible authority

The Proponent replaced 'Minister for Planning' with 'responsible authority' in the Day 1 version of the permit conditions, as shown in specific changes in the tables below.

#### *Committee response*

The Committee supports this drafting change, which is consistent with terminology used in the Planning Scheme.

### **Must, is required to, will be required to, should and shall**

At the drafting discussion, the Committee queried the ability to enforce permit conditions with 'should' rather than 'must'. The Proponent identified conditions where 'must' would be more appropriate but did not support it for instances where it would result in a requirement to meet guidelines which are discretionary in nature.

After the discussion, the Proponent provided a further version of Planning Permit PA2302142 (subdivision)<sup>19</sup> which, among other things, revised many of the permit conditions to apply the active voice and to replace 'should' with 'must'.

Table 5 shows how the terminology evolved and refers to Day 1 version condition numbers. Numbers in brackets refer to revised condition numbers for that version.

**Table 5** Permit condition terminology

Condition	Exhibition version	Day 1 version	Final version
<b>Permit PA2302140 (warehouses)</b>			
20	Should [condition 17]	Should	Should [22]
<b>Permit PA2302142 (subdivision)</b>			
3	Is required to [2]	Is required to	Is required to [3]
10	Shall [9]	Shall	Must [11]
14	Shall [15]	Must	Must [17]
22	Will be required [23]	Is required	Is required [25]
23	Should [24]	Should	Must
27	Shall [29]	Shall	Shall [30]
28	Should	Should	Should [31]
29	-	Shall	-

<sup>19</sup> Document 118

Condition	Exhibition version	Day 1 version	Final version
30	Shall [31]	Shall	Must [32]
31	Shall [32]	Shall	Shall [33]
32	Shall [34]	Shall	Shall [34]
42	Shall [39]	Shall	Shall [44]
43	Shall [40]	Must	Must [45]
44	Shall [41]	Must	Must [46]
49	Shall [49]	Shall	Shall [50]
52	Should [50]	Should	Must [53]
53	-	Is required	
54	Should [51]	Should	Should [55]
60	Shall [59]	Shall	Shall [61]
<b>Permit PA2302142 (data centre)</b>			
21	Should [16]	Should	Should [23]

### *Committee response*

A planning permit is a legally binding document so it should avoid 'should' and 'shall' and instead use 'must' to make each condition clear and enforceable. Using vague language such as 'shall' or 'should' will create confusion and may result in legal challenges, delays and costs.

The Committee agrees with the Proponent's changes to replace 'should' with 'must'. This should be extended to all other permit conditions with similar circumstances. Permit conditions should replace 'shall' and 'should' with 'must' if it does not result in mandating what would normally be discretionary guidelines. In that latter instance, references to guidelines should appear as permit notes rather than appearing among enforceable permit conditions.

For consistency, 'must' should be used rather than 'is to', 'will be required to' and 'is required'.

In Appendix D, the Committee has recommended that advisory content be translated into a permit note rather than being expressed as a condition.

### **Active voice**

At the drafting discussion, the Committee queried whether permit conditions should be drafted in active voice, consistent with advice in the Writing Planning Permits document. The Proponent's revised Planning Permit PA2302142 (subdivision) applied active voice to a considerable proportion of passive voice expressions.

### *Committee response*

The Committee supports active voice for drafting all permit conditions, consistent with advice in the Writing Planning Permits document.

### **(iii) Specific drafting**

Condition numbers in Tables 6, 7 and 8 are to the Day 1 version.

**Table 6** Permit PA2302140 (warehouses) drafting changes

Requested by	Details	Responses
Mr Glossop	<b>Preamble</b> – should not refer to ‘use’ because no use is proposed	Included in Day 1 version
Mr Glossop	<b>Preamble</b> – delete the word ‘staged’ because the conditions and plans do not indicate a staged permit	Included in Day 1 version
Mr Glossop	<b>Preamble</b> – delete “ <i>and a reduction in the car parking requirements</i> ”	Included in Day 1 version
Mr Glossop	<b>Condition 1</b> – should be deleted because it is more an advisory note and given comments about staging, it should not be replaced with a note	Included in Day 1 version

**Table 7** Permit PA2302142 (subdivision) drafting changes

Requested by	Details	Responses
Council	<b>Condition 14</b> – add “ <i>and the responsible road manager</i> ” and delete “ <i>unless otherwise agreed by the responsible authority in consultation with the responsible road manager</i> ”	Proponent: Agreed in principle, except that the works should be to the satisfaction of the responsible road manager alone
Council	<b>Condition 16</b> – add “ <i>to the satisfaction of ... and Hume City Council</i> ”	Proponent: Unnecessary addition. The obligation is to prepare a landscape masterplan to the satisfaction of the responsible authority, which is the relevant authority for that purpose
Council	<b>Condition 26</b> – add “ <i>to Hume City Council</i> ”	Proponent: Agreed in principle based on the effect of the change is that Council would receive the audit
Council	<b>Condition 52</b> – replace “ <i>should</i> ” with “ <i>must</i> ”	Proponent agreed
Council	<b>Condition 54</b> – add “ <i>to the satisfaction of ... and Hume City Council</i> ”	Proponent: Disagree. Like the landscape plan condition, as a matter of good drafting practice there should only be one authority that needs to be satisfied by the design of the Stormwater Management Strategy. It is appropriate for the responsible authority to consult with Council and Melbourne Water on the stormwater design



**Table 8** Permit PA2302143 (data centre) drafting changes

Requested by	Details	Responses
Proponent	<b>Condition 2, 7 and 10</b> – replace “ <i>Minister for Planning</i> ” with “ <i>responsible authority</i> ”	Included in Day 1 version
Proponent	<b>Conditions 5, 9, 21 and 25</b> – replace “ <i>Minister for Planning, in consultation with Hume City Council</i> ” to “ <i>responsible authority</i> ”	Included in Day 1 version
Proponent	<b>Condition 22</b> – extend the expiry date for commencing development from 12 months to 24 months	Day 1 version extended it to 4 years
Mr Glossop	<b>Condition 22</b> – the permit relates to a use so the following additional expiry conditions should be added: <i>c. the use is not commenced within two (2) years after the completion of the development.</i> <i>d. the use is discontinued for a period of two (2) years.</i>	Included in Day 1 version
Proponent	Other minor drafting changes which improve consistency and legibility	Included in Day 1 version

The Committee agrees with drafting changes which were included in the Day 1 version because they will improve the clarity and operation of the permits. The permit conditions in Appendix D include the drafting changes which the Committee considered to be appropriate.

The Proponent’s proposed conditions for Permit PA2302140 (warehouses) did not include a requirement to provide a waste management plan generally in accordance with the waste management plan exhibited with the proposal, despite a reference to a condition of this nature in Clause 1(c)(ii) of the permit. A condition of this nature was included in the Day 1 version of Permit PA2302143 (data centre). Having reviewed both permits and the exhibited waste management plans<sup>20</sup>, the Committee considers this to be a drafting error and has included a condition to this effect in Permit PA2302140 (warehouses).

<sup>20</sup> Documents 22 and 23

## Appendix A Referral letter

Ms Kathy Mitchell AM  
Panel Chair  
Priority Projects Standing Advisory Committee  
Planning Panels Victoria

Dear Ms Mitchell AM

### **DEVELOPMENT FACILITATION PROGRAM - 140-204 WESTERN AVENUE, WESTMEADOWS**

I refer to draft Planning Scheme Amendment C269 to the Hume Planning Scheme and to draft planning permits PA2302140, PA2302142 and PA2302143 affecting land at 140-204 Western Avenue, Westmeadows. The proposal has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be prioritised for accelerated assessment and determination.

I am considering whether to prepare, adopt and approve draft Amendment C269 to the Hume Planning Scheme and to draft planning permits PA2302140, PA2302142 and PA2302143, and exempt myself under section 20(4) of the *Planning and Environment Act 1987* (PE Act) from the requirements of section 17, 18 and 19 of the PE Act and the Regulations.

Draft Amendment C269 proposes to rezone the land from Farming Zone to become a mixture of Industrial 3 Zone and Public Park and Recreation Zone, introduce a Design and Development Overlay Schedule 6, and to amend the planning scheme to make the Minister for Planning the responsible authority for the matters relating to the draft planning permits.

The three draft planning permits are for the use and development of a data centre (PA2302143), use and development of a warehouse, display of signage and reduction in car parking (PA2302140) and the subdivision of land into 34 lots including a stormwater bioretention area, part removal of a drystone wall and removal of native vegetation (PA2302142).

A total of 64 submissions, including 59 objections, have been received. The main concerns relate to the proposed rezoning from Farming Zone to Industrial 3 Zone, disturbance of the contaminated land, air and dust pollution, legacy remediation issues of the site, traffic and congestion, oversupply of industrial warehouses, impacts to wildlife and native vegetation removal, stormwater discharge into the Moonee Ponds Creek, preference for the land to remain as 'buffer' between residential establishment and existing landfills in the area, impacts arising from the contamination of land, and poor design response.

I have determined to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether I should approve draft Amendment C269 to the Hume Planning Scheme and draft planning permits PA2302140, PA2302142 and PA2302143. I request that the committee's specific advice be constrained to the themes summarised above.

The draft amendment documentation, including the application and supporting documents, and submissions will be provided to the committee.

The cost of the committee process will be met by the proponent, MAB Corporation Pty Ltd.

Yours sincerely



The Hon Sonya Kilkenny MP  
Minister for Planning

16/7/23

## Appendix B Document list

No	Date	Description	Provided by
1	14 Jun 2020	Priority Projects Standing Advisory Committee Terms of Reference (Version 1)	Minister for Planning
<b>2023</b>			
2	16 Jul	Referral letter	Minister for Planning
3	16 Jul	Letter – Proponent to Manager, Development Facilitation DTP, 30 Aug 2022	Minister for Planning
4	16 Jul	Feature and level survey	Minister for Planning
5	16 Jul	Architectural plans (data centre)	Minister for Planning
6	16 Jul	Architectural plans (warehouses)	Minister for Planning
7	16 Jul	Biodiversity assessment	Minister for Planning
8	16 Jul	Bioretention maintenance schedule	Minister for Planning
9	16 Jul	Copy of Title Part 1 of 2	Minister for Planning
10	16 Jul	Copy of Title Part 2 of 2	Minister for Planning
11	16 Jul	Draft proposed development renders	Minister for Planning
12	16 Jul	Drystone wall removal plan	Minister for Planning
13	16 Jul	Environmental Audit Report & Statement	Minister for Planning
14	16 Jul	Environmental Summary report	Minister for Planning
15	16 Jul	Landscape plan	Minister for Planning
16	16 Jul	Proposed Civil drawings – Roads, Drainage and sewer	Minister for Planning
17	16 Jul	Proposed Concept Plan	Minister for Planning
18	16 Jul	Proposed Drystone wall removal plan	Minister for Planning
19	16 Jul	Proposed monitoring wells locations	Minister for Planning
20	16 Jul	Proposed plan of subdivision	Minister for Planning
21	16 Jul	Proposed roadworks plan	Minister for Planning
22	16 Jul	Proposed waste management plan (data centre)	Minister for Planning
23	16 Jul	Proposed waste management plan (warehouses)	Minister for Planning
24	16 Jul	Sustainability management plan (warehouses)	Minister for Planning
25	16 Jul	Sustainability management plan (data centre)	Minister for Planning
26	16 Jul	Title re-establishment survey	Minister for Planning
27	16 Jul	Town planning report	Minister for Planning
28	16 Jul	Traffic report (data centre)	Minister for Planning
29	16 Jul	Traffic report (subdivision)	Minister for Planning

No	Date	Description	Provided by
30	16 Jul	Traffic report (warehouses)	Minister for Planning
31	16 Jul	Arboricultural assessment	Minister for Planning
32	16 Jul	John Stevens (Heritage advisor) advice to Proponent on dry stone wall	Minister for Planning
33	16 Jul	Stormwater management strategy	Minister for Planning
34	16 Jul	Amendment C250hume Council report	Minister for Planning
35	16 Jul	C269hume – Exhibited Public Park and Recreation Zone Schedule with track changes	Minister for Planning
36	16 Jul	C260hume – Exhibited Design and Development Overlay Schedule 6	Minister for Planning
37	16 Jul	C269hume – Exhibited Industrial 3 Zone Schedule	Minister for Planning
38	16 Jul	C269hume – Exhibited Clause 72.01 Schedule with track changes	Minister for Planning
39	16 Jul	C269hume – Exhibited Clause 72.01 Schedule	Minister for Planning
40	16 Jul	C269hume – Explanatory report	Minister for Planning
41	16 Jul	Planning permit PA2302140 (warehouses)	Minister for Planning
42	16 Jul	Planning permit PA2302142 (subdivision)	Minister for Planning
43	16 Jul	Planning permit PA2302143 (data centre)	Minister for Planning
44	16 Jul	C269hume – Planning scheme amendment instruction sheet	Minister for Planning
45	16 Jul	C269hume – Exhibited Design and Development Overlay Schedule 6 map	Minister for Planning
46	16 Jul	C269hume – Exhibited Planning Scheme zoning map	Minister for Planning
47	20 Jul	Directions Hearing notice letter	Planning Panels Victoria (PPV)
48	3 Aug	Letter – EPA to Committee, enclosing: a) Submission, 10 May 2023 b) Letter to DTP, 11 Oct 2023	Environment Protection Authority, Victoria (EPA)
49	7 Aug	Letter outlining suggested directions	Hume City Council (Council)
50	9 Aug	Committee Directions and Timetable (version 1)	PPV
51	28 Aug	Committee Directions and Timetable (version 2)	PPV
52	28 Aug	Proponent Part A submission	MAB Corporation Pty Ltd (MAB)
53	28 Aug	Concept Plan Revision O, 9 Aug 2023	MAB
54	28 Aug	Plan of Subdivision (Draft) Revision 3	MAB
55	28 Aug	Roadworks Plan Revision C, 14 Aug 2023	MAB
56	28 Aug	Plan of monitoring wells Revision E	MAB

No	Date	Description	Provided by
57	28 Aug	Overlays Plan	MAB
58	28 Aug	Dry stone wall (VAHR 7822-0513) Removal Revision B	MAB
59	28 Aug	Layout Plan (Concept) Revision K, 19 Jul 2022	MAB
60	28 Aug	Bioretention System Plan and Sections Revision K, 23 Aug 2023	MAB
61	28 Aug	Landscape Masterplan Revision 7, 24 Aug 2023	MAB
62	28 Aug	Cultural Heritage Management Plan 11308, 5 Nov 2010	MAB
63	28 Aug	Letter – CHMG Archaeologists to MAB (peer review), 6 Dec 2022	MAB
64	28 Aug	Cultural Heritage Salvage Report, 25 Jan 2023	MAB
65	28 Aug	Merrifield Business Park Design Guidelines, Nov 2021	MAB
66	28 Aug	Email – Melbourne Water to MAB, 28 Aug 2023	MAB
67	28 Aug	Expert witness report – Rhys Quick	MAB
68	28 Aug	Expert witness report – Michael Rehfisch	MAB
69	28 Aug	Expert witness report – Chris Beardshaw	MAB
70	28 Aug	Expert witness report – Barry Murphy	MAB
71	28 Aug	Expert witness report – John Glossop	MAB
72	28 Aug	Expert witness report – Aaron Organ	MAB
73	28 Aug	Expert witness report – John Kiriakidis	MAB
74	29 Aug	DEECA native vegetation removal report	MAB
75	1 Sep	Proponent Part B submission	MAB
76	1 Sep	Proponent Day 1 version – Design and Development Overlay Schedule 6	MAB
77	1 Sep	Proponent Day 1 version – Permit PA2302142 (subdivision)	MAB
78	1 Sep	Proponent Day 1 version – Permit PA2302140 (warehouses)	MAB
79	1 Sep	Proponent Day 1 version – Permit PA2302143 (data Centre)	MAB
80	1 Sep	Expert witness presentation – Barry Murphy	MAB
81	1 Sep	Opening submission – Hume City Council	Council
82	1 Sep	Committee Directions and Timetable (version 3)	PPV
83	1 Sep	Supplementary submission	Wurundjeri Woi wurrung Cultural Heritage Aboriginal Corporation
84	4 Sep	Email – from Michael Rehfisch Re: Homestead clean up works	MAB
85	7 Sep	Corrected page 31 of John Kiriakidis evidence	MAB
86	7 Sep	Diagram referred to by Mr O'Farrell during submission	MAB
87	8 Sep	Committee Directions and Timetable (version 4)	PPV

No	Date	Description	Provided by
88	11 Sep	Hearing submission, enclosing: a) Preliminary Health Study of Residents near the Tullamarine Hazardous Waste Landfill, May 2010 b) The Tip of the Iceberg SECOND HEALTH REPORT of Residents Near the Tullamarine Hazardous Waste Landfill, July 2010	Terminate Tullamarine Toxic Dump Action Group (TTDAG)
89	11 Sep	Presentation slides	Friends of Moonee Ponds Creek
90	11 Sep	Hearing submission	Graeme Hodgson
91	11 Sep	Original submission with annotations	Greg Hunt
92	11 Sep	Hearing presentation	Greg Hunt
93	11 Sep	Hearing submission	Carolyn Layton
94	11 Sep	Photographs – Moonee Ponds Creek environs	Carolyn Layton
95	11 Sep	Copy of email response from State Planning Services	Roy Ellis
96	11 Sep	Hearing submission	Dr John Knowles
97	11 Sep	Hearing submission	Renae Kenessy
98	11 Sep	Hearing submission	Kaylene Wilson
99	11 Sep	Main and closing submission	Council
100	11 Sep	Hearing submission, enclosing: a) Appendix A – Access road b) Appendix B – Extra 70 industrial lots c) Appendix C – Storage on existing MAB buffer d) Appendix D – Landscape Wright Street e) Appendix E – Mickleham Road at capacity f) Appendix F – Extra traffic generation g) Appendix G – Extra traffic generation h) Appendix H – VicRoads mitigation approval 2013 i) Appendix I – Queuing j) Appendix J – Harwood Andrews k) Appendix K – Attwood connector	Peter Barbetti
101	12 Sep	Updated Terms of Reference (Version 2)	Minister for Planning
102	12 Sep	Email outlining matters to be addressed by Proponent in closing	PPV
103	14 Sep	Proponent Part C submission	MAB
104	14 Sep	Proponent Day 5 version – Design and Development Overlay Schedule 6	MAB
105	14 Sep	Proponent Day 5 version – Permit PA2302142 (subdivision)	MAB
106	14 Sep	Proponent Day 5 version – Permit PA2302140 (warehouses)	MAB
107	14 Sep	Proponent Day 5 version – Permit PA2302143 (data centre)	MAB

No	Date	Description	Provided by
108	14 Sep	Correspondence from Cleanaway Waste Management Limited, 13 Sep 2023	MAB
109	14 Sep	Melbourne Airport Planting Guidelines, Jul 2015	MAB
110	14 Sep	EPA Publication 1461, April 2012 (Tullamarine Landfill Community air monitoring program Reports Three and Four)	PPV
111	15 Sep	Proponent Day 5 version – PA2302142 (subdivision), 15 Sep 2023	MAB
112	20 Sep	Comments on permit conditions	TTTDAG
113	20 Sep	Preferred draft – Design and Development Overlay Schedule 6	Friends of Moonee Ponds Creek
114	20 Sep	Preferred draft – Permit PA2302142 (subdivision)	Friends of Moonee Ponds Creek
115	20 Sep	Preferred draft – Design and Development Overlay Schedule 6	Council
116	20 Sep	Preferred draft – Permit PA2302142 (subdivision)	Council
117	21 Sep	Proponent response to party comments on conditions and DDO6	Proponent
118	21 Sep	Preferred draft final version – Permit PA2302142 (subdivision)	Proponent

## Appendix C Submitters to the Amendment and permits

No	Submitter	No	Submitter
1	Belinda and Demir Hasandic	31	Robert Bichler
2	Terminate Tulla Toxic Dump Action Group	32	Rebecca Swincer
3	Kaye Walsh	33	Margaret Shillabeer
4	Lysiane Lefebure	34	Talia Silivestros
5	Tuncay Yavuzcan	35	Steven Baker
6	Roy and Jennifer Ellis	36	Luke Galea
7	Peter Barbetti	37	Joy Denman
8	Jacinta Barbetti	38	Emily Shillabeer
9	Renae Stapleton (Kenessy)	39	Elizabeth Balfour
10	Country Fire Authority	40	Greg Hunt
11	Russel Nillson	41	Millicent Tree
12	Gennaro Peri	42	India Hill
13	Mala Wijenayake	43	Nathan Baxter
14	Pavin Ram	44	D Wiemann
15	Mary Rose Briffa	45	Dianne Hartshorne
16	Kim Westcombe	46	Chelsea Sutton
17	Salvatore and Mary Cetrola	47	Warren Lofts
18	Graeme Spurr	48	Kaylee Wilson
19	Dom Calderan	49	Roslyn Dwyer
20	Lysiane Lefebure and Jeff Billows	50	Amy Lizio
21	Craig Duncan	51	Patricia Wloch
22	Amber Dwyer	52	Yang Family
23	Russell McLeod	53	Stephen Muldoon
24	Edison McLeod	54	Dr Chantal Coles
25	Archer McLeod	55	Margaret Shillabeer
26	Leonie Elliott	56	Stephen Fry (Jessica Dinsdale)
27	Brad Comrie	57	Evan Mulholland MP
28	Graeme Hodgson	58	Carolyn Layton
29	Kristine and Ian Hutchison	59	Environment Protection Authority
30	Jeffrey Evans	60	Julie Trevaskis



No	Submitter	No	Submitter
61	Stephen Fry	73	Suzanne Verzanvoort
62	Friends of Moonee Ponds Creek	74	Suzanne Pacewicz
63	Sue McLean	75	Amanda Postma
64	Luke Galea	76	Jalinda Bennett
65	Department of Energy, Environment and Climate Action	77	Josh Bennett
66	Department of Energy, Environment and Climate Action	78	Debra Holley
67	Ms Van Den Berg	79	Michelle Reid
68	Jeffrey Evans	80	Charlotte Powel
69	Hume City Council	81	Dianne Gambling
70	Heritage Victoria	82	Cherine Fielder
71	Bianca Muldoon	83	Assoc Prof Graeme Pollock OAM and Dr John Knowles
72	Tricia Baker		

## Appendix D Committee recommended DDO6 and planning permit conditions

### D:1 Design and Development Overlay Schedule 6

#### 1.0 Design Objectives

- To contribute to a visually interesting gateway experience to Metropolitan Melbourne.
- To enhance the appearance of the approach into the arrival corridor from Melbourne Airport to Melbourne by encouraging high quality built form with integrated landscape outcomes adjacent to the Tullamarine Freeway.
- To ensure that signs are well designed, and do not detract from the amenity and appearance of the arrival corridor from Melbourne Airport to Melbourne along the Tullamarine Freeway.
- To provide a high quality landscaped area between Wright Street and buildings on the IN3Z land that softens the appearance of and filters view to industrial built form from Wright Street.

#### 2.0 Buildings and Works

A permit is not required for any of the following:

- The installation of an automatic teller machine.
- An alteration to an existing building façade provided:
  - The alteration does not include the installation of an external roller shutter.
  - At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.
- An awning that projects over a road if it is authorised by the relevant public land manager.

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

#### Lots with frontage to Tullamarine Freeway:

##### Infrastructure

- All lots should be connected to reticulated water, sewerage and drainage.
- All developments should meet the principals of Water Sensitive Urban Design, including the collection of rainwater run-off from roof areas.

##### Built form

- For larger storage or manufacturing buildings, avoid extensive blank facades and include a mix of architectural treatments such as colours and materials.
- Water storage tanks must be located to the side or rear of buildings or otherwise appropriately screened from the public realm.
- Encourage all external surfaces visible from the Tullamarine Freeway to be painted or finished with a textured coating, or treated appropriately and/or clad in non-reflective materials.
- Encourage paving materials that provide texture, patterns, subtle colour and permeability to the lot frontage.

- Plant equipment, vents and other roof mounted structures must be designed or incorporated into the roof design or screened to minimise visibility from the street, surrounding public spaces and buildings.

#### Landscaping

- Landscaping of lots which face the Tullamarine Freeway should complement the design of the buildings and enhance the environs of the Freeway approach into Melbourne.
- Landscaping should include trees within car park areas to provide shade and visual amenity.
- Nature strips should include street tree planting consistent with existing streetscape theme.

#### Car parking and access

- Direct vehicle access must not be provided to the Tullamarine Freeway.
- Driveway crossovers should be fully constructed with an all weather pavement.
- Parking areas should be surfaced and graded to reduce run-off and allow stormwater to drain out of the site with integrated landscaping.

#### Storage and waste

- Storage and waste facilities must be screened from view from the Tullamarine Freeway.

#### Lighting

- Subtle lighting of buildings when viewed from outside is encouraged, to enhance visual effects, access and legibility at night.
- Lighting is to be designed to avoid light spill onto the Tullamarine Freeway.

### **Lots adjacent to Wright Street**

#### Landscaping

- All lots adjacent to Wright Street must be provided with a minimum 40m wide landscaped area, inclusive of a 300mm wide reserve.
- Landscaping must include a combination of canopy trees and other planting including mid-canopy and ground level planting, that provides a filtering of views to buildings on the land when viewed from Wright Street.
- The landscaped zone provided must not be used to park vehicles or store vehicles, materials or goods.

#### Vehicle Access

- Vehicle access must not be provided to Wright Street.

### **3.0 Subdivision**

#### None Specified

### **4.0 Signs**

#### Signs should be designed to:

- Be integrated with the overall building design.
- Complement the visual amenity of the arrival corridor from Melbourne Airport to Melbourne.
- Design to minimise visual clutter.

## **5.0 Application Requirements**

None Specified

## **6.0 Decision Guidelines**

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The extent to which the proposed buildings and works comply with the requirements of this schedule.
- The extent to which any proposed sign responds to the objectives of the schedule.

## D:2 Permit PA2302140 (warehouses)

1. Before the use and development start, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the amended plans prepared by Watson Young, Drawing Numbers TP01 – TP24, dated October 2022, but modified to show:
  - a) landscaping that is generally in accordance with the landscape master plan prepared by Tract dated 24 August 2023, Drawing titles 'Detail Master Plan 3 – Office buildings and 'Detail Master Plan 4 – Office buildings'
  - b) all roofed areas to be coloured in non-reflective tones or constructed of suitable materials that absorb light to minimise glare that may cause visual distraction to pilots
  - c) where relevant to shown on the plans, any changes as a result of the:
    - i) Sustainability Management Plan required by Condition 11, or
    - ii) Waste Management Plan required by Condition 17.
2. The development as shown on the endorsed plans or described in the endorsed documents must not be altered or modified except with the written consent of the responsible authority.
3. If there is a monitoring well for the aftercare monitoring program of the Closed Tullamarine Landfill on the land, before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner of the land must:
  - a) prepare, enter into, and register on title an agreement with the responsible authority pursuant to section 173 of the *Planning and Environment Act 1987*
  - b) pay all costs associated with the preparation, execution and registration of the agreement.
4. The section 173 agreement referred to in Condition 3 must:
  - a) be registered on title of lots on which groundwater monitoring wells are located
  - b) provide:
    - i. the identification of groundwater monitoring wells
    - ii. the owner must ensure that groundwater monitoring wells are accessible by the party responsible for the aftercare of the Closed Tullamarine Landfill for the lifetime of the well.
5. There must not be any extraction of groundwater from the land for potable mineral water supply, agricultural uses, parks and garden uses, stock watering, industrial uses, or primary contact recreation uses (eg swimming).
6. Any activity on the land must not result in the emissions of smoke, dust or other particulate matter, or the emission of steam or other gas, where those emissions can affect the ability of aircraft to operate in the applicable prescribed airspace for Melbourne Airport.
7. Once the development permitted by this permit has started, it must be continued and completed to the satisfaction of the responsible authority.

8. Before the development is occupied, the landscaping as shown on the endorsed plans must be completed to the satisfaction of the responsible authority. The landscaping must also be maintained to the satisfaction of the responsible authority, including but not limited to removing weeds and replacing damaged, dead, and diseased plants in accordance with the planting schedule.
9. The site, including any landscaped and paved areas, must be drained and graded to the satisfaction of the responsible authority to prevent the discharge of stormwater, causing damage/nuisance from the site, across any adjoining footpath, land, or road. All stormwater tanks must have an overflow pipe connected to the legal point of discharge.
10. Any solar panels installed on the building must be designed and oriented to minimise the risks of glint and glare that may cause visual distraction to pilots.
11. A Sustainability Management Plan (SMP), which must be generally in accordance with the sustainability management plan prepared by Sustainable Development Consultants dated August 2022, must be submitted to and be approved by the responsible authority.
12. All environmentally sustainable design (ESD) measures outlined in the SMP must be carried out to the satisfaction of the responsible authority. Where alternative ESD measures are proposed to those specified in the SMP, the responsible authority may, if requested to do so in writing, agree to vary the required ESD measures, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.
13. The stormwater management measures outlined in the SMP, and shown on the endorsed plans must be installed and maintained to the satisfaction of the responsible authority.
14. Before the development is occupied, a report must be provided to the responsible authority by a qualified ESD consultant that demonstrates the delivery of all provisions, recommendations, and requirements on the SMP to the satisfaction of the responsible authority.
15. Before any buildings and works commence on site, a Construction Site Environmental Management Plan (CSEMP), which describes how the site will be managed before and during the construction period, must be submitted to and be approved by the responsible authority. The CSEMP must address the requirements for managing:
  - a) erosion and sediment
  - b) stormwater
  - c) litter, concrete, and other construction wastes, and
  - d) chemical contamination.
16. The approved CSEMP must be implemented to the satisfaction of the responsible authority.
17. Before plans required by Condition 1 are endorsed, a Waste Management Plan (WMP), which must be generally in accordance with the waste management plan prepared by Leigh Design dated 15 November 2022, must be submitted to and be approved by the responsible authority.
18. Any new fencing required as part of the development is to be constructed at the permit holder/land owner(s) cost.

19. All works on or facing the boundaries of adjoining properties must be finished, and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the responsible authority.
20. Areas set aside for the parking of vehicles together with the aisles and access lanes must be properly formed to such levels that they can be utilised in accordance with the endorsed plans, and must be drained and provided with an all-weather seal coat.
21. The areas must be constructed, drained, and provided and maintained in a continuously useable condition to the satisfaction of the responsible authority.
22. Areas set aside for the parking and movement of vehicles as shown on the endorsed plans must be made available for such use, and not be used for any other purpose.
23. The loading and unloading of goods to and from vehicles must be contained within the site.
24. The boundaries of all car spaces (including disabled and associated share areas), ingress and egress lanes, and the direction in which vehicles should proceed along the access lanes must at all times be clearly indicated on the ground to the satisfaction of the responsible authority.
25. External lighting must be installed or baffled such that it does not cause light spillage above the horizontal plane.
26. No goods or packaging materials are to be stored or left exposed outside any building, on the street frontage, and on any car park or landscaped area shown on the endorsed plans.
27. Waste receptacles must not be stored on the street frontage, and on any car park or landscaped area shown on the endorsed plans, unless for collection purposes.
28. Waste collection must only be collected by a private contractor, unless with the prior written consent of the responsible authority.
29. No polluted and/or sediment laden run off is to be discharged directly or indirectly into Hume City Council's drains or watercourses during and after construction.

**Permit Expiry**

30. This permit will expire if one of the following circumstances applies:
  - a) the development is not started within four (4) years from the issued date of this permit.
  - b) the development is not completed within six (6) years from the issued date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing:

- a) before or within six (6) months after the permit expiry date, where the use or development allowed by this permit has not yet started, or
- b) within 12 months after the permit expiry date, where the development allowed by this permit has lawfully started before the permit expires.

### D:3 Permit PA2302142 (subdivision)

1. Before the use and development start, plans must be approved and endorsed by the responsible authority. The plans must:
  - a) be prepared to the satisfaction of the responsible authority
  - b) be drawn to scale with dimensions
  - c) submitted in electronic form
  - d) show the layout of the subdivision lots, roads and access tracks, public open space reserve and drainage reserve, the drainage and bioretention system, the groundwater monitoring wells, and the drystone wall, generally in accordance with the following plans:
    - i) Concept plan by Landair, Revision O, dated 14 August 2023
    - ii) Roadworks plan by Landair, Revision C, dated 14 August 2023
    - iii) Monitoring wells plan by Landair, Revision E, dated 21 August 2023
    - iv) Layout plan by Dalton Consulting Engineers, Revision K, dated 23 August 2023
    - v) Bioretention system detail plan by Dalton Consulting Engineers, Revision K, dated 23 August 2023
    - vi) Drystone wall removal plan by Landair, Revision B, dated 14 August 2023
  - e) show:
    - i) a restriction that any future buildings on Lots 22, 23, 24, 25, 39 and 40 must use external surface and facade materials (excluding glazing) with muted tones and avoid highly reflective surfaces
    - ii) any concrete retaining walls for retention of lots, to be charcoal coloured
    - iii) any changes required in response to conditions 5, 18, 38, and 57.
2. The layout of the subdivision as shown on the endorsed plans must not be altered or modified except with the written consent of the responsible authority.
3. The holder of this permit must submit a Bushfire Management Plan to Hume City Council's Municipal Fire Prevention Officer before October each year, for the duration of the subdivision construction.
4. The subdivision permitted by this permit must be carried out to the satisfaction of the responsible authority.
5. Before plans required by Condition 1 are endorsed, a Groundwater Monitoring Wells Plan must be provided to the responsible authority that shows the location of all monitoring wells on the land, including:
  - a) the location of any relocated wells
  - b) the alignment and dimensions of any access paths to any monitoring wells on any lots (which must be at least 3 metres wide).
6. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner of the land must:
  - a) prepare, enter into, and register on title an agreement with the responsible authority pursuant to section 173 of the *Planning and Environment Act 1987*, in respect of the groundwater monitoring wells referred to in Condition 5



- b) pay all costs associated with the preparation, execution and registration of the agreement.
7. The section 173 agreement referred to in Condition 6 must:
  - a) be registered on title of lots on which groundwater monitoring wells are located
  - b) provide:
    - i. the identification of groundwater monitoring wells on the land
    - ii. the owner of the land must ensure that groundwater monitoring wells on the land (except for those in proposed public land) are accessible by the party responsible for the aftercare of the Closed Tullamarine Landfill for the lifetime of the well.
8. There must not be any extraction of groundwater from the land for potable mineral water supply, agricultural uses, parks and garden uses, stock watering, industrial uses, or primary contact recreation uses (eg swimming).
9. The owner of the land must enter into an agreement with:
  - a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time
  - b) a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
10. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
  - a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time
  - b) a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
11. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, reticulated water, sewerage, drainage and electricity must be provided for that stage to the satisfaction of all relevant authorities.
12. A Statement of Compliance issued under the *Subdivision Act 1988* must be subject to the satisfaction of relevant authority requirements with such satisfaction being verified by acceptance in SPEAR from each relevant authority.

13. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the land must be drained to the satisfaction of the responsible authority in accordance with plans and specifications approved by the Minister for Planning under the *Subdivision Act 1988*.
14. Land required for reserves or public roads must be shown on a plan of subdivision for certification as a reserve in favour of Hume City Council or another relevant person or body.
15. Street lighting must be installed or baffled such that it does not cause light spillage above the horizontal plane.

#### **Intersection upgrade works**

16. Within 6 months of a Statement of Compliance being issued under the *Subdivision Act 1988*, (unless otherwise agreed with the responsible authority), the intersection upgrade works set out in Section 4.4 of the Traffic and Transport Assessment by Impact dated 19 August 2022 (and generally in accordance with Appendices B, C and D of that Assessment report) must be completed to the satisfaction of the responsible road manager, unless otherwise agreed by the responsible authority in consultation with the responsible road manager. The owner or developer under this permit must request that the responsible road manager undertake traffic signal optimisation as part of and/or at the completion of the intersection upgrade works.
17. The upgrade works in respect of the intersection of Western Avenue and Hillcrest Drive must include design measures intended to limit access to Hillcrest Drive from Western Avenue by large commercial vehicles (other than vehicles commonly required to meet residential needs).

#### **Landscape Conditions**

18. The owner or developer under this permit must submit to the responsible authority for approval 3 copies of a landscape masterplan and detail plans for all open space, the bioretention system, landscape strips, and road network landscaping.
19. The landscape masterplan and detail plans must be informed by the results of the Soil Erosion and Sodic Soil Assessment and the Environmental and Geomorphological Impact Assessment required by Conditions 55 and 56 respectively, must be to the satisfaction of the responsible authority, in consultation with Hume City Council, and must be generally in accordance with the landscape masterplan prepared by Tract dated 24 August 2023, but be modified to show:
  - a) the use of large evergreen indigenous tree species (except that they must not be species listed as unsuitable for planting within the Melbourne Airport environs in the Melbourne Airport Planting Guidelines (or any replacement document)) for the future public open space, and street tree planting shown in the area marked A in Figure 4.2 of the statement of evidence of Mr Barry Murphy dated 28 August 2023
  - b) the use of large evergreen native tree species (except that they must not be species listed as unsuitable for planting within the Melbourne Airport environs in the Melbourne Airport Planting Guidelines (or any replacement document)) for the future street tree planting shown in the areas marked other than A in Figure 4.2 of the statement of evidence of Mr Barry Murphy dated 28 August 2023
  - c) landscape strips to Lots 22, 23, 24, 25, 39 and 40, generally in accordance with Figure 4.9 and Figure 4.12 of the statement of evidence of Mr Barry Murphy dated 28 August 2023,

- which are to include the planting of large canopy trees of native or indigenous species (except that they must not be species listed as unsuitable for planting within the Melbourne Airport environs in the Melbourne Airport Planting Guidelines (or any replacement document))
- d) the details, including a complete planting schedule, of the landscaping proposed in the 40m landscape strip at the rear of Lots 4, 5, 6 and 7 shown on the Plan of Subdivision, with large canopy trees in that landscape strip to be planted at a minimum density of 1:66 sqm, and with the species used to include the species listed at paragraphs 67 and 68 of the statement of evidence of Mr Barry Murphy dated 28 August 2023 (if available), and otherwise native or indigenous species from EVC55-61 and EVC175 (except that they must not be species listed as unsuitable for planting within the Melbourne Airport environs in the Melbourne Airport Planting Guidelines (or any replacement document))
  - e) shared path connections and seating opportunities
  - f) a complete planting schedule for the bioretention system, referencing best practice standards for habitat creation, including the Melbourne Water Biofiltration systems in Development Services Scheme Guideline (2020), Growling Grass Frog Masterplan for Melbourne's Growth Corridors (2017) and Guidelines for managing the endangered Growling Grass Frog in urbanising landscapes (2010)
  - g) targeted high priority weeds for removal
  - h) regeneration and soil stabilisation areas
  - i) appropriate management actions for a minimum two (2) year maintenance period with seasonal reporting
  - j) construction details of the landscaping scheme including details of finished gradients, any retaining walls, pathways, surfaces and finishes, safety devices, and planting.
20. When approved, the landscape masterplan and detail plans will be endorsed and will then form part of this permit. The works in those plans, including fencing of all reserves must be completed in accordance with the approved plans before a Statement of Compliance is issued under the *Subdivision Act 1988* or as bonded to the satisfaction of the responsible authority. Following approval of the landscape masterplan and detail plans and before Statement of Compliance, the owner or developer under this permit must provide Hume City Council a copy of the specification and an estimate of costs for all works.
  21. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner must pay Hume City Council:
    - a) a set plan checking and supervision fee for all reserves, in accordance with Hume City Council's currently adopted fees and charges
    - b) a 35% Maintenance Bond to the satisfaction of Hume City Council.
  22. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, all nature strips and disturbed areas must be stabilised with hydromulch (or similar treatment), to the satisfaction of the responsible authority. These works are unable to be bonded.
  23. The owner or developer under this permit must invite the responsible authority and Hume City Council to a pre-construction meeting, before commencing any landscape works.
  24. The responsible authority must be notified of the completion of the works for the future public open space. An inspection must be undertaken and a verified costing of the works

provided to Hume City Council before the maintenance period is to commence. The public open space must be maintained by the owner or development under this permit for a minimum period of two (2) years after completion of works is confirmed by the responsible authority.

25. Before the two (2) year maintenance period commences in respect of the streetscapes and public open space, “as constructed” electronic files in DWG, PDF and A- Spec/O-Spec formats for all landscape development works (including approved irrigation systems) must be provided to Hume City Council.
26. Before the maintenance period starts for the streetscapes and public open space, the owner or developer under this permit must provide a safety and functional audit for the design and construction of any raingardens, sediment collection facilities and wetlands, and to complete any rectification works required under that audit.
27. The maintenance obligation for the streetscapes and public open space will end when:
  - a) the responsible authority has been notified of the end of the maintenance period, and
  - b) an inspection has been undertaken and the works verified as having been completed to relevant Hume City Council standards.
28. Before handover to Hume City Council, the owner or developer under this permit must provide a functional audit – including infiltration tests – for all Water Sensitive Urban Design elements (including any tree pits, raingardens, sediment collection facilities and wetlands) to Hume City Council, and complete any rectification works required under that audit.
29. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner of the land must:
  - a) prepare, enter into, and register on title an agreement with the Hume City Council pursuant to section 173 of the *Planning and Environment Act 1987*, in respect of the ongoing maintenance of landscaping within the landscape strips of proposed Lots 4, 5, 6, 7, 22, 23, 24, 25, 39 and 40, as referred to in conditions 19(c) and 19(d) above
  - b) pay all costs associated with the preparation, execution and registration and removal of the agreement.
30. The section 173 agreement referred to in Condition 29 must:
  - a) be registered on title of Lots 4, 5, 6, 7, 22, 23, 24, 25, 39 and 40
  - b) provide:
    - i. except with the prior written consent of the responsible authority, the owner must maintain all landscaping within the identified landscape strip within the relevant Lot, which maintenance is to include the reasonable replacement of lost vegetation
    - ii. replace any dead or diseased vegetation, and vegetation that has reached the end of its life
    - iii. the inclusion of a plan identifying the relevant landscape strips within each relevant Lot subject to the agreement.

[Note – In accordance with the *Subdivision Act 1988*, payment will be required for works within the road reserves at the following rates:

- a) plan checking fee: 0.75% of the value of the works
- b) supervision fee: 2.5% of the value of the works.]

### Engineering Conditions

31. Before a Statement of Compliance is issued under the *Subdivision Act* 1988, the following works (Conditions 32 – 36) are to be completed to the satisfaction of Hume City Council.
32. Hume City Council Infrastructure Standards Manual, standard drawings and specifications must be used to design and construct all proposed works in the subdivision.
33. Where access to the subdivision is from an existing carriageway, the intersection must be designed and constructed, to the extent practicable, in accordance with AustRoads “Guide to Traffic Engineering Practice, Intersections at Grade” and to the satisfaction of Hume City Council.
34. The minimum pavement widths must be in accordance with the pavement widths shown on the Layout plan prepared by Dalton Consulting Engineers, Revision K, dated 23 August 2023.
35. The general construction requirements applicable to all roads and drainage are:
  - a) The depth of all road pavements must be based on soil tests taken on the final roadway alignment and the anticipated traffic loadings notwithstanding that minimum depths will apply in accordance with Councils standard drawings.
  - b) The pavement must be designed using a mechanistic design approach.
  - c) All road pavements must be constructed using approved materials.
  - d) A vehicle crossing to service the municipal reserve created by the subdivision must be provided.
  - e) Footpaths must be provided in accordance with Council requirements with a minimum of one 1.5m wide footpath on the low side of the roadway.
  - f) Conduits must be provided under roads and footpaths for utility services to all allotments fronting on to roads created.
  - g) Street trees must be provided in accordance with the approved landscape masterplan.
36. All roads created by the subdivision, intersections, and any traffic management devices must be provided with street lighting in accordance with the requirements of AS/NZS 1158.1.1:2005, Vehicular traffic (Category V) lighting, AS/NZS 1158.3.1:2005, Pedestrian Area (Category P) lighting, Essential Services Commission Public Lighting Code 2005 and AGLE Public Lighting Technical Standard. Non-standard street lighting will be permitted in accordance with Council’s Public Place Lighting Policy.
37. An electronic version of the “as constructed drawings” that meet the following requirements must be provided to Hume City Council:
  - a) Drawings must be in recent AutoCAD format.
  - b) Drawings must be prepared in GDA94 mapping coordinates.
  - c) All additional attribute data for subdivision assets must be clearly tabulated on digital drawings.
  - d) Where available, all identifiable areas such as pavement surfaces, footpaths and nature strips must be polygonised and displayed in different drawing layers.

### Vegetation Removal Plan

38. The owner or developer under this permit must prepare a Tree and Vegetation Removal Plan which must be either endorsed under this permit or otherwise approved in writing to

the satisfaction of the responsible authority. Removal of native vegetation must be generally in accordance with the Tree and Vegetation Removal Plan. Before the felling of any trees with nest or hollows the tree must be examined for fauna by a suitably qualified zoologist. If native fauna species are found, they must be salvaged and relocated where possible to the nearest suitable habitat, in consultation with the Department of Energy, Environment and Climate Action (DEECA).

39. The owner of the land must provide a general offset of 0.033 general habitat units:
  - a) located within the Melbourne Water Catchment Management Authority boundary or Hume City Council municipal district
  - b) with a minimum strategic biodiversity score of at least 0.415.
40. Before any native vegetation is removed, evidence that the required offset for each stage has been secured must be provided to the satisfaction of the responsible authority. Acceptable evidence will be one or both of the following:
  - a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site and/or
  - b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to the Department of Transport and Planning.

41. Before the certification of the Plan of Subdivision, a Kangaroo Management Plan must be approved by the Secretary of DEECA. The approved plan will form part of the permit. The submitted Kangaroo Management Plan must include:
  - a) strategies to avoid land locking kangaroos
  - b) strategies to minimise animal and human welfare risks.

The approved Kangaroo Management Plan must be implemented to the satisfaction of the Secretary to DEECA.

42. Before works start, a Construction Site Environmental Management Plan (CSEMP) to address the potential impacts of construction works 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 EPA Publication 1834: Civil construction, building and demolition guide, and address methods for noise, dust, erosion and sediment control, waste and chemical management, flora/fauna protection, weed control (primarily in the future public open space, bioretention system and future drainage outfall location), and archaeological/heritage impacts.
43. Before works start, contractors must be inducted into the CSEMP and all flora and fauna conservation requirements.
44. The approved CSEMP must be implemented to the satisfaction of responsible authority.
45. Before works start, a soil and fill recovery plan must be submitted to the satisfaction of the responsible authority. The plan must detail the quantity of soil and/or fill to be generated during construction, the reuse option for any excess soil and/or fill generated within the site

and the quantity of soil and/or fill to be removed off-site. The contractor is to nominate in writing at the pre-commencement meeting the legal/approved location where the soil and fill will be disposed. Evidence of legal/approved disposal will be required to be submitted to the satisfaction of the responsible authority.

[Note – the definition of fill for the purposes of this condition includes any soil, rock, substrate, clay, sand or other natural material generated through the excavation of the site.]

#### **Electrical supply**

46. The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to Jemena Electricity Networks (Vic) Ltd in accordance with section 8 of that Act.
47. The owner or developer under this permit must enter into an agreement for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision as required by Jemena Electricity Networks (Vic) Ltd.
48. Where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, those buildings or other installations must be brought into compliance with the Supply and Installation Rules issued by the Local Government Electricity Supply Association (Vic) and Distribution Authorities to the extent determined by Jemena Electricity Networks (Vic) Ltd.

[Note – A payment to cover the cost of electricity supply work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required.]

#### **Department of Transport and Planning**

49. No direct vehicular access is allowed to the Tullamarine Freeway which forms the southern boundary of the subject site.

#### **Yarra Valley Water**

50. The owner or developer under this permit must enter into an agreement with Yarra Valley Water for the provision of water services to the land.
51. The owner or developer under this permit must enter into an agreement with Yarra Valley Water for the provision of sewerage services to the land.

#### **Melbourne Water**

52. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, the Owner must enter into and comply with an agreement with Melbourne Water Corporation (Melbourne Water) for the acceptance of surface and storm water from the land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water.
53. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
54. Before certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with section 8 of the *Subdivision Act 1988*.

55. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, a Soil Erosion and Sodic Soil Assessment of the land in the future public open space and drainage reserve must be prepared to inform the Stormwater Management Strategy.
56. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, an Environmental and Geomorphological Impact Assessment of the land in the future public open space and drainage reserve must be submitted to Melbourne Water. This assessment must be undertaken by a suitably qualified person and must investigate the threat to physical form, riparian vegetation and fauna as a result from the proposed development.
57. Before plans required by Condition 1 are endorsed, a Stormwater Management Strategy must be prepared to the satisfaction of the responsible authority, in consultation with Melbourne Water and Hume City Council. The Stormwater Management Strategy must include:
  - a) a layout of the bioretention system and drainage system that is generally in accordance with the Bioretention system detail plan by Dalton Consulting Engineers, Revision K, dated 23 August 2023, and the Layout Plan prepared by Landair dated 23 August 2023, with any modifications needed to generally accord with Figure 11 in the statement of evidence of Mr Chris Beardshaw dated 28 August 2023
  - b) evidence of how stormwater runoff from the subdivision will achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater as set out in the 'Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO) 1999' to the satisfaction of the responsible authority
  - c) a minimum civil construction and landscape maintenance period of five (5) years for the bioretention system
  - d) measures that address or respond to all recommendations of the 'Environmental and Geomorphological Impact Assessment' and 'Soil Erosions and Sodic Soil Assessment'
  - e) future provision for rainwater tanks for all lots, to be provided when buildings are constructed on those lots
  - f) consideration of infiltration or evaporation opportunities
  - g) provision of dry retention basins or other stormwater attenuation methods to mitigate peak flows, including any consequential re-direction of major overland flows into those attenuation methods
  - h) a management system for direction and control of overland flows to avoid uncontrolled sheet flow to Moonee Ponds Creek
  - i) a diversion pipe to control treatable flows from the Wright Street gully to the outfall pipe to Moonee Ponds Creek
  - j) a gross pollutant trap on the Wright Street drainage pipe, generally in accordance with Figure 11 in the statement of evidence of Mr Chris Beardshaw dated 28 August 2023.
58. If stormwater treatment measures are implemented before Melbourne Water consent to a Statement of Compliance for the subdivision is issued, documentation supporting the approved ongoing maintenance of the treatment measures by the relevant authority must be submitted to Melbourne Water.
59. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, Hume City Council approved engineering plans of the subdivision (in electronic format) must be



submitted to Melbourne Water. These plans must show road and drainage details and any overland flow paths for the 100 year ARI storm event.

60. All new lots must be filled to a minimum of 300mm above the 1 in 100 year flood levels associated with any existing or proposed Melbourne Water pipeline and/or all new lots must be filled to a minimum of 600mm above the 1 in 100 year flood level associated with any existing or proposed Melbourne Water wetland, retarding basin or waterway.
61. Before a Statement of Compliance is issued under the *Subdivision Act 1988*, a certified survey plan prepared by or under the supervision of a licensed land surveyor, showing finished lot levels reduced to the Australian Height Datum, may be required to be submitted to Melbourne Water.
62. Before works start, a Site Management Plan detailing pollution and sediment control measures must be submitted to Melbourne Water.
63. Easements or reserves must be created over existing and proposed Melbourne Water assets on the Plan of Subdivision to the satisfaction of Melbourne Water.
64. Any temporary outfall is to be arranged to the satisfaction of Melbourne Water, Hume City Council and the affected downstream property owner(s).
65. The owner or developer under this permit must negotiate with the downstream landowners to obtain a free draining outfall through their property. Approval must be forwarded to Melbourne Water for its records before construction starts.
66. Before a Statement of Compliance is issued for subdivision under the *Subdivision Act 1988*, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

#### **Permit Expiry**

67. This permit will expire if one of the following circumstances applies:
  - a) The plan of subdivision is not certified within two (2) years of the issued date of this permit.
  - b) The registration of the subdivision is not completed within five (5) years of the certification of that plan of subdivision.

If a plan of subdivision is not certified within two (2) years of the issued date of this permit, the responsible authority may extend the time for certification if a request is made in writing before the permit expires or within 6 months after the expiry date.

## D:4 Permit PA 2302143 (data centre)

1. Before the use and development start, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the amended plans prepared by Watson Young, Drawing Numbers TP01 – TP15, dated June 2022, but modified to show:
  - a) landscaping that is generally in accordance with the landscape master plan prepared by Tract dated 24 August 2023, Drawing titles 'Detail Master Plan 1 – Data Centre' and 'Detail Master Plan 2 – Data Centre'
  - b) all roofed areas to be coloured in non-reflective tones or constructed of suitable materials that absorb light to minimise glare that may cause visual distraction to pilots
  - c) a revised layout for the bicycle storage room, in accordance with Figure 8.3 of the statement of evidence of Mr John Kiriakidis dated 28 August 2023
  - d) where relevant to show on the plans, any changes as a result of the:
    - i) Sustainability Management Plan required by Condition 11, or
    - ii) Waste Management Plan required by Condition 17.
2. The development as shown on the endorsed plans or described in the endorsed documents must not be altered or modified except with the written consent of the responsible authority.
3. If there is a monitoring well for the aftercare monitoring program of the Closed Tullamarine Landfill on the land, before a Statement of Compliance is issued under the *Subdivision Act 1988*, the owner of the land must:
  - a) prepare, enter into, and register on title an agreement with the responsible authority pursuant to section 173 of the *Planning and Environment Act 1987*
  - b) pay all costs associated with the preparation, execution and registration of the agreement.
4. The section 173 agreement referred to in Condition 3 must:
  - a) be registered on title of lots on which groundwater monitoring wells are located
  - b) provide:
    - i. the identification of groundwater monitoring wells on the land
    - ii. the owner of the land must ensure that groundwater monitoring wells on the land (except for those in proposed public land) are accessible by the party responsible for the aftercare of the closed Tullamarine Landfill for the lifetime of the well.
5. Groundwater must not be extracted from the land for potable mineral water supply, agricultural uses, parks and garden uses, stock watering, industrial uses, or primary contact recreation uses (eg swimming).
6. Any activity on the land must not result in the emissions of smoke, dust or other particulate matter, or the emission of steam or other gas, where those emissions can affect the ability of aircraft to operate in the applicable prescribed airspace for Melbourne Airport.

7. Once the development permitted by this permit starts, it must continue and be completed to the satisfaction of the responsible authority.
8. Before the development is occupied, the landscaping as shown on the endorsed plans must be completed to the satisfaction of the responsible authority. The landscaping must be maintained to the satisfaction of the responsible authority, including but not limited to removing weeds and replacing damaged, dead, and diseased plants in accordance with the planting schedule.
9. The site, including any landscaped and paved areas, must be drained and graded to the satisfaction of the responsible authority to prevent the discharge of stormwater, causing damage/nuisance from the site, across any adjoining footpath, land, or road. All stormwater tanks must have an overflow pipe connected to the legal point of discharge.
10. Any solar panels installed on the building must be designed and oriented to minimise glint and glare that may cause visual distraction to pilots.
11. Before plans required by Condition 1 are endorsed, a Sustainability Management Plan (SMP), which must be generally in accordance with the sustainability management plan prepared by Sustainable Development Consultants dated November 2022, must be submitted to and be approved by the responsible authority.
12. All environmentally sustainable design (ESD) measures outlined in the SMP must be carried out to the satisfaction of the responsible authority. Where alternative ESD measures are proposed to those specified in the SMP, the responsible authority may, if requested to do so in writing, agree to vary the required ESD measures, subject to the development achieving equivalent (or greater) ESD outcomes in association with the development.
13. The stormwater management measures outlined in the SMP, and shown on the endorsed plans must be installed and maintained to the satisfaction of the responsible authority.
14. Before the development is occupied, a report must be provided to the responsible authority by a qualified ESD consultant that demonstrates the delivery of all provisions, recommendations, and requirements on the SMP to the satisfaction of the responsible authority.
15. Before any buildings and works start, a Construction Site Environmental Management Plan (CSEMP), which describes how the site will be managed prior to and during the construction period, must be submitted to and be approved by the responsible authority. The CSEMP must address the requirements for managing:
  - a) erosion and sediment
  - b) stormwater
  - c) litter, concrete, and other construction wastes, and
  - d) chemical contamination.
16. The approved CSEMP must be implemented to the satisfaction of the responsible authority.
17. Before plans required by Condition 1 are endorsed, a Waste Management Plan (WMP), which must be generally in accordance with the waste management plan prepared by Leigh Design dated 14 November 2022, must be submitted to and be approved by the responsible authority.

18. Any new fencing required as part of the development is to be constructed at the permit holder/land owner(s) cost.
19. All works on or facing the boundaries of adjoining properties must be finished, and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the responsible authority.
20. Areas set aside for the parking of vehicles together with the aisles and access lanes must be properly formed to such levels that they can be utilised in accordance with the endorsed plans, and must be drained and provided with an all-weather seal coat.
21. The areas identified in Condition 20 must be constructed, drained, and provided and maintained in a continuously useable condition to the satisfaction of the responsible authority.
22. Areas set aside for the parking and movement of vehicles as shown on the endorsed plans must be made available for such use, and not be used for any other purpose.
23. The loading and unloading of goods to and from vehicles must only be carried out on the land.
24. The boundaries of all car spaces (including disabled and associated share areas), ingress and egress lanes, and the direction in which vehicles should proceed along the access lanes must at all times be clearly indicated on the ground to the satisfaction of the responsible authority.
25. External lighting must be installed or baffled such that it does not cause light spillage above the horizontal plane.
26. No goods or packaging materials are to be stored or left exposed outside buildings, on the street frontage, and on any car park or landscaped area shown on the endorsed plans.
27. Waste receptacles must not be stored on the street frontage, and on any car park or landscaped area shown on the endorsed plans, unless for collection purposes.
28. Waste collection must only be collected by a private contractor, unless with the prior written consent of the responsible authority.
29. No polluted and/or sediment laden run off is to be discharged directly or indirectly into Hume City Council's drains or watercourses during and after construction.

#### **Permit Expiry**

30. This permit will expire if one of the following circumstances applies:
  - a) the development is not started within four (4) years from the issued date of this permit
  - b) the development is not completed within six (6) years from the issued date of this permit
  - c) the use is not started within two (2) years after the development starts
  - d) the use is discontinued for a period of two (2) years.
31. The responsible authority may extend the periods referred to if a request is made in writing:
  - a) before or within six (6) months after the permit expiry date, where the use or development allowed by this permit has not yet started; or

- b) within 12 months after the permit expiry date, where the development allowed by this permit has lawfully started before the permit expires.

## Appendix E Terms of Reference

### E:1 Version 1 extract – 14 June 2020 to 8 September 2023

#### Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
  - a. the specific issues the Minister for Planning seeks advice about
  - b. the mechanism of intervention being considered
  - c. whether, or which previously collected, submissions are to be considered by the Committee
  - d. how the costs of the Committee will be met.
10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
  - a. be satisfied that any proposed planning controls for the land 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, or
  - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in any way it sees fit, but must consider:
  - a. The referral letter from the Minister for Planning,
  - b. referred submissions,
  - c. the comments of any referral authority,
  - d. the views of the project proponent,
  - e. the views of the relevant Council,
  - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
  - a. assess any matter 'on the papers'
  - b. conduct discussions, forums, or video conferences when there is a quorum of:
    - i. a Chair or Deputy Chair
    - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

#### Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs

that the material is to remain confidential. A document may be made available for public inspection electronically.

### **Outcomes**

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
  - a. A Short description of the project.
  - b. A short summary and assessment of issues raised in submissions.
  - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
  - d. Any other relevant matters raised in the course of the Committee process.
  - e. Its recommendations and reasons for its recommendations.
  - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
  - g. A list of persons consulted or heard, including via video conference.
22. Following completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

### **Timing**

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
  - a. the date of receipt of referral, if no further submission or information are to be sought, or
  - b. receipt of the final submission of material or final day of any public process in respect of a referral.

### **Fee**

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.  
The costs of the Advisory Committee will be met by each relevant proponent.



**Richard Wynne MP**  
**Minister for Planning**

**Date:** 14 / 06 / 2020

## E:2 Version 2 extract – from 9 September 2023

### Method

7. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
8. The referral letter must specify:
  - a. the specific issues the Minister for Planning seeks advice about
  - b. the mechanism of intervention being considered
  - c. whether, or which previously collected, submissions are to be considered by the Committee
  - d. how the costs of the Committee will be met.
9. The letter of referral will be a public document.
10. In making a referral, the Minister for Planning or delegate must, either:
  - a. be satisfied that any proposed planning controls for the land 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, or
  - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
11. The Committee may inform itself in any way it sees fit, but must consider:
  - a. The referral letter from the Minister for Planning
  - b. referred submissions
  - c. the comments of any referral authority
  - d. the views of the project proponent
  - e. the views of the relevant Council and
  - f. The relevant planning scheme.
12. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
13. The Department of Transport and Planning (DTP) will be responsible for any further notification required. New submissions, if required, will be collected by DTP.
14. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
15. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
16. The Committee may:
  - a. assess any matter 'on the papers'
  - b. conduct discussions, forums, or video conferences when there is a quorum of:
    - i. a Chair or Deputy Chair, and
    - ii. at least one other member.
17. The Committee may apply to vary these Terms of Reference in any way it sees fit.

### Submissions are public documents

18. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
19. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.



### Outcomes

20. The Committee must produce a concise written report to the Minister for Planning providing the following:
- a short description of the project
  - a short summary and assessment of issues raised in submissions
  - a draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral
  - any other relevant matters raised during the Committee process
  - its recommendations and reasons for its recommendations.
  - a list of persons or authorities/agencies who made submissions considered by the Committee and
  - a list of persons consulted or heard, including via video conference.
21. Following completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

### Timing

22. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- the date of receipt of referral, if no further submission or information are to be sought, or
  - receipt of the final submission of material or final day of any public process in respect of a referral.

### Fee

23. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.

  
Sonya Kilkenny MP  
Minister for Planning

Date:

9/9/2023