

**East Gippsland Planning Scheme draft Amendment C163egip
Referral No. 17: 598-610 Main Street, Bairnsdale**

Priority Projects Standing Advisory Committee Report

Planning and Environment Act 1987

20 October 2021

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to section 25 of the PE Act

East Gippsland Planning Scheme draft Amendment C163egip

Referral No. 17: 598-610 Main Street, Bairnsdale

20 October 2021

A handwritten signature in blue ink, appearing to read 'Kathy Mitchell', written over a light blue rectangular background.

Kathy Mitchell AM, Chair

A handwritten signature in blue ink, reading 'Rodger Eade', written over a light blue rectangular background.

Rodger Eade, Member

Contents

| | Page |
|--|-----------|
| 1 Overview | iv |
| 2 Introduction..... | 1 |
| 2.1 Terms of Reference and letter of referral..... | 1 |
| 2.2 Background to the proposal | 1 |
| 2.3 Procedural issues | 3 |
| 2.4 The proposal..... | 4 |
| 2.5 The subject land..... | 5 |
| 2.6 Scope of this report | 6 |
| 2.7 Key issues..... | 7 |
| 3 Strategic planning context..... | 8 |
| 3.1 Evidence and submissions | 8 |
| 3.2 Discussion and findings | 11 |
| 4 Economic issues..... | 12 |
| 4.1 Demand for a Kmart store..... | 12 |
| 4.2 Economic impact | 13 |
| 4.3 Employment benefits..... | 15 |
| 4.4 CBD locations | 16 |
| 4.5 Fragmentation of the CBD..... | 20 |
| 5 Traffic, access and parking | 22 |
| 5.1 Background | 22 |
| 5.2 Traffic and site access arrangements | 23 |
| 5.3 Off-site road and other works | 26 |
| 6 Other matters..... | 27 |
| 6.1 Noise | 27 |
| 6.2 Landscaping..... | 28 |
| 6.3 Signage and façade treatment..... | 28 |
| 6.4 Hours of operation | 29 |
| 6.5 Victorian Health Building Authority..... | 29 |
| 6.6 Shuttle bus..... | 30 |
| 6.7 Development contributions | 30 |
| 7 Net community benefit | 32 |
| 7.1 Evidence and submissions | 32 |
| 7.2 Discussion and findings | 35 |
| 8 Response to Terms of Reference and letter of referral | 37 |
| 8.1 Terms of Reference | 37 |
| 8.2 Minister’s letter of referral | 37 |
| 8.3 Conclusions and recommendation..... | 39 |

| | |
|-------------------|--|
| Appendix A | Terms of Reference |
| Appendix B | Letter of referral |
| Appendix C | Document list |
| Appendix D | Planning framework |
| Appendix E | Committee recommended Incorporated Document |

List of Tables

| | Page |
|---------|--|
| Table 1 | Net community benefit assessment by Mr Barlow 32 |
| Table 2 | Net community benefit assessment by Mr Dimasi 33 |
| Table 3 | Net community benefit assessment by Council..... 34 |
| Table 4 | Planning Policy Framework: State and regional policies..... 49 |
| Table 5 | Planning Policy Framework: Local policies 52 |

List of Figures

| | Page |
|----------|--|
| Figure 1 | Plan of proposal 2 |
| Figure 2 | Zoning controls of the subject site..... 5 |
| Figure 3 | Aerial view of 598-610 Main Street, Bairnsdale..... 6 |
| Figure 4 | Preferred location for major retail development 9 |
| Figure 5 | Alternative sites investigated in, or in close proximity to the CBD 17 |

Glossary and abbreviations

| | |
|----------------|--|
| BCCI | Bairnsdale Chamber of Commerce and Industry |
| CBD | Central Business District |
| Council | East Gippsland Shire Council |
| DDS | discount department store |
| DELWP | Department of Environment, Land, Water and Planning |
| DoT | Department of Transport |
| Noise Protocol | EPA publication 1826, <i>Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues</i> dated May 2021 |
| PE Act | <i>Planning and Environment Act 1987</i> |
| TIA | Transport Impact Assessment |
| VCAT | Victorian Civil and Administrative Tribunal |

1 Overview

Referral summary

| | |
|-----------------------------|---|
| Date of referral | 15 August 2021 |
| Members | Kathy Mitchell AM (Chair), Rodger Eade |
| Description of the referral | Proposed development of land at 598-610 Main Street, Bairnsdale for use as a Kmart store, to be implemented by site specific planning controls through the Specific Controls Overlay Schedule 2 and a new Incorporated Document '598-610 Main Street, Bairnsdale' |
| Municipality | East Gippsland Shire |
| Planning Authority | Minister for Planning |
| Subject land | 598-610 Main Street, Bairnsdale |
| Site inspection | <p>Unaccompanied on 19, 20 September 2021, inspecting:</p> <ul style="list-style-type: none">- the subject site and surrounds (twice, including the morning peak on 20 September)- Bairnsdale CBD, including the site of the K Hub, current and former Woolworths sites, Coles supermarket site, the Nicholson Street Mall, and Dahlsen timber yard site- Sale CBD- Morwell CBD and Mid Valley Centre- Traralgon CBD- Warragul CBD and Kmart development on the periphery of Warragul. |
| Parties to the proceedings | <p>Landmor Pty Ltd represented by Paul Chiappi of Counsel, instructed by Nick Sutton of Norton Rose Fulbright, calling the following expert evidence:</p> <ul style="list-style-type: none">- Planning from Michael Barlow of Urbis- Economics from Tony Dimasi of Dimasi & Co- Traffic and Transport from John Kiriakidis of Stantec- Landscape from John Patrick of John Patrick Landscape Architects- Acoustics from Christophe Delaire of Marshall Day Acoustics <p>East Gippsland Shire Council, represented by Martin Richardson</p> <p>Department of Transport, represented by Bianca Coughlan</p> <p>Bairnsdale Commercial Pty Ltd, represented by Mark Bartley of HWL Ebsworth Lawyers</p> <p>Bairnsdale Chamber of Commerce and Industry, represented by Jaime Savory</p> <p>J C Dahlsen Pty Ltd, represented by John Dahlsen</p> |

| | |
|---|--|
| Other submitters (not requesting to be heard) | Mr Goodman Mr Beckers and Ms Nelsson Mr and Ms Trethowan Department of Health Toy World Bairnsdale. |
| Hearings | Directions Hearing by video conference, 9 September 2021 Public Hearing by video conference, on 27, 28, 29 September and 4 October 2021 Video conference managed by Norton Rose Fulbright |
| Information relied upon | All material submitted by Landmor Pty Ltd in support of its proposal Draft Amendment C163egip as exhibited 11 submissions made in response to exhibition Submissions, expert witness reports and other information tendered as part of the Public Hearing process (see Appendix C) Observations made on site inspections |
| Date of this report | 20 October 2021 |
| Citation | Priority Projects SAC Referral 17 [2021] PPV |

(i) Findings

The Committee finds:

Strategic planning context:

- State and local policy provides strong strategic support for the location of a significant retail development in the form of a full line Kmart in the Bairnsdale Central Business District (CBD).
- If the development of Kmart cannot be located in the CBD, the East Gippsland Planning Scheme provides for out of centre development to be contemplated if a net community benefit can be demonstrated, through the provisions of Clause 17.02-2S.

Economic issues:

- There is strong evidence of demand for a full line discount department store (DDS) within Bairnsdale.
- The closure of the former Kmart store is likely to have resulted in significant but unknown retail expenditure escaping from Bairnsdale, both to other regional centres and to on-line shopping.
- The estimated impacts of a reduction in Bairnsdale CBD retail turnover of 1.6 per cent is well within the bounds of acceptable competitive impact.
- A significant number of ongoing and construction jobs will be generated by the proposal proceeding.
- Job creation in Bairnsdale is of particular importance at this time because of the economic challenges faced by the town.
- There is no conclusive evidence that there is a suitable and/or available location in the CBD that meets the needs of Kmart.
- Therefore, a net community benefit assessment is warranted under the provisions of Clause 17.02 – 2S of the East Gippsland Planning Scheme.

- There is a planning risk that a second retail centre could develop in and around the subject site if Kmart proceeded.

Traffic, access and parking:

- Car parking, bicycle parking and the location of the loading and delivery bays are acceptable.
- The site and pedestrian access can be further modified to enhance pedestrian access and safety, including relocating the bus stop.
- The access road to the surplus land should be created as a road reserve and constructed to meet the requirements of the local authority.
- The bus stop should be upgraded to ensure it is compliant with the *Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002*.
- A pedestrian refuge should be provided in Calvert Street to ensure a safe crossing for pedestrians to the site.
- The functional layout plan for Main Street should include that area of Calvert Street from the bus stop or the northern edge of the surplus land access road through to the Main Street intersection.

Other issues:

- The proposed noise mitigation measures are acceptable.
- The revised landscape plan proposed by John Patrick Landscape Architects is acceptable.
- The modified heights and width of the pylon and secondary signs, and the extension of the painted façade, are acceptable.
- The hours of operation for store opening/closing, loading, and waste/recycling are acceptable.
- The issues raised by the Victorian Health Building Authority are resolved by Design and Development Overlay Schedule 16 and the proposed development will have no impact on the operation of the Bairnsdale Hospital.
- There is no planning reason to require Kmart to offer a shuttle bus service between the CBD and the subject site.
- The proposed contribution to off-site works proposed by the Proponent, while light, is appropriate.

Net community benefit:

- The proposed development of a Kmart store on the site at 598 to 610 Main Street, Bairnsdale will generate a net community benefit.

(ii) Recommendation

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

1. **Adopt Amendment C163egip to the East Gippsland Planning Scheme in accordance with the modified Incorporated Document in Appendix E.**

2 Introduction

2.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Document 1 and Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

For this matter, the Minister for Planning's letter of referral of 15 August 2021 (Document 2 and Appendix B), asked the Committee to consider a proposal from Landmor Pty Ltd (the Proponent) to use land at 598-610 Main Street, Bairnsdale for the purpose of a Kmart store, including draft Amendment C163egip to the East Gippsland Planning Scheme which seeks to facilitate the proposal.

The proposal was initially considered by the Development Facilitation Program for accelerated assessment and determination. It recommended the Minister for Planning intervene and seek the Committee's advice on the proposal and draft Amendment. In particular, the Minister for Planning asked the Committee to advise and report on:

- the appropriate drafting of draft Amendment C163egip if approval is recommended
- the appropriateness of proposed restrictions on the use of and access arrangements to the balance of land at the rear of the proposed development
- the reasonableness of developer contributions being sought by some submitters.

This is Priority Project Referral No. 17. The members of the Committee who considered Referral No. 17 are:

- Ms Kathy Mitchell AM, Chair
- Professor Rodger Eade, Deputy Chair.

The Committee was assisted by Ms Andrea Harwood, Senior Project Manager, and Ms Georgia Thomas, Project Officer from the Office of Planning Panels Victoria.

2.2 Background to the proposal

A Kmart store had occupied a site in the Bairnsdale CBD for approximately 15 years. In 2020, Kmart vacated its site as its lease was not renewed. That now closed store employed 120 people and had an annual turnover of \$18 million¹. Subsequently Kmart has occupied a smaller site in the CBD in a 'K Hub' format on a temporary basis. This lease is due to expire in October 2022. The Proponent advised the Committee the temporary K Hub store carries approximately one third of the range that the previous store had carried and employs proportionately less staff.

There is no other DDS in Bairnsdale. The closest DDSs are a Target store in Sale (a one and three quarter hour round trip) or a Kmart store in Traralgon (a three hour round trip). There is a smaller K Hub in Lakes Entrance.

¹ Contour Planning Report, Section 4.1

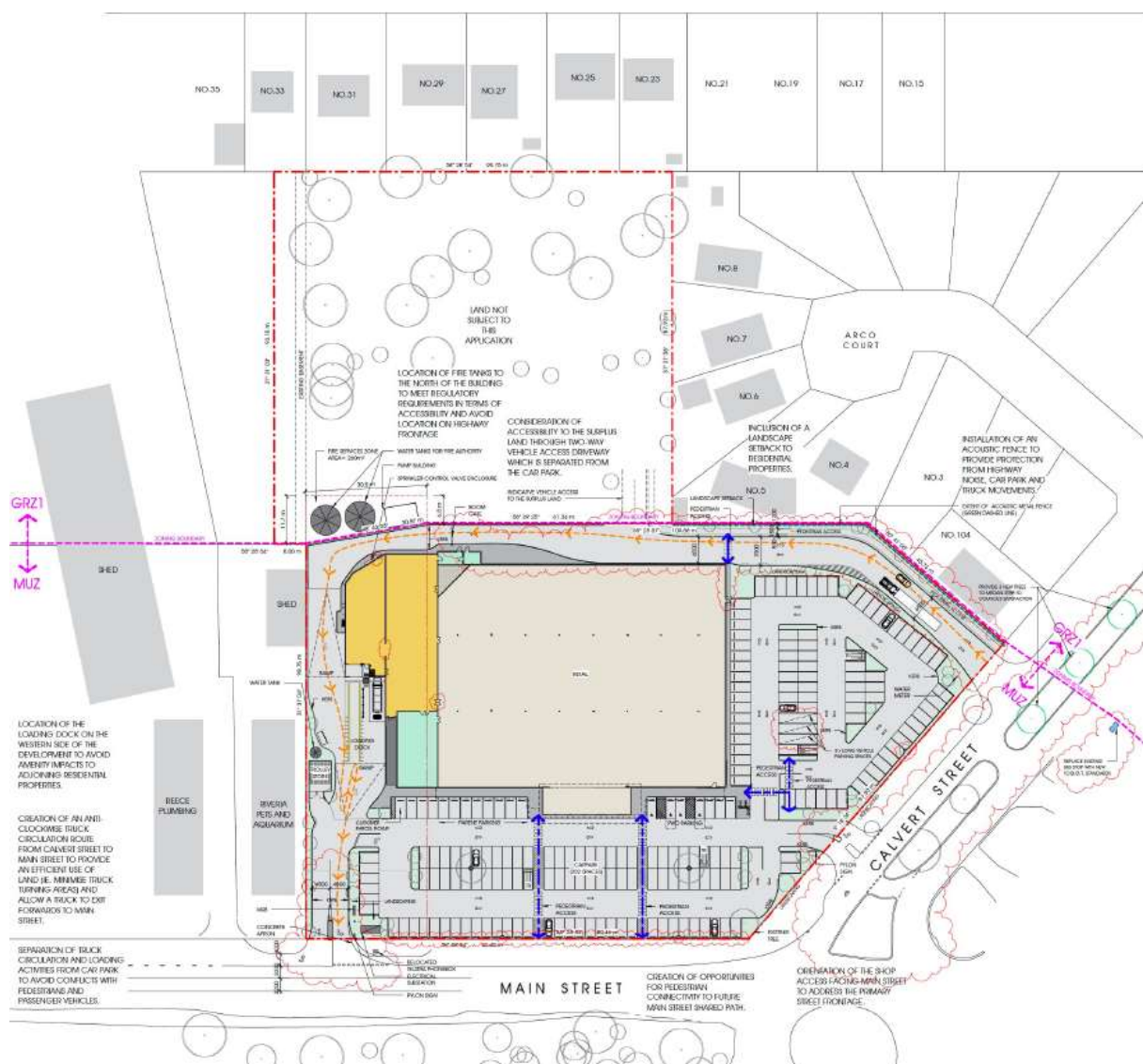
The Proponent advised it had investigated a number of options for a new Kmart in the Bairnsdale CBD, including the former Target store, the former Woolworths store and the Dahlsen timber yard site. It advised the Committee that none of these options proved to be suitable. It stated its criteria for a new site were:

- a site area of approximately 15,000 square metres
- convenient access from a main street, preferably a highway with a secondary street access
- truck accessibility.

As a result, the Proponent proposes to develop the site at 598-610 Main Street, Bairnsdale, currently occupied by a motel.

The proposal was slightly revised in response to initial submissions and the amended proposal the subject of this review is provided as Figure 1.

Figure 1 Plan of proposal



Source: Document 44

2.3 Procedural issues

At the Directions Hearing, procedural issues were raised by three parties as follows:

(i) Landmor Pty Ltd

The Proponent submitted that it was not clear from the Minister's referral letter dated 15 August 2021 whether the Minister was asking the Committee to advise about the drafting of the draft Amendment, should it be approved, or to advise about merits of the draft Amendment (in addition to the issues of the surplus land and developer contributions). It submitted that clarification should be sought by the Committee.

A second issue was the reference to developer contributions in the Minister's referral letter. It submitted that it was not aware of developer contributions being raised by submitters to the draft Amendment.

Mr Cohen from the Department of Environment, Land, Water and Planning (DELWP) attended the Directions Hearing and responded verbally. He was subsequently directed to provide a written response, which was provided as Document 27 on 17 September 2021.

With respect to the role of the Committee, he responded in part: ²

... DELWP confirms that the Minister for Planning has requested the Priority Projects Standing Advisory Committee (the Committee) consider the drafting of the amendment.

The Committee's Terms of Reference stipulate that the Committee can consider all relevant information that would enable it to make an informed recommendation on the abovementioned matters.

With respect to possible contributions from the developer, DELWP advised that both East Gippsland Shire Council (Council) and the Department of Transport (DoT) referred to off-site road and traffic works which need to be undertaken in conjunction with the proposed development in their original submissions.

(ii) East Gippsland Shire Council

Council requested the following:

- copies of the written submissions made in response to the exhibition of the draft Amendment
- any amended plans of the proposed development and planning scheme amendment documentation prior to the commencement of proceedings
- permission to meet with Regional Roads Victoria officers to discuss matters in relation to the proposed access to Calvert Street and any proposed intersection changes and upgrades to the intersection at Calvert Street and Main Street.

Further, Council advised that in compliance with current Chief Health Officer's orders relating to the Covid-19 pandemic, officers were not permitted to leave home to work, and site inspections of the subject land and surrounding area were not permitted.³

In response, the Chair advised that submissions had been provided; that any amended plan would be provided; that no permission was required from it for Council to meet with officers of Regional

² Document 27

³ Document 8

Roads Victoria and that any site inspection held would be unaccompanied (with no need for Council officers to attend) and in full compliance with the Chief Health Officer's orders.

(iii) Dahlsens Pty Ltd

Mr Dahlsen raised a question about the limited nature of advertising of the draft Amendment and therefore the limited opportunity for the community to make submissions.

Mr Cohen made a brief verbal response at the Directions Hearing and subsequently responded in writing:

Several parties were consulted with under section 20(5) of the *Planning and Environment Act 1987* to inform a decision about the proposed planning scheme amendment. As part of this consultation, views were sought from:

- all adjoining and some surrounding landowners / occupiers
- East Gippsland Shire Council
- Department of Transport
- Department of Health (Victorian Health Building Authority)
- the Proponent.

Mr Cohen advised letters were sent to 46 landowners/occupiers about the proposed Amendment and noted written submissions could be provided from 28 May to 21 June 2021. Mr Cohen noted 11 submissions were received, all of which were provided to the Committee.⁴

At the Hearing, Mr Dahlsen made further submissions about the lack of local consultation. Mr Bartley similarly expressed concern about the limited notification for such a significant proposal but acknowledged this was not a matter for the Committee, nor was notification its responsibility.

2.4 The proposal

The Proponent proposes to develop the site for a Kmart store of approximately 5,096 square metres of gross floor area, together with 194 car parking spaces and 18 bicycle spaces.⁵ The building is proposed to be set back approximately 31 metres from Main Street and 29 metres from Calvert Street.

The parcel fronting Main Street is predominantly within the Mixed Use Zone with a small sliver in the General Residential Zone Schedule 1. The parcel at the rear is in the General Residential Zone Schedule 1 (referred to as the surplus land, previously used as a caravan park). The zone controls are shown in Figure 2.

⁴ Document 27

⁵ Document 24

Figure 2 Zoning controls of the subject site and surrounds



Source: Document 44

A Planning Scheme Amendment is required because:

- shop use is prohibited in the General Residential Zone
- the Category 3 advertising controls in the Mixed Use Zone do not allow for the signage proposed by Kmart, specifically the height of the pole sign and the area of signs above 10 square metres (constituting a panel sign which is prohibited).

Draft Amendment C163egip proposes to:

- amend the Schedule to Clause 45.12 (Specific Controls Overlay) in the East Gippsland Planning Scheme (the Scheme) to include a new Specific Controls Overlay Schedule 2 over the subject land
- amend the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) of the planning scheme to insert the incorporated document titled '598-610 Main Street, Bairnsdale (May 2021)'
- amend Map 30 (Specific Controls Overlay) of the planning scheme to apply the Specific Controls Overlay Schedule 2 to the subject land.

If the Amendment is approved, no planning permit will be required for the development as the incorporated document effectively operates as a permit.

2.5 The subject land

The site is located at 598-610 Main Street, Bairnsdale, currently occupied by a motel with vacant land to the rear which was previously occupied by the caravan park (Figure 3).

Figure 3 Aerial view of 598-610 Main Street, Bairnsdale



Source: Town Planning Report prepared by Contour Consultants

The site has a total area of approximately 24,320 square metres and is located 2.5 kilometres west of the Bairnsdale CBD. It has a frontage to Main Street of approximately 110 metres and to Calvert Street of approximately 100 metres.

To the east of the site is an unmanned petrol station and car wash. To the east but on the southern side of the divided Main Street are a series of motor vehicle related businesses and a VicRoads customer service centre. Further to the east is a Bunnings store. To the rear of the site are residential dwellings in Greene Street and Arco Court. To the west of the site is a plumbing supplies, a pet supplies store and vacant land, zoned Mixed Use.

2.6 Scope of this report

The Committee's Terms of Reference and the letter of referral require the Committee to consider and report on the proposal to develop a Kmart store at 598-610 Main Street, Bairnsdale.

A number of submitters, including Mr Dahlsen, suggested alternative sites and in particular the site currently occupied by Dahlsens timber yard in Dalmahoy Street, on the periphery of the existing CBD.

The Committee made it clear at the Directions Hearing and again in opening at Day 1 of the Hearing that its task does not include an analysis of alternative sites, but rather to make recommendations with respect to the proposed site.

The Proponent advised that prior to developing its proposal, it had considered a number of CBD sites including the former Myer store in Nicholson Street and the Dahlsen site in Dalmahoy Street. The Committee visited these sites as part of its site inspection.

Notwithstanding, the Committee does discuss some of the issues raised by the Proponent and various parties about alternative sites and the impacts of developing a DDS on the Proponent's preferred site on the CBD of Bairnsdale.

2.7 Key issues

The Committee considers the overarching key strategic issues to be:

- whether there is demand to justify the proposed development
- whether the proposed location is appropriate.

In considering these issues, the Committee considers the key issues to be resolved are:

- strategic planning context
- economic issues
- traffic, access and parking
- other matters:
 - noise
 - landscaping
 - signage and façade treatment
 - hours of operation
 - Victorian Health Building Authority
 - shuttle bus
 - development contributions
- net community benefit.

The Committee also responds to its Terms of Reference and referral letter.

3 Strategic planning context

The key issues to resolve are:

- whether there is strategic planning support for a Kmart (DDS) to be located in Bairnsdale
- if so, where it could be located.

3.1 Evidence and submissions

Relevant State and local planning scheme provisions which apply to the site are summarised in Appendix D.

Mr Barlow (planning witness called by the Proponent) undertook a detailed analysis of both State and local policy in his evidence, citing the following clauses:

State/regional

- Clause 11.03-1S: Activity Centres
- Clause 11.03-6S: Regional and local places
- Clause 15.01-1S: Urban Design
- Clause 15.01-2S: Building Design
- Clause 17.02-1S: Business
- Clause 17.02-1R: Commercial Centres – Gippsland
- Clause 17.02-2S: Out of Centre development.

Local

- Clause 21.02: Municipal Overview
- Clause 21.03: Settlement
- Clause 21.07: Built Environment and Heritage
- Clause 29.09-1: Commercial
- Clause 21.10: Transport
- Clause 21.12: Strategies for subregions, towns and localities.

Selected strategies referred to by Mr Barlow from Clause 21.12 directly relevant to the provision of a major retail development included:⁶

Support development that encourages the revitalisation of Bairnsdale CBD identified in the Bairnsdale Growth Strategy 2009, Re-Imagining Bairnsdale Master Plan, and Improving Walking and Wayfinding in the Bairnsdale CBD - Draft Report, May (2011).

The core retail centre from Wood Street to Pyke Street (between Macleod and Riverine Streets) is confirmed as the major regional commercial centre. This centre features safe and convenient pedestrian access, with adequate parking and a diverse range of retail activities. Any major retail development will be expected to locate within this core retail area; fragmentation will be actively discouraged. Council will explore ways to revitalise the shopping centre and further improve its appearance and image.

Uses to be encouraged in the Mixed Use Zone north of the Princes Highway include light industry, motels, take-away food premises and service stations.

The retail hierarchy in Bairnsdale is set out in Clause 21.09.

⁶ Clause 21.12 of the East Gippsland Planning Scheme

The subject site is outside the CBD and outside the retail core, located within a precinct designated 'Specialised Centres (Employment)'.

In his submission, Mr Bartley (for Bairnsdale Commercial Pty Ltd) cited a number of the same policies including a number of the same extracts from Clause 21.12.⁷ He placed considerable emphasis on the *Bairnsdale Growth Strategy 2009* (the Strategy), a reference document at Clause 21.03 of the Scheme. He took the Committee to a number of extracts in the Strategy which supported the ongoing development of the CBD. He strongly contended that policy mandated locating retail development of the type proposed within the CBD, if not within its core area as shown in Figure 4.

Figure 4 Preferred location for major retail development



Source: Document 17

He cited the following extract from the Strategy:⁸

The retail hierarchy for Bairnsdale will be anchored by the CBD. The CBD will perform an ongoing function as the primary retail destination, supported by higher order retail including full line supermarkets and discount department stores. In the event that department store was seeking to re-establish in Bairnsdale, the CBD would be the priority location. This higher order retail will be supported by a continued and expanded specialty retail offer that provides for diversity across the market segments and attempts to limit escape expenditure for these items.

⁷ Document 17, para 70 and Document 61, para 6.4

⁸ Document 61, page 8

The CBD re-structure proposed in the CBD Strategy will create a framework for reinvestment and revitalisation of the CBD, re-establishing its role in the retail hierarchy of the town and the region.

Mr Barlow cited the same extract from the Strategy. There was in fact no disagreement that both State and local policy guided major retail development of the type proposed to a CBD or near CBD location.

Council placed emphasis on the importance of the Strategy and cited key directions from it. It stated it had undertaken significant capital works in the CBD, including to better link the CBD north and south of Main Street, since the Strategy was adopted.

Mr Barlow cited Clause 17.02-2S (Out of Centre Development), which states in part:⁹

Ensure that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

While his overall position was to not support the proposal, Mr Bartley acknowledged the draft Amendment could be seen as consistent with Clause 17.02-2S. With respect to the interpretation of this Clause, he submitted:

Essentially, a Clause 17.02-2S analysis is geared towards identifying an activity centre or retail centre with which the 'out-of-centre development' will compete.

Council submitted the proposed location is not supported by key State and local policy, and is not preferred as it is not located in or bordering the CBD.

Mr Chiappi summarised the Proponent's position with respect to the strategic policy justification for the proposal as follows:¹⁰

The strong policy support for new large-scale retail development to establish within the activity centre is not doubted. In this case, however, it cannot be met. There is no opportunity to provide this facility within the centre.

This outcome is anticipated by the planning scheme. It allows for out-of-centre development in appropriate circumstances. This case is one of them.

He further submitted:¹¹

This case falls squarely within State policy that recognises there may be real merit in an out-of-centre single use retail facility. Clause 17.02-2S allows for an out-of-centre location where it is of net benefit to the community of the region it serves.

In presenting his strategic justification for a CBD location for the proposed development, Mr Bartley cited the following Victorian Civil and Administrative Tribunal (VCAT) cases where he submitted VCAT had refused to grant a permit for out of centre locations:

- Fabcot Pty Ltd v Latrobe CC [2007] VCAT 354
- Maverston Property Pty Ltd v Greater Bendigo CC [2013] VCAT 1244
- Pioneers Market Place Pty Ltd v Cardinia CC [2020] VCAT 1461.

In addition, he cited Panel reports for Greater Shepparton C192 and C193 where the Panel found that two supermarkets separated by 400 metres of Commercial 2 zoned land would not result in a consolidated, pedestrian friendly walking centre. He further cited reports on Amendments

⁹ Document 30, para 67.

¹⁰ Document 30, paras 4 and 5.

¹¹ Document 30, para 29.

Greater Geelong C321 and Moira C88 where he submitted the respective Panels expressed the need for caution with respect to out of centre development.

Mr Bartley cited the report of the Kaufland Stores in Victoria Advisory Committee, making particular reference to the Committee's recommendation not to proceed with a store in Mornington because it was considered contrary to higher order strategic policy and was out of centre.

In response, Mr Chiappi submitted that none of the cases cited by Mr Bartley were comparable to this matter under review. He submitted that in the Pioneers Market Place case, the Tribunal stated there needed to be a compelling case to support a proposal which does not align with activity centre policy. He submitted there is a compelling case in this instance.

3.2 Discussion and findings

There was no dispute amongst submitters and relevant experts about the broad thrust of the key imperatives of State and local policy as it relates to Activity Centres. It is clear that major development such as that proposed should be located in the CBD. The Committee agrees with this. The provision of a DDS within Bairnsdale has strong strategic and policy support. The key issue here is its location.

The point of contention is whether the proposal can be accommodated in the CBD consistent with State and local policy or whether, as Mr Chiappi contended, it can't be. Therefore, the net community benefit assessment referenced in Clause 17.02-2 is effectively triggered as the basis of whether this out of centre development can be supported.

With respect to the Tribunal cases and Panel reports cited by Mr Bartley in support of his submission that the proposed development is inconsistent with policy, the Committee notes that there are no close parallels with this proposal, and it considers this proposal should be judged on its merits against policy. Further, the cases cited generally related to supermarket developments, not DDSs, so they are not directly comparable.

The Committee addresses the possibility of CBD locations further in Chapter 4 and net community benefit in Chapter 7.

The Committee finds:

- State and local policy provides strong strategic support for the location of a significant retail development in the form of a full line Kmart in Bairnsdale and located in the CBD.
- If the development of Kmart cannot be located in the CBD, Clause 17.02-2S of the East Gippsland Planning Scheme provides for out of centre development to be contemplated only where a net community benefit can be demonstrated.

4 Economic issues

The key issues to be resolved are:

- demand for a Kmart store
- economic impact
- employment benefits
- CBD locations
- fragmentation of the CBD.

4.1 Demand for a Kmart store

(i) Evidence and submissions

In justifying the demand for the proposed development, the Proponent relied on the supporting Economic Assessment report prepared by Deep End Services which accompanied the request for the draft Amendment, as well as the expert evidence of Mr Dimasi.

Mr Dimasi gave evidence that prior to its closure, the previous Kmart store experienced an annual turnover of approximately \$17 million which had reduced significantly after the closure of its main larger store. Some of that expenditure was diverted to the smaller K Hub store, but a significant proportion of it escaped to other regional towns to the west.

The Deep End report in part justified the proposal by stating the average provision of DDS floorspace in regional Victoria (excluding Greater Geelong) was 21 square metres per capita in 2020. It estimated the main trade area population for Bairnsdale at 44,232 in 2020. Allowing for existing K Hubs in Bairnsdale and Lakes Entrance, Deep End calculated there remained a shortfall of approximately 5,500 square metres of DDS floorspace in the defined main trade area.

Mr Dimasi's definition of the trade area was similar to that defined by Deep End and in 2020 was estimated to have a resident population of 43,936. Mr Dimasi's evidence was that the approximately 590 DDSs currently operating in Australia serve average populations of about 34,600 people per store. On this basis, he advised a full line DDS to serve the Bairnsdale main trade area was warranted.

Mr Dimasi pointed out the main trade area as defined by him did not extend to the NSW border, and excluded the town of Orbost and other rural area in the far east of the State.

Notwithstanding, he noted residents from these areas would likely use a Kmart in Bairnsdale, as they are not serviced by any other full line DDSs.

Further, Mr Dimasi undertook an analysis which showed retail expenditure capacity existed within the main trade area to comfortably support the full line DDS as proposed. He estimated that within the trade area, \$234 million was spent annually on non-food retail goods, broadly the categories that a Kmart would service. Deep End's retail expenditure analysis was slightly more targeted and defined a spending category of 'DDS core', with a 2020 spending capacity estimated at \$173.8 million. Both reports demonstrated that retail expenditure capacity existed to support the proposed development.

Neither the Deep End analysis nor the evidence of Mr Dimasi with respect to demand for a full line DDS was challenged by any submitter. Indeed, most submitters acknowledged the need for a DDS,

with Council submitting the loss of a Kmart to Bairnsdale would detrimentally impact the town's regional retail position.

(ii) Discussion and findings

The Committee accepts there is a readily demonstrable demand for a full line DDS in Bairnsdale of the type proposed, both on an analysis of the DDS floorspace per head of population within the main trade area, and on an analysis of retail expenditure capacity within the trade area.

The Committee finds:

- There is strong evidence of demand for a full line DDS within Bairnsdale.

4.2 Economic impact

(i) Evidence and submissions

The Deep End report stated that with the closure of the previous Kmart store in late 2020, there had been a negative economic impact on Bairnsdale by way of a loss of DDS expenditure to regional towns to the west (Sale and Traralgon). Further, it stated this was likely to be accompanied by loss of expenditure in other retail categories as residents of the Bairnsdale main trade area undertook multi-purpose shopping trips to these towns. No estimate was provided of the likely magnitude of this escape expenditure, other than the difference between previous turnover of the former Kmart store and turnover of the current K Hub. No estimate of escape expenditure for other retail categories was provided.

Mr Dahlsen was critical of the escape expenditure estimates and submitted the leakage of sales to Sale and Traralgon would likely be very low. He submitted the analysis failed to account for the dynamic nature of the retail sector and the ability of retailers to grasp opportunities and fill any gaps that the departure of Kmart left in the market.

The Committee asked Mr Dimasi whether there was any specific evidence of the amount of spending in the DDS core and other retail expenditure categories that had been lost to Bairnsdale since the closure of the Kmart store. He advised he did not have such evidence and that if it was available, it would need to be interpreted with some caution because of the impacts of the Covid-19 pandemic on retail expenditure patterns.

The Committee asked Mr Dimasi if he had any information on the percentage of the escape expenditure which might have gone to on-line shopping as opposed to other bricks and mortar stores. He responded that pre-pandemic, about 10 per cent of all retail expenditure Australia wide had been on-line and this increased to 16 per cent during the pandemic and appears to have plateaued at this level. He further indicated that DDS on-line retailing had performed well. In answer to a further question from the Committee, Mr Dimasi indicated that people in lower income groups had a lower average propensity to shop on-line.

Mr Dahlsen quoted a newspaper source that on-line shopping was now accounting for 21 per cent of retail sales and that it was particularly attractive for people in remote communities where it could be above 21 per cent.

With respect to the likely economic impact on the Bairnsdale CBD with Kmart locating on the subject site, the Deep End report estimated the loss of turnover in the CBD would be about \$4 million per annum or 1.6 per cent of turnover. It stated an impact of this magnitude was well within the bounds of generally accepted competitive impacts.

Mr Dimasi made no similar calculation but in answer to a question from the Committee he indicated he was not surprised by this estimate and that he did not consider it to be a significant issue. In answer to a question from Council, he stated that any negative impact on the CBD would be in part at least offset by the repurposing of the current K Hub store when it vacates in late 2022, giving rise to an opportunity for new retailers to locate in the CBD.

Mr Bartley and Mr Dahlsen were critical that, in their opinion, a detailed assessment of the economic impact on the CBD was not undertaken. Mr Bartley submitted:¹²

The accompanying economic assessment prepared by Deep End Services acknowledges some potential impact on the town centre of Bairnsdale, but does not explore these impacts in any detail. There is also no acknowledgement of what further influence on future retail investment this proposal may lead to.

Mr Dahlsen submitted there had been no independent shopper survey undertaken and that with extra time, he would have liked to have undertaken a more detailed analysis.

A major concern of Council was the economic impact on Bairnsdale of a loss on Kmart from Bairnsdale. Council submitted that Kmart is a major retailer which is a major attractor for retail expenditure more broadly. It was further concerned about the potential loss of jobs which it considered was a major issue. With respect to economic impact, Council submitted:¹³

The potential loss of a major employer to the town and region is considered to outweigh any negative impact on the CBD retail centre. The presence of a discount department store will contribute substantially to the retail offer for the regional centre as a whole.

(ii) Discussion and findings

The Committee accepts the closure of the former Kmart store resulted in the loss of retail expenditure in both DDS related and other retail expenditure categories. It accepts this is difficult to estimate and that recent disruptions to retail expenditure patterns would make any data provided difficult to interpret. Any interpretation made would be even more difficult because it is difficult to estimate the amount of the previous Kmart turnover that has been diverted to on-line shopping, forced by the lack of a local bricks and mortar DDS shopping opportunity. It is unknown how much of this might come back to a bricks and mortar store if developed and post pandemic.

Given the recent significant increase in on-line shopping, the Committee is a little surprised at the lack of attention given to it in either the Deep End report or Mr Dimasi's evidence, particularly in response to the departure of a major retailer from Bairnsdale, albeit replaced by a smaller format store.

The Committee accepts the closure of the Kmart store in Bairnsdale is likely to have had a significant impact on DDS category shopping in Bairnsdale. Further, logically it is likely that there would have been at least some further escape expenditure in other retail categories, particularly food, packaged liquor and groceries, as a result of the closure of the former Kmart store.

The Committee observes that although Bairnsdale Commercial and Mr Dahlsen were critical of the economic impact analysis undertaken by Deep End and Mr Dimasi, the analysis undertaken is typical of what would be expected in similar situations. The Committee acknowledges there is always further analysis which could be undertaken but, in this instance, it heard no submission or

¹² Document 61, para 6.15

¹³ Document 49, para 18

competing evidence which convinced it that further work would materially change the conclusions reached by the experts on the significance of the economic impact of this proposal.

The Committee is not surprised at the relatively small impact Deep End estimated on the CBD retail turnover. While there are some competitor retail offerings located within the CBD, these appear to be relatively limited.

Further, the Committee agrees with Council and the Proponent that the loss of a DDS to Bairnsdale would have a significant economic disbenefit, both in terms of escape DDS expenditure and also consequential escape expenditure in other retail categories.

The Committee finds:

- The closure of the former Kmart store is likely to have resulted in significant but unknown retail expenditure escaping from Bairnsdale, both to other regional centres and to on-line shopping.
- The estimated impacts of a reduction in Bairnsdale CBD retail turnover of 1.6 per cent is well within the bounds of acceptable competitive impact.

4.3 Employment benefits

(i) Evidence and submissions

Deep End stated the closure of the previous store resulted in a drop from 120 jobs from Kmart to 36 in the current K Hub, a loss of 84 jobs. The report estimated the proposed Kmart store would restore the previous 120 jobs (75 direct full time and 45 indirect full time equivalent jobs). It indicated further jobs would be generated during the construction phase but made no estimate of that number.

Deep End stated:¹⁴

Such ongoing employment would also be vital within a region which has suffered the double effects of the 2019 bushfires and COVID-19 (with the latter having a devastating effect on local tourism). Bairnsdale's unemployment rate has grown rapidly from 4.8% in December 2019 to 5.5% in June 2020 as a result of these impacts.

Mr Dimasi estimated that 84 long term jobs would be directly created by the proposed Kmart store, with a further 34 indirect or multiplier created jobs. He acknowledged that many of the indirect jobs created would not be local. He estimated the local construction jobs at 47 with a further 75 created in the supply chain.

Both Mr Dahlsen and the Bairnsdale Chamber of Commerce and Industry (BCCI) submitted the benefits associated with construction industry employment is misleading because the local construction industry (both residential and industrial) is currently very stretched. For this reason, they argued fast tracking this proposal was not needed.

Mr Dahlsen was critical of the job creation estimates of Mr Dimasi as he submitted these do not take account of possible job losses in other businesses as a result the opening of a full line Kmart store, regardless of where it is located in Bairnsdale. He further stated that based on the number of employees at his site, the estimated jobs at Kmart was likely to be lower than projected.

Mr Dimasi emphasised other economic benefits of the proposal, stating:¹⁵

¹⁴ Deep End Services, page 20

¹⁵ Document 18, para 3.16

... the population of the trade area is relatively elderly and household income levels are modest by Victorian standards. The availability of a price-focused general merchandise and apparel retailer offering an extensive range in a full-scale new store, as the proposed Kmart will do, will be of substantial economic and social benefit to these residents.

Council submitted that Bairnsdale had suffered significantly in recent times as a result of bushfires, Covid-19 and unemployment, particularly youth unemployment, which was a significant issue for the area.

(ii) Discussion and findings

The Committee acknowledges the employment benefits the proposal would generate for Bairnsdale, particularly amongst younger workers. It is acknowledged the loss of 84 jobs that occurred with the closure of Kmart in 2020 is significant in a town the size of Bairnsdale. To put this job loss in context, at the time of the 2016 census, there were 1,589 full time and 1085 part time resident employees in the town of Bairnsdale. The jobs lost equate to approximately five per cent of full time employees. The loss of jobs occurred at a time when Bairnsdale, like other bushfire affected communities, were already facing challenging economic circumstances.

The Committee notes Mr Dahlsen's submission that based on the size of his site and the number of people he employs, the ongoing job estimates by Deep End and Mr Dimasi for the Kmart proposal were too high. The Committee comments that job generation per square metre of site or floorspace will vary significantly across retail categories and the comparison Mr Dahlsen has made is of limited utility.

Although neither Mr Dahlsen nor the BCCI produced specific evidence on the lack of capacity in the local construction sector, it is understood that sector is at or near capacity across much of the State. However, if the proposal is approved, construction is likely to occur and construction jobs will be generated, albeit the time frame may be uncertain.

The Committee understands Council's concern about a potential permanent loss of jobs if Kmart does not re-establish in Bairnsdale.

For these reasons, the Committee accepts the proposal will generate significant employment and other economic benefits for Bairnsdale.

The Committee finds:

- A significant number of ongoing and construction jobs will be generated by the proposal proceeding.
- Job creation in Bairnsdale is of particular importance at this time because of the economic challenges faced by the town.

4.4 CBD locations

(i) Evidence and submissions

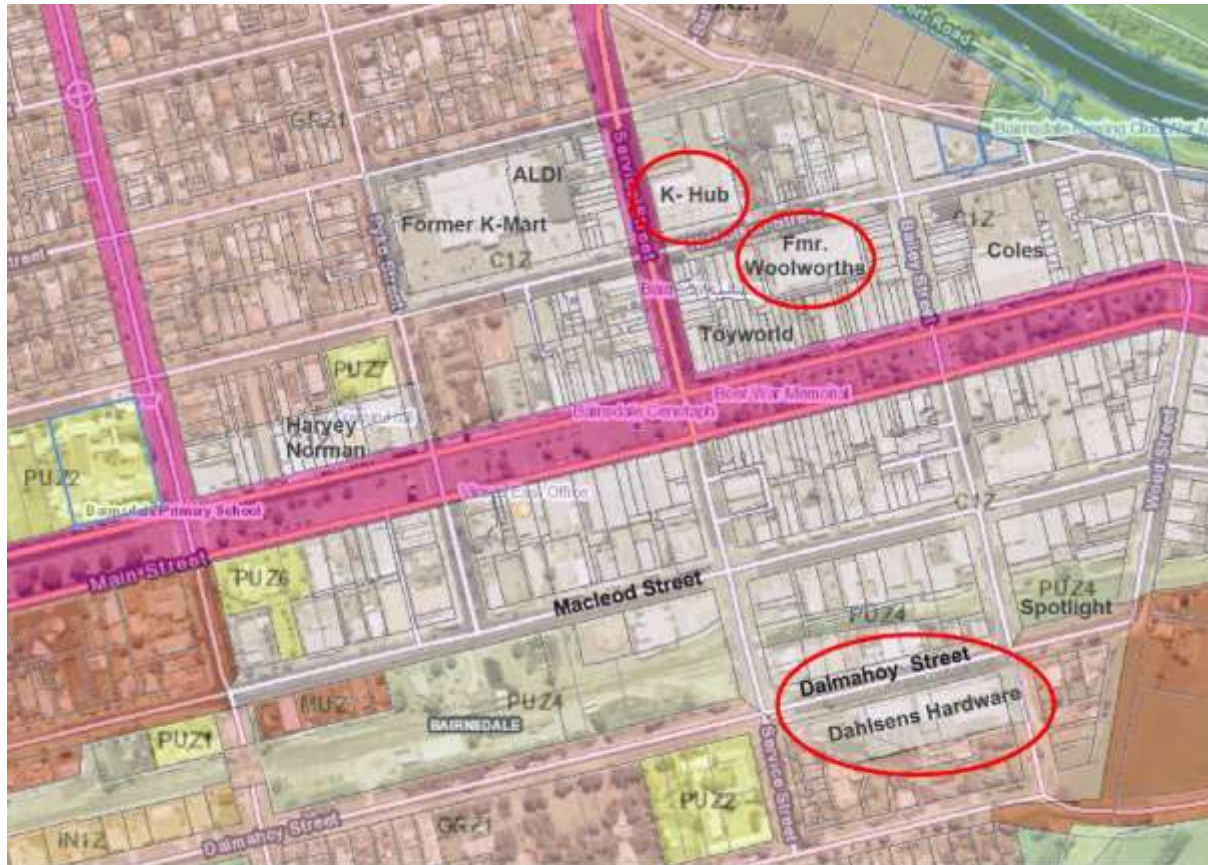
Mr Chiappi submitted that Kmart had investigated alternative sites in the CBD and found no suitable sites. This was supported by the evidence of Mr Barlow and Mr Dimasi and in the Deep End Economic Assessment. Each of these reports discussed various alternative CBD locations which were identified and assessed by Kmart, including:¹⁶

¹⁶ Document 17, Appendix A

- former Target premises, Nicholson Street
- former Woolworths premises, Nicholson Street
- Dalmahoy Street (Dahlsen)
- O'Brien Street (not discussed further as it is a site in close proximity to the subject land).

Figure 5 shows the alternative sites referred to by parties in, or in close proximity to, the CBD.

Figure 5 Alternative sites in, or in close proximity to, the CBD



Source: Document 44

Mr Barlow appended a letter from Kmart to the Proponent to his evidence, which set out the criteria it used to assess alternative sites. These were:¹⁷

- a defined trade area, suitable population numbers, and a favourable demographic profile across the catchment to support a sufficient level of store sales
- an acceptable level of sales impacts projected on the existing store network
- size and dimensions of the site to fit the standard layout for a full line Kmart department store to our new store brief and to enable the display of the full range of Kmart merchandise
- sufficient on grade parking with easy access and egress from the car park for customers
- safe access for delivery vehicles with separation from customer vehicles and pedestrians
- visibility of the store and signage opportunities from high traffic main roads.

Mr Barlow informed the Committee he had undertaken investigations of further alternative CBD sites, identifying appropriately zoned sites of 15,000 square metres or more (the size required by Kmart) or where two adjoining sites met this size criterion. A small number of sites were identified

¹⁷ Document 17, Appendix A

that met the size criterion, but he did not undertake further assessment of their suitability or availability. Only one single site that met the size criterion was located near the CBD, but was located on land with a Land Subject to Inundation Overlay.

In his evidence, Mr Dimasi said of the Dahlsen site:¹⁸

- The site is irregularly shaped, and on Kmart's assessment is not able to reasonably accommodate a full-scale Kmart store plus the requisite carparking in an acceptable configuration.
- The site is not well located for a traditional retailer such as Kmart. This is evident when one considers the location of the site relative to the core of the Bairnsdale CBD in particular the retail offering of the town centre, which is focused on the northern side of the Princes Highway. The three supermarkets which are the main retail anchors of the town centre (Coles, Woolworths and Aldi) are 500 metres, 600 metres and 700 metres respectively from the Dahlsen site. Clearly, for the great majority of cases, customers would not be able or choose to walk from the retail core on the northern side of Princes Highway to the Kmart store were Kmart to be located at the Dahlsen site.

Mr Bartley put to Mr Dimasi that the Dahlsen site could be one end of a retail 'dumbbell' with Kmart anchoring one end and the supermarkets north of Main Street anchoring the other. Mr Bartley suggested this was a typical retail configuration. While accepting this was a configuration of many mall-based retail centres, Mr Dimasi rejected the proposition in this instance, as he advised there was no prospect of core retail uses filling in the 500 or more metres between the two ends of the 'dumbbell'.

There was some debate about the willingness of shoppers to walk between the retail core north of Main Street and a prospective Kmart on the Dahlsen site.

Council submitted there were a significant number of shoppers who visited the CBD by either bus or taxi and then walked considerable distances around the centre.

Mr Bartley submitted:¹⁹

Whilst it is accepted that the Policy Framework supports out-of-centre development in circumstances where a retail facility cannot be accommodated within an existing retail precinct, this ought not be considered by the Advisory Committee on the basis that there are no suitable alternative sites within the CBD and adjacent areas.

Mr Bartley further submitted the Dahlsen site was both of a sufficient size and that an appropriately configured Kmart store could be accommodated on the land. He tabled an indicative concept plan to show that adequate parking could be provided combining on site and on street parking spaces, and that the site could be accessed by delivery trucks without the need for on-street reversing.

This position was supported by Mr Dahlsen who submitted that plans for that site were well advanced to locate serviced apartments and other residential accommodation. Further, he advised he had put those plans on hold and would make the site available to Kmart if they wished to purchase the site.

The BCCI submitted it wrote to Kmart at early stage of its planning process, suggesting amongst other matters, the Dahlsen site would be a suitable alternative. It received a response indicating that Kmart had assessed the site and found that it did not meet their criteria.

¹⁸ Document 18, para 3.24.

¹⁹ Document 61, para 6.8.

Mr Chiappi acknowledged that it is not possible to say that an alternative site in the CBD will never be available, but a suitable site has not been put forward in the last twelve months. He submitted:²⁰

It is possible that someone will, at some time, consolidate a large enough parcel of land, in an appropriate location within the CBD, for the establishment of a full line DDS. But, that has not happened to date and it may not happen at all.

(ii) Discussion and findings

Significant time was spent at the Hearing discussing the availability of alternative CBD sites, in particular the suitability of the Dahlsen site. The Committee makes clear as it did at the Hearing that the evaluation of alternative sites was not included in its Terms of Reference. For this reason, the Committee makes no definitive comment on the availability of alternative sites in the CBD.

The Committee observes that little detailed evidence was put before it either by the Proponent or other submitters on the suitability of alternative sites. The Committee notes the Proponent acknowledged the Dahlsen site was of sufficient size, but that it did not meet other locational criteria.

With respect to the suitability of the Dahlsen site, the Committee notes the following:

- it is outside the core retail area as defined in Council policy, indeed one block south of that area
- it is on the south side of Main Street and some considerable distance from key retail attractors, primarily the three existing supermarkets
- it is unlikely that core retail activities would take up locations so as to create continuous core retailing between a DDS located on the site and other retail anchors north on Main Street
- it would be likely to attract other retail activity to locate around it over a period of time.

The Committee reiterates that it is not its role to undertake a detailed assessment of alternative sites. Indeed, it does not have the information available to it to do this. The Committee accepts there is no alternative site available in the short term which Kmart says is acceptable to it. The Committee notes Mr Chiappi's submission that it is not possible to rule out the possibility of a suitable CBD site becoming available at some stage in the future. The Committee accepts this, but it is not a factor directly relevant to the Committee's task.

The Committee is satisfied that the lack of near term availability or otherwise of alternative sites in the CBD acceptable to Kmart enables it to conclude that a net community benefit assessment of the proposed development on the subject site is warranted, as envisaged in Clause 17.02-2S.

The Committee finds:

- There is no conclusive evidence that there is a suitable and/or available location in the CBD that meets the needs of Kmart.
- Therefore, a net community benefit assessment is warranted under the provisions of Clause 17.02 – 2S of the East Gippsland Planning Scheme.

²⁰ Document 30, para 33.

4.5 Fragmentation of the CBD

(i) Evidence and submissions

Mr Bartley submitted:²¹

The Amendment would lead to the fragmentation of retail shopping in Bairnsdale which would lead to disconnected commercial centres that are not easily navigable by pedestrians and would detrimentally impact the retail town centre.

Mr Bartley supported his contention by identifying the vacant land at 620 Main Street, Bairnsdale just to the west of the subject site which is entirely within the Mixed Use Zone and which he submitted could be developed by future co-locating retail uses. He estimated the size of this vacant land (approximately 4,000 square metres), is large enough to attract a number of other retailers. He submitted this creates a major risk that, despite the current policy framework, a de facto second activity centre could develop around the proposed Kmart store. He further submitted that development of such an activity centre could undermine plans for a Local Activity Centre, as set out in the *Bairnsdale Growth Strategy*, to support new residential development further to the west of the subject site.

Between the vacant land referred to by Mr Bartley and the subject site is further Mixed Use Zone land currently occupied by pet supplies and plumbing supplies stores.

Mr Dimasi stated a further planning scheme amendment would be required in order for additional retail uses to locate on either the surplus land at the rear of the subject land or other land in the vicinity of the proposed Kmart. Mr Bartley submitted this was incorrect, as shop and food and drink premises are permitted uses to a maximum floor area of 150 square metres on land zoned Mixed Use.

In response to the proposition from Mr Bartley that it would be possible to locate a small supermarket of approximately 1,500 square metres plus a dozen or so speciality shops on land to the west of the subject site, Mr Barlow responded this would not be consistent with policy and would not have the same drivers associated with it as with the development of the proposed Kmart on the subject site. In answer to a further question, Mr Barlow responded it would be possible to put policy in place to discourage retail on the Mixed Use Zone land to the west. However, he added the caveat that this would need to be high level and should be subject to further strategic work.

Following Mr Bartley's question to Mr Barlow on the use of policy to discourage retail development in the Mixed Use Zone land adjacent to the subject site, the Committee asked Mr Bartley his view. He responded the Scheme envisages the use of policy to aid in the exercise of discretion.

In closing, Mr Chiappi submitted that a second activity centre developing on the vacant land to the west of the subject site:²²

... could not occur without planning permission. Unlike the Kmart proposal, no case could be made under out-of-centre policy for such an outcome. Mr Barlow said there was no prospect of a de facto secondary activity centre locating on the MUZ land due to the policy settings. The Council has not raised any concern with the prospect of a de facto activity centre being created.

²¹ Document 61, para 1.4

²² Document 77, para 32.

Mr Chiappi further submitted the vacant land has a current planning permit for the extension of the aged care facility located to the north of the site. He noted Mr Dimasi had stated that Bairnsdale was already well serviced by supermarkets and that there was no prospect that any one of these would seek to co-locate with Kmart. Mr Chiappi submitted that Council had not raised any concern about a second activity centre adjacent to the proposed Kmart.

(ii) Discussion and findings

The Committee observes that potential fragmentation of the CBD and the second activity centre developing adjacent to the proposed Kmart site is a potential disbenefit associated with the proposal. This is particularly so as there is a significant area of land zoned Mixed Use within an 'employment area' where new highway type development is already evident.

The Committee understands the potential for more development to evolve over time and agrees with Mr Chiappi that further retail development may be unlikely to occur under current policy.

However, the introduction of a Kmart in this location may change that dynamic.

The Committee observes however, that in order for a second activity centre not to develop in the vicinity of the proposed Kmart, it may require Council to review its current policy position. If it does not, development of a second activity centre may be regarded as a potential planning risk.

It was suggested the Committee might recommend that Council review policy to discourage particular uses on the adjacent Mixed Use Zone land. This is not an issue which the Committee considers appropriate for it to comment on.

The Committee finds:

- There is a planning risk that a second retail centre could develop in and around the subject site if Kmart proceeded.

5 Traffic, access and parking

The key issues to resolve are:

- site and pedestrian access
- off-site road and other works.

5.1 Background

GTA Consultants (now Stantec) provided a Transport Impact Assessment (TIA) in February 2021 in support of the request for the Amendment. The TIA focused on:

- existing conditions and the road network
- car parking
- traffic impact
- bicycle parking
- pedestrian connectivity.

The TIA was supplemented by the expert evidence of Mr Kiriakidis of Stantec (formerly GTA Consultants) at the Hearing.

The site will front Main Street, an arterial road controlled by Regional Roads Victoria and located in a Road Zone (Category 1). It is a two way road aligned east-west with 9 metre wide dual carriageway set in a 58 metre wide road reserve. It does not have roadside parking restrictions and carries approximately 20,000 vehicles per day.

Calvert Street forms the east boundary to the site and is a local Council road, predominately providing access to the residential catchment north of Main Street. It is a two way road aligned north-south with six metre wide dual carriageways. It carries approximately 2,400 vehicles per day and does not have kerb side parking restrictions. It terminates at Main Street with a break in the median providing left and right turns onto Main Street.

There is a bus stop on Calvert Street, opposite the site. The current bus service provides three services per day and none on weekends.

Pedestrian access is poor, with no footpaths along the frontage to Main Street or the side along Calvert Street. Further, there is no dedicated cycling infrastructure at or near the site.

No other evidence was provided, however DoT and Council raised a number of traffic issues, as did Mr Dahlsen. These related to site and pedestrian access, traffic generation and off-site road works (bus stop upgrade, footpath improvements and site access arrangements) that may be required as a consequence of the proposal.

There were a number of matters not generally contested, these included:

- car parking
- bicycle parking
- location of loading and delivery.

(i) Car parking

The revised plans provide 194 car parking spaces, including three extra-long spaces for cars towing trailers or caravans. This number exceeds the statutory requirement and importantly, does not rely on on-street parking at times of peak demand (Christmas, Easter, Mothers' Day). The

Committee questioned the location of the long spaces and was advised that these were provided on the east side, away from the most accessible and preferred areas to park for shoppers.

While the Committee accepts that position, it notes that parking in the extra-long spaces in the location proposed might prove to be too cumbersome and those shoppers may end up parking on the abutting streets. Council and DoT will need to monitor this.

Further, the Committee asked Mr Kiriakidis whether the site was likely to require overflow parking on street. He noted that was unlikely.

Mr Boocock asked many questions about on-site parking, however, the information gained was of little utility to the Committee. Essentially it confirmed the site provided more than adequate car parking.

(ii) Bicycle parking

A total of 18 bicycle parking spaces are proposed (with nine hoops) as well as one shower/change room facility, which is acceptable.

(iii) Loading and delivery bays

One articulated vehicle bay and one waste collection bay is proposed, with entry off Calvert Street and then forward movement out to Main Street, left turn only. Loading and waste collection will occur on the west side of the store, generally separated from customer car park traffic. The Committee finds this arrangement appropriate.

(iv) Findings

The Committee finds:

- Car parking, bicycle parking and the location of the loading and delivery bays are acceptable.

5.2 Traffic and site access arrangements

(i) Evidence and submissions

The TIA provided extensive traffic survey data, including traffic flows and intersection operation, the findings of which were generally unchallenged. Most of Mr Kiriakidis' evidence related to his response to the Council and DoT original written submissions.

Council was concerned that motorists arriving from the east (and using the Calvert Street entrance) may potentially result in vehicles queuing through the Main Street median, leading to congestion and potential safety issues. Mr Kiriakidis noted the intersection modelling indicated minimal congestion would occur.

Council raised issues about the operation of the Calvert Street access point in that drivers turning left onto Calvert Street would be required to undertake a circuitous route or U turn to get back to Main Street, which might have a potential impact on residential amenity (as it is not proposed cars exiting the site can turn right into Calvert Street to readily access Main Street).

Mr Kiriakidis agreed that could occur in principle, but it would not add a meaningful amount of traffic in the local area.

A key issue for Council was the access road from Calvert Street to be used as the delivery and waste truck access, as well as providing access to the surplus land to the rear of the site. This road

was updated from the original plan to be wider and fit for purpose. A footpath was added between the access road and the fence of the surplus land, which is proposed to be landscaped. Council sought the road be created as a road reserve and constructed to meet the requirements of the local authority, or managed and maintained by formal agreements between the owners of the subject land and the owners of the surplus land.²³ Council wanted to be sure that the access road would be fit for purpose.

The Committee asked Mr Kiriakidis whether footpaths along the front and side boundary to the site could be provided as developer works, or funded through development contributions. He advised that it could be perceived as a gesture of goodwill but did not see a need for footpaths or see how these could be delivered, as they would not be continuous or joining with any other footpath. He suggested there would be more value in contributing to the proposed upgrade of the bus stop and associated hard stand.

Further, the Committee asked Mr Kiriakidis to respond to various issues raised in Mr Dahlsen's second submission (Document 26). In summary, Mr Kiriakidis noted:

- the TIA was adequate, and it had proper regard to traffic and the make-up of traffic
- heavy vehicle traffic was allowed for in the modelling, where the percentage of heavy vehicles made up three per cent of the total traffic movements
- the nature of traffic movement will be slower in and around the subject land, noting the speed along Main Street is 80 kilometres per hour in that area (coming down from 100 kilometres per hour further west)
- co-location of the Kmart and Bunnings in the same general area (noting they will be diagonally opposite) may increase the level of traffic movement and some patrons may visit both stores in one outing, driving between the two, but that will be a small proportion of overall traffic and may assist to reduce the number of individual trips
- he was not able to comment on traffic and parking issues associated with the Bunnings site (as he had not investigated that site)
- going forward, installation of traffic lights at the Main Street/Calvert Street intersection might be considered if conditions warrant it, but that is not the case now
- the location of the petrol station proposed to the east of the site is adequately separated from the subject land.

(ii) Discussion and findings

In summary, the Committee considers there are no significant traffic or access issues that warrant refusal of the proposal.

The Committee acknowledges the proposal is on the eastern outskirts of a vibrant regional town, and that Main Street (which forms part of Princes Highway) is a very important highway that runs through many regional towns and cities, carrying significant traffic of around 20,000 vehicles per day through Bairnsdale.

The TIA considered and evaluated traffic conditions based on numerous data sources (traffic surveys and previous VicRoads traffic counts, including identifying the peak month December) to arrive at conservative position (ie. more busy traffic conditions) that projected out to 10 years. Mr Dahlsen's concerns around traffic (including traffic mix, through traffic compared to local traffic

²³ Document 75

and arrivals from the east creating more congestion within the CBD and the nearby Bunnings) are captured in the TIA assessment of Main Street traffic conditions and subsequent analysis.

The TIA assessment of crash statistics identified no safety issues with the existing operation of the Main Street/Calvert Street intersection. The Committee notes the wide median in Main Street and turn lanes at intersections along Main Street.

The Committee acknowledges the detailed submission of Mr Dahlsen about traffic, but notes that typically, the peak periods for a Kmart (Friday afternoons and Saturdays) occur outside of the traditional peak periods for schools and commuter traffic. As such, development of the Kmart would not be anticipated to have significant effects on the other uses in the area, including Bunnings.

DoT agreed in principle to the proposed development subject to providing a left turn deceleration lane from Main Street into the site, and modifications to access points from Calvert Street. DoT did not raise any concerns with the proposal impacting on the safe and efficient operation of Main Street, or take issue with the detailed and conservative traffic modelling and analysis provided in the TIA.

The Committee considers the final design of the pedestrian refuge, median strip and bus stop area needs to ensure the highest degree of pedestrian safety, particularly given access off Calvert Street to the site for customers and its juxtaposition with delivery and waste vehicles. The median strip closest to Main Street will need to be appropriately tapered to allow right hand turns into the site from the north, but to prevent U-turns, especially by trucks.

Having reviewed the location of the bus stop, the Committee considers that as part of its proposed upgrade, consideration should be given to moving it further south so that it lines up with the main Calvert Street entrance, and further away from the truck entry area, provided this would not conflict with the operation and access for the petrol station to the east.

The Committee considers that directional signage could be installed in the car park to alert those customers seeking direct access to Main Street (to avoid exiting onto Calvert Street and performing a U-turn).

With regard to the internal access road, the Committee supports Council's position that it should be created as a road reserve to ensure that it will appropriately accommodate future residential traffic to the surplus land at the rear of the site (and to ensure that if the land was not developed for residential purposes, the road was adequate for whatever purpose the surplus land would ultimately be used for).

The Committee agrees the provision of footpaths at this stage should not be required but that it is appropriate that the Proponent contribute to the provision of this if, at a future stage, a network of paths is developed in the area by Council.

The Committee has included additional requirements in the Incorporated Document to reflect these findings (6.1(j), 6.1(k) and 6.37).

The Committee finds:

- The site and pedestrian access can be further modified to enhance pedestrian access and safety, including relocating the bus stop.
- The access road to the surplus land should be created as a road reserve and constructed to meet the requirements of the local authority.

5.3 Off-site road and other works

(i) Evidence and submissions

The Proponent acknowledged it was required to undertake off-site works as part of its obligations in developing its proposal. There was discussion at the Hearing about the extent of those obligations, particularly by DoT and Council.

In closing, DoT raised issues about potential inclusions in the Incorporated Document and the Committee sought these in writing. In essence, DoT sought amended words in relation to the bus stop. It contended the bus stop was not compliant with the *Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002* and changes needed to be made. Further, it sought a pedestrian refuge and safe crossing point be provided in Calvert Street. DoT submitted these changes would appropriately mitigate any impacts on the arterial road network.²⁴

The Proponent noted there was no evidence or justification for these additional works and it “... would entail significant cost for redundant infrastructure”.²⁵ However, the Proponent conceded the bus stop plan was not pram or wheelchair accessible and it proposed an amendment to Condition 6.19(b) in the Incorporated Document. It did not accept that a pedestrian refuge and crossing was required.

Council sought the functional layout plan include Calvert Street to ensure any works in the road reserve are appropriately integrated.

(ii) Discussion and findings

The Committee supports the closing submissions made by DoT. It is important to provide a safe pedestrian crossing and given the introduction of the Kmart in this location will generate new and additional traffic along Calvert Street, a pedestrian safe refuge is a reasonable inclusion. Likewise, the bus stop must be upgraded to comply with disability requirements.

Further, the Committee supports the submissions of Council that the functional layout plan should include that part of Calvert Street opposite the proposed Kmart development, and that coordinated road works occur up to the area of the internal access road for delivery and the surplus land.

The Committee has included additional requirements in the Incorporated Document to reflect these findings (6.19(a), (b) and (c)).

The Committee finds:

- The bus stop should be upgraded to ensure it is compliant with the *Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002*.
- A pedestrian refuge should be provided in Calvert Street to ensure a safe crossing for pedestrians to the site.
- The functional layout plan for Main Street should include that area of Calvert Street from the bus stop or the northern edge of the surplus land access road through to the Main Street intersection.

²⁴ Document 85

²⁵ Document 86

6 Other matters

A number of other matters were raised through submissions and at the Hearing, these include:

- noise
- landscaping
- signage and façade treatment
- hours of operation
- Victorian Health Building Authority
- town centre shuttle bus
- development contributions.

6.1 Noise

Submitters Mr Beckers and Ms Nelsson raised the issue of noise as it would impact on their abutting property.

The Proponent provided a noise assessment report prepared by Arup as part of its initial request for the Amendment. At the Hearing it relied on the evidence of Mr Delaire who provided both a peer assessment of the Arup report and undertook his own noise assessment. The latter was necessary as a result of a change in the legislative framework which came into effect on 1 July 2021. New EPA publication 1826, *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* dated May 2021 (Noise Protocol) introduced a requirement to consider all reasonably practical measures to reduce noise in noise sensitive areas.

No other party provided noise evidence nor questioned the evidence of Mr Delaire.

The Committee questioned Mr Delaire on a number of issues, including:

- whether it is desirable to require the Proponent to install windows with acoustic properties on the south and west facing walls of the properties at 104 Calvert Street and 4, 5 and 6 Arco Court, to which he responded that they may have benefits, but those residents would be protected by their proximity to the acoustic fence
- whether it would be desirable to close off the eastern section of the car park in the evenings apart from at the peak Christmas, January and Easter periods, to which he responded that it would improve amenity but that acceptable noise levels could be achieved without this measure
- whether the proposed 1.8 metre acoustic wall had been measured from road level, to which he responded that to remove any doubt, the acoustic wall should be 1.8 metres above road level
- whether he supported the use of broadband reversing signals instead of tonal signals on delivery trucks, to which he responded that he was a strong advocate of these.

The Committee accepts the evidence of Mr Delaire and finds the acoustic measures proposed are acceptable. A Noise Management Plan is required as part of the Incorporated Document and the Committee has amended Clause 6.11 to include the requirement that it must be considered with the EPA publication 1826, *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues* (May 2021).

The Committee finds:

- The proposed noise mitigation measures are acceptable.

6.2 Landscaping

A Landscape Plan prepared by John Patrick Landscape Architects accompanied the request for the Amendment. Mr Patrick provided an updated landscape plan with his expert evidence, the main changes being increased planting along the Main Street frontage and additional planting in the car park areas.

In his evidence, Mr Barlow stated the revised landscape plan needed to show there was sufficient space to accommodate the proposed planting, particularly along the northern border of the site abutting the residential properties.

Mr Patrick explained to the Committee that the Landscape Plan was guided by the strong remnant landscape character of the surrounding area. He indicated that River Red Gum was a significant species in the area, but one not suited to the subject site because of its propensity to drop limbs. He stated that the existing trees on the subject site were not local species.

The new plantings proposed by Mr Patrick were predominantly Red Box, Yellow Box and Aristocrat Callery Pear. A strong planting theme was proposed along Main Street, but one which would allow filtered views through to the car park. Structural soils were proposed to be used in the car park to prevent tree roots interfering with the car park pavement. Mr Patrick stated none of the trees would get to a height where they would interfere with the helicopter flight path to the nearby hospital.

Mr Barlow, who had proposed some changes to the initial landscape plans, indicated in his evidence he was satisfied with the changes made by Mr Patrick in his revised plans.

In answer to a question from Mr Bartley, Mr Patrick stated that no landscaping was proposed along the interface with the surplus land as he assumed that when it was developed, a Landscape Plan would be required to screen the northern wall of the built form of the Kmart store.

Mr Beckers and Ms Nelsson submitted that removal of the existing trees would reduce their amenity and they suggested fast growing native trees be provided.

The Committee acknowledges that removal of existing vegetation as part of the development will impact the amenity of the residential properties to the north in the short term, but would be addressed in the medium term by the proposed plantings. The Committee is satisfied with the proposed Landscape Plan and does not see a need for a landscape barrier between the proposed built form and the surplus land. It agrees with Mr Patrick that this is an issue best addressed at the time when the built form of the surplus land is known and addressed via a separate Landscape Plan for that development.

The Committee finds:

- The revised landscape plan proposed by John Patrick Landscape Architects is acceptable.

6.3 Signage and façade treatment

The submitted plans proposed a pylon sign nine metres high and measuring 1.5 by 1.3 metres at the Main Street entrance and a further sign 1.5 metres high and three metres wide at the Calvert Street entrance.

In his evidence, Mr Barlow recommended the height of the Main Street pylon sign be reduced to no more than eight metres and that the secondary sign at the Calvert Street entrance be reduced in width to not more than 1.5 metres.

The Proponent did not accept Mr Barlow's recommendation to reduce the Calvert Street sign to be 1.5 metres in width.

The Committee agrees with the evidence of Mr Barlow that the main sign (in Main Street) should be reduced by one metre and the secondary sign (in Calvert Street) should be reduced in width to be not more than 1.5 metres.

Further, Mr Barlow recommended the painted façade pattern which is proposed for approximately the front third of the east elevation should continue for the full length of the façade as it does for the south (Main Street) elevation. The Proponent accepted this recommendation, and the Committee agrees.

The Committee finds:

- The modified heights and width of the pylon and secondary signs and the extension of the painted façade as recommended by Mr Barlow are appropriate.

6.4 Hours of operation

The May 2021 version of Incorporated Document included proposed hours of operation as follows:

- opening hours: 7.00am to midnight, seven days per week
- loading hours: 7.00am to midnight, seven days per week.²⁶

As a result of questions from the Committee about the hours of operation, the Proponent subsequently proposed the following hours:

- opening hours: February to October 7.00am to 10.00pm, seven days per week
November to January 7.00am to midnight, seven days per week
- loading hours: 7.00am to 7.00pm, Monday to Friday
8.00am to 6.00pm, Saturday and Sunday
- waste/recycling: 7.00am to 6.00pm, Monday to Friday
7.00am to 1.00pm, Saturday.²⁷

The Proponent indicated that it may not trade for all opening hours provided for, but wished to have the flexibility to do so.

The Committee supports the updated hours of operation as noted in Appendix E.

The Committee finds:

- The hours of operation for store opening/closing, loading, and waste/recycling are acceptable.

6.5 Victorian Health Building Authority

The Victoria Health Building Authority had no objection to the proposal but provided a submission which highlighted a number of conditions to ensure that the flight path for helicopters attending

²⁶ Document 50

²⁷ Document 81

the Bairnsdale Hospital, located approximately one kilometre away, was not compromised in any way.

Design and Development Overlay 16 provides for height restrictions around the Hospital to ensure this. This proposal does not impact on the Hospital, however the Proponent included the requirements sought by the Authority in any event.

The Committee supports these conditions, which are at Clauses 6.31 to 6.35 inclusive of the Incorporated Document.

The Committee finds:

- The issues raised by the Victorian Health Building Authority are resolved by Design and Development Overlay 16 and the proposed development will have no impact on the operation of the Bairnsdale Hospital.

6.6 Shuttle bus

In its closing, Council submitted that Kmart should provide a regular (perhaps hourly), shuttle bus from the CBD to their site. It submitted that this would be a demonstration of corporate social responsibility and a service to those who do not have easy access to a car to drive to the proposed development.

Mr Chiappi responded that the Proponent could not agree to such a proposal that was not costed and for which demand had not been established. Mr Chiappi further submitted that there was already a bus service between the CBD and the subject site with a bus stop opposite the site in Calvert Street.

The Committee understands the sentiment of the proposal by Council but agrees with the Proponent. It would not be prudent to support such a proposal unless further investigation demonstrated it was warranted. The Committee acknowledges that there are precedents for such services, such as that which operates between Melbourne's CBD and Chadstone, but that is a very different situation.

The Committee finds:

- There is no planning reason to require Kmart to offer a shuttle bus service between the CBD and the subject site.

6.7 Development contributions

The Proponent submitted it would undertake a number of off-site works. These are provided for in the proposed plans and Incorporated Document and include:

- limited road works in the bell mouth of the intersection of Calvert and Main Streets
- upgrading the bus stop in Calvert Street
- site access ways and crossovers in Main Street and Calvert Street
- removal of redundant crossovers
- relocation of an electrical pole and a payphone
- three new trees in the Calvert Street median strip.

Each of these are to be provided at no cost to the Responsible Authority or DoT as noted in the Incorporated Document.

Council's initial submission was that footpaths should be provided on street frontages to the site.

The Proponent responded:²⁸

There are no footpaths in this area on the highway or Calvert Street, and the proposal is unlikely to generate other than a very small amount of foot traffic. Further, no investigation has been carried out as to what infrastructure or services works would be required if footpaths were to be installed. With that unknown, the proponent is unable to agree to the footpaths.

Mr Chiappi submitted his client would be prepared to make a contribution to the provision of footpaths at some stage in the future if they are to be provided as part of a broader network of paths in the area.

Council submitted the Proponent should make improvements to the Calvert Street streetscape, including planting trees and upgrading the pavement and kerbing in Calvert Street.

This was rejected by the Proponent as inappropriate, but it indicated it was prepared to contribute of \$25,000 towards such works.

The Committee notes there is no formal Development Contributions Plan proposed. It is appropriate the Proponent undertakes the works necessary as a consequence of its development proposal and provided for in the plans and Incorporated Document at no cost to the relevant authority.

The Committee finds:

- The proposed contribution to off-site works proposed by the Proponent, while light, is appropriate.

²⁸ Document 77

7 Net community benefit

7.1 Evidence and submissions

Both Mr Barlow and Mr Dimasi provided a net community benefit assessment of the proposed development, placing emphasis on their respective expertise in planning and retail economics. The Deep End Economic Assessment listed economic benefits but did not undertake a full net community benefit assessment. The benefits/disbenefits of the proposal identified by Mr Barlow, Mr Dimasi and Council respectively are summarised in Tables 1, 2 and 3:

Table 1 Net community benefit assessment by Mr Barlow

| Benefits and disbenefits | Committee comment |
|--|--|
| Benefits | |
| The current absence of a comparable retail store will mean that the proposed development will result in an improved retail offer. | Accepted that a DSS would normally be expected in the Victorian regional city retail context. No submitter or expert argued to the contrary. The Committee considers the provision of a DDS would generate a significant benefit for the local and regional community. |
| The provision of a higher order retail use is consistent with the role that Bairnsdale plays within its region. The proposed new store will contribute to employment growth. | This is consistent with the first benefit above and is accepted by all as a benefit, which the Committee regards as significant. |
| The proposed new store will reduce the need for customers to travel to more distant retail centres, and consequently, the reduction in escape expenditure. | Issue is addressed in Chapter 4.2 in the context of escape expenditure. While there was some dispute about the extent of escape expenditure and how much of it may be 'lost' to on-line shopping, no party contested the closure of the previous Kmart resulted in some escape expenditure. For this reason, the Committee regards this as a significant benefit. |
| The proposal is for a standalone store that will not draw significant custom from the CBD. | Issue is addressed in Chapter 4.2 where it was concluded the impact on CBD retail turnover is well within the bounds of what is normally considered to be an acceptable competitive impact. |
| Disbenefits | |
| The location outside the CBD will require customers to take specific trips to this destination. | Accepted as a disbenefit, but not regarded as significant. Noted that there was some discussion at the Hearing about the likelihood that shoppers visiting core retailers north of Main Street being prepared to walk to a Kmart if located on the Dahlsen site. It is some significant distance and as Mr Dimasi argued, would be unlikely to generate enough core retail uses to fill intervening land. It is likely that a significant proportion of shoppers would drive between the two if it was able to be located on the Dahlsen site. |
| Out of centre locations can be considered to draw trade from | This potential disbenefit is covered under Benefits above and is not considered by the Committee as a significant disbenefit. |

| Benefits and disbenefits | Committee comment |
|---|--|
| competitor centres, in this case the CBD. | |
| A potential lost opportunity to develop a strong retail presence in the sector of the CBD south of Main Street. | Considered to be a significant disbenefit. However, the only alternative site south of Main Street which is immediately available appears to be the Dahlsen site which does not meet Kmart's site criteria (addressed Chapter 4.4). |
| The rigid interpretation of policy could lead to a potentially sub-optimal outcome or no outcome at all. | Accepted that there is strong direction for a CBD location for a proposal of this type. Accepted that by Kmart's judgement, locating on the Dahlsen site would be a sub-optimal outcome. A worse outcome for the community would be for Kmart to exit Bairnsdale completely. For this reason, it is accepted this is a significant disbenefit. |

Source: Document 17, paras 124 and 125

Table 2 Net community benefit assessment by Mr Dimasi

| Benefits and disbenefits | Committee comment |
|--|--|
| Benefits | |
| The proposed development will result in significant employment creation, both in direct jobs, indirect jobs and construction jobs. | Addressed in Chapter 4.3. In the context the Terms of Reference which at Clause 6 refers to the building and construction industry, this is considered to be a significant benefit. |
| Provide economic benefits for a population which is relatively elderly and for whom income levels are modest by Victorian standards. | Mr Dimasi provided data on the age distribution of the population and its income compared to the broader Victorian population. This was not addressed in this report as it is factual data and not contentious. Accepted that the proposed development will generate benefits for the communities identified by Mr Dimasi. |
| The proposed development will help anchor broader retail provision in Bairnsdale. | Accepted by the Committee as a benefit. |
| Greater opportunity for residents of Bairnsdale to shop more extensively within Bairnsdale. | This benefit is accepted by the Committee and is self-evident. |
| Residents of the secondary trade area will be more inclined to shop in Bairnsdale, resulting in spin off benefits for other retailers. | Addressed in Chapter 4.2 and is considered by the Committee as a significant benefit. |
| Disbenefits | |
| The potential for fracturing or hollowing out of the town centre which Mr Dimasi discounts as unlikely to | Addressed in Chapter 4.2. The suggested fracturing or hollowing out of the CBD is only an issue if significant further retail is permitted to co-locate in the vicinity of the proposed development. The Committee concludes in Chapter 4.5 that while there is some risk |

| Benefits and disbenefits | Committee comment |
|---|---|
| happen, as there is little possibility for other retailers to locate adjacent to the proposed development. | this could occur, it is unlikely without a policy change by Council. Therefore, not considered to be a significant disbenefit. |
| The potential for Kmart to locate on an alternative site has been investigated by Kmart and alternative sites rejected by them. | The issue of alternative CBD sites was addressed in Chapter 4.4. The Committee found there was no evidence that a suitable CBD site is available that meets the site needs of Kmart if the current proposal does not proceed. |

Source: Document 18, paras 3.14 to 3.20

Table 3 Net community benefit assessment by Council

| Benefits and disbenefits | Committee comment |
|--|---|
| Benefits | |
| Located within town boundary. | This is accepted. |
| Part of an established employment node. | This is accepted. |
| Subject site identified as performing a mixed use role. | This is accepted. |
| Development can be integrated when considering function, design and architectural style. | This is accepted. |
| Car parking in front of development is characteristic of this type of use. | This is accepted. |
| Land size is appropriate. | This is accepted. |
| Use is permitted within the zone. | Use is permitted subject to a permit. |
| A number of identified amenity issues can be mitigated. | This is accepted although this is also identified as a disbenefit with no clear delineation of the two. |
| The proposed use will support the retail hierarchy. | This is accepted. |
| Disbenefits | |
| Location outside CBD does not align with policy. | This is accepted although policy does provide for out of centre uses subject to net community benefit. |
| Location not within or adjacent to the CBD. | This is accepted. |
| Poor pedestrian connections. | This is accepted. |

| Benefits and disbenefits | Committee comment |
|---|---|
| Some potential for amenity impacts on neighbouring residents. | See comment under benefits above. |
| Unresolved issues with respect to subdivision of the land. | Committee does not accept this as a significant issue. |
| Access to the surplus land. | Committee does not accept this as a significant issue, and is resolved by the changes to the internal access road discussed in Chapter 5.2. |

Source: Document 49, paras 53 to 70

Both Mr Barlow and Mr Dimasi concluded that in their opinion, the proposed development will generate a net community benefit.

Neither of the experts provided any insight as to how they had weighed up benefits against disbenefits to reach their conclusions. The Committee asked Mr Barlow if he had used any objective approach or whether the conclusion was his professional opinion. He responded that no methodology was devised to allow an objective assessment to be made, which he said was unfortunate.

Council did not present any conclusion reached from its analysis, but acknowledged it would accept a Kmart on the site proposed rather than lose Kmart to Bairnsdale completely.

Mr Chiappi summarised the net community benefit assessment based of benefits and disbenefits identified by Mr Barlow and Mr Dimasi and is not reported separately.

7.2 Discussion and findings

Clause 71.02-3 of the Victoria Planning Provisions 'Integrated decision making' provides that:

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure.

Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Additionally, Clause 17.02-25 (Out of centre development) includes the following strategy:

Ensure that out of centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

The Planning Scheme requires these policy tensions to be reconciled through balancing competing objectives in favour of net community benefit and sustainable development, for the benefit of present and future generations.

In considering net community benefit, the 'community' which might be positively or negatively impacted must be acknowledged. In this case, the community includes Bairnsdale and the East Gippsland Shire, which has a very large geographic area.

In this particular matter, much turns on the outcome of the net community benefit analysis, perhaps more so than in many other matters. The proposal involves an out of centre development, and there is strong policy direction that the proposed development should be located in the Bairnsdale CBD. Clause 17.02-2S directs that out of centre development proposals should only be supported where the proposed use or development is of net benefit to the community in the region served by the proposal.

The Committee notes Mr Barlow's observations about the lack of an objective methodology to weigh competing benefits and disbenefits and agrees that within the planning context, no such methodology has wide acceptance. The Committee is aware that in other disciplines there have been attempts to reduce benefits and disbenefits to one or two objective measures and in some instances to weight them to assist in reaching a conclusion. These approaches usually have limitations and can involve simplifications which reduce their utility.

The Committee observes that three of the four benefits of the proposal identified by Mr Barlow and all of those identified by Mr Dimasi apply regardless of where a prospective Kmart store is located in Bairnsdale. This does not mean that they are not valid considerations, but rather that they are not useful in assessing whether an out of centre development delivers community benefit.

The Committee considers the key disbenefits to be the potential for a loss of an opportunity for a major retailer to anchor development in the retail core south of Main Street.

Weighing all the factors relevant to a recommendation, the Committee concludes the proposal will result in a net community benefit. In reaching this conclusion, the Committee accepts Council's position that the Kmart as proposed in the subject location is a better outcome for the town and region than the risk of losing a full line Kmart to Bairnsdale.

The Committee finds:

- The proposed development of a Kmart store on the site at 598-610 Main Street, Bairnsdale will generate a net community benefit.

8 Response to Terms of Reference and letter of referral

8.1 Terms of Reference

The Committee has complied with and reported on all relevant matters in accordance with its Terms of Reference, in particular Clauses 12, 13, 17, 21 and 23.

8.2 Minister's letter of referral

In addition to the matters outlined in its Terms of Reference, the Minister for Planning sought the Committee's advice and report on three specific matters, each of which are summarised below.

(i) **Appropriate drafting of draft Amendment C163egip if approval is recommended**

It is proposed to apply Specific Controls Overlay Schedule 2 to the East Gippsland Planning Scheme to the land at 598 - 610 Main Street, Bairnsdale.

The Incorporated Document imposes a number of requirements that might normally be found in a planning permit.

The Proponent relied on the evidence of Mr Barlow with respect to the use of this overlay:

Mr Barlow indicated his support for the use of this VPP tool and with respect to its use stated: The proposed Incorporated Document identifies the more specific nature of the permitted use and development including 'conditions' for construction and for the ongoing use of the land. It is clear from the prepared documentation the land to which the development is intended to comprise and its purpose. This includes clear and dimensioned delineation of the 'surplus land' within the document.²⁹

The Committee finds the use of the Specific Controls Overlay and the inclusion of the Incorporated Document at Clause 72.04 of the East Gippsland Planning Scheme is appropriate for this matter.

The Committee was provided with various versions of the Incorporated Document as follows:

- initial version February 2021 (Document 3)
- various versions incorporating changes proposed through the Hearing process (Documents 50, 52 and 57)
- DoT comments (Document 74)
- Council comments (Document 75)
- final Proponent version, 4 October 2021 (Document 81).

These various changes to the Incorporated Document added value to the final control. Due to the iterative nature of the drafting of the Incorporated Document through issues raised at Hearing, the Committee is using the 4 October 2021 version as its base document for its recommendation. The Committee's preferred version is at Appendix E to this report.

DELWP suggested in its comments on the May 2021 version of the Incorporated Document that the area to which the Incorporated Document applies be extended to include adjoining roads to

²⁹ Document 17, para 35

allow for roadworks.³⁰ This was not the subject of discussion at the Hearing and the Committee does not make any findings on this.

(ii) Appropriateness of proposed restrictions on the use of and access arrangements to the balance of land at the rear of the proposed development

Council and the Committee raised issues about the timing and use of the surplus land to the rear of the site, which is proposed to be subject to the Specific Controls Overlay but will remain in the General Residential Zone. The Proponent advised that while it could not be certain, it is intended the land will be used for housing, possibly for up to 10 dwellings. The timing of plans for future development is unknown.

The Incorporated Document provides a number of inclusions under *“The following requirements apply to this document in relation to the Surplus Land”* and at Clause 6.37 and 38 relating to the surplus land, including:

- the number of dwellings
- vehicle movements
- impacts on the arterial road network
- exclusion of access at the western end of the site
- clearly identifiable signage.

An issue raised by Council related to the shared access road, its standard and the carriageway rights. Council sought the addition of words to the effect that this vehicular access must either be created as a road reserve and constructed to meet the requirements of the local road authority, or that it be managed and maintained by a formal agreement.³¹

The Committee notes the Proponent did not see that as necessary and noted in its closing that concerns raised by Council were unwarranted. It noted any subdivision process will ensure there is suitable access.

The Committee accepts that Council is keen to ensure the surplus land will not be landlocked, and the access road be constructed to provide for two way traffic and delivery vehicles that can access the surplus land. For the avoidance of doubt, the Committee includes a new Clause 6.37 in the Incorporated Document that includes the words provided by Council in Document 75 relating to the creation of the road reserve and a requirement that it is constructed to meet the requirements of the local road authority.

A final issue for the surplus land relates to the area set aside for the firefighting water tank. The Committee questioned the usefulness of retaining the sliver of land on the far west side of the site as surplus land. The Committee considers Figure 1 in the Incorporated Document should be amended to remove that sliver of land and it has recommended that deletion in the Incorporated Document.

(iii) Reasonableness of developer contributions being sought by some submitters

A development contributions plan was not provided as part of the draft Amendment and the Committee does not recommend one be prepared.

³⁰ Document 3

³¹ Document 75

The Incorporated Document requires the Proponent to undertake all off-site works related to the development at its own cost. The provisions of the Incorporated Document provide that Council as Responsible Authority and DoT as custodian of Main Street (Princes Highway) have oversight of various works in and around the site. The Committee regards these requirements as appropriate.

The Incorporated Document requires the Proponent to pay \$25,000 for Council works (noted as being a contribution to off-site works at the Hearing), which on any view, is a 'light' contribution.

Council sought the opportunity for Kmart to run a shuttle bus to and from its site to the Bairnsdale CBD. The Committee accepts that while this might be a good idea, the need for such a service has not been demonstrated. Nor was the Committee persuaded that the development generates a planning need for a shuttle bus service. It is therefore inappropriate to mandate a shuttle bus service.

The Committee raised the issue of a café on site (due to that fact that the proposal is a single destination site), however Kmart resisted that.

The onus will be on Kmart to demonstrate goodwill to Council and the community once it commences operations.

8.3 Conclusions and recommendation

The Committee supports a full line Kmart being re-instated in Bairnsdale. It will provide a broad range of goods for the local and wider regional community. It will add jobs to the local economy and will reduce escape expenditure.

Like Council, the Proponent and submitters, the Committee accepts that planning policy strongly prefers the Kmart to be located in the core retail CBD area. However, the Committee understands Kmart's rationale to have a full line retail store on enough land to accommodate car parking, truck access and loading, and landscaping. The Committee accepts there is no suitable site in the CBD at this point in time that meets those requirements.

As Council advised the Committee, while it does not support the location of the Kmart on Main Street, it would rather it be located at that site than not being in Bairnsdale at all. The Committee agrees that Bairnsdale would be significantly disadvantaged by the permanent loss of a full line Kmart store. This is a critical consideration for the Committee in supporting this proposal in this location.

The Committee supports the application of the Specific Controls Overlay Schedule 2 on the subject land for the purposes of use and development of the land for a Kmart store as provided for in Appendix E.

The Committee supports this Amendment, and it recommends the Minister for Planning:

- 1. Adopt Amendment C163egip to the East Gippsland Planning Scheme in accordance with the modified Incorporated Document in Appendix E.**

Appendix A Terms of Reference



Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority ProjectsPriority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

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.

Terms of Reference | Priority Projects Standing Advisory Committee

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 anyway 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, and
 - 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.

Terms of Reference | Priority Projects Standing Advisory Committee

22. Following the 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 submissions 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

Appendix B Letter of referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing
Acting Minister for Water

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chair (Lead), Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning_panels@delwp.vic.gov.au

Ref: MBR045088



Dear Ms Mitchell

DEVELOPMENT FACILITATION PROGRAM – 598-610 MAIN STREET, BAIRNSDALE

I am writing to you about draft Amendment C163egip, which proposes the use and development of land for a Kmart department store at 598-610 Main Street, Bairnsdale. The proposal has been recommended for accelerated assessment and determination by the Development Facilitation Program (DFP).

I am considering whether to prepare, adopt and approve draft Amendment C163egip to the East Gippsland Planning Scheme and exempt myself under 20(4) of the *Planning and Environment Act 1987* from the requirements of section 17, 18 and 19 of the Act and the Regulations. The amendment would facilitate the proposed use and development by implementing site-specific planning controls via the Specific Controls Overlay 2 and a new incorporated document titled '598-610 Main Street, Bairnsdale (May 2021)'.

To inform my decision about whether to prepare, adopt and approve Amendment C163egip and exempt myself under section 20(4) of the Act from the requirements of section 17, 18 and 19 of the Act and the Regulations, the Department of Environment, Land, Water and Planning (DELWP) consulted with several parties under section 20(5) of the Act to seek their views about the draft amendment. The parties consulted were East Gippsland Shire Council, the Department of Transport, the Department of Health, Landmor Pty Ltd (the proponent) and the owners and occupiers of surrounding properties. There were 11 submissions received, including from the council, the Department of Transport, the Department of Health, the proponent, Bairnsdale Commercial Pty Ltd (owner of Coles Bairnsdale), the Bairnsdale Chamber of Commerce and Industry, Dahlsen Bairnsdale, Toy World Bairnsdale and three from owners and occupiers of surrounding properties.

Since consultation under section 20(5) of the Act, minor administrative changes have been made to the proposed Amendment C163egip to reflect changes introduced by Amendment GC161, which introduced the Specific Controls Overlay and an SCO1 into the East Gippsland Planning Scheme. I have written to all submitters to inform them of these changes.

I have decided to refer this matter to the Priority Projects Standing Advisory Committee (SAC) for advice and recommendations about the appropriate drafting of Amendment C163egip if approval is recommended, the appropriateness of proposed restrictions about the use of and access arrangements to the balance of the land at the rear of the proposed development (known as the 'surplus land') and the reasonableness of developer contributions being sought by some submitters.

The submissions received will be provided to the SAC along with the draft Amendment C163egip documentation and supporting plans and assessments. Any additional submissions received that are not noted in this letter will be referred to the SAC separately.



The cost of the advisory committee will be met by the proponent, Landmor Pty Ltd.

If you would like more information about this matter, please email Dr Jane Homewood, Executive Director, Statutory Planning Services, DELWP, at jane.homewood@delwp.vic.gov.au.

Yours sincerely



HON RICHARD WYNNE MP
Minister for Planning

15/8/21

Appendix C Document list

Version 4: 7 October 2021

| No. | Date | Description | Presented by |
|-----|----------|---|--|
| 1 | 14/06/21 | Terms of Reference | Minister for Planning |
| 2 | 15/08/21 | Letter of Referral | " |
| 3 | 18/08/21 | Referred material including: <ul style="list-style-type: none"> - Submissions - Draft Planning Scheme Amendment - Application Documents - Plans and Reports | Development Facilitation Program (DELWP) |
| 4 | 24/08/21 | Notification letter | Committee Chair |
| 5 | 01/09/21 | Email to all parties providing referred documentation | " |
| 6 | 06/09/21 | Statement of Grounds | Mr Boocock, HWL Ebsworth Lawyers for Bairnsdale Commercial Pty Ltd |
| 7 | " | Statement of Grounds | Mr Padovan for DoT |
| 8 | " | Email in response to Committee directions and filing Statement of Grounds | Ms Reynolds for Council |
| 9 | " | Statement of Grounds | " |
| 10 | " | Statement of Grounds | Mr Dahlsen for JC Dahlsen Pty Ltd |
| 11 | " | Letter filing procedural matters and Statement of Grounds | Ms Choi, Norton Rose Fulbright for Landmor Pty Ltd |
| 12 | " | Statement of Grounds | Ms Savory, Bairnsdale Chamber of Commerce |
| 13 | " | Open letter to the East Gippsland Community | " |
| 14 | 07/09/21 | Letter confirming evidence to be called | Ms Choi |
| 15 | 10/09/21 | Directions and Timetable | Committee Chair |
| 16 | 14/09/21 | Letter filing evidence | Ms Choi |
| 17 | " | Evidence statement of Mr Barlow | " |
| 18 | " | Evidence statement of Mr Dimasi | " |
| 19 | " | Evidence statement of Mr Kiriakidis | " |
| 20 | " | Evidence statement of Mr Patrick | " |
| 21 | " | Landscape Plan of Mr Patrick | " |

| No. | Date | Description | Presented by |
|-----|--|---|-------------------------------------|
| 22 | " | Evidence statement of Mr Delaire | " |
| 23 | " | Amended Plans Statement of Changes | " |
| 24 | " | Amended Plans | " |
| 25 | " | Part A Submission | " |
| 26 | " | Letter | Mr Dahlsen |
| 27 | 17/09/21 | Response to Committee Direction (9) | Mr Cohen, DELWP |
| 28 | 23/09/21 | On-line Hearing details | Mr Sutton, Norton Rose Fulbright |
| 29 | " | Letter filing Part B Submission | " |
| 30 | " | Part B Submission | " |
| 31 | " | Email requesting order of witnesses | Mr Bartley, HWL Ebsworth Lawyers |
| 32 | " | Letter confirming order of witnesses | Mr Sutton |
| 33 | " | Distribution List and Timetable (Version 2) | Committee Chair |
| 34 | 14/09/21 (sequence is out of date order) | 598 Main Street, Bairnsdale - Planning Property Report | Ms Choi |
| 35 | " | 610 Main Street, Bairnsdale- Planning Property Report | " |
| 36 | " | Clause 32.08 General Residential Zone | " |
| 37 | " | Schedule 1 to Clause 32.08 General Residential Zone 1 | " |
| 38 | " | Clause 32.04 Mixed Use Zone | " |
| 39 | " | Schedule to Clause 32.04 Mixed Use Zone | " |
| 40 | " | Clause 43.02 Design and Development Overlay | " |
| 41 | " | Schedule 16 to Clause 43.02 Design and Development Overlay | " |
| 42 | " | Clause 45.12 Specific Controls Overlay | " |
| 43 | " | Schedule to Clause 45.12 Specific Controls Overlay | " |
| 44 | 27/09/21 | Presentation of Mr Barlow | |
| 45 | " | Gippsland Regional Growth Plan May 2014 | Mr Sutton |
| 46 | " | Bairnsdale Growth Strategy Volume 1 2009 | " |
| 47 | " | Bairnsdale Growth Strategy Volume 2 2009 | " |
| 48 | 28/09/21 | Timetable (Version 3) | " |
| 49 | " | Submission | Mr Richardson for Council |
| 50 | 29/09/21 | Draft Incorporated Document | Mr Sutton |

| No. | Date | Description | Presented by |
|-----|----------|---|---------------------|
| 51 | " | Submission | Ms Coughlan for DoT |
| 52 | " | Appendix 1 - Incorporated Document Suggested changes | " |
| 53 | 30/09/21 | PTV Standard rural bus stop | " |
| 54 | " | STD S0062 - flagpole footing | " |
| 55 | " | STD S0063 - flagpole footing detail | " |
| 56 | " | Email filing revised Incorporated Document | Mr Sutton |
| 57 | " | Revised Draft Incorporated Document | " |
| 58 | " | Letter of Mr Delaire | " |
| 59 | " | Letter of Mr Kiriakidis | " |
| 60 | 01/10/21 | Direction regarding the circulation of responses to the Proponent's draft Permit Conditions | Committee Chair |
| 61 | " | Submission | Mr Boocock |
| 62 | " | Kaufland Stores in Victoria Advisory Committee - Report 2 (AC) [2019] PPV 27 | " |
| 63 | " | Maverston Property Pty Ltd v Greater Bendigo CC [2013] VCAT 1244 | " |
| 64 | " | Moira C88 (PSA) [2019] PPV 34 | " |
| 65 | " | Pioneers Market Place Pty Ltd v Cardinia CC [2020] VCAT 1461 | " |
| 66 | " | Sunshine Vale Pty Ltd v Brimbank CC [2021] VCAT 1058 | " |
| 67 | " | Crothers v Moira SC [2019] VCAT 342 | " |
| 68 | " | Fabcot Pty Ltd v Latrobe CC [2007] VCAT 354 | " |
| 69 | " | Greater Geelong C321 (PSA) [2016] PPV 88 | " |
| 70 | " | Greater Shepparton C192 and C193 (PSA) [2017] PPV 105 | " |
| 71 | " | Submission | Mr Dahlsen |
| 72 | " | Submission | Ms Savory |
| 73 | " | Supplementary submission | Ms Coughlan |
| 74 | " | Appendix A – response to the draft Incorporated Document | " |
| 75 | " | Response to draft Incorporated Document | Mr Richardson |
| 76 | 04/10/21 | Summary of submission | Mr Dahlsen |
| 77 | " | Closing submissions in reply | Mr Sutton |
| 78 | " | Email, Mr Smith of Kmart to Council, 22 October 2020 | " |
| 79 | " | Councillor briefing presentation, 16 February 2021 | " |
| 80 | " | Email from Mr Serra, indicative site layout for Dalmahoy Street | " |

| No. | Date | Description | Presented by |
|-----|----------|---|--------------|
| 81 | “ | Revised Incorporated Document | “ |
| 82 | “ | STD S0067 site with no footpath | “ |
| 83 | “ | Email tabling Documents 81 and 82 | “ |
| 84 | “ | Email correspondence between Bairnsdale Chamber of Commerce and Kmart Group | Ms Savory |
| 85 | 05/10/21 | Supplementary submission | Ms Coughlan |
| 86 | 06/10/21 | Response to supplementary submission of DoT | Mr Sutton |

Appendix D Planning framework

Table 4 Planning Policy Framework: State and regional policies

| Relevant clauses |
|---|
| 11 Settlement |
| 11.01 Victoria |
| <p>11.01-1S Settlement</p> <p>To promote the sustainable growth and development of Victoria and deliver choice through a network of settlements</p> |
| <p>11.01-1R Settlement – Gippsland</p> <p>To support urban growth in regional cities including Bairnsdale and to allow them to provide services to their districts. To provide clearly defined and prosperous town centres.</p> |
| <p>11.03-1S Activity Centres</p> <p>To encourage the concentration of major retail into activity centres</p> |
| <p>11.03-6S Regional and local places</p> <p>To facilitate integrated place-based planning</p> |
| 15 Built Environment and Heritage |
| 15.01 Built Environment |
| <p>15.01-1S Urban design</p> <p>Create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.</p> <p>Strategies</p> <p>Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.</p> <p>Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.</p> <p>Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport</p> <p>Ensure that the design and location of publicly accessible private spaces, including car parking areas, forecourts and walkways is of a high standard, creates a safe environment for users and enables easy and efficient use.</p> <p>Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.</p> <p>Promote good design along and abutting transport corridors.</p> |

Relevant clauses

15.01-2S Building design

Achieve building design outcomes that contribute positively to the local context and enhance the public realm.

Strategies

Ensure a comprehensive site analysis forms the starting point of the design process and provides the basis for consideration of height, scale and massing of new development.

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.

Ensure that buildings and their interface with the public realm support the personal safety, perceptions of safety and proper security.

Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.

Ensure that development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.

Ensure development is designed to protect and enhance valued landmarks.

15.01-4R Healthy Neighbourhoods-Metropolitan Melbourne

Create 20-minute neighbourhoods where people have the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.

15.01 – 5S - Neighbourhood character

To recognise support and protect neighbourhood character.

Strategies

Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

17.Economic Development

17.01 Employment

17.01-1S – Diversified economy

To strengthen and diversify the economy.

Strategies

Protect and strengthen existing and planned employment areas and plan new employment areas.

Facilitate regional, cross border and inter-regional relationships to harness emerging economic opportunities.

Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.

Improve access to jobs closer to where people live.

Support rural economies to grow and diversify.

17.02 Commercial

Relevant clauses

17.02-1S – Business

To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

Strategies

Plan for the adequate supply of commercial land in appropriate locations.

Ensure that commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

17.02 – 1R Commercial Centres Gippsland

To support redevelopment initiatives in commercial centres that will be subject to significant growth, including Bairnsdale

17.02-2S - Out of centre development

Manage out of centre development.

Strategies

Ensure that out of centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

18 Transport

18.01 Integrated transport

18.01-1S Land use and transport planning

Create a safe and sustainable transport system by integrating land use and transport.

Strategies

Develop integrated and accessible transport networks to connect people to jobs and services and goods to market.

Plan urban development to make jobs and services more accessible by ensuring equitable access is provided to developments in accordance with forecast demand, taking advantage of all available modes of transport and to minimise adverse impacts on existing transport networks and the amenity of surrounding areas.

Integrate public transport and infrastructure into new development.

18.02 Movement Networks

18.02-4S - Car parking

Ensure an adequate supply of car parking that is appropriately designed and located.

Strategies

Allocate or require land to be set aside for car parking subject to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.

Encourage the efficient provision of car parking by consolidating car parking facilities.

Design and locate local car parking to:

- Protect the role and function of nearby local roads
- Enable easy and efficient use
- Enable the movement and delivery of goods

Relevant clauses

- Achieve a high standard of urban design and protect the amenity of the locality, including the amenity of pedestrians and other road users
- Create a safe environment, particularly at night
- Facilitate the use of public transport
- Protect the amenity of residential precincts from the effects of road congestion created by on-street car parking
- Make adequate provision for taxi ranks as part of activity centres, transport interchanges and major commercial, retail and community facilities.

Table 5 Planning Policy Framework: Local policies

Relevant clauses

21 Municipal Strategic Statement

21.02 Municipal overview

Provides an overview of East Gippsland the second largest municipality in the State and which includes the regional city of Bairnsdale which is the largest population centre in the municipality and as such serves as a regional retail and service centre.

Sets out the key influences relevant to planning for the municipality including

- slow economic growth
- high unemployment especially for young people
- narrow economic base
- lack of investment.

The Vision for the Shire is:

East Gippsland Shire Council will work with the community to ensure a sustainable future through liveable and productive communities supported by a healthy environment.

21.03 Settlement

Relevant objectives are:

- to make the best use of the community's investment in urban infrastructure and to provide support for community and commercial services.
- to build and support the urban centres so that they remain commercially viable and a focus for services to residents and their wider districts.

Strategies to support achieving these objectives include:

- encourage infill or dispersed development of existing towns in preference to dispersed development.
- encourage development of strong township centres through consolidation of retail and commercial areas.
- discourage development of 'mainstream' retail and commercial facilities outside these areas.
- encourage retail and commercial uses requiring larger sites to locate adjacent to central commercial areas rather than in free-standing sites on the outskirts on towns.

Relevant clauses

21.07 – Built Environment and heritage

Relevant objectives include:

- ensure that future development contributes to, reinforces and enhances East Gippsland's identity aesthetic quality and economic diversity.
- encourage high standards of design in all new developments with special emphasis on urban areas, coastal and lakeside areas and other localities of high landscape quality, and land adjacent to parks and reserves.
- support commercial development applications that provide weather protection elements such as awnings, and verandas which make a positive contribution to the visual quality of the building and public realm environment.
- support development that ensures ground floor windows and door openings to commercial developments remain transparent.

These objectives are supported by a number of strategies to guide their implementation.

21.09 Economic Development

A relevant objective is to:

- ensure that future development contributes to and enhances East Gippsland's identity, aesthetic quality, and economic diversity.

Strategies to guide implementation include:

- require applications for commercial and retail development within new residential growth areas to undertake an economic impact assessment to confirm the appropriate size and type of facilities to be provided in each centre.

21.10 Transport

Relevant objectives include:

maintain the efficiency and traffic capacity of highways and major roads and to protect and enhance the visual quality of road corridors, especially between towns.

Strategies to guide implementation include:

- minimise the number of access and egress points directly on to highways.
- assess the potential impact of new developments on the efficiency and safety of the road system in the area.
- restrict commercial development adjoining highways and major roads between towns, where such development has the potential to impact adversely on the efficiency and amenity of the road corridor.

21.12 Strategies for sub-regions, towns and localities

This clause includes Bairnsdale in the Lakes and Coastal sub-region of the Shire

The vision for Bairnsdale is:

- enhance Bairnsdale's role as the principal commercial and retail centre in the East Gippsland region, supplying a diverse range of goods and services and is the regional centre for public sector administration.

Among the attributes listed for Bairnsdale is:

- full range of retail & commercial facilities.

Strategies to support the development of Bairnsdale include:

Relevant clauses

- support development that encourages the revitalisation of Bairnsdale CBD identified in the Bairnsdale Growth Strategy 2009, Re-Imagining Bairnsdale Master Plan, and Improving Walking and Wayfinding in the Bairnsdale CBD - Draft Report, May (2011).

Strategies for the sub-region include:

- reinforce the role of Bairnsdale as the main commercial, retail and service centre for East Gippsland, while upgrading and revitalising business centres in other towns to serve local and district level needs.
- the core retail centre from Wood Street to Pyke Street (between Macleod and Riverine Streets) is confirmed as the major regional commercial centre. ... Any major retail development will be expected to locate within this core retail area; fragmentation will be actively discouraged.

Table 3 Other relevant strategic documents

Relevant Strategies

Gippsland Regional Growth Plan

The regional plan identified Bairnsdale's role as a regional centre providing employment and services for a wide area including the Gippsland lakes and town to the east of Bairnsdale. It identified the commercial centre of Bairnsdale as serving the town and the wider region in which it is located.

Bairnsdale Growth Strategy, 2009

This strategy which is now more than a decade old recognised the challenges facing the town centre. Identified issues included the divisive role of the highway with retail uses on each side, the fragmented nature of the many small land holdings which posed a challenge for the location of big box and homemaker uses and a poor relationship with the river environs.

Appendix E Committee recommended Incorporated Document

[Committee track added](#)

~~Committee track deleted~~

Based on Proponent's version in reply, 4 October 2021, Document 81

EAST GIPPSLAND PLANNING SCHEME

Incorporated document

598-610 Main Street, Bairnsdale (May 2021)

This document is an incorporated document in the East Gippsland Planning Scheme pursuant to Section 6(2)(j) of the *Planning and Environment Act 1987*

1.0 INTRODUCTION

The document is an incorporated document at the schedule to Clause 45.12 and the schedule to Clause 72.04 of the East Gippsland Planning Scheme (planning scheme).

The land identified in Clause 3.0 of this document may be developed in accordance with the specific controls and clauses contained in Clause 6.0 of this document.

The provisions of this incorporated document prevail over any contrary or inconsistent provision in the planning scheme.

2.0 PURPOSE

The purpose of this incorporated document is to permit the use and development of the “Department Store Land” described in Section 3.0 for a ‘Department store’, access to a Road Zone, Category 1 (RDZ1), a reduction in the standard car parking requirement and the display of advertising signage, generally in accordance with the plans approved consistent with Clause 4.0 of this incorporated document (“the Project”).

3.0 LAND

This incorporated document applies to the land at 598-610 Main Street, Bairnsdale, that is affected by the Specific Controls Overlay (SCO1) and as identified in Figure 1 below. The section of the land within the white dashed line is described within this incorporated document as “Surplus Land” and the section of the Land outside the white dashed line is described as “Department Store Land”.

In addition to the Specific Controls Overlay, the existing zone and overlay provisions continue to apply to the land identified as the Surplus Land.



Figure 1: Land subject to this incorporated document is highlighted by the red solid line. Surplus Land is highlighted by the white dashed line.

[The dimension on Figure 1 of 10.1m is to be changed to 11.7m.]

[The northern boundary of the area set aside for firefighting equipment be amended to be contiguous across the site to the west, thus removing that sliver of surplus land.](#)

4.0 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary or any inconsistent provision in the planning scheme, no planning permit is required for, and no planning provision in the planning scheme operates to prohibit, restrict or regulate the use and development of the Department Store Land for the purposes of the Project.

5.0 THIS DOCUMENT ALLOWS

The incorporated document allows the following use and development in relation to the Department Store Land:

- a) Use of land for the purpose of a Department store
- b) Demolition works
- c) Buildings and works for the construction of a Department store
- d) Creation and alteration of access to a Road Zone, Category 1 (RDZ1)
- e) Removal, destruction and lopping of vegetation
- f) Landscaping works
- g) Roadworks to Calvert Street
- h) Ancillary activities, including but not limited to:

- i Car parking, including a reduction in standard car parking requirements associated with the use
- ii Bicycle facilities
- iii Loading and unloading of vehicles
- iv Display of signage, including internally illuminated business identification signs and directional signs.

These activities must be generally in accordance with the following plans prepared by Select Architects Pty Ltd dated 10 September 2021 (TP01 dated 9 February 2021), modified to include changes required by the conditions of this incorporated document at Section 6.0, including any amendment to the plans that may be approved from time to time under the clauses of this document:

- TP01 – Site Context and Locality Plan
- TP02 – Existing and Demolition Site Plan
- TP03 – Design Response Plan
- TP04 – Proposed Floor Plan
- TP05 – Roof Plan
- TP06 – Proposed Elevations
- TP07 – Sections
- Any other plans or documents prepared to the satisfaction of the responsible authority as required at Section 6.0 of this incorporated document.

For avoidance of doubt, all plans submitted for endorsement under Section 6.0 of this incorporated document must be to the satisfaction of the responsible authority.

Any plans endorsed by the responsible authority pursuant to any condition of this incorporated document may be amended with the written consent of the responsible authority.

6.0 THE FOLLOWING REQUIREMENTS APPLY TO THIS DOCUMENT IN RELATION TO THE DEPARTMENT STORE LAND:

- 6.1 Prior to the commencement of works (excluding demolition, bulk earthworks and vegetation removal), amended plans must be submitted to and approved by the responsible authority. When approved, the plans will be the endorsed plans. The plans must be generally in accordance with the plans prepared by Select Architects Pty Ltd dated 10 September 2021, but modified to show:
- a) Details of any signs providing directional information within the car park and accessways, including bicycle signage.
 - b) A schedule of the proposed signs including their dimensions and definitions based on the “sign terms” described in Clause 73.02 of the East Gippsland Planning Scheme.
 - c) The location and appropriate labelling of each pylon sign in relation to the site.
 - d) Dimensions, material and finish of the proposed acoustic wall at the north of the site.
 - e) The Main Street pylon sign reduced to 8 metres in height.
 - f) The Calvert Street sign reduced to ~~2~~ 1.5 metres in width.
 - g) The painted geometric pattern extended to the full extent of the east elevation.
 - h) A pedestrian connection through the car park from Calvert Street to the Department store building, including any consequential changes to the parking, layout and landscape.
 - i) The three trailer bays re-dimensioned, with consequential layout changes including removal of one car space, as recommended in the plan by GTA Consultants (now Stantec) Drawing No. V202440-AT01-01 – Sheet 1 of 4 – Issue P7.
 - j) Design the median strip along Calvert Street to allow cars to safely right turn into the site from the north, but to prevent vehicles and trucks to use it as a U-turn.

- k) [Move the bus stop further south, closer to the main Calvert Street entrance, to minimise potential conflict with truck and waste traffic.](#)
- l) Any changes to the plans arising from the amended:
 - i. Sustainability Management Plan in accordance with Section 6.5 of this incorporated document.
 - ii. Stormwater Management Plan in accordance with Section 6.6 of this incorporated document.

Landscape Plan

- 6.2 Within three months of the commencement of works, a Landscape Plan must be submitted to and approved by the responsible authority. The Landscape Plan must be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architect Pty Ltd, dated September 2021.
- 6.3 Prior to the commencement of the use, or by a later date approved by the responsible authority in writing, the landscaping works shown on the Landscape Plan must be carried out and completed, including the functional operation of all irrigation systems, to the satisfaction of the responsible authority.

Landscape Management Report

- 6.4 Concurrently with the endorsement of the Landscape Plan in Section 6.3 of this incorporated document, a Landscape Management Report prepared by a suitably qualified person must be submitted to and approved by the responsible authority. The Landscape Management Report must include:
 - a) The watering regime to be followed for all landscaped areas during the establishment period (i.e. 24 months after planting), and the ongoing period following establishment.
 - b) Details of the ongoing maintenance of landscaped areas, including a requirement to replace dead or diseased plantings.

Sustainability Management Plan

- 6.5 Prior to the commencement of works (excluding demolition, bulk earthworks and vegetation removal), a Sustainability Management Plan must be submitted to and approved by the responsible authority. The Sustainability Management Plan must be generally in accordance with the Sustainability Management Plan prepared by Ark Resources Pty Ltd, dated 15 February 2021.

Stormwater Management Plan

- 6.6 Prior to the commencement of works (excluding demolition, bulk earthworks and vegetation removal), a Stormwater Management Plan which demonstrates compliance with Clause 53.18-5 of the East Gippsland Planning Scheme must be submitted to and approved by the responsible authority. The Stormwater Management Plan must be generally in accordance with the proposal set out in the Sustainability Management Plan prepared by Ark Resources Pty Ltd, dated 15 February 2021.

Lighting Plan

- 6.7 Within three months of the commencement of works (excluding demolition, bulk earthworks and vegetation removal), a Lighting Plan must be submitted to and approved by the responsible authority. The plan must be prepared by a suitably qualified person and include:
 - a) The location and format of external lighting at the property.
 - b) Mechanisms for safety and security (e.g. time sensors, etc).
 - c) Any relevant guidelines and/or Australian Standards and methods for achievement of compliance to avoid unreasonable amenity impacts to surrounding residential properties.
 - d) Details of any maintenance and inspection schedules.

- 6.8 All external lighting must be appropriately baffled to the satisfaction of the responsible authority to prevent adverse amenity impacts on adjoining and nearby properties.

Construction Management Plan

- 6.9 Prior to the commencement of works, a Construction Management Plan must be submitted to and approved by the responsible authority [and the Head, Transport for Victoria](#). The Construction Management Plan must satisfy all relevant Environmental Protection Authority (EPA) requirements and must include details pertaining to:
- a) Project management and staging.
 - b) Traffic management, including transportation routes associated with the movement of supplies to and from the land.
 - c) Hours of construction, including the limitation of construction work to the hours of 7:00am and 7:00pm Monday – Saturday.
 - d) Management of lighting, including the appropriate location and baffling of security lighting.
 - e) Dust emission controls, including the use of water trucks.
 - f) Noise emission and vibration controls.
 - g) Environmental awareness and training.
 - h) Surface water and drainage.
 - i) Soil and earthworks, including contamination.
 - j) Management of dangerous goods and refuelling.
 - k) Waste management.

Noise Management

- 6.10 Prior to the commencement of the use, a suitably qualified acoustic engineer must inspect the acoustic fence and confirm that it and other noise attenuation measures at the site are compliant with the recommendations contained within the Acoustic Report prepared by Marshall Day Acoustics, dated 14 September 2021. Prior to the commencement of the use, an Acoustic Statement of Compliance must be provided to the satisfaction of the responsible authority.
- 6.11 The use must be managed ~~so as~~ to minimise the emission of unreasonable noise to the environment in accordance with the Environment Protection Act 2017 [and EPA publication 1826, Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues dated May 2021](#), to the satisfaction of the Responsible Authority.

Car Parking, Bicycle Facilities and Access

- 6.12 Prior to the commencement of the use, areas set aside for parked vehicles, bicycles and associated facilities and access lanes as shown on the endorsed plans must be:
- a) Constructed.
 - b) Properly formed to such levels that they can be used in accordance with the plans.
 - c) Surfaced with an all-weather sealcoat.
 - d) Drained and maintained.
 - e) Line marked to indicate each car space and all access lanes.
 - f) Properly lit.

Waste Management Plan

- 6.13 Prior to the commencement of the use, a Waste Management Plan for the site must be prepared by a suitably qualified person and must be submitted to and approved by the responsible authority. The Waste Management Plan must be generally in accordance with the

Waste Management Plan prepared by Leigh Design, dated 16 February 2021, and must include the following:

- a) Adequate areas set aside for storage and disposal of waste.
- b) The type of waste and recyclable materials, bins and containers.
- c) The location and space allocated for storage of waste and recyclable materials, bins and containers.
- d) Collective service arrangements including the frequency and times of collection.
- e) The path of access for both users and collection vehicles.
- f) Measures to manage and minimise noise, odour and litter.

Signage

- 6.14 The location and details of signs, including supporting structures, as shown on the endorsed plans, must not be altered unless with the prior written consent of the responsible authority.
- 6.15 The signs must not contain any flashing or moving light, to the satisfaction of the responsible authority. Illuminated signage must be switched off outside of the Department store's business hours.
- 6.16 The signs must be constructed and maintained to the satisfaction of the responsible authority.
- 6.17 The sign lighting must be designed, baffled and located to the satisfaction of the responsible authority.
- 6.18 No bunting, streamers or the like shall be displayed unless with the prior written consent of the responsible authority.

Road works

- 6.19 Prior to the commencement of the ~~road~~ works, a Traffic Management Plan (TMP) must be prepared by a suitably qualified traffic engineer, to the satisfaction of the responsible authority and the Head, Transport for Victoria. The TMP must address the following matters:
 - a. A Functional Layout Plan for Princes Highway East (Main Street), [Calvert Street to the bus stop or the northern edge of the access road](#) and the Main Street/Calvert Street intersection, generally in accordance with the plans by GTA Consultants (now Stantec), Drawing No. V202440-01-01, Issue P3, dated 02/09/2021 and Drawing No. V202440-01-04, Issue P3, dated 02/09/2021.
 - b. An upgraded bus stop on Calvert Street to be *Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002* approved stop including:
 - i. Upgraded concrete bus stop hardstand including post, flag and tactile ground surface indicators generally in accordance with [the Concrete Plan Detail within PTV drawing – 13222-1 Standard Rural Bus Stop but modified to provide a pram/wheelchair ramp crossing to Calvert Street and ~~PTV Standard Drawing Number STD S0067 \(Rev A\) – Bus Stop for a site with no existing footpath;~~](#) Drawing Number STD S0062 (Rev A) – *Standard Bus Stop Design Flag Pole Footing Details, Installation Notes and Connection Details* and STD S0063 (Rev A) – *Standard Bus Stop Design Single and Double Sided Flag Mounted Sign Installation Specification*
 - c. Provide a [pedestrian refuge/safe ~~footpath~~](#) crossing point [on Calvert Street, located within the central median closest to the site](#) with pram crossing on either side, located to generally line up with the bus stop.
- 6.20 All roadworks, [mitigation works](#), and management measures approved in the TMP must be implemented prior to the commencement of the use to the satisfaction of and at no cost to the Head, Transport for Victoria [or the responsible authority](#).

General Conditions

- 6.21 The use and development must be undertaken generally in accordance with the approved plans and documents described in this incorporated document.

- 6.22 The use and development as shown on the approved plans must not be altered without the written consent of the responsible authority.
- 6.23 All buildings and works must be maintained in good order and appearance to the satisfaction of the responsible authority.
- 6.24 Parking areas and access lanes must be kept available for these purposes at all times.
- 6.25 The loading and unloading of goods from vehicles must only be carried out on the land. Trucks accessing the loading bay are permitted between 7:00am and 7:00pm Monday – Friday, and 8:00am and 6:00pm Saturday – Sunday, unless with the prior written consent of the responsible authority.
- 6.26 Upon completion of the buildings and works, the site must be cleared of all excess and unused building materials and debris to the satisfaction of the responsible authority.
- 6.27 The amenity of the area must not be detrimentally affected by the use of development, through the:
 - a) Transport of any materials, goods or commodities to and from the land.
 - b) Appearance of any building, works or materials.
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash dust, waste water or products, grit or oil.
 - d) Presence of vermin.
- 6.28 No plant, equipment, services or architectural features, other than those shown on the endorsed plans, are permitted above the roof level of the building(s) without the prior written consent of the responsible authority and Department of Health.
- 6.29 The land use is permitted to operate:
 - a. From February – October: between the hours of 7:00am and 10:00pm seven days per week, unless with the prior written consent of the responsible authority; and
 - b. From November – January: between the hours of 7:00am and midnight, seven days per week.
- 6.30 Waste and recycling collections are permitted between 7:00am and 6:00pm weekdays and 7:00am and 1pm Saturday, unless with the prior written consent of the responsible authority.

Victorian Health Building Authority conditions

- 6.31 Any change to the maximum building elevation, including any mechanical plant equipment at a height greater than 44.0m AHD, must be submitted to the Department of Health for approval.
- 6.32 All crane activity must remain below the helicopter flight path Obstacle Limitation Surface at 56.0m AHD and must not extend beyond the boundaries of the site. Any crane activity must be advised to the Department of Health at least five business days prior to commencement.
- 6.33 Prior to the commencement of development or by such time as agreed by the Minister and the Department of Health in writing, a Flight Path Construction Management Plan (FPCMP) must be submitted to and be approved by the Minister with the consent in writing of the Department of Health. The FPCMP must include measures to minimise the impact of the construction of the proposed development on the safe and unfettered operation of the Bairnsdale Hospital helipad. The management measures incorporated within the plan must be implemented during the construction of the building to the satisfaction of the Department of Health and the Minister.
- 6.34 Cranes and other associated construction equipment must be fitted with continuously operated low intensity steady red obstruction lighting in accordance with Chapter 9.4 of the Civil Aviation Safety Authority Manual of Standards Part 139 at their highest point(s) to ensure that they can be seen within the helicopter flight paths.
- 6.35 Any exhaust plumes from the development must not exceed an upward velocity of 4.3 metres per second. Any exhaust plumes that are proposed to exceed this maximum velocity must be assessed and provided to the Department of Health for approval.

Development Contribution

- 6.36 Prior to the commencement of works (excluding demolition, bulk earthworks and vegetation removal), a contribution of \$25,000 must be paid to East Gippsland Shire Council to be used towards public realm upgrades by the Council.

THE FOLLOWING REQUIREMENTS APPLY TO THIS DOCUMENT IN RELATION TO THE SURPLUS LAND:

The following conditions apply to a planning permit application for the use, subdivision or to construct a building or construct or carry out works on all or part of the Surplus Land (shown in Figure 1 of this incorporated document) where that application relies on access to Calvert Street for:

- A development comprising more than 10 residential dwellings; or
- A development comprising more than 10 residential allotments with associated common property; or
- A development that would generate more than eight vehicle movements from the Surplus Land via Calvert Street during weekdays between 3.00pm to 4.00pm or Saturdays between 10:30am and 11:30am.

- 6.37 [Vehicular access to the Surplus Land must be created as a road reserve and constructed to meet the requirements of the local authority.](#)

- 6.38 The application must demonstrate that any proposed vehicular access to Calvert Street will not have unreasonable traffic impacts to the Road Zone 1 (Main Street, Bairnsdale), to the satisfaction of the Department of Transport.

- 6.39 Any planning permit or other form of planning approval granted for the use or development of the Surplus Land must include the following conditions, or similar, to the satisfaction of the responsible authority:

- a) Access to and from the Surplus Land must not be provided via the loading bay and western driveway associated with the Department store at 598-610 Main Street, Bairnsdale with frontage to Main Street.
- b) Clearly identifiable street signage must be provided on Calvert Street for the purpose of property identification and emergency vehicle access, to the satisfaction of the responsible authority.

7.0 EXPIRY

This incorporated document will expire if one of the following circumstances applies:

- The development is not started within one year of the date of the gazettal of Amendment C163egip.

The responsible authority may extend the periods referred to if a request is made in writing before these controls expire or within 6 months afterwards.