

Planning and Environment Act 1987

Advisory Committee Report – Report No. 2

Kaufland Stores in Victoria Advisory Committee

3 May 2019

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Kathy Mitchell, Chair



William O'Neil, Deputy Chair



Suzanne Barker, Member



Kate Partenio, Member

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List of Abbreviations

ACP	Advisory Committee Plan
ACS	Activity Centre Strategy Review 2018
the Act	<i>Planning and Environment Act 1987</i>
ACZ1	Activity Centre Zone Schedule 1
ARI	Average Recurrence Interval
the Committee	Kaufland Stores in Victoria Advisory Committee
DELWP	Department of Environment, Land, Water and Planning
EIA	Economic Impact Assessment
EPA	Environment Protection Authority
ESD	Environmentally Sustainable Development
Hume	City of Hume
ILS	Industrial Land Strategy 2018
Kaufland	Kaufland Australia Pty Ltd
Kingston	City of Kingston
LPS	Mornington Peninsula Localised Planning Statement
MAC	Major Activity Centre
MGAIR	Master Grocers Association Independent Retailers
Mornington Peninsula	Mornington Peninsula Shire Council
NEIC	National Employment and Innovation Cluster
NIRV	Noise from Industry in Regional Victoria
PPF	Planning Policy Framework
PPV	Planning Panels Victoria
Report No. 1	Report 1 of the Committee submitted on 7 February 2019
SEPP N-1	State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1
VCAT	Victorian Civil and Administrative Tribunal

Executive summary

(i) Summary

This is Report No. 2 of the Kaufland Stores in Victoria Advisory Committee. It should be read in part, with the Tranche 1 Report which was submitted to the Minister for Planning on 7 February 2019, as many issues addressed in that report are not repeated.

Kaufland, a German-based grocery chain and a subsidiary of the Schwartz Group, proposes to enter the Victorian retail market through the development of six supermarket stores with locations across metropolitan Melbourne in Chirnside Park, Coolaroo, Dandenong, Epping, Oakleigh South and Mornington.

Kaufland sought a streamlined public process to provide the necessary planning permissions by using the Specific Controls Overlay and the Incorporated Document as the means for planning approval. It has sought all approvals be considered through a public Advisory Committee process, which the Minister for Planning supported.

The Minister for Planning appointed the *Kaufland Stores in Victoria Advisory Committee* on 24 July 2018 to provide advice on all relevant planning matters associated with the location, development and use of the proposals, including advice on the site-specific planning scheme amendments proposed. The Committee's Terms of Reference (refer Appendix A) require it to consider submissions made to the publicly exhibited draft amendments; hold a Public Hearing; provide independent advice on the planning merits of proposals; and make recommendations whether planning permissions should be granted, with or without modification.

This report considers the Tranche 2 sites at Coolaroo, Mornington and Oakleigh South.

The proposals consist of three draft Planning Scheme Amendments which apply the Specific Controls Overlay, accompanied by an Incorporated Document to the relevant local planning scheme, Hume, Mornington Peninsula and Kingston, respectively. The content of the Incorporated Document controls the use and development proposed on each site. This approach was the subject of objecting submissions, some of which argued this as providing preferential treatment outside the standard planning permit process.

Following an extensive exhibition process (with notification being far wider than if it went through a standard planning permit application process), 100 submissions were received in total for all three sites, of which 83 related to the Mornington proposal (Appendix B).

A Directions Hearing was held on Friday 8 February 2019, and Public Hearings were held over 18 days from 25 February to 2 April 2019 to consider submissions and evidence.

The key issues raised in submissions are summarised in Chapter 1.5 of this report. Common issues across all three proposals are addressed in Chapter 3, including matters relating to:

- application of the Specific Controls Overlay and Incorporated Document
- alternative sites
- signage
- hours of operation.

The specific issues relating to each site are addressed in Chapter 4 (Coolaroo), Chapter 5 (Mornington) and Chapter 6 (Oakleigh South). Chapter 7 provides an overview of how the Committee has addressed its Terms of Reference.

Having considered all submissions and evidence presented in response to exhibition of the proposals as well as what was presented and tested during the course of the Public Hearing, the Committee finds that the proposed use of the Specific Controls Overlay and Incorporated Documents is reasonable and can be supported.

However, unlike Tranche 1, there were significant issues with each of the three sites. This has resulted in the Committee supporting the proposal at Coolaroo, not supporting the proposal at Mornington, and conditionally supporting the proposal at Oakleigh South pending master planning of the whole site to ensure that matters concerning the siting, design, and delivery of the supermarket are integrated with the siting, design and delivery of the proposed National Headquarters. The Committee recommends accordingly.

(ii) Recommendations

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

- 1. Approve the draft amendment to the Hume Planning Scheme to facilitate the use and development of the land at 1550 Pascoe Vale Road, Coolaroo for a Kaufland supermarket and complementary uses with associated carparking and signage in accordance with the approved Incorporated Document, subject to the following changes:**
 - a) Replace the exhibited version of the Incorporated Document with the revised version (Appendix E) and make any consequential changes to Clause 72.01 if required.**
 - b) Include the Hume Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**
- 2. Abandon the draft amendment to the Mornington Peninsula Planning Scheme to facilitate the use and development of the land at 1158 Nepean Highway Mornington for a Kaufland supermarket and complementary uses with associated carparking and signage.**

Should this recommendation not be accepted, then any approval for the site should be subject to the following changes:

- a) Replace the exhibited version of the Incorporated Document with the revised version (Appendix F) and make any consequential changes to Clause 72.01 if required.**
 - b) Include the Mornington Peninsula Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**
- 3. Approve the draft amendment to the Kingston Planning Scheme to facilitate the use and development of the land at part 1126 – 1146 Centre Road, Oakleigh South for a Kaufland supermarket and complementary uses with associated carparking and signage in accordance with the approved Incorporated Document, subject to:**
 - a) Defer approval of the supermarket proposal until the design and location of the supermarket is reviewed and co-ordinated with the siting, design and**

delivery of the National Headquarters via a combined master planning process to ensure an integrated outcome.

Should this recommendation not be accepted, then any approval for the site should be subject to the following changes:

- b) Replace the exhibited version of the Incorporated Document with the revised version (Appendix G) and make any consequential changes to Clause 72.01 if required.**
- c) Include the Kingston Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**

1 Introduction

1.1 The proposal

Kaufland is a German supermarket chain that is seeking to enter the Victorian retail market by establishing an initial presence of six stores in metropolitan Melbourne. A summary of the six proposed store locations and other site details are summarised in Table 1.

Table 1 Summary of store location and site details

SITE	LGA	ZONE	OVERLAYS	SITE AREA (sqm)	GFA (sqm)	CAR PARKS
1 Gladstone Road, Dandenong	Greater Dandenong	Commercial 2	Nil	30,607	6,680	456
592-694 High Street, Epping	Whittlesea	Activity Centre 1	Development Contributions Plan Overlays 3 and 14, Development Contributions Plan Overlay 14, Environmental Audit Overlay, Parking Overlay 1	30,885	6,717	494
1126-1146 Centre Road, Oakleigh South	Kingston	Industrial 1	Nil	44,085	6,863	480
1550 Pascoe Vale Road, Coolaroo	Hume	Commercial 2	Special Building Overlay	54,153	6,905	549
266-268 Maroondah Highway, Chirnside Park	Yarra Ranges	Commercial 1	Development Contributions Plan Overlay 1, Special Building Overlay	39,496	6,886	423
1158 Nepean Highway, Mornington	Mornington Peninsula	Industrial 3	Development Plan Overlay 2	19,147	7,584	430

Source: Town Planning Assessment, Kaufland Store Network – Victorian Entry Proposal, Planning & Property Partners

To facilitate this entry into the Victoria market, Kaufland sought a streamlined planning process from the Minister for Planning to assist the review and assessment process for each of its proposed sites using the Specific Controls Overlay and an Incorporated Document.

This report deals with Tranche 2 of the sites referred, these being sites in Coolaroo, Mornington and Oakleigh South. The Tranche 1 report dealing with sites at Chirnside Park, Dandenong and Epping was submitted to the Minister for Planning on 7 February 2019 (Report No. 1) and was released on 8 March 2019. The recommendations of the Committee were supported by the Minister for Planning and the planning permissions granted accordingly.

1.2 The Advisory Committee

The Minister for Planning appointed the Kaufland Stores in Victoria Advisory Committee (the Committee) on 24 July 2018 under the provisions of s151 of the *Planning and Environment Act 1987* (the Act) to consider submissions and provide advice on the redevelopment proposal of the six referred sites in metropolitan Melbourne identified in Table 1. The Committee comprises:

- Kathy Mitchell – Chair
- Rodger Eade – Deputy Chair (to 31 October 2018)
- William O’Neil – Deputy Chair (from 1 November 2018)
- Suzanne Barker
- Kate Partenio.

The Committee is assisted by Andrea Harwood, Senior Project Manager and Joseph Morrow, Project Officer from Planning Panels Victoria (PPV).

Due to the later than expected exhibition of the Tranche 1 sites, Professor Eade had no role in this Committee process.

The Terms of Reference sets out the purpose of the Committee at Clause 3 which is to:

... Provide advice to the Minister for Planning on all relevant planning matters associated with the location, development and use of six proposed Kaufland supermarket-based stores in metropolitan Melbourne and the national headquarters proposed to be co-located with the proposed store at Oakleigh South. This includes advice on the site-specific planning scheme amendments proposed for each of the relevant planning scheme to facilitate the establishment of the stores, and/or any other planning mechanism that is proposed.

The Terms of Reference provide that the Committee undertakes its work in the following stages:

- notice and exhibition
- public hearings
- outcomes.

Clauses 12 to 17 specify a range of direct and public notices which were required to be undertaken as part of the public exhibition phase, which is the responsibility of the Department of Environment, Land, Water and Planning (DELWP). The Committee had no role in that process and DELWP summarised the extent of notification in Document 9 (see Chapter 3.1).

As a point of difference to Tranche 1, there are two sites in Tranche 2 (Mornington and Oakleigh South) where supermarket of the scale proposed is prohibited, and a rezoning through a Planning Scheme Amendment would have normally been required to allow consideration of the proposed uses.

1.3 Submissions and public hearings

The Terms of Reference require the Committee to carry out a Public Hearing and provide all submitters with the opportunity to be heard.

A total of 100 submissions were received by PPV across the three sites and are recorded at Appendix B.

A Directions Hearing was held on Friday 8 February 2019, and Public Hearings were held at PPV and Mornington over 18 days on 25, 27, and 28 February, 1, 4, 5, 6, 8, 12, 13, 14, 19, 20, 21, 26 and 27 March and 1 and 2 April 2019 to consider submissions and evidence. The parties to the Hearing are provided in Appendix C.

In accordance with Clause 21 of the Terms of Reference, the Committee conducted the Public Hearing either with the full Committee or as a quorum of two. The Chair and Deputy Chair were present during the entire hearing process.

The Outcomes at Clause 22 of the Terms of Reference note the Committee is to produce a written report or reports for the Minister for Planning providing:

- recommendations for each site and advice on whether the site is appropriate for the proposed use
- assessment of relevant planning provisions and recommendations for any suggested amendments to the existing planning controls
- assessment of each development and any conditions that should apply to the use and development
- assessment of submissions.

Prior to the commencement of the Public Hearing, the Committee undertook unaccompanied inspection of the Tranche 2 sites and surrounds. Sites and areas inspected included:

Coolaroo

- subject site and immediate surrounds
- Roxburgh Park Major Activity Centre, including Roxburgh Park Village shopping centre (C04)
- Roxburgh Park residential areas.

Mornington

- subject site and immediate surrounds, including the Bata Australia site
- Mt Eliza Square at 85 Mt Eliza Way, Blackbrook site, (Submission) M82
- Aventus Mornington Homemaker, 1158 Nepean Highway, M75
- Mornington Central Shopping Centre, Vicinity Centre, 78 Barkley Street, M74
- Mornington Village Shopping Centre, Best Hooper, 241 Main Street, M77
- former Masters site on Mornington-Tyabb Road
- Bentons Square Shopping Centre (corner Dunns and Bentons Road, Mount Martha)
- Mount Martha Village (corner Bay Road and Esplanade, Mount Martha).

Oakleigh South

- subject site and immediate surrounds
- Murrumbeena IGA Express, 235 Murrumbeena Road, (Submission) OS07
- Bentleigh East Foodworks, 933 Centre Road, OS05

- Oakleigh Central, Vicinity Centre, 39 Hanover Street, Oakleigh, OS04
- Stockland site, 1126 - 1146 Centre Road, OS09
- Mulgrave IGA Xpress, 36 Wanda Street, Mulgrave, OS06.

It supplemented this with further inspections at the Mornington site as well as Foodworks when the Committee held three days of hearings in Mornington and other inspections of specific sites, including the Meadow Heights Shopping Centre (including Morgan's IGA), Paring Boulevard (C05).

The Committee noted that at the site inspection for Oakleigh South, some Bunnings staff observed it walking around and approached to see if it *"needed any assistance"*. A staff member asked what the Committee were doing so the Chair briefly explained the purpose of the visit. That person volunteered that the Bunnings operation was moving to the former Masters building at Oakleigh South on the corner of Warrigal Road and Centre Road because the Masters building is smaller, and its current location was too large for the turnover generated.

With regard to the Mornington inspection, Ms Partenio noted that in 2018 in her role as a Victorian Civil and Administrative Tribunal (VCAT) member, she determined a case regarding development of a car park on Oakbank Road opposite the Padua College Mornington Campus for the purpose of school parking. The primary issue in that case was the use of the land for school purposes in a Green Wedge Zone and it did not consider traffic impacts at Nepean Highway. The Committee noted that case gave her some familiarity with the school's operations.

Both of these matters were declared at the opening of the Hearing.

1.4 Procedural issues

(i) Committee declarations

At the Directions Hearing, the following declaration was made about Ms Barker, Committee Member. The Committee noted Ms Barker is a contracting consultant to the Colac Otway Shire and part of that role includes acting as the Project Manager and stakeholder/community engagement facilitator for the Colac Otway Tourism Parking and Traffic Strategy, which is being undertaken by GTA Consultants. GTA Consultants have led the traffic impact studies for Kaufland Australia.

Additionally, Mr King who represented the City of Hume for the Coolaroo site was the former General Manager Planning of Colac Otway Shire and Ms Barker was a former Coordinator of Strategic Planning. Ms Barker advised that while she did not report to Mr King, she worked with him on strategic planning matters. That working relationship ended over two years ago when both left the Council.

All parties in attendance at the Directions Hearing were specifically invited to raise any issues about these declarations and no party or individual raised any issues in response. Further, the declaration was noted in the letter from the Committee advising the outcome of the Directions Hearing and the timetable (Document 7).

(ii) Declaration of witnesses

Two of the witnesses for Mornington Peninsula (Mr Haratsis and Mr Papworth) did not provide the appropriate declarations in their evidence statements in accordance with Directions provided by the Committee in its letter of 11 February 2019 (Document 7). Further, Mr Haratsis did not provide a declaration for Vicinity Centres (Coolaroo). These were subsequently provided by Mr Haratsis (Documents 144 and 145 for Mornington and Document 158 for Coolaroo), and by Mr Papworth (Document 146 for Mornington).

During the course of the Hearing, Mr O'Farrell sought declarations from Mr Dimasi about the extent of advice provided by him to Kaufland in relation to whether he advised Kaufland on other sites aside from those under consideration. Mr Dimasi provided two declarations and confirmed that apart from the Economic Impact Assessments and the expert evidence provided, he had not undertaken any other paid work for Kaufland (Documents 98 and 164).

(iii) Serving and filing of evidence**Nomination of experts**

PPV takes its obligations to manage any real or perceived conflicts seriously. To do this, it requires the cooperation of all parties participating in the process, particularly by nominating advocates and expert witnesses by specified dates. While most parties completed this information or provided this to the Office of PPV, this was not the case for all.

At the Directions Hearing, the Committee requested that parties who had not yet confirmed their experts, to verbally confirm this information. In its written Directions (Document 7) it directed all parties to confirm all witnesses by 14 February 2019. Confirmation was not received from Blackbrook and the verbal confirmation received by Vicinity Centres did not reflect the experts who ultimately filed evidence.

The Committee accommodated Blackbrook as a late submitter and adjusted its proposed timetable to accommodate the limited availability of its advocate.

As a result of these issues, there was the potential for the Chair to be conflicted out of the Hearing at very late notice, due to no notice being provided by Rigby Cooke that a key planning witness was giving evidence until that evidence was received.

Format of reports

The Committee directed that documents be provided in A4 format and many were submitted in A3. Some of these were very difficult to read electronically and difficult to file. It noted in opening that it could see no reason why any could not have been provided in A4 format, with some pages only appended in A3 format, for example, relevant plans or maps.

Serving of evidence

The Committee noted that dates were set for the Hearing and serving of evidence early in the exhibition process. This was reiterated in the acknowledgment and notification letters on 30 and 31 January and 1 February 2019.

Through its written Directions (Document 7), the Committee directed that all evidence be filed by Monday 18 February 2019 except Planning and Economic statements, with those to be filed by Wednesday 20 February 2019.

A further Direction (Document 22) was issued by the Committee on 20 February in response to a request received by Harwood Andrews (Document 21) to extend the timeframe for the filing of evidence. In considering this request, the Committee considered that it would extend the date for serving of evidence to all parties for procedural fairness to 9.00am on 21 February 2019. Kaufland and Mornington Peninsula generally met this Direction.

Despite receiving no request to serve late evidence by Rigby Cooke (for Vicinity Centres and Blackbrook) and seeking a response to a request about when evidence would be served, no response was provided, nor was the email acknowledged. Evidence from Rigby Cooke for Vicinity Centres (Oakleigh South and Mornington) was received electronically after the close of business on 21 February 2019. Hardcopies were received at lunchtime the day after.

Evidence from Rigby Cooke for Blackbrook was received electronically at 10.30am on 22 February and evidence for Vicinity Centres (Coolaroo) was received electronically at 12.01pm on Friday 22 February. The hardcopies were received later that day. No notice or explanation for the late filing of evidence was provided.

(iv) Extent of notice

During the Hearing, the Committee questioned the extent of notification with regard to the Coolaroo site (Document 67). Mr Kirkland of DELWP provided a response on 4 March 2019 (Document 72). No party took issue with this and the matter is discussed further in Chapter 3.1.

(v) Acceptance of late submission

The Committee was requested to hear a submission from a resident in Mornington. The individual had not lodged a submission. No party to the hearing opposed the request, subject to the individual lodging a written submission. The individual complied with the Committee's Direction to provide a written submission (M83) and was subsequently accommodated on the hearing timetable.

(vi) Release of Tranche 1 Report

The Committee's Tranche 1 report was publicly released at 10.00am on 8 March 2019 following a decision by the Minister for Planning to approve Planning Scheme Amendment GC123 to the Greater Dandenong, Whittlesea and Yarra Ranges Planning Schemes. The Report's release coincided with Day 8 of the Hearing and parties were advised accordingly by the Chair during preliminary matters.

Parties, including Mr Biacsi (who was giving evidence at the time), were asked to advise the Committee whether they were aware of the approval and release of the Report. Ms Forsyth advised that Kaufland were unaware that such approval had been granted and had not viewed the Report. All parties in attendance and Mr Biacsi advised in a similar nature that they were unaware that a decision had been made on the Tranche 1 sites and had not viewed the report.

The Committee adjourned the Hearing for 45 minutes to allow parties the opportunity to view the Report. Following the adjournment, the Committee determined to proceed with the Hearing on the basis that expert witnesses may be recalled by the Committee if required.

1.5 Summary of issues raised in submissions

The key issues raised in submissions are briefly summarised as follows:

(i) Common issues

The key issues raised of a general nature were similar to those considered in the Tranche 1 report and are not repeated. Others where some discussion is warranted included:

- choice of planning control
- whether the Kaufland supermarket proposal could be accommodated on alternative sites
- scale and height of the pylon sign type 2
- hours of operation.

(ii) Coolaroo

The key issues raised in relation to Coolaroo included:

- site is not in-centre nor edge of centre
- proposal is contrary to planning policy
- proposal will have detrimental impact on nearby centres and the Meadow Heights IGA
- parking and access.

(iii) Mornington

The key issues raised in relation to Mornington included:

- proposal not supported by planning policy
- proposal is out-of-centre
- use is prohibited
- no Development Plan for the whole site
- urban design and landscaping
- traffic and access
- extent of signage.

(iv) Oakleigh South

The key issues raised in relation to Oakleigh South included:

- site not in or near an Activity Centre
- use is prohibited
- site should be planned with the proposed National Headquarters
- urban design and landscaping
- traffic and access
- loss of significant trees and need for better landscape planting along the main roads.

1.6 Approach to this report

The Committee has considered all written submissions made in response to the exhibition of the proposal, observations from site visits, and submissions, evidence and other material presented to it during the Hearing.

All submissions and materials have been considered by the Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The Committee addressed various aspects of State policy in its Tranche 1 report as well as common issues which not be repeated in this report.

This Report deals with the issues under the following headings:

- Planning context
- Common issues
- Coolaroo
- Mornington
- Oakleigh South
- Summary response to Terms of Reference.

The Committee has assessed the applications primarily based on the set of Advisory Committee Plans (ACP) provided in the map book tabled on day 1 of the Hearing (Document 34). The Committee notes and has had regard to a number of updated/modified plans that were tabled during the Hearing by Kaufland in response to matters raised in submissions and evidence. The updated plans include:

- Oakleigh South - Plan TP-04, revision P4, proposed site and ground floor plan (Document 192)
- Mornington - Plan TP-04, revision P3 proposed site and ground floor plan (Document 134).

The Committee has adopted the final version of the Incorporated Documents provided by Kaufland (Documents 208 to 213) as the base documents for its recommendations, using tracked changes included as Appendices E, F and G.

2 Planning context

The Terms of Reference require the Committee to undertake an assessment of the existing planning scheme provisions applying to each site. Kaufland undertook a Strategic Assessment of each proposal as part of the exhibited Explanatory Reports.

Chapter 2 provided a high-level summary of policy in Report No. 1. Further assessment of relevant policy and other relevant strategic material that the Committee had regard to in its assessment of the proposals is included in each of the location-based chapters.

2.1 State policy

Matters of State policy considered and taken into account in Report 1 and not repeated here include:

- *Planning and Environment Act 1987*
- Plan Melbourne 2017
- Planning policy framework
 - State planning policy
 - Other relevant provisions
- Ministerial directions and Planning Practice Notes.

Of note is that there was significant evidence and submissions about Clause 17.02-2S – Out-of-centre development, which includes the objective to manage out-of-centre development. Its strategies seek to:

- *discourage proposals for expansion of single use retail, commercial and recreational facilities outside activity centres.*
- *give preference to locations in or on the border of an activity centre for expansion of single use retail, commercial and recreational facilities.*
- *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 this Clause was touched upon in Report No. 1, it was a key focal point for all three sites in Tranche 2.

Relevant specifically to the Mornington proposal is State planning policy at Clause 11.03-5S that seeks to protect and enhance distinctive areas of State significance, including the Mornington Peninsula. A Localised Planning Statement (LPS) for the Mornington Peninsula is a reference document to this Clause. It contains objectives and strategies in relation to integrated planning, conservation, character, landscape and cultural values, recreation and tourism. Strategy 22(b) encourages commercial development that contributes to local employment opportunities, vitality of town centres, economic wellbeing of the community and located to reinforce the hierarchy of activity centres on the Peninsula. This is further discussed in Chapter 5.

2.2 Local policies and relevant strategies

(i) Coolaroo – Hume Planning Scheme

The following local policies are relevant to the Coolaroo proposal:

Clause 21.01 Municipal Profile:

- Hume, together with Whittlesea and parts of Mitchell, form the Northern Growth Corridor, which plays a crucial role in meeting the demands of Melbourne’s growing population.

Clause 21.02 Urban Structure and Settlement:

- Identifies key issues, objectives and strategies for managing growth, increasing choice and providing jobs near where people live within greenfield areas.

Clause 21.05 Activity Centres:

- Identifies Hume’s hierarchy of activity centres. Roxburgh Park is identified as a Major Activity Centre and reinforces that retail activity should be the basic building block and economic driver in activity centres.

Clause 21.06 Economic Development:

- Objectives are to facilitate economic growth and job diversity through both existing and new businesses and to facilitate greater employment opportunities in Activity Centres.

Clause 22.12 Roxburgh Park Activity Centre – South of Somerton Road:

- This policy applies to land between the site and Somerton Road, however it also identifies that development should be respectful of the residential land to the west, while ensuring proposals are not affected by industrial land uses across the rail corridor to the east.

Clause 22.20 Liquor Licensing:

- Applies to all applications for licensed premises. Encourages an appropriate mix of licensed premises relative to other commercial, retail and residential uses within activity centres and to manage appropriate locations and hours for licensed premises.

(ii) Mornington – Mornington Peninsula Planning Scheme

The following local planning policies are relevant to the Mornington proposal:

Clause 21.03-2 A Shared Vision – Council’s Corporate Plan

- Provides a shared community vision reflective of the range of views and values in the community. The community vision is for Council to maintain and enhance quality lifestyle, environmental sustainability, social needs, economic development and high landscape quality.
- To support this vision, Council commits to servicing and developing communities, promote equity of access to quality services, enhance the environment in partnership with the community, and facilitate a robust economy by encouraging employment opportunities compatible with the character of the Peninsula.

Clause 21.03-3 Summary of Strategic Challenges and Opportunities

- Recognises that further population growth could widen the job gap unless it is accompanied by effective economic development measures. It acknowledges that existing township industrial areas provide an important employment base as well as services to the local population, with these industrial areas often located at the 'gateway' to townships and adjacent to main roads, strongly influencing their presentation.
- The design of these industrial areas is required to respond to the opportunities and responsibilities associated with the level of public exposure, often attracting large format retailing subject to it not compromising the role and function of the town centres.

Clause 21.04 Morning Peninsula Strategic Framework Plan

- Provides Council's broad strategic direction for land use planning within the municipality. The subject site is designated within the 'Township Area' (Mornington), where future development is to be focussed. The site is on the fringe of the 'Township Area' and just inside the Urban Growth Boundary. It is across the road from the Green Wedge Zone 3 land to the north that provides the 'green break' between the Mornington and Mt Eliza townships.

Clause 21.06 Strategic Framework and the Peninsula's Settlement Pattern

- Reinforces the need to strengthen established areas, with Mornington recognised as a 'major town' where future population growth is to be directed within growth boundaries.
- The objective is to establish an integrated land use pattern suitable to the role and character of the area without prejudicing its values. This will be achieved through a strategic framework plan and by defining clear and stable township boundaries which maintain a green break from metropolitan Melbourne, a separation between Mt Eliza and Mornington, a sense of place for individual towns, and a planned expansion of major towns including Mornington.

Clause 21.07 Housing and Integrated Local Area Planning

- Objective is *"to provide for land use and development within township areas which meets the needs and respects the values of local communities"*.
- This will be achieved by directing growth to major townships to support a wider range of infrastructure, facilities and services, by encouraging development of a stronger employment base, by providing for development of retail and commercial floor space and by the development of multi-function facilities and the co-location of services where appropriate.

Clause 21.07-3 Activity Centres

- Establishes the hierarchy of Activity Centres across the municipality while recognising the growth of bulky goods retailing. The preference for this type of retailing is to be located in clusters directed to the edge of the three townships with major activity centres on the Peninsula. This contributes to the overall position of the activity centres in the hierarchy.

Clause 21.07-4 Industrial Areas

- Objective is to facilitate the expansion of existing industries and to attract new industries that provide services to the Peninsula community, contribute to the local employment base compatible with the Peninsula's character and environment.
- Strategies to achieve this include providing appropriate areas for industrial development in locations that provide separation from major residential and commercial areas, encouraging redevelopment of old and under-utilised sites and supporting retail or office activity in industrial areas where it consists of restricted retail premises that cannot be reasonably located in existing commercial activity centres.

Clause 22.01 Industrial Areas

- Objectives are to achieve orderly design and development in industrial areas, prevent of out-of-centre commercial developments in the industrial zones that undermine the activity centres policy at Clause 22.02, particularly along main roads, establish landscaping which uses native vegetation of local provenance where appropriate, and protect the amenity of residential and commercial areas in proximity to industrial land and the amenity, safety and efficiency of main roads.

Clause 22.02 Activity Centres

- This policy, which applies to land in the business zones (noting they are now the commercial zones), aims to support the activity centre hierarchy shown in Clause 21.07-3.
- The objectives are to ensure commercial development strengthens the activity centre hierarchy and reinforces the role and function of the relevant activity centre, to facilitate additional retail in major and township activity centres, and to oppose retail that would cause a change to the classification of any activity centre within the hierarchy.

Clause 22.10 Advertising Signs

- This local policy operates in addition to Clause 52.05 and lists further considerations for applications involving signage on all land. It acknowledges signs are necessary to provide effective business identification, however poorly designed signage can detract from the visual amenity and character of the area, including impacting upon road safety and causing confusion to drivers.
- Objectives include ensuring signs do not detract from amenity, do not dominate streetscapes, are compatible with the site or building, are not cluttered and do not affect clarity of traffic management signs.

Clause 22.13 Township Environment

- This local policy applies to all Township Areas within the Mornington Peninsula, including land contained within the Industrial 3 Zone and emphasises the need to promote environmental sustainability.
- Its objectives include ensuring infill development proposals meet State environmental standards, that proposals for new development provide appropriate stormwater treatment measures, that all developments are designed to protect the environment from polluting discharges and activities, that development does not

reduce the extent or integrity of areas of remnant indigenous vegetation within township areas, and that new developments are energy efficient in design.

The Committee notes that Council has prepared and adopted the Mornington Peninsula Activity Centre Strategy (ACS) (2018) and the Mornington Peninsula Industrial Land Strategy (ILS) (2018). Neither Strategy is yet referenced in the Mornington Peninsula Planning Scheme.

(iii) Oakleigh South – Kingston Planning Scheme

The following local planning policies are relevant to the Oakleigh South proposal:

Clause 21.02 Municipal profile

- Places a focus on the significant role Kingston plays as a location for business and a generator of employment.

Clause 21.03 Land Use Challenges for the New Millennium

- Recognises the challenges for the municipalities in older industrial areas which are in need of revitalisation and investment if they are to remain viable. A focus is placed on prioritising activity centres as being preferable locations for retail investment.

Clause 21.06 Retail and Commercial Land Use

- Recognises that new investment in supermarkets is required yet seeks to discourage additional out-of-centre development following the establishment of a series of large format centres emerging outside Kingston's recognised activity centres. It nominates key issues as being consolidating retailing activity within centres, the need to limit restricted retailing activity *"to the consolidation of existing restricted retailing precincts"* and ensuring new *"office development provides sufficient differentiation to further diversify Kingston's employment base"*.

Clause 21.07 Industrial Land Use

- Generally, seeks to protect industrial land from non-industrial encroachments and includes a strategy to *"protect industrial land from inappropriate rezoning and encourage retail and office uses to locate in appropriate business zones, except where such uses form part of an integrated development plan for industrial estates"*.
- Strategy to *"redevelop smaller pockets of industrial land located within residential areas for innovative residential or mixed use development, taking into account local environmental and amenity issues"*.

2.3 Discussion and conclusions

In contrast to Report No. 1, the Committee has significant concerns about the veracity of some of the Tranche 2 proposals in response to State and local planning policy.

There was significant debate about whether Coolaroo was in-centre, edge of centre or out-of-centre. The Committee ultimately concludes that due to its Commercial 2 Zone, its location immediately adjacent to a former Master store, that it had no amenity impacts, and it was part of a large and emerging centre of diverse activity immediately adjacent to a Major Activity Centre (MAC), it should be approved.

The Committee ultimately concludes there is little about the Mornington proposal that satisfies planning policy objectives. At the size proposed, supermarket is a Section 3

prohibited use. For reasons expressed in Chapter 5, the Committee considers that it is contrary to higher order strategic policy, it is out-of-centre and it will redirect investment from established activity centres in Mornington. Further, it is located on a site where a Development Plan needs to be prepared for future development and there was little evidence to demonstrate this has occurred with the adjacent building and the residual part of the site.

Consideration of planning proposals requires a balanced assessment of relevant State and local policy imperatives in favour of sustainable development and net community benefit. The Committee is not satisfied that the Mornington proposal adequately responds to these policy imperatives.

The Oakleigh South proposal is a Section 3 prohibited use. However, taken in combination with the proposed National Headquarters and that there is an existing Bunnings on site, the Committee considers the case was made well with regard to approval of the out-of-centre proposal in this location, subject to it being further considered through a whole of site master planning process.

Chapters 4, 5, and 6 further assess the proposals against local policy in relation to planning and activity centre policy, economic impact, built form and urban design, signage, acoustics, landscaping and traffic and access.

3 Common issues

Report No. 1 notes the several issues raised in submissions and evidence about the Kaufland proposals that were common across all three sites in Tranche 2. In addition to these, there are some common issues across all sites in Tranche 2, which include:

- use of the Specific Controls Overlay and Incorporated Document
- whether the proposals could be accommodated on alternative sites
- the scale of signage proposed
- hours of operation.

3.1 Specific Controls Overlay and Incorporated Document

(i) Context

The use of the Specific Controls Overlay and Incorporated Document was addressed at length in Report No. 1 and the Committee does not resile from its findings.

However, some submitters including Kingston, residents of Mornington and the Master Grocers Association raised it through this process and it is appropriate to respond to this in the context of the extent of notification.

(ii) Submissions and evidence

For each site, and prominently for Mornington, submissions were made concerning the appointment of an Advisory Committee by the Minister for Planning. Several themes emerged from these submissions.

Kingston noted its concern about the use of an Advisory Committee process for what is essentially a rezoning process, that in its opinion, should have gone through a normal Planning Scheme amendment and Panel process. Kingston (OS08) submitted that *“the use of Ministerial Advisory Committee and the fast tracked approval pathway does create a framework which is inconsistent with that followed by other retailers who may be seeking to advance similar proposals.”* It saw no justification for the process and made it clear its preference to be the Planning Authority in this matter.

This sentiment was echoed in submissions from members of the Master Grocers Association, who went further to describe the process as providing a *“back door”* for Kaufland (C05). The decision to provide Kaufland such an opportunity, where it is not extended to other businesses, was antithetical to the concept of a ‘fair go’ (C05, M23, M76).

The clearest expression of dissatisfaction was in submissions about Mornington, where numerous submitters made reference to the process inappropriately by-passing the usual amendment process¹. The Mt Eliza Chamber of Commerce questioned *“why should this absolutely massive development be exempt for the normal and accepted processes of discussion and submissions, especially as it is our local Council and Council officers who know the local area inside out?”*. Indeed, this was the thrust of many submitters for Mornington,

¹ Including C05, OS08, M06, M08, M10, M18, M19, M23, M37, M39, M45, M46, M47, M59, M63, M67, M70, M76.

who saw the Council as best placed to understand the local planning scheme and apply its objectives and strategies in a coherent manner. Taking Council out of the assessment of the proposal was considered undemocratic (M37), unrepresentative (M10) and an overreach by the State Government (M19). One submitter (M63) saw the proposal as “*contrary to proper and orderly planning in terms of process, format and impact on the integrity of the planning system*”.

(iii) Discussion

The Committee observes that DELWP was responsible for undertaking the notification of these proposals and it produced a Group 2 Stores: Notification Report February 2019 (Document 10). That report detailed the extent of notification and advised that in accordance with the Terms of Reference, DELWP:

... after consulting with the relevant municipal councils, DELWP forwarded a cover letter and information sheet inviting submissions from:

- *each relevant Council*
- *the owners and occupiers of properties adjoining or surrounding the proposed development sites*
- *relevant government agencies and servicing or referral authorities*
- *the prescribed Ministers ...*

The Committee understands it was the Councils that agreed on the boundaries for notice and provided the address details for owners and occupiers within the notification boundaries for each site as provided in Document 10. DELWP provided letters and information sheets about the draft amendments. Letters to identified owners and occupiers included:

- Coolaroo: 17 owners and occupiers
- Mornington: 638 owners and occupiers
- Oakleigh South: 406 owners and occupiers for properties in the municipalities of Kingston and Monash.

From this notification, there were 100 submissions received in total, as follows:

- General – 3
- Coolaroo - 5
- Mornington - 83
- Oakleigh South – 9.

The Councils further assisted DELWP by providing the details of servicing or referral authorities that should be notified.

Additionally, newspaper advertisements were provided in various local newspapers in the weeks commencing 5 and 12 December 2018 as well as hard copy information folders containing all the planning documents and background reports in public areas of each of the municipalities. Recognising the Christmas and holiday period in December and January, DELWP set out a nine week notification period, greater than the 20 business day period required through Clause 13 of the Terms of Reference.

At the Hearing, the Committee sought clarification from DELWP about the extent of notice for Coolaroo, which seemed low compared with the earlier Tranche 1 sites and the Mornington

and Oakleigh South sites in Tranche 2 (Document 67). This was responded to by Mr Kirkland (Document 72), who advised that DELWP provided Hume with a map indicating the extent of properties where owners and occupiers could receive notification about the Kaufland proposal, to which Hume did not respond to. Mr Kirkland advised the map for Coolaroo was based on aerial photography and existing infrastructure, including Pascoe Vale Road, the Railway line, and the former Masters store. He said:

The residential properties west of Pascoe Vale Road were specifically considered but not included because of the substantial separation from the development site, the road layout and the unlikelihood of visual, traffic or other amenity impact ...

The Committee is satisfied with that response.

The key difference between the Tranche 1 and 2 sites is that the Oakleigh South store is a prohibited use in the underlying Industrial 1 zone, and the use and development of supermarket at the scale proposed Mornington becomes a prohibited use in the Industrial 3 Zone. In such situations, there would need to be a rigorous rezoning process to consider the proposals. However, the Committee accepts that the extent of notification for all sites was substantial and in the case of Mornington in particular, there was significant media and Council involvement in publicising the proposal.

Mornington Peninsula itself published a flyer that encouraged residents to object to this matter. Despite the fact that the flyer had many incorrect statements, it appeared to have been distributed widely. The notification process for Mornington was widespread and there would be little chance that those interested in putting in a submission would not have done so, noting that the Committee also accepted a late submission made during the course of the hearing from a local resident.

(iv) Findings

The Committee finds:

- The notification of the proposals that was undertaken by DELWP was satisfactory.

3.2 Alternative sites

(i) Context

A number of parties suggested that all three sites in this tranche were inappropriate and that there were more appropriate sites elsewhere.

(ii) Submissions and evidence

Mr Gobbo reiterated the vision for Kaufland is to establish stores which are in most cases between one and a half to twice the size of a typical Woolworths or Coles supermarket. The stores combine traditional supermarket products such as household electricals, apparel, cookware and other items. An important part of the model is to provide sufficient car parking to enable customers to find a car park with ease. The result of a combination of the car parking requirements and store size create a big box format, because 'form follows function'. Mr Gobbo stated:

While Kaufland can tailor its store format in response to site context (within reason), its core values are to provide items at the lowest possible cost to end consumers. Efficient and repeatable store layouts assist enormously in reducing costs. Very substantial sums have been spent in designing the Kaufland retail floor area (and its interactions with the back of house and loading dock) to give Australian shoppers the cheapest, simplest, most convenient and comfortable shopping experience possible.

Kaufland indicated its strong desire to provide efficient and repeatable store layouts with standardised store designs.

Counsel and witnesses for Vicinity Centres in particular argued that the sites under review were inappropriate for many reasons, and that there were more appropriate sites in and around various activity centres.

Mr O'Farrell said his client *"welcomes Kaufland to the Australian market and hopes that Kaufland is a successful new operator to add to the retail offer in Australia"*.² However, Vicinity Centres contested claims by Kaufland that it was not able to find appropriate sites within activity centres which satisfied their requirements. Indeed, Mr O'Farrell advised Vicinity Centres extended an invitation for Kaufland to engage with them, or other land holders, to secure appropriate in-centre locations to facilitate their entry into Australia.

The reason for this inability to find alternative sites, Mr O'Farrell said, was because Kaufland had adopted an inflexible approach to their proposals, requiring sites which can accommodate strict adherence to their preferred proposed design and use. Vicinity Centres referred to the package of requirements sought as the 'Construct'. It submitted that Kaufland relied upon an assertion that the 'Construct' was necessary to their entry into Australia without evidence, and were using this assertion to justify, in his opinion, the out-of-centre development proposals. He argued there was no reason the flexibility in design showcased in Kaufland stores internationally (of which he provided several examples of) could not be applied in Australia, which would allow in-centre site proposals.

Mr O'Farrell further submitted that consideration of more appropriate locations, that is to say in-centre locations, was not only within the remit of the Committee, but an *"obvious, relevant and necessary enquiry"*.

Mr Rogers, in providing planning evidence for the Oakleigh South site, said the proposal would be better situated within the Monash National Employment and Innovation Cluster (NEIC) but was not able to specify a site, location or timing for such. Regardless, he proposed that any benefits of the proposal would be enhanced by location in-centre or in the NEIC, and the failure by Kaufland to provide evidence of consideration of this led him to the view that net community benefit was not established.

Kaufland responded that it was unreasonable to suggest that it was incumbent upon them to disprove a negative, such that the potential appropriateness of other sites to accommodate their requirements should have been discounted in their proposals. This, Kaufland said, would set the bar too high for out-of-centre retail development. Kaufland submitted the Committee

² Submissions for Vicinity Centre, Document 181, at [3]

should consider the question of whether the site proposed is acceptable as the “*most relevant inquiry*”.

(iii) Discussion

The Terms of Reference set out the role and purpose of the Committee, which is to provide advice to the Minister for Planning on all relevant matters associated with the location, development and use of the six proposed Kaufland stores.

In closing, Mr Gobbo used the analogy of a person seeking to buy a certain car with particular specifications would not be keen to purchase a car different to what was sought. He said Kaufland was in the same position. Kaufland, he said, had its specifications and these were what should be approved, particularly for the early entry and establishment of the supermarkets in Victoria. The Committee does not support the rationale in this analogy. Buying a car is a very personal matter and an individual is entitled to seek what is required in this regard. Using land for a very large supermarket where it is in the public domain is totally different.

While the Committee respects that Kaufland is seeking to roll out its stores using a similar model for each, it must do so taking into account the zone of the land, its overall built form, amenity impacts, its abutments to residential and other uses and the like. It understands that Kaufland is seeking to build stand-alone stores in various locations, but each must be assessed against the provisions of State and local policy. But such assessment does not extend to looking at alternative sites, including those that might be suitable in various activity centres or other locations.

The Committee notes the submissions of Vicinity Centres regarding the validity of the so-called ‘Construct’, however it does not consider it of relevance to the work of the Committee as provided for in the Terms of Reference. It is not for the Committee to determine the motivations behind the use of the ‘Construct’. Again, alternate proposals are not before the Committee, rather it is the ‘Construct’, and its relation to the specific site proposed, that must be for considered. Were the Committee to accept Vicinity Centres’ submission that the ‘Construct’ was an artificial restriction or accept Kaufland’s submission that the ‘Construct’ was integral to their entry to the Australian market, the question to answer would remain the same. That is, is the site appropriate for the proposed Kaufland store having regard to the relevant planning scheme policies, provisions and controls?

The Committee is required to provide a report which makes recommendations for each proposed development site, including whether the site is an appropriate location for the proposed use (Clause 22b in the Terms of Reference). It is clear that to widen that consideration to sites beyond those proposed would be untenable for this process. There may be a vast number of sites that may be more appropriate than those proposed, or indeed there may be very few, however the existence of more appropriate alternate sites has no bearing on the appropriateness of any particular site under consideration as part of this process. Were this the case, it follows that all potential sites (and this could be many) would be required to be considered in order to determine the most appropriate site. Such an exercise has no support in the planning schemes or the Terms of Reference and is well beyond the remit of this Committee process.

3.3 Signage

(i) Context

The proposal includes various business identification signage for the three sites. The signage is generally consistent across the sites and includes Kaufland’s logo and images of produce which form part of the building facades and the types of pylon signs described in Table 2.

Table 2 Key elements of the signage proposal

Coolaroo	<ul style="list-style-type: none"> Internally illuminated logo signage: Entry logo sign 1a (5 metres by 5 metres), typical logo sign 1b (5 metres by 5 metres), and typical logo mark 1c (4 metres by 4 metres). Billboard signage lit by linear LED lighting from brackets above (5.01 metres by 3.51 metres). Pylon sign type 1 (8 metres by 2-2.4 metres). Pylon sign type 2 (21.8 metres (h) with a sign 5 metres by 5 metres). Trolley enclosure signage: 4.8 metres x 5 metres.
Mornington	<ul style="list-style-type: none"> Internally illuminated logo signage: Entry logo sign 1a (6 metres by 6 metres), typical logo sign 1b (5 metres by 5 metres), and typical logo sign 1d (4 metres by 4 metres). Non-illuminated typical logo sign 1c (5 metres by 5 metres). Billboard signage lit by linear LED lighting from brackets above (5.01 metres by 3.51 metres). Pylon sign type 1 (8 metres by 2-2.4 metres). Pylon sign type 2 (21.8 metres (h) with a sign 5 metres by 6.3 metres). Trolley enclosure signage (4.8 metres by 5 metres).
Oakleigh South	<ul style="list-style-type: none"> Internally illuminated logo signage: Entry logo sign 1a (5 metres by 5 metres), typical logo sign 1b (5 metres by 5 metres), typical logo sign 1c (4 metres by 4 metres), typical logo sign 1d (3 metres by 3 metres). Billboard signage lit by linear LED lighting from brackets above (5.01 metres by 3.51 metres). Pylon sign type 1 (8 metres by 2-2.4 metres). Pylon sign type 2 (18 metres (h) with a sign 5.04 metres by 4 metres). Trolley enclosure signage: 4.8 metres x 5 metres.

Source: Amended Plans (Document 9)

Clause 52.05 contains the relevant State provisions as noted in the Tranche 1 report. The relevant category of signage is Category 2 for Oakleigh South and Mornington, and Category 1 for Coolaroo. In addition, all three planning schemes have local policies which deal with signage

- Clause 22.10 Advertising signs in the Mornington Peninsula Planning Scheme
- Clause 22.09 Advertising signs local policy in the Hume Planning Scheme

- Clause 22.15 Outdoor Advertising Signage Policy in the Kingston Planning Scheme.

(ii) Submissions and evidence

As with the Tranche 1 sites, many submissions raised concern in relation to the height and visual presentation of the pylon sign type 2 at 22 metres. All Council submissions opposed the exhibited height of the pylon sign type 2, because it was considered excessive, and out of context in the three locations.

Seeking to address submitter concerns, Kaufland tabled revised plans (Document 9) which reduced the height of the pylon sign type 2 from 22 metres for the Mornington site to 15 metres with a 3.5 metre box, and Oakleigh South to 18 metres with a 4 metre box. For Coolaroo, the pylon sign type 2 was relocated with an increased setback from Pascoe Vale Road.

Mr King for Hume noted the intent of Clause 22.09 of the Hume Planning Scheme to reduce sign clutter, encourage signs appropriate in scale and character, and maintain and enhance the attractiveness of the City. Mr King maintained that the pylon sign type 2 was inconsistent with that policy in that it was too tall, and the eight-metre type 1 sign oriented to Pascoe Vale Road was adequate to identify the site. He noted:

If additional signage is needed, more appropriate signage that reflects the scale of the location could be provided through re-use of the existing pylon sign that serviced the former Masters store instead of the 22 metre high sign located on the land.

Ms Astill for Kingston submitted that *“the proposed signs (with the exception of the proposed 18 metre pylon sign) are considered acceptable and provide an appropriate level of identification of the business without resulting in visual clutter.”* She noted those signs were consistent with policy at Clause 22.12 of the Kingston Planning Scheme. In relation to the pylon sign type 2, she submitted that a pylon sign is not a defined term at Clause 73.02 and submitted that the sign met the definition of a sky sign given that it would meet the height requirements of more than seven metres above the ground. She noted that Clause 22.15 specifically discourages sky signs for industrial areas in Kingston:

This discouragement and emphasis in the policy demonstrates that the proposed sign is not acceptable due to its contribution in visual clutter, dominance and impact on adjoining sensitive interfaces.

Ms Astill noted that sky signs are only permitted on main roads where they would not dominate the skyline, and given the height and proposed advertising area, submitted that it would dominate views from Centre Road and Clarinda Road. She stated Council was of view the sign was excessive in height, especially given its proximity to an existing residential area to the east and the site’s highly exposed location on Centre Road. She stated, that *“no compelling justification has been provided to warrant its inclusion from an economic, urban design or business identification perspective”*.

Kingston considered it excessive given the destination nature of the store and unobstructed view lines for the site from Centre Road and Clarinda Road, and sought the height of the sign to be reduced to 10 metres, comparable to other large format retailers across Kingston

Mornington Peninsula maintained their opposition to the pylon sign type 2 at the reduced height of 15 metres. Ms Morris submitted the scale of proposed pole sign is excessive and incompatible with the existing amenity and visual appearance of the area and desired future character. She stated the sign would dominate the wider landscape and front setback because:

- its height is substantially higher than the tree canopy
- the colouring is stark
- its visibility from long range views
- it is unacceptable and inconsistent with the Planning Policy Framework and decision guidelines of clause 52.05.

Ms Morris relied on the evidence of Mr Papworth who was of the view that the sign would be extremely prominent in the Nepean Highway context and visible in long range views. Mr Biles in evidence opined that the pylon sign type 2 was an unacceptable outcome for the location. He stated that the existing advertising signage along the highway was generally low-lying consolidated signage for a range of business uses within the area, which limited the impact on the landscape character, particularly from the approach from the north. He contended that at 15 metres, the sign would tend to dominate the character and be clearly distinct in scale compared with other signs in the location.

Resident submissions for Mornington expressed concern in relation to the size and prominence of the signage. For example, M02 submitted that Mornington does not need the large proposed sign which was not appropriate for the location and was too large. Submitter M12 stated that the large sign would be the first view people would have of Mornington on arrival driving down the Nepean Highway. Submitter M51 stated that it was incompatible with its immediate surrounds and the large amount of business identification signage was excessive.

Kaufland tabled photomontages (Document 26i) prepared by Hansen Partnership in support of the pylon sign type 2 which presented its potential visual impact. The proponent relied on the evidence of Mr Blades, who held a similar view for all three sites. He noted that the pylon sign in all three locations was taller than other comparable large format retailer or supermarket signs and a departure from existing signage in the three locations. However, he considered this was warranted given the sub-regional magnitude of the proposed use. He considered the signs would enable longer-range views and assist in wayfinding for those unfamiliar with the broader area of Coolaroo, Oakleigh South, and Mornington. Mr Blades considered the height, siting and illumination of the sign contextually responsive.

Having reviewed the Tranche 1 report when it was released (and that the Committee recommended that there be no pylon sign type 2 in any location, a position which the Minister for Planning accepted), Kaufland further revised the height and size of the proposed pylon sign type 2 in its Part C Incorporated Document as follows:

- Oakleigh South – 12 metres with a 3 x 3 metre box for the Kaufland logo (Document 190)
- Mornington – 10 metres with a 2 x 2 metre box for the Kaufland logo (Document 186)
- Coolaroo – 15 metres with a 3 x 3 metre box for the Kaufland logo (Document 188).

In closing for Kaufland, Mr Gobbo acknowledged the findings of the Committee in relation to signage from its Tranche 1 report. He noted that the Committee confined its discussions to the issue of height rather than whether a pylon sign should be permitted at all.

He stated that the pylon sign type 2 is properly characterised under Clause 73.02 as business identification and sky signs and noted that permission is required because all signs exceed eight square metres. He submitted that relevant considerations include:

- *significant business identification signage in the form proposed is important to Kaufland, and is the type of advertising that has been accepted across Victoria for major retailers such as McDonalds;*
- *there is a particular benefit to facilitating the ready identification of businesses on a highway location so that motorists can make a decision in advance to exit the highway in a timely and safe manner; and*
- *notions of precedent ought to be applied with a great degree of caution, given that all future permit applications for signage on other land will fall to be determined on their own merits.*

He noted that there is no evidence to suggest that the pylon sign type 2 is unacceptable at Oakleigh South or Coolaroo, and that both Mr Blades and Mr Biacsi in evidence considered them appropriate. Further:

- for Oakleigh South, that in Warrigal and Centre Roads, signs of up to 15 metres in height already exist and *“Kaufland has responded by seeking a sign of 12m, which is lower than the McDonalds and La Porchetta signs, but still slightly higher than Council’s proposed 10m sign”*
- for Coolaroo, its in-board location eliminated the potential for visual clutter or dominance
- for Mornington, as an interface site, that it is marked by business identification which will be mitigated by both existing and future vegetation, would assist in wayfinding.

Mr Gobbo stated that Kaufland requested the Committee’s reconsideration of each of pylon sign type 2 in the current Tranche on their merits and welcomed advice in relation to what height would be appropriate. In verbal submissions, he reiterated the need for the sign to assist Kaufland with brand recognition as a new entrant to the retail market in Australia.

In closing, Mr King acknowledged the reduced height for the Coolaroo site as a *“better outcome”*, however reiterated Council’s position that the pylon sign type 2 was an *“unnecessary form of signage”*. In Council’s opinion, the eight metre pylon type 1 sign was a reasonable form of signage to enable people to make decisions to visit the site, however the type 2 sign would add to visual clutter, be visually prominent on an exposed site, was out of scale, and unnecessary.

Ms Morris stated that Mornington Peninsula was pleased that Kaufland had made some compromise regarding the height of the proposed sign but considered that this did not go far enough. She maintained Council’s view that there is no precedent for a sign over eight metres in height in this location.

For Kingston, Ms Astill stated that there will be a range of signage which will ensure the site is well identified and considered the sign would be suitable if reduced to a maximum height of 10 metres and noted her support of the reduced box dimension of 3 x 3 metres.

(iii) Discussion

The Committee notes the submission of Ms Astill, which highlighted that ‘pylon’ sign was not a defined term in the Planning Scheme. As the pylon signs are more than 7 metres off the ground, they are correctly defined as sky signs. However, given that parties have consistently referred to the signs using the ‘pylon’ designation (both type 1 and 2), this report will continue to refer to them as such.

The Committee has found no reason to depart from its findings and conclusions in its Tranche 1 report and concludes that the pylon sign type 2 are inappropriate for the three Tranche 2 proposals. Even though the pole signs were reduced further, the Committee does not support any pylon sign type 2 for any of the sites due to visual impact and that there is sufficient signage proposed. It considers the pylon signs type 2 are unwarranted and excessive.

The Committee does not agree with Kaufland’s submissions that the pylon sign type 2 is required to enable people to decide to depart the various arterial roads in advance of arriving at the site. It agrees with the various Council submissions which note that if approved, Kaufland will become a destination, and rely upon repeat visits from customers, rather than impulse shopping triggered by signage. The Committee agrees with verbal submissions noted by submitter M83 who stated that it can be expected that Kaufland will rely on a broad marketing campaign and not just signage when launching in Australia.

The Committee notes the pylon sign type 2 is not the only signage proposed for each site. It is part of a suite of signs including large billboards with corporate branding. The Committee considers that signage which serves the ability to identify multiple businesses on the site is more appropriate, as is proposed by the pylon type 1 sign, as is typical for signage associated with retail uses. Business identification is important and necessary but does not need to be excessive in terms of quantity and area or prominence. The Committee notes the visual impact of the existing Bata sign on the corner of Nepean Highway and Oakbank Road and considers this sort of intrusion should be avoided.

The Committee observes that, in addition to the signage on the façade of each building, the respective sites nominate a pylon type 1 sign on each street frontage which is considered acceptable, and sufficient to support business identification and wayfinding.

(iv) Findings

The Committee finds:

- The pylon sign type 2 should be deleted from all plans and proposals.

The above finding is reflected in the Conclusions and Recommendations of the following three site-specific chapters.

3.4 Hours of operation

(i) Context

The exhibited versions of the Incorporated Documents for Tranche 2 maintained the hours of operation for the supermarket, shops and bottle shop components as 7.00am to 12.00pm.

In its final versions of the Incorporated Document, Kaufland acknowledged the hours recommended by the Committee in its Tranche 1 report and ultimately adopted and gazetted as 7.00am to midnight for shop and ancillary retail uses, and 9.00am to 10.00pm for the bottle shop. It therefore accepted these hours for the Tranche 2 sites.

(ii) Submissions and evidence

Mornington sought a further change to the hours of operation. It submitted in its opening submission (Document 122) that the bottle shop should not trade beyond 10.00pm.

In its Part C without prejudice version of the Incorporated Document (Document 202), Council noted Condition 3 *“the supermarket and all other uses shall only operate between the hours of 7.00am and 10.00pm ...”*. The Committee questioned this as it has previously recommended the bottle shop uses hours of operation be 9.00am to 10.00pm in Report No. 1. Ms Morris conceded this was an error and verbally confirmed its preferred hours of operation were from 7.00am to 10.00pm for shop and all other retail uses, and 9.00am to 10.00pm for the bottle shop.

The only difference remaining from Mornington’s perspective was that it preferred all shop uses to close at 10.00pm, not midnight.

(iii) Discussion

The Committee finds no reason to depart from the findings and conclusions in its Tranche 1 report that the hours of operation for shop and other retail uses be from 7.00am to midnight, and the bottle shop be from 9.00am and 10.00pm.

(iv) Findings

The Committee finds that:

- the hours of operation for the bottle shop should be limited from 9:00am to 10:00pm while other shop and retail uses be permitted to trade from 7:00am to midnight for all sites.

The above finding is reflected in the Incorporated Documents for each of the three sites.

4 Coolaroo

4.1 Context

(i) Proposal summary

Kaufland Australia is seeking to develop land at 1550 Pascoe Vale Road, Coolaroo for the purposes of a Kaufland supermarket and complementary uses, with associated carparking and signage.

The draft amendment proposes the following changes to the Hume Planning Scheme:

- application of the Specific Controls Overlay to land at 1550 Pascoe Vale Road and update the schedule to the Specific Controls Overlay accordingly
- insert “*Kaufland supermarket development, 1150 Pascoe Vale Road, Coolaroo*” in the schedule to Clauses 45.12 and 72.04 as an Incorporated Document.

The key elements of the proposal are outlined in Table 3.

Table 3 Key elements of the Coolaroo proposal

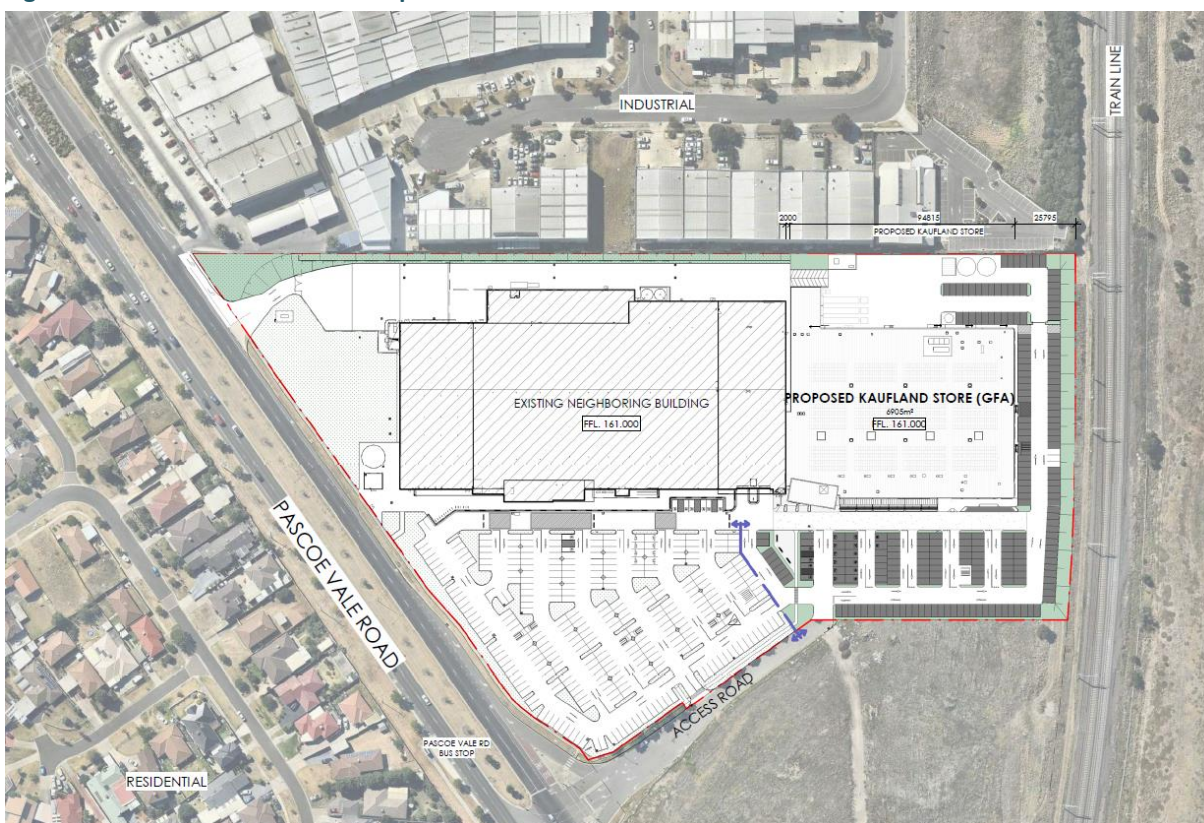
Land use mix	A 6,905 square metre building containing the following: <ul style="list-style-type: none"> • 3,657 square metres of supermarket floor area • 354 square metres for bottle shop • 287 square metres for food hall and 136 square metres for outdoor eatery • two complementary retail tenancies totalling 229 square metres • associated in house facilities including 1,400 square metres back of house facilities and 169 square metres of services and 307 square metres of administration.
Built form	A large single storey building with a building height of 6 to 9 metres and a feature parapet of 11 metres. Construction materials include a mix of feature cladding including concrete panels and planter timber and metal deck roofing.
Car parking provision	At grade car park accommodating 222 car parking spaces within the Kaufland site, allocated as: <ul style="list-style-type: none"> • 4 accessible spaces • 8 family spaces • 6 senior spaces. An additional 321 existing spaces shared with the existing retail building on the site.
Bicycle parking provision	36 on-site bicycle spaces.
Signage	See Table 2.

Loading bay facilities	Loading and deliveries are located at the rear of the building, accessed via the separate entrance at the northern boundary of the site.
Access	The main customer vehicle access will continue from the access point at Pascoe Vale Road south of the parking lot.

Source: Amended Plans – Coolaroo (Document 9)

The site context plan at Figure 1 sets out the proposed layout for Coolaroo.

Figure 1 Coolaroo site context plan



Source: Amended Plans – Coolaroo (Document 9)

(ii) The site

The site as shown in Figure 2 is located at 1150 Pascoe Vale Road, Coolaroo as Lot 1 on PS 709155T and is affected by Owners Corporation 1 Plan No. PS709155T.

The Plan of Subdivision identifies that the site is affected by three easements for the purposes of sewerage, water supply and powerlines.

Figure 2 1550 Pascoe Vale Road, Coolaroo



Source: Coolaroo Town Planning Assessment, Planning and Property Partners, June 2018; p6.

The site is located on the east side of Pascoe Vale Road, approximately 425 metres south of Somerton Road and to the south of the Roxburgh Park MAC.

Characteristics of the site are set out in Table 4:

Table 4 Coolaroo site characteristics

Current land use	The site contains a defunct Masters Home Improvement store of approximately 9,500 square metres in area which ceased operation in late 2016. The existing building is set back from Pascoe Vale Road between 20-60 metres.
Site area	Irregularly shaped and has a total site area of 5.414 hectares.
Frontage and abuttals	The site has frontage to Pascoe Vale Road and abuts the Craigieburn Railway line to the east.
Slope	None.
Other	Affected by three easements.

The site is surrounded by the following land uses set out in Table 5.

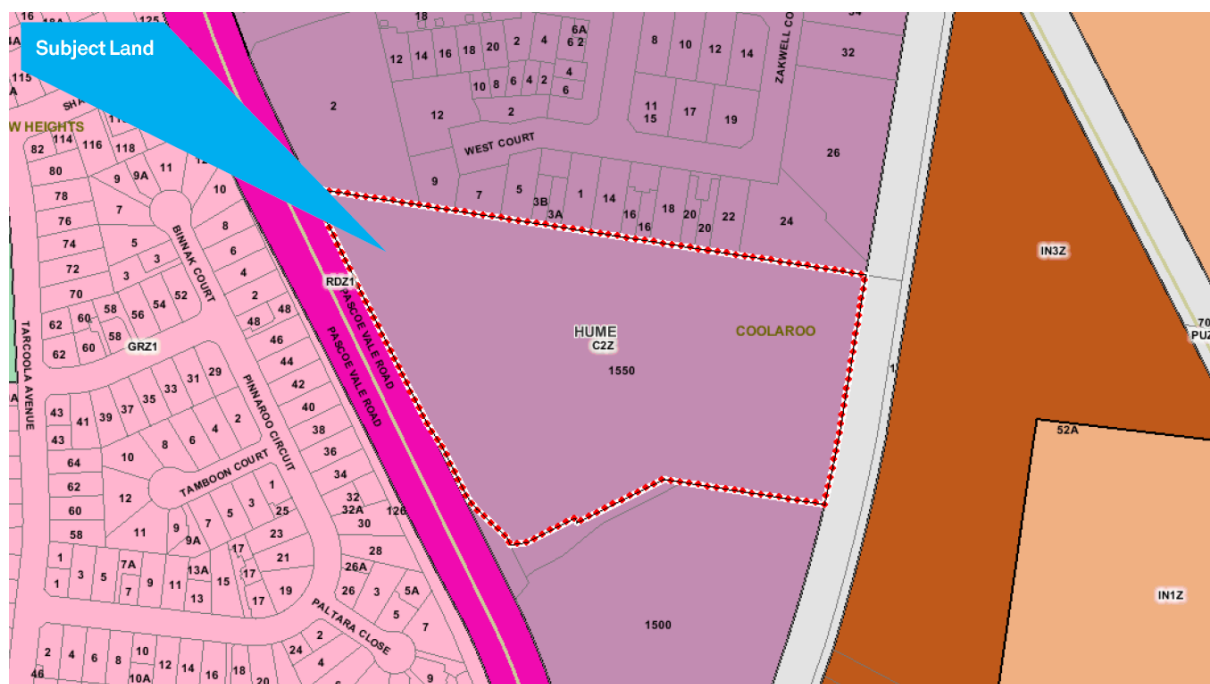
Table 5 Coolaroo surrounding land uses

North	Interface with the rear of several industrial and mixed-use buildings, including a place of worship and associated parking lot.
East	Bounded by the Craigieburn train line with commercial industrial uses beyond.
South	Land immediately south is vacant, with a cluster of building 100 metres south including service station and fast food outlets.
West	Frontage to Pascoe Vale Road with a housing development on the other side of the road.

(iii) Planning scheme controls

The site is included within the Commercial 2 Zone under the provisions of the Hume Planning Scheme (Figure 3).

Figure 3 Coolaroo zoning



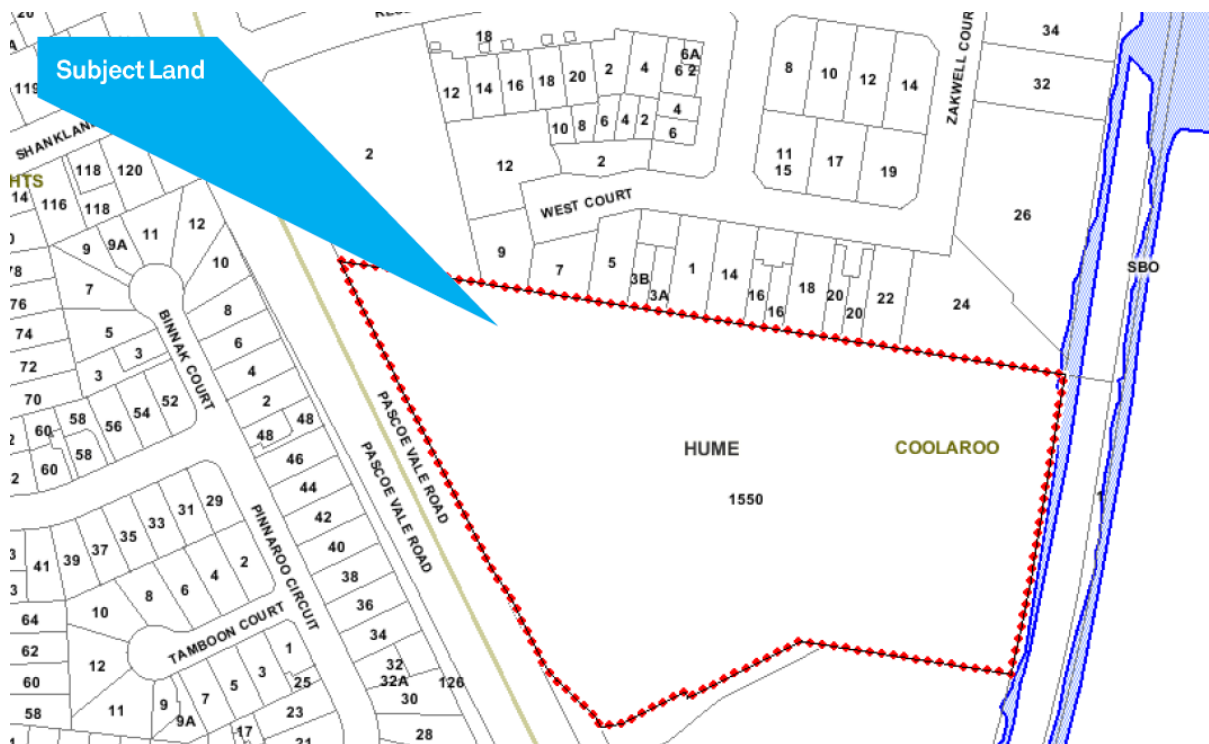
Source: Expert Witness Statement Mr Biacsi (Document 26d)

The key purposes of the Commercial 2 Zone are:

- to encourage commercial areas for offices, appropriate manufacturing and industries, bulky good retailing, other retail uses, and associated business and commercial services
- to ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.

A small north-eastern section of the land is subject to the Special Building Overlay.

Figure 4 Coolaroo Overlays



Source: Expert Witness Statement Mr Biacsi (Document 26d)

The following planning scheme provisions trigger a requirement for a planning permit for the site:

- **Clause 34.02-1 Commercial 2 Zone:** a permit is required to use the land for a supermarket as leasable floor area exceeds 1,800 square metres
- **Clause 34.02 Commercial 2 Zone:** a permit is required to construct a building or construct or carry out works
- **Clause 44.05 Special Building Overlay:** a permit is required for buildings and works located on land affected by the Special Building Overlay, however no development of land affected by that overlay is proposed
- **Clause 52.05 Advertising Signs:** a permit is required due to the size of each sign as it is a commercial area designated as a category 1 (minimum limitation) area
- **Clause 52.06 Car Parking:** statutory requirement for use of the land as a 'supermarket' and 'shop' is 316 spaces
- **Clause 52.27 Licensed Premises:** a permit is required to sell liquor as required by *Liquor Control Reform Act 1998*
- **Clause 52.29 Land adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road:** a permit is required to create or alter access to Pascoe Vale Road, which is a Road Zone, Category 1.

A permit is not required under the following planning scheme provisions:

- **Clause 52.17 Native Vegetation:** the site does not support remnant native vegetation and therefore does not require a permit

- **Clause 52.34 Bicycle Facilities:** the proposed development meets the statutory requirements for bicycle facilities.

4.2 Planning issues

(i) Context

Matters concerning the proposed application of the Specific Controls Overlay accompanied by an Incorporated Document were addressed by the Committee in Chapter 3.1 of Report No. 1.

This site is located in the Commercial 2 Zone. Supermarket use up to a leasable floor area of 1800 square metres and other shop uses up to a leasable floor area of 500 square metres are as of right. Given the proposed development exceeds the Section 1 as of right floor area triggers (refer Table 5), a use permit would be required under the provisions of Section 2 of the Commercial 2 Zone if the proponent sought planning approval through a planning permit.

The site was previously developed and used as a Masters hardware store. The shell of that store remains, and it is currently vacant and fenced off. It is understood that ultimately, that store will be re-used for homemaker uses. The proposed Kaufland supermarket is to be located immediately adjacent to it. Surrounding land uses are described in Table 5 and consist of a wide range of mixed uses including commercial and warehousing, as would be expected in a Commercial 2 Zone.

The key issue for this site in relation to planning policy relates to whether the site sits within, at the edge of, or outside of the Roxburgh Park MAC.

(ii) Submissions and evidence

Kaufland agreed with Hume that the proposed development is in an area that is identified as part of the broader Roxburgh Park MAC. It noted that *“the words and the perfect circle”* utilised in local planning policy at Clause 21.05 make it clear that the Roxburgh Park MAC, as opposed to the Roxburgh Park (Village) shopping centre, extend to the land south of Somerton Road. The submission stated (Document 105):

It would be an extraordinary proposition to suggest that a round circle on a strategic framework plan identifies the boundaries of the activity centre.

In support of its position regarding the sites in-centre location, Kaufland cited extracts of Clauses 21.05-3 and 22.12 that references in the first instance the activity centre on *“both sides of Somerton Road”* and in the second instance the *“Roxburgh Park Activity Centre – South of Somerton Road”*. With regard to Clause 22.12, Kaufland submitted that the reference suggests clearly that the Commercial 2 zoned land south of Somerton Road is part of the broader activity centre and is intended to *“complement”* the *“core retail role”* of the Roxburgh Park (Village) Shopping Centre – which is a sub-set of the broader Roxburgh Park MAC. Kaufland considered it illogical that Commercial 2 zoned land that abuts Commercial 1 zoned land could be considered anything but part of a broader activity centre, particularly in this instance given the development that has been approved on land adjacent to the subject site including the now abandoned Masters store and the recently approved office and medical centre development south of the site.

Mr Biacsi gave evidence that “... the proposal is appropriate for the site and location and will not diminish or undermine the role and functioning of the broader Roxburgh Park MAC...”. He was comfortable with the application of the Specific Controls Overlay, noting a permit could have been sought under the current zone provisions. He noted the site is located to the south and on the periphery of the Roxburgh Park MAC. In this regard he gave evidence that:

In a strategic policy sense, the issue of ‘out-of-centre development’ does not directly arise in this case as the subject land is already zoned such that the C2Z affords the as-of-right opportunity for a supermarket and shop to establish on the Subject Land and in a location that is accepted as forming part of the broader Roxburgh Park MAC.

In the opinion of Mr Biacsi, the Commercial 2 zoning of the site is significant from both a strategic and statutory planning point of view. In support of his opinion that the commercially zoned land on both sides of Somerton Road combine to form the Roxburgh Park MAC, Mr Biacsi quoted the following extracts of local policy at Clause 21.05-3:

- *To promote Roxburgh Park as a vibrant, highly accessible and integrated activity centre and sub-regional retail centre.*
- *Facilitate development that provides for an integrated centre, linking land uses and activity on both sides of Somerton Road.*

Further he posited the issue is not whether a supermarket is an appropriate use, because conditionally the use is as of right in the Commercial 2 Zone. He considered the principle issue is the extent of the additional floor space proposed over and above the 1,800 square metre threshold established by the Section 1 condition, rather than the acceptability of the use per se. In this regard opined that the consequences of the additional supermarket floor area above 1800 square metres does not have material bearing in economic or planning policy terms, particularly when undertaking a competitive impact analysis and assessing the consequence of the development on other operators and existing centres. He noted he relied on the economic evidence of Mr Dimasi and Mr Stephens, as well as the competing economic evidence of Mr Haratsis. All concluded that no supermarket or activity centre in the trade catchment will be impacted to an extent that their existence will be threatened. Mr Biacsi concluded that the proposal is in a location that forms part of the Roxburgh Park MAC and is of a nature that will provide a net community benefit to the area, including meeting the needs of local residents and workers in the surrounding area.

The submission from Hume (CO3) stated “the subject land is identified as part of the Roxburgh Park Major Activity Centre per Clause 21.05-3 of the Hume Planning Scheme.” It went on to observe that “Clause 22.12 of the Hume Planning Scheme specifically notes the site has a focus for bulky goods retailing and should complement the Roxburgh Park Shopping centre to the north”. Further:

Whilst the Council does not support out-of-centre development proposals, with consideration of the above policy context, the concept of a supermarket based development on the site is considered an edge of centre proposal supported by developments in retail land use planning at a State level in recent years.

...

Council is of the view that the proposal does not create a significant new activity centre ...

...

The development of a large supermarket complex on the site will offer competition to existing supermarkets operating in the Roxburgh Park and Broadmeadows shopping centres.

Council's submission at the Hearing (Document 101) reiterated this position and noted *"the proposed development introduces a supermarket based development to an area identified as part of the broader Roxburgh Park Major Activity Centre ..."*. Mr King for Council noted that Council's position is influenced by key strategic work that resulted in policy at Clause 21.05 (Hume City Retail Strategy) and Clause 21.06 (Hume Corridor HIGAP Spatial Strategy and Hume Economic Development Strategy 2030). Further, Mr King noted *"the current Commercial 2 Zone that applies to the land has influenced Hume City Council's position."*

In its closing submission (Document 205), Council made it clear that *"... the subject land is located within the Roxburgh Park Major Activity Centre and disagrees with the context put by other parties that the proposal is out-of-centre development."* The closing submission provided a brief history of the planning for the land south of Somerton Road and noted the former Business 4 Zone of the land being rezoned to Commercial 2 Zone. Council indicated that the land forms part of an extended activity area, supported by strategic work and local policy. The submission concluded:

The proposed supermarket on the subject land combined with land to the south where office, medical centre and convenience food based use and development has been approved, provides for an activity centre envisioned to the north and south of Somerton Road that satisfies the range of uses anticipated in such centre as detailed in Practice Note 58 Structure Planning for Activity Centre (Document 116). Council submits such an outcome is expected by and consistent with existing policy at Clause 21.05-3 of the Hume Planning Scheme.

Vicinity Centres disagreed with the position of Council and Kaufland. Vicinity Centres owns the Roxburgh Village Shopping Centre which is located within the Roxburgh Park MAC. Ms Peterson and Mr Haratsis gave planning evidence for Vicinity Centres, both argued that the site is not part of the MAC. Mr O'Farrell submitted *"there is no room for debate that the Coolaroo site is out-of-centre ... the Hume Planning Scheme is crystal clear that the subject site is out-of-centre"*. Mr O'Farrell relied heavily that the plan accompanying the local policy at Clause 22.12 does not include the subject site as part of the 'Activity Centre South of Somerton Road'.

Ms Peterson gave evidence the subject site does not form part of the Roxburgh Park MAC. She stated that she formed this opinion due to a variety of factors citing:

- the physical separation of the site from the Roxburgh Village Shopping Centre (located north of Somerton Road)
- the lack of pedestrian or vehicular connectivity between the Roxburgh Village Shopping Centre and the subject site
- the *"considerable barrier"* imposed by the traffic and width of Somerton Road

- *“the lack of synergy”* between the areas.

Ms Peterson further noted her conclusion regarding the site being out-of-centre was informed by review and interpretation of local planning policy, principally based on interpretation of:

- the Urban Structure Plan at Clause 21.02
- the plan contained in the *Roxburgh Park Activity Centre – South of Somerton Road* Policy at Clause 22.12
- other plans contained in a number of strategic planning studies including:
 - Somerton Road and Reservoir Drive Strategic Analysis Report 2003
 - the Hume Economic Development Strategy 2030
 - The Hume Corridor Integrated Growth Area Plan Spatial Study.

Ms Patterson observed that the strategic direction in the Hume Planning Scheme discourages retailing, including large format supermarkets outside of designated activity centres. Due significantly to her finding that the site is out-of-centre, Mr Peterson concluded:

- *The subject land is located within an existing bulky goods precinct where the establishment of a large-scale supermarket is not supported by policy or strategy.*
- *The Proposal will result in out-of-centre use that will compete, rather than complement nearby retail uses including those within the Roxburgh Park Major Activity Centre.*
- *The Proposal will have a negative impact on the retail hierarchy.*
- *As a result, the out-of-centre proposal will not have a net community benefit.*

Mr Haratsis gave strategic planning evidence that the site is isolated from the Roxburgh Village Shopping Centre and does not form part of nor seeks to integrate with the Roxburgh Park MAC. Due to its location, Mr Haratsis considered the site will be primarily accessed by private vehicles and will negatively impact on the development of 20 minute cities by *“weakening a hierarchy of centres which are intended to be non- retail employment generators”*.

Mr Haratsis opined that approval of the Kaufland store in the proposed location will *“reduce investability in the Roxburgh Park MAC by reducing turnover in supermarkets, and impacting on current fresh food sales at a time when the local trade catchment population is declining.”* He concluded that, *“the project is out-of-centre and there is no rational basis to support the proposal”*.

MGAIR submitted (Document 61) that the proposed site is not only out-of-centre, and nor is it edge of centre. As discussed elsewhere in this report, MGAIR considered approval should not be granted as there is no strategic justification for allowing development outside of an activity centre.

In its submissions in reply (Document 215), Kaufland reiterated that the Oxygen Advisory Committee concluded in 2010 that the subject land was in-centre. Mr Gobbo stated: *“you can’t nuance a change of zoning”* and observed no subsequent amendment to the planning scheme has been tabled or referenced by Vicinity Centres or its witness Ms Peterson. The closing submission noted that the wording of the objectives and strategies which provide for an integrated centre north and south of Somerton Road are identical today as they were in 2010. Further the closing submission noted the oral evidence of Ms Peterson which sought to define the land south of Somerton Road as comprising *“a separate activity centre”*. Noting

the Committee's questions which it put to Ms Peterson on this issue, Kaufland submission in reply noted:

So the Committee does not need to go about finding new language to describe two activity centres within a large conglomeration of activity, as Ms Peterson suggested: there is already a word for such a beast – it is called a “major activity centre”.

Kaufland maintained that the subject land is within-centre and urged the Committee to conclude that from a strategic land use perspective, the proposal has strategic support. Accordingly, Kaufland said a Clause 17.02-2S net community benefit analysis was not required to be undertaken.

(iii) Discussion

The Committee acknowledges the rigorous submissions from various Counsel and extensive cross examination of witnesses about whether the subject land is within, at the edge of, or outside the MAC. Ultimately, the Committee supports the position of Council and Kaufland on this issue and finds that the subject site and broader Commercial 2 zoned land located south of Somerton Road forms part of the MAC.

There is no doubt that the whole of the Roxburgh Park area and its surrounds was one of the early growth areas of Hume and is now well established. This was not the case in 2003 when Roxburgh Park was just developing. Clearly the area to the south of Somerton Road was used for public purposes, and that use is now redundant. The Committee does not believe that the argument about the strategic work undertaken in 2003 (Somerton Road and Reservoir Drive Strategic Analysis Report) can have much bearing on what is on the land now, and how it is expected to develop in the future. The land is in the Commercial 2 Zone where there is a clear expectation of commercial development. Unlike the Industrial 3 Zone where a supermarket over 1800 square metres is prohibited, this zone contemplates and allows for supermarket to be considered through a permit process.

Whether there is a line drawn around the land to the south of Somerton Road and how far it extends is a moot point. The existing Commercial 2 Zone along with the existing and proposed land uses and development opportunities for this land is evolving. It forms part of a broader activity centre by use alone. The evidence before the Committee is that approval of retail and supermarket floorspace as proposed by Kaufland will not threaten the existence of other supermarkets in the MAC nor the viability of other centres in the trade area catchment (see Chapter 4.3). Further, the Committee notes that there will be some regeneration of activity as the area develops, as is the current situation with the development of the large office/medical centre complex to the immediate south of the site.

The Committee notes that various land uses sought by activity centre policy are accommodated through a number of land use zones, including the Commercial 2 Zone. In reaching its conclusions regarding the in-centre vs out-of-centre debate, the Committee places emphasis on the fact that the land is zoned for commercial use through the Commercial 2 Zone and it abuts Commercial 1 zoned land.

In the opinion of the Committee, no justifiable rationale was satisfactorily advanced by Vicinity Centres or its expert witnesses that could explain why it would be appropriate for

commercially zoned land that abuts other commercially zoned land to be excluded from an activity centre. In this regard the Committee asked Mr O'Farrell if he knew of any circumstance in metropolitan Melbourne where Commercial 2 zoned land was excised or excluded from or did not form part of an activity centre. Mr O'Farrell replied that he would take the question on notice and get back to the Committee. Prior to hearing of Kaufland's closing submissions, the Committee asked parties if there were any outstanding matters to be addressed. No party raised any further or outstanding issues. The Committee specifically asked Ms Robertson if Mr O'Farrell had been able to report in response to the Committee's question. Ms Robertson replied that she had received no instructions on the matter. The Committee considers this telling.

(iv) Findings

The Committee finds:

- The site of the proposed Kaufland Coolaroo store is located on land in the Commercial 2 Zone which forms part of the Roxburgh Park Major Activity Centre.
- Retailing and supermarket uses (up to 1,800 square metres) are Section 1 (as-of-right) uses in the Commercial 2 Zone. The proposed supermarket development which exceeds 3,600 squares metres (and ancillary retail uses) will not have a material impact on other supermarkets in the Roxburgh Park Major Activity Centre or other centres in the catchment and is supportable as a Section 2, permit required use.
- Kaufland's proposed development of the site is consistent with uses encouraged to locate in Major Activity Centres.
- The proposed development enjoys broad strategic planning policy support of Council and the Hume Planning Scheme.
- The proposed development will provide a catalyst for the redevelopment of the balance of the Roxburgh Park Major Activity Centre.

4.3 Economic impact

(i) Context

The Coolaroo Economic Impact Assessment (EIA) concluded that that the existing supermarket operators within the main trade area would expect a one-off trading impact of between 5% and 6%. The centres expected to experience the greatest impacts from the new Kaufland store were identified as Roxburgh Park Shopping Centre, Broadmeadows Shopping Centre and Craigieburn Central, with lower impacts likely on the smaller facilities including Greenvale Shopping Centre, Craigieburn Shopping Centre and Meadow Heights.

The EIA concluded that while these centres would experience trading impacts, the impacts will not threaten the centres network. Further the EIA concluded that the likely trading impacts will not undermine the viability, role or function of any existing centre.

(ii) Submissions and evidence

The evidence of Mr Dimasi reiterated opinions expressed in the EIA for Coolaroo that the supermarkets within Roxburgh Village (Coles, Woolworths, Aldi and Freshplus) are likely to be impacted to a greater degree than the average trading impact given they are the closest chain

supermarkets to the proposed Kaufland Store. His opinion was that there is no likelihood that the resultant impact will in any way threaten the viable operating future of Roxburgh Village or any supermarket within the centre, particularly given the centre has a vacancy rate of 0.6% and is anchored by four supermarkets, three of which are national chain stores. He stated that the expected growth in population in the trade area will provide further opportunity for all existing facilities to achieve future growth in sales.

With respect to the Morgan's IGA supermarket that anchors the small Meadow Heights neighbourhood centre, Mr Dimasi considered the impact will be lower than average and that its continued operation will not be threatened. In support of this conclusion, Mr Dimasi cited that the centre is conveniently located within a residential neighbourhood and has a Middle Eastern focus in its speciality food offer, reflecting the socio-demographic profile of the neighbourhood.

Mr Stephens peer-reviewed the EIA prepared by Mr Dimasi. He stated that he generally agreed with the conclusions of the Coolaroo EIA, estimating that supermarket in the trade area will experience on average sales impact in the order of -8% as a result of the introduction of the proposed Kaufland store. Mr Stephens considered that supermarkets within the Roxburgh Park Shopping Centre will experience a greater impact, in the order of a 10% reduction in sales in 2021 relative to sales which might otherwise be achieved in that year. He considered the impact on the Roxburgh Park Village centre as a whole will be much smaller (in the order of -6%). The level of impacts anticipated were considered by Mr Stephens *"to be well within normal bounds of a competitive retail sector"*.

Mr Stephens concluded that the proposed Kaufland Coolaroo store will not undermine the role and function of other centres in the hierarchy and that the proposal is entirely consistent with the operation of Roxburgh Park as a MAC. Mr Stephens gave evidence that he did not support the view expressed in the submission on behalf of Vicinity Centres (C04) that the proposal will cause deleterious economic impact on the retail hierarchy.

Vicinity Centres submitted that the proposed store will cause deleterious economic impact on the retail hierarchy. Mr O'Farrell submitted (Document 181) that the level of impact assessed in the evidence of Mr Haratsis that the impact on the MAC will be in the 10% to 15% range *"is alarming"*. Mr O'Farrell further noted that Mr Haratsis gave evidence that 10 million shoppers per annum will not come to Roxburgh Park MAC if the Kaufland store is approved on the subject site. He concluded *"that number is a stark demonstration of how the proposal is contrary to central tenets of Activity Centre policy relation (sic) to agglomeration and the multiplier benefits of co-location"*.

In relation to economic impacts, Mr Haratsis gave evidence that if the Kaufland store achieved \$45 million in sales at 2021, the overall impact on retail shopping centres with the defined catchment would average at approximately 8%, and range between 2% – 12% for individual shopping centres. His analysis concluded that Roxburgh Village would be impacted by 11.9% under that scenario, and up to 15.9% if Kaufland were to achieve sales of \$60 million in 2021.

Mr Haratsis critiqued a number of articles published by the Reserve Bank of Australia. He concluded that the retail trade sector has become more competitive in recent times and as such there is a compelling argument that introducing further competition is not a high economic priority. He did say however, additional competition and choice within-centres

would likely have positive economic/multiplier flow on effects. Mr Haratsis concluded that as the risk profile for the retail sector is more pronounced, investability in the sector is now cause for concern, and the Kaufland project is unlikely to provide a net community benefit.

Hume submitted (CO3) that it supported the provision of the Kaufland based supermarket development “*as a unique opportunity to influence the retail food market*”. Mr King submitted (Document 101) that Council relied on the evidence provided for Kaufland relating to retail and economic impact assessment analysis by Dimasi & Co and Essential Economics. In this regard, Mr King submitted:

The evidence provides convincing analysis of the existing catchments and that the existing activity centres at Broadmeadows and Roxburgh Park and smaller specialist centres will not be unreasonably impacted by the proposal considering the exiting retailing offers and growing population in the catchments.

...

Given the flexibility created via the introduction of the Commercial 2 Zone and the locational attributes including reference to the site as being part of the Roxburgh Park Activity Centre the proposed supermarket development is considered an edge of centre proposal providing additional competition and diversity in the retail grocery market in an accessible location.

Mr King in closing reiterated Council’s support for the proposed development (Document 205). In response to economic impact matters and evidence tested during the Hearing, Mr King advised that Council officers met with the Meadow Heights IGA shopping centre owner and the operator to discuss opportunities to facilitate the growth of the centre as appropriate into the future.

The MGAIR submitted (GE01) that the proposed store location is out-of-centre and as such is inconsistent with activity centre policy. The submission stated that hyper-supermarkets should be located with the epicentre of an activity centre and the proposed location will undermine the retail hierarchy. Mr Kane submitted (Document 61) that Kaufland stores rely far too heavily on being out-of-centre. In this regard he submitted “*The proposals are unjustifiable and an ad-hoc attempt to manufacture a major shift in the retail hierarchy and Activity Centre planning for metropolitan Melbourne.*” He noted the trading impacts of the proposals are difficult to predict with certainty and that MGAIR is very concerned that Kaufland will have an adverse trading impact on independent supermarkets/retailers with cascading negative impacts, including job losses and reduced offer to customers. Mr de Bruin argued that the economic evidence before the Committee was “*folly*” and that there is absolutely no demonstration of net community benefit.

Morgan’s IGA submitted (C05) that if the Kaufland Store at Coolaroo proceeds, it will severely impact the Meadow Heights shopping centre and surrounding community. The submission stated that the IGA and the smaller shops it supports will become unsustainable and “*they will simply cease to exist*”. Further, the submission contended that the locality is already saturated with supermarkets and small retail outlets and the proposed development is therefore not needed. Mr Morgan reiterated to the Committee his concern that since the global financial crisis of 2008, costs have risen, and profit margins have declined. He stated that if he ceased

to operate his store, it would be extremely unlikely that another retailer would take on the lease. He considered that the Meadow Heights centre is significantly under threat.

Kaufland supported the findings of the Coolaroo EIA. It submitted (Document 105) that there is no reason to suggest that the one-off trading impact that will be experienced by existing supermarket operators in the trade area catchment of between 5% and 6% would imperil their continued operation. The submission stated these impacts are to be balanced against the significant consumer and economic benefits that will result from development of the proposal. Kaufland contended that the development of the new store would result in a clear net community benefit. In respect of Mr Stephens peer review of Mr Dimasi's assessment, Kaufland noted that while Mr Stephens' assessed impacts were slightly higher for individual supermarkets, he concurred with Mr Dimasi that the likely impact on Roxburgh Park will be in the order of 6%, which he concluded is well within normal bounds of a competitive retail sector.

Kaufland strongly contested the evidence of Mr Haratsis in relation to his estimate of a negative 11.9% trading impact on Roxburgh Park. Kaufland submitted that his finding was based on an unrealistic assumption that 43% of Kaufland's total estimated sales will be drawn from Roxburgh Park and noted that neither Mr Dimasi nor Mr Stephens accepted that assumption as being reasonable. On this issue, in its submission in reply (Document 215) Kaufland noted that Mr Dimasi said it was more likely that 35% of Kaufland's future sales would be drawn from Roxburgh Park, which would make the impact in the order of 7% to 8%. Mr Stephens concluded that the impact on Roxburgh Park would be in the order of 10%. The submission further noted that none of the economists thought that the proposal would cause the supermarkets in the trade area to close. The submission noted that Mr Haratsis accepted that Roxburgh Park would continue to perform its role and function and that there would be no impact on the hierarchy of centres. In closing Kaufland concluded that:

The evidence of Mr Dimasi and the peer review evidence of Mr Stephens should be preferred to the evidence of Mr Haratsis. Mr Stephens' evidence was that, while the proposed Kaufland Coolaroo store will generate some moderate trading impacts on some existing supermarket operators, "these are well within then normal bounds of a competitive retail sector. Ongoing population and spending growth in the trade area ensures that any initial trading impacts are temporary, and that supermarkets and other competing traders will soon return to overall sales growth." That evidence should be accepted.

(iii) Discussion

The Committee considers that the EIA for Coolaroo is a robust and valid assessment that reasonably assesses the likely higher order economic impacts associated with the proposal. This view has been formed having heard the extensive range of submissions and the testing of expert evidence from three economists in relation to the matter.

The Committee notes that all economists agreed that the proposed Kaufland store at Coolaroo would not likely impact on any of the supermarkets in the trade area to such an extent that they would become unprofitable and be forced to close. The Committee agrees.

The Committee forms the view that the likely impact on Roxburgh Park Village shopping centre as a whole will be between 6% and 10% which is within normal bounds of a competitive retail sector. In this regard the Committee prefers the evidence of Mr Dimasi and Mr Stephens that Kaufland's capture of retail spending from Roxburgh Park will be approximately 35% compared to Mr Haratsis estimate of 48%. The Committee agrees with Mr Dimasi and Mr Stephens that it is likely that the trade will be drawn more broadly across centres within the catchment compared to Mr Haratsis' projections. The Committee accepts that there will be continued population and spending growth throughout the trade area that will offset the one off initial trading impacts of the proposal. The Committee notes that while Mr Haratsis considered the impacts on Roxburgh Park will be between 10% and 15%, he agreed that the Roxburgh Village centre would continue to perform its role and function and that hierarchy of centres will not be challenged.

In respect to the potential impact of the Kaufland store on Meadow Heights and Morgan's IGA, the Committee prefers the economic evidence advanced by all three economists that the impact will be less than that experienced at Roxburgh Village, and that it is unlikely to threaten the viability of either the Centre or the independent supermarket. The Committee commends Hume Council officers for having met with the operator of the Meadow Heights IGA to discuss opportunities to facilitate the growth of the centre as appropriate into the future.

The Committee supports the findings of the EIA that residents and local businesses will enjoy the following benefits arising from the proposed Kaufland store:

- substantially improved shopping choice and convenience
- downward pressure on grocery prices
- an additional avenue for retail sales for local suppliers
- local employment creation.

(iv) Findings

The Committee finds:

- A Kaufland supermarket at Coolaroo will provide a range of economic benefits for local and regional shoppers, suppliers and residents.
- While a number of short-term trading impacts will be experienced by existing supermarkets, retailers and shopping centres in the trade area catchment, the projected economic impacts are acceptable and within normal competitive tolerances.

4.4 Urban design/built form/landscape

(i) Context

The Kaufland supermarket development is proposed to locate at the rear of the existing Masters development and is therefore setback behind the former Masters away from Pascoe Vale Road. The proposed building is setback just under 25 metres from the railway corridor at its rear. The overall building height varies from 9 to 11 metres, which is broadly consistent with the adjoining Masters building. The proposed at-grade car park is located predominantly to the south of the building's main entrance, and east of the former Masters car park. The main vehicular access is from the existing internal road which intersects with Pascoe Vale

Road. The car park is proposed to be planted with *Eucalyptus* ‘Little Spotty’ with a line of *Melia azerdach* (White Cedar) along the south boundary to link with the existing White Cedars. Planting is proposed along the eastern interface.

(ii) Submissions and evidence

Mr Blades for Kaufland gave evidence that the Coolaroo site is robust in built form terms, located in an emerging activity centre on a busy arterial road. The proposed design ties in with the existing Masters development. Mr Blades opined that the design is contextually responsive in terms of siting, height, massing, design detail and architecture. He was of the view however, that there was opportunity to enhance the articulation of the building on the southern and eastern facades by varying the parapet height for visual interest.

The proponent thought this unnecessary.

Mr King for Hume submitted that Council considered the proposal in terms of its location and form, is generally responsive to the nature of the subject land and requirements of the Commercial 2 Zone.

In relation to landscaping, Mr McWha was of the view that the proposed landscape was contextually responsive.

In relation to detailed matters of the landscape plan, discussion at the Hearing considered the suitability of the proposed White Cedar trees in the existing Masters car park. Mr McWha stated that he would not have chosen this species because of the berries they produce which can result in trip hazards within a car park environment. He only supported these trees for the perimeter of the Kaufland site in order to continue the existing avenue along the access road. He stated that the existing car park trees on the Masters site are not proposed to be removed and thought this would be resolved as part of the development of that site.

In its final version of the Incorporated Document, Kaufland proposed to replace the White Cedar trees with *Eucalyptus* ‘Little Spotty’.

No further issues were raised in relation to built form, urban design or landscape in submissions for the Coolaroo proposal.

(iii) Discussion

The Committee notes the absence of concerns raised in relation to the built form, urban design or landscape proposal for Coolaroo. It agrees with Mr Gobbo that the site is robust and the design response is contextually appropriate. The Committee considers that the proposal provides an acceptable built form, urban design and landscape outcome.

(iv) Findings

The Committee finds:

- The built form, urban design and landscape proposal for the Coolaroo site is appropriate.

4.5 Traffic and access

(i) Context

The Coolaroo site has access from traffic lights on Pascoe Vale Road that also provides access to the adjacent property to the south. This access is the sole access and egress for the car park. Delivery vehicles would enter the site from the traffic signals and travel around the site, in an anti-clockwise direction, to the rear loading area before departing via a northern cross-over onto Pascoe Vale Road.

The development proposal will extend the Masters car park further west and will maintain access to the car park from the traffic signals. However, it will modify the existing service vehicle route by altering the one-way service vehicle route along the north side of the building to allow two-way movement directly between Kaufland's rear loading docks and Pascoe Vale Road, via a modified northern cross-over. This change removes the need for large service vehicles to traverse around the car park, although that route is to be maintained for fire vehicle access. A small loading dock is proposed in the car park in front of the Kaufland store for its specialty tenants.

The development will not provide sufficient car parking to meet its own needs and proposes to enter into a shared arrangement with the Masters premises.

(ii) Submissions and evidence

Traffic Impacts

A Transport Impact Assessment was prepared on behalf of Kaufland by GTA Consultants and this was supported by evidence from Mr Davies of GTA Consultants, and a peer review by Ms Dunstan of Traffix Group.

The traffic assessment was undertaken on an assumption that the existing Masters building, which has a gross floor area of 13,000 square metres, will in future contain 9,500 square metres of leasable floor space and be used for restricted retail. The assessment included traffic generated from the proposed adjacent development to the south.

Neither Mr Davies nor Ms Dunstan had seen any re-development plans for the Masters building that support the leasable floor space assumption. Nor had they considered the future loading requirements for the Masters building beyond ensuring that trucks can turn around within the site to access the existing double dock towards the front of the site.

In summary, the traffic assessment indicated that some works would be required at the signalised intersection to provide adequate traffic capacity at full development. The works proposed by GTA Consultants include an extension of the right turn lane on Pascoe Vale Road by 152 metres and the provision of green paint on the existing bicycle lanes through the intersection. With these works, the future intersection degree of saturation is estimated to peak at 0.97 on a Saturday, and 0.80 on a weekday, assuming that all uses peak at the same time.

Ms Dunstan noted other potential works that could be undertaken to improve capacity. These included changing the right turn phase on Pascoe Vale Road from fully controlled to allow

some filter turns outside of the commuter peak period to reduce the critical queue length on Saturdays and constructing an extra southbound through lane through the intersection.

VicRoads advised that it was satisfied with the works at the signalised intersection proposed by GTA Consultants to ameliorate traffic impacts.

In respect of the northern service vehicle access, Mr Davies and Ms Dunstan recommended that the existing left turn lane that services the entry to the abutting development to the north be extended to provide access to this site's northern crossover.

VicRoads expressed concern at the potential conflict arising from a shared left turn lane. Ms Dunstan considered that, in comparison to providing a short separate left turn lane, the risks of conflict are low and are overridden by the benefit provided by a longer left turn lane into the site which would minimise potential conflict with through traffic.

In response to a question from the Committee, Mr Davies agreed that the northern entry to the site should be widened to allow opposing trucks to pass.

VicRoads submitted that the Incorporated Document should include standard conditions for design and construction. These were accepted by Kaufland as Conditions 26 and 27. In addition, VicRoads sought a condition requiring that the property boundaries be realigned to ensure that any existing road infrastructure sit within the road reserve. Kaufland noted that this condition (Condition 28) should refer to future road infrastructure.

Parking and pedestrian movements

There are presently 348 car parking spaces on the site. The proposed Kaufland development will remove 37 existing spaces and add 222 new spaces, increasing the total to 543 spaces.

The statutory car parking requirement for the Kaufland Store is 307 spaces, while a re-developed Masters building, as assumed, would require 237 spaces. The total requirement for the two buildings would be 544 spaces, being one above the proposed total supply.

The Transport Impact Assessment noted that the statutory rate for the restricted retail use at 2.5 spaces/100 square metres is above the average empirical rate of 1.42 spaces/100 square metres.

Both experts supported an exemption for the shortfall of one parking space, this was not contested.

Mr Davies noted that Condition 14 in the Incorporated Document for Coolaroo requires that if fewer than 85 spaces are available on Masters' site, then alternative arrangements would need to be made. Ms Dunstan advised that this condition should include an ability for the responsible authority to approve a lower provision should a lesser need be shown by actual demand.

With respect to disabled parking, the Transport Impact Assessment noted the Building Code of Australia requires the provision of one disabled parking space for every 50 car parking spaces for retail premises. This equates to seven spaces for the Kaufland store, (based on 306 spaces) and 11 spaces over the whole car park. Kaufland agreed to provide these spaces near the front of its store, shown in Condition 1d.

In relation to pedestrian movements, the plans provide for a connection to the signalised intersection. The experts agreed that a connection to the pedestrian path network within the adjacent development to the south should be provided. This is included as Condition 1f.

In response to a question from the Committee, the experts agreed that the eastern end of the footpath running along the south side of the building, adjacent to the Tenancy Loading Zone, should extend to meet a parking aisle near the south-east corner of the building to facilitate movement with trolleys to the eastern-most parking aisle.

(iii) Discussion

Assumptions regarding the Masters building

VicRoads sought the proponent assess the transport impacts assuming a full re-development of the Masters site and the site to the south (1500 Pascoe Vale Road)³. The Committee is concerned that the experts have undertaken their assessment of the traffic impacts and parking demands based on an assumption of a redevelopment of the Masters building that would result in a leasable floor area significantly lower than the current gross floor area. Kaufland did not provide any plans or documentation that confirm this assumption.

Subject to the issues identified in the discussion on parking, Condition 14 in the Incorporated Document addresses concerns in relation to the adequacy of the parking supply for the combined Masters and Kaufland site. However, it does not provide any certainty in relation to the traffic generation or in relation to the future loading dock requirements of the Masters building. This is of concern given that the signalised intersection, which is to serve the Kaufland store, the Masters building and the adjacent development to the south is estimated to operate at saturation levels based on the estimated floor space. Accordingly, no spare capacity is provided should a larger net floor area be utilised in the Masters building, noting that its own parking could service up to 12,840 square metres of leasable restricted retail floor space⁴.

In relation to loading, the Kaufland store, at 6,905 square metres gross floor area and 6,370 square metres leasable floor area, is being provided with three rear docks and a front loading zone. Whereas, the Masters building, with 13,000 square metres of gross floor area and only an assumed 9,500 square metres leasable floor area due to the loss of the circulation around the site, in future appears to be limited to two loading docks with the only truck turning circle provided at the front of the site. This is despite having significantly more floor space than the Kaufland store. Should the Masters building be divided into a number of tenancies, it is unclear how delivery vehicles could access each tenancy or if two docks would be sufficient for the floor space. It is further noted that the proposed design of the car park is not conducive to allowing trucks to access the front of the Masters building as an alternative.

Approval of the Kaufland store as proposed appears to result in several constraints on the future re-use of the Masters building. The Committee is not satisfied that the assumptions in relation to the Masters building are reasonable and that the impacts of constraints in relation

³ VicRoads Submission GE03, p17.

⁴ Based on the current supply of 321 spaces and a statutory rate of 2.5 spaces per 100 square metres leasable floor area.

to loading and at the signalised intersection have been fully tested. Accordingly, further work on an overall development plan for the combined Masters and Kaufland site is recommended prior to endorsement of plans to ensure proper and orderly traffic management and planning.

Traffic Impacts

Notwithstanding the above, based on the assumed Masters floor area, the Committee notes that VicRoads is satisfied with the proposed external traffic works.

The Committee agrees with Ms Dunstan that the left turn lane into the truck access would be best facilitated by an extension of the existing left turn lane on Pascoe Vale Road, located to the north of the site.

The Committee accepts that there is an opportunity to improve the capacity of the right turns at the traffic signals by extending the right turn lane and by allowing filter turns in the critical peak on weekends if required, noting that the analysis assumed all uses would have peak traffic generation concurrently. While VicRoads has not sought to require such modification to the signal phasing, this is something that VicRoads could do if needed in the future.

Condition 28 relating to changes to the property boundary to ensure public road infrastructure sits within the road reserve, was proposed consistently by both VicRoads and Kaufland for all three sites. There was no statement provided at the Hearing that the existing road infrastructure is not within the road reserve, and this is not shown on the development plans. However, GTA Drawing No. V15990-06 P2, which is a concept drawing over an aerial photo, shows the property boundary crossing the footpath near the northern access.

The Committee in this instance considers it reasonable that the condition relates to future infrastructure as any realignment to suit existing infrastructure should be a matter to be resolved with the owner of the frontage site, rather than Kaufland.

Parking and pedestrian movements

Kaufland has a statutory requirement for 307 spaces, however the expert witnesses agreed that a reduction of one space from the statutory requirement is acceptable, resulting in a standard requirement for 306 spaces.

TP-04 ACP indicates that 222 car parking spaces are being provided by Kaufland within the Specific Controls Overlay area, and Condition 14 in the Incorporated Document states:

If fewer than 85 car parking spaces on the site to the immediate north-east of the Kaufland supermarket become unavailable to Kaufland customers, alternative parking (if required) must be provided to the satisfaction of the Responsible Authority or the floor area of the supermarket or retail reduced to the satisfaction of the Responsible Authority.

The Committee understands that the reference to the 85 spaces is to some of the 'existing' parking in front of the Masters building which is to the south-west, not the north-east of the supermarket; with all of the car parking being within 1550 Pascoe Vale Road. The Committee notes that a small number of the 222 'proposed' spaces are located outside the 'Proposed

Boundary Line’ shown on page 19 of the Map Book⁵. Accordingly, the Incorporated Document needs to be modified for clarity.

Given that TP0-04 ACP clearly identifies the 222 proposed Kaufland car parking spaces in the table and shows the whole of the parking within 1550 Pascoe Vale Road, it would add clarity to the Incorporated Document to refer to the full requirement of Kaufland car parking within the whole allotment, rather than referring to 85 spaces in a poorly defined portion of the allotment.

Issues relating to the location of disabled parking and the pedestrian connection to 1550 Pascoe Vale Road have been included as Condition 1 changes to the plans as recommended by the experts. The Committee is satisfied with these changes. It considers that customers would expect to be able to take trolleys along the footpath adjacent to the building past the Tenancy Loading Zone to reach the eastern most parking aisle. Accordingly, provision should be made to extend the path to reach the parking aisle to the east of the loading zone.

(iv) Findings

The Committee finds that:

- Prior to the approval of endorsed plans and any traffic and parking plans, further work is required to determine the future leasable floor space and loading requirements of the Masters building to ensure that its future use is not unduly compromised and supports the underlying assumption in the traffic analysis.
- The proposed access arrangements, as amended by conditions in the Incorporated Document, are suitable to mitigate any traffic impacts, subject to any further works that may be determined following the review of the Masters floor space assumptions.
- The reduction of one parking space is acceptable and Condition 14 in the Incorporated Document should be amended to refer to the provision of 307 spaces within 1550 Pascoe Vale Road.
- Condition 12 should be modified to require the Car Parking Plan to show the location of all car parking spaces meeting the requirement of Condition 14.
- Condition 1 should be modified to require the footpath adjacent to the Tenancy Loading Zone to be extended to meet a parking aisle at the southeast corner of the building.
- The provision of loading is acceptable.

4.6 Acoustics

The acoustic evidence of Mr Tardio considered noise compliance with State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No. N-1 (SEPP N-1), Environment Protection Authority (EPA) Publication 1254 and sleep disturbance criteria. The assessment assumed some form of packaged noise attenuation would be applied to plant and this should be determined at the time of plant selection to ensure compliance with SEPP N-1.

In respect to the noise from the car park and from deliveries, including night time deliveries and waste collection, the modelling undertaken by Mr Tardio indicated that the noise would

⁵ Document 34.

either be inaudible inside the nearest dwellings or indistinguishable from traffic noise on Pascoe Vale Road. The ambient traffic noise along the main road separating the site from the residential properties as well as the setback of the Kaufland building behind another, existing, commercial building contributed to these findings.

The EPA submitted that while SEPP N-1 is the current State noise policy, it intends to phase out SEPP N-1 and replace it with a newer guideline or regulation. In the interim, it recommended that the following generic condition be included in the Incorporated Document to protect amenity:

There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:

- i. the environment in the area around the premises; and*
- ii. the wellbeing of persons and/or their property in the area around the premises.*

In considering whether noise is detrimental, an assessment can be made against the relevant noise guideline, whether it is still SEPP N-1 or a newer guideline or regulation.

The EPA also recommended that the Construction Management Plan include provision for community consultation and notification of noisy works.

The Committee finds:

- The development can achieve compliance with SEPP N-1.
- Condition 5 should be replaced with the EPA’s recommended condition, and Condition 6 should include reference to any newer guidelines or regulations if appropriate.
- Condition 19 proposed by Kaufland relating to a Construction Management Plan is sufficiently flexible to allow the Council to require inclusion of consultation and notification if it is deemed necessary.

4.7 Conclusions

(i) Should planning approval be granted?

The Committee concludes:

- the proposed Kaufland Store at 1550 Pascoe Vale Road, Coolaroo should be granted planning approval.

(ii) Changes to Incorporated Document

The Committee considers the Incorporated Document for Coolaroo be amended as follows:

- Modify the fourth dot point in Section 4.1 Exemption from Planning Scheme Requirements to add the word “and” at the end of the dot point, as shown following:
“for a supermarket or a bottle shop ... Kaufland Australia Pty Ltd (or a related entity); and”
- Modify Condition 1, in Section 4.3 Conditions, by:
 - replacing Condition 1a with the words: *“the removal of pylon sign type 2”*.
 - adding *“h. the footpath running adjacent to the Tenancy Loading Zone extended to meet a parking aisle at the southeast corner of the building”*.

- adding “i. any changes resulting from the Car Parking and Traffic Management Report, the Car Park Plan and the Stormwater Management Plan required by these conditions”.
- Replace Condition 5 with the words:
 - “There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:
 - a. the environment in the area around the premises; and
 - b. the wellbeing of persons and/or their property in the area around the premises.
 In considering whether noise is detrimental, an assessment can be made against the relevant noise guideline, whether it is still SEPP N-1 or a newer guideline or regulation”.
- Modify Condition 6 by adding, at the end, the words: “or newer guidelines or regulation”.
- Modify Condition 12 by:
 - adding the words “c. all car parking spaces required by Condition 14”.
 - adding the sentence: “The Car Parking and Traffic Management Report must be informed by a masterplan for the whole of 1550 Pascoe Vale Road that establishes the expected leasable floor area and loading requirements for a redevelopment of the former Masters building and assess any changes required both within the site and to the external traffic mitigation works specified in Condition 25”.
- Modify Condition 14 by replacing the words “If fewer than 85 car parking spaces on the site to the immediate north-east of the Kaufland supermarket become unavailable to Kaufland customers,” with the words “If fewer than 306 car parking spaces are provided within 1550 Pascoe Vale Road (Lot 1 on PS 709155T) for the use of Kaufland”.
- Modify Condition 25 by adding at the end “The plans must be amended to reflect any changes or additional traffic mitigation works recommended in the Car Parking and Traffic Management Report required by Condition 12”.

These amendments are reflected in Appendix E.

4.8 Recommendations

For the reasons expressed in this report, the Committee recommends that the Minister for Planning:

- 1. Approve the draft amendment to the Hume Planning Scheme to facilitate the use and development of the land at 1550 Pascoe Vale Road, Coolaroo for a Kaufland supermarket and complementary uses with associated carparking and signage in accordance with the approved Incorporated Document, subject to the following changes:**
 - a) **Replace the exhibited version of the Incorporated Document with the revised version (Appendix E) and make any consequential changes to Clause 72.01 if required.**
 - b) **Include the Hume Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**

5 Mornington

5.1 Context

(i) The proposal

Kaufland Australia is seeking to develop land at 1158 Nepean Highway, Mornington for the purposes of a Kaufland supermarket and complementary uses with associated car parking and signage.

The draft amendment proposes the following changes to the Mornington Peninsula Planning Scheme:

- application of the Specific Controls Overlay to land at 1158 Nepean High Mornington, formally described as Lot 1 on PS630840P (Volume 08727 Folio 330) and update the schedule to the Specific Controls Overlay accordingly
- insert “*Kaufland supermarket development, 1158 Nepean Highway, Mornington*” in the schedule to Clauses 45.12 and 72.04 as an Incorporated Document.

The key elements of the proposal are outlined in Table 6.

Table 6 Key elements of the Mornington proposal

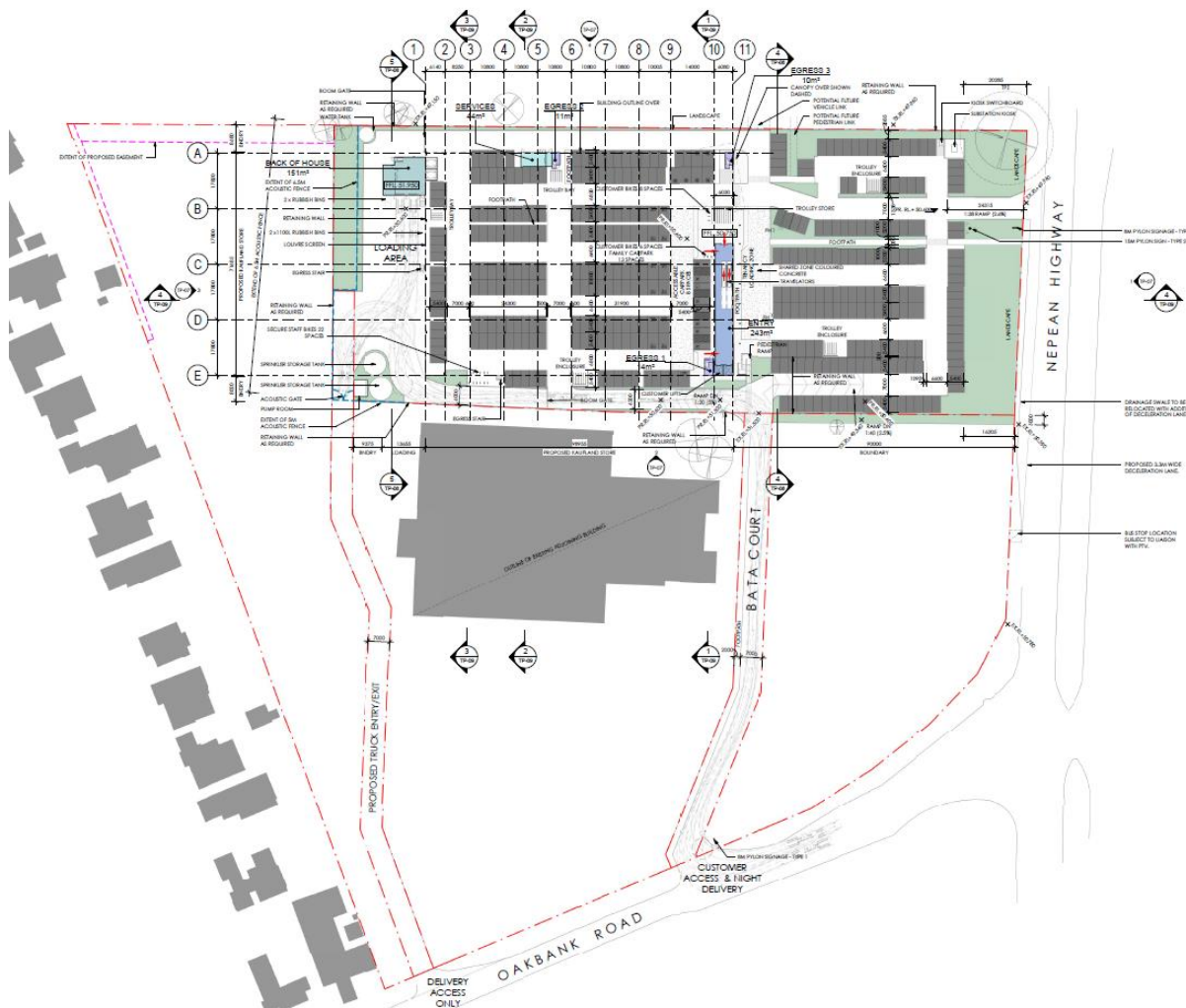
Land use mix	<p>A 7,554 square metres building containing the following:</p> <ul style="list-style-type: none"> • 3,610 square metres of supermarket floor area • 354 square metres for bottle shop • 278 square metres for food hall • two complementary tenancies totalling 276 square metres • associated in house facilities including 1,373 square metres back of house facilities and 342 square metres of administration • 1,253 square metres of non-leasable/services.
Built form	<p>A double storey building with a building height of 13.1 metres and a feature parapet of 14.6 metres.</p> <p>Construction materials include a mix of feature cladding including concrete panels and planter timber and metal deck roofing.</p>
Car parking provision	<p>Located beneath the supermarket accommodating 380 car parking spaces, including:</p> <ul style="list-style-type: none"> • 8 accessible spaces • 13 family spaces • 6 senior spaces. <p>Accessed via the ground floor car park and internal traveller at the same building entrance.</p>
Bicycle parking provision	36 on-site bicycle spaces.

Signage	See Table 2.
Loading bay facilities	Loading and deliveries are located at the eastern rear of the property.
Access	Vehicle access will be via a new entry/exit from the Nepean Highway in a left in/out operation, and two new carriageway easements from Oakbank Road - a western access to the car park (Bata Court) and an eastern access to the rear loading dock.

Source: Amended Plans – Mornington (Document 9)

The site context plan at Figure 5 sets out the proposed layout as amended by Document 134.

Figure 5 Mornington proposed site and ground floor plan



Source: Ground floor site plan (Document 134)

(ii) The site

The site is located at 1158 Nepean Highway, Mornington (Figure 6). It is on the south-east corner of the Nepean Highway and Oakbank Road intersection within the northern edge of the Urban Growth Boundary as it applies to the Mornington Township. The site is approximately two kilometres north-east of the Mornington MAC.

Figure 6 1158 Nepean Highway, Mornington



Source: Mornington Town Planning Assessment, Planning Property Partners, June 2018

Characteristics of the site are set out in Table 7:

Table 7 Mornington site characteristics

Current land use	<p>The 'Planning Unit' is vacant grass land located to the south of the Bata Shoe Company factory.</p> <p>The balance of the site currently contains an existing warehouse/factory building setback from its two street frontages and positioned near the site's centre.</p> <p>The existing structure is single storey and currently used for the purposes of the Bata Shoe Company of Australia.</p>
Site area	<p>The combined site has a total area of 6.042 hectares and is irregular in shape.</p> <p>The planning unit is 1.973 hectares and is generally rectangular.</p>
Frontage and abutments	<p>The site has a western frontage to Nepean Highway and a northern boundary to Oakbank Road.</p>
Slope	<p>None.</p>
Other	<p>Contains a drainage easement in the south-east corner.</p>

The site is surrounded by the following land uses set out in Table 8.

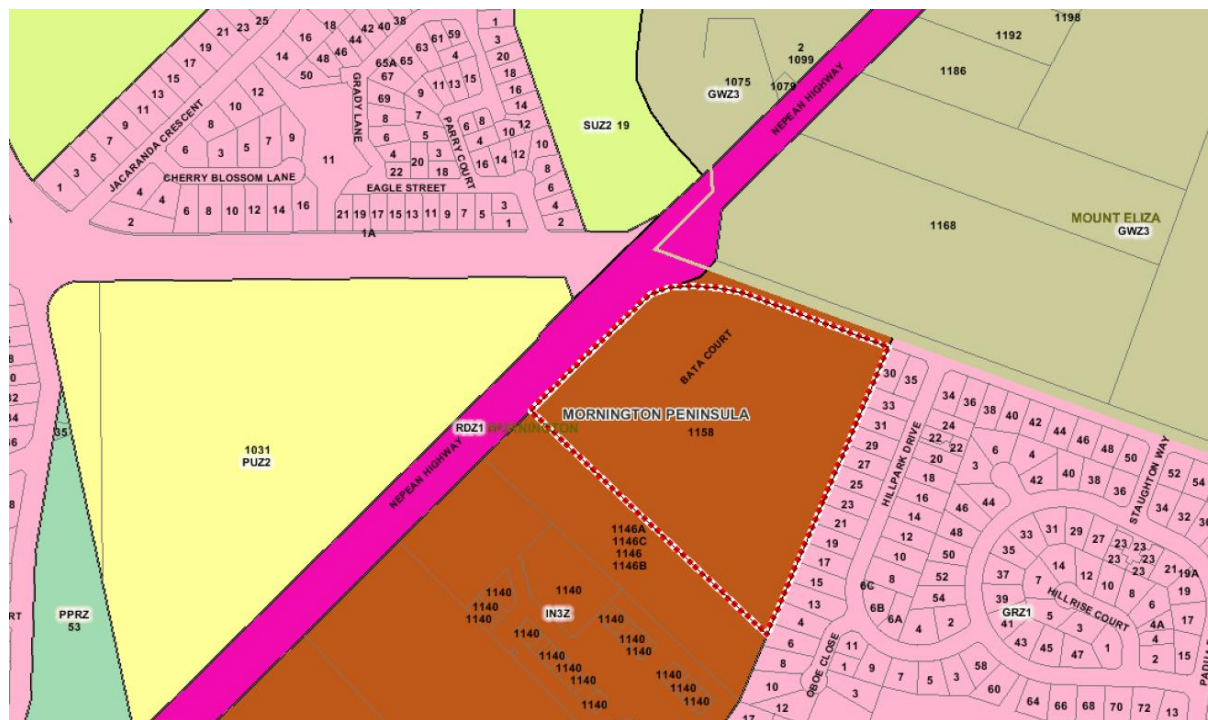
Table 8 Mornington surrounding land uses

North	<p>Bound by Oakbank Road, with land on the northern side of the road located within the Green Wedge Zone.</p>
East	<p>Interface with residential generally consisting of detached dwellings and the Padua College.</p>
South	<p>Land within the Mornington Parkland Industrial Estate, with various commercial operations accessed off the Nepean Highway.</p> <p>Further south are larger scale retail and bulky goods outlets as part of the Mornington Homemaker Centre which includes a Bunning Warehouse and an Aldi Supermarket.</p>
West	<p>Bound by the Nepean Highway, with land beyond in the Public Use Zone due to Mornington Secondary College and its associated outdoor recreation areas for students.</p>

(iii) Planning scheme controls

The site is included within the Industrial 3 Zone under the provisions of the Mornington Peninsula Planning Scheme, shown on Figure 7.

Figure 7 Mornington zoning



Source: Expert Witness Statement Mr Biaci (Document 26e)

The key purposes of the Industrial 3 Zone are:

- to provide for industries and associated uses in specific areas where special consideration of the nature and impacts of industrial uses is required or to avoid inter-industry conflict
- to provide a buffer between the Industrial 1 Zone or Industrial 2 Zone and local communities, which allows for industries and associated uses compatible with the nearby community
- to allow limited retail opportunities including convenience shops, small scale supermarkets and associated shops in appropriate locations
- to ensure that uses do not affect the safety and amenity of adjacent, more sensitive land uses.

The land is affected by Schedule 2 to the Development Plan Overlay.

Figure 8 Mornington site Development Plan Overlay 2

Source: Expert Witness Statement Mr Biacs (Mornington) (Document 26e)

Under **Clause 33.01-1 Industrial 3 Zone**, use of the land for a ‘supermarket’ or ‘shop’ is a section 3 (prohibited) use if the leasable floor area exceeds 1800 square metres. The proposal exceeds this area and is therefore prohibited under the Industrial 3 Zone.

Schedule 2 to the Development Plan Overlay applies to the site and requires a development plan to be approved for any proposed development. No such development plan has been approved for the site, however the proposal has sought to accommodate the discretionary requirements of the overlay with respect to setback, plot ratio and landscaping.

The following planning scheme provisions would otherwise trigger a requirement for a planning permit:

- **Clause 52.05 Signage:** an industrial area is designated as a low limitation area and would require a permit for the proposed signs.
- **Clause 52.17 Native Vegetation:** the site is identified in the *Preliminary Ecological and Cultural Heritage Assessment* dated 6 June 2018 as containing remnant native vegetation and trees of arboricultural value which may require a permit to remove.
- **Clause 52.27 Licensed Premises:** a permit is required for use of the land to sell liquor.
- **Clause 52.29 Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road:** a permit is required to create access from Nepean Highway, which is a Road Zone, Category 1.

A permit is not required under the following planning scheme provisions:

- **Clause 52.06 Car Parking:** proposed car parking exceeds statutory rates provided for use of the land for a ‘supermarket’ or ‘shop’.
- **Clause 52.34 Bicycle Facilities:** proposed bicycle parking and end of trip facilities meet the statutory requirements of this clause.

Of significance is the LPS, a statement of planning policy endorsed by the Minister for Planning. Clause 11.03-5S directs that the LPS must be considered in any amendment. Ministerial Direction No. 17 directs that a Planning Authority must have regard to the LPS and requires an explanatory report for any amendment to include how an amendment implements the LPS. As Council noted in its submission (Document 122):

The LPS recognises the special character of the Peninsula, as distinct from Melbourne, and the importance of preserving and enhancing this distinction. The policy contains directions to respond to development pressures placed on the Peninsula. Importantly, these directions include supporting a strong land-use planning framework to provide certainty for landowners and the community. It also seeks to protect the role and character of the Mornington Peninsula's settlements, towns and villages. To achieve this objective, the LPS encourages commercial development which is located to reinforce the role of different townships and activity centres on the Peninsula.

Council has recently undertaken two major strategic reviews, these being the ACS and the ILS. Both were subject to consultants' reviews and both were adopted by Council in 2018, well before the Kaufland proposal emerged. Neither has been progressed to a planning scheme amendment, and the Committee sought clarification about the timing of this.

Council advised in closing that while it has not commenced preparation for any planning scheme amendment to implement either Strategy "... this is not for lack of appetite but rather due to resourcing and competing strategic priorities". Council noted it was seeking to implement a full planning scheme review which included high priority actions. Further it was seeking to identify new opportunities for industrial land and while this work was yet to be completed, Council officers are "... highly unlikely to recommend rezoning any industrial land ... until this urgent industrial land supply issue has been resolved".

5.2 Planning issues

(i) Context

Matters concerning the proposed application of the Specific Controls Overlay accompanied by an Incorporated Document were addressed by the Committee in Chapter 3.1 of Report No. 1.

This site is located in the Industrial 3 Zone. A Supermarket use up to a leasable floor area of 1800 square metres and other shop uses up to a leasable floor area of 500 square metres are as of right. Any size exceeding that is a prohibited use and would normally require a rezoning to be considered.

The site has been owned and operated by the Bata Shoe Australia company since the 1980s. It is understood that the site will be subdivided and Kaufland would purchase the land it requires for the development of the proposed Kaufland supermarket, which will be located to the south of the existing Bata business. Surrounding land uses are described in Table 7 and consist of residential uses, schools and the Peninsula Homemaker Centre. Land to its immediate north is located in the Green Wedge Zone.

The proposal for the Kaufland supermarket on this site was heavily argued and contested due to its size, location in an Industrial 3 Zone and on land that is not within, or at the edge, of an activity centre.

(ii) Submissions and evidence

Mr Gobbo noted the strategic context of the site at the entrance to Mornington and as part of a large gateway site on a highway. He acknowledged that the land is zoned Industrial 3 and is not within or at the edge of an activity centre. He noted that State policy at Clause 17-02-2S provides for consideration of out-of-centre retail proposals, subject to meeting the net community benefit test. He said:

The Committee is required, by the ToR and State policy, to assess the proposal on its merits, through the prism of net community benefit.

Further, Mr Gobbo said:

Indeed, there is a clear parallel with the history of decision-making that has occurred in relation to the former Masters sites at 61 Mornington-Tyabb Road, which has now been approved for use and development for the purposes of a Coles supermarket.

He contended there is no doubt that the site could be developed without any controversy for light industrial or restricted retail uses given its zone. Such a development “*might well include a similar building footprint (noting that the proposed building footprint replicates the Bata factory), at-grade car parking and a landscaped setback.*” He stated, that despite submissions about the interface with the green wedge zoned land, the land affected by the Specific Controls Overlay does not interface directly with that land. He noted that no ecological, environmental or landscape sensitivities have been identified for the site.

Kaufland relied heavily on a VCAT decision⁶ relating to the proposed Coles supermarket on the site of the former Masters store on Mornington-Tyabb Road, where VCAT determined a permit should issue for a large Coles supermarket.

Mr Biacsi gave evidence that the proposal is a single use out-of-centre retail development which is discouraged from locating outside of activity centres and discouraged from locating within industrial areas. He noted Clause 17.02-2S of State policy is clear that out-of-centre development should only be considered where:

- *It is of net benefit to the community or region it serves;*

Or

- *It provides small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.*

Mr Biacsi noted that if the floor space thresholds were met (up to 1,800 square metres for supermarket), a permit would not be required for use. On this basis, he argued that the proposal will not undermine activity centre policy, give rise to adverse planning consequences, nor result in a poor planning outcome, despite the expressed preference in the Mornington Peninsula Planning Scheme to:

⁶ Vicinity Centres Pty Ltd v Mornington Peninsula SC [2017] VCAT 1802, [74].

- encourage major retail development to locate in existing activity centres
- not allow the formation of new activity centres
- strongly discourage out-of-centre development
- prevent out-of-centre development in industrial zones that undermines policy (particularly along main roads)
- ensure that subdivision and development of large industrial areas are preceded by development and approval of a development plan.

Bata Australia supported the proposal and more generally the submissions advanced by Kaufland. In its written submission (Document 157), Bata Australia provided cursory submissions on:

- out of centre development
- net community benefit
- alternative sites.

Bata outlined its intention to remain and expand on the site (M15), recognising that the site is currently underutilised. In advancing its intentions to remain and expand on the site, Bata advised that a modified Development Plan was submitted to Council in early March 2019. For commercial reasons, Bata expressed its sense of urgency for Council's approval of the Development Plan.

Council opposed the Kaufland proposal on numerous grounds, in summary these being:

- lack of strategic planning and policy support
- no demonstrable need for a supermarket in this location
- impacts on the Mornington Peninsula hierarchy of activity centres
- impact of at grade car park and landscape quality
- scale of the type 2 pole sign
- traffic, access and safety.

In relation to the hierarchy of centres in Mornington Peninsula, Council observed it:

... has long recognised the importance of the hierarchy of activity centres in the Peninsula. These centres play an important role in encouraging agglomeration and activity and reinforcing the settlement pattern which gives the Peninsula its unique sense of place.

The planning scheme at Clause 21.07-3 sets out the hierarchy of activity centres, including three MACs, one of which is Mornington. Mt Eliza and Bentons Square are both classified as large township centres. The Peninsula Homemaker Centre south of the site is in the Industrial 3 Zone and is not recognised as an activity centre in the scheme. The Committee was advised the Mornington MAC has a very low vacancy rate in the order of 3% for shopfront tenancies.

In opposing Kaufland, Council said:

In Council's view, the proposal cannot be justified. It does not respond appropriately to the current Planning Scheme. It fails, on a first principles assessment, to respond to context and constraints of the Land. A net community benefit assessment of the proposal weighs heavily against it.

Council contended that the proposal could be described as an out-of-centre commercial development in an industrial zone and if approved, “effectively creates or is likely to create a new activity centre”. Neither outcome, it said, is supported by the planning scheme “... nor are they consistent with proper and orderly planning”. Council noted:

State policy encourages concentration of major retail development into activity centres that are highly accessible. It contemplates a range of centres that vary in function and size and provides that centres give clear direction for preferred locations for investment.

In discussing the role of strategic policy, Council summarised that:

- *the Peninsula has a well-defined activity centre hierarchy;*
- *there is no need for additional centres within this hierarchy;*
- *new retail should be directed to existing centres; and*
- *fragmentation of commercial activity and out-of-centre development is discouraged.*

The content and various Council resolutions of the ACS and ILS was hotly debated at the Hearing with differences in emphasis and outcomes of each subject to much interpretation. The key issue related to whether the subject Industrial 3 Zone land might be considered for rezoning to a Commercial 2 Zone in light of one of the findings of the ILS.

Council called Mr Haratsis and Mr Biles to give strategic planning evidence. Mr Biles noted the strategic policy tension at play and questioned whether the proposed supermarket is consistent with relevant policy directions. He concluded that it was not. In speaking to the policy framework, he noted:

What is clear in this policy framework is a concern that ‘out-of-centre’ commercial developments can undermine activity centre policy and the vitality and viability of defined centres.

He referred to the ILS and noted it acknowledged that the homemaker precinct does not present as an industrial area “... given the existing business and land use mix”. He noted that while the ACS did give consideration to rezoning the subject land to Commercial 2, it also noted that given the limited Industrial 3 Zone land supply and that Bata remains on the site, the whole of the land could be retained in the current industrial zone. Mr Biles concluded:

The strategic policy framework does not generally support the establishment of large supermarkets in locations outside defined activity centres. Insufficient supporting information is included in the proposal to demonstrate that the proposal would not detract from Mornington’s activity centre hierarchy or to justify a significant departure from Activity Centre policy.

Mr Haratsis gave similar strategic planning evidence and noted that through the LPS, Mornington must be considered differently to metropolitan Melbourne:

The Mornington Peninsula is one of Melbourne’s greatest assets, characterised by contained townships, a substantial and diverse economy, and areas of national and international conservations significance. The Mornington Peninsula is critical to the future liveability, sustainability and prosperity of the wider metropolitan region.

He urged the Committee to recognise the need for a clear separation of Mornington to metropolitan Melbourne. He contended that the location of a supermarket on the subject land would not result in balanced and integrated development at the key entry point from green wedge zoned land into the Mornington township area. Mr Haratsis argued that retail planning in Mornington needs to be considered differently to that of metropolitan Melbourne.

He questioned whether approval of the Kaufland proposal would result in a new activity centre being developed, even though the proposal is for a supermarket with some shops. Mr Haratsis noted that approval of this proposal would see the whole of the Industrial 3 zoned land changing the perception and face of Mornington.

In speaking to the ASC and ILS, Mr Haratsis noted that the use and development of the supermarket at this location is not contemplated and that:

The risk of unintended and unplanned change through the cumulative impact due to the proximity to the Peninsula Homemaker Centre and the proximity of additional vacant lands is high given the high profile nature and the scale of the retail anchor.

In response to a question from the Committee, Mr Haratsis stated that the subject site may be an appropriate location for a large supermarket proposal such as proposed by Kaufland, but the strategic planning work has not been undertaken to justify a proposal of this scale at this time.

Mr Finazio for Blackbrook questioned the strategic justification of the Kaufland proposal and while he acknowledged that *“it’s easy to see why Kaufland might want to establish in a location like this”*, he argued there are no planning reasons sufficient to justify the establishment of the use in this location. He too noted the planning assessment required at Clause 17.02-2S. Mr Finazio argued the planning policy framework strongly discourages out-of-centre development and if this supermarket was approved on this site, it would send the wrong messages to the market about the future of the land, the surrounding vacant land and State planning policy.

Blackbrook called Mr Bromhead to give planning evidence. Mr Bromhead noted that while planning needs to be flexible enough to account for new investment, long held policy objectives should not be undermined. He observed that the Mornington site has little or no policy support, it is a prohibited use and it is, in any event, inappropriately located. While Mr Bromhead accepted there are some benefits accruing to the community due to its supermarket function, he argued a key consideration of net community benefit is the assessment of a proposal against State and local policy. Overall, he gave evidence that the proposal is premature and that it lacks strategic support.

Mr O’Farrell was scathing in his criticism of this proposal in his submissions for Vicinity Centres. The Committee has already discussed his arguments about the form of Kaufland stores and alternative sites in Chapter 3.2. Mr O’Farrell noted that in his opinion, there were numerous opportunities within the Mornington MAC that might accommodate a Kaufland model, albeit a different model to that proposed. Kaufland soundly rejected that proposition.

Mr O’Farrell reiterated the submissions of Council and Blackbrook that *“relevant policies of the LPPF generally seek to concentrate retail uses within, or immediately adjacent to activity*

centres” and he noted “*Clause 21.07-3 specifically identifies that the Mornington Peninsula does not require any new activity centres*”. He contended there was no evidence to suggest there is a service gap in Mornington nor was the Kaufland proposal integrated in any way. He was particularly critical that the experts of Kaufland did not seek to consider in-centre sites as part of the strategic assessment, a position which he said “... *is frankly stunning*”, particularly as he contended “... *when Kaufland is seeking to claim finding sites in-centre is ‘very difficult or simply impossible’*”.

Vicinity Centres relied upon and called Mr Rogers and Mr Milner to give planning evidence. Mr Rogers contended that if approved, Kaufland at this site would compete, rather than complement the existing hierarchy in Mornington. He argued that net community benefit goes beyond an economic assessment and must be balanced with the underlying principles of activity centre policy. Mr Rogers highlighted the challenges of locating Kaufland in this location and contended it would “... *create a significant retail node with the potential for future growth, particularly given the nature of land uses within the precinct immediately to its south*”.

Mr Milner strongly contended that a net community benefit assessment for Mornington should be holistic to include a broad range of issues, which in summary include:

- consolidation and aggregation of mixed land uses and synergies with complementary uses
- approximate to and good access to a large catchment with good public transport
- higher densities around a broader range of services so that a greater number of people get value from agglomeration
- safety and attractiveness of walkability
- trips that serve multiple purposes, rather than one off-single purpose trips
- minimum use of private vehicles and lower fossil fuels
- land to be used most efficiently
- making better use of underutilised land such as large flat surface car parks
- protect the scarce industrial zoned land for a broad range of uses.

He noted the Planning Scheme promotes orderly development by preparing and testing relevant strategies and that State and local policy gives clear direction and high levels of certainty regarding investment decisions when upheld. This he said, results in better planning outcomes.

Mr Milner argued that there is a cost that occurs in deciding to locate at the edge of a settlement. He noted that the walkable catchment is missing in this relatively isolated location which would not be assisted by poorly integrated development with a mix of uses that stand separately. He noted the immediate residential area is low density with limited prospects of growth, therefore almost all users will travel to the site by car. In his words, the site is “*regionally accessible, but not locally*”. In response to the same question put by the Committee to Mr Haratsis, Mr Milner similarly stated that the subject site may be an appropriate location for a large supermarket proposal such as proposed by Kaufland, but the strategic planning work has not been undertaken to justify such a proposal at this time.

Ms Traill acted for Aventus Group Pty Ltd who own and operate the Peninsula Home Homemakers Centre at 1128 – 1132 Nepean Highway, Mornington. That site has an area of

85,000 square metres of which 33,000 square metres is lettable area. It has 30 shops and provides for 840 cars.

Ms Traill submitted that while Aventus was not opposed to the proposal, it should not be approved for three key reasons, these being:

- the Kaufland proposal at this size is prohibited under the provisions of the Industrial 3 Zone (that is, it exceeds 1800 square metres)
- the zoning of the site should be reviewed to determine if a Commercial 2 Zone is more appropriate
- the exhibited 22 metre pylon sign is inappropriate (noting it was reduced to 15 metres at the Hearing).

Ms Traill contended that this proposal presents an opportunity to properly plan for the services and employment needs of Mornington by investigating the rezoning of the whole of the Industrial 3 zoned land to the Commercial 2 Zone. However, this current process, she said, was not this opportunity. When asked by the Committee if the Commercial 1 Zone could be contemplated for the site, Ms Traill emphatically responded in the negative. One reason for not supporting a Commercial 1 Zone was because it allows for residential development, which she said was undesirable in this location.

Few local submitters supported the proposal, and many came to the Hearing to express their view that the proposal is not supported by State or local policy, that it would create a new unplanned activity centre and that it would be detrimental to Mornington Main Street (M66, M46, M68, M42, M63, M23, M39). Many stated that Mornington does not need, nor does it want a new supermarket in this location. Others noted the built form impact on arrival at Mornington from the north (noting some expressed their discontent with the existing Bata sign), the loss of trees, vegetation and character.

One submitter argued that the proposal was not 'just' or 'fair' as it is short sighted and will cause the demise of local stores and local employment.

Submitter M63 provided a detailed submission on the incongruity between Mornington Peninsula Planning Scheme and the proposal, particularly as it relates to Mornington's activity centre policy. He pointed out that the Mornington context could be clearly distinguished from the other proposed Kaufland sites, which justified the proposal being rejected. Specifically, he submitted that it was prohibited by the zone, the subdivision raised possibilities of uncertain and fragmented planning, the use of the Specific Controls Overlay was inappropriate, and that local policy unambiguously directed against creating new activity centres.

Both the Mt Eliza and Mornington Chambers of Commerce noted that many of its member businesses are small family owned operations that would be hurt by the impact of Kaufland due to the range of goods to be sold, including gifts, stationery and small whitegoods. Both talked about the 'summer' culture of the main streets and how the cooler months result in some businesses closing their doors for periods of time due to adverse weather conditions. They submitted there would be further losses if Kaufland was approved.

Some local submitters provided support for the proposal and noted it would bring increased choice to Mornington. Submitter M43 advised that he was not opposed to the proposal

irrespective of the use that located there. He emphasised the strategic importance of the site as a gateway to Mornington, and as a long-term resident to the local area, recognised the underutilised nature of the site. The submitter conceded that the site's redevelopment is inevitable, however he sought to ensure appropriate traffic safety and noise mitigation measures for the Padua College Students and local residents.

In its Part C closing submissions (Document 215), Kaufland observed that the Mornington Industrial area is different to the Mornington MAC and is likely to remain so due to its, inter alia:

- fine grain and distinct village feel
- 'main street' atmosphere and good levels of public infrastructure
- wide range of specialty shops, galleries, bars and boutiques
- location in close proximity to the beach and tourist activity
- the gradual influx of higher density residential development.

Kaufland argued the proposal will complement this activity centre, not compete with it. It contended that the ACS provides support for 'enterprise' areas which relate to location of large format and mixed use/business uses operating outside the township activity centres.

Kaufland invited the Committee to find that irrespective of whether the Kaufland proposal should be supported, *"... the Mornington Parkland Industrial Area will continue to complement the Mornington Activity Centre, by providing an area which can accommodate large format uses, which benefit from highway frontage, and which are otherwise difficult to accommodate in the Mornington Activity Centre"*.

(iii) Discussion

The key issue for the Committee to address is whether it is appropriate for a prohibited use in an area that is acknowledged as being out-of-centre and contrary to State and local policy, in a precinct where there is an established homemaker centre that includes a supermarket use, to be approved.

The Committee found the submissions and evidence of Council, supported by Vicinity Centres, Blackbrook and some local submitters, most of whom were against this proposal, to be compelling in this instance.

The Committee shares the concerns about the implications of approval of this site for the Kaufland proposal. It supports the many submissions made about the lack of policy support and is particularly concerned that approval of Kaufland will lead to the creation of a new activity centre that will redirect substantial new retail investment from the planned and established centres within the Mornington retail hierarchy.

In this regard the Committee agrees with the submission of Mr Finanzio that approval of the proposed development will draw trade away from existing and carefully planned activity centres and it will disrupt the market place. Further, the Committee has no doubt that if approved, it will change the composition and role of the broader Industrial 3 precinct within which the site is contained. A proper strategic planning review of the site to determine whether it should be rezoned is essential and should be undertaken first – not the other way around as is the case as proposed here by the Kaufland application.

In relation to Vicinity Centres submissions regarding the availability of alternate sites in the Mornington town centre, the Committee is not able to pursue such submissions as it is beyond the scope of its Terms of Reference and its considerations. The question to be determined is whether this proposal is appropriate for this site. If, as the Committee has found, that the proposal is not appropriate for this site, then Kaufland has the option of pursuing other sites in or around Mornington as part of a separate process.

The Committee acknowledges the path that Council is on with regard to its ACS and ILS. These two projects are not thought bubbles or ideas on the forward agenda. They represent a significant amount of work already undertaken with a further process(es) to go. Both reports appear to be robust assessments in line with a considered strategic planning process. No party was critical of the documents. While adopted by Council, they now need to progress into the Mornington Peninsula Planning Scheme through an amendment process, the timing of which is uncertain. Panels and Advisory Committees are cognisant of the time taken to progress strategic reviews and this Committee would have considered these two strategies differently if they were Council intentions, rather than work that was completed in 2018, before Kaufland was contemplated.

For these reasons, the Committee does not support the submission made by Kaufland that some of the reasoning in this case is comparable to the Mitcham Towers case⁷ (Document 215). In that case, VCAT questioned the delay in decision making and said: *“... how often have decision makers awaited some new report or study, in the hope that it will provide guidance and certainty, to have those hopes dashed when the report or study is published?”*. Kaufland contended that *“As in that case, here the Committee has been provided with ample information to make an informed decision in this case. There is no impediment in doing so.”* While the Committee can understand that rationale, it does not have all the relevant facts, which distinguishes this matter from the Mitcham case. The Committee acknowledges that Council has embarked on a genuine strategic path through its ACS and ILS which is now reaching progression to a planning scheme amendment process. On the face of it, the circumstances are quite different.

The Committee acknowledges the presence of the Bata Factory and the Homemaker Centre. Once entering Mornington, the built form landscape changes from rural to semi-urban. The addition of a Kaufland supermarket will not impact on that transition to any great degree. Indeed, it is difficult to know by built form alone where the Green Wedge Zone begins and ends on the approach to Mornington from Mt Eliza due to the noticeable built form on the east side of Nepean Highway. It may eventuate over time that the Bata site will be developed for commercial or other purposes, but it should not be through this process.

Schedule 2 to the Development Plan Overlay requires a Development Plan for any development proposal in the Industrial 3 Zone. Bata noted it had been seeking to provide a Development Plan to Council for some time to demonstrate how it proposed to redevelop its site. It tabled such a plan towards the end of the Hearing (Document 126). The issue for the Committee is that firstly it is not able to comment on that plan, but more importantly, that plan does not provide any integration with, or vision for, the whole of the site. Given the planning issues facing Kaufland in that the proposal is clearly out-of-centre, the Committee

⁷ Golden Ridge v Whitehorse CC (Mitcham Towers) [2004] VCAT 1706, [72]

considers that at the very least, both Kaufland and Bata could have worked together to provide a whole of site integrated Development Plan that holistically examined the strategic intent for the site.

With regard to the 61 Mornington-Tyabb Road VCAT decision, the Committee does not consider it can be compared with this matter. Firstly, that site is zoned Commercial 2 where a supermarket over 1800 square metres is subject to permit. No rezoning is required. Secondly, the site was previously used for a Masters store and it results in reuse of an existing structure. This can be better compared with the Dandenong proposal in Tranche 1 and Coolaroo in Tranche 2. While not determinative, the Committee notes that Mornington Peninsula supported that proposal.

The Committee concurs with the evidence of Mr Haratsis that for Mornington, fragmentation of commercial activity is not in the long term interests of the community and *“strengthening the existing hierarchy of activity centres is sustainable, equitable and achieves net community benefit”*. The Committee accepts the evidence of both Mr Haratsis and Mr Milner, that while the subject site might be an acceptable location for a proposal of this size and magnitude, the strategic planning work has not yet been undertaken to validate that conclusion.

A key difference between this site and the other Kaufland sites in Tranches 1 and 2 (except Oakleigh South) is that firstly, the use at the scale proposed is prohibited and combined with that, the site is greenfield, in that for all other sites, there had been a Bunnings or Masters store already located on or approved for the site.

The Committee has no doubt that if it supported the Mornington proposal, it would effectively be a de facto rezoning of the site and it would create a new, but unplanned activity centre for Mornington. That the proposal:

- is on land zoned Industrial 3 where a supermarket of this size is prohibited,
- is subject to further resolution of the ACS and the ILS,
- is not replacing an existing use,
- leaves remnant parcels of surplus land available for unspecified development,
- is inconsistent with State and local planning policy,
- does not show how it integrates with the Bata use and its plans for expansion,

lead the Committee to not support this proposal on planning grounds. It is Council who is responsible for determining its forward strategy and whether a new activity centre should emerge, not the location of a supermarket in a zone where a supermarket of this size is prohibited on the land in question. The Committee would have not been as strong on this issue had Council not prepared and adopted its ACS and ILS.

The Committee finds that net community benefit has not been established and overall, the proposal is contrary to State and local policy. Any benefits that might accrue (and the Committee acknowledges there are benefits identified through the economic impacts and other site matters), are negated by the size of the proposal (it is not small-scale), and the conflicts with, and lack of policy support, based on the strategic planning work that has been undertaken to date.

The Committee noted at the Directions Hearing that the bar for strategic justification for the proposal had to be raised for this site (and the Oakleigh South site which has different issues)

as the use is prohibited. Under normal planning circumstances, the site would have been subject to a rezoning process and the strategic assessment for such a proposal would be rigorous. For Mornington, that bar was not able to be cleared from a planning perspective.

(iv) Findings

The Committee finds:

- The location of the proposed Kaufland supermarket is premature, it has little State and local policy support, it is out-of-centre and will have the effect of creating a new but unplanned activity centre.
- Net community benefit has not been established for this proposal. It is not small scale, and while some benefits will accrue on a local and regional scale, this does not outweigh the disbenefits with regard to well established policy.
- Council should implement its Activity Centres Structure Plan and the Industrial Land Strategy as a matter of urgency and as part of that strategic planning work, formally determine the future role and zone for this site.
- A Structure Plan for the whole of this site and the wider Industrial 3 zoned site (from Oakbank Road to Bungower Road) should be considered and prepared to properly plan for the future of this broader site, in conjunction with resolution of the Activity Centres and Industrial Land Strategies.

5.3 Economic impact

(i) Context

The Mornington EIA concluded that the existing supermarket operators within the main trade area would expect a one-off trading impact of between 5% and 6%, after which all businesses would compete equally for future growth. Further, the EIA estimated that the Kaufland store is likely to result in an impact which on average would see little or no real growth for existing supermarket operators across the main trade area which it will serve.

The EIA concluded that the anticipated order of impact is unlikely to result in any existing operator being impacted to an extent which would imperil its continuing operation. The EIA stated that the anticipated impacts reflected a normal competitive environment and will not threaten the centre hierarchy or undermine the viability, role, or function of any centre.

(ii) Submissions and evidence

Mr Dimasi gave evidence that the proposed Kaufland development at Mornington, once developed, would account for 6.8% of the shopfront floorspace and 5.5% of the total centre floorspace that already exists in the various centres/precincts which are potentially impacted by the proposal. Accordingly, Mr Dimasi considered that the claims by opposing submitters that the introduction of Kaufland will have dire economic consequences is unjustified. Mr Dimasi noted that residents in the trade area currently spend approximately \$1.1 billion on retail goods annually, and the Kaufland Mornington store is projected to capture in the order of 3% of that expenditure. Based on those numbers, Mr Dimasi stated *“it can reasonably be concluded that the expressed economic concerns are greatly overblown”*.

In his evidence, Mr Dimasi quoted from the independent ‘Kaufland Mornington Economic Impact Assessment’ prepared by Mr Haratsis in November 2018 for Mornington Peninsula. That assessment concluded:

Overall, the development of a Kaufland supermarket at the subject site is not expected to have a significant impact on any one retail precinct in the surrounding area, and is not likely to affect the viability of any retailer in the area. It is also not considered to impact on the primacy of the Mornington MAC and will also will likely result in a number of community benefits.

Mr Dimasi considered this finding from an opposing economist in this case to be significant.

Mr Dimasi quoted from the ACS to demonstrate that his findings and analysis in the EIA was reasonable, the content of which he relied upon included:

- acknowledgment that there is a high degree of escape retail spending occurring in the Shire
- there is a significant tourism trade that augments resident spending
- there is a quantified need for an additional 105,000 square metres of new shopfront and commercial floorspace in the Shire by 2036.

Mr Dimasi concluded that claims that the Kaufland proposal has the capacity to undermine the centres hierarchy of the Mornington Peninsula are “*entirely without foundation*” and “*it is a myopic and protectionist position to adopt, for which there is no reasonable economic basis*”.

Mr Shipp peer reviewed the EIA prepared by Mr Dimasi. He concluded that the method and structure of the EIA was sound and followed the methodology commonly applied in retail economic assessments. Mr Shipp’s estimate of total economic impact was marginally higher than those forecast by Mr Dimasi (3.6% vs 3.0% based on forecast expenditure of \$45m) and impact on supermarkets in Mornington ranging from 6.6% to 7.6%. Mr Shipp concluded that this level of impact would not compromise the primacy of the overall performance, sustainability or viability of the Mornington MAC or compromise the primacy of the centre as part of the Mornington Peninsula hierarchy. Further, Mr Shipp stated that he agreed with the finding of Mr Dimasi that the smaller convenience stores will not be materially impacted by the proposed Kaufland store given they provide a different offer to the larger format weekly shopping offer provided by Kaufland.

Kaufland supported the findings of the Mornington EIA. It submitted that there is no reason to suggest that the one-off trading impact of between 5% and 6% that will be experienced by existing supermarket operators in the trade would imperil their continued operation (Document 105). The submission stated these impacts are to be balanced against the significant consumer and economic benefits that would result from development of the proposal, resulting in a clear net community benefit. The submission summarised the findings of each of the four expert witnesses and concluded:

The result is that four experts in the area of retail economics agree that the impacts of Kaufland Mornington on existing activity centres will be modest. It cannot be said that such modest impacts will in any way disrupt the activity centre hierarchy, which is the core concern of local activity centres policy.

The economic experts also agree that the proposal will result in economic benefits.

In relation to ‘Supermarket floorspace need and impact’ Mr Haratsis gave evidence for Council that Mornington is currently well served with retail floorspace. He said that once the Coles supermarket is operational on the former Masters site, the retail floorspace in the primary sector will rise to 342 square metres per 1000 residents, which he said is above the metropolitan Melbourne benchmark of 312 square metres per 1000 residents. With the introduction of Kaufland, the rate rises to 423 square metres per 1000 residents which Mr Haratsis concluded *“will push the supermarket provision to be well above average, which may have implications for the existing supermarkets in the area”*.

In relation to impacts, Mr Haratsis estimated that the existing full line supermarkets in the primary sector are projected to experience modest impacts of between 5% and 6% following the development of the Kaufland store. He considered the impacts on Aldi supermarkets may be larger due to their offer more closely resembling that proposed by Kaufland. Mr Haratsis anticipated the Mount Eliza Town Centre supermarkets will experience impacts of around 3%. He estimated the overall impact on identified retailers/retail precincts within the main trade area to be *“relatively modest at 2.5% of sales in Financial Year 2021”*.

Mr Haratsis concluded that no existing major supermarket operator will be impacted to an extent which would render operations unviable. Despite these findings, Mr Haratsis’ evidence was that the large volume of projected yearly sales for Kaufland could affect the existing hierarchy of activity centres on the Mornington Peninsula and that the new store *“will in effect create a new Activity Centre outside the existing Activity Centre hierarchy, which has the potential to impact on roles served by other Activity Centres in the area”*.

In relation to economic impact, Council acknowledged that the proposal will generate some positive economic benefits (Document 122). It noted however *“the benefits do not outweigh the known and potential adverse economic impacts to Mornington Activity Centre, centres within the proposal’s trade area and the Mornington Peninsula activity centre hierarchy.”* The submission summarised the economic evidence of Mr Haratsis and Mr Quick and was critical of the evidence of Mr Dimasi and Mr Shipp for failing to assess impacts on individual centres.

Vicinity Centres submitted that the proposed store will cause deleterious economic impacts on the retail hierarchy (M74). It relied on the evidence of Mr Quick that impacts on Mornington Central will exceed 12%, which it considered to be significant (Document 181).

Mr Quick gave evidence for Vicinity Centres that the proposed Kaufland supermarket at Mornington would have a direct impact on the Mornington MAC of -\$14million which equates to a -4.3% impact. He stated that supermarkets in Mornington would experience greater impacts. Mr Quick acknowledged that there will be some economic benefits and employment generation from the proposed store, however the benefits would be magnified if the store was co-located within an activity centre. His assessment noted that the cumulative impact on Mornington Central from the Kaufland store, together with the development of another large supermarket on the former Masters site, will be in the order of -12%.

Blackbrook submitted that much is made of the relatively small/tolerable economic impacts on existing traders in-centre (Document 132):

At best, the case for Kaufland can be put no higher than: if the store is located here, it is unlikely to cause much harm.

Though the level of trade drawn from each centre in isolation will not be sufficient to cause any one centre/anchor to fail, the trade will be diverted from planned activity centres.

Further, the submission stated that the fact that other centres “*won’t be destroyed*” is not demonstrative of a benefit to the community, at most it is neutral. As noted in Chapter 5.2, Mr Finanzio submitted that it was significant that the development will draw trade away from existing and carefully planned activity centres and it will disrupt the market place.

The submissions by the Mornington Chamber of Commerce (M66) and the Mt Eliza Chamber of Commerce (M23) expressed concerns that the entry of Kaufland into the Mornington retail market will come at the cost of losing current traders. Both considered the retail needs of residents and visitors are already well served. Further both submitted that as Chambers of Commerce, they are not averse to competition, but rather they are concerned that the proposed development will result in an oversupply of retail floorspace. The concerns expressed above were shared by a local business owner with stores in five of the Peninsula’s retail precincts (M56).

As reflected in the Coolaroo and Oakleigh South chapters of this report, MGAIR submitted that the proposed store location is out-of-centre and as such is inconsistent with activity centre policy (GE01).

Mr and Mrs Hewitt acknowledged that few customers did a full weekly shop at their independent Foodworks store. They expressed concern however that the store will suffer a similar decline in turnover that occurred when Aldi opened, at approximately 4%. They indicated this impact would likely result in job losses.

Ritchies Pty Ltd submitted that just as happened in other parts of the world, the introduction of Kaufland in Mornington will result in the ‘High Street dying’, shops will close, and the community atmosphere will vanish (M76). In his verbal presentation, Mr Harrison expressed concern that the Kaufland model is a wholly integrated model where they will own the whole supply chain. Such a model will result in little economic downstream benefits for wholesalers and suppliers. He stated that Mornington and the broader Peninsula is already well served with supermarkets.

Newpac Investment Group, owner of the Mornington Village Shopping Centre, opposed the proposal and submitted that it had the potential to significantly undermine the Mornington Activity Centre (M77). Further, the submission noted that the proposal does not facilitate communal economic growth and development.

The presentation from Submitter M63 noted that it is not enough to say whether the Kaufland proposal has a limited impact on the existing businesses of the Mornington MAC (Document 156). He opined that to be responsive to the State and local planning policy framework, it must be established that there is no detrimental impact on the additional retail development envisaged by the planning scheme, in particular the addition of a major retail store. He concluded that “*the proposal will require an investment of a magnitude that would delay and possibly prevent the establishment of a major retail store in the MAC*”.

Numerous submitters opposed the proposed Kaufland Mornington store in part because they considered Mornington is already adequately served with supermarkets and other retail stores. Approval of the new store they contended, will jeopardise existing traders⁸.

Counter to those submissions, several submitters expressed support for the Kaufland proposal, citing it would bring benefits of consumer choice, convenience as well as increased employment opportunities⁹.

In closing, Kaufland rejected the proposition put by Mr Quick relating to the cumulative impact of recent approvals. In its submission in reply (Document 215), Kaufland cited a number of extracts from the EIA that Mr Haratsis prepared for Mornington Peninsula in November 2018 that were “*favourable to Kaufland*” which he excluded from his evidence, summarised as follows:

- (a) *His opinion that no alternative sites are available on commercially zoned land (page 38);*
- (b) *His opinion as to the economic benefits of the proposal (page 44);*
- (c) *His opinion that the development is not expected to impact on the primacy of the Mornington Activity Centre (page 46); and*
- (d) *His opinion that the trading impacts are unlikely to have a substantial effect on the overall performance of the network of surrounding Activity Centres, and all centres will be able to continue to serve their role in serving the needs of the local community (compare EIA page 44 with expert witness report page 34).*

(iii) Discussion

The Committee accepts the economic evidence of Mr Dimasi, Mr Shipp, Mr Quick and Mr Haratsis that the economic trading impacts arising from the approval and operation of the store will be modest. All four economists agreed that approval of Kaufland will not result in supermarket closures based on initial or ongoing trading impacts. Further they agreed that the primacy of the Mornington MAC will not be challenged by approval of Kaufland in its proposed location, nor will the role or function of any centre in the trade area be jeopardised.

In addition, the Committee notes that through evidence tested at the Hearing, and the content of the ACS, there was acknowledgement that there is a:

- high degree of escape retail spending occurring in the Shire
- significant tourism trade that augments resident spending
- quantified need for an additional 105,000 square metres of new shopfront and commercial floorspace in the Shire by 2036.

⁸ For example: submitters M02, M05, M06, M07, M08, M09, M13, M16, M17, M18, M19, M21, M28, M29, M32, M37, M39, M40, M41, M44, M45, M49, M52, M55, M57, M58, M61, M64, M65, M67, M68, M70, M71, M73, M81 and Document 131.

⁹ For example: submitters M11, M24, M25, M26, M30, M34, M36, and M38.

In the Committee’s view, this analysis (which has been adopted by the Shire) adds weight to the submissions and evidence that noted there is unlikely to be significant economic and retail impacts arising should Kaufland be facilitated in the short term.

Based on its consideration of the evidence and submissions advanced and tested during the Hearing, the Committee considers the proposed development does not raise concerns from a retail economic impact perspective. In this regard, the Committee does not agree with Council’s submission that there are potential significant adverse economic impacts to the Mornington MAC and to other centres in the broader activity centre hierarchy. The evidence presented and tested does not support this particular submission of Council. Similarly, the Committee does not share the concerns expressed in numerous resident submissions that approval of the Kaufland store will result in store closures.

In reaching the above conclusions, the Committee highlights and agrees with the balanced submission advanced by Mr Finanzio, that based solely on the economic evidence approval of the Kaufland store in its proposed location “*is unlikely to cause much harm*” from an economic perspective.

In addition to the above observations in relation to economic impact, the Committee supports the findings in the EIA that residents and local businesses would enjoy the following higher order benefits arising from the new proposed store should it be approved:

- substantially improved shopping choice and convenience
- downward pressure on grocery prices
- an additional avenue for retail sales for local suppliers
- local employment creation.

Having noted the above and while it accepts that economic impacts will be manageable, the Committee accepts submissions and evidence advanced by Council, Blackbrook and Vicinity Centres that if approved, the development will draw trade away from existing and carefully planned activity centres, it will disrupt the market place and potentially will create a new unplanned activity centre. All of these outcomes would be counter to fair and orderly retail/activity centre planning.

(iv) Findings

The Committee finds:

- The development of the proposed Kaufland Store at Mornington would provide some economic benefits for local and regional shoppers, suppliers and residents.
- While a number of short-term trading impacts will be experienced by existing supermarkets, retailers and shopping centres in the trade area catchment, the projected economic impacts are acceptable and within normal competitive tolerances.
- The Kaufland supermarket has the potential to disrupt existing retail activity centre policy in Mornington Peninsula.

5.4 Urban design/built form/landscape

(i) Context

The proposal for Mornington varies from other sites in that it includes an undercroft car park in addition to the car parking area proposed within the Nepean Highway frontage. The proposed building is setback 90 metres from the Nepean Highway with an overall height of 14.6 metres measured from the top of the featured parapet, with a prevailing height of approximately 13.1 metres. The car park varies in setback from the boundary with the Nepean Highway between 16 and 20 metres. The building is located 8.68 metres from the southern boundary, 9.4 metres from the Bata site, and 60 metres from the eastern boundary with Oakbank Road. The proposal includes a retaining wall along the southern boundary as well as eastern internal boundary.

The proposal seeks to remove vegetation to facilitate the development, including for the proposed truck entry road from Oakbank Road. It is proposed to create a planted habitat buffer area along the boundary to its residential interface, replanting with additional indigenous trees, and a boundary buffer of Callistemon 'Harkness'. It proposes buffer planting along the internal boundary to the east adjoining the loading zone. Further garden bed planting is proposed within the front setback to the Nepean Highway which would include drainage infrastructure, and along the northern and southern car park boundaries. The car park is proposed to be planted with Kaufland themed trees including *Cupaniopsis anacardioides* 'Tuckeroo' and *Eucalyptus* 'Little Spotty'.

(ii) Submissions and evidence

Urban design and built form

Mr Gobbo relied on evidence from Mr Blades in relation to urban design, who noted that the design had been informed by functional requirements. He stated that he based his assessment *"on the proposal's response to surrounding built form character as the principal urban design driver for contextual responsiveness (rather than Planning Scheme policy)"*. He was of the view that it was appropriate to take the built form cues from the adjoining industrial and commercial buildings *"whilst contributing to the Nepean Highway's existing pattern of sequential character experiences and whilst also being cognisant of the impact of development on areas of more limited change (such as the Green Wedge and adjoining residential precincts)"*.

Mr Blades noted the building height was a result of the undercroft car parking and technical requirements for clearances, vehicle gradients and operational requirements. He observed this departs from what currently exists on the site, however considered this acceptable and contextually responsive because the impression of the height *"will be broadly consistent with the datum of existing large-format built form within the subject site's immediate commercial/industrial context"*. He further noted the proposal utilises several other design techniques to reduce the perception of height, including *"extensive street setbacks, significant canopy landscaping and specific architectural resolution techniques"*.

In relation to massing and siting, Mr Blades was of the view that the siting of the building from the Nepean Highway setback responded appropriately to the existing character of larger

street setbacks. He thought the abutting Bata Shoe building would remain the primary determinant of street setback from Oakbank Road.

Mr Blades considered the architectural response to be contextually responsive, largely due to the recessive colour qualities of the materials chosen for the upper level.

Mr Gobbo reiterated that the urban design evidence highlighted the proposal complies with relevant planning scheme provisions, and results in a high quality urban design response.

The Council opposed the proposed supermarket on a variety of grounds, including *“the expansive at-grade car park proposed for the front of the site, together with the minimal breaks between the proposed building and existing neighbouring buildings will leave inadequate opportunities for meaningful landscaping on the site and will significantly detract from the landscape character of the area and nearby Green Wedge land”*.

Ms Morris submitted that the site and surrounds are not typical for industrial land or bulky goods retailing precincts. A key feature of the industrial precinct she said, is the generous and consistent setbacks to the Nepean Highway and mature vegetation, and stated:

This creates a setting where landscaping and sense of openness is dominant rather than the built form. This sense of openness is particularly evident at the Land due to its corner location at the entry to the Mornington township and its interface with the Green Wedge to its north.

Ms Morris submitted that the planning scheme seeks to protect this special character, and has done so for many years, a position which was supported by Mr Biles in evidence. The strategic intent of the controls was to maintain a green break between Mount Eliza and Mornington and protect the sense of openness, landscape character and arrival to Mornington. She stated that the site is visually exposed to the Nepean Highway because of its corner location, topography and absence of built form on the north west of the site.

Ms Morris stated that Council considered the design response was unacceptable because:

- the siting of the car park and accessways with narrow setbacks from boundaries (proposed and existing) provide for only limited landscaping opportunities, which contributes to the dominance of the building and car parking from Nepean Highway
- the setback of the car park from Nepean Highway, while allowing for landscaping, is not consistent with the extent of landscaped area within frontages of properties south of the site
- limited opportunity for tree planting is proposed to soften the appearance of the development or reduce the hard surface area
- while acknowledging that *“boxy, utilitarian buildings”* are anticipated by the zone and policy context, the inadequate landscaping will result in a visually exposed and prominent building
- significant removal of vegetation in the eastern portion of the site to allow for service and loading access
- the vegetation is deemed valuable from a landscape perspective and the replacement opportunities are inadequate to reduce the visual buffer to the residential interface

- Development Plan Overlay 2 requires 50% landscaping, and the planning unit set aside for landscaping is 15.6% which relies on the balance of the land to contribute a high portion of area to landscaping and cannot be assured.

Mr Biles had a different view to Mr Blades in relation to the design response. He considered the proposed design was inadequate, and that *“the siting, layout and form of development fails to respond to the established landscape character that defines the experience of arrival in and departure from Mornington township along the Nepean Highway”*.

He noted the transitional nature of the site in its context moving from the green wedge land into Mornington, and predominant setback of 90 metres for commercial buildings in the industrial precinct, which *“accommodates a ‘forecourt’ of landscaping that continues the green boulevard character. While the planting varies in density and tree species, there is a reasonable sense of landscape homogeneity stemming from the largely mature trees that have generous canopies”*. He noted that most front setbacks are void of car parking except for Bunnings further to the south, which in his view has successfully reduced its prominence from the street through landscape planting with hedging and canopy trees, and level changes.

Mr Biles considered that *“the design appears to have largely been driven by the prioritisation of vehicular movements, parking and Kaufland’s own internal design specifications as opposed to an understanding of context”*.

He considered the design failed to respond to the prevailing ‘green spine’ because of the expansive provision of at-grade parking. It was his view that the car park area should be a subservient visual element with sufficient planting to provide shade, with a tall canopy and generous density. He stated that the car park, if required, ought to accommodate more significant landscape planting around and within it. He suggested exploring the option of adjusting the level of the car park relative to the highway or introducing *“a planted earth berm”* to visually screen the car park area from the Highway.

Mr Biles thought the design response ought to mediate the building height below an established datum canopy of trees and take a *“back seat to the prominence of the landscape character”*. He considered, however, that the building will read as a dominant element and would be inconsistent with the prevailing character because of limited spacing for substantial canopy planting. Mr Biles was of the view that despite the use of some natural finishes such as timber, the bright masonry finishes and advertising signage *“is one that will clearly be read in contrast to the landscape character”*.

Numerous resident and community group submitters were opposed to the development because, in summary, it was out of character for the area, too large, and an *“eyesore”* (M10, M54, M46). They also raised the issue of removal of existing trees. M46 submitted that the proposal would degrade the green belt, and M57 considered it would alter the gateway to Mornington because of the size and scale of the development.

A proposed development plan was tabled for the Bata site (Document 3d). The development plan included a showroom on the Kaufland site and maintained the area in the north-west corner of the land as a ‘landscape zone’. A second version of the plan was tabled by Ms Patterson at the Hearing (Document 126). That version excluded the showroom and maintained the landscape zone on the corner of the site.

Landscape

Mr Gobbo noted the landscape evidence is that the canopy trees will provide a filtered view through to the store entry and that the understorey planting will largely mask cars within the car park. The grassed character of the area to the north of the site will be maintained, and a habitat buffer will be created to interface with the residential land to the east.

Mr Blades considered the landscape proposal to be appropriate. He contended that the landscape response contributed to the landscaped setting with a planted setback from the Nepean Highway, additional car park trees, and landscaped buffer planting along the development's respective boundaries.

Mr Gobbo noted Mr McWha's evidence that the existing vegetation is largely of very poor quality, and that the presentation of the site would be significantly improved through replacement vegetation.

In evidence, Mr McWha noted the site was formerly a plant nursery. He noted the wide landscaped setbacks which enhance the green character of the approach to the site. He suggested that most of the trees on the site appear to have been planted as part of the Bata development or associated plant nursery and could be replaced, except for a remnant Manna Gum which is to be retained and protected. The tree would not overhang the car park, and he stated in verbal evidence that it would be necessary to liaise with the civil contractors to ensure that the stormwater treatment does not undermine that tree.

Mr McWha stated that the curvilinear bioswale was designed to manage stormwater in the front setback and would include additional Coast Manna Gums to enhance the gateway treatment to Mornington. The trees will be tall canopy trees *"and views of commercial visibility and activity will be enhanced rather than screened"*. He noted that the mass planted garden bed in the front setback *"should conceal the view from the highway, of the bottom half of parked vehicles"*.

Mr McWha described the 2.7 metre landscape buffer located along the length of the south-west carpark boundary with mass planting and isolated Blackwoods. He described a similar planting strip in relation to the view from the north-east side of the car park, which was proposed on an easement within the Bata site, and would continue the indigenous planting theme of the front setback with shade trees and understorey planting.

The two car park trees proposed are *Eucalyptus* 'Little Spotty' in diamond bays and *Cupaniopsis* spp 'Tuckeroo' which in his view would perform well in this location. His evidence was that the two native trees *"are cultivars, which are medium size trees, which should only grow up to about 6 to 7 metres height, by 5 metres spread, on this site. This is a good manageable size for a carpark situation"*. In verbal evidence, he noted that the Manna gums proposed for the front setback can grow 15 to 18 metres, and the *Angophora costata's* proposed for the perimeters can grow 12 to 15 metres.

Mr McWha further noted the screening planting along the rear interface with residential land to the east. It was his view that this would soften the view to the site and screen the development and provide valuable local habitat for local birdlife.

His view was *"the landscape design will provide a landscape outcome of very high quality, and good amenity. One which enhances the architectural layout, and one which will improve the*

landscape character of the site.” He considered the front setbacks generous, particularly compared with the Bunnings site which are 15 metres to the road verge. He expected that the proposed Lomandras would conceal the cars to about the bonnet height. He expected the proposed landscape to be of a much higher quality than the existing industrial site. He thought the setbacks on the northern and southern side of the property were wide enough with generous planting. He also noted that a row Angophoras is proposed within a ‘Planting Easement’ on the Bata site.

Mr McWha relied on the Treelogic arboreal assessment (Documents 15a and 15b) in relation to tree health.

Ms Morris noted that it was Mr McWha’s evidence that the landscape response relied on the north-west corner of the land being free from development, and for this reason contended that his evidence was flawed and should not be relied upon.

Ms Morris submitted Mr Blades’ evidence was that the design response was driven by specific functional requirements rather than the existing context which is *“not proper planning”*. She contended that Mr Papworth’s evidence provided a better analysis of the design response. Mr Papworth considered that the development would result in a significant building and carpark on the site with insufficient landscape to replace or counter the development. He held the view that the vegetation loss along the Oakbank Road frontage would strip the property of significant existing vegetation that *“currently assists in receding existing built form into the landscape”*.

Vegetation removal

Kaufland tabled an arboreal assessment by Greg Pollard of Treelogic (2 November 2018, Documents 15a and b). At issue is whether the native trees were planted or naturally occurring. The assessment noted the State planning exemption in Clause 52.17 for the removal of planted native vegetation. Mr Pollard found that most of the trees proposed for removal were planted. Several trees in the assessed area are benchmark species of EVC 175: Grassy Woodland, including: a *“large Manna Gum (Tree 1), three relatively small Blackwood (Acacia melanoxylon) Trees 14, 15 and 16, the over-mature Black She-oak (Allocasuarina littoralis) Tree No. 50 and a mature Boobialla (Myoporum insulare) Tree No 54 on the eastern boundary”*. The assessment noted:

Clause 52.17 of the local planning scheme contains a permit requirement which may control the removal of Trees 1, 14, 15, 16, 50 and 54 (considered benchmark species of EVC 175: Grassy Woodland) however, there does not appear to be any specific planning overlays governing retention of other trees assessed.

Kaufland tabled subsequent correspondence from Eco Logical (Document 112) which stated that the four native understorey trees identified in the study area (three Blackwoods and one Black Sheoak) are indigenous to the region. It considered however that *“their proximity and relationship to similar aged plantings indicates they are also likely to have been planted. As a result, they are exempt from the requirement to obtain a permit for their removal under the ‘Planted Vegetation’ exemption of Clause 52.17”*.

Ms Morris submitted that it was Council's view that a permit is required for the removal of native vegetation pursuant to Clause 52.17 because there is no exemption which applies to the land. She stated that there was no expert or lay evidence before the Committee other than Document 112 that provides information about this.

(iii) Discussion

Urban design and built form

It is clear from submissions and evidence that a key design consideration for any development of this site is its siting and response to the prevailing character feature of the land as a transition between the rural character of the green wedge zoned land to the north and the more urbanised area of Mornington. It is also clear from the zoning of the land that development for light industrial or restricted retail purposes is contemplated, which could result in a built form typology not dissimilar to that proposed by Kaufland. Having acknowledged this, a key consideration is whether the proposal has appropriately responded to its landscape character context as a key design consideration.

In relation to the building, the Committee considers that the Mornington proposal has raised the bar in relation to design and architectural finishes compared to the other proposals before it. It notes the undercroft carpark reduces the overall provision of at-grade car parking, albeit with an increased overall building height. The Committee welcomes the built form and architectural finishing as a superior built form response in this instance. It considers the increased building height acceptable because of the use of timber and glazing as an appropriate design response in this location, befitting of its context. This will contribute to the upper section of the building receding visually. The Committee agrees with Mr Blades' evidence that the large setback of 90 metres will assist in reducing visual impacts associated with the increased height.

The Committee considers the siting of the building to be generally appropriate. The front setback is consistent with the prevailing setback in this location. It notes that the side setbacks from the existing boundary and proposed internal boundary do not meet the requirements of Development Plan Overlay 2. The Committee recognises that most of the side setback area near the building is utilised by access way and hard surfaces. However, it considers this is a less significant aspect of the design response compared with the need to meet the large front setback, and to provide sufficient side setbacks in the visually prominent parts of the site closer to the Nepean Highway. The Committee considers that the proposal has generally achieved this in relation to the development's siting.

Landscape

In relation to the rear setback and landscape response, the Committee considers this is adequate and site responsive. The proposed landscaping should provide sufficient screen planting to contribute positively to this part of the development, and reduce any visual amenity impacts on the adjoining residential land.

However, the Committee does not consider that the front setback of the car park and aspects of the landscape response in this area are adequate. It agrees with the evidence of Mr Biles and Mr Papworth that the car park design is inadequate and would not sufficiently filter the views of the development. The Committee considers that while the Kaufland site is not the

immediate interface site to the green wedge and is visually spared from dominance by the existing substantial Bata sign on the corner, it is nonetheless an important site within the overall transition from the rural to the urban. While it accepts the need to provide car parking within the front setback, it considers that given the excess provision of car parking spaces proposed as part of the development, there is an opportunity to lose some of these spaces and increase the front setback of the car park from the Nepean Highway. Increasing the setback would facilitate greater separation of the car park from the Highway which would be more consistent with the large landscaped setbacks directly to the south of the site, as well as assisting with the landscape transition.

The Committee considers the site to the immediate south is more relevant than the Bunnings site in terms of design cues and appropriate transitioning characteristics. The relevant transition to consider is when travelling from the north to the south along Nepean Highway, rather than from south to north. The Bunnings site therefore, while within the industrial precinct, is less relevant than the homemaker centre closer to the subject land.

The Committee is persuaded by the evidence of Mr Biles that the introduction of a planted earth berm or the like would facilitate the screening of the car park and parked cars from this important aspect. An earth berm would also be useful within the planted area along the internal boundary to the Bata site on the northern boundary. It is clearly an important policy aim to maintain the wide landscaped setback as a transitional area between the Green Wedge Zone and the industrial precinct. The landscape response and siting of the car park should therefore provide sufficient detail to contribute to this character in a positive way. This should include increased canopy planting of sufficient size to provide a range of tree heights to appropriately filter the view of the building from various perspectives from the public realm.

While the Committee considers it important that the development is visible and does not hold the view that the purpose of landscaping is to screen the development completely from view, it agrees with Mr Biles that for this site, the development should take a ‘back seat’ to the primacy of the landscape. Landscaping in the car park area and within the front setback and setback along the northern internal boundary in particular, are therefore important in order to achieve this outcome. The Committee considers the specific aspects which need to be improved include:

- increasing the number and height of trees in the car park to ensure they provide a denser canopy to filter the view of the development, while still allowing for visibility
- removal of a row of car parking along the Nepean Highway frontage to increase the landscaped setback and introduce a planted earth berm or the like into this area to help screen the view of the car park and parked cars
- increase the number and density of planting along the northern internal boundary including additional canopy trees to provide further visual filtering.

The landscape plan includes a significant amount of planting within the Bata site outside of the Kaufland planning unit. A Section 173 Agreement is proposed as a condition of the Incorporated Document for the establishment and ongoing maintenance of this landscaping.

The Committee notes the concerns of Council about the loss of trees with the Nepean Highway median and while it acknowledges Council’s efforts in establishing an avenue of trees along the median, it does not consider the loss of trees in the median to be a significant matter.

Should the development not be approved, the Committee considers that an opportunity exists to consider the development of the land as part of the broader precinct. This would enable consideration of opportunities for connectivity between adjoining parcels, and appropriate management of relevant setbacks including siting of car parking, signage and buildings.

Vegetation removal

In relation to native vegetation removal, the Committee notes the differing views put forward in Documents 15a and 15b, and Document 112 in relation to whether a number of the native trees proposed to be removed are planted or naturally occurring. It considers there is insufficient information in relation to this, however agrees with Council that if the trees are naturally occurring and native, then Clause 52.17 would apply, and permissions would be required. The Committee considers that should approval for the development be granted, further assessment should be required to clarify this matter.

(iv) Findings

The Committee finds:

- The siting of the building, its built form and the architectural response of the proposed Kaufland store at Mornington is acceptable and would result in an appropriate building which would sit comfortably within its industrial context.
- The landscape proposal is insufficient to contribute to the predominant landscaped character in the location and should be amended to:
 - increase the number and height of trees in the car park
 - increase the landscaped setback along the Nepean Highway frontage by approximately five metres to introduce a planted earth berm or the like into this area
 - increase the density of planting along the northern edge of the car park boundary, including additional canopy trees.
- The Section 173 Agreement in the Incorporated Document should refer to an approved Landscape Plan rather than current plans to ensure it reflects the above changes where relevant.
- Permissions for vegetation removal may be required if trees native to Victoria are to be removed and are found to be naturally occurring. The conflicting assessments provided by Kaufland ought to be clarified by way of an additional assessment.

5.5 Traffic and access

(i) Context

The Mornington site is located on the corner of Nepean Highway and Oakbank Road. Nepean Highway is a divided state arterial road, while Oakbank Road is a two lane local street. Their intersection is signalised. The Committee and several submitters observed that at peak times, the Highway is heavily congested between Oakbank Road and Bungower Road with traffic queuing back from downstream intersections across Oakbank Road.

Padua College is located at the eastern end of Oakbank Road generating a large number of pedestrians, cars and buses along Oakbank Road in the morning and afternoon school peaks.

Vehicular access will be available from both roads, with all truck access from Oakbank Road only. Cars arriving from the south along Nepean Highway can either do a U-turn at the signalised intersection or turn right into Oakbank Road to access the store.

It is proposed to have two access points on Oakbank Road, with the eastern access limited to delivery vehicles. The western access, (listed as Bata Court) is proposed to be located approximately 100 metres from Nepean Highway. The traffic experts all assumed that these two access points would service the whole of the Bata land, replacing existing access points to Bata. However, Bata advised the Committee that it intends to retain its intermediary car park access.

(ii) Submissions and evidence

Traffic

A Transport Impact Assessment was prepared on behalf of Kaufland by GTA Consultants and this was supported by evidence from Mr Davies, of GTA Consultants, and a peer review by Ms Dunstan of Traffix Group. Mr Walley of Ratio Consultants provided evidence on behalf of Council.

All experts were satisfied that a second right turn lane on the south approach to Oakbank Road on Nepean Highway, and corresponding additional lane in Oakbank Road to just past the proposed Bata Court, will mitigate the impacts of traffic during the PM commuter peak.

However, both Mr Walley and Ms Dunstan identified a need to assess the impact during the school PM peak period, as they identified that this time period was more critical. Ms Dunstan derived the school peak hour based on signal data, while Mr Walley used survey data for his analysis. Neither adjusted these volumes to consider growth in the school population at Padua College, which occurred at the start of 2019 due to relocation of Year 10 students to this campus.

The analysis in the PM peak assumed the pedestrian phases at the intersections would not be called up. The school peak analysis was not adjusted to include pedestrians. Ms Dunstan acknowledged that the analysis may need to be updated to take these factors into account.

VicRoads advised it was satisfied with the proposed mitigation works and access strategy. Mr Walley advised that access by Oakbank Road was an essential part of the access strategy to avoid adverse impacts at the next downstream intersection on Nepean Highway.

On the penultimate day of the Hearing, Kaufland tabled a Technical Note from Mr Davies (Document 195) which provided additional traffic assessment for the school time peak. The analysis adopted the same cycle time of 106 seconds for the school peak as had been previously determined by GTA for the commuter peak, noting that Mr Walley had used 150 seconds. It adopted the surveyed traffic volumes provided in Mr Walley's evidence as the base traffic, while it used the GTA derived traffic generation estimate for the development traffic. The analysis tested various scenarios reflecting the different directional distributions determined by GTA and Mr Walley. The results indicated that the right turn lane proposed by GTA is of sufficient length.

Council submitted that Oakbank Road should be widened opposite the eastern access to allow for through traffic to pass traffic turning right into the site. This was not considered warranted

by any of the traffic experts. In addition, Council submitted that Oakbank Road be widened at Bata Court to provide two 3.5 metre lanes, which was supported by Mr Walley. Mr Davis and Ms Dunstan gave evidence that one 3.0 metre and one 3.5 metre lane was adequate in a local road environment, with any additional width simply likely to encourage speeding.

Submitter M68 submitted that the traffic assessment did not consider the existing congestion midblock along Nepean Highway.

Several submitters raised potential amenity and safety impacts arising from the potential for traffic to rat-run through the local streets to the east between Oakbank Road and Bungower Road. In response to those submissions, Mr Davies advised that while the travel distance was similar to using Nepean Highway, the number of turns and narrow carriageways made the local street route less attractive.

Trucks

The development plans provided for a separate (eastern) access for truck access from Oakbank Road. In response to a Day 1 proposal (Document 35) by Kaufland to use Bata Court (western access) for truck access between 10.00pm and 7.00am for acoustic reasons, Kaufland tendered a Technical Note by Mr Davies (Document 48) that showed trucks using Bata Court to access the loading dock. The accompanying swept path diagrams showed that concurrent truck and car movement on Bata Court would not be possible. In addition, a large splay at Oakbank Road would be required to facilitate turning circles.

Kaufland advised that it proposes to manage truck and car conflict between 10.00pm and 12midnight (when the store closes) through a loading and delivery management plan (Condition 15).

In response to issues about this plan relating to pedestrian safety on Oakbank Road and vehicular conflicts, Kaufland (again on the penultimate day of the hearing) tabled a further Technical Note from Mr Davies relating to the accessway designs (Document 193). This was supported by a memorandum from Ms Dunstan (Document 194). The Technical Note contained concept plans showing a widening of both the western access and Bata Court to provide passing opportunities and to reduce the distance that the Oakbank Road footpath crosses the accessways.

The designs do not allow passing on the eastern access within approximately 40 metres of Oakbank Road or along Bata Court within approximately 70 metres of Oakbank Road.

In response, Council tabled an email from Mr Walley (Document 198) and three documents from Council's engineers (Documents 199, 200, 201). These documents continued to raise concerns regarding the need for a truck to occupy the whole of the carriageway on both access roads while turning in or out. Critically, at Bata Court, concern was expressed about the need for an exiting truck to not only occupy the whole width of Bata Court, but the need to sweep across the centreline in Oakbank Road to make the left turn out. This would conflict with any traffic waiting to turn into Bata Court.

The Council responses continued to raise concerns regarding the footpath crossing distance, with Document 201 containing a plan showing that to satisfactorily resolve the vehicular conflict issues, the footpath would need to be diverted significantly into the Bata site before crossing Bata Court.

Both Council and the local submitters suggested that truck access should be directly from Nepean Highway.

Parking and pedestrian movements

Mr Davies advised that the provision of 380 car parking spaces exceeds the statutory requirement of 305 spaces to provide sufficient parking beyond the 85th percentile demand and to ensure that typically customers can be assured that parking will be available.

(iii) Discussion

Traffic

Unlike other sites further along Nepean Highway, this site does not have direct access from a signalised intersection, but rather it relies in part on access to its car park and loading through the Bata site from Oakland Road and U-turns at the signals to reach a left in/left out access on Nepean Highway.

The Committee accepts the expert evidence that the overall access strategy providing for access from both Nepean Highway and Oakbank Road is reasonable.

With respect to the use of Oakbank Road for access, the Committee finds this is generally appropriate, given that there are no residential properties on the opposite side of the road, which has had a history of providing access to the industrial precinct, namely the Bata site.

In respect to potential rat-running through the residential area to the east, the Committee accepts the expert advice that the design of the local road network should discourage such impacts and Council has tools to address any impacts from rat-running. However, there will always be that potential, regardless of whether there is direct access from Oakbank Road. In this regard it is important that the access route via the arterial network has sufficient capacity.

With regard to the adequacy of the traffic mitigation works at the Nepean Highway traffic signals, the Committee notes that Mr Davies' school peak hour assessment (Document 195) again does not appear to run any pedestrian phases. Indeed, the phase time for the Oakbank Road approach is only three seconds which is clearly not sufficient to run a pedestrian phase across Nepean Highway. As advised to parties during the Hearing, the Committee observed a significant number of Padua College students crossing Nepean Highway on the north side of Oakbank Road during the school peak to reach the bus stop on the northwest corner of the intersection. Extending this phase to allow for pedestrians would have a significant effect on the capacity of the intersection. This should be further modelled to determine the full traffic impact and the extent of the required mitigating works.

The Committee observed southbound traffic along Nepean Highway queuing back across the Oakbank Road intersection, as also noted by M68 (Document 184). Such congestion could have an impact on the opportunity for traffic to do a U-turn at Oakbank Road to reach the Nepean Highway entry. In addition, Kaufland traffic could exacerbate this congestion, which in turn could lead to rat-running through local streets.

The Committee notes that the traffic analysis should consider the traffic generated by Bata's future expected operations.

With respect to the lane widths on Oakbank Road, the Committee accepts the evidence of Kaufland's experts that a total eastbound carriageway width of 6.5 metres is reasonable for a low speed road to facilitate passing of right turning traffic.

Trucks

The Committee considers that it is important that pedestrian safety be a priority along Oakbank Road due to the need for pedestrians, particularly students from nearby schools, to walk to and from Nepean Highway across the two site entries.

The Committee is satisfied that a reasonable design can be achieved, generally as shown in GTA drawing no. V155990-03 P4 for the eastern truck access (Document 193).

However, the Committee is not satisfied that the proposed alignment for Bata Court, even as widened in the Document 193 can satisfactorily accommodate truck access. The design appears to be constrained by the acute angle of approach to Oakbank Road which results in a very large throat width at Oakbank Road at the disadvantage of pedestrians. While truck use of Bata Court is only proposed overnight, the impact on the footpath crossing distance would always be there. The Committee is concerned about the length of Bata Court that would not allow for passing opportunities along with the need for trucks to cross the centre line in Oakbank Road conflicting with any traffic waiting to turn right in. This constraint would be difficult to overcome even with a delivery management plan.

The Committee is not convinced that the alternative design solution put forward by Council in Document 201 is reasonable. That design proposes a significant deviation of the public footpath into the Bata land and this is not considered to be a practical solution for either the site or for pedestrians along Oakbank Road. This is not to say that an acceptable design solution cannot be achieved, rather one has yet to be tabled.

In addition, no information has been provided on how the new Bata Court will impact the Bata operations or the balance of the Bata site. The Committee was provided with a proposed development plan for Bata (Document 148, 6 March 2019) submitted to Council during the course of the Hearing. The development plan, which makes no reference to the Kaufland proposal, shows a proposed expansion to the Bata building on its northern side.

While Bata has been in discussion over its expansion plans with Council for a number of months, the Kaufland plans fail to identify this proposal, nor show how Kaufland's accessways from Oakbank Road are to be integrated with Bata's current or future operations. Indeed, the plan for Bata Court traverses Bata's existing areas of parking and roadways but provides no information on how the Bata site will be rearranged to account for this change.

Of concern to the Committee was that Kaufland's own traffic experts have essentially ignored the Bata site and its operations in their assessment. This lack of coordination of the two facilities was borne out by some confusion during the Hearing as to what Oakbank Road access Bata intends to retain and utilise. Initially during questioning of Mr Walley, Bata indicated that it intended to retain its western access close to Nepean Highway as shown on its proposed development plan. This was not supported by Mr Walley. Subsequently, Bata submitted that it intended to retain its central car park access, which is not shown on any plan before the Committee, as well as share the Kaufland accessways through its site.

This lack of coordination is potentially impacting the design of Bata Court and the Committee considers that a whole of site masterplan should be developed to help resolve these design issues.

Parking and pedestrian movements

The provision of car parking is satisfactory, and some scope is available to reduce parking if needed to provide space for other uses or additional landscaping. The Committee notes its findings in relation to the landscape response in Chapter 5.5 and recommendation to increase the landscape setback from the Nepean Highway which would result in the loss of a row of car park spaces.

The Committee considers the car park layout as proposed to be amended in Condition 1 is generally acceptable, subject to the following modifications:

- ensuring that the pedestrian ramp near the south-east corner of the ground level entry foyer is designed to accommodate prams, wheelchairs and customer trolleys
- increase the front setback from the Nepean Highway to allow for additional landscaping as noted in Chapter 5.5
- extending the footpath that ends at a car park in the parking area to the west of the egress 3 stairwell to meet the parking aisle.

(iv) Findings

The Committee finds:

- A whole of site master plan should be prepared prior to any approval for this site.
- The traffic impact assessment should be revised to include:
 - traffic generated by the uses provided in the master plan
 - existing Padua College school traffic, as at 2019
 - pedestrian phases at the signalised intersection in the school peak period
 - consideration of traffic congestion along Nepean Highway.
- The design of Bata Court should be altered to ensure that two-way movements are possible at the entry of the site and pedestrian crossing distances are limited to in the order of 8 to 10 metres.
- The use of Oakbank Road for access is reasonable.
- The provision of parking is acceptable, and surplus parking can be lost to achieve a better landscape outcome as discussed in Chapter 5.5.
- The layout of the parking is generally acceptable subject to minor improvements.

5.6 Acoustics

The acoustic evidence provided by Mr Tardio considers noise compliance with EPA Publication 1411 Noise from Industry in Regional Victoria (NIRV), EPA Publication 1254 and sleep disturbance criteria. Mr Tardio noted that the Mornington site is outside of the metropolitan area covered by SEPP N-1 and hence NIRV is the relevant control, however the noise limits in NIRV are essentially the same as in SEPP N-1; and SEPP N-1 could alternatively be referenced as the control in the development conditions.

The assessment assumed that some form of packaged noise attenuation would be applied to plant and this should be determined at the time of plant selection to ensure compliance with NIRV.

Waste collection is proposed to be prohibited the between the hours of 10.00pm and 7.00am to minimise sleep disturbance and to avoid the need to use Bata Court.

Mr Tardio's evidence was written on the basis that all delivery vehicles, including at night, use the proposed new eastern service road off Oakbank Road. On that basis, he recommended that a series of stepped noise walls be extended along the east side of the dock area and out to Oakbank Road. A two-metre-high noise wall would be located along the rear of some adjacent residential properties closer to Oakbank Road. An intermediary four-metre high wall along part of the service road would be offset some 35 metres from the rear of properties, while a six-metre high noise wall would be located at the rear of the loading dock, a minimum of 50 metres from the rear of properties.

At the start of the Hearing, Mr Tardio provided an addendum to his evidence (Document 35) that provided an alternative noise reduction solution based on delivery trucks utilising the proposed Bata Court access (located closer to Nepean Highway) between 10.00pm and 7.00am.

With trucks utilising Bata Court, the noise fencing could be limited to the dock area, with a 6.5-metre noise fence, in lieu of a six-metre fence, along the east side of the dock, dropping to a five-metre fence as it wraps around the northern side of the dock area. No noise fence would be required along the eastern service vehicle access or along the rear of residential properties. An acoustically designed gate would be provided at the dock connection to the eastern service road access for truck access from 7.00am to 10.00pm.

The Committee is satisfied that the noise impacts of both options for truck access can be suitably controlled, particularly noting that the site is presently in an industrial zone. Accordingly, abutting residents would have some expectation of noise from vehicles and machinery from the site. The Committee further notes that while some local residents expressed concerns regarding the potential for noise disturbance, there were no substantive issues in relation to the noise fences.

The Committee finds:

- the development can achieve compliance with NIRV
- the conditions relating to noise control proposed in the Incorporated Document are appropriate.

5.7 Stormwater

In response to *Planning Advisory Note 75 Amendment VC154 - Stormwater management*, Kaufland submitted a Stormwater Management Plan for the Mornington site (Document 43)¹⁰. That plan includes:

- an onsite in-ground piped stormwater system designed for a 1 in 10-year ARI storm event

¹⁰ Stormwater Management Plan, prepared by Davis, Naismith & McGovern, 20 February 2019.

- an onsite overland flow stormwater system design for a 1 in 100-year ARI storm event
- onsite detention provided by two ponds adjacent to Nepean Highway to limit the site to its pre-development discharge.

Council submitted that it had concerns with that plan. It advised that the assumed discharge point has a limited capacity of a 1 in 10 Average Recurrence Interval (ARI) storm event and Council is uncertain how the 1 in 100-year detention of stormwater could be accommodated on the site without significant changes to proposal. Council was concerned that, without a 1 in 100-year detention, the proposal will result in unacceptable flooding impacts which will adversely affect residential properties to the east of the site. Council noted that it has recently upgraded the Bungower Road drainage system and will not be doing any more work to accommodate additional flows.

Council recommended that the Incorporated Document contain the following Stormwater conditions (Document 92):

35. Prior to the commencement of development, a Stormwater Management Plan (SMP) must be submitted to and be approved by the Responsible Authority. The SMP must, to the satisfaction of the Responsible Authority:

- a. be based on an integrated water sensitive urban design strategy;*
- b. meet the objectives of clause 53.18-5 of the Planning Scheme;*
- c. include detailed engineering plans of the proposed stormwater management system, including drainage works and retention, detention and discharges of stormwater to the drainage system;*
- d. demonstrate how discharge from the site will be limited to an equivalent pre-development flow based on a 1 in 2 year storm event for the critical storm duration and be connected to the existing underground drainage system in the south east corner of 1146 – 1152 Nepean Highway via a 450mm diameter drainage pipe constructed adjacent to the eastern boundary of 1146 – 1152 Nepean Highway and/or the existing underground drainage system within Nepean Highway adjacent to 1140 Nepean Highway via a minimum 375 mm diameter drainage pipe constructed within Nepean Highway;*
- e. provide for drainage of the site via an underground drainage system to retain a post development 1 in 100 year storm event for the critical storm duration;*
- f. confirm that the development has been designed to achieve compliance with the Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).*

36. The measures included in the SMP must be implemented prior to occupation of the building, to the satisfaction of the Responsible Authority.

Kaufland accepted all stormwater conditions with the exception of 35e. requiring an underground drainage system to retain a post-development 1 in 100-year storm event.

The Committee notes Council’s advice regarding existing drainage limitations and flooding potential and considers that it is reasonable to limit site discharge for all storm events up to 1 in 100 years to pre-existing levels.

The Committee finds that:

- Provision should be made to retain stormwater associated with a 1 in 100-year flows to limit discharge to the site’s pre-development levels, as indicated in the submitted Stormwater Management Plan.

5.8 Conclusions

(i) Should planning approval be granted?

The Committee concludes:

- The proposed Kaufland Store at 1158 Nepean Highway, Mornington should not be granted planning approval and the draft Amendment should be abandoned.
- If the Minister for Planning does not support the primary conclusion and recommendation of the Committee, planning approval should be deferred until the landscaping and traffic issues identified in Chapters 5.4 and 5.5 are addressed.

(ii) Changes to Incorporated Document

If the Minister for Planning does not support the primary recommendation of the Committee to abandon this draft Amendment, the Committee considers the Incorporated Document should be amended as follows:

- Modify the fourth dot point in Section 4.1 Exemption from Planning Scheme Requirements to add the word “and” at the end of the dot point, as shown following: *“for a supermarket or a bottle shop ... Kaufland Australia Pty Ltd (or a related entity); and”*
- Modify Section 4.2 Plans the revision number for TP-04 to *“P3 dated 19/03/2019”*.
- Modify Condition 1, in Section 4.3 Conditions, by:
 - Replacing 1a with the words: *“The removal of pylon sign type 2”*
 - Inserting in 1i. the words: *“Car Parking and Traffic Management Report”* after the words *“Landscape Plan”*.
- Modify Condition 18 by adding:
 - “f. an increased number and height of trees in the car park to ensure they provide a denser canopy to filter the view of the development, while still allowing for visibility*
 - g. the landscaped setback along the Nepean Highway frontage increased in width by approximately five metres and a planted earth berm or the like introduced into this area to help screen the view of the car park and parked cars*
 - h. increased density of planting along the northern internal boundary including additional canopy trees to provide further visual filtering.”*
- Modify Condition 19 by replacing the words: *“the landscape plan by FORMium revision ACP (2) Figures 3 and 4 which”* in the second paragraph with the words: *“the Landscape Plan required by Condition 18 that ...”*

- Delete Condition 19c.
- Modify Condition 24 by:
 - deleting the words in 24c: *“generally as shown in the GTA proposed access arrangement concept layout drawing no. V155990-03 dated 26 March 2019”*
 - adding:
 - “f. the design of Bata Court allowing for a truck and a car to pass and two way movement at the Oakbank Road intersection*
 - g. Bata Court carriageway(s) limited to the order of 8 to 10 metres where they cross the Oakbank Road footpath*
 - h. the pedestrian ramp opposite the southern end of Bata Court designed to accommodate the two way movement of trolleys and wheelchairs*
 - i. all footpaths ending with pram crossings into parking aisles or roadways. The Car Parking and Traffic Management Report must include a revised traffic assessment that considers:*
 - a. traffic generated by the uses provided in the master plan for the whole of the site*
 - b. existing Padua College school traffic, as at 2019*
 - c. pedestrian phases at the signalised intersection in the school peak period*
 - d. consideration of traffic congestion along Nepean Highway.”*
- Modify Condition 35 by inserting a new point: *“e. provide for drainage of the site via an underground drainage system to retain a pre-development 1 in 100 year storm event for the critical storm duration”*.
- Modify Condition 43 by adding the sentence: *“The plans must be amended to reflect any changes or additional traffic mitigation works recommended in the Car Parking and Traffic Management Report required by Condition 24”*.

These amendments are reflected in Appendix F.

5.9 Recommendation

For the reasons expressed in this report, the Committee recommends that the Minister for Planning:

- 2. Abandon the draft amendment to the Mornington Peninsula Planning Scheme to facilitate the use and development of the land at 1158 Nepean Highway Mornington for a Kaufland supermarket and complementary uses with associated carparking and signage.**

Should this recommendation not be accepted, then any approval for the site should be subject to the following changes:

- a) Replace the exhibited version of the Incorporated Document with the revised version (Appendix F) and make any consequential changes to Clause 72.01 if required.**
- b) Include the Mornington Peninsula Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**

6 Oakleigh South

6.1 Context

(i) The proposal

Kaufland Australia is seeking to develop land at 1126-1146 Centre Road, Oakleigh South for the purposes of a Kaufland supermarket and complementary uses with associated car parking and signage.

The draft amendment proposes the following changes to the Kingston Planning Scheme:

- application of the Specific Controls Overlay to land at 1126-1146 Centre Road, Oakleigh South, formally described as; Lot 2 on Plan of Subdivision No.5000005D, Lots 1, 2, 5, 7 and 8 on LP 22409, Lot 1 on TP 102345J, and Lot 1 on TP017894W, and to update the schedule to the Specific Controls Overlay accordingly
- insert “*Kaufland supermarket development, 1126-1146 Centre Road, Oakleigh South*” in the schedule to Clauses 45.12 and 72.04 as an Incorporated Document.

The key elements of the proposal are outlined in Table 9.

Table 9 Key elements of the Oakleigh South proposal

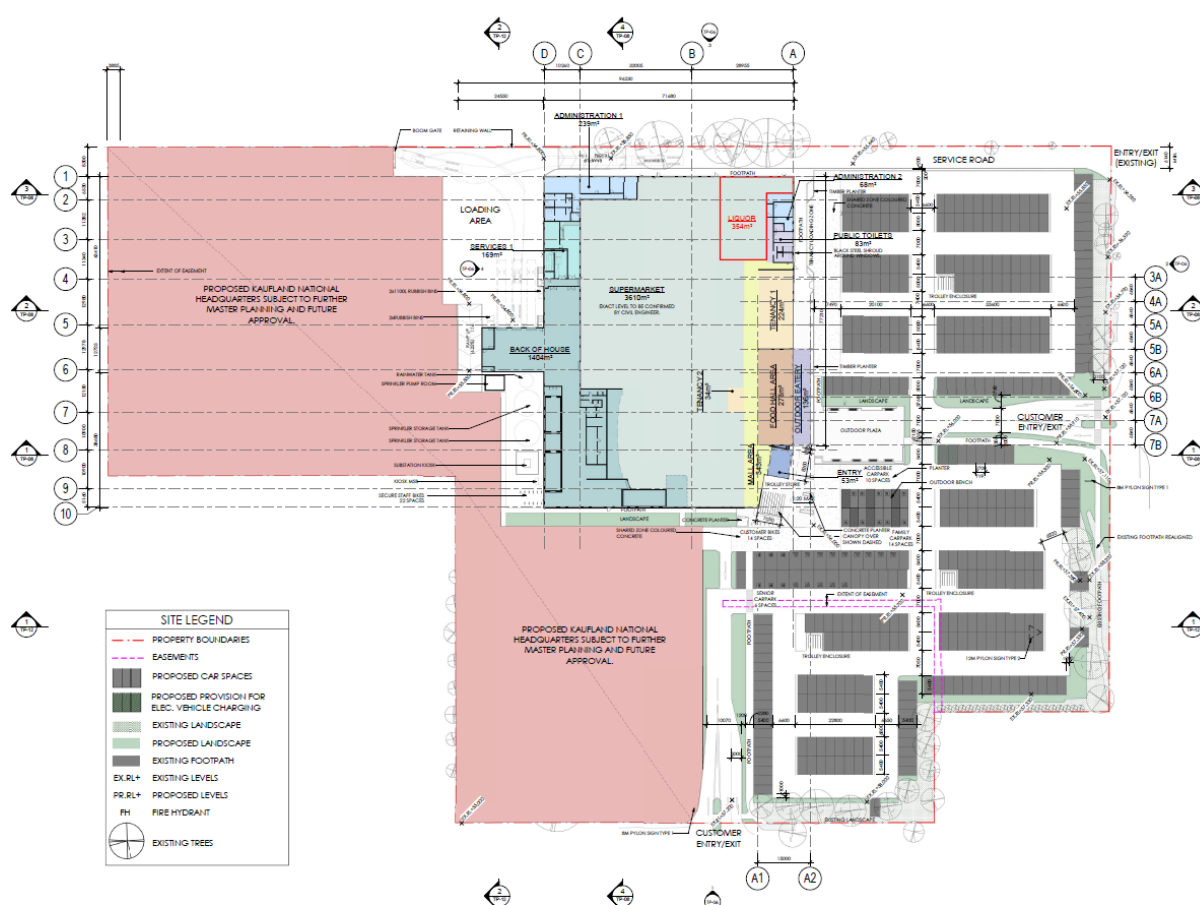
Land use mix	<p>A 6,907 square metres building containing the following:</p> <ul style="list-style-type: none"> • 3,610 square metres of supermarket floor area • 354 square metres for bottle shop • 278 square metres for food hall and 136 square metres of outdoor eatery • two complementary tenancies totalling 258 square metres • associated in house facilities including 1,404 square metres back of house facilities and 307 square metres of administration • 648 square metres of non-leasable/services.
Built form	<p>A large single storey building with a building height range of 8 to 9 metres and a feature parapet of 11 metres.</p> <p>Construction materials include a mix of feature cladding including concrete panels and planter timber and metal deck roofing.</p>
Car parking provision	<p>A total of 375 car parking spaces to be provided on site including:</p> <ul style="list-style-type: none"> • 10 accessible spaces • 14 family spaces • 6 senior spaces.
Bicycle parking Provision	36 on-site bicycle spaces.
Signage	See Table 2.

Loading bay facilities	Loading and deliveries are located to the south side of the building.
Access	Primary access is provided from both Centre Road and Clarinda Road to the south and east of the site. Dedicated service vehicle entry is provided at the western point of the site’s frontage to Centre Road.

Source: Amended plans (Document 9)

The site context plan at Figure 9 sets out the proposed layout.

Figure 9 Oakleigh South site and ground floor plan



Source: Oakleigh South TP-04 – Rev P4 (Document 192)

(ii) The site

The site is located on the south side of Centre Road near the intersection with Clarinda Road and Huntingdale Road. The site has a frontage to both Centre Road and Clarinda Road.

The site currently contains a Bunnings Warehouse and associated car parking and access ways for customers and service vehicles (see Figure 10). It contains several large trees scattered throughout the site.

Figure 10 1126-1146 Centre Road, Oakleigh South



Source: Town Planning Assessment Oakleigh South – Planning and Property Partners June 2018

Characteristics of the site are set out in Table 10.

Table 10 Oakleigh South site characteristics

Current land use	The site is currently occupied by a Bunnings Warehouse, consisting of a large warehouse building and associated car parking. There is established landscape buffer around the site to soften the appearance of the building and car park from the street.
Site area	The site is approximately 4.41 hectares and is an irregular shaped parcel of land.
Frontage and abuttals	The site has a frontage to Centre Road to the north and Clarinda Road to the east.
Slope	None.

The site is surrounded by the following land uses set out in Table 11.

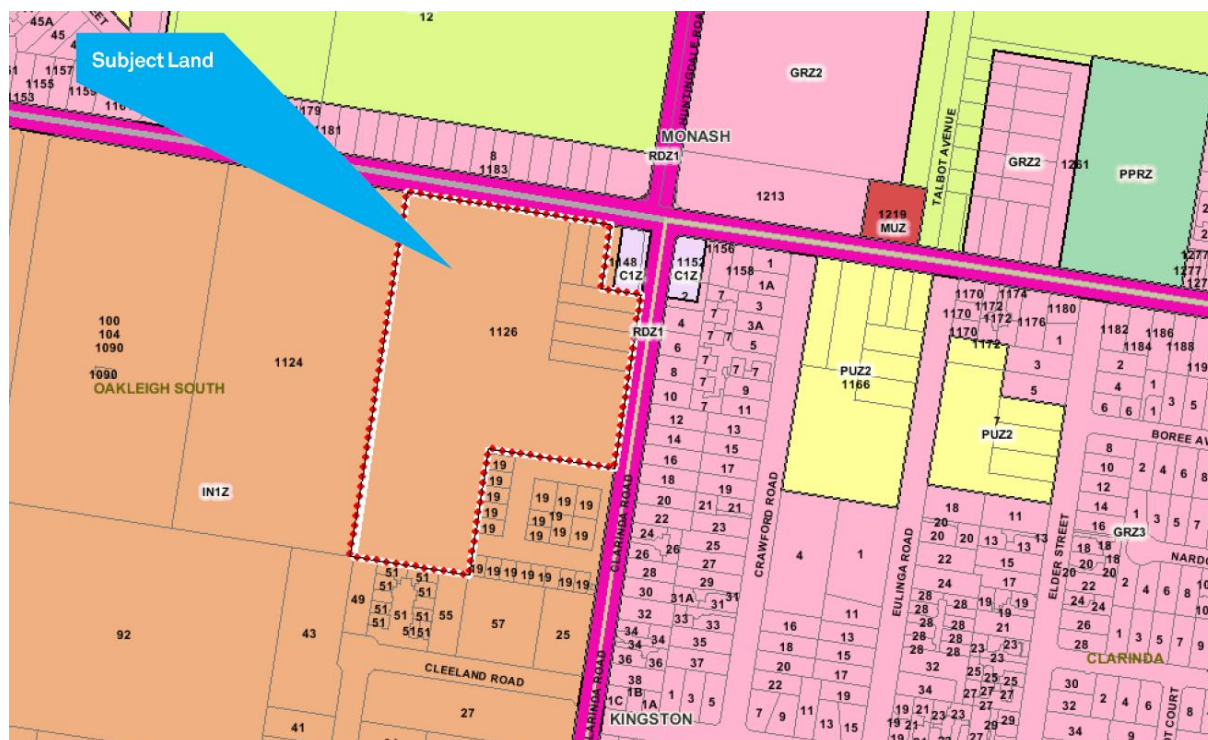
Table 11 Oakleigh South site surrounding land uses

North	<p>The northern side of Centre Road, opposite the site, is used as a Golf Course. This is heavily landscaped and contains associate fencing. The Golf Course itself is surrounded by residential development.</p> <p>A four-storey apartment building is located on the land on the north east corner of the Clarinda Road/Centre Road intersection.</p>
East	<p>The land on the opposite side of Clarinda Road is predominantly residential, typified by single dwellings.</p> <p>The Clarinda Primary School, tennis club and Presbyterian Church is located further east.</p>
South	<p>An existing business park is located immediately south with medium sized tenancies.</p> <p>These contain head offices for a number of businesses, with the Clarinda electrical substation further south.</p>
West	<p>Immediately to the west is the Stockland Industrial Park, consisting of large office/warehouse buildings and car parking.</p>

(iii) Planning scheme controls

The site is included within the Industrial 1 Zone under the provisions of the Kingston Planning Scheme as shown in Figure 11.

Figure 11 Oakleigh South zoning



Source: Expert Witness Statement Mr Biacsi (Document 26f)

A key purpose of the Industrial 1 Zone is to provide for manufacturing industry, the storage and distribution of goods and associate uses in a manner which does not affect the safety and amenity of local communities.

The Oakleigh South site is not subject to any Planning Scheme Overlays.

Clause 33.01-1 Industrial 1 Zone provides land use for a ‘shop’, which include ‘supermarket’, as a section 3 (prohibited) use.

The following planning scheme provisions would otherwise trigger a requirement for a planning permit:

- **Clause 52.05 Signage:** a permit is required for the proposed signage as an industrial area is designated as a minimum limitation area
- **Clause 52.27 Licensed Premises:** a permit is required to use land to sell liquor
- **Clause 52.29 Land Adjacent to a Road Zone Category 1, or a Public Acquisition Overlay for a Category 1 Road:** a permit is required to create or alter access to a road in a Road Zone, Category 1.

6.2 Planning issues

(i) Context

Matters concerning the proposed application of the Specific Controls Overlay accompanied by an Incorporated Document were addressed by the Committee in Chapter 3.1 of Report No. 1.

This site is located in the Industrial 1 Zone. Supermarket is a prohibited use.

The site is developed and used as a Bunnings hardware store, but Bunnings will be relocating in the near future to a site on the corner of Warrigal and Centre Road (to the former Masters store). The proposed Kaufland supermarket is to be located within a similar spatial area as the Bunnings store but will be a new building. Surrounding land uses are described in Table 11 and consist of a wide range of mixed uses including industrial, residential and golf course uses.

Kaufland stated its intent to locate its National Headquarters on this site and it was originally foreshadowed that this Committee would consider that proposal concurrently with the proposed supermarket. However, Kaufland advised that those plans have been delayed and that in any event, it now proposes to have the National Headquarters considered through normal Council planning permit application processes.

The Committee was advised in the Hearing that Kaufland has purchased the whole of the site outright.

(ii) Submissions and evidence

Kaufland submitted that while Oakleigh South is not within an activity centre, it has a number of attributes that lend support for the proposed development (Document 105). Cited attributes included:

- it is an available site that is *“owned by Kaufland”*
- it is *“sufficiently large to accommodate the National Headquarters and supermarket in a campus style development”*

- it has been developed with a Bunnings store “signifying its appropriateness as a site for a large-format non-industrial retail use and development”
- it has good road and public transport access (being at the intersection of two arterial roads)
- its development will not impact on the role, function or viability of nearby activity centres
- it is in close proximity to the Monash NEIC and it will have low potential for amenity impacts.

With regard to the proposed National Headquarters, Kaufland’s Part B submission noted (Document 105):

While the details of the proposed National Headquarters is not before the Advisory Committee for consideration, it is nevertheless relevant to note that Kaufland intends to seek planning permission from the Council to co-locate its National Headquarters on this site. Of course, the Advisory Committee is not able to assume that approval will be given, and hence cannot rely upon that factor in its consideration. However, it is a matter that is relevant to why this large site has been chosen by Kaufland, and the way the supermarket has been sited.

In its submissions in reply (Document 215) Kaufland noted that it proposed a master planning process for the site due to the concerns expressed by Council and Mr Blades about the proposed location of the headquarters. It submitted that Kaufland need to consider Mr Blades advice carefully, and for this reason that the notations regarding the location of the headquarters and car park were taken off the ACP version of the plans. Its submission in reply concluded on this matter as follows:

Kaufland has publicly stated, and restates, that its intention is for its national headquarters to be built on the site at Oakleigh South. It has purchased the whole of the site – its actions therefore strongly support this publicly stated intention. Kaufland’s national headquarters will be of a very high quality, reflective of the image it wishes to portray to the community about the quality of its offer. It has engaged very experienced and well regarded architects and intends to progress the planning for that site, in consultation with the Council, as soon as it is able (but recognising that its current priority is the roll out of its initial stores).

Even if – for whatever reason – the national headquarters did not proceed on the Oakleigh South site, that is not a fundamental failing. The remaining land is not landlocked. There are any number of industrial and commercial developments that could be accommodated on that land.

Kaufland reiterated that the proposed development and draft amendment has the support of Council. It highlighted that Council is satisfied that the amended plans and proposed changes to the Incorporated Document have largely addressed the concerns of Council.

Mr Biacsi acknowledged that supermarket is a prohibited use in the Industrial 1 Zone. He gave evidence that there is no policy support or contemplation for a supermarket at the proposed

location. He noted the proximity of the Monash NEIC to the site, although it is not on the edge of that cluster. Mr Biacsi opined that the proposed development has a number of broader strategic benefits and stated:

The review site's location within a pocket of underutilised IN1Z land that is situated in a major arterial road (Category 1) with excellent connections to the Monash Freeway, access to public transport options and within proximity to the Monash NEIC causes it to be well positioned to advance the strategic intentions and initiatives of Plan Melbourne and the PPF as set out in the Planning Scheme.

Mr Biacsi asked himself the question whether the proposal will undermine activity centre policy. He couched his response in economic terms, identifying that he relied on the economic evidence to note the Kaufland proposal will not have any deleterious impacts on any retailer. His evidence stated that despite the policy settings, approval of Kaufland would not prejudice fundamental strategic planning decisions of major consequence to Kingston, South Oakleigh or the industrial area to which the subject land presently belongs. In assessing net community benefit, Mr Biacsi noted:

The economic benefits associated with the Kaufland proposal together with the associated social benefits typically attributed to increased investment, employment, competition, product choice, and cost in my opinion, result in a strong case in favour of achieving net community benefit for the community in the region served by the proposal.

Mr Biacsi highlighted potential dis-benefits, including loss of synergy, loss of industrial land, increased traffic, impacts of signage and diverted investment. He noted there could be a lack of certainty in *“leaving unresolved the ultimate development of the overall landholding given the National Headquarters proposal and master planning exercise”*.

The Committee asked Kaufland to address why they did not seek a rezoning as part of this planning process and Mr Biacsi addressed this issue, noting:

The rezoning could have been advanced at the time the application was made and, in my opinion, there would have been good reason to support such a proposal. That said, the process intended to be followed in due course to facilitate the National Headquarters for Kaufland on the balance land may be an equally suitable opportunity to revisit the rezoning option.

Mr Biacsi's evidence concluded that he was satisfied that approval of the proposal will produce an acceptable planning outcome for the subject land, noting that:

- it will not affect the established activity centre hierarchy
- it will not give rise to an adverse planning consequence for the precinct or industrial policy
- it will increase investment, employment, competition, product choice and produce cost benefits for consumers.

Kingston submitted (OS08) that it supported the proposal *“... particularly in the context of the significant economic and employment benefits associated with the proposed establishment of the Kaufland National Head office on the Centre Road site. The commitment by Kaufland to*

pursue its head office in this location is significant given the areas proximity to the Monash National Employment and Innovation Cluster”. This support, it said, was tempered by:

- the Advisory Committee process established by the Minister for Planning and the pathway chosen
- the short timeframes of the process
- the use of the Incorporated Document and its various exemptions
- other matters such as urban design, traffic and infrastructure (dealt with elsewhere in this Chapter).

Council helpfully provided its initial recommended changes to the Incorporated Document in its original submission. In that same submission, it noted its support of the National Headquarters being located on the site and that no permissions had been sought for this through this Tranche 2 process. It submitted:

Given that a key purpose of the Advisory Committee’s Terms of Reference is to provide advice to the Minister for Planning on all relevant planning matters associated with both the supermarket and the national headquarters proposed to be co-located at Oakleigh, Council welcomes the opportunity to discuss this in more detail to ensure the site is cohesively developed in an efficient manner.

(Council underlining)

In its submission to the Committee (Document 104) Council advised it had met with representatives of Kaufland about the National Headquarters and agreed that at this time, insufficient detail is available for that aspect of the proposal to be considered. Council acknowledged that Kaufland require certainty before it can move forward with the head office which would require the successful roll out of several stores across Victoria. Further Council submitted that in its view, the National Headquarters aspect of the proposal is likely to be a Section 2 – Permit required use in the Industrial 1 Zone and could appropriately be considered as part of a future planning permit application process with Council as the Responsible Authority. Appendix 2 to Council’s submission contained a letter to the Committee advising Council’s position in relation to the National Headquarters. It confirmed the advice contained in its submission to the Committee and concluded:

We would therefore request the Advisory Committee consider making recommendations that allow for the National Headquarters to be assessed subsequently through the normal statutory process conducted by Kingston City Council.

When asked by the Committee, Council advised it had not seen any plans for the National Headquarters nor did the proposed location affect its support for the supermarket component. When asked by the Committee in closing whether it would be preferable from an integrated development perspective to consider both components of the site together, Council said “no”.

Having noted its support for the proposal, Council expressed concern that the scope of exemptions provided in the Incorporated Document could have an impact on the viability of surrounding centres with the establishment of further smaller speciality shops on the site. To address this concern, Council proposed the Incorporated Document be modified to ensure

that in the event that Kaufland does not proceed, the speciality shops cannot operate in isolation. Specifically, Council requested that Section 4.1 Exemption for Planning Scheme Requirements' of the Incorporated Document be modified to link the requirement that the use and development be carried out by Kaufland with the ancillary uses of the land by the deletion of the word "or" and the insertion of the word "and" as follows:

Any requirement in the Planning Scheme which:

Does not apply to the use and development of the land ...

- *for a supermarket or a bottle shop used in conjunction with a supermarket where such use or development is carried out by or on behalf of Kaufland Australia Pty Ltd (or a related entity); ~~for~~ and*
- *for the purpose of the following uses of land*

It further sought Condition 1 and 2 under 'Section 4.3 Conditions' of the proposed Incorporated Document be modified to make Council the approval authority for all relevant matters, instead of the Minister for Planning. Council submitted such a change was necessary to allow it detailed feedback and input on technical matters including drainage, infrastructure, traffic and transport, car parking and stormwater management.

In Council's closing submission, it advised it would support the recommendation of the Committee in the Report for the Tranche Group 1 sites being adopted for the Oakleigh South site. This would identify the Minister for Planning as the Responsible Authority for Condition 1, and Council for the remaining Conditions. This support was subject to the inclusion of other proposed changes, shown in Document 104.

Council's closing submission reiterated its support for the use of the site-specific control and Incorporated Document in this instance to allow for the current proposal as the site forms part of a broader industrial precinct. It reaffirmed its view that the use of the site-specific control will *"allow for the land to be used for an industrial use in the future and will not compromise the broader role of the surrounding industrial precinct through the introduction of a new, and potentially incompatible, zoning regime"*.

The original submission of Vicinity Centres (OS04) noted its objection to the proposed Oakleigh South store on the basis that it is contrary to policy, it will create an out-of-centre activity centre which will compete with existing activity centres and it utilises land zoned for industrial purposes. It submitted that the claim that the development will produce a net community benefit had not been established. In its submission at the Hearing (Document 108), Vicinity Centres noted the proposed site is in a strategic location that encourages industry and warehouse uses and seeks to prohibit most types of shop – including supermarket. The submission was critical of Kingston, stating that *"with respect ... the Council simply hasn't engaged with its own planning scheme"*.

Vicinity Centres submitted that the proposed development is not supported by planning policy and regardless of the fact that Bunnings have operated at the site, the proposal would remove the land from industrial use and replace it with a core retail use. The submission noted:

There is no doubt that the proposed Kaufland store would permanently remove this land as an industrial resource because the prospect of a core retail function returning to an industrial land resource are remote.

Vicinity Centres was critical that the National Headquarters was not before the Committee for consideration at this time. Mr O’Farrell stated that:

... the Advisory Committee ought advise the Minister that because there is no proposal for a National Headquarters, if Kaufland promised the headquarters to the Minister, that he ought not proceed on the basis that the promise will be delivered upon.

In giving planning evidence for Vicinity Centres, Mr Rogers acknowledged that there are economic benefits associated with Kaufland’s entry into the Australian market, however the benefits would occur to the same (if not greater) degree in or on the edge of an activity centre location. He considered that the proposed site is within a well-established industrial area, outside a designated activity centre, and with relatively poor public transport access.

He gave evidence that a location in a designated activity centre or the Monash NEIC would be preferred to the proposed site *“where benefits beyond job creation and additional competition could be leveraged”*. He considered that a review of alternative opportunities, such as the Monash NEIC should be considered and appropriately assessed *“prior to any decision being made on this site”*.

MGAIR submitted (Document 61) that the proposed site is out-of-centre. As discussed elsewhere in this report, it considered approval should not be granted as there is no strategic justification for allowing the development proposed by Kaufland outside of an activity centre.

The submission on behalf of Stockland by proUrban Advisory, Planning and Management (Submission OS09) noted that Stockland own the site immediately to the west of the proposed development being 1090-1124 Centre Road. The submission sought to ensure that the proposed development did not adversely impact on the operations and functionality of the Stockland site and the broader industrial precinct. While noting a number of potential traffic concerns, the submission did not state that Stockland opposed the development, but rather that the Committee consider the ongoing operation of the commercial and industrial precinct in its deliberations.

Bentleigh IGA X-press (OS07) opposed the development and was critical that the proposal is being allowed to *“circumvent Councils guidelines and go above the Councils to get their approvals”*.

Submitter OS01 indicated that she welcomed the new development to Kingston but was concerned with the traffic implications for local residents.

In relation to Mr Rodgers’ evidence that the proposed store should be located within one of the Monash NEIC business centres, Kaufland submitted that under cross examination Mr Rodgers acknowledged that the NEIC plan had a development lead time of 10 to 20 years. Further, it submitted he accepted that supermarket is a prohibited use under the current zoning regime (Special Use Zone 6) of the two sites, therefore a planning scheme amendment would be required to facilitate his proposed outcome. Kaufland noted that Mr Rodgers agreed that the proposed development at Oakleigh South would not prejudice a Kaufland locating in the NEIC in the future.

(iii) Discussion

It is uncontested that under the provisions of the Industrial 1 Zone, the proposed Supermarket use is prohibited. The Committee considers the key strategic planning considerations before it is whether the proposed use and the proposed development is acceptable in respect to impacts on the surrounding commercial, industrial and residential land uses that abut the site. The suitability of the site for the proposed use, and its impact on function and viability of existing commercial and industrial operations in the precinct are particularly important considerations.

In relation to use of the site for the proposed supermarket and ancillary retail and commercial uses, the Committee agrees with submissions of Kaufland and Kingston that they will be acceptable uses on the subject site as they replace a restricted retail use (currently Bunnings). The Committee considers this an acceptable outcome given the sites location on the arterial road network, its location on the edge of an established industrial and commercial precinct and its abuttal to, but with, minimal impact on residential areas. In forming this opinion, the Committee agrees with Council that the Incorporated Document should be modified to ensure that if Kaufland does not proceed, the ancillary shops cannot operate in isolation. The minor word changes proposed by Council will satisfactorily address this issue. The Committee has adopted that wording for the other Tranche 2 sites as well.

As discussed in Chapter 3.2, the Committee was not persuaded by the evidence of Mr Rogers that a review of alternative opportunities, such as the Monash NEIC should be considered and assessed prior to any decision being made on this site. The Committee considers the public exhibition and hearing process has robustly provided the opportunity for the merits of this current suite of proposals to be assessed and tested on their own merits. The Committee has already agreed with the submission by Kaufland that the Committee has not been charged with the task of assessing alternative options, but rather determining the acceptability of the proposals before it. Having noted this, the Committee did not find the evidence of Mr Rogers compelling in relation to his opinion that the proposed supermarket would be better located within the Monash NEIC. The Committee considers the evidence lacked specificity in relation to this.

In relation to the retailing uses proposed, the Committee accepts the evidence presented and tested before it that approval of the supermarket on the subject land will:

- not affect the established activity centre hierarchy
- not give rise to an adverse planning consequence for the precinct or industrial policy
- increase investment, employment, competition, product choice and produce cost benefits for consumers.

Having found that the proposed uses advanced by Kaufland are acceptable on the subject site, the Committee notes that it has considerable concern that the proposed development, at this time, is not sufficiently resolved.

While the Committee considers that the proposed development has the ability to integrate well into the surrounding industrial/commercial precinct, in its current form, the Committee does not think the proposal represents an adequate development outcome. The key concern in this regard relates to the lack of design integration with the balance of the site. In short, the Committee considers it important that the proposed supermarket be further considered

together with the proposed built form of the National Headquarters. In this regard the Committee notes the evidence of Mr Biacsi that at present, a negative aspect of the proposal is that it could be considered that there is a lack of certainty in *“leaving unresolved the ultimate development of the overall landholding given the National Headquarters proposal and master planning exercise”*.

The urban design, landscaping and traffic management benefits that will accrue from master planning the whole site are discussed later in this report. While the Committee has determined that traffic management issues can be appropriately managed (Chapter 6.5) and subject to further refinement, current design and landscaping deficiencies can be made acceptable (Chapter 6.4), the Committee considers that further detailed planning and design should occur as a condition of approval being granted. Further, the Committee considers that the strategic merits of the proposal advanced by Kaufland will be significantly reduced if the National Headquarters development on the site does not proceed.

Despite the submission advanced by Kaufland (and supported by Council) that assessment of the National Headquarters proposal can adequately occur following and as a separate task to the approval and development of its supermarket proposal, the Committee does not agree that this is an appropriate planning response. The Committee is concerned that the separation of the approval processes for these two elements of the Kaufland offer will not achieve an optimal site outcome and result in the potential for lost opportunity of site planning and integration.

In forming its opinion that the development concept is at present not adequately resolved, the Committee notes the submission by Council who advised that there is insufficient detail available regarding the design for the proposed Headquarters. The Committee considers it highly appropriate for the detail of both components be resolved together into order to maximise integration and design outcomes. Having noted this, the Committee accepts that planning assessment of the National Headquarters is likely to be a Section 2 – Permit required use in the Industrial 1 Zone. The Committee urges that there be an integrated assessment of the two proposals and reiterates they should be considered collectively, not individually. This is further discussed in Chapter 6.4.

To be clear, the Committee considers it appropriate for Kaufland to deliver on both the National Headquarters and supermarket elements of its Oakleigh South offer as proposed in its representations to both the Minister for Planning and Council. Clearly the benefits arising to Council, the community and residents and prospective employees within the catchment will be increased if both aspects of the offer are not only delivered, but also planned and implemented in a coordinated and integrated manner. The Committee considers there is a residual risk that the National Headquarters promised by Kaufland will not be delivered unless there is an imperative to do so. In this context, the Committee considers the Minister for Planning should utilise his discretion to link the delivery of the National Headquarters as part of approval of the supermarket offer. In recommending this approach, the Committee notes that Council placed significant weight in its submissions to the fact that Kaufland had agreed to develop its National Headquarters on the Oakleigh South site. As noted previously, Kingston supported the proposal:

“... particularly in the context of the significant economic and employment benefits associated with the proposed establishment of the Kaufland National Head office on the Centre Road site. The commitment by Kaufland to pursue its head office in this location is significant given the areas proximity to the Monash National Employment and Innovation Cluster”.

Armed with the Committee’s recommendation that the supermarket proposal on the subject site is supportable pending resolution of design integration issues, the Minister for Planning can deliver the ‘certainty’ required by Kaufland by giving conditional approval pending the delivery of the National Headquarters in a master planned co-ordinated development. The Committee recommends accordingly.

(iv) Findings

The Committee finds:

- While a prohibited use under the existing zone and out-of-centre, the Committee considers there are considerable benefits to the local community in establishing a Kaufland supermarket at this site.
- The location of a Kaufland supermarket on the Oakleigh South site is supportable, but only in the context of fully developed plans for both the supermarket and the proposed National Headquarters.
- There will be clear synergies between these two uses and the planning for this site should be undertaken in a structured manner where the supermarket is co-located with the office building in a considered way.

6.3 Economic impact

(i) Context

The Oakleigh South EIA concluded that that the existing supermarket operators within the main trade area on average would expect a one-off trading impact of between 5% and 6%. The EIA noted that from a total centre perspective, the likely impacts will be lower in percentage terms since the sales of the new Kaufland store will be focused on the food and groceries category. The stores situated closer to the proposed Kaufland store in Oakleigh South are expected to be impacted to a greater degree than those which are situated further away and the stores which most closely resemble the offer of the new entrant are more likely to be impacted to a greater extent than other stores. For these reasons the EIA concluded that IGA store at East Bentleigh is expected to experience a lower percentage impact than other existing competitors.

The EIA concluded that there is no reason to believe that any existing operator will be impacted to the extent which would imperil its continuing operation, assuming reasonably competent management because the anticipated impacts will be distributed across a number of existing operators and will therefore be quite low in percentage terms on any one operator.

(ii) Submissions and evidence

The evidence of Mr Dimasi reiterated opinions expressed in the EIA for Oakleigh South that there will be real growth in available supermarket business in the trade area before the

Kaufland store will be built, and in subsequent years. His opinion was that the one off impact of between 5% and 6% on existing supermarkets will be more than offset by the real growth in supermarket spending. Mr Dimasi concluded that there is no likelihood of any threat to the continued operation or future viability of Oakleigh Central or the smaller independent stores.

In relation to the smaller independent stores, Mr Dimasi emphasised that they are not substitutes for the typical weekly supermarket shopping, but rather operate as convenience stores. He opined that the customer offer available in the smaller foodstores is very different to the offer proposed by Kaufland, and the reasons why each store attracts customers can be quite different. He gave evidence that the two quite different retail offers co-exist across all parts of the Melbourne metropolitan area.

Mr Stephens peer-reviewed the EIA prepared by Mr Dimasi. He was in broad agreement with the conclusions of the Oakleigh South EIA, estimating a one off trading impact in the order of a 7% reduction in sales on average for supermarkets within the catchment. Mr Stephens concluded that ongoing population and spending growth in the trade area will ensure that any initial trading impacts on existing supermarkets will be temporary, and that supermarkets and other competing traders will soon return to overall sales growth.

Kaufland support the findings of the Oakleigh EIA. It submitted that there is no reason to suggest that the one off trading impact of around 5% to 6% that will be experienced by existing supermarket operators in the trade would imperil their continued operation (Document 105). The submission stated these impacts are to be balanced against the significant consumer and economic benefits that will result from development of the proposal, resulting in a clear net community benefit. It noted that none of the expert retail economists could point to an unacceptable economic impact on existing activity centres, or an undermining of the activity centre hierarchy. In relation to the evidence of Mr Quick, Kaufland submitted:

Mr Quick estimates only a 2.8% impact on Oakleigh Activity Centre, with impacts on his client Oakleigh Central at only 3.7%. Even (wrongly) accounting for cumulative impacts, Mr Quick does not consider Kaufland's proposal would undermine the existing activity centre hierarchy. In evidence in chief, Mr Dimasi described this level of impact as being of no consequence.

Kingston submitted that the site is an appropriate location for the proposed use on the basis that it broadly replicates the scale and intensity of the existing large format retail use on site (Bunnings Warehouse). It said Kaufland will not compromise the evolving commercial and industrial function of the surrounding precinct (Document 104). Having noted its support for the proposal, Council expressed concern that the scope of exemptions provided in the Incorporated Document could have an impact on the viability of surrounding centres with the establishment of further smaller speciality shops on the site. To address this concern, Council proposed the Incorporated Document be modified to ensure that in the event that Kaufland does not proceed, the speciality shops cannot operate in isolation.

Vicinity Centres submitted that the proposed store will cause deleterious economic impacts on the retail hierarchy (OS04). Vicinity Centres did not pursue this in its further submissions to any great degree (Document 181).

Mr Quick gave evidence for Vicinity Centres that the proposed Kaufland store would have a direct impact on the Oakleigh MAC of -\$6million, which equates to a -2.8% impact. He stated that supermarkets in Oakleigh will experience greater impacts. Mr Quick acknowledged that there will be some economic benefits and employment generation from the proposed store, however the benefits would be magnified if the store was co-located within an activity centre. His assessment noted that with the completion of a number of new supermarket proposals, combined with the proposed Kaufland store, the trade area will have a significantly above average provision of supermarket floorspace.

Murrumbeena Cellars and IGA X-press and Bentleigh IGA X-press submissions generally noted that the area is already oversaturated with supermarkets. Mulgrave IGA X-press (OS06) noted *“the community is oversupplied with large retailers that dominate the area and consequently there is no longer opportunity for small business to succeed in the retail industry”*. Murrumbeena Cellars/IGA X-press (OS07) held similar views.

Bentleigh East Foodworks submitted that the area is already populated with large and small retailers that are within walking distance of each other and that the area does not need another large retailer *“especially not the size of Kaufland”* (OS05). The submission expressed concern regarding potential loss of sales and a possible reduction of staff. It further submitted that the proposed development did not satisfy a new demand.

As reflected in the Coolaroo and Mornington chapters of this report, MGAIR submitted that the proposed store location is out-of-centre and as such is inconsistent with activity centre policy (GE01).

In its submission in reply (Document 215) Kaufland reiterated that even considering cumulative impacts, following development of a Kaufland store at Oakleigh South, Oakleigh Central would have a 5% reduction in turnover in 2022, which would not impact on its role, function or viability.

(iii) Discussion

The Committee considers that the EIA for Oakleigh South is a robust and valid assessment. It has formed this view following the testing of evidence of the three expert witnesses. The Committee generally accepts the projections of likely trading impacts contained in the assessment. All witnesses agreed that the approval and subsequent operation of Kaufland would not result in the closure of any supermarket in the catchment, nor result in unacceptable economic impact on existing activity centres or undermine the activity centre hierarchy. The Committee accepts this evidence. The Committee is not concerned that the additional floorspace provided by the proposed store will temporarily result in an above Melbourne Metropolitan average provision of floorspace per 1000 head of population.

The Committee supports the findings that residents and local businesses will enjoy the following benefits arising from the new proposed store:

- substantially improved shopping choice and convenience
- downward pressure on grocery prices
- an additional avenue for retail sales for local suppliers
- local employment creation.

(iv) Findings

The Committee finds:

- the development of the proposed Kaufland supermarket at Oakleigh South will provide a range of economic benefits for local and regional shoppers, suppliers and residents
- while a number of short-term trading impacts will be experienced by existing supermarkets, retailers and shopping centres in the trade area catchment, the projected economic impacts are acceptable and within normal competitive tolerances.

6.4 Urban design/built form/landscape

(i) Context

Kaufland Australia is seeking to demolish the existing Bunnings warehouse on the land at Oakleigh South and replace the building with a Kaufland supermarket and complementary uses. While the proposal notes the co-location of the proposed Kaufland National Headquarters and associated car park on part of the land, it does not form part of this proposal or fall within the area of the proposed Specific Controls Overlay.

The supermarket is proposed to be setback further than the existing Bunnings building from Centre Road with a distance of 91.04 metres. The building is to be setback from its western boundary by 8.3 metres to allow for a service road access, and approximately 90.3 metres from Clarinda Road. At-grade car parking is located in the setback areas fronting Centre Road and a portion of Clarinda Road, with a balance area on the Clarinda Road frontage identified for the future National Headquarters. Vehicle access is proposed off Centre Road as well as Clarinda Road. The supermarket fronts Centre Road with loading being from the building's southside.

The proposal seeks to remove a number of existing trees to facilitate the development. A narrow landscape strip is proposed along the Centre Road and Clarinda Road frontages as well as along the common boundaries with the property on the north east corner of the land. The car park is proposed to be planted with Kaufland themed trees including *Cupaniopsis anacardioides* Tuckeroo along the main entrances, and *Eucalyptus* 'Little Spotty' for the balance of the car park area.

(ii) Submissions and evidence

Urban design and built form

Kaufland's Part A submission (Document 26) advised that although the National Headquarters for Kaufland were intended to be located at the Oakleigh South site, the headquarters were to be informed by a future master planning process and subject to a future approval process.

Mr Blades in evidence was of the view that it is appropriate to take contextual cues from the surrounding built form, noting Kaufland's approach to locate supermarkets including the Oakleigh South site in areas where existing large format retailers exist.

He noted Kaufland’s exhibited plans for the site with the potential National Headquarters located to the rear of the site, and a multi-deck car park on the Clarinda Road frontage. He considered that potential development of the balance of the land necessitated basic site master planning *“regardless of chronology or potential future processes”*. He thought the proposed supermarket needed to be sufficiently resolved to *“stand on its own”* in case the balance of the site is not developed, but to *“be sufficiently adaptable and prescient so as to integrate with future development scenarios (in the event that the balance of the subject site is redeveloped in due course)”*.

Mr Blades considered the supermarket proposal sufficiently resolved, however, was of the view that the office component of the National Headquarters ought not be located at the rear of the property. Kaufland’s revised plans from 13 February 2019 (Document 34) identified the balance of the land for the National Headquarters subject to master planning, but do not specify a precise location for either the associated car park or office building.

In relation to building height, massing and siting, Mr Blades considered the design response of the Kaufland building appropriate. He stated the proposed height is consistent with the height of the existing Bunnings store, which is comparable with the existing height of buildings within the industrial precinct. While the proposal’s setback from Clarinda Road is broadly consistent with the existing condition, he acknowledged that the proposal’s street setback to Centre Road increases the existing setback and provision of at-grade car parking within the setback area. He was of the view that this is primarily a utilitarian approach. He considered the prevailing setback character in Centre Road to be eclectic and noted the open landscape nature of the Huntingdale Golf Course opposite. He stated:

The subject site consequently has an ‘open’ opposing streetscape context, and the pursuit of a greater setback simply responds to this condition accordingly.

In relation to design detail and architecture, Mr Blades noted the contemporary design detail response. He was generally satisfied with the response, however thought there was some scope for further refinement of the secondary corner with variation of the parapet height around the Kaufland logo. He thought the landscape response contextually responsive.

As part of its submission to exhibition, Kingston (OS08) raised urban design concerns in relation to the presentation to the existing streetscapes, the urban realm, the location of the outdoor plaza, and future car park building and national headquarters, and stated:

The extent of at-grade hard stand parking presents a number of concerns, in terms of WSUD and presentation to the urban realm. While it is accepted that, given the nature of the proposal, some amount of surface car parking is unavoidable the design should be revised to reduce the setback from Centre Road. The landscape response should also be improved to increase the amount of canopy trees (to improve presentation and reduce the impact of urban heat in car parking environments) and garden beds (to assist with storm water management).

Kingston stated the presentation of the streetscapes could be improved by replacing some of the peripheral car parking bays with mixed planting, especially at the edges to Clarinda and Centre Roads to improve the presentation.

Council raised concerns in relation to the exhibited location of the National Headquarters and thought that the office component ought to be located closer to the frontage of Clarinda Road, with car parking to the rear. It stated however, it was broadly supportive of the development, noting the specifics of the National Headquarters proposal was being advanced.

Ms Astill on behalf of Kingston (Document 104) noted that the revised plans from 13 February 2019 (Document 34) addressed two of Council's original concerns. These related to the relocation of the outdoor plaza further east to align with the store entry and footpath from Centre Road, and provision of a new footpath extending from Clarinda Road to the store entry.

She reiterated Council's concerns in relation to the extent of at grade car parking and presentation from Centre and Clarinda Roads. Ms Astill stated that Council was of the view that:

Ideally the proposed landscape buffer along Centre and Clarinda Roads should be maintained for that purpose, providing for the retention of existing vegetation, opportunities for further landscaping and root growth, reducing the amount of hard surface, improving presentation and reducing the impact of urban heat and providing for opportunities for stormwater management.

Mr Gobbo in closing stated Kaufland is proposing a master planning process for the balance of the site as part of the National Headquarters in response to Mr Blade's evidence and Council's concerns. He advised Kaufland had made the decision to pursue the development of the National Headquarters through the usual Council planning permit process. Mr Gobbo noted that the final Incorporated Document for Oakleigh South (Document 212) has picked up on many of Council's requested changes.

Landscape

Mr McWha gave evidence in relation to the proposed landscape response and was of the view the proposal would improve the existing landscape outcome and result in a landscape outcome of high quality and good amenity.

Ms Astill noted Council's concerns with the height of the trees proposed for the car park which it estimated would achieve a height at maturity of five metres. She said Council was of the view this is *"insufficient to provide meaningful shade either for reduction in the heat that a large mass of hard surface will contribute to, or for pedestrians and cars. It is recommended that the landscape plan be modified to include a minimum of 6 native trees within the car park capable of reaching a minimum height of 15 metres"*.

Council raised specific issues in relation to the retention of several trees which were earmarked for removal or would potentially be impacted by works. Kaufland tabled an arboriculture assessment and report from Treelogic dated 6 September 2018 *"to record attributes of the trees including their species, type and condition, to review any planning overlays relating to the trees and to advise on their arboricultural value and suitable tree protection zones to be employed should trees be retained along with proposed site development"* (Document 15c).

Council raised specific concerns in relation to trees 54 to 64 located at 1125 Centre Road on the adjacent site which were noted as large trees. It expressed concern in relation to the proposed works to be undertaken near these trees given the likely impact on their health.

They wished “to ensure that any works proposed along the service road (east of the site) do not impact on the adjoining row of gum trees numbered (54-64)”. Council requested that:

A Tree Protection and Management Plan be prepared addressing how excavation impacts, including soil level changes, on existing trees within and proximate to the site will be retained and managed, including consideration of the TPZ of the trees located at 1124 Centre Road, Oakleigh South.

Kingston raised further concerns about additional trees within the Clarinda and Centre Road setbacks. Ms Astill noted Council’s support for the review provided by GTA dated 28 February 2018 (Document 60) which considered whether a revised park layout is possible to facilitate a suitable offset from the existing trees and footpath along the Centre Road frontage. She stated that Council strongly encouraged the same approach along the remaining section of landscape buffer along Centre Road. Council’s arborist identified that Trees 1, 2 and 3 were worthy of retention and should be retained in a landscape buffer.

Council requested that the following conditions be inserted in Section 4.3 of the Incorporated Document:

- Deletion of the car parking spaces adjacent to Centre Road, with this area to provide for a landscaping buffer
- A landscape plan in accordance with the submitted landscape concept plan by FORMium dated February 19, revision ACP 2 which incorporates:
 - the area referred to in Condition 1d to include planting of 10 indigenous canopy trees capable of reaching a minimum mature height of 15 metres
 - the replacement of 6 of the internal car park trees with native trees capable of reaching a height of 15 metres
 - deletion of the notes ‘Arborist to investigate potential to provide 2 No. extra car spaces’, and ‘Existing adjacent trees, these trees are not impacted by the development’
- A Tree Management Plan (written report) must be prepared by a suitably qualified arborist, with reference to the Tree Protection Plan (Condition 1f.) which provides details of:
 - how excavation impacts, including soil level changes, on trees to be retained will be managed, including for the service road within the TPZ of the trees located at 1124 Centre Road, Oakleigh South.

Kaufland tabled a revised site and ground floor plan for the Oakleigh site (Documents 191 and 192) which removed three car spaces fronting Centre Road to retain trees 1, 2, and 3, and car parks abutting Clarinda Road to retain trees numbered 23, 24, 25, 27 and 28.

(iii) Discussion

Urban design and built form

As previously noted, the Committee is generally supportive of use of the site for a supermarket and considers it broadly appropriate. However as noted in Chapter 6.2, the Committee considers that the supermarket and National Headquarters should be considered together in a holistic way from a planning perspective. The Committee’s view about the urban design and landscape response reinforces this view, because the Committee has concerns about the

overall site layout and contextual response to the existing conditions, and lack of consideration for future integration with the National Headquarters.

The Committee agrees with Council that siting of the supermarket and presentation to Centre Road is inadequate and considers that the building should be located closer to Centre Road, consistent with the prevailing setbacks and existing setback of the Bunnings building. It does not agree with Mr Blades' evidence that the open nature of the golf course opposite is a relevant condition and does not see that an expansive at grade car park is something that can be said to mimic the openness of a golf course. The Committee considers that the existing setback of the Bunnings store, and the adjoining property to the east are more relevant markers for a contextually responsive design. The proposed orientation of the building makes a reduced setback difficult, however the store could be rotated to front onto the car park located within the Clarinda Road setback. These are fundamental problems with the proposed site layout and design response which have not been adequately addressed in the Committee's view.

There are other issues with the siting of the store. The loading for example, might be more appropriately located to the south west corner of the building, utilising an area along the western boundary as a more benign interface, rather than as proposed. There is an opportunity to consider pedestrian connectivity more broadly across sites (including the Stockland site). In the absence of consideration of the National Headquarters car parking and circulation requirements, it is difficult to determine what the layout ought to be. A master planning exercise for the entire site is therefore a more sensible approach to explore appropriate built form and urban design outcomes.

Such a master planning exercise might also assist with determining an appropriate use and design outcome for the derelict house on the corner of Clarinda and Centres Roads, which is strategically located in a small pocket of land zoned Commercial 1.

Landscape

The Committee has concerns with the potential impact of the development on the vegetation along the western boundary and therefore considers that an increased setback and landscape buffer strip should be incorporated in this location as a defacto tree protection zone.

It further considers that most of the vegetation, if not all, could be spared along the edges of the site with wider landscaped strips and removal of car parking spaces intruding into these areas. While it understands the Kaufland preference to provide excess car parking spaces to assist with the ease of finding a space, the Committee does not agree that this should result in a poor design response and jeopardise public realm and landscape outcomes. It therefore considers that the spaces located within the landscape setbacks on Clarinda and Centre Roads should be removed entirely to provide wider buffer areas along these frontages.

The Committee considers it appropriate to re-examine the tree selection for the car park to identify additional canopy trees as suggested by Council with sufficient height to provide shade and improved amenity.

(iv) Findings

The Committee finds:

- The siting of the building is unacceptable and should be located closer to Centre Road and match the existing setback of the Bunnings building and building adjoining to the west.
- The supermarket entrance should be oriented to face Clarinda Road.
- A landscape strip should be included along the western boundary of the site, to facilitate the retention of trees in this area.
- Access arrangements, loading area, pedestrian connectivity internally and externally to the site including to the adjoining site to the west, and car parking locations should be resolved in a holistic way with the National Headquarters development to ensure integration and an appropriate urban design and landscape response.
- The proposed built form and architectural response at Oakleigh South is generally acceptable and would result in an appropriate building which would sit comfortably within its industrial context, subject to amended siting and orientation.
- The landscape proposal is insufficient to contribute to the predominant landscaped character in the location and should be amended to provide for more and taller canopy trees in the car park.
- The areas immediately abutting Clarinda and Centre Roads should have additional planting of canopy trees with no car parking spaces intruding into them.

6.5 Traffic and access

(i) Context

The Oakleigh South site has access to both Clarinda Road and Centre Road, with existing unsignalised, full movement, access points on each road. Both undivided roads are arterial roads under the control of VicRoads and their intersection is signalised.

The car park access points on each road will be shifted slightly to align with the revised site layout. The relocation of the Centre Road access includes a removal of a left turn slip lane into the site, in favour of a standard T-intersection treatment.

The existing truck access off Centre Road will be retained for access to the rear loading docks.

The proposed parking will significantly exceed the requirement set out in Clause 52.06.

It is further noted that the design of the site allows for the incorporation of a future National Headquarters for Kaufland, subject to a separate planning permit application. The traffic analysis has included traffic generated by that proposed use, noting the headquarters area would contain its own car parking in addition to the proposed retail parking.

(ii) Submissions and evidence

Traffic

A Transport Impact Assessment was prepared on behalf of Kaufland by GTA Consultants and this was supported by evidence from Mr Davies, of GTA Consultants, and a peer review by Ms

Dunstan of Traffix Group. The assessment included the traffic generated by the proposed Kaufland headquarters on the Clarinda Road frontage.

The assessment indicated that there is no opportunity to increase the capacity of the Clarinda Road/Centre Road intersection. The provision of access onto both roads helps motorists to balance traffic at the intersection by choosing an appropriate route into and out of the site.

The assessment found that all intersections would adequately accommodate the expected traffic generation, with the signalised intersection operating at a similar level of saturation to existing with the reallocation of green time.

VicRoads submitted that it had a concern with the proposed shifting and redesign of the Centre Road access as well as the right turn out movement at this entry.

The redesign of the entry results in the loss of the left turn slip lane and accompanying pedestrian crossing, while the shifting of the entry to the west shortens the right turn lane on Centre Road. Overall VicRoads expressed concern that these changes will combine to reduce the capacity for right turns in and result in the potential for right turning traffic to obstruct the through lane.

Both Ms Dunstan and Ms Davies advised that a left turn slip lane did not make a significant difference to the traffic capacity or queuing at the intersection. The right turn lane will have a reduced storage of 32 metres, down from 40 metres, while the future queue was estimated at 13 metres. The predicted 95th percentile queue length is 13 metres.

In addition, VicRoads contended that a left turn slip lane would increase the number of roadways for pedestrians to cross, reducing, rather than improving pedestrian safety.

With respect to the right turn out, VicRoads noted that the Bunnings permit included a condition for an island that prevented right turns out, but this was never constructed, nor was it enforced. Mr Davies and Ms Dunstan argued that this existing right out movement attracts only a small volume of traffic in the commuter peak as motorists can choose to exit via the Clarinda Road exit to avoid delays turning right onto Centre Road. They contended that the right turn out was not causing any safety issues and provided a benefit to motorists at other times of the day.

Mr Davies advised that a year 2031 analysis was undertaken which shows that the average delay for the right turn out for that design year is around 2½ minutes.

Parking

Mr Davies advised that the provision of 375 parking spaces exceeds the statutory requirement of 308 spaces to provide sufficient parking beyond the 85th percentile demand and to ensure that typically, customers can be assured that parking will be available.

Pedestrian movements

Mr Davies and Ms Dunstan advised that a clear pedestrian network is provided out to both Clarinda and Centre Roads. When asked by the Committee, they had not considered the provision of a pedestrian connection to the existing retail use (Stockland) to the west and expressed concern about crossing the two service lanes between the two uses. They both considered that the footpath along Centre Road should suffice.

VicRoads advised that the public footpaths along both arterial roads currently sit within the property boundary and that the current permit for the Bunnings store includes a requirement for the property boundary to be amended to place this infrastructure within the road reserve.

Both experts agreed with VicRoads that the property boundary should be amended to ensure that the footpaths along Centre Road and Clarinda Road sit within the road reserves. However, Kaufland contended that only the proposed road infrastructure should be burdened by such a condition.

(iii) Discussion

Traffic

With respect to the right turn out from the site onto Centre Road, the Committee notes that in the PM peak, the average right turn delay, based on existing traffic is greater than the cycle time at the adjacent signalised intersection and more than double the average delay for the right turn movement from Clarinda Road into Centre Road. By 2031, which represents a 10-year design period, the delay exiting the site is almost double the cycle time.

While there is only a small volume of traffic estimated to do this movement, the average delay reflects that some motorists will face longer wait times. Such delays may be discouraging to regular shoppers familiar with local conditions, but Kaufland will be a regional store that will also attract customers for infrequent visits, reducing the benefit of familiarity.

Of particular concern is that long delays can result in drivers attempting to take smaller gaps, thus reducing road safety. This can result in both minor and major collisions, with most minor collisions being unreported in statistics but nevertheless having consequences to health and the economy.

Accordingly, the Committee recommends that this movement be prohibited or at least VicRoads retains the right to require changes in the future to prohibit the movement with the construction of any necessary kerbing to help reinforce the ban.

With respect to the loss of the left turn slip lane, the Committee accepts that slip lanes are more usually found at signalised intersections and notes that they are often provided to accommodate the larger turning circle of a truck, which is not relevant for this car park entry. The Committee notes that there are both benefits to traffic and disbenefits to pedestrians with the provision of a slip lane. The no slip lane option will reduce the amount of road paving, and improve opportunities for landscaping, which is supported by the Committee.

On balance, the case for or against a slip lane is not heavily weighted in one direction or the other and ultimately, the design of this entry is a matter that must be resolved with VicRoads as they are the road authority for Centre Road.

Parking

The parking provided is in excess of the statutory requirements and the amenity that this provides for customer needs must be balanced with the amenity impacts on landscaping opportunities.

Pedestrian movements

The Committee considers that the pedestrian network is sufficient when considering this site as a stand-alone single destination retail use. Indeed, the adjacent furniture store, has been developed on the same idea, being a car park oriented use with no clear connection to the public footpath network except along the road ways.

The Kaufland store, unlike the current Bunnings store which has a setback of less than 10 metres from Centre Road, is proposed to be set back approximately 90 metres from Centre Road. The retail to the west is setback around 40 metres.

While the two adjacent laneways between the stores, which are separated by a landscape strip and fence within the adjacent site, are an existing barrier that would need design consideration, pedestrians along the Centre Road footpath also need to cross these two laneways which merge at the footpath to provide some 30 plus metres of crossing distance. Accordingly, it would be safer for pedestrians to cross the laneways well clear of Centre Road where they can stage their crossing within the landscape strip, thus minimising both walking distances and exposure to traffic. A master planning exercise for the commercial precinct, as has been attempted by Mr Blades for the combined Kaufland store and National Headquarters building, would seek to provide direct pedestrian connections between the various buildings.

In respect to the modification of the property boundary to place the road infrastructure within the road reserve, the Committee considers that this outstanding matter should be extended to any new planning permission for the site. The Committee notes that due diligence on behalf of Kaufland when they purchased the whole of the site should have identified this outstanding matter as it is common for VicRoads to request property boundaries to be realigned in such circumstances.

(iv) Findings

The Committee finds that:

- The traffic generated by the use can be accommodated within the road network.
- The design of the Centre Road access is ultimately subject to the approval of VicRoads, but strong consideration should be given to either banning right turns out at the outset or making provision in the approval to require this to be done if requested by the road authority at any time.
- The provision of parking exceeds the statutory requirement and some parking can be removed to achieve better landscape and stormwater retention outcomes.
- Provision should be made for a pedestrian connection between the Kaufland store and the Stockland premises to the west.
- Any existing and proposed road infrastructure along the site's arterial road frontages should be vested in the Roads Corporation.

6.6 Acoustics

The acoustic evidence provided by Mr Tardio considered noise compliance with SEPP N-1, EPA Publication 1254 and sleep disturbance criteria. The assessment assumed that some form of packaged noise attenuation would be applied to plant. This should be determined at the time of plant selection to ensure compliance with SEPP N-1.

With respect to the noise from the car park and from deliveries, including night time deliveries and waste collection, the modelling undertaken by Mr Tardio indicated that the noise would either be inaudible inside the nearest dwellings or indistinguishable from traffic noise on the abutting main roads. The ambient traffic noise along the main roads separating the site from the residential properties as well as location of the loading dock on the south side of the building contributes to these findings.

The EPA submitted that while SEPP N-1 is the current State noise policy, it intends to phase out SEPP N-1 and replace it with a newer guideline or regulation. In the interim it recommends that the same generic conditions as the other Tranche 2 sites be included in the Incorporated Document to protect amenity.

The EPA further recommended that the Construction Management Plan include provision for community consultation and notification of noisy works.

The Committee finds:

- The development can achieve compliance with SEPP N1.
- The noise condition No. 5 should be replaced with the EPA's recommended condition, and Condition 6 include reference to any newer guidelines or regulations.
- The condition proposed by Kaufland relating to a Construction Management Plan is sufficiently flexible to allow Council to require inclusion of consultation and notification if it is deemed necessary.

6.7 Conclusions

(i) Should planning approval be granted?

The Committee concludes:

- The proposed Kaufland Store at part 1126 – 1146 Centre Road, Oakleigh South, is supportable, however planning approval should be deferred until the final plans for the National Headquarters are resolved to enable the comprehensive design and integration of the whole site.

(ii) Changes to Incorporated Document

The Committee considers the Incorporated Document be amended as follows:

- Modify the fourth dot point in Section 4.1 Exemption from Planning Scheme Requirements to add the word *“and”* at the end of the dot point, as shown following:
“for a supermarket or a bottle shop ... Kaufland Australia Pty Ltd (or a related entity); and”
- Modify Condition 1, in Section 4.3 Conditions, by:
 - removing the words *“and landscape”* after *“... detailed architectural”*
 - adding a new *“a. any changes resulting from the combined master planning process with the National Headquarters, including but not limited to consideration of the following:*
 - i. siting of the building closer to Centre Road to match the existing setback of the Bunnings building and building adjoining to the west*
 - ii. orientation of the supermarket entrance to face Clarinda Road*

- iii. *resolution of access arrangements, loading area, pedestrian connectivity, and car parking locations in a holistic way with the National Headquarters development to ensure integration and an appropriate urban design and landscape response.*
 - replacing renumbered Condition 1.b (formerly 1.a) with the words: *“The removal of the pylon sign type 2”*
 - adding a new Condition 1.g with the words: *“provision for a pedestrian connection between the supermarket and the Stockland building to the west”*
 - adding a new Condition 1.h with the words: *“Any changes resulting from the Landscape Plan required by these conditions”.*
- Replace Condition 6 with the words:
 - “There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:*
 - a. the environment in the area around the premises, and*
 - b. the wellbeing of persons and/or their property in the area around the premises.*
 - In considering whether noise is detrimental, an assessment can be made against the relevant noise guideline, whether it is still SEPP N-1 or a newer guideline or regulation.”*
- Modify Condition 7 by inserting, at the end, the words: *“or newer guidelines or regulation.”*
- Modify Condition 14 by:
 - replacing 14b with the words: *“any changes resulting from the combined master planning process with the National Headquarters”*
 - inserting a new point: *“c. a landscape strip along the western boundary of the site to facilitate tree protection”*
 - inserting a new point: *“d. the deletion of the two double car bays between the trees along the Centre Road frontage and the single car bay along the Clarinda Road frontage that are shown on TP-04 Revision P4 to provide a continuous landscape strip and the planting of additional canopy trees where the car bays are removed”.*
- Modify Condition 47 by including the words: *“existing and”* prior to the words *“proposed infrastructure”* at the start of the condition.

These amendments are reflected in Appendix G.

6.8 Recommendation

For the reasons expressed in this report, the Committee recommends that the Minister for Planning:

3. **Approve the draft amendment to the Kingston Planning Scheme to facilitate the use and development of the land at part 1126 – 1146 Centre Road, Oakleigh South for a Kaufland supermarket and complementary uses with associated carparking and signage in accordance with the approved Incorporated Document, subject to:**
 - a) **Defer approval of the supermarket proposal until the design and location of the supermarket is reviewed and co-ordinated with the siting, design and**

delivery of the National Headquarters via a combined master planning process to ensure an integrated outcome.

Should this recommendation not be accepted, then any approval for the site should be subject to the following changes:

- b) Replace the exhibited version of the Incorporated Document with the revised version (Appendix G) and make any consequential changes to Clause 72.01 if required.**
- c) Include the Kingston Planning Scheme Map (Appendix H) in the final Amendment documentation, modified as necessary.**

7 Summary Response to Terms of Reference

The Committee provides the summary of its response to its Terms of Reference in Table 1.

Table 12 Summary of response to Terms of Reference

Term of Reference	Comment	Chapter(s)
PURPOSE		
4a. Strategic assessment against State and local planning policies	Overall, State and local policy not supportive of Mornington and to a lesser extent Oakleigh South. Some support to Coolaroo, in that the Committee has concluded it is edge of centre and in a Commercial 2 Zone. Very little strategic and planning policy support for Mornington. Support to Oakleigh South in conjunction with whole of site development of the proposed National Headquarters.	2.5, 5.2 and 6.2 2.5 and 4.2
4b. Assessment of each site with regard to amenity, traffic and access, built form, urban design and other referral and statutory requirements	Chapter 3 addresses common issues. Chapter 4 addresses the Coolaroo store. Chapter 5 addresses the Mornington store. Chapter 6 addresses the Oakleigh South store.	3 4 5 6
4c. Advice about the introduction and form of the proposed Incorporated Document and conditions	The use of the Specific Controls Overlay and Incorporated Documents is supported. Minister for Planning should be the Responsible Authority for Condition 4.3 (1) relating to 'Submission and approval of architectural plans' and the relevant Council should be the Responsible Authority for all other conditions.	3.1
GENERAL		
10a. <i>Planning and Environment Act 1987</i> , Victoria Planning Provisions and Plan Melbourne 2017-2050	Chapter 2 outlines the various planning controls considered, with relevant discussions in each subsequent Chapter.	2, 3, 4, 5 and 6
10b. Consider relevant Planning Scheme, adopted plans, strategies or planning scheme amendments	Chapter 2 outlines the various planning controls and other documents, with relevant discussions in each subsequent Chapter.	2, 3, 4, 5 and 6
10c. Consider all relevant material from Kaufland or otherwise	Lists the additional Documents tabled by parties.	Appendix D
10d. Consider all submissions and evidence	All submissions and evidence were considered by the Committee. Appendices B and C list the Submitters and Parties to the Hearing. Chapter 3 discusses and assesses common issues raised in submissions and evidence, and Chapters 4, 5 and 6 discuss and assess site specific issues.	3, 4, 5 and 6

Term of Reference	Comment	Chapter(s)
HEARING PROCESS		
18. Directions Hearing and Public Hearing	A Directions Hearing was held on Friday 2 November 2018, and Public Hearings were held at PPV over nine days on 23, 27, 28, 29, and 30 November and 3, 4, 6 and 13 December 2018.	1.3
19. May conduct other forms of inquiry	Not required.	
20. May limit times of parties and may prohibit or regulate cross examination	Not required.	
21. Quorum of two at all times, including Chair or Deputy Chair	A quorum of was maintained at all times and both the Chair and Deputy Chair attended all aspects of the Hearing.	1.3
OUTCOMES		
22a. Consider matters in the Terms of Reference	This Report of the Advisory Committee represents its response to the Terms of Reference.	All
22b. Recommendations for each site, including whether each site is an appropriate location for the proposal	Recommendations for each site are contained at the end of each respective site-specific Chapter.	4.7 and 4.8 5.7 and 5.8 6.7 and 6.8
22c. Assessment of planning provisions for each site and recommendations for any amendments	Chapter 2 provides an overview and assessment of the planning provisions. Specific Recommendations for each site are contained at the end of each site-specific Chapter.	2, 4.7 and 4.8 2, 5.7 and 5.8 2, 6.7 and 6.9
22d. Assessment of each proposal including layout, access, parking, and built form	Chapter 3 addresses common issues. Chapter 4 addresses the Coolaroo store. Chapter 5 addresses the Mornington store. Chapter 6 addresses the Oakleigh South store.	3, 4, 5 and 6
22d. Conditions that should apply to use and development	Conditions are shown in the Committee's amended versions of the Incorporated Documents.	Appendix E Appendix F Appendix G
22e. Assessment of submissions and other relevant matters	Chapter 3 addresses common issues. Chapter 4 addresses the Coolaroo store. Chapter 5 addresses the Mornington store. Chapter 6 addresses the Oakleigh South store.	3, 4, 5 and 6
22f. List of submitters	A list of submitters is in Appendix B	Appendix B
22g. List of parties consulted and heard	A list of parties consulted and heard is in Appendix C.	Appendix C

Appendix A Terms of Reference

Kaufland Stores in Victoria Advisory Committee

Advisory Committee appointed pursuant to section 151 of the *Planning and Environment Act 1987 (Act)* to provide advice on the proposed initial establishment of supermarket-based stores in Victoria by Kaufland Australia Pty Ltd (Kaufland).

Name

1. The Advisory Committee is to be known as the 'Kaufland Stores in Victoria Advisory Committee'.

Skills

2. The Advisory Committee is to have a Chair and Deputy Chair, and other members as appropriate, with the following skills:
 - a. strategic and statutory planning
 - b. retail planning analysis
 - c. traffic/transport planning
 - d. urban design.

Purpose

3. The purpose of the Advisory Committee is to provide advice to the Minister for Planning on all relevant planning matters associated with the location, development and use of six proposed Kaufland supermarket-based stores in metropolitan Melbourne and the national headquarters proposed to be co-located with the proposed store at Oakleigh South. This includes advice on the site-specific planning scheme amendments proposed for each of the relevant planning schemes to facilitate the establishment of the stores, and/or any other planning mechanism that is proposed.
4. The Advisory Committee is expected to:
 - undertake a strategic assessment of the use of each proposed store site, including an assessment against State and local policies, and, where relevant, recommend any required amendments to the existing planning scheme provisions applying to the site or to land that is surplus to the Kaufland store and associated uses.
 - undertake an assessment of each of the proposed store developments, including consideration of amenity, traffic and access, built form, urban design, and referral authority or statutory body requirements in sufficient detail to enable the Advisory Committee to recommend whether each development should be approved and the conditions of any such approval.
 - provide advice on the proposed introduction and form of an Incorporated Document in the schedules to Clause 52.03 and Clause 81.01 of each of the planning schemes to enable the use and development of the Kaufland stores, subject to conditions.

Background

5. Kaufland is a German-based grocery chain, and is a subsidiary of the Schwarz Group, the world's fourth largest retailer. Kaufland Australia Pty Ltd intends to enter the Victorian retail market and, through its consultant Planning and Property Partners Pty Ltd, has requested that the Minister for Planning assist in facilitating its plan to deliver an initial tranche of proposed supermarket-based stores.

6. Based on its experience elsewhere, Kaufland considers that it needs to enter the market with a critical mass of stores to develop its customer base and deliver optimal benefits to customers. Kaufland has secured control of sites for potential stores at:
 - 1-3 Gladstone Road, Dandenong VIC 3175
 - 592-694 High Street, Epping VIC 3076
 - 1126-1146 Centre Road, Oakleigh South VIC 3167
 - 1550 Pascoe Vale Road, Coolaroo VIC 3048
 - 266-268 Maroondah Highway, Chirnside Park VIC 3116
 - 1158 Nepean Highway, Mornington VIC 3931
7. The Minister for Planning may refer an additional site or tranche of sites or any other use or development associated with the development of the Kaufland stores to the Advisory Committee, at the Minister's discretion.
8. The Minister for Planning considers the proposed roll-out of stores has the potential to deliver significant economic and employment benefit across the State, as well as greater retail choice for Victorians.
9. The Advisory Committee has been appointed to provide a consistent, timely and transparent process for assessing the planning merits of each of the proposed initial tranche of stores.

Method

General

10. The Advisory Committee may inform itself in any way it sees fit, and must consider all relevant matters, including but not limited to:
 - a. relevant provisions of the *Planning and Environment Act 1987*, the Victoria Planning Provisions and *Plan Melbourne 2017 - 2050: Metropolitan Planning Strategy*.
 - b. the relevant Planning Scheme, including any adopted plans, strategies or planning scheme amendments.
 - c. all relevant material submitted on behalf of Kaufland or otherwise provided to the Advisory Committee.
 - d. all submissions and evidence received.
11. The Advisory Committee may apply to the Minister for Planning to vary these Terms of Reference in any way it sees fit prior to submission of its report to the Minister for Planning.

Notice

12. The Department of Environment, Land, Water and Planning (DELWP) must liaise with the Advisory Committee to agree:
 - a. the public exhibition dates
 - b. a Directions Hearing date
 - c. the Public Hearing dates.The agreed dates are to be included on all notices.
13. DELWP will provide direct notice (by letter) inviting written submissions within a 20 business-day notice period, at a minimum, to:
 - a. Each relevant council
 - b. Relevant Government agencies and servicing or referral authorities

- c. Any landowners and occupiers adjoining or surrounding the proposed sites.
- 14. DELWP will place a notice in a local newspaper (where available) during the notice period.
- 15. The Advisory Committee is not expected to carry out any additional public referral or notice but may do so if it considers it to be appropriate.
- 16. All submissions are to be collected at the office of Planning Panels Victoria (PPV) in accordance with the 'Guide to Privacy at PPV'. Electronic copies of submissions will be provided for each relevant council, DELWP and the proponent.
- 17. Petitions and pro-forma letters will be treated as a single submission and only the first name to appear on the first page of the submission will receive correspondence on Advisory Committee matters.

Hearing

- 18. The Advisory Committee is expected to carry out a directions hearing and public hearings for each site, either separately or as a block of sites.
- 19. The Advisory Committee may conduct workshops, forums or other meetings as necessary.
- 20. The Advisory Committee may limit the time of parties appearing before it and may prohibit or regulate cross-examination.
- 21. The Advisory Committee requires a quorum of two members, one of whom must be the Chair or the Deputy Chair, for any hearing.

Outcomes

- 22. The Advisory Committee must produce a written report or reports for the Minister for Planning, providing the following:
 - a. Consideration of the matters outlined in these Terms of Reference.
 - b. Recommendations for each proposed development site including advice on whether the site is an appropriate location for the proposed use.
 - c. An assessment of the existing planning provisions applying to each site and recommendations for any suggested amendments to the existing planning controls in consideration of the proposed use.
 - d. An assessment of each proposed development including consideration of the proposed layout, access, parking and built form and advice on the conditions that should apply to the use and development and whether the proposed means of applying these conditions is appropriate.
 - e. An assessment of submissions to the Advisory Committee and any other relevant matters raised in the course of the Advisory Committee process.
 - f. A list of persons who made submissions to the Advisory Committee.
 - g. A list of persons consulted or heard.

The report or reports of the Advisory Committee may be submitted in stages depending on the timing of matters referred to the Advisory Committee.

Submissions are public documents

- 23. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly until a decision has been made on its report or five years has passed from the time of its appointment.
- 24. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain confidential.

25. All submissions, evidence and other material received will be treated as public documents and will be placed online as part of the exhibition and public notification process.

Timing

26. The Advisory Committee should commence hearings as soon as practicable after the completion of the notice period.
27. The Advisory Committee is required to submit its report/s in writing no later than 20 business days from the completion of any of its hearings.

Fee

28. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
29. The costs of the Advisory Committee and associated public consultation notification will be met by the proponent, Kaufland Australia Pty Ltd.



HON RICHARD WYNNE MP
Minister for Planning

Date: 24/7/18

Appendix B List of Submitters

No.	Submitter
GENERAL SUBMISSIONS	
Ge01	Master Grocers Association
Ge02	Environment Protection Agency
Ge03	VicRoads
COOLAROO	
C01	Transport for Victoria
C02	Melbourne Water
C03	Hume City Council
C04	Vicinity Centres Pty Ltd
C05	Morgan's IGA (Master Grocers Association)
MORNINGTON	
M01	Pauline May Hume
M02	Geoffrey William and Eleanor Kaye Moran
M03	John Wright
M04	Simone Werner
M05	Emma Dowling
M06	Janet Groves
M07	Helen Loersch
M08	Jan Belkin
M09	Raquel Lemon
M10	Jade Caroline Barker
M11	David Leigh
M12	Susan Lyons
M13	Mt Eliza Community Alliance
M14	Janet Groves
M15	The Bata Shoe Company of Australia Pty Ltd
M16	Sally Christie
M17	Nathanael Alexander Taylor
M18	John Gordon-Kirkby
M19	Joe Ziino

M20	Transport for Victoria
M21	Kevin Fletcher
M22	Denise Cioban
M23	Mt Eliza Chamber of Commerce
M24	Derek Hymas
M25	Silke Steenblock
M26	Teena Pillar
M27	Linda Marie Morrison
M28	Ashleigh Baker
M29	Penelope Watson
M30	Per Ejner Carlsen
M31	Andrew Weber
M32	Bonnie Douglas
M33	Stephan R Wood
M34	Seachange Property
M35	Malcolm Green
M36	Shane McLachlan
M37	Robyn Elizabeth Hearn
M38	Pamela Sun
M39	Jill Stanszus
M40	Mary Brownley
M41	Anthony James Butcher
M42	Ann Robb
M43	Phillip Boelen
M44	Susan Elizabeth McIntyre
M45	Susanna Watkins
M46	Mornington Environment Association
M47	Alan Anthony Higginson
M48	Mornington Peninsula Shire Council
M49	John Randle
M50	Michael Boulton
M51	Patrick Dubuc
M52	Not utilised

M53	Not utilised
M54	Margaret Howden
M55	Steve Howard
M56	Ginevra Hosking
M57	Robert Pashen
M58	Barbara Jane Pashen
M59	Hayden Rees
M60	Peter Norman Deerson
M61	Dale Frances Halstead
M62	Melbourne Water
M63	Frank Mangan
M64	David Archer
M65	Sheryne Kaye Tully, Harry Tully and Brooke Wegener
M66	Mornington Chamber of Commerce
M67	Janet Stuart Oliver, O.A.M.
M68	Georgina M Stubbs
M69	David Gibb
M70	Peter Yalden
M71	Pauline May Hume
M72	Geoffrey William and Eleanor Kaye Moran
M73	John Wright
M74	Simone Werner
M75	Emma Dowling
M76	Ritchies Pty Ltd
M77	Newpac Investment Group Pty Ltd
M78	Jenny Stidston
M79	Jennifer Diviny
M80	John G Nixon
M81	Lynton Shedden
M82	Blackbrook Pty Ltd
M83	Janet Street
OAKLEIGH SOUTH	
OS01	Daniella Chiappetta

OS02	Transport for Victoria
OS03	Melbourne Water
OS04	Vicinity Centres Pty Ltd
OS05	Bentleigh East FoodWorks (Master Grocers Association)
OS06	Mulgrave IGA X-press (Master Grocers Association)
OS07	Murrumbeena Cellars & IGA X-press & Bentleigh IGA X-press (Master Grocers Association)
OS08	City of Kingston
OS09	Stockland Corporation Limited

Appendix C Parties to the Hearing

Submitter	Represented by
Kaufland Australia	Jeremy Gobbo QC of Counsel, with Juliet Forsyth SC and Emily Porter of Counsel, instructed by Mark Naughton and Matthew Hughes of Planning and Property Partners, calling evidence from: <ul style="list-style-type: none"> - Daren Tardio of Enfield Acoustics on acoustics - Brodie Blades of SJB Urban on urban design - Simon Davies of GTA Consultants on traffic - Charmaine Dunstan of Traffix Group on traffic - Mark McWha of FORMium Landscape Architects on landscape - Tony Dimasi of Dimasi & Co on economics - Sean Stephens of Essential Economics on economics (for Coolaroo and Oakleigh South) - Paul Shipp of Urban Enterprise on economics (for Mornington) - Andrew Biacsi of Contour Consultants on planning
VicRoads	Gaureav Verma
Master Grocers Association Independent Retailers	Jason Kane of Counsel, with Joss DeBruin (CEO), Neal Morgan (Meadow Heights IGA), Jon and Donna Hewitt (Foodworks Mornington), Fred Harrison (Ritchies)
Hume City Council	Brydon King of BJK Planning
Kingston City Council	Rita Astill
Mornington Peninsula Shire Council	Kate Morris, Kim Piskuric and Alison Tansley of Harwood Andrews, with Rosa Zouzoulas and Leigh Northwood, calling evidence from: <ul style="list-style-type: none"> - Tim Biles of Message Consultants on urban design and planning - Brendan Papworth of Papworth Davies Landscape Architects on landscape - Aaron Walley of Ratio on traffic - Brian Haratsis of MacroPlan on economics and strategic planning
Blackbrook Pty Ltd	Adrian Finanzio SC and Paul Chiappi of Counsel, instructed by Gemma Robinson of Rigby Cooke Lawyers, calling evidence from:

	- William Bromhead of Ratio on planning
Vicinity Centres Pty Ltd and ISPT Pty Ltd (Mornington)	Peter O’Farrell and Carly Robertson of Counsel, instructed by Rhodie Anderson of Rigby Cooke Lawyers, calling evidence from: <ul style="list-style-type: none"> - Rob Milner of 10 Consulting on planning - Brendan Rogers of Urbis on planning - Rhys Quick of Urbis on economic
Vicinity Centres Pty Ltd (Coolaroo)	Peter O’Farrell and Carly Robertson of Counsel, instructed by Rhodie Anderson of Rigby Cooke Lawyers, calling evidence from: <ul style="list-style-type: none"> - Colleen Peterson of Ratio on planning - Brian Haratsis of MacroPlan on economics and strategic planning
Vicinity Centres Pty Ltd (Oakleigh South)	Peter O’Farrell and Carly Robertson of Counsel, instructed by Rhodie Anderson of Rigby Cooke Lawyers, calling evidence from: <ul style="list-style-type: none"> - Brendan Rogers of Urbis on planning - Rhys Quick of Urbis on economic
Bata Shoe Company of Australia Pty Ltd	Adele Patterson of Counsel, instructed by Beckwith Cleverdon Rees Lawyers
Aventus Mornington Pty Ltd	Akemi Traill of Tract Consultants
Mornington Chamber of Commerce	Alice Dawkins
Mornington Environment Association	Margaret Howden
Mt Eliza Community Alliance	Ian Morrison
Mt Eliza Chamber of Commerce	Alison Doherty
Mornington individual submitters	Phillip Boelen Georgina Stubbs Ann Rob John Nixon Frank Mangan Jill Stanzus Janet Street

Appendix D Document list

No.	Date	Description	Presented by
1	31/02/2019	Advisory Committee Hearing Process Notification Letter	Ms Mitchell, Advisory Committee Chair
2	01/02/19	Kaufland Australia Stores in Victoria Advisory Committee	Mr Naughton, Planning and Property Partners
3	08/11/19	Harwood Andrews Correspondence and associated plans	Ms Piskuric, Harwood Andrews
4	“	Mornington Peninsula Activity Centre Strategy 2018	“
5	“	Industrial Land Strategy 2018	“
6	“	Mornington Peninsula Localised Planning Strategy	“
7	11/02/19	Committee Directions and Hearing Timetable (v1)	Ms Mitchell
8	12/02/19	Kaufland confirmation of expert witnesses	Mr Hughes, Planning and Property Partners
9	13/02/19	Revised site plans	“
10	14/02/19	DELWP Notification Report	Mr Kirkland, DELWP
11	“	Kingston Council endorsed submission	Ms Astill, Kingston Council
12	“	Kaufland Statement of Changes	Mr Hughes
13	18/02/19	Kaufland letter tabling evidence	“
14	“	Evidence Statement of Darren Tardio a) Coolaroo b) Mornington c) Oakleigh South	“
15	“	Arboricultural Assessment and Report a) Mornington b) Supplementary Arborist Report – Mornington c) Oakleigh South	“
16	“	Evidence Statement of Brodie Blades a) Coolaroo b) Mornington c) Oakleigh South	“
17	“	Evidence Statement of Simon Davies a) Coolaroo b) Mornington c) Oakleigh South	“
18	“	Evidence Statement of Charmaine Dunstan a) Coolaroo b) Mornington	“

No.	Date	Description	Presented by
		c) Oakleigh South	
19	“	Transport Impact Assessment a) Coolaroo b) Mornington c) Oakleigh South	”
20	“	Landscape Plan a) Coolaroo b) Mornington c) Oakleigh South	”
21	“	Correspondence from Harwood Andrews re circulation of evidence statements	Ms Morris, Harwood Andrews
22	“	Further Committee Direction re circulation of evidence statements	Ms Mitchell
23	“	a) Correspondence - site visit locations b) Recommended locations for Mornington site visit	Ms Morris
24	19/02/19	Mornington Shire Issue Paper with tabling letter	“
25	20/02/19	Correspondence from Kaufland - filing of Part A submission	Mr Hughes
26	21/02/19	Kaufland letter tabling evidence a) Tony Dimasi – economics b) Sean Stephens – economics c) Paul Shipp – economics d) Andrew Biacsi – planning (Coolaroo) e) Andrew Biacsi – planning (Mornington) f) Andrew Biacsi – planning (Oakleigh South) g) Mark McWha - landscape architecture (Coolaroo) h) Mark McWha - landscape architecture (Mornington) i) Mark McWha - landscape architecture (Oakleigh South) j) Amended landscape plans (Mornington and Oakleigh South) k) Part A submission l) Signage viewpoint analysis m) Signage viewpoint methodology	“
27	“	Harwood Andrews letter tabling evidence (Mornington) a) Mr Walley – traffic and transport b) Mr Haratsis – economics and strategic planning c) Mr Biles - planning and urban design d) Mr Papworth – landscape	Ms Morris
28	“	Vicinity Centres - Letter tabling evidence a) Mr Rogers – planning (Mornington) b) Mr Quick – economics (Mornington)	Ms Anderson, Rigby Cooke

No.	Date	Description	Presented by
		c) Mr Milner - planning	
29	“	Vicinity Centres - Letter tabling evidence a) Mr Rogers – planning (Oakleigh) b) Mr Quick – economics (Oakleigh)	“
30	22/02/19	a) Blackbrook letter filing evidence b) Mr Bromhead Planning (Mornington)	“
31	“	Vicinity Centres - Letter tabling evidence a) Ms Peterson – planning (Coolaroo) b) Mr Haratsis - economics (Coolaroo)	“
32	“	Revised Hearing Timetable and Distribution List (version 2)	Ms Harwood, Planning Panels Victoria
33	25/02/19	Group 2 Sites Policy Folder	Mr Gobbo QC of Counsel for Kaufland
34	“	Group 2 Sites Book of Plans	“
35	“	Addendum to Mr Tardio Acoustic Evidence	“
36	“	ESD Outcomes Report	“
37	“	Waste Management Plan - Mornington	“
38	“	Waste Management Plan - Coolaroo	“
39	“	Waste Management Plan – Oakleigh South	“
40	“	Bushfire Development Report - Mornington	“
41	“	Stormwater Management Plan – Oakleigh South	“
42	“	Stormwater Management Plan - Coolaroo	“
43	“	Stormwater Management Plan - Mornington	“
44	“	Urban Design Expert Evidence Slide Presentation	Mr Blades, SJB Urban
45	“	Expert Evidence of Ms Roberts for Whittlesea	Mr O’Farrell of Counsel for Vicinity Centres
46	“	Interim Design Guidelines for Large Format Retail Premises	“
47	“	VCAT Case: Vicinity Centres Pty Ltd v Mornington Peninsula SC [2017] VCAT 1802, [74]	Ms Robertson of Counsel for Vicinity Centres
48	26/02/19	GTA Technical Note – Mornington Bata Court	Mr Hughes
49	“	GTA Technical Note – ESD Raingardens Response	“
50	“	Plans and Elevations: Medical Centre, 1550 Pascoe Vale Road	Mr King, BJK Planning
51	27/02/19	Alternative Raingardens Design Oakleigh South	Ms Forsyth SC of Counsel for Kaufland
52	“	Area Breakdown Table (by Store)	Mr Gobbo QC
53	“	VicRoads Hearing Presentation	Mr Verma
54	28/02/19	Specific Control Overlay Map - Mornington	Ms Forsyth SC

No.	Date	Description	Presented by
55	“	Specific Control Overlay Map – Oakleigh South	“
56	“	Specific Control Overlay Map - Coolaroo	“
57	“	Oakleigh South Arboriculture Assessment	“
58	“	Addenda 1 – Mornington Stormwater Management Plan Review	Ms Forsyth SC
59	“	Google Maps Photo – 1100 State Route 3 Bunnings Store	Mr McWha, FORMium
60	“	GTA Technical Note - Oakleigh South Car Park Layout Modifications	Ms Forsyth SC
61	01/03/19	Written Submission on behalf of Master Grocers Association of Independent Retailers	Mr Kane of Counsel for MGAIR
62	“	Plans showing independent retailer store locations	“
63	04/03/19	Mornington Peninsula Shire Council Minutes of Planning Services Committee, 19 March 2018 Re Proposed Land Swap and Extension of Mornington Village Shopping Centre	Mr Gobbo QC
64	“	Financial Review Article	
65	“	Planning Application P17/1100 219-257 Main Street Mornington	Ms Morris
66	“	Permit Application Plans	“
67	“	Correspondence seeking clarification regarding extent of notification	Ms Mitchell
68	05/03/19	Maps of the Kaufland Stores visited in Germany by Mr Dimasi	Mr Hughes
69	“	Mornington Industrial Precinct job statistics	“
70	“	Letter from Harwood Andrews	Ms Morris
71	“	Mornington Activity Centre Strategy Plan	“
72	“	Department response re notification of Coolaroo Site	Mr Kirkland
73	“	VCAT Order 8 Feb 2019	Ms Morris
74	“	Available Sites Identified by Mornington Shire with areas identified	“
75	“	Response to Mr Haratsis Evidence	Mr Dimasi, Dimasi & Co
76	“	Map of Kaufland Stores in Stuttgart	Mr O’Farrell
77	06/03/19	Correspondence from Advisory Committee Chair	Ms Mitchell
78	“	‘Our growth in Australia. Full of possibilities’	Mr O’Farrell
79	“	Oakleigh Central – Vicinity Centres Web Site Extract	“
80	“	Photos taken in-store overseas	Mr Stephens, Essential Economics
81	“	Mornington Shire Council Minutes, 30 April 2018	Ms Forsyth SC
82	“	Direction 17 - Localised Planning Statement	Mr O’Farrell

No.	Date	Description	Presented by
83	“	Plan Melbourne Extracts (4 Pages)	“
84	“	Bata Industrials Australia Overview	“
85	08/03/19	Revision 1 Town Planning Report - General	Mr Biacsi, Contour Consultants
86	“	Revision 1 Town Planning Report – Oakleigh South	“
87	“	Revision 1 Town Planning Report – Coolaroo	“
88	“	Revision 1 Town Planning Report- Mornington	“
89	“	Retail Industry Review, Productivity Commission (2011)	Ms Forsyth SC
90	“	Independent Recommendations Report – Retail Expert Advisory Committee (NSW) (2017)	“
91	“	Productive Economy Discussion Paper, State Planning Commission (2018)	“
92	“	Mornington Shire Without Prejudice Draft Planning Permit Conditions	Ms Morris
93	“	Amendment VC117 Explanatory Report	“
94	“	Reasons for Decision to Use Power of Intervention VC117	“
95	“	Extract from Practitioners Guide to Victorian Planning Schemes	“
96	“	Advisory Committee Tranche 1 Report	Ms Mitchell
97	“	Permit for Distribution Centre	Ms Forsyth SC
98	“	Mr Dimasi Response to Direction	“
99	“	File Note 180554	Mr Biacsi
100	“	Email from Angela Ash, Contour Consultants	“
101	12/03/2019	Hume City Council submission	Mr King
102	“	Unconfirmed minutes of Hume City Council Ordinary Meeting 25 Feb 2019	“
103	“	Hume Economic Development Strategy (2012)	“
104	“	City of Kingston submission	Ms Astill
105	“	Kaufland Part B submission	Ms Forsyth SC
106	“	Part B Version of Incorporated Document - Mornington	“
107	“	Part B Version of Incorporated Document – Kingston (Oakleigh South)	“
108	“	Part B Version of Incorporated Document – Hume (Coolaroo)	“
109	“	Analysis of Mornington Peninsula land in MAC against Kaufland requirements	“
110	“	Council Officer Report 14 Nov 2016 – Copy from Tribunal File	“
111	“	61 Mornington – Tyabb Road Application for Review Oct 2017	“

No.	Date	Description	Presented by
112	“	Letter from ‘Ecological Australia’	“
113		Clause 21.01 Hume Planning Scheme @ 2009	“
114		Clause 21.06-2 Hume Planning Scheme @ 2009	“
115		Clause 21.07 Hume Planning Scheme @ 2009	“
116		Planning Practice Note 58	“
117	13/03/2019	Photos (2) of Bata Site	Ms Patterson of Counsel for Bata
118	14/03/2019	Figure 1: The Bata Site Development Plan	“
119	“	Traffix Group Memo dated 13 March	Ms Porter of Counsel for Kaufland
120	“	GTA Technical Note dated 14 March	“
121	“	Kaufland Mornington EIA November 2018 [Draft]	Mr Gobbo QC
122	“	Submissions on behalf of Mornington Peninsula Shire Council	Ms Morris
123	“	Email from Doug Bradbrook 5 March 2019	“
124	“	Internal Memo: Engineering 07 March 2019	“
125	“	Email from Leigh Northwood 14 March 2019	“
126	14/03/2019	Bata Site Development Plan – Full version (Emailed)	Mr Perry
127	15/03/2019	Letter regarding Mr Dimasi Declaration (Emailed)	Ms Anderson
128	“	Letter proposing amended order of witness appearance (emailed)	Ms Bilke, Rigby Cooke
129	“	Response from Kaufland Australia objecting to requested change in witness order appearance by Vicinity	Mr Hughes
130	18/03/2019	Further Direction and Revised Hearing Timetable (v4)	Ms Mitchell
131	19/03/2019	Submission by Janet Street	“
132	“	Submissions for Blackbrook Pty Ltd	Mr Finanzio SC of Counsel for Blackbrook
133	“	Emails from Brian Haratsis	Ms Mitchell
134	“	Amended Ground Floor Plan for Mornington (TP-04 Rev P3)	Ms Forsyth SC
135	“	Opening Outline of Submission Vicinity Centres	Mr O’Farrell
136	“	Report of the Retail Development Policy Review Panel	“
137	20/03/2019	‘Kaufland real estate. Full of possibilities’	“
138	“	Confidential letter	“
139	“	Kaufland Store Overviews	“
140	“	Kaufland Building Envelope Overlay – Site No 1	“
141	“	Kaufland Building Envelope Overlay – Site No 3	“
142	“	Kaufland Building Envelope Overlay – Site No’s 4, 5, and 6	“

No.	Date	Description	Presented by
143	“	Mornington Tyabb Road Evidence of Bernard McNamara	Ms Forsyth SC
144	“	Expert Witness Details 19/03/2019	Ms Morris
145	“	Expert Witness Details – next version	“
146	“	Papworth Davies Correspondence 20 March 2019	“
147	“	Harwood Andrews Correspondence 17 December 2019	“
148	“	1158 Nepean Highway Incorporated Document (Emailed)	Ms Mitchell
149	21/03/2019	City of Kingston Vegetation Re-Referral 24/02/2019 (Emailed)	“
150	“	City of Kingston Vegetation Re-Referral 28/2/2019 (Emailed)	
151 a	“	Ecological and Cultural Heritage Due Diligence Assessment	Ms Porter
151 b	“	Accompanying A3 extract from Doc 151 a	
152	“	Aventus Mornington Slide presentation – Peninsula Home	Ms Traill, Tract Consultants
153	“	Presentation by Mornington Environment Association Inc	Ms Howden
154	“	Individual submission	Ms Robb
155	“	Individual submission	Mr Nixon
156	“	Individual submission	Mr Mangan
157	“	Submission on behalf of Bata Shoe Company	Ms Patterson
158	22/03/2019	Haratsis declarations	Ms Robinson
159	“	Submission speaking notes	Ms Stanszus
160	“	Email re hearing timetable	Ms Morris
161	“	Email in response to hearing timetable	Ms Anderson
162	24/03/2019	Email re hearing timetable	Ms Morris
163	25/03/2019	Further Directions Re Mr Dimasi	Ms Mitchell
164	“	Responses to Further Directions	Mr Dimasi
165	“	Summary of events – Bata Shoe Company	Mr Beckwith
166	26/03/2019	Recording of events in relation to Dimasi disclosures	Mr O’Farrell
167	“	Kaufland Building Envelope Overlay - Coolaroo	“
168	“	Clause 21.01 Hume Planning Scheme in 2011	Ms Paterson
169	“	Clause 21.07 Hume Planning Scheme in 2013	“
170	“	Clause 21.03 Hume Planning Scheme	“
171	“	Extract of Fountain Gate Incorporated Plan	Ms Forsyth SC
172	“	Google Maps Donnybrook	“
173	“	Somerton Road & Reservoir Drive Strategic Analysis Report	Mr O’Farrell
174	“	Confidential Document - Response	Ms Forsyth SC
175	27/03/2019	Evidence statement of Mr Milner, 61 Mornington-Tyabb Road	Ms Porter

No.	Date	Description	Presented by
176	“	Extract of Draft Industrial Areas Strategy (Oct 2017)	“
177	“	Aerial Photo Bata Site	“
178	“	Article – Low Inflation	Mr O’Farrell
179	“	Article – Financial Stability Risks and Retailing	“
180	“	Article - Business Concentration and Mark Ups	“
181	“	Submissions for Vicinity Centre	“
182	“	Extract of Panel Report – Epping Plaza expansion	“
183	“	Mornington Peninsula Shire Minutes 20/08/2018	Ms Forsyth SC
184	“	Presentation noted (emailed)	Ms Stubbs
185	29/03/2019	Incorporated Document – Mornington – Clean version	Mr Hughes
186	“	Incorporated Document – Mornington – Tracked Changes	“
187	“	Incorporated Document – Coolaroo – Clean Version	“
188	“	Incorporated Document – Coolaroo – Tracked Changes	“
189	1/04/2019	Incorporated Document – Oakleigh South – Clean Version	“
190	“	Incorporated Document – Oakleigh South – Tracked Changes	“
191	“	Statement of Changes – Oakleigh South	“
192	“	Revised Site & Ground Floor Plan (TPO4 P4) – Oakleigh South	“
193	“	GTA Technical Note – Mornington Bata Court Response	Ms Porter
194	“	Memo: Traffix Group Traffic Engineering Review, Mornington	“
195	“	GTA Technical Note – 28 March – School Peak Traffic	“
196	“	Stormwater Proposed Conditions - Mornington	Ms Forsyth SC
197	“	Stormwater Proposed Conditions - Oakleigh	“
198	“	Email from Aaron Walley	Ms Morris
199	“	Email from Leigh Northwood	“
200	“	Internal Memo Terry Boyd	“
201	“	Plan Attachment	“
202	“	Mornington Preferred Version of Incorporated Document	Ms Morris
203	“	Clause 52.05	Mr Gobbo QC
204	“	Clause 22.10 – Mornington Peninsula Planning Scheme	“
205	“	Closing submission – Hume City Council	Mr King
206	“	Closing submission – Kingston City Council	Ms Astill
207	“	Closing submission – Mornington Peninsula Shire Council	Ms Morris
208	2/04/2019	Final Day Incorporated Document – Coolaroo – Tracked	Mr Hughes
209	“	Final Day Incorporated Document – Coolaroo – Clean	“

No.	Date	Description	Presented by
210	“	Final Day Incorporated Document – Mornington – Tracked	“
211	“	Final Day Incorporated Document – Mornington – Clean	“
212	“	Final Day Incorporated Document – Oakleigh South – Tracked	“
213	“	Final Day Incorporated Document – Oakleigh South - Clean	“
214	“	Email from Mr Papworth	Ms Morris
215	“	Closing Submission for Kaufland	Mr Gobbo QC
216		Aerial Photo – Mornington	Ms Forsyth SC
217		Zoning Plan - Mornington	“
218		Email from Jon McGovern	“
219	“	SCO1 Map – Mornington	“
HEARING CLOSED			
220	05/04/19	Letter from Mornington Peninsula Council re drainage	Ms Morris
221	“	Mornington Peninsula Council memo regarding drainage	“

Appendix E Incorporated Document, Coolaroo

Kaufland Supermarket and complementary uses, part 1550 Pascoe Vale Road, Coolaroo Incorporated Document (*insert date*), 2019

Incorporated document pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*

1.0 INTRODUCTION

This document is an incorporated document in the schedule to clause 45.12 and clause 72.04 of the Hume Planning Scheme ('Planning Scheme') pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in clause 3.0 of this document may be used and developed in accordance with the specific control in clause 4.0 of this incorporated document.

If there is any inconsistency between any of the provisions of this document and the provisions of the Planning Scheme, the control at clause 4.0 of this document shall prevail over any contrary or inconsistent provision in the Planning Scheme.

2.0 PURPOSE

To facilitate efficient land use for the purposes of supermarket and retail uses in the area affected by this control.

3.0 LAND

The control in this document applies to the land defined as part of 1550 Pascoe Vale Road, Coolaroo, formally referred to as part of Lot 1 on PS 709155T.

4.0 CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Any requirement in the Planning Scheme which:

- Prohibits use and/or development of land; or
- Requires a permit for use and/or development of land; or
- Requires use or development of land to be carried out in a particular manner,

does not apply to the use and development of the land identified in clause 3.0 of this document undertaken either for or in connection with the use or development of land:

- for a supermarket or a bottle shop used in conjunction with a supermarket where such use or development is carried out by or on behalf of Kaufland Australia Pty Ltd (or a related entity); [and](#)

- for the purposes of the following uses of land:
 - Bank
 - Electoral office
 - Medical centre
 - Real estate agency
 - Travel agency
 - Art gallery
 - Food and drink premises except for hotel or tavern
 - Postal agency
 - Shop except for adult sex product shop, department store, laundromat, restricted retail premises (other than party supplies)
 - Party supplies

- for the purposes of signage associated with the above uses of land.

4.2 PLANS

The use and development of the land must be undertaken generally in accordance with the following plans but as modified by clause 4.3 of this document:

SHEET NUMBER	SHEET NAME	REVISION
TP-02	SITE CONTEXT PLAN	ACP dated 13/02/2019
TP-03	EXISTING CONDITIONS PLAN	ACP dated 13/02/2019
TP-04	PROPOSED SITE & GROUND FLOOR PLAN	ACP dated 13/02/2019
TP-05	ROOF PLAN	ACP dated 13/02/2019
TP-06	OVERALL ELEVATIONS	ACP dated 13/02/2019
TP-07	STREET ELEVATIONS	ACP dated 13/02/2019
TP-08	OVERALL SECTIONS	ACP dated 13/02/2019
TP-09	SIGNAGE DIAGRAMS	ACP dated 13/02/2019

4.3 CONDITIONS

The exemption from Planning Scheme requirements outlined in clause 4.1 of this document is subject to the following conditions:

Submission and approval of architectural plans

1. Prior to the commencement of any development (including demolition, bulk excavation works and site preparation/retention works), detailed architectural plans must be prepared and submitted to the Minister for Planning for approval and endorsement. The plans must be drawn to scale, and be generally in accordance with the plans listed in clause 4.2 to this incorporated document but modified to show:
 - a. ~~the removal of the pylon sign type 2 the pylon sign reduced in height to 15m (overall height) with a 3 x 3 m box for the Kaufland logo~~
 - b. the provision of secure and undercover bicycle parking for staff
 - c. end-of-trip facilities for staff in accordance with [Clause 52.34](#)
 - d. a minimum of 7 accessible parking spaces in closer proximity to the entry to the supermarket
 - e. any widening of the throat to the proposed two way service road off Pascoe Vale Road to provide an adequate width for the passing of the type of vehicles expected to use that service road
 - f. a pedestrian connection between the proposed footpath along the access road and the pedestrian connection proposed as part of the development of the medical centre to the south of the access road

- g. widening of the new proposed footpath along the access road to 2 metres if required by the Responsible Authority.
- h. [the footpath running adjacent to the Tenancy Loading Zone extended to meet a parking aisle at the southeast corner of the building.](#)
- i. [any changes resulting from the Car Parking and Traffic Management Report, the Car Park Plan and the Stormwater Management Plan required by these conditions.](#)

Layout not altered

- 2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. Where a proposed alteration would require referral to a referral authority, save for these provisions, a request for the Responsible Authority's written consent must be accompanied by the written views of the referral authority.

Hours of Operation

- 3. The supermarket and all other uses other than bottle shop uses shall only operate between the hours of 7:00am and midnight each day of the week, unless with the written approval of the Responsible Authority. Bottle shop uses shall only operate between the hours of 9:00am and 10:00pm each day of the week, unless with the written approval of the Responsible Authority.
- 4. Waste collection from the site in association with the permitted uses must not occur between the hours midnight and 7:00am (other than a maximum of one waste collection truck between midnight and 7:00am) unless with the written consent of the Responsible Authority.

Noise

- 5. [There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:](#)
 - [a. the environment in the area around the premises; and](#)
 - [b. the wellbeing of persons and/or their property in the area around the premises.](#)

[In considering whether noise is detrimental, an assessment can be made against the relevant noise guideline, whether it is still SEPP N-1 or a newer guideline or regulation. ~~Noise levels emanating from the premises must not exceed noise levels as determined by the State Environment Protection Policy \(Control of Noise from Commerce, Industry and Trade\) No. N-1.~~](#)

- 6. Plant and equipment shall be assessed by a suitably qualified acoustic consultant during design and construction to ensure compliance with SEPP N-1 [or newer guidelines or regulation.](#)

Waste

- 7. Prior to the commencement of use, a waste management plan for the development must be prepared to the satisfaction of the Responsible Authority.
- 8. Provision must be made on the land for the storage and collection of garbage and other solid waste.

Loading and Delivery Management Plan

- 9. Prior to the commencement of development, a Loading and Delivery Management plan must be submitted to and be approved by the Responsible Authority.
- 10. Any loading and unloading of goods and all manoeuvring of vehicles must only be carried out within title boundaries of the land.

Landscaping

11. Prior to commencement of development, a landscape plan must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the landscape plans by FORMium Landscape Architects ACP Figures 1-8 dated February 2019 dimensioned and drawn to scale, and must show:
 - a. the location of all existing vegetation to be retained and/or removed;
 - b. the location of buildings and trees on neighbouring properties within 3 metres of the title boundaries;
 - c. details of surface finishes of pathways and driveways;
 - d. a planting schedule of all proposed trees, shrubs, and ground covers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each species; and
 - e. replacement of any trees nominated as White Cedar with *Pyrus calleryana* 'Capital' or *Eucalyptus leucoxylon* 'EuKy Dwarf'.

Car parking and Traffic Management

12. Prior to the commencement of development, a Car parking and Traffic Management Report and Car Parking Plan by a recognised traffic consultant must be submitted to and be approved to the satisfaction of the Responsible Authority.

The Car Parking Plan must show:

- a. line marking and signage
- b. detail of the shared zones including any pedestrian priority spaces.
- c. [all car parking spaces required by Condition 14.](#)

[The Car Parking and Traffic Management Report must be informed by a masterplan for the whole of 1550 Pascoe Vale Road that establishes the expected leasable floor area and loading requirements for a redevelopment of the former Masters building and assess any changes required both within the site and to the external traffic mitigation works specified in Condition 25.](#)

13. All traffic mitigation works and management measures as recommended in the car parking and traffic management report must be implemented at no cost to the Responsible Authority, and must be maintained to the reasonable satisfaction of the Responsible Authority.
14. [If fewer than 306 car parking spaces are provided within 1550 Pascoe Vale Road \(Lot 1 on PS 709155T\) for the use of Kaufland, if fewer than 85 car parking spaces on the site to the immediate north-east of the Kaufland supermarket become unavailable to Kaufland customers,](#) alternative parking (if required) must be provided to the satisfaction of the Responsible Authority or the floor area of the supermarket or retail reduced to the satisfaction of the Responsible Authority.

Materials, finishes and design integrity

15. Prior to the commencement of development, a facade and materials strategy must be submitted to and be to the satisfaction of the Responsible Authority. The facade and materials strategy must include a detailed schedule of materials and finishes including the colour, type of materials (and quality), construction and appearance.

ESD

16. Prior to the commencement of development, an ESD report and ESD Management Plan must be submitted to and be approved by the Responsible Authority. The ESD report must confirm to the satisfaction of the Responsible Authority that:
 - a. the roof top photovoltaic arrays have been optimised and

- b. the development has been designed to achieve a 5 Star Green Star Design & As Built rating or equivalent.

The measures included in the ESD report must be implemented prior to occupation of the building, to the reasonable satisfaction of the Responsible Authority.

Stormwater Management

17. Prior to the commencement of development, a Stormwater Management Plan (SMP) must be submitted to and be approved by the Responsible Authority. The SMP must:
 - a. be based on an integrated water sensitive urban design strategy
 - b. meet the objectives of clause 53.18-5 of the Planning Scheme
 - c. include details of the proposed stormwater management system, including drainage works and retention, detention and discharges of stormwater to the drainage system
 - d. confirm that the development has been designed to achieve compliance with the *Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999)*.
18. The measures included in the SMP must be implemented prior to occupation of the building, to the satisfaction of the Responsible Authority.

Construction Management Plan

19. Prior to the commencement of development, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority. The plan must be prepared in accordance with any municipal construction management plan guidelines (where applicable), and should include the following:
 - a. public safety, amenity and site security;
 - b. construction hours, noise and vibration controls;
 - c. air and dust management;
 - d. stormwater and sediment control;
 - e. waste and materials reuse;
 - f. traffic management; and
 - g. site services and amenities during construction.

Signage

20. The type, location, size, lighting and material of construction of the signs shown on the endorsed plans shall not be altered without the written consent of the Responsible Authority.
21. The signs, including their structure, as shown on the endorsed plans must at all times be maintained in good order and condition, to the satisfaction of the Responsible Authority.
22. The signs must only contain a logo or name which identifies the business conducted on the site unless otherwise approved by the Responsible Authority.
23. Flashing or intermittent lighting must not be used in the signage for the land.

VicRoads Conditions

24. An electronic or animated sign within 60 metres of a freeway or arterial road declared under the Road Management Act 2004 must not be constructed without the written consent of VicRoads and the Responsible Authority.
25. Unless otherwise agreed in writing by VicRoads, prior to the commencement of any works, Functional Layout Plans must be submitted to and approved by VicRoads. The plans must reflect the mitigating works for Pascoe Vale Road, as identified in the Transport Impact Assessment Report prepared by GTA Consultants (Reference V155990 dated 14 February 2019) to the satisfaction of VicRoads. These plans must be generally in accordance with the Concept Layout Plan (Drawing No. V155990-04-01, Issue P3, and Drawing No. V155990-06, Issue P2- dated 14 February 2019 prepared by GTA Consultants), and include:
 - a. extension of the existing right-turn lane on Pascoe Vale Road at the signalised access point as recommended in the Transport Impact Assessment and as shown on the concept layout plan
 - b. the provision of a left-turn auxiliary lane at the site's northern access point, to the satisfaction of VicRoads, to ensure trucks can safely enter/exit the site at this location.

[The plans must be amended to reflect any changes or additional traffic mitigation works recommended in the Car Parking and Traffic Management Report required by Condition 12.](#)
26. Subsequent to the approval of the Functional Layout Plans and prior to the commencement of any roadworks, detailed engineering design plans must be submitted to VicRoads for approval. The detailed design plans must be prepared generally in accordance with the approved Functional Layout Plans.
27. Prior to the occupation of the development, all road improvement works as per approved Functional Layout Plans and Detailed Design Plans must be constructed to the satisfaction of and at no cost to VicRoads.
28. Where the proposed road infrastructure, including footpath and nature strip, lie within the private land, a widening of the road reserve will be required. Before the commencement of the use of the permitted development, the permit holder must engage a licensed surveyor to prepare a Plan of Subdivision showing the affected land labelled "ROAD", which is to be vested in the Roads Corporation upon certification of the Plan of Subdivision, without any encumbrances. Subsequent to the registration of the plan, the subdivider must ensure that the original Certificates of Title that issues in the name of the Roads Corporation, are posted to: VicRoads - Property Services Department, 60 Denmark Street KEW, 3101.

Transport for Victoria

29. All reasonable steps must be taken to ensure that disruption to bus operation along Pascoe Vale Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation procedures must be communicated to Public Transport Victoria thirty-five (35) days prior.

Melbourne Water Conditions

30. Finished ground level must be constructed no lower than 157.4 metres to Australian Height Datum (AHD) which is 300mm above the applicable flood level of 157.1 metres to AHD or otherwise to the satisfaction of Melbourne Water.
31. Any new fencing/gates must be of an open style of construction (minimum 50% open) to allow for the passage of overland flows or otherwise to the satisfaction of Melbourne Water.
32. All open space within the property must be set at existing natural surface level so as not to obstruct the passage of overland flows or otherwise to the satisfaction of Melbourne Water.
33. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to the satisfaction of Melbourne

Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.

34. Prior to commencement of works, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

4.4 EXPIRY

The control in this document expires in respect of land identified in clause 3.0 and Appendix A of this document if any of the following circumstances apply:

- a. development of that land has not commenced 2 years after the approval date of Amendment X; or
- b. use of that land has not commenced 4 years after the approval date of Amendment X; or
- c. development of that land is not completed 4 years after the approval date of Amendment X.

The exemption in this document from the need for a permit for a major promotion sign expires 15 years after the approval date of Amendment X.

Appendix F Incorporated Document, Mornington

Kaufland Supermarket and complementary uses, part 1158 Nepean Highway, Mornington Incorporated Document (*insert date*), 2019.

Incorporated document pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*

1.0 INTRODUCTION

This document is an incorporated document in the schedule to clause 45.12 and clause 72.04 of the Mornington [Peninsula](#) Planning Scheme ('Planning Scheme') pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in clause 3.0 of this document may be used and developed in accordance with the specific control in clause 4.0 of this incorporated document.

If there is any inconsistency between any of the provisions of this document and the provisions of the Planning Scheme, the control at clause 4.0 of this document shall prevail over any contrary or inconsistent provision in the Planning Scheme.

2.0 PURPOSE

To facilitate efficient land use for the purposes of supermarket and retail uses in the areas affected by this control.

3.0 LAND

The control in this document applies to the land defined as part of 1158 Nepean Highway, Mornington, formally referred as part of Lot 1 on PS630840P.

4.0 CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Any requirement in the Planning Scheme which:

- Prohibits use and/or development of land; or
- Requires a permit for use and/or development of land other than for the lopping, destruction or removal of native vegetation; or
- Requires use or development of land to be carried out in a particular manner,

does not apply to the use and development of the land identified in clause 3.0 of this document undertaken either for or in connection with the use or development of land:

- for a supermarket or a bottle shop used in conjunction with a supermarket where such use or development is carried out by or on behalf of Kaufland Australia Pty Ltd (or a related entity); [and](#)
- for the purposes of the following uses of land:
 - Bank
 - Electoral office
 - Medical centre
 - Real estate agency
 - Travel agency
 - Art gallery
 - Food and drink premises except for hotel or tavern
 - Postal agency
 - Shop except for adult sex product shop, department store, laundromat, restricted retail premises (other than party supplies)
 - Party supplies
- for the purposes of signage associated with the above uses of land.

4.2 PLANS

The use and development of the land must be undertaken generally in accordance with the following plans but as modified by clause 4.3 of this document:

SHEET NUMBER	SHEET NAME	REVISION
TP-02	SITE CONTEXT PLAN	ACP dated 13/02/2019
TP-03	EXISTING CONDITIONS PLAN	ACP dated 13/02/2019
TP-04	PROPOSED SITE & GROUND FLOOR PLAN	P3 dated 19/03/2019 ACP dated 13/02/2019
TP-05	FIRST FLOOR PLAN	ACP dated 13/02/2019
TP-06	ROOF PLAN	ACP dated 13/02/2019
TP-07	OVERALL ELEVATIONS	ACP dated 13/02/2019
TP-08	STREET ELEVATIONS	ACP dated 13/02/2019
TP-09	OVERALL SECTIONS	ACP dated 13/02/2019
TP-010	SIGNAGE DIAGRAMS	ACP dated 13/02/2019

4.3 CONDITIONS

The exemption from Planning Scheme requirements outlined in clause 4.1 of this document is subject to the following conditions:

Submission and approval of architectural plans

1. Prior to the commencement of any development (including demolition, bulk excavation works and site preparation/retention works), detailed architectural plans must be prepared and submitted to the Minister for Planning for approval and endorsement. The plans must be drawn to scale, and be generally in accordance with the plans listed in clause 4.2 to this incorporated document but modified to show:
 - a. [The removal of pylon sign type 2](#) ~~the pylon sign reduced in height to 10m (overall height) with a 2 x 2 m box for the Kaufland logo~~
 - b. the changes to the acoustic fences generally as shown in Appendix D to Darren Tardio's Addendum Report dated 24 February 2019 including:
 - i. deletion of the 2 metre and 4 metre high acoustic fence

- ii. increase in the height of the 6 metre acoustic fence to 6.5 metres
- iii. a new 5 metre high noise wall along that part of the north eastern boundary that adjoins the sprinkler storage tanks and pump room with an integrated solid gate across the truck entry
- c. the changes to the layout generally as shown in the GTA proposed access arrangement concept layout drawing no. V155990-03 dated 26 March 2019
- d. relocation of the footpath in the south western corner of the outdoor car park to connect into the access aisle
- e. a notation on TP-04 that prevents left turns into the tenancy loading zone/shared space from the main access isle off the Nepean Highway or alternatively a redesign of the corner to provide for the left hand turn into that loading zone/shared space
- f. the provision of secure and undercover bicycle parking for staff
- g. signage on the truck entry at Oakbank Road “no entry 10pm – 7am” (or equivalent wording)
- h. end-of-trip facilities for staff in accordance with [Clause 52.34](#)
- i. any changes resulting from the Landscape Plan, [Car Parking and Traffic Management Report](#) and Car Parking Plans.

Layout not altered

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. Where a proposed alteration would require referral to a referral authority, save for these provisions, a request for the Responsible Authority’s written consent must be accompanied by the written views of the referral authority.

Hours of Operation

3. The supermarket and all other uses other than bottle shop uses shall only operate between the hours of 7:00am and midnight each day of the week, unless with the written approval of the Responsible Authority. Bottle shop uses shall only operate between the hours of 9:00am and 10:00pm each day of the week, unless with the written approval of the Responsible Authority.
4. Waste collection from the site in association with the permitted uses must not occur between the hours 10:00pm and 7:00am unless with the written consent of the Responsible Authority.

Noise

5. Noise levels emanating from the premises must not exceed noise levels as determined by EPA Publication 1411, *Noise from Industry in Regional Victoria* (NIRV).
6. Plant and equipment shall be assessed by a suitably qualified acoustic consultant during design, construction and within 3 months of the use commencing to ensure compliance with NIRV. A report by a suitably qualified acoustic consultant detailing to the satisfaction of the Responsible Authority how the use and development complies with NIRV must be submitted to the Responsible Authority within 3 months of the use commencing.
7. All noise walls and the gate at the truck entry point to the loading area shall be constructed of material cladding not less than 15kg/m² and shall be designed and approved by an acoustic consultant.
8. The 6.5 metre noise wall adjacent to the loading area must be treated with similar architectural motifs to the balance of the architecture (eg use of timber clad battens) to the satisfaction of the Responsible Authority.
9. The noise walls must be installed and maintained unless an intervening structure is built to shield the residential area from noise, or other measures are adopted, in which case the noise walls may be removed or reduced in size to the satisfaction of the Responsible Authority.

10. The gate at the truck entry point to the loading area must remain closed between the hours 10pm-7am.

Waste

11. Prior to the commencement of use, a waste management plan for the development must be prepared and submitted to the Responsible Authority for approval. The waste management plan must be prepared to the satisfaction of the Responsible Authority and include:
 - a. details for the storage and collection of garbage and other solid waste on the land
 - b. details of any external areas used for the cleaning of waste receptacles, equipment or vehicles
 - c. details of the location of any trade waste infrastructure on the land.
12. Provision must be made on the land for the storage and collection of garbage and other solid waste.
13. All sewage and sullage must be discharged to the reticulated sewerage system to the satisfaction of the Responsible Authority.
14. Any external areas used for the cleaning of waste receptacles, equipment or vehicles must be connected to the reticulated sewer system to the satisfaction of the Responsible Authority.

Loading and Delivery Management Plan

15. Prior to the commencement of development, a Loading and Delivery Management plan must be submitted to and be approved by the Responsible Authority. It must include arrangements to manage any conflict between customer vehicles and delivery using the Bata Court access between the hours of 10:00pm – 12 midnight.
16. Any loading and unloading of goods and all manoeuvring of vehicles must only be carried out within title boundaries of the land.
17. All delivery vehicles must use the Bata Court access from 10:00pm – 7:00am.

Landscaping

18. Prior to commencement of development, a landscape plan dimensioned and drawn to scale must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the landscape plans by FORMium Landscape Architects ACP Figures 1-2 and 5-8 and ACP2 Figures 3-4 all dated February 2019, and must show:
 - a. the location of all existing vegetation to be retained and/or removed;
 - b. the TPZs of all trees to be retained;
 - c. the location of buildings and trees on neighbouring properties within 3 metres of the title boundaries;
 - d. finishes of pathways and driveways;~~and~~
 - e. a planting schedule of all proposed trees, shrubs, and ground covers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each species;
 - f. an increased number and height of trees in the car park to ensure they provide a denser canopy to filter the view of the development, while still allowing for visibility;
 - g. the landscaped setback along the Nepean Highway frontage increased in width by approximately five metres and a planted earth berm or the like introduced into this area to help screen the view of the car park and parked cars;
 - h. increased density of planting along the northern internal boundary including additional canopy trees to provide further visual filtering.

Section 173 Agreement

19. Except with the written consent of the responsible authority, before the land known as 1158 Nepean Highway Mornington and more particularly described as Lot 1 on PS630840P (Land) is subdivided and before the development (including demolition, bulk excavation works and site preparation/retention works) starts, Kaufland Australia Pty Ltd (or a related entity) and the owner of the Land must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*.

The agreement must provide for the establishment and ongoing maintenance of the landscaping shown on [the Landscape Plan required by Condition 18 that ~~the landscape plan by FORMium revision ACP \(2\) Figures 3 and 4 which~~](#) is on that part of the Land which is outside of the Specific Controls Overlay map, namely the landscaping:

- a. to the north-east of the car park
- ~~b. between the new truck access road and the adjacent residential area~~
- c. ~~along the car park access road from Oakbank Road.~~

The agreement must provide for the following:

- a. the vegetation must be maintained in a healthy condition and any dead or diseased trees and shrubs replaced within 2 months to the satisfaction of the Responsible Authority
- b. that the landscaped areas be kept free of rubbish or other dumped material.

20. Before the use commences, application must be made to the Registrar of Titles to register the section 173 agreement on the title to the land under section 181 of the Act.
21. Kaufland Australia Pty Ltd (or a related entity) must pay the reasonable costs of the preparation, execution and registration of the section 173 agreement.

Tree Protection Zones

22. Before the development (including demolition) starts, a Tree Protection Plan (TPP) conforming to *AS4970-2009 Protection of Trees on Development Sites* should be prepared for trees proposed to be retained as part of development.
23. All recommendations in the TPP must be implemented to the satisfaction of the Responsible Authority.

Car Parking and Traffic Management

24. Prior to the commencement of development, a Car Parking and Traffic Management Report and Car Parking Plan by a recognised traffic consultant must be submitted to and be approved to the satisfaction of the Responsible Authority.

The Car Parking Plan must show:

- a. line marking and signage (internal and external to the site)
- b. detail of the shared zones including any pedestrian priority spaces
- c. safe pedestrian crossing locations and pedestrian infrastructure standards at the vehicle accesses in both Oakbank Road and Nepean Highway that connect to existing footpaths, ~~generally as shown in the GTA proposed access arrangement concept layout drawing no. V155990-03 dated 26 March 2019~~
- d. pedestrian priority/safety treatment across the basement car park access road outside the travelator air lock
- e. signage to ensure trucks are restricted from parking in Oakbank Road at all times
- f. [the design of Bata Court allowing for a truck and a car to pass and two way movement at the Oakbank Road intersection](#)

- g. [Bata Court carriageway\(s\) limited to the order of 8 to 10 metres where they cross the Oakbank Road footpath](#)
- h. [the pedestrian ramp opposite the southern end of Bata Court designed to accommodate the two way movement of trolleys and wheelchairs](#)
- i. [all footpaths ending with pram crossings into parking aisles or roadways.](#)

[The Car Parking and Traffic Management Report must include a revised traffic assessment that considers:](#)

- a. [traffic generated by the uses provided in the approved master plan for the whole of the site](#)
- b. [existing Padua College school traffic, as at 2019](#)
- c. [pedestrian phases at the signalised intersection in the school peak period](#)
- d. [consideration of traffic congestion along Nepean Highway.](#)

25. Prior to the occupation of the development, the following works must be completed in accordance with approved engineering plans and to the satisfaction of and at no cost to the Responsible Authority:
- a. Pavement rehabilitation and construction of Oakbank Road between Nepean Highway and the eastern access road in accordance with recommendations within a geotechnical report incorporating a pavement deflection survey and assessment
 - b. Kerb and channel on both sides of Oakbank Road from Nepean Highway to Hillpark Drive;
 - c. Underground drainage within Oakbank Road
 - d. Removal of the redundant vehicle crossing in Oakbank Road
 - e. Intersection lighting at both entries from Oakbank Road.
26. All traffic mitigation works and management measures as recommended in the car parking and traffic management report must be implemented at no cost to the Responsible Authority, and must be maintained to the reasonable satisfaction of the Responsible Authority.

Security Alarms

27. All security alarms or similar devices installed on the land must be of a silent type approved by the Standards Association of Australia and be connected to a registered security service to the satisfaction of the Responsible Authority.

Lighting Plan

28. Before the development starts, a lighting plan (including the appropriate use of LED lights) must be submitted to and be approved by the Responsible Authority.
29. All lighting in unenclosed areas of the site must be designed, baffled, and directed in a downwards position to prevent upward light spill and any direct light being emitted beyond the boundaries of the site and so that no nuisance is caused to surrounding residential properties to the satisfaction of the Responsible Authority.
30. The development must provide night lighting along all pathways throughout the site such that the full length of travel paths is illuminated.

Amenity

31. The use and development must be managed so that the amenity of the area is not detrimentally affected through the:
- a. Transport of materials, goods or commodities to or from the land
 - b. Appearance of any building, works or materials
 - c. Emission of noise, artificial light, vibration, smell, dust, fumes, smoke, vapour, steam, waste water, or waste products
 - d. Presence of vermin
- to the satisfaction of the Responsible Authority.

Materials, finishes and design integrity

32. Prior to the commencement of development, a facade and materials strategy must be submitted to and be to the satisfaction of the Responsible Authority. The facade and materials strategy must include a detailed schedule of materials and finishes including the colour, type of materials (and quality), construction and appearance.

Environmentally Sustainable Design

33. Prior to the commencement of development, an ESD report and ESD Management Plan must be submitted to and be approved by the Responsible Authority. The ESD report must confirm to the satisfaction of the Responsible Authority that:
- a. the roof top photovoltaic arrays have been optimised and
 - b. the development has been designed to achieve a 5 Star Green Star Design & As Built rating or equivalent.
34. The measures included in the ESD report must be implemented prior to occupation of the building, to the reasonable satisfaction of the Responsible Authority.

Stormwater Management

35. Prior to the commencement of development, a Stormwater Management Plan (SMP) must be submitted to and be approved by the Responsible Authority. The SMP must be to the satisfaction of the Responsible Authority:
- a. be based on an integrated water sensitive urban design strategy
 - b. meet the objectives of clause 53.18-5 of the Planning Scheme
 - c. include detailed engineering plans of the proposed stormwater management system, including drainage works and retention, detention and discharges of stormwater to the drainage system
 - d. demonstrate how discharge from the site will be limited to an equivalent pre-development flow based on a 1 in 2 year storm event for the critical storm duration and be connected to the existing underground drainage system in the south east corner of 1146 – 1152 Nepean Highway via a 450mm diameter drainage pipe constructed adjacent to the eastern boundary of 1146 – 1152 Nepean Highway and/or the existing underground drainage system within Nepean Highway adjacent to 1140 Nepean Highway via a minimum 375 mm diameter drainage pipe constructed within Nepean Highway
 - e. [provide for drainage of the site via an underground drainage system to retain a pre-development 1 in 100 year storm event for the critical storm duration](#)
 - f. confirm that the development has been designed to achieve compliance with the *Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999)*.
36. The measures included in the SMP must be implemented prior to occupation of the building, to the satisfaction of the Responsible Authority.

Construction Management Plan

37. Prior to the commencement of development, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority. The plan must be prepared in accordance with any municipal construction management plan guidelines (where applicable), and should include the following:

- a. public safety, amenity and site security;
- b. construction hours, noise and vibration controls;
- c. air and dust management;
- d. stormwater and sediment control;
- e. waste and materials reuse;
- f. traffic management; and
- g. site services and amenities during construction.

Signage

38. The type, location, size, lighting and material of construction of the signs shown on the endorsed plans shall not be altered without the written consent of the Responsible Authority.
39. The signs, including their structure, as shown on the endorsed plans must at all times be maintained in good order and condition, to the satisfaction of the Responsible Authority.
40. The signs must only contain a logo or name which identifies the business conducted on the site unless otherwise approved by the Responsible Authority.
41. Signage must not be illuminated outside approved operating hours of the supermarket with the exception of signs 1a, 1b and 1d on the North Signage Elevation (Nepean Highway) shown on TP-10 Rev ACP.

VicRoads Conditions

42. An electronic or animated sign within 60 metres of a freeway or arterial road declared under the Road Management Act 2004 must not be constructed without the written consent of VicRoads and the Responsible Authority.
43. Unless otherwise agreed in writing by VicRoads, prior to the commencement of any works, Functional Layout Plans must be submitted to and approved by VicRoads. The plans must reflect the mitigating works for Nepean Highway/Oakbank Road intersection, as identified in the Transport Impact Assessment Report prepared by GTA Consultants (Reference V155990, dated 14 February 2019) to the satisfaction of VicRoads and Council. These plans must be generally in accordance with the Concept Layout Plan (Drawing V155990-03 issue P3 dated 14 February 2019), that include:
 - a. a left-turn auxiliary lane on Nepean Highway (south bound) at the proposed access point
 - b. second right turn lane on Nepean Highway (north bound) for Oakbank Road
 - c. second departure lane along Oakbank Road merging back into one lane on eastern side of the access point on Oakbank Road.

[The plans must be amended to reflect any changes or additional traffic mitigation works recommended in the Car Parking and Traffic Management Report required by Condition 24.](#)

44. Subsequent to the approval of the Functional Layout Plans and prior to the commencement of any roadworks, detailed engineering design plans must be submitted to VicRoads for approval. The detailed design plans must be prepared generally in accordance with the approved Functional Layout Plans.
45. Prior to the occupation of the development, all road improvement works as per approved Functional Layout Plans and Detailed Design Plans must be constructed to the satisfaction of and at no cost to VicRoads.
46. Where the proposed road infrastructure, including footpath and nature strip, lie within the private land, a widening of the road reserve will be required. Before the commencement of the use of the permitted development, the permit holder must engage a licensed surveyor to prepare a Plan of Subdivision showing the affected land labelled "ROAD", which is to be vested in the Roads Corporation upon certification of the Plan of Subdivision, without any encumbrances. Subsequent to the registration of the plan, the subdivider

must ensure that the original Certificates of Title that issues in the name of the Roads Corporation, are posted to: VicRoads - Property Services Department, 60 Denmark Street KEW, 3101.

Transport for Victoria

47. All reasonable steps must be taken to ensure that disruption to bus operation along Nepean Highway is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation procedures must be communicated to PTV eight (8) days prior. If a temporary stop in an alternative location is required during construction, the temporary bus stop must be provided in consultation with, and to the satisfaction of PTV. Once the new stop is deemed suitable for operation, the temporary stop must be removed in consultation with PTV.

4.4 EXPIRY

The control in this document expires in respect of land identified in clause 3.0 and Appendix A of this document if any of the following circumstances apply:

- a. development of that land has not commenced 2 years after the approval date of Amendment X; or
- b. use of that land has not commenced 4 years after the approval date of Amendment X; or
- c. development of that land is not completed 4 years after the approval date of Amendment X.

The exemption in this document from the need for a permit for a major promotion sign expires 15 years after the approval date of Amendment X.

Appendix G Incorporated Document, Oakleigh South

Kaufland Supermarket and complementary uses, part 1126 – 1146 Centre Road, Oakleigh South Incorporated Document (*insert date*), 2019

Incorporated document pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*

1.0 INTRODUCTION

This document is an incorporated document in the schedule to clause 45.12 and clause 72.04 of the Kingston Planning Scheme ('Planning Scheme') pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in clause 3.0 of this document may be used and developed in accordance with the specific control in clause 4.0 of this incorporated document.

If there is any inconsistency between any of the provisions of this document and the provisions of the Planning Scheme, the control at clause 4.0 of this document shall prevail over any contrary or inconsistent provision in the Planning Scheme.

2.0 PURPOSE

To facilitate efficient land use for the purposes of supermarket and retail uses in the areas affected by this control.

3.0 LAND

The control in this document applies to the land defined as part 1126-1146 Centre Road, Oakleigh South, formally referred to as;

- Part Lot 2 on PS 500005D;
- Lots 1, 2, 5, 7 & 8 on LP 22409;
- Lot 1 on TP 102345J (formerly Lot 6 on PS 22409); and,
- Lot 1 on TP 017894W.

4.0 CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Any requirement in the Planning Scheme which:

- Prohibits use and/or development of land; or
- Requires a permit for use and/or development of land; or
- Requires use or development of land to be carried out in a particular manner,

does not apply to the use and development of the land identified in clause 3.0 of this document undertaken either for or in connection with the use or development of land:

- for a supermarket or a bottle shop used in conjunction with a supermarket where such use or development is carried out by or on behalf of Kaufland Australia Pty Ltd (or a related entity); [and](#)
- for the purposes of the following uses of land:
 - Bank
 - Electoral office
 - Medical centre
 - Real estate agency
 - Travel agency
 - Art gallery
 - Food and drink premises except for hotel or tavern
 - Postal agency
 - Shop except for adult sex product shop, department store, laundromat, restricted retail premises (other than party supplies)
 - Party supplies
- for the purposes of signage associated with the above uses of land.

4.2 PLANS

The use and development of the land must be undertaken generally in accordance with the following plans but as modified by clause 4.3 of this document:

SHEET NUMBER	SHEET NAME	REVISION
TP-02	SITE CONTEXT PLAN	ACP dated 13/02/2019
TP-03	EXISTING CONDITIONS PLAN	ACP dated 13/02/2019
TP-04	PROPOSED SITE & GROUND FLOOR PLAN	P4 dated 29/03/2019
TP-05	ROOF PLAN	ACP dated 13/02/2019
TP-06	OVERALL ELEVATIONS	ACP dated 13/02/2019
TP-07	STREET ELEVATIONS	ACP dated 13/02/2019
TP-08	OVERALL SECTIONS	ACP dated 13/02/2019
TP-09	SIGNAGE DIAGRAMS	ACP dated 13/02/2019

4.3 CONDITIONS

The exemption from Planning Scheme requirements outlined in clause 4.1 of this document is subject to the following conditions:

Submission and approval of architectural plans

1. Prior to the commencement of any development (including demolition, bulk excavation works and site preparation/retention works), detailed architectural ~~and landscape~~ plans must be prepared and submitted to the Minister for Planning for approval and endorsement. The plans must be drawn to scale, and be generally in accordance with the plans listed in clause 4.2 to this incorporated document but modified to show:

- a. any changes resulting from the combined master planning process with the National Headquarters; including but not limited to consideration of the following:
 - i. siting of the building closer to Centre Road to match the existing setback of the Bunnings building and building adjoining to the west
 - ii. orientation of the supermarket entrance to face Clarinda Road
 - iii. resolution of access arrangements, loading area, pedestrian connectivity, and car parking locations in a holistic way with the National Headquarters development to ensure integration and an appropriate urban design and landscape response
- b. the removal of the pylon sign type 2 ~~the pylon sign reduced in height to 12m (overall height) with a 3 x 3 m box for the Kaufland logo~~
- c. any changes resulting from the Stormwater Management Plan required by these conditions
- d. any further changes to the car park layout necessary to retain tree No. 3 (if practicable having regard to the arboricultural report)
- e. the provision of secure and undercover bicycle parking for staff
- f. end-of-trip facilities for staff in accordance with Clause 52.34
- g. provision for a pedestrian connection between the supermarket and the Stockland building to the west
- h. any changes resulting from the Landscape Plan required by these conditions.

Layout not altered

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority. Where a proposed alteration would require referral to a referral authority, save for these provisions, a request for the Responsible Authority's written consent must be accompanied by the written views of the referral authority.

Hours of Operation

3. The supermarket and all other uses other than bottle shop uses shall only operate between the hours of 7:00am and midnight each day of the week, unless with the written approval of the Responsible Authority. Bottle shop uses shall only operate between the hours of 9:00am and 10:00pm each day of the week, unless with the written approval of the Responsible Authority.
4. Waste collection from the site in association with the permitted uses must not occur between the hours midnight and 7:00am (other than a maximum of one waste collection truck between midnight and 7:00am) unless with the written consent of the Responsible Authority.

Liquor

5. The sale of packaged liquor must only occur within the red line area as shown on the endorsed plans to the satisfaction of the Responsible Authority.

Noise

6. There must be no emissions of noise and/or vibrations from the premises which are detrimental to either of the following:
 - a. the environment in the area around the premises, and
 - b. the wellbeing of persons and/or their property in the area around the premises.

In considering whether noise is detrimental, an assessment can be made against the relevant noise guideline, whether it is still SEPP N-1 or a newer guideline or regulation. ~~Noise levels emanating from the premises must not exceed noise levels as determined by the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.~~

7. Plant and equipment shall be assessed by a suitably qualified acoustic consultant during design and construction to ensure compliance with SEPP N-1 [or newer guidelines or regulation.](#)

Lighting

8. Exterior lighting must be installed in such positions as to effectively illuminate all parking and areas. Such lighting must be designed, baffled and located to the satisfaction of the Responsible Authority.

Building Appurtenances

9. All building plant and equipment is to be concealed to the satisfaction of the Responsible Authority.

Waste

10. Prior to the commencement of use, a waste management plan for the development must be prepared to the satisfaction of the Responsible Authority.
11. Provision must be made on the land for the storage and collection of garbage and other solid waste.

Loading and Delivery Management Plan

12. Prior to the commencement of development, a Loading and Delivery Management plan must be submitted to and be approved by the Responsible Authority.
13. Any loading and unloading of goods and all manoeuvring of vehicles must only be carried out within title boundaries of the land.

Landscaping

14. Prior to commencement of development, a landscape plan must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the landscape plans by FORMium Landscape Architects ACP Figures 1-2 and 4-8 and ACP2 Figure 3 all dated February 2019 dimensioned and drawn to scale, and must show to the satisfaction of the Responsible Authority:
 - a. any changes resulting from the Stormwater Management Plan required by these conditions
 - b. [any changes resulting from the combined master planning process with the National Headquarters](#)
~~any changes resulting from the ground floor layout plan TP04–P4~~
 - c. [a landscape strip along the western boundary of the site to facilitate tree protection](#)
 - d. [the deletion of the two double car bays between trees along the Centre Road frontage and the single car bay along the Clarinda Road frontage that are shown on TP-04 P4 to provide a continuous landscape strip and the planting of additional canopy trees where the car bays are removed](#)
 - e. ten (10) indigenous canopy trees capable of reaching a minimum mature height of 15 metre in the setback along the Centre Road frontage to the west of the new entranceway
 - f. the replacement of 6 of the internal car park trees with native trees capable of reaching a height of 15 metres
 - g. the location of all existing vegetation to be retained and/or removed generally as shown on ACP2 Figure 3 but modified to show replacement of tree No. 3 with a Eucalyptus Leucoxyman (unless the arboricultural assessment advises that tree No. 3 can be retained), and removal of tree No. 19, No. 41 and No. 42
 - h. the TPZs of all trees to be retained (including street trees) accurately drawn to scale and labelled as per the endorsed Tree Protection Plan
 - i. the location of buildings and trees on neighbouring properties within 3 metres of the title boundaries
 - j. details of surface finishes of pathways and driveways
 - k. notations showing site preparation, including the removal of all weeds, proposed mulch, soil types and thickness, subsoil preparation and any specific maintenance requirements

- i. a planting schedule of all proposed trees, shrubs, and ground covers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each species.
15. The landscaping as shown on the endorsed plans must be maintained and any dead, diseased or damaged plants are to be replaced to the satisfaction of the Responsible Authority.

Arboricultural Assessment

16. Before the endorsement of plans under condition 1, an arboricultural assessment must be submitted to the satisfaction of the Responsible Authority assessing the likelihood of retention of tree No. 3 and any recommended mitigation measures.
17. Commensurate with the submission of the arboricultural assessment, a report must be submitted to the satisfaction of the Responsible Authority responding to the recommendations of the arboricultural assessment and outlining whether any changes to the plans are required as a result of that assessment.

Tree Protection Zones

18. Before the development (including demolition) starts, a Tree Protection Plan (TPP) conforming to AS4970-2009 Protection of Trees on Development Sites should be prepared for trees proposed to be retained as part of development. As well as general tree protection measures outlining tree protection fencing, ground protection, mulching and prohibited activities within tree protection zones (TPZs), the plan should specifically address:
 - a. Non-destructive investigation by the Project Arborist of the car park aisle to the south of and within the TPZ of Tree 3 and the potential to retain Tree 3 as a viable specimen.
 - b. Root pruning of trees to be retained prior to excavation of kerbs for new car parking that lie within TPZs.
 - c. Liaison with the engineer/architect to ensure resurfacing of car parks and service roads do not alter existing levels within TPZs of trees proposed to be retained.
 - d. Non-destructive installation of underground services such as drainage and electricity through TPZs.
19. All recommendations in the TPP must be implemented to the satisfaction of the Responsible Authority.

Street trees

20. Tree Protection Fencing is to be established around the retained street trees in the Clarinda Road nature strip prior to demolition and maintained until all works on site are complete. The fencing is to:
 - a. be a 1.8 metre high temporary fence constructed using steel or timber posts fixed in the ground or to a concrete pad, with the fence's side panels to be constructed of cyclone mesh wire or similar strong metal mesh or netting; and
 - b. encompass the entire nature strip with each end 3 metres from the base of the tree.
21. Prior to the construction of the Clarinda Road crossover, the *Ulmus* sp. (Elm) street tree located in the Clarinda Road nature strip must be removed by Council at the expense of the Developer/Owner.

Car Parking and Traffic Management

22. Prior to the commencement of development, a car parking and traffic management report and Car Parking Plan by a recognised traffic consultant must be submitted to and be approved to the satisfaction of the Responsible Authority. The Car Parking Plan must show:
 - a. line marking and signage
 - b. detail of the shared zones including any pedestrian priority spaces.

23. All traffic mitigation works and management measures as recommended in the car parking and traffic management report must be implemented at no cost to the Responsible Authority, and must be maintained to the reasonable satisfaction of the Responsible Authority.

Materials, finishes and design integrity

24. Prior to the commencement of development, a facade and materials strategy must be submitted to and be to the satisfaction of the Responsible Authority. The facade and materials strategy must include a detailed schedule of materials and finishes including the colour, type of materials (and quality), construction and appearance.

ESD

25. Prior to the commencement of development, an ESD report and ESD Management Plan must be submitted to and be approved by the Responsible Authority. The ESD report must confirm to the satisfaction of the Responsible Authority that:

- a. the roof top photovoltaic arrays have been optimised and
- b. the development has been designed to achieve a 5 Star Green Star Design & As Built rating or equivalent.

The measures included in the ESD report must be implemented prior to occupation of the building, to the reasonable satisfaction of the Responsible Authority.

Stormwater Management

26. Unless with prior written consent of the Responsible Authority, before the development commences the following Integrated Stormwater Management (drainage) documents must be prepared, by a suitably qualified person, to the satisfaction of the Responsible Authority:
- a. Stormwater Management (drainage) Plan(s) must be prepared, with supporting computations, showing the stormwater (drainage) works to the nominated point of discharge. The plan(s) must show all details of the proposed stormwater works including all existing and proposed features that may have an impact on the stormwater (drainage) works, including landscaping details.
 - b. Prior to submitting detailed plans, a comprehensive stormwater management (drainage) strategy for the site must be prepared that addresses the requirements specified within Council's "Civil Design requirements for Developers – Part A: Integrated Stormwater Management".
 - c. The stormwater management (drainage) strategy must include a report with MUSIC modelling results demonstrating water sensitive urban design treatments that achieve Victorian best practice objectives. These may include the use of an infiltration or bio-retention system, rainwater tanks connected for reuse, or other treatments to the satisfaction of the Responsible Authority.
 - d. The water sensitive urban design treatments as per conditions 26a, 26b, & 26c above must be implemented on-site, unless an alternative agreement for stormwater quality in-lieu contribution is reached with the Responsible Authority.

Infrastructure and Road Works

27. Any relocation of pits/power poles or other services affected by this development must be relocated to the satisfaction of the relevant servicing authority and the Responsible Authority, at the cost of the owner/developer.
28. Property boundary and footpath levels must not be altered without the prior written consent form the Responsible Authority.
29. The replacement of all footpaths, including offsets, must be constructed to the satisfaction of the Responsible Authority.

Construction Management Plan

30. Prior to the commencement of development, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority. The plan must be prepared in accordance with any municipal construction management plan guidelines (where applicable), and should include the following:
- a. public safety, amenity and site security;
 - b. construction hours, noise and vibration controls;
 - c. air and dust management;
 - d. stormwater and sediment control;
 - e. waste and materials reuse;
 - f. traffic management; and
 - g. site services and amenities during construction.

Signage

31. The type, location, size, lighting and material of construction of the signs shown on the endorsed plans shall not be altered without the written consent of the Responsible Authority.
32. The signs, including their structure, as shown on the endorsed plans must at all times be maintained in good order and condition, to the satisfaction of the Responsible Authority.
33. The signs must only contain a logo or name which identifies the business conducted on the site unless otherwise approved by the Responsible Authority.
34. All signs must be located wholly within the title boundary of the land.
35. All signs that are affixed to a building must not protrude above the overall height of the building without the written consent of the Responsible Authority.
36. The sign(s) must not be animated and no flashing or intermittent lights may be displayed without the written consent of the Responsible Authority.
37. All signage which is not attached to the approved building as shown by the endorsed plans must not be internally or externally illuminated without the written consent of the Responsible Authority.
38. The intensity of the light on the sign(s) must be limited so as not to cause glare or distraction to motorists or other persons or loss of amenity in the surrounding area all to the satisfaction of the Responsible Authority.
39. The signage must not:
- a. Dazzle or distract drivers due to its colouring;
 - b. Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles; or
 - c. Be able to be mistaken as an instruction to drivers.

Traffic Mitigation

40. Unless otherwise agreed in writing by VicRoads, and prior to the commencement of any works, Functional Layout Plans must be submitted to and approved by VicRoads for the works to the new site access points (collectively the Site Access Works) generally in accordance with drawings V155990-05-01 (Clarinda Road Oakleigh Proposed Access Arrangement Concept Layout) and V155990-05-02 (Centre Road Oakleigh Access

Arrangement Concept Layout) as identified in the Transport Impact Assessment Report prepared by GTA Consultants (Reference V155990, dated 14 February 2019).

41. Subsequent to the approval of the Functional Layout Plans and prior to the commencement of any roadworks, detailed engineering design plans must be submitted to VicRoads for approval. The detailed design plans must be prepared generally in accordance with the approved Functional Layout Plans.
42. Prior to the occupation of the development, the Site Access Works must be completed to the satisfaction of and at no cost to VicRoads.

VicRoads Conditions

43. An electronic or animated sign within 60m of a freeway or arterial road declared under the Road Management Act 2004 must not be constructed without the written consent of VicRoads and the Responsible Authority.
44. Unless otherwise agreed in writing by VicRoads, prior to the commencement of any works, Functional Layout Plans must be submitted to and approved by VicRoads. The plans must reflect the mitigating works for Centre Road and Clarinda Road, as identified in the Transport Impact Assessment Report prepared by GTA Consultants (Reference V155990, dated 14 February 2019) to the satisfaction of VicRoads and Council. These plans must be generally in accordance with V155990-05-01 (Clarinda Road Oakleigh Proposed Access Arrangement Concept Layout) and V155990-05-02 (Centre Road Oakleigh Access Arrangement Concept Layout).
45. Subsequent to the approval of the Functional Layout Plans and prior to the commencement of any roadworks, detailed engineering design plans must be submitted to VicRoads for approval. The detailed design plans must be prepared generally in accordance with the approved Functional Layout Plans.
46. Prior to the occupation of the development, all road improvement works as per approved Functional Layout Plans and Detailed Design Plans must be constructed to the satisfaction of and at no cost to VicRoads.
47. Where the existing and proposed road infrastructure, including footpath and nature strip, lie within the private land, a widening of the road reserve will be required. Before the commencement of the use of the permitted development, the permit holder must engage a licensed surveyor to prepare a Plan of Subdivision showing the affected land labelled "ROAD", which is to be vested in the Roads Corporation upon certification of the Plan of Subdivision, without any encumbrances. Subsequent to the registration of the plan, the subdivider must ensure that the original Certificates of Title that issues in the name of the Roads Corporation, are posted to: VicRoads - Property Services Department, 60 Denmark Street KEW, 3101.
48. Prior to the commencement of the use of the permitted development, the permit holder must pay all costs associated with the survey, road declaration and planning scheme amendment and it must be at no costs to VicRoads.

Transport for Victoria Condition

49. All reasonable steps must be taken to ensure that disruption to bus operation along Centre Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation procedures must be communicated to Public Transport Victoria thirty-five (35) days prior.

4.4 EXPIRY

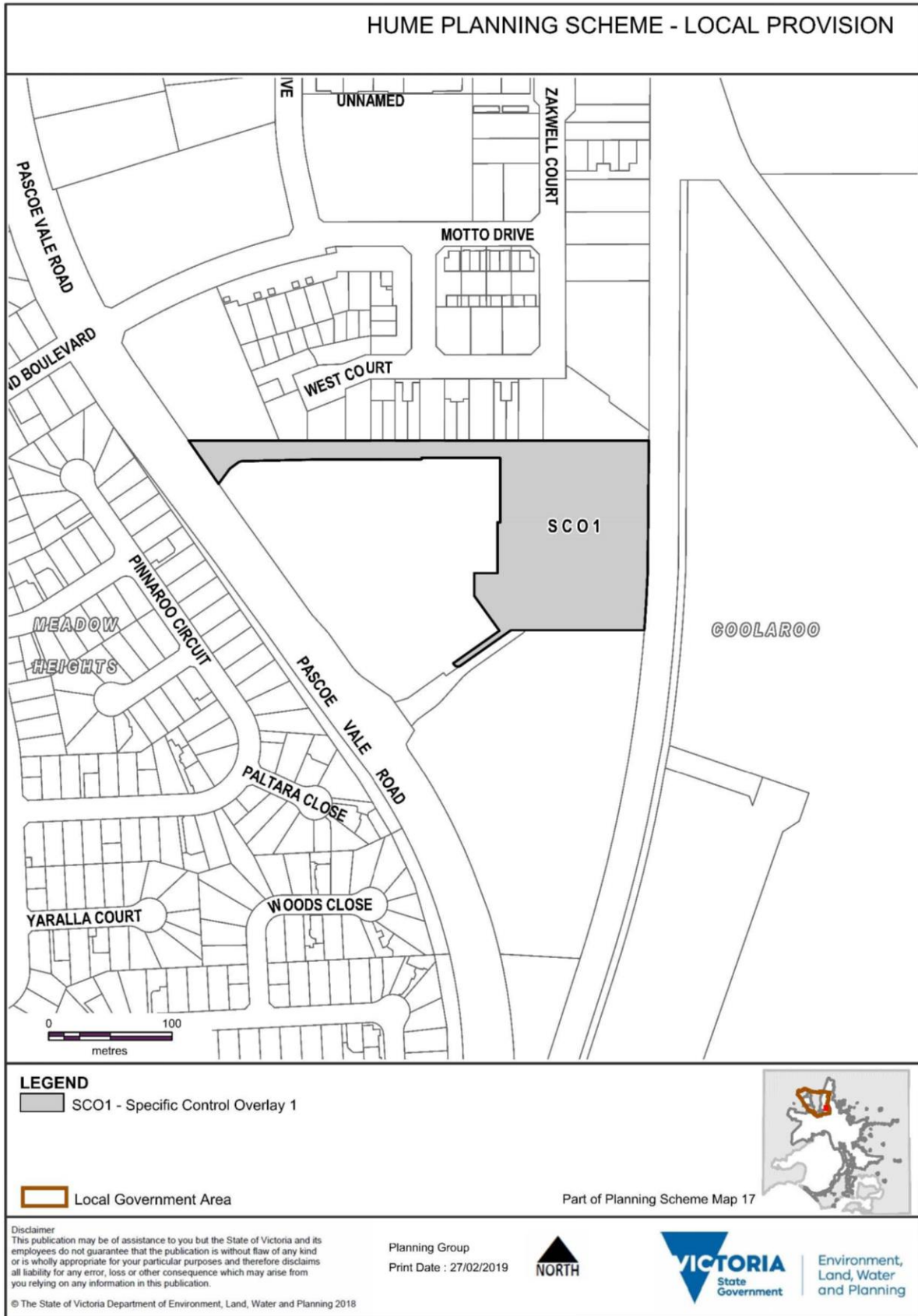
The control in this document expires in respect of land identified in clause 3.0 and Appendix A of this document if any of the following circumstances apply:

- a. development of that land has not commenced 2 years after the approval date of Amendment X; or

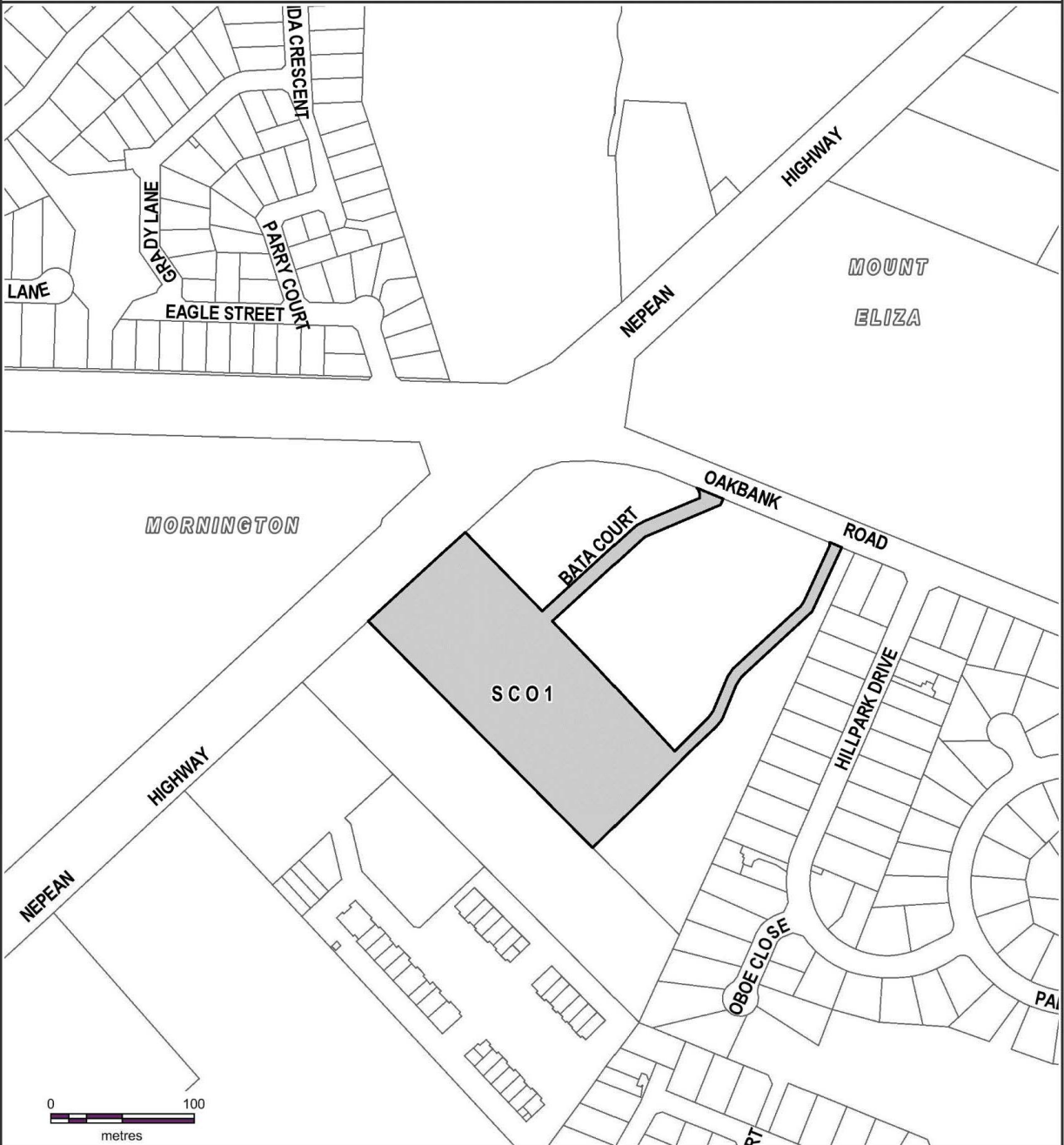
- b. use of that land has not commenced 4 years after the approval date of Amendment X; or
- c. development of that land is not completed 4 years after the approval date of Amendment X.

The exemption in this document from the need for a permit for a major promotion sign expires 15 years after the approval date of Amendment X.

Appendix H Planning Scheme Maps



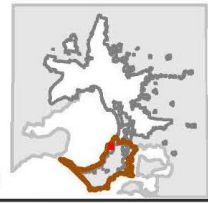
MORNINGTON PENINSULA PLANNING SCHEME - LOCAL PROVISION



LEGEND
 [Grey Box] SCO1 - Specific Control Overlay 1

[Orange Box] Local Government Area

Part of Planning Scheme Map 6



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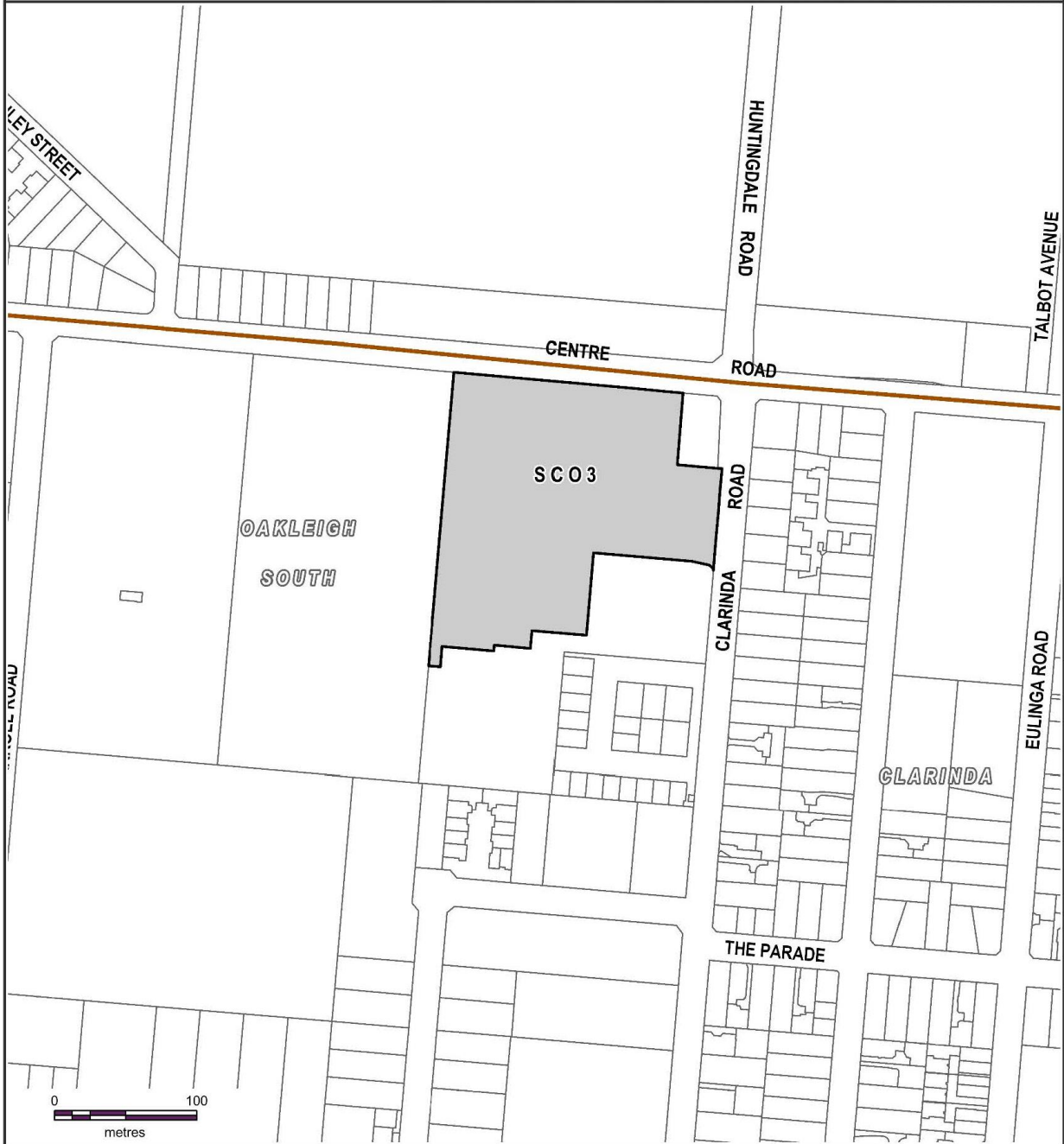
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KINGSTON PLANNING SCHEME - LOCAL PROVISION

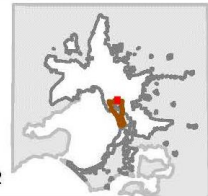


LEGEND

 SC03 - Specific Control Overlay 3

 Local Government Area

Part of Planning Scheme Map 2



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