

Planning and Environment Act 1987

# Government Land Standing Advisory Committee

## Tranche 26 Report

### 9 Maralinga Avenue, Keysborough

6 April 2021

<b>About this report .....</b>	<b>2</b>
<b>1 Summary and recommendation .....</b>	<b>3</b>
1.1 The site .....	3
1.2 Issues raised in submissions .....	3
1.3 Committee conclusion.....	4
1.4 Recommendation .....	4
<b>2 Process issues for this site .....</b>	<b>5</b>
2.1 Process summary.....	5
2.2 Process issues .....	6
<b>3 Site constraints and opportunities.....</b>	<b>10</b>
3.1 Planning context.....	10
3.2 History of the site .....	12
3.3 Physical constraints and opportunities .....	12
<b>4 Issues with the proposed changes .....</b>	<b>28</b>
4.1 What zone is suitable .....	28
4.2 Recommendation .....	28
4.3 Whether a Development Plan Overlay is appropriate .....	29
<b>Appendix A: About the Government Land Standing Advisory Committee .....</b>	<b>32</b>
<b>Appendix B: List of Submitters.....</b>	<b>33</b>
<b>Appendix C: Document list .....</b>	<b>34</b>

## List of Tables

Table 1: Existing and proposed controls .....	4
Table 2: Proposal summary .....	5
Table 3: Exhibited planning scheme changes.....	5
Table 4: Committee process.....	5

## List of Figures

Figure 1: Site location .....	3
Figure 2: Proposed DPO area – as exhibited and revised.....	7
Figure 3: Current zoning .....	10
Figure 4: Proposed zoning .....	10
Figure 5: Clause 22.09-3.5 of the Planning Scheme Map 1 – Future Change Areas .....	11
Figure 6: Land titles.....	13

## List of Abbreviations

---


DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
EPA	Environment Protection Authority
ESD	Environmentally sustainable development
GLSAC	Government Land Standing Advisory Committee
NRZ1	Neighbourhood Residential Zone – Schedule 1
WSUD	Water sensitive urban design

---

## About this report

On 4 November 2019 the Minister for Planning referred 9 Maralinga Avenue, Keysborough to the Government Land Standing Advisory Committee as Tranche 26. This matter was delayed due to COVID restrictions.

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 9 Maralinga Avenue, Keysborough.



Elissa Bell, Member



Meredith Gibbs, Member

In accordance with the Committee's Terms of Reference this report is endorsed by the Chair of the Committee.



Lester Townsend

6 April 2021

# 1 Summary and recommendation

## 1.1 The site

Figure 1: Site location



Source: Calibre Consulting Planning Report, July 2019

The site is the former Maralinga Primary School, known as 9 Maralinga Avenue, Keysborough. It is comprised of two parcels of land, being Lot 1 TP165895Q and Lot 1 TP186709W and has an area of approximately 2.1 hectares. The site does not have direct street frontage. It is accessed from the north by Maralinga Avenue and Woomera Avenue and from the south by McMahon Street and Malcolm Street.

To the west of the site is an area of open space and Chandler Road Reserve; to the north and south established residential areas; and to the east an established industrial estate.

## 1.2 Issues raised in submissions

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

Issues raised in submissions related to:

- whether the site should remain for education or other community purposes
- impact on neighbourhood character
- site access, increased traffic in local streets, impact on parking and safety
- retention of significant vegetation and impact on existing trees
- open space contribution
- potential contamination issues associated with former underground petroleum storage systems and asbestos building materials

- stormwater and drainage
- assessment of the culturally sensitive area
- interface with surrounding areas (residential, industrial and open space)
- community garden plans
- appropriateness and adequacy of the proposed Development Plan Overlay to manage future development and impact on third party rights
- accuracy and adequacy of information included with the Amendment as exhibited.

### 1.3 Committee conclusion

The site owner proposes to rezone the subject land from Public Use Zone 2 (Education) to Neighbourhood Residential Zone – Schedule 1 (NRZ1). The Committee agrees that this is an appropriate zone if the land is to be sold.

The Amendment also seeks to introduce Development Plan Overlay – Schedule 16, 9 Maralinga Avenue, Keysborough. The Committee does not agree that this overlay is appropriate. The land is in two titles, these should be consolidated before sale to ensure that development planning addresses the whole site.

The proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the *Ministerial Direction on The Form and Content of Planning Schemes*.

**Table 1: Existing and proposed controls**

Current planning scheme controls	Exhibited planning scheme	Advisory Committee Recommendation
Public Use Zone	Neighbourhood Residential Zone, Schedule 1	Neighbourhood Residential Zone, Schedule 1
	Development Plan Overlay, Schedule 15	<i>Do not apply</i>
	Amend Clause 21.08 to include 'Arboricultural Assessment Maralinga Primary School (Treelogic, 15 May 2017)', as a reference document	<i>Do not include</i>

### 1.4 Recommendations

The Committee recommends that:

1. **A planning scheme amendment be prepared and approved for 9 Maralinga Avenue, Keysborough to rezone the site to apply the Neighbourhood Residential Zone 1.**
2. **Do not apply a Development Plan Overlay to the site.**
3. **Consolidate the two titles into one title before to sale.**

## 2 Process issues for this site

### 2.1 Process summary

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

**Table 2: Proposal summary**

Proposal summary	
<b>Tranche</b>	26
<b>Site address</b>	9 Maralinga Avenue, Keysborough
<b>Previous use</b>	Maralinga Primary School
<b>Site owner</b>	Department of Education and Training, represented by the Department of Treasury and Finance
<b>Council</b>	City of Greater Dandenong
<b>Exhibition</b>	26 October to 18 December 2020
<b>Submissions</b>	10

**Table 3: Exhibited planning scheme changes**

Existing controls	Exhibited changes
Public Use Zone – Schedule 2 (Education)	Neighbourhood Residential Zone, Schedule 1
	Development Plan Overlay, Schedule 15
	Amend Clause 21.08 to include the ‘Arboricultural Assessment Maralinga Primary School (Treeologic, 15 May 2017)’ report as a reference document

**Table 4: Committee process**

Committee process	
<b>Members</b>	Elissa Bell (chairing), Meredith Gibbs
<b>Information session</b>	Cancelled due to Covid-19
<b>Directions Hearing</b>	10 February 2021
<b>Hearing</b>	26 February and 1 March 2021 – Online via MS Teams
<b>Site inspections</b>	By Member Gibbs, 3 February 2021, Unaccompanied
<b>Appearances</b>	Department of Treasury and Finance represented by Fiona Slechten of Calibre Greater Dandenong City Council represented by Kirstin Richardson of Maddocks, with evidence from David Barnes on Planning Bryan Hunter Gaye Guest
<b>Date of this Report</b>	6 April 2021

## **2.2 Process issues**

### **2.2.1 Deferment of the Hearing and need for further exhibition**

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

Immediately prior to, and at, the Directions Hearing, Council raised a range of concerns about the exhibited Amendment and requested an adjournment until these matters were resolved (Document 1).

At the Directions Hearing the site owner conceded some errors in the documentation but submitted that further background information was unnecessary at this stage.

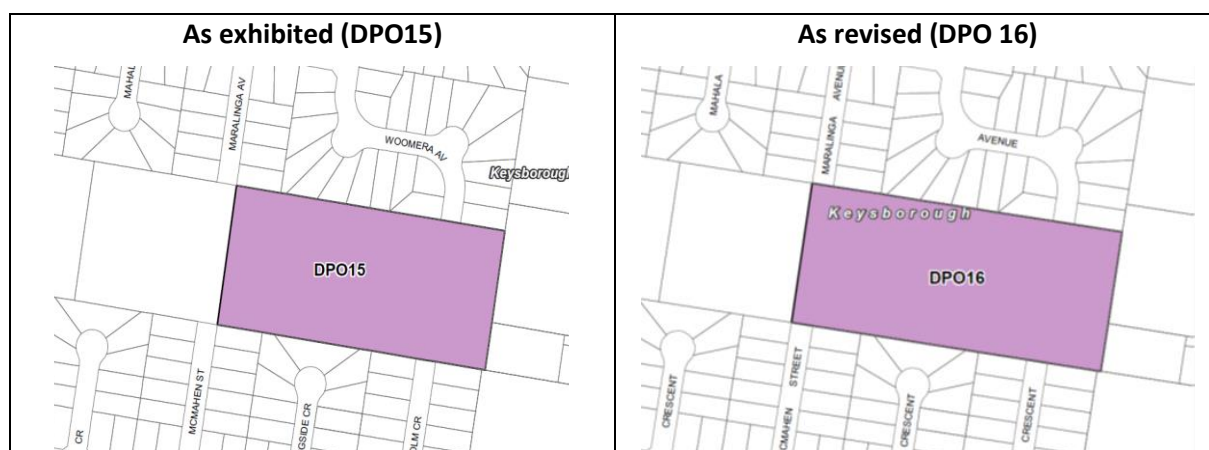
In response, the Committee directed (Document 2) the site owner provide additional information to address some of the issues raised and determined that the Hearing should proceed. Further details of Council's concerns, the site owner's response and the Committee's reasoning was provided with the Directions, and are not repeated here except to note the following extract regarding additional background material:

In relation to additional background reports requested by Council, the Committee considers that reports addressing matters such as WSUD, stormwater, traffic impacts, interface treatments etc should properly be prepared at the stage of preparing a development plan for the site or associated documentation. These are matters that the Planning Scheme requires to be addressed through Particular and General Provisions and policy or can be included as requirements within the DPO schedule. Indeed, the Committee notes that many of these reports would not be able to be prepared in the absence of a specific development proposal for the site.

In response to the Committee's Directions, on 17 and 19 February 2021, the site owner provided the following new material (Documents 3 and 4):

- environmental reports: Preliminary Site Investigation Report (Prensa, March 2017), Validation Assessment Report (Prensa, August 2017)
- correspondence from the EPA dated 16 July 2019
- an updated DPO map (as shown in Figure 2), which included an additional strip of land to the west, and clarification it was intended the future site developer would deliver a road on that land
- an updated and tracked version of the Schedule to the DPO (now numbered DPO16)
- an Addendum to the Arboricultural Assessment Maralinga Primary School report (Treelogic, 15 May 2017)
- proposed amendments to Schedule to Clause 53.01 to exempt the site from any public open space contribution.

**Figure 2: Proposed DPO area – as exhibited and revised**



The remainder of this report discusses the DPO area as revised. The Committee notes that there was no consequential change to the proposed zoning map (NRZ1) because the additional strip is already zoned NRZ1.

On 19 February 2021, Council again requested (Document 5) the Amendment be re-exhibited and the Hearing deferred citing concerns about the short timeframes to review new material and procedural fairness implications.

On 22 February 2021 the Committee responded (Document 6) that the revised DPO16 did not constitute a transformation of the Amendment requiring re-exhibition or postponement of the scheduled Hearing, except for the proposed changes to the public open space contribution provisions (Schedule to Clause 53.01). Having said that, the Committee understood the site owner was prepared to omit those changes enabling the matter to proceed to Hearing and for other matters raised by Council to be ventilated at the Hearing.

The Hearing proceeded on the basis that the Amendment did not include any changes to the Schedule to Clause 53.01.

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

Council's primary submission was the Amendment should not proceed because:

- Insufficient and inaccurate information had been provided.
- Submitters and residents have not been provided sufficient opportunity to consider 'new' information and post-exhibition changes.
- Information relating to contaminated land in the Explanatory Report did not comply with Ministerial Directions 19 and 11.
- Re-exhibition was necessary to enable local residents to consider new information and post-exhibition changes.

The additional information that Council said needed to be provided and exhibited included the new material that had been provided by the site owner in response to the Committee's Directions and the following information which had not yet been prepared:

- preliminary cultural heritage report
- information addressing stormwater and drainage issues
- information addressing water sensitive urban design
- an acoustic report addressing the interface with industrial land
- a transport impact report or integrated traffic management plan



- details of the provision of public open space.

Council submitted the exhibited Planning Report was misleading in that it stated Council had leased a part of the Chandler Reserve land for public open space when in fact no lease had yet been signed. In Council's submission, if the public knew the lease was unsigned and only for 20 years, there may have been further objections to the rezoning and therefore the Amendment should be re-exhibited.

Council also submitted a preliminary cultural heritage assessment should have been prepared and exhibited with the Amendment in accordance with Practice Note 45. In Council's submission, this was important as results of any such assessment could identify relevant constraints and opportunities that may be relevant to the rezoning and application of the DPO.

With respect to post-exhibition changes and in response to questioning from the Committee, Mr Barnes gave evidence:

- He did not consider the change to the DPO mapping was a big issue.
- He did not think proposed changes to Clause 3 of the DPO requiring further reports be prepared warranted re-exhibition of the Amendment.
- Re-exhibition would only be warranted if the site owner were proposing to change the permit triggers at Clause 2 of the proposed DPO.

In his evidence, the matter to be decided by the Committee was whether these changes were likely to constitute a transformation of the Amendment.

The site owner relied upon the Committee's letter (Document 2) in its submission that additional reports were unnecessary at this stage and that such information is commonly included as requirements of a DPO.

The site owner mentioned in passing that the environmental reports had been provided to the Fast Track Government Land Service within DELWP but that the decision had been made by it not to exhibit these reports.

The site owner submitted the exhibited documents had not been misleading as the offer for a lease remained and the outcome was in Council's hands.

In relation to procedural fairness submissions, the site owner responded that the proposed changes merely respond to issues raised by Council and do not take *"anything away from any party potentially affected by the amendment, rather additional measures to protect them were provided through these inclusions"*. In respect of proposed changes to the DPO mapping (shown in Figure 2), the site owner submitted these changes *"did not change the overall intent"* of the Amendment and that *"re-exhibition is not required unless transformative"*.

The site owner submitted that *"none of the changes sought are transformative"*.

### **(iii) Discussion**

Given the environmental reports and the EPA advice were available at the time of exhibition, the Committee thinks it would have been preferable for the site owner to have exhibited these documents with the Amendment. Nevertheless, the Committee considers adequate and proper opportunity was provided for submitters to consider the potential site contamination issues and to provide their views to the Committee at the Hearing, and that there has been no procedural unfairness in this regard.

With respect to the wording of the Explanatory Report, the Committee is satisfied the essence of these Ministerial Directions have been met by the Amendment.

Having considered the submissions and absent a proposal for the site, the Committee considers that, on balance, additional documents and background reports are best provided as part of a permit application when the nature of the proposed land use is known.

The Committee accepts the evidence of Mr Barnes and the submission of the site owner that proposed changes to the Amendment and the DPO mapping do not constitute a transformation of the Amendment.

Further, the Committee does not consider the inaccuracies relating to the status of lease and the mapping of the 'lease land' are sufficient to have materially misled the public or materially changed the number or content of public submissions.

The Committee notes Council would have had knowledge of the status of the land as surplus for some time. Government policy requires the sale of surplus land with an appropriate zone. Further, it is inappropriate for land zoned Public Use to be sold for a private use.

#### **(iv) Conclusion**

The Committee is satisfied that consideration of the Amendment should proceed.

#### **2.2.2 Committee constitution**

The Terms of Reference provide the Committee may meet when there is a quorum of at least one Chair, or Deputy Chair or two of the Committee members. The original quorum was Annabel Paul, a Deputy Chair, and Member Meredith Gibbs.

On 25 February 2021 it was brought to the attention of Ms Paul, that she may have a potential conflict. As a result, the Committee was reconstituted to include Members Elissa Bell and Meredith Gibbs. Elissa Bell chaired the proceedings. A report written by two members must be endorsed by the Chair or a Deputy Chair of the Committee. In this case, Lester Townsend the Chair of the Committee has endorsed this report.

### 3 Site constraints and opportunities

#### 3.1 Planning context

Figure 3 shows the current and proposed zonings.

Figure 3: Current zoning

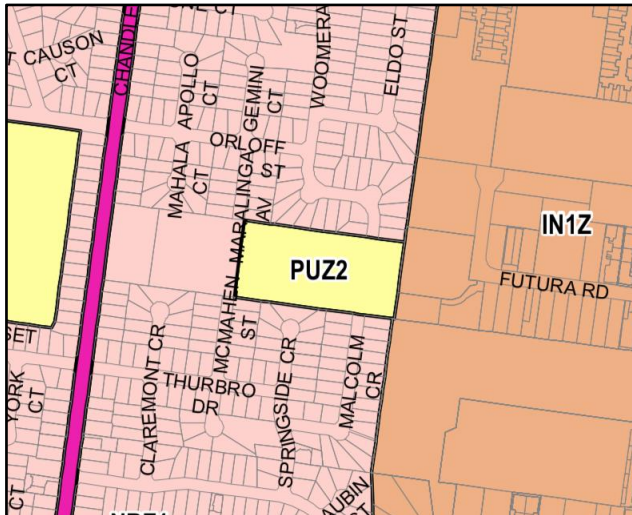
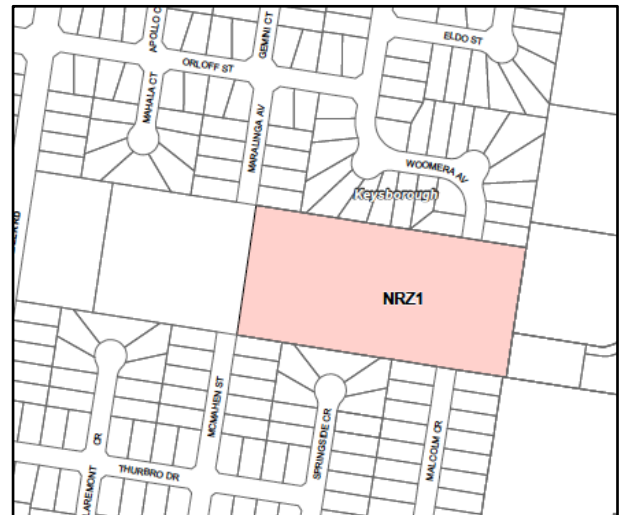


Figure 4: Proposed zoning



There are no overlays applicable to the site. A Development Plan Overlay is proposed.

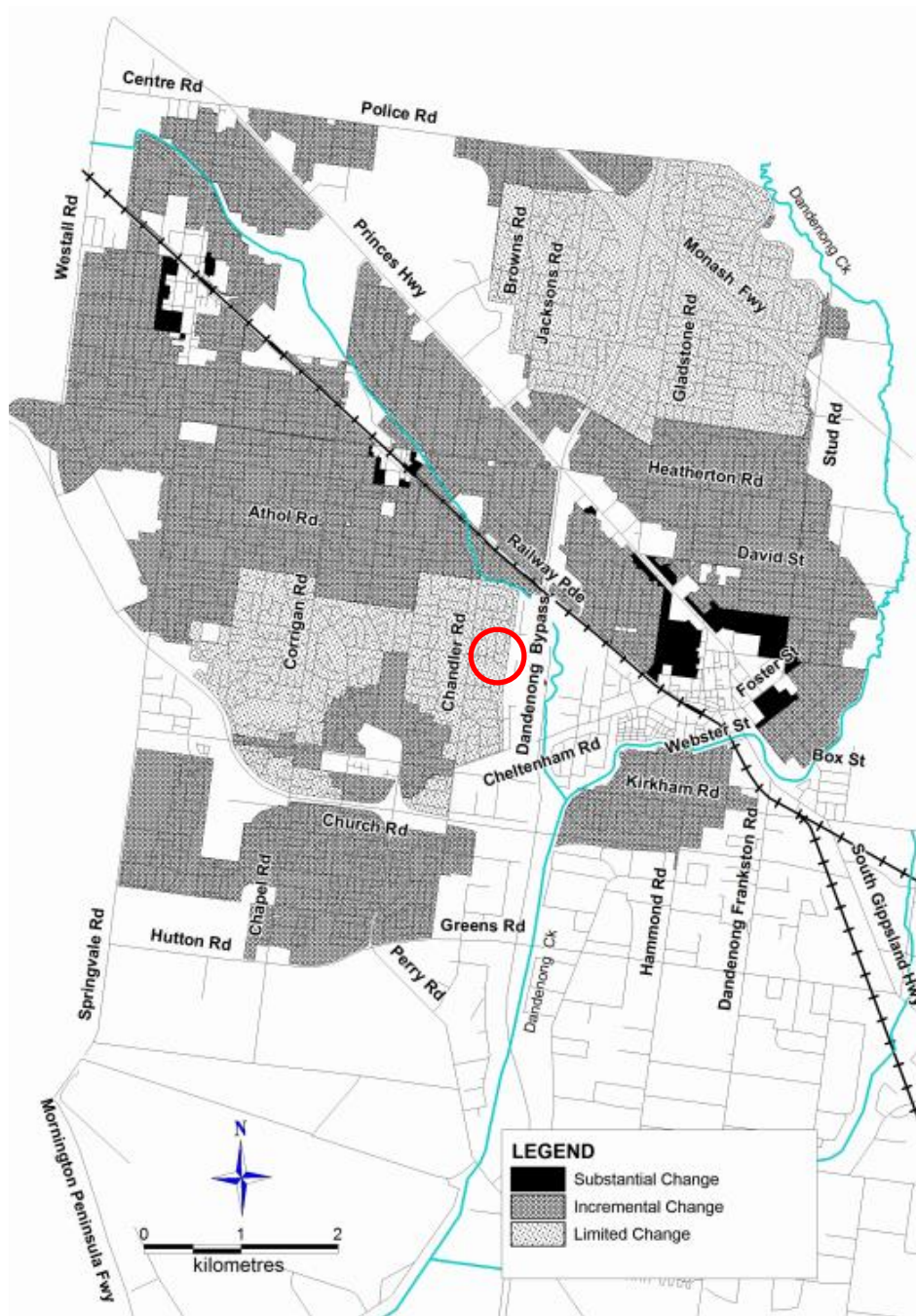
#### Limited Change Area

Clause 22.09 Residential Development and Neighbourhood Character Policy provides guidance to manage the evolution of residential neighbourhood character and growth throughout Greater Dandenong and divides residential areas of the municipality into three Future Change Areas: Substantial, Incremental and Limited. The policy aims to identify areas suitable for, or to be protected from, increased residential development. It applies to all residential development within the municipality requiring a planning permit in a residential zone.

The policy identifies the rationale, existing character, identified future character and design principles for each of these areas. Limited Change Areas are zoned Neighbourhood Residential Zone and generally located at significant distances from the Princes Highway, railway corridor, and the key Activity Centres of Dandenong, Springvale and Noble Park. These areas have been identified as being suitable for low density housing, primarily because they lack the location and/or access advantages compared to other areas.

The site is located in a Limited Change Area as shown in Figure 5.

Figure 5: Clause 22.09-3.5 of the Planning Scheme Map 1 – Future Change Areas



The desired future character of Limited Changes Areas is described as follows:

The future character of limited change areas will evolve over time to contain a relatively limited number of well-designed and site responsive detached and infill residential developments that respect the existing neighbourhood character. Residential development will be a mix of one and two storey dwellings with separation between dwellings, at the upper level at least, with main living areas and private open space at ground level. Generous landscaping will make a significant contribution to the future character of these areas.

Residential development will give particular consideration to providing appropriate setbacks and private open space areas and high-quality landscaping, including the planting of canopy trees, to protect the amenity of adjoining dwellings and to contribute to the landscape character.

The Limited Change Area policies are to:

- Ensure that new development respects the neighbourhood character of the area and considers the identified future character.
- Ensure that future housing density will be at a lower intensity than in surrounding Incremental Change Areas (zoned GRZ).
- Encourage residential development in the form of dual occupancies and single detached dwellings.
- Encourage well-designed low-density infill developments.
- Apply the Design Principles for all residential developments, in addition to those at Clause 22.09-3.1:

All residential developments in the Limited Change Area are to be assessed against the specified design principles which include a preference for:

- low density housing
- substantial landscaping including canopy trees to protect the outlook of adjacent properties
- ground level private open space
- built form that is responsive to existing character
- separation between dwellings especially at the upper levels
- retention of spines of private open space at the rear of properties
- consideration of overlooking and overshadowing for two-storey dwellings
- setbacks to allow generous landscaping and canopy trees.

## **3.2 History of the site**

In 2010 the Chandler and Maralinga Primary Schools, which were both located in Keysborough, merged to become Chandler Park Primary School. The school operated from both sites, being the Maralinga Campus and Cochrane Avenue Campus, until the end of 2014. At the start of 2015 all staff and students transferred to the Cochrane Avenue campus. Due to declining enrolments the retention of the Maralinga Campus was no longer financially viable, and the site was identified as surplus to educational requirements.

The site was deemed surplus by the site owner on 20 July 2015 in accordance with the Victorian Government Landholding Policy and Guidelines (the Guidelines). A first right of refusal process was subsequently undertaken in 2016. There were no expressions of interest made by government agencies through this process.

As a result, the site owner now proposes to sell the site.

The site owner also owns separate, adjacent land located to the west of the site. This land is currently being used, together with land owned by Council, as public open space (known as Chandler Road Reserve). In 2018, the Victorian School Building Authority advised that in recognition of its ongoing public use and historical arrangements, this land would be retained as public open space and offered to Council on a long-term lease for nominal annual rent (\$1).

## **3.3 Physical constraints and opportunities**

### **3.3.1 Location**

The site is located in an established residential area (to the north and south) and abuts an established industrial estate to the east. To the west is an area of open space and Chandler Road Reserve. The site is located approximately; 2 kilometres from the Dandenong Major

Activity centre, 1 kilometre from Parkmore Shopping Centre and 500 metres from a neighbourhood shopping centre located to the south. A train station is located approximately 1.3 kilometres to the north-east and bus routes along Chandler Road are within 70 metres of the site.

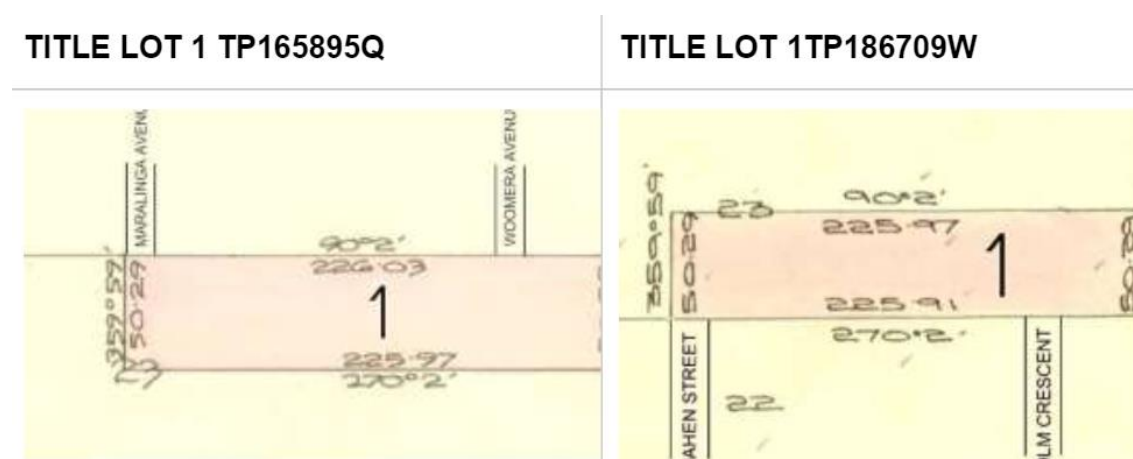
### 3.3.2 Current site conditions

The site comprises approximately 2.1 hectares and is generally flat. It is currently vacant, with the former school buildings having been demolished and removed. There is existing vegetation (predominately trees with some shrubs), including both native and exotic species.

### 3.3.3 Land titles

The site consists of two titles, the first title containing Lot 1 TP165985Q and the second title containing Lot 1 TP186709W as shown in Figure 6 below.

Figure 6: Land titles



#### (i) What is the issue?

Whether the Amendment provides an appropriate response to the two existing titles.

#### (ii) Evidence and submissions

Council submitted that the DPO should contain a requirement that there be only one development plan for the whole of the DPO area to ensure that the two titles would be developed as one site.

The site owner advised it intends to sell the titles together as one development site.

#### (iii) Discussion

The Committee considers the current boundaries of the two titles, together with the lack of existing access, may make it difficult for the two lots to be developed separately. The Committee notes the site owner's intention to sell the site as one, but observes that there is no legal requirement that the two titles remain in the same ownership or be developed as one site. The Committee agrees with Council that it is desirable the two titles be developed as one site.

#### (iv) Conclusion

The Committee concludes the two titles should be developed as one site.

### **3.3.4 Interface with surrounds**

The site currently has three distinct interfaces: residential, industrial and open space.

To the north and south, the site is surrounded by an existing residential area, generally comprising detached single-storey dwellings. The surrounding subdivision layout comprises a series of cul-de-sacs. Housing generally contains front and rear gardens with some canopy trees.

To the east is an established industrial area, characterised by one and two-storey scale warehouse and manufacturing buildings. The exhibited Planning Report identifies this as the Dandenong industrial precinct which adjoins the State significant Dandenong South industrial precinct.

Although the land to the west, Chandler Road Reserve, is currently open space, it is zoned NRZ1. The reserve is in two parts: the western-most section owned by Council and the remainder (adjacent to the site) owned by the site owner.

The exhibited Planning Report states the reserve is not identified in the City of Greater Dandenong's open space strategy, *Places for People: Open Space in Greater Dandenong (May 2009)* and provision of parks in the Keysborough suburb is discussed. The Planning Report considers the site is not in a location deficient in open space and points to larger nearby reserves, Frederick Wachter Reserve and Greaves Reserve, being 600 and 720 metres from the site.

#### **(i) What is the issue?**

Whether the Amendment appropriately responds to the three distinct interfaces.

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

##### **Residential interface**

Council submitted a number of changes to the DPO which would assist with the integration of future development with the surrounding residential area. Such changes addressed:

- maximum building height
- site coverage
- permeability
- landscaping
- side and rear setbacks
- private open space
- minimum garden area.

Mr Barnes gave evidence describing the character of the existing surrounding residential area as:

- A local residential road pattern characterised by a broken grid, with the review site being located away from main roads, with a number of local residential streets terminating into the site from the north and south.
- Predominately single storey, brick veneer detached houses, with hip rooves, dating from about the 1960s and 70s.
- Houses set in a moderately landscaped garden setting and streetscapes.

Mr Barnes identified that existing front setbacks were generally around 7 metres and gave evidence that in absence of a requirement in a DPO, a default front setback of 4 metres would apply for dwellings in 'new streets'. Whilst Mr Barnes supported the use of the DPO,

he gave evidence it was lacking in detail and that the following design and built form requirements should be addressed to complement the existing character:

- front, rear and side setbacks
- restatement of garden requirements (which would be removed by the application of the DPO)
- separation between dwellings, particularly two-storey dwellings
- designation of larger lots for multi-dwelling development with other sites being identified for single dwellings.

Mr Barnes gave evidence that requirements in the DPO would only apply where a permit is required under provisions of the scheme. He noted that a single dwelling on lots greater than 300 square metres does not require a permit under the NRZ1. To ensure that this situation was captured by the DPO provisions, Mr Barnes suggested conditions could be placed on a planning permit issued for the subdivision of the site to require residential design guidelines be prepared and implemented. To ensure implementation, Mr Barnes recommended either a notice of restriction on title or Section 173 agreement be imposed – with either of these to be included in the DPO.

Mr Barnes gave evidence that with the exception of front setbacks, Schedule 1 to the NRZ1 included variations to Clause 54 (One dwelling on a lot) and 55 (Two or more dwellings on a lot and residential buildings) to deal with site coverage, landscaping and side and rear setbacks.

Resident submitters Mr Hunter and Ms Guest were concerned with potential effects on the existing residential interface including through potential overshadowing, overlooking, and change in neighbourhood character resulting in reduction in property values.

### **Industrial interface**

Mr Barnes gave evidence *“the industrial area to the east of the site provides a harsh, impermeable, low amenity interface”* and the DPO should include requirements for this interface.

Council’s original submission noted the proposal identified that existing screening at this interface included a fence and trees. As the Arboricultural Report identified most of these trees being of low retention value, Council submitted this provided little comfort for how the interface would be dealt with in the future. Council identified that residential-industrial interfaces generally generate a significant number of complaints and that the potential impacts of existing industry including noise, dust and vehicle movement need to be considered. To this end, Council recommended a requirement in the DPO for the development plan to include findings of an acoustic report to address interface issues and provide a response to existing amenity issues arising from existing uses on the adjacent industrial land.

In its proposed version of the DPO, Council proposed marking up the Outline Development Plan to indicate the *“setback and interface requirements must be detailed on this plan along the eastern boundary (industrial interface) including proposed acoustic measures”*.

The site owner submitted until the development was known it was unclear if acoustic measures would be required.



## **Open space interface**

Council's original submission provided *"the new development must provide new open space or a cash contribution towards open space (currently 5 per cent). It cannot rely on an existing area of open space to fulfil this obligation"*. At the Hearing, Council submitted the DPO should include a requirement for a *"well-expressed and integrated open space network that meets the required 5 per cent land contribution"*.

In addition, Council was concerned the existing carpark off McMahan Street may need to be relocated to facilitate the joining with Maralinga Avenue, this would reduce the amount of open space land available.

Council submitted further discussion needed to be had to resolve the future zoning of the 'lease land' to be consistent with its current use as open space.

Mr Barnes gave evidence the Chandler Road Reserve provides an *"attractive"* interface to the west.

At the Hearing, the site owner submitted the public open space contribution could satisfactorily be provided in cash. Following the close of the Hearing, the site owner submitted its closing submission and tracked change response to the DPO which included the comment that *"additional open space is not deemed required"*.

Ms Guest and Mr Hunter informed the Committee they were part of a proposal to build a community garden on Council owned land in Chandler Road Reserve. Ms Guest submitted this issue needed to be resolved prior to the Amendment proceeding.

In response to questioning of the Committee, Council submitted the resolution of the community garden issue was contingent on the:

- formulation of a related Council policy
- resolution of the leasing discussions
- impact of future land use and development on the design of Chandler Reserve including the need for any carparking to be relocated.

The site owner submitted the community garden proposal was for Council owned land and was entirely separate from this Amendment process.

### **(iii) Discussion**

#### **Residential interface**

With the exception of front setbacks, the Committee notes many of the built form and design requirements recommended by Mr Barnes would apply by virtue of the NRZ1 zone and general provisions for the Limited Change Area, including specific design principles, without the need for a DPO.

The Committee acknowledges that a planning permit is not required for a single dwelling on lots greater than 300 square metres. The Committee considers Mr Barnes' suggestion to include a condition on a subdivision permit requiring residential design guidelines be prepared and implemented could occur in the absence of a DPO and could address the issue of setbacks as well as any other desired design requirements.

The Committee is concerned the removal of third party rights resulting from a DPO would reduce the ability of residents to meaningfully engage with a development proposal, once known, to ensure their interests are adequately protected.

### **Industrial interface**

The Committee accepts Council's submission that the screening provided by current vegetation and trees may not remain under a development scenario and that consideration of the treatment of this interface is required by any development.

The Committee also accepts the site owner's submission that acoustic measures may not be required depending on the circumstances. Current uncertainties include the proponent, development proposal and timing of any development. In addition to the challenges of undertaking an acoustic report absent a development proposal, the Committee notes that the owners or operations at the industrial interface could change over time.

The Committee is concerned the removal of third party rights resulting from a DPO would reduce the ability of industry to meaningfully engage with the development proposal once known to ensure their interests are adequately protected.

### **Open space interface**

The Committee does not agree that the resolution of the lease is related to the current Amendment. The Committee understands that Council were given the opportunity to purchase the 'lease land' and chose not to. Council now has the opportunity to lease the land for open space at nominal rent, should it choose to do so. The lease land is already zoned NRZ1 so if Council chose not to use the land, it is already zoned appropriately for disposal. Having said that, the Committee did not get any indication from Council it was disinclined to enter into the lease, just that this process was not yet complete. Indeed, Council indicated further discussions needed to be had with respect to the current zoning of the lease land and the potential need to rezone this land to reflect the current use as open space. The Committee considers the rezoning of the lease land should be pursued in a separate Amendment, if desired.

The Committee agrees with the site owner that the issue of the community garden is separate to this Amendment.

In closing at the Hearing, the site owner opposed the proposed wording of the DPO which required the open space contribution to be made in land form instead of leaving the opportunity for a cash contribution. The Committee is unclear what the site owner meant in its final version of the DPO in saying that no further public open space contribution is required.

Consistent with its position in its letter dated 22 February (Document 6), the Committee does not consider it appropriate for any changes to be made to the Schedule to Clause 53.01 to exempt the proposal from a public open space contribution. The Committee agrees with the site owner's submission that the required contribution could be made in either cash or land, and it is appropriate that any planning controls allow this flexibility to be determined at a later stage.

### **(iv) Conclusion**

The key factors which need to be balanced relating to interfaces are the ability to control the design response of any built form on the site with the removal of third party rights from potentially affected neighbouring properties.

### **3.3.5 Access**

The site currently has no direct access, yet is surrounded by cul-de-sacs and dead-end streets. Maralinga Avenue terminates at the northwest corner of the site and McMahan Street at the southeast corner of the site. Woomera Avenue provides access from the north and Malcolm Crescent from the south.

#### **(i) What is the issue?**

Whether the Amendment provides for appropriate access to the site.

#### **(ii) Submissions**

The site owner submitted the need to provide road connections with existing roads was a key reason for including a DPO and that the Outline Development Plan had been provided in response to a specific request from Council for road connection in this manner. In relation to third party rights, the site owner submitted traffic outcomes were for the engineers to resolve.

Council submitted the absence of a transport impact report, integrated traffic management plan and information regarding the standards of the proposed roads, maintenance responsibilities and potential impacts on local traffic volumes meant there was insufficient information to support the Amendment.

Council submitted requirements for traffic management should be included in the planning controls. Council was also concerned about potential impacts to the existing carpark at the end of McMahan Street.

Mr Hunter and Ms Ettery were concerned about potential increases in traffic, pedestrian safety, the potential to create 'rat-running' opportunities and the potential increase in cars parked on new and existing neighbouring streets.

#### **(iii) Discussion**

The Committee was not provided with any evidence of a strategic framework to support the proposed road layout in the Outline Development Plan. Whilst the Committee considers the proposed road layout provides an outcome to provide adequate road access to the site, it is not convinced it is the only, or best, outcome. It seems feasible an appropriate development could proceed with a different layout – for instance, access could be provided by extending only one of the roads, terminating in another cul-de-sac either alone or together with through connection with two of the remaining north-south streets; or through access could be provided from the Woomera Avenue in the north-east and exiting at McMahan Street in the south-west; or alternatively from Maralinga Avenue to Malcolm Crescent.

Whilst the Committee does not consider it to be a determining issue, it is possible that if an alternate layout were deemed most suitable, the relocation of the existing carpark would not be necessary.

In the absence of any justification for the proposed access and conscious of concerns raised by residents, the Committee is concerned the removal of third party rights would reduce the ability of residents to meaningfully engage with any proposed new access arrangements. The Committee does not accept that traffic matters are entirely closed from community input.

**(iv) Conclusion**

The Committee does not consider it necessary for the planning controls to dictate the potential road layout as provided in the exhibited Outline Development Plan.

**3.3.6 Potential contamination**

**(i) What is the issue?**

Whether specific planning controls are required to deal with potential site contamination.

**(ii) Relevant policy**

Ministerial Direction No. 1 – Potentially Contaminated Land applies to land used or known to have been used for industry, mining or storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use) and requires a planning authority to satisfy itself that any potential contamination issues have been resolved prior to permitting a sensitive use (including residential and child-care centre).

The General Practice Note on Potentially Contaminated Land (2005) provides further guidance on how to assess whether land is potentially contaminated.

Ministerial Direction No 19 – Requirement for Information for Authorisation of Preparation of Amendments that may Significantly Impact on the Environment, Amenity and Human Health requires a planning authority to seek advice from the EPA in the preparation of planning scheme reviews and amendments that may result in significant impacts on the environment, amenity and human health due to pollution and waste.

**(iii) Background information**

The Explanatory Report stated that an environmental assessment had been undertaken on site. The assessment identified three underground petrol storage systems (underground petrol tanks and associated pipework) which were a potential source of historical and ongoing contamination. The Report noted that the petrol storage systems were decommissioned and removed, site remediation works undertaken, and validation soil sampling conducted. The Explanatory Report noted:

Ultimately, the environmental assessments have demonstrated that the risk of contamination is low and the site is suitable for residential use and development.

The EPA has advised that it is satisfied that no further planning control is required in this regard.

The background Planning Report also referred to this information.

As outlined in Section 2.2.1 the environmental reports were provided on 17 February 2021. The Preliminary Site Investigation identified:

- three underground petrol storage systems which required decommissioning and removal to be followed by validation underground petroleum storage systems sampling
- hazardous building materials, including friable and non-friable asbestos, in the school building
- at the time of the report, the site was not listed on, or in the vicinity of a site listed on, the Victorian EPA Priority Sites Register

The Preliminary Site Investigation noted that, subsequently, the underground petrol storage systems were decommissioned as part of the demolition and removal of the school buildings. The Validation Report stated that soil exhibiting a hydrocarbon odour was identified in certain areas after this decommissioning. This soil was re-excavated and disposed of offsite. The Validation Report concluded that the contamination concentrations reported on site were *“unlikely to pose a risk to ecological receptors or human health, based on the potential sensitive use of the site in the future”*.

With respect to asbestos, the Preliminary Site Investigation noted:

Some asbestos fibre cement debris associated with damaged walls was observed within the [school] buildings. Based on observations, building debris was considered unlikely to have impacted the land (that is, surface soil) at the time of the inspection.

#### **(iv) Evidence and submissions**

Council raised concerns that EPA’s position was unclear as to status of the clean-up of the site and that more definitive advice was required prior to rezoning. Council submitted that if the Committee were minded to recommend that the Amendment proceed, the DPO16 should be revised to include the following at Clause 4.0:

The following information must be provided to Council’s satisfaction prior to the endorsement of a Development Plan:

- A certificate of environmental audit must be issued for the land in accordance with Part IXD of the *Environment Protection Act 1970*, or
- An environmental auditor appointed under the *Environment Protection Act 1970* must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.

The site owner tabled an Asbestos Removal Clearance Inspection Certificate (Azcor Consultants Pty Ltd dated 29/05/2017) evidencing the removal of asbestos materials from the site during the school building demolition works. The Certificate states:

An inspection by an independent person has found that there is no visible asbestos residue remaining as a result of the asbestos removal work in the area where the asbestos removal work was performed, or in the area immediately surrounding the area where the asbestos removal work was performed.

The EPA’s submission confirmed its view that it was not necessary to apply the Environmental Audit Overlay or any other planning scheme control to the site.

On the basis of the remediation work completed on the site and the EPA’s view that it was not necessary to apply the Environmental Audit Overlay or any other planning scheme control, the site owner submitted that the Committee could be satisfied that the land is not subject to potential contamination and is suitable to be used for sensitive land uses. As a result, the site owner argued that no requirement for an environmental audit should be imposed.

Mr Hunter and Ms Guest raised general concerns about the impact of past contamination of the site on its future use.

#### **(v) Discussion**

Having considered the evidence and submissions relating to the potential for residual contamination on the site, the Committee is satisfied that:

- the Preliminary Site Investigation considered the historical uses of the site, noting that it concluded that *“the site was considered unlikely to represent a source of*

*significant contamination due to historical uses (that is, agricultural and primary school) with the exception of the underground petrol storage systems”*

- the underground petrol storage systems and associated pipework have been decommissioned and removed from the site and that the remaining risk of contamination from these sources is low
- the risk of any asbestos or other hazardous building materials associated with the school buildings remaining on site is low.

The Committee considers the EPA advice to be clear that it was satisfied that the residual risk of site contamination is low and further planning controls were unnecessary.

#### **(vi) Conclusion**

The Committee concludes that it is not necessary to impose any planning controls in relation to the potential for contamination of the site.

### **3.3.7 Significant vegetation**

#### **(i) What is the issue?**

Whether the Amendment adequately protects the existing significant vegetation on site.

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

Clause 52.17 Native vegetation aims to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. A planning permit would be required to remove, destroy or lop native vegetation, including dead native vegetation, on the site.

The City of Greater Dandenong’s *Urban Forest Strategy, Greening Our City* and *Greening Our Neighbourhoods* provide a holistic approach to managing and enhancing the municipality’s urban forest. The *Greening Our City: Urban Tree Strategy 2018-28* aims to increase the number of canopy trees on privately-owned land and increase the overall canopy cover for the Council area to 15 per cent by 2028. The aim is to reduce the urban heat island effect throughout the area, which currently has a very low percentage canopy cover.

#### **(iii) Background information**

The Arboricultural Report identified canopy trees primarily around the perimeter of the site, with scattered trees around the school buildings. The Arboricultural Report found:

- four trees had an arboricultural rating of ‘High’
- twenty-eight trees had an arboricultural rating of ‘Medium’
- fifty-one trees had an arboricultural rating of ‘Low’
- six trees had an arboricultural rating of ‘None’.

The Arboricultural Report recommended the retention of ‘high’ and ‘medium’ rated trees where possible, and noted that Clause 52.17 would apply to seven native trees.

The Amendment proposed that the Arboricultural Report be a reference document at Clause 21.08 of the Planning Scheme.

The Arboricultural Addendum Report inspected trees located within the DPO area and neighbouring properties. Trees located in the adjacent Chandler Reserve and the additional strip were not assessed.

The Addendum concluded:

- eleven trees rated ‘Low’ or ‘None’ had been removed during the school demolition works
- two trees on a neighbouring property had been removed since the 2017 Arboricultural Report
- five trees were in irreversible decline and should not be considered for retention within the future site development
- there were no dead trees within the site.

The Addendum noted that Tree 50, a Coast Banksia (*Banksia integrifolia*), may trigger a permit under Clause 52.17 if it were to be removed, lopped or destroyed. However, the removal of Trees 28, 34, 48 and 56 would not require a permit under Clause 52.17 if removed, lopped or destroyed.

#### **(iv) Evidence and submissions**

Council submitted that:

- all trees identified as “High” and “Moderate” in the Arboricultural Report should be retained and identified on the Outline Development Plan
- DPO16 should include all key recommendations from the Arboricultural Report relating to vegetation and habitat retention
- all trees to be retained, including tree protection zones, should be located within public open space or road reserves vested in Council and not count towards the 5 per cent public open space requirement
- DPO16 should include and address the impact of the retention of trees within the public realm including the road reserve
- DPO16 should require the Concept Landscape Plan to include more detail such as:
  - the vegetation to be retained, areas of new planting and planting themes and species, having regard to the Arboricultural Report and Addendum
  - measures to protect and enhance identified vegetation, including detailed measures for the protection of trees to be retained (including tree protection zones)

Mr Barnes gave evidence:

The neighbourhood character objectives contained in Schedule 1 of the NRZ, focus on high quality landscaping. A number of trees exist on the review site. It would be appropriate to identify significant trees to be retained on the site at this time, and to show them on any Outline Development Plan contained in [the] Schedule ... . This would ensure that the road layout for the site, and subsequent lot pattern and building envelopes, is designed to maximise the retention of trees.

The site owner submitted that Clause 52.17 and the provisions of NRZ1 and DPO16 were sufficient to ensure that any future development would be designed to avoid the removal of significant vegetation. It submitted that in the absence of formal design plans, it would be inappropriate to specify individual trees to be retained in the DPO and that this would occur as part of the submission of a development plan.

The site owner did not agree that all trees to be retained, including tree protection zones, should be located within public open space or road reserves vested in Council and not count towards any public open space contribution. It submitted that this would amount to a double requirement to provide public open space, noting that the provisions of Clause 53.01

would apply to the site. It submitted that any tree protection zones were more appropriately dealt with at the permit stage.

Mr Barnes gave evidence that it was not necessary to include the Arboriculture Report as a reference document and that a reference to it in Clause 4.0 of DPO16 would be sufficient to ensure that the findings of the Report would be taken into account in the preparation of the development plan. The site owner agreed with this approach.

**(v) Discussion**

The Committee accepts that there are a number of significant trees on the site and that trees identified as “High” and “Moderate” in the Arboricultural Report (or any updated report) should be retained, where possible.

However, the Committee considers that given the absence of a specific development proposal, it would be inappropriate for planning controls to specify which trees are to be retained or any tree protection zones. To do so could unnecessarily limit the development potential of the site and discourage innovative responses to the site. Further, it may be some years before the site is developed by which time the rating of existing trees may have changed.

The Committee considers that the ultimate decision on which trees should be retained would be best made at the time of a permit application and that Council has sufficient discretion through existing Planning Scheme provisions to ensure that the site is developed in a way that minimises the removal of significant vegetation.

**(vi) Conclusion**

The Committee concludes the existing planning controls are sufficient to minimise the removal of significant vegetation on the site and it is not necessary to include the Arboriculture Report as a reference document.

**3.3.8 Cultural heritage**

**(i) What is the issue?**

Whether planning controls are needed to ensure investigation of potential impacts to Aboriginal cultural heritage.

**(ii) Relevant policy**

The *Aboriginal Heritage Act 2006* sets out the circumstances under which a Cultural Heritage Management Plan is required. Part of the site is located in an area of high cultural sensitivity.

Practice Note 45 – The Aboriginal Heritage Act 2006 and the planning permit process.

**(iii) Evidence and submissions**

Mr Barnes gave evidence that, consistent with Practice Note 45:

I would suggest that a preliminary cultural heritage assessment should have been prepared and placed on exhibition with the amendment. In the absence of this, [the] Schedule ... should be modified to include the need for a preliminary cultural heritage assessment as part of the Development Plan.



Council submitted the DPO should include a requirement for the findings and recommendations of the Cultural Heritage Management Plan to be incorporated into the development plan.

The site owner relied upon its cross examination of Mr Barnes where he stated that he would not put a great deal of emphasis on the absence of a preliminary assessment and the inclusion of a requirement in the DPO for the findings and recommendations of the Cultural Heritage Management Plan to be incorporated into the development plan would be sufficient. The site owner advised it was comfortable with this proposed change to the DPO.

**(iv) Discussion**

The Committee acknowledges it is unknown whether there are any cultural heritage matters which may represent a constraint or opportunity for future use and development of the site. However, the Committee considers that any cultural heritage matters would be material to the proposed future development of the site and not to the proposed zone. In terms of the timing of things, the Committee is therefore comfortable that such information is provided after the Amendment but before any high impact activity takes place, as required by the Aboriginal Heritage Act.

The Committee does not consider it necessary for planning controls to require the undertaking or implementation of a Cultural Heritage Management Plan as this is controlled under the *Aboriginal Heritage Act* and would be an unnecessary duplication of that legislative scheme.

**(v) Conclusion**

The Committee does not consider it necessary for planning controls to require the undertaking or implementation of a Cultural Heritage Management Plan.

**3.3.9 Environmentally sustainable design, water sensitive urban design, stormwater and drainage**

**(i) What is the issue?**

Whether planning controls are needed to manage environmentally sustainable design (ESD), water sensitive urban design (WSUD), and on site stormwater and drainage issues.

**(ii) Relevant policy**

Clause 22.06 Environmentally Sustainable Development applies throughout the City of Greater Dandenong to residential and non-residential development that requires a planning permit. The policy requires a permit application to be accompanied by either a Sustainable Design Assessment or a Sustainability Management Plan as specified:

**Figure 7 – ESD application requirements for residential development**

Type of development	Application requirements
<b>Accommodation /Mixed Use with residential component</b>	
<ul style="list-style-type: none"> <li>▪ 3 - 9 dwellings; or</li> <li>▪ Development of a building for accommodation other than dwellings with a gross floor area of 1000m<sup>2</sup> to 2499m<sup>2</sup>.</li> </ul>	Sustainable Design Assessment (SDA)
<ul style="list-style-type: none"> <li>▪ 10 or more dwellings; or</li> <li>▪ Development of a building for accommodation other than dwellings with a gross floor area more than 2499m<sup>2</sup>.</li> </ul>	Sustainability Management Plan (SMP) Green Travel Plan (GTP)

A sustainable design assessment is a simpler, less detailed version of a sustainability management plan which should:

- provide a detailed assessment of the development
- identify achievable environmental performance outcomes having regard to the objectives of the policy (as appropriate)
- demonstrate that the building has the design potential to achieve the relevant environmental performance outcomes, having regard to the site’s opportunities and constraints
- document the means by which the performance outcomes can be achieved.

Clause 22.06 sets objectives for a range of ESD matters such as energy performance, water resources, stormwater management (including WSUD), waste management and urban ecology.

**(iii) Evidence and submissions**

Council made submissions the DPO should provide more detail and guidance on ESD, WSUD and stormwater issues including by requiring:

- An ESD statement outlining the environmentally sustainable practices and best practice water sensitive design principles that will be incorporated into the development such as energy and water conservation, passive solar design, waste minimisation, vegetation retention, the promotion of alternative transport options and other innovative practices.
- A stormwater management plan comprising:
  - a stormwater drainage impact report
  - provisions to accommodate overland stormwater flows
  - how the development will address best practice environmental management and incorporate WSUD
  - details of stormwater management measures
  - construction and maintenance requirements
  - any other matters as required by the responsible authority or Melbourne Water.

Mr Barnes gave evidence supporting the requirement for an ESD statement and a stormwater and integrated water management plan to form part of a development plan.

The site owner submitted:

The Greater Dandenong Planning Scheme includes at Clause 22.06 Environmentally Sustainable Development applies to residential and non-residential development that requires a planning permit. Application requirements include either a Sustainable Design Assessment or a Sustainability Management Plan. Thresholds are identified to determine the level of assessment required to accompany an application.

It is therefore considered that these matters are required to be addressed as part of any future development application.

The site owner further submitted:

The updated DPO Schedule has included an earlier level of assessment requiring the provision of both a Stormwater and Integrated Water Management Plan and an Environmentally Sustainable Design report as part of the Development Plan approval process.

In closing, in response to a line of questioning by the Committee throughout the Hearing, the site owner submitted none of the land is subject to a Land Subject to Inundation Overlay and that it is enough for the DPO to require relevant reports as part of the development plan stage or for the existing general provisions of Clause 22.06 ESD to apply.

Mr Hunter's submission identified that since the school buildings had been removed from site, the centre of the land has a tendency to hold water which can get to ankle depth and not dissipate for a number of weeks.

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

The Committee has considered the current attributes of the site and submissions made in terms of drainage and flooding and does not consider there is anything unique to the site which would require management above and beyond the existing general provisions of the Planning Scheme. Clause 22.06 and the subdivision requirements at Clause 56.07 provide adequate provision for these aspects to be explored as part of a future permit application process.

In addition, the Committee considers that Clause 22.06 enables ESD matters, including WSUD, to be addressed appropriately at the permit stage.

#### **(v) Conclusion**

The Committee does not consider it necessary for additional planning controls to require the consideration of ESD, WSUD, stormwater or drainage issues above and beyond the general provisions available in the planning scheme.

### **3.3.10 Affordable housing**

#### **(i) What is the issue?**

Whether planning controls should be imposed to require development of the site to include affordable housing.

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

*Plan Melbourne 2017-2050* contains:

- Direction 2.3: 'Increase the supply of social and affordable housing'
- Policy 2.3.1: 'Utilise government land to deliver additional social housing' which states:

The Victorian Government will increase the supply of social and affordable housing through identifying surplus government land suitable for housing.

- Policy 2.3.4: “Create ways to capture and share value uplift from rezoning’s” which states:

Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes such as social and affordable housing.

The *Greater Dandenong Housing Strategy 2014-2024* has as one of its housing affordability objectives to “*achieve a wide choice of well-designed, high quality affordable housing in appropriate locations to meet current and future needs.*” The Strategy sets out the many, interlinked ways that Council will seek to achieve this and related objectives.

Clause 16.01-2S Housing Affordability of the Planning Scheme has as its objective “*to deliver more affordable housing closer to jobs, transport and services*” and one of its strategies as “*encouraging a significant proportion of new development to be affordable for households on very low to moderate incomes*”.

Clause 21.04-1 Housing and community identifies that “*appropriate and affordable housing that suits diverse needs is critical to maintaining a health and balanced socio-economic society*” and has:

- an objective “*to improve access to affordable and appropriate housing*”
- a strategy to “*encourage the provision of affordable housing in association with larger residential developments*”.

Clause 21.02-3 Land use notes that “*housing is relatively affordable in Greater Dandenong, though the costs of house purchase have steeply in recent years*”.

### **(iii) Submissions**

The Council submitted that DPO16 should include a requirement that a minimum of 20 per cent of the dwelling stock developed on the site be affordable housing.

The site owner did not agree that the site should be subject to any affordable housing requirements.

Submitter 4 expressed concern that development of the site for “low income/welfare” accommodation would adversely affect the house values of the surrounding area.

### **(iv) Discussion**

The Committee notes the high-level objectives of the Victorian Government and Council to achieve housing affordability. It also notes that the Planning Scheme does not contain any detailed affordable housing policies and no provisions that identify the site (or the area in which the site is located) as being suitable for the delivery of affordable housing.

The Committee also notes that as part of the first right of refusal process, no government department or agency purchased the site for the delivery of affordable housing.

### **(v) Conclusion**

The Committee concludes that further assessment of the suitability of the site to contribute affordable housing stock would be best undertaken at the permit stage and that no housing affordability controls should be imposed at this time.

## **4 Issues with the proposed changes**

### **4.1 What zone is suitable**

It is proposed to rezone the site from Public Use Zone Schedule 2 to NRZ1.

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

The site owner and Council both submitted that the NRZ1 is appropriate for the site.

Mr Barnes gave expert planning evidence supporting the NRZ1 when coupled with an appropriately worded DPO. Mr Barnes noted that the NRZ1 is quite a restrictive zone which aims to achieve a lower density than other areas in the municipality. In his view, this is appropriate given that the area is located in a Limited Change Area.

Mr Hunter objected to the proposed change to a residential zone on the basis that the site should be retained for a future school and that development of the site with two-storey dwellings and town houses would change the neighbourhood character, impact on neighbours' privacy, cause overshadowing and loss of light to current residential properties, and create adverse traffic impacts, amongst other issues. However, when questioned by the Committee at the Hearing, Mr Hunter stated that he supported the NRZ1.

Ms Guest objected to the application of the NRZ1 on similar grounds to Mr Hunter. Ms Guest also raised concerns including potential impacts on residential amenity, neighbourhood character, availability of infrastructure, density and over-development, traffic and safety.

Submitter 4 supported development of the site for private residential development but not for government housing related purposes.

Several other submitters objected to the rezoning on the basis that the site should be retained for a school.

South East Water did not object to the proposed zone change.

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

The Committee acknowledges the submissions to retain the site for a future school or other public use. To apply a Public Use Zone or to question the surplus status of the land is outside the scope of the Committee's Terms of Reference.

The Committee agrees with submissions the NRZ1 is the most appropriate zone and is consistent with the zoning of adjacent and surrounding residential land.

#### **(iii) Conclusion**

The Committee concludes that the Neighbourhood Residential Zone 1 (NRZ1) is the most appropriate zone.

### **4.2 Recommendation**

The Committee recommends:

1. **A planning scheme amendment be prepared and approved for 9 Maralinga Avenue, Keysborough to rezone the site to apply the Neighbourhood Residential Zone 1.**

### **4.3 Whether a Development Plan Overlay is appropriate**

#### **(i) Issue**

The issue is whether a DPO is appropriate and required for the site.

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

In Council's submission, the purpose of a DPO is:

- To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.
- To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.

Council submitted *"an appropriately drafted DPO is required to guide the future development of the subject land"*. Council submitted substantial revisions to the current drafting of the DPO and provided a marked-up version of its proposed controls.

Council provided detailed submissions as to why the exhibited DPO was not appropriately detailed and should therefore be re-exhibited. These matters have been addressed above at Section 2. In absence of re-exhibition, Council submitted significant issues of procedural fairness would arise due to the exemption of third party notice and review rights as a result of applying a DPO.

Although not Council's primary position, the inclusion in the DPO of informal consultation provisions were suggested to address the loss of third party rights. However, in Council's submission, this approach should be treated very cautiously as such provisions have previously been considered unhelpful and likely to raise unrealistic expectations within the community. In support of this submission, Council noted the relevant passage of Practice Note 23 'Applying the Incorporated Plan and Development Plan Overlays' being:

Responsible authorities should not use non-statutory consultation practices to assist in deciding planning applications. Where notice is being served without a basis in the planning scheme or *Planning and Environment Act 1987*, it is possible that defects in the notice process can be judicially reviewed in the Supreme Court.

In response to questions from the Committee, Council advised it would not support the Amendment without the application of an appropriately worded DPO.

Mr Barnes gave the following evidence supporting a DPO:

Whilst the provisions of the NRZ1 are relatively restrictive and provide a degree of guidance regarding requirements for new residential development, in my opinion the requirements are better suited to managing ad hoc, infill development on individual sites within an established residential area, than to the design and layout of a new residential subdivision / integrated residential development of a large vacant site.

Further:

Whilst the provisions of Clause 56 provide general guidance and requirements for residential development per se, a DPO provides the opportunity to set out more tailored requirements for a large [site] such as the review site, within the context of the area in which it is located.

Finally, he gave evidence it was common and good planning practice *“to apply a DPO to a large site such as the review site, which is located within an established residential area, when it is being zoned to a zone that will allow for its sale and redevelopment”*.

In response to questioning, Mr Barnes admitted he had initially pondered whether a DPO was necessary considering the existing controls in the scheme and the NRZ1. Whilst he agreed there was an argument for not imposing a DPO, he did not support it for this site for the reasons previously provided.

With respect to third party rights, Mr Barnes gave evidence there is always a tension between a Council seeking more detailed controls through a DPO and an owner looking for fewer controls and more flexibility. In his view, the critical point of the tension is the involvement of the community (or third parties) because the opportunity to object is lost once the DPO is applied. The aim, in his view, is not to ‘lock in’ something but to provide the community with surety. In this case, due to the limited information exhibited he did not consider an appropriate level of surety had been provided to the community.

In closing, the site owner was less emphatic in its support for a DPO and submitted it was open to the Committee to recommend a rezoning absent the DPO. The site owner submitted the site would then be subject to a simple planning permit application process within which all the measures contained in the NRZ1 and public notification processes would apply. The site owner then took the Committee through a consideration of the applicable planning policy in the NRZ1 under a permit application. It then submitted the focus was on balancing the need to have certainty around vegetation controls and road connectivity versus the potential impact on neighbouring properties and their rights.

Following the Hearing, in response to a question put by the Committee, the site owner provided its final position that the Amendment should proceed without the DPO.

### **(iii) Discussion**

Practice Note 23 provides that a DPO should be underpinned by a strategic framework and that such a framework should be applied to:

- Identify and address opportunities and constraints for the development of the land.
- Provide direction about development outcomes and overall form of development.
- Provide certainty to landowners and third parties about the form of development
- Ensure the schedule to the overlay is drafted to achieve the desired development outcomes and facilitate the development.

The Committee notes that the proposed DPO is not underpinned by a strategic framework. Based on the evidence and submissions provided to the Committee, it appears that very little strategic planning for development of the site has been undertaken.

The Committee considers the requirement for a strategic framework in Practice Note 23 implies that a DPO is appropriately applied to sites with a level of complexity which warrants the application of the control and the undertaking of the strategic framework exercise. That complexity could be due to the site’s size or other characteristics.

In Section 3 of this report, the Committee considered the particular constraints and opportunities presented by the site. The Committee concluded the only aspect of the site’s development that needs to be addressed before sale is the fact that the site is in two separate titles. This need to be addressed to ensure that the separate lots are developed as one site.

Council submitted the DPO include a requirement for a single development plan to ensure the site is developed as one. The Committee agrees with the desired outcome, however considers this can be realised through alternate means.

The Committee considers that there are no other site complexities that warrant the application of additional planning controls, such as those proposed in DPO16, given the considerable controls already provided by the NRZ1. Further, in considering the site's constraints and opportunities, the Committee has not identified any situations where the imposition of a DPO will deliver a materially better outcome as compared to the NRZ1 controls alone, particularly where the underlying strategic framework is not present to justify the particular DPO controls proposed (other than to repeat what is already contained in the NRZ1 and other general provisions).

The Committee considers that the 'direction' and 'certainty' that a DPO is intended to give to landowners and third parties about the form of development is not present here.

In considering the site's characteristics, the Committee acknowledges the existing residential interface, which according to the Practice Note persuade against applying a DPO. The Committee also notes the industrial interface to the east which raises the prospect of potential reverse sensitivity issues on which adjoining industrial owners may wish to submit. The Committee considers the development design response to these interfaces could be adequately dealt with by Council through the permit process under the NRZ1 zone, noting that Council has discretion to impose relevant conditions on any future subdivision permit granted for the site.

The Committee considers that the trade-off between the loss of third party rights when applying the DPO and the direction and certainty that a DPO can provide must be carefully considered. For the trade-off to be warranted, the DPO must provide clear direction and certainty to enable those affected to meaningfully engage in the planning scheme amendment process. The Committee agrees with the evidence of Mr Barnes that due to the limited information exhibited, an appropriate level of surety has not been provided to the community.

On balance, the Committee considers that the loss of third party rights is not outweighed by the benefits of applying a DPO in this case, particularly where the underlying strategic justification is not evident.

#### **(iv) Conclusion**

The Committee concludes that the imposition of a DPO is not justified. In absence of a DPO, the Committee recommends that the land titles be consolidated:

- 2. Do not apply a Development Plan Overlay to the site.**
- 3. Consolidate the two titles into one title before to sale.**



## Appendix A: About the Government Land Standing Advisory Committee

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

A revised Terms of Reference for the Committee was approved in April 2018.

The Committee currently consists of:

- Chair: Lester Townsend
- Deputy Chairs: Lisa Kendal, Mandy Elliott, Trevor McCullough and Annabel Paul
- Members: Elissa Bell, Meredith Gibbs, Jonathan Halaliku, Prue Mansfield, Elizabeth McIntosh, Cazz Redding and Lynn Sweeney.

The Committee is assisted by Chris Brennan, Project Officer in Planning Panels Victoria.

The Committee's Terms of Reference state that the purpose of the Advisory Committee is to:

- a. advise the Minister for Planning on the suitability of new changes to planning provisions for land owned, proposed to be acquired or to land required to facilitate the delivery of priority projects by the Victorian Government, and
- b. provide a timely, transparent and consultative process to facilitate proposed changes to land owned or proposed to be acquired; or to support delivery of priority projects by the Victorian Government.

The Advisory Committee must produce a written report for the Minister for Planning providing:

- a. an assessment of the appropriateness of any changes of planning provisions in the context of the relevant planning scheme and State and Local Planning Policy Frameworks,
- b. consideration of whether the proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes,
- c. an assessment of whether planning scheme amendments could be prepared and adopted for each proposal, including the recommended planning provisions,
- d. an assessment of submissions to the Advisory Committee,
- e. any other relevant matters raised during the hearing(s),
- f. a list of persons who made submissions considered by the Advisory Committee,
- g. a list of persons consulted or heard,
- h. endorsement by the Chair or the Deputy Chair.

## Appendix B: List of Submitters

No.	Submitter
1	Marianne Ettery
2	Analese Boland
3	Heather Louis
4	Phuong Nguyen
5	Bryan Hunter
6	South East Water Corporation
7	Gaye Guest
8	EPA Victoria
9	Greater Dandenong City Council
10	Matthew Kirwan

---

## Appendix C: Document list

No.	Date	Description	Presented by
1	09/02/2021	Letter on behalf of Greater Dandenong City Council (Council) foreshadowing request for adjournment	Maria Marshall, Maddocks
2	11/02/2021	Committee Directions and Timetable	Planning Panels Victoria (PPV)
3	17/02/2021	Email on behalf of Department of Treasury and Finance (DTF) in response to Direction 2 enclosing: <ul style="list-style-type: none"> <li>a. Letter including explanation as to the ownership of the strip of land between Maralinga Avenue and McMahan Street and attaching: <ul style="list-style-type: none"> <li>– EPA response to Environmental Assessment and Validation Assessment</li> <li>– Updated DPO map and copies of relevant affected titles for strip of land</li> <li>– Updated DPO Schedule</li> <li>– Proposed Schedule to Clause 53.01</li> </ul> </li> <li>b. Environmental Assessment</li> <li>c. Validation Assessment</li> </ul>	Fiona Slechten, Calibre Professional Services
4	19/02/2021	Email on behalf of DTF in response to Direction 2 enclosing: <ul style="list-style-type: none"> <li>a. Arboricultural Addendum</li> </ul>	Fiona Slechten, Calibre Professional Services
5	19/02/2021	Letter on behalf of Council requesting adjournment in response to revised documents from DTF	Maria Marshall, Maddocks
6	22/02/2021	Committee letter in response to Council request for adjournment	PPV
7	23/02/2021	Planning expert evidence prepared by David Barnes of Hansen on behalf of Council	Kristin Richardson, Maddocks
8	25/02/2021	Submission on behalf of DTF and attachments: <ul style="list-style-type: none"> <li>a. Title Plan TP165895Q</li> <li>b. Aerial Plan</li> <li>c. Site Photographs</li> <li>d. Zoning Plan</li> <li>e. Clause 32.09 NRZ</li> <li>f. Tracked changed DPO Schedule</li> <li>g. Clause 22.06 Environmentally Sustainable Development</li> <li>h. Clause 22.09 Residential Development and Neighbourhood Character Policy</li> <li>i. Arboricultural Assessment</li> <li>j. Addendum to Arboricultural Assessment</li> <li>k. Planning Practice Note 23</li> <li>l. Ministerial Direction 19.</li> </ul>	Fiona Slechten, Calibre Professional Services

No.	Date	Description	Presented by
9	25/02/2021	Other attachments on behalf of DTF that may be referenced: <ul style="list-style-type: none"> <li>a. Ministerial Direction No. 1 – Potentially Contaminated Land</li> <li>b. Planning Practice Note PPN30 – Potentially Contaminated Land</li> <li>c. Planning Practice Note PPN45 – The Aboriginal Heritage Act 2006 and the Planning Permit Process</li> <li>d. Division 6 Hazardous Building Materials Assessment, 9 Maralinga Avenue.</li> </ul>	Fiona Slechten, Calibre Professional Services
10	26/02/2021	Submission on behalf of Council	Kristin Richardson, Maddocks
11	01/03/2021	Draft Without Prejudice DPO16 schedule on behalf of Council	Kristin Richardson, Maddocks
12	02/03/2021	Email providing additional documents referred to during Council’s submission including: <ul style="list-style-type: none"> <li>a. Plan Melbourne 2017-2050 (relevant extracts on pages 55-56)</li> <li>b. Greater Dandenong Housing Strategy 2014-2024 Council Action Plan (relevant extract on page 16)</li> <li>c. Schedule 11 to Clause 43.04</li> <li>d. Schedule 13 to Clause 43.04</li> <li>e. Extract from Council’s overland flows mapping system</li> </ul>	Kristin Richardson, Maddocks
13	03/03/2021	Submission from Gaye Guest	Gaye Guest
14	09/03/2021	Email advising DTF’s position that a DPO should not be applied to the site and enclosing: <ul style="list-style-type: none"> <li>a. Marked-up changes to Council Draft Without Prejudice DPO16 Schedule</li> <li>b. Closing submission</li> <li>c. Asbestos Clearance Certificate</li> </ul>	Fiona Slechten, Calibre Professional Services