

Planning and Environment Act 1987

Government Land Standing Advisory Committee

Tranche 24 Report

150 Cambridge Road, Kilsyth

15 January 2020

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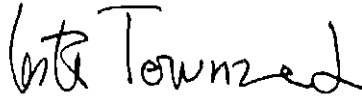
List of Abbreviations

DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
GLPS	Government Land Planning Service
GLSAC	Government Land Standing Advisory Committee
NRZ1	Neighbourhood Residential Zone – Schedule 1
UDF	Urban Design Framework
VCAT	Victorian Civil and Administrative Tribunal

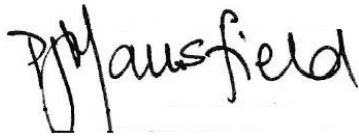
About this report

On 28 August 2019, the Minister for Planning referred 150 Cambridge Road, Kilsyth to the Government Land Standing Advisory Committee as Tranche 24.

This is the report under section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 150 Cambridge Road, Kilsyth.



Lester Townsend, Chair



Prue Mansfield, Member

15 January 2020

1 Summary and recommendation

1.1 The site

Figure 1: Site location



The site has an area of 3.58 hectares and has frontages to Cambridge Road and playing fields leased to Yarra Ranges Shire Council adjacent to Elizabeth Bridge Reserve. The site was formerly part of the Yarra Hills Secondary College prior to a merger.

The site is within 1 kilometre of a primary school and community centre, and 2 kilometres of a secondary school and neighbourhood shopping centre. Mooroolbark Railway Station and shopping centre is 2.4 kilometres away. A bus passes the site but does not run on Sundays.

1.2 Issues raised in submissions

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

Issues raised in submissions related to:

- whether the site should remain as open space
- the inevitable increase in traffic resulting from the development of the site, especially on the “Five Ways” intersection to the north west
- the impact of the rezoning on the density and character of the area
- which planning controls would best guide any future development of the site.

1.3 Committee conclusion

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

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

Table 1: Existing and proposed controls

Current planning scheme controls	Exhibited planning scheme	Advisory Recommendation	Committee
Public Use Zone 2 (Education) (PUZ2)	Neighbourhood Residential Zone – Schedule 1 (NRZ1)	Neighbourhood Residential Zone – Schedule 1 (NRZ1)	
	Significant Landscape Overlay – Schedule 23 (SLO23)	Significant Landscape Overlay – Schedule 23 (SLO23)	
	Development Plan Overlay – Schedule 10 (DPO10)	Development Plan Overlay – Schedule 10 (DPO10)	

1.4 Recommendation

The Committee recommends that:

A planning scheme amendment be prepared and approved for 150 Cambridge Road, Kilsyth to:

- 1. Rezone the site to apply the Neighbourhood Residential Zone, Schedule 1.**
- 2. Apply the Significant Landscape Overlay – Schedule 23.**
- 3. Apply the Development Plan Overlay – Schedule 10, in the form shown in Appendix E.**

2 Process issues for this site

2.1 Process summary

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

Table 2: Proposal summary

Proposal summary	
Tranche	24
Site address	150 Cambridge Road, Kilsyth
Previous use	Yarra Hills Secondary College
Site owner	Department of Education and Training, represented by the Department of Treasury and Finance
Council	Shire of Yarra Ranges
Exhibition	23 September to 1 November 2019
Submissions	84

Table 3: Committee process

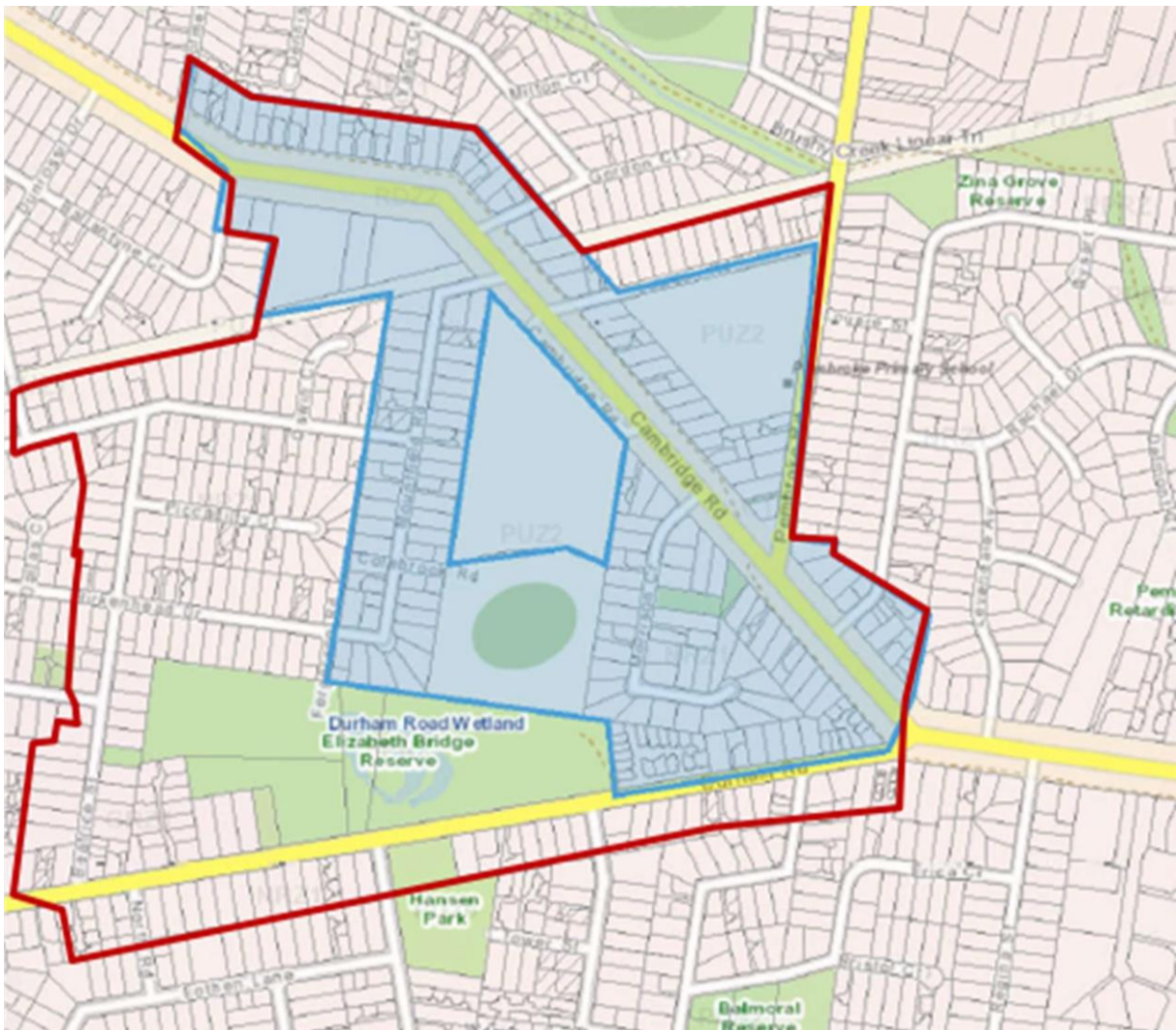
Committee process	
Members	Lester Townsend, Prue Mansfield
Information session	9 October 2019
Hearing	27 November 2019, Japara House, Kilsyth
Further information after the Hearing	16 December 2019, site owner response to Council calculation of open space requirements
Site inspections	27 November 2019
Appearances	See Appendix C
Date of this Report	15 January 2020

2.2 Process issues

(i) Extent of notice

The extent of the notice was determined by consultation between the Government Land Planning Service (GLPS) and Council. The map below shows the extent of notice. The GLPS originally proposed the area in blue. The final extent following consultation with Council is bounded by the red line.

Figure 2: Extent of notice



At the information session, the issue of the extent of the notice was raised. As indicated at the session, Lester Townsend consulted Dalia Cook, a Deputy Chair of the Committee, and determined that further notice was not warranted.

The Committee understands that a concerned submitter undertook his own notice beyond the original notice area.

At the Hearing, 12 people indicated that they had not received notice, and believed they should have. Eleven of the addresses were outside the notification area. Mr Johnson (submitter 26) was within the notice area and should have received the notification. It is not clear why this did not occur. Mr Johnson knew of the process, made a submission, presented to the Hearing, and had his concerns considered by the Committee.

Deciding who should get notice of a proposal depends on the issue being considered. The Committee has reflected on its decision that further notice was not warranted and reaffirms its view that the notice was adequate for the question: *“are the proposed planning controls appropriate given the site has been declared surplus?”*. It was clear from the Hearing process that many people did not think the notice was adequate to address the question: *“should the land be retained for open space”*. Retaining the land for open space is not an issue that the Committee can address.

(ii) Public open space

In 2015, the Department of Education and Training approached Council regarding the sale of the secondary school site. At that time, Council declined to purchase the land, but in 2016 negotiated a 20 year lease for the southern portion of the site consisting of the former sportsground adjacent to the Elizabeth Bridge Reserve. In October 2018, the site was subdivided into two parcels. The boundary of the southern lot (2.9 hectares) aligns with Council’s leased area, and is not included in the proposed amendment. The northern (3.58 hectare) parcel has been declared surplus to Government requirements, and is the subject of the proposed rezoning.

(iii) Hearing Process

Mr Dighton came to the Hearing. There is no record of him having made a submission, but he was given the opportunity to address the Committee after the scheduled submitters.

3 Site constraints and opportunities

3.1 Planning context

Figures 2 and 3 show the current and proposed zonings.

Figure 3: Current zoning

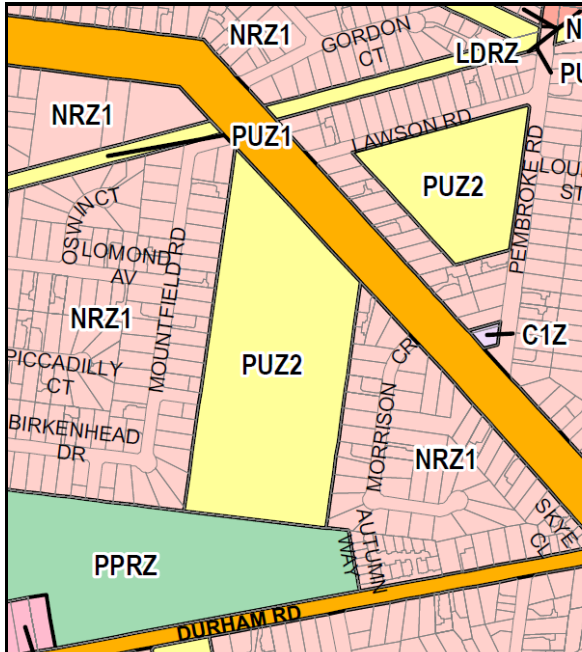
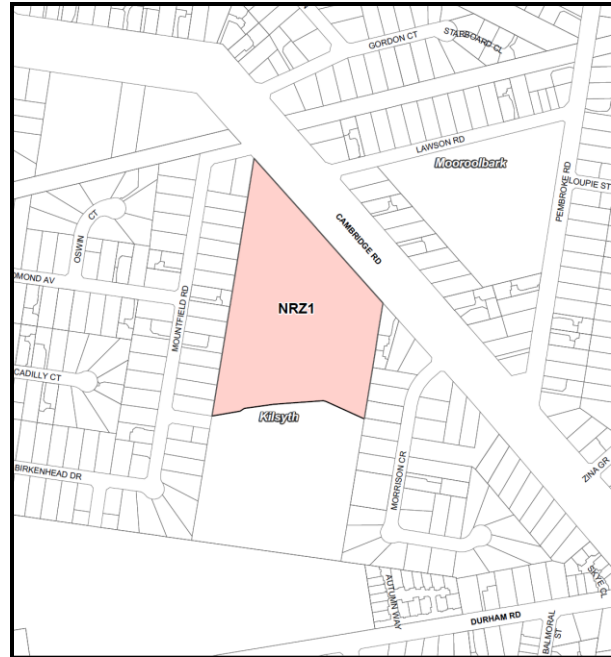


Figure 4: Proposed zoning



3.2 History of the site

Yarra Hills Secondary College, formerly Pembroke Secondary College, merged with Mooroolbark Secondary College and Mount Evelyn Secondary College, resulting in three campuses. Following modernisation and refurbishment, the Cambridge Road site became surplus. Demographic analysis by the Department of Education and Training confirms that the site is not needed to accommodate future enrolments.

3.3 Physical constraints and opportunities

(i) Current site conditions

The site is about 3.58 hectares. The frontage to Cambridge Road is 223 metres, the eastern boundary is 135 metres and the western boundary is 301 metres. The site generally falls to the west. The former school buildings have been demolished, but some hard stand areas remain scattered across the site. The site retains the benching that was required for the school buildings.

Submitters pointed out that the site was used by dog walkers, but was not always well maintained.

(ii) Interface with surrounds

The site is within an established residential area, generally comprising single storey dwellings, some double storey dwellings and more recent medium density infill. Most

dwellings have established gardens, and the road reserves typically contain substantial mature canopy trees.

The site abuts the sports oval to the south that was part of the former school site. Immediately beyond that, linked by a walking path, the Elizabeth Bridge Reserve is an attractive park developed for passive uses. To the north is Cambridge Road, with detached dwellings on the northern side. On the east and west of the site are mostly single storey residential properties.

(iii) Significant vegetation

A stretch of mature canopy trees, some very large, are located along Cambridge Road and the eastern boundary. There are also some individual mature canopy trees scattered across the site. The vegetation has not yet been assessed against the criteria set out in the Schedule to the Significant Landscape Overlay (already applicable to the area surrounding the site) to determine which individual trees are significant. The trees are mostly native, with some exotic specimens.

(iv) Access and traffic capacity of surrounding area

Cambridge Road, which will remain the main vehicular access to the site, is in Road Zone, Category 2, and under Council control. A concern raised by most submitters was the impact of any further development on the 'Five Ways' intersection, 1.5 kilometres to the north-west of the site. The Roads Corporation did not make a submission. Council's submission in relation to traffic considered the timing of the traffic study, and the extent of mitigation required.

The Committee accepts that many of the submitters have concerns about traffic congestion in the area, but there is nothing to suggest that the site cannot be given safe access to Cambridge Road or that the rezoning of the site to the Neighbourhood Residential Zone will result in unacceptable traffic impacts.

4 Issues with the proposed changes

4.1 What zone is suitable

(i) Submissions

Many submissions sought the retention of the whole of the site as open space, saying this would be a far preferable result for the long term future of Kilsyth. Twenty one submissions specifically requested the application of the Public Park and Recreation Zone. Mr Phillips (submitter 57) made strong arguments as to why the whole of the site should be open space.

At the Hearing, some of the submitters stated they supported the Neighbourhood Residential Zone over the General Residential Zone.

The site owner and Council supported the use of the Neighbourhood Residential Zone, allowing for incremental development, as set out in the current Municipal Strategic Statement in the Yarra Ranges Planning Scheme and the proposed updated Municipal Strategic Statement currently before the Minister for Planning for approval.

(ii) Discussion

The application of the Public Park and Recreation Zone is outside the Terms of Reference of the Committee. The Committee can only recommend this zone where it has been explicitly requested to do so by the Minister for Planning, or by a Government Department where the land is needed for an identified current or future service delivery purpose. No such request has been made.

The site is in the ‘metropolitan’ – as opposed to ‘foothills’ and ‘rural townships’ – area of the municipality according to the Yarra Ranges Planning Scheme (Clause 21.03-1). The residential framework guides development into the metropolitan area of the Shire, which is further divided into areas of ‘consolidation’, ‘incremental change’ and ‘least change’. The site is in an incremental change area. This is implemented by the use of the Neighbourhood Residential Zone. Specifically, Clause 21.04-1 says “... recognise areas that will undergo some incremental change but predominantly maintain a low density residential character”.

It is appropriate to apply the same zone as the surrounding area.

(iii) Conclusions

The Committee concludes that:

- The Neighbourhood Residential Zone is the most appropriate zone.

4.2 What zone schedule is appropriate

4.2.1 Lot size

(i) The zone schedule

The NRZ specifies that a schedule to the zone may specify a minimum lot size to subdivide land. The proposed Schedule 1 does not set a minimum lot size.

(ii) Submissions

Council submitted that a specific NRZ schedule with a 600 square metre minimum lot size should be applied. It argued that:

- the site was remote from the train station and activity centre in particular, being 2.4 kilometres away, and so did not meet the requirement for a twenty minute neighbourhood
- a minimum lot size is required to ensure the future neighbourhood character has an open spacious feel, designed to accommodate off street carparking
- existing residential lots within 1 kilometre of the site had an average lot size of about 800 square metres.

Council presented two recent VCAT decisions (VCAT 1828/2017 and VCAT 1915/2018) where medium density developments had been refused in the General Residential Zone. While each case is specific to its site and design, both decisions considered the location to be relevant; that is, the sites more distant from the major activity centre are less appropriate for higher densities.

The site owner submitted that the strategic need to apply a minimum lot size of 600 square metres on character or other grounds has not been established by Council in its submission:

As outlined earlier in our submission, introducing such a control would be inconsistent with the controls that apply to the surrounding area, which is the character that Council seeks future development on this site to be consistent with.

In supporting this argument, it submitted that:

- the NRZ schedule that applies to surrounding properties does not have a lot size restriction
- there are no other controls on the surrounding properties that would result in lot size restriction
- and none of the other NRZ schedules within the Yarra Ranges Planning Scheme have a mandatory minimum lot size.

A number of incremental change areas in the Shire have minimum lot sizes that are mandated through a Design and Development Overlay (DDO) – these are in the much more sensitive ‘Foothills’ areas, rather than Kilsyth which is in the ‘metropolitan’ area.

The site owner submitted that Council has failed to identify any specific environmental or landscape qualities that warrant a more stringent approach than on other land in the metropolitan area of the Shire. Finally, the site owner argued that the site could be considered as within the 20 minute neighbourhood principle, as this includes access by bicycle and public transport, not just walking.

Three other submissions, 3, 39 and 52, argued for minimum lot sizes to be set, with the lot size sought ranging from 500-1000 square metres.

(iii) Discussion

Historically, Kilsyth has developed with large blocks and substantial gardens retaining the canopy trees on both public and private land. More recent strategic planning, starting with the Housing Strategy in 2009 and further detailed in Amendment C148yrn, has established the regime of accommodating most new development in the ‘metropolitan’ area of the Shire, to protect the more sensitive foothills and rural townships from urban encroachment. If this is done, the strategic planning predicts Yarra Ranges Shire will be able to accommodate the additional dwellings needed for its projected population growth.

However, this is not open slather as feared by some submitters. The NRZ, allowing incremental growth rather than the more intense consolidation, will fundamentally establish the style and nature of development on this site.

The Committee notes that the recently released Planning Practice Note 91, Using the Residential Zones, says:

Principle 5

The density or number of dwellings on a lot cannot be restricted in the Neighbourhood Residential Zone unless special neighbourhood character, heritage, environmental or landscape attributes, or other constraints and hazards exist.

Dwelling density is no longer the basis for restricting development outcomes in the Neighbourhood Residential Zone. It is no longer appropriate to limit housing growth in existing urban areas just because an area is perceived to be remote from jobs, services and public transport.

Amendment C148yrn to the Yarra Ranges Planning Scheme identifies the site (Clause 21.01) as a strategic redevelopment site. This amendment has been adopted by Council and is with the Minister for Planning for consideration.

The Committee can envisage a development that will deliver a mix of lot sizes catering for housing diversity while respecting the character of the area.

(iv) Conclusion

The Committee concludes that it is not appropriate to seek to limit lot sizes on the site.

4.2.2 Site coverage and impervious surfaces

(i) The zone schedule

Clause 54.03 sets out:

Standard A5

The site area covered by buildings should not exceed:

- The maximum site coverage specified in a schedule to the zone, or
- If no maximum site coverage is specified in a schedule to the zone, 60 per cent.

Standard A6

The site area covered by pervious surfaces should be at least:

- The minimum area specified in a schedule to the zone; or
- If no minimum area is specified in a schedule to the zone, 20 per cent of the site.

(ii) Submissions

Council submitted that the total area of the site covered by buildings and impervious surfaces not exceed 30 per cent and 50 per cent respectively.

The site owner submitted that the strategic need to apply 30 per cent site coverage and 50 per cent impervious surfaces has not been adequately established in Council's submission.

It is noted that such requirements do not apply to any other incremental change area within the metropolitan parts of the Shire. Such requirements do apply to incremental change areas in the foothills and rural townships, where there is an established need to respect the environmental and landscape qualities of the foothills and the non-urban area.

Council and some community submitters have expressed the desire for ‘open’, ‘less dense’ and ‘spacious’ lots. This outcome is controlled by the amount of site coverage permitted. Schedule 1 to the Neighbourhood Residential Zone includes the following decision guideline:

Development respects existing residential character and responds to the attributes of the established neighbourhood. Development within the metropolitan incremental change areas should cover no more than 40% of the site in keeping with the established character of the area.

This is not the conventional way of drafting such a control – decision guidelines are meant to be policy neutral – but it achieves the purpose sought on the site, to provide for more garden space and openness.

The site owner submitted that the decision guideline highlights that Council’s own planning scheme does not support a 30 per cent blanket site coverage requirement on incremental change areas within the metropolitan area, such as those that the subject site is located in.

(iii) Discussion

The Committee consider that the proposed NRZ1, Clause 55 and existing policy provide appropriate guidance for site coverage and impervious surfaces.

This is a matter that can be appropriately assessed at the planning permit stage and there is no need to specify a more restrictive requirement that might not be appropriate for all parts of the site and may militate against diverse housing outcomes.

4.2.3 Recommendation

The Committee recommends that:

A planning scheme amendment be prepared and approved to:

- 1. Rezone the site to apply the Neighbourhood Residential Zone, Schedule 1.**

4.3 What overlays are appropriate

4.3.1 Tree protection

The site owner and Council agreed that it was appropriate to apply the Significant Landscape Overlay – Schedule 23 to this site. This overlay:

- applies to all the residential land in the surrounding area
- recognises the importance the mature canopy trees have on creating a visual connection to the backdrop of the Dandenong Ranges
- protects existing trees
- requires new canopy trees to reinforce the landscape character of the neighbourhood and protect important vegetation.

Many submissions agreed with the importance of the vegetated character of the area, both for its environmental and visual values. Requiring a planning permit for the removal of significant trees, as defined in the Schedule, will ensure careful consideration of all the issues before removal is permitted.

The Committee recommends:

A planning scheme amendment be prepared and approved to:

- 2. Apply the Significant Landscape Overlay – Schedule 23.**

4.3.2 Development Plan Overlay and Design and Development Overlay

It was common ground that an overlay was required to control how this land would be subdivided and developed. There was not agreement between the parties about how prescriptive, and how much detail was needed to be resolved before development could happen, and therefore which of these overlays was the most appropriate.

Several community submissions sought the application of the DDO rather than the Development Plan Overlay (DPO). The reason given for this request was the retention of the third party appeal rights when permits were issued. These rights are ‘turned off’ under the DPO.

Council supported the application of a DDO in place of the DPO, but acknowledged that this would *“require further detailed strategic work upfront”*.

The Committee does not support the application of a DDO. Any DDO schedule would require strategic justification for the requirements it imposed, and this work had not been done. The DPO facilitates a master planning approach that would provide justification for any requirements it imposed.

5 Form of the Development Plan Overlay

5.1 What are the issues

A number of issues were raised in relation to the proposed DPO, and are discussed under the following headings:

- Revised objectives
- Traffic
- Integrated storm water management plan
- Shared path connection
- Parking and pavilion for the Public Open Space
- Estimated dwelling yield
- Housing types consistent with surrounding neighbourhood
- Incorporation of trees into open space
- Building setbacks to all interfaces
- Cambridge Road service road
- Undergrounding electricity
- Garden areas
- Passive surveillance to public spaces
- Built form
- Notification.

The site owner supported the intent of a number of the changes proposed to the draft DPO.

There is common ground that the DPO needs to provide for:

- transition to existing houses on the boundaries, so the impact on their amenity is mitigated
- a sealed service road along Cambridge Road
- dwellings that face Cambridge Road
- a road layout that allows dwellings to face the oval
- a direct, landscaped path from Cambridge Road to the oval
- development that is sited and designed to retain the existing trees, in public spaces where possible.

5.2 Consideration of the issues

(i) Revised objectives

Council sought additional objectives and changes to a number of objectives. The *Ministerial Direction – The Form and Content of Planning Schemes* limits the number of objectives to five. There is no scope to include additional objectives.

The other changes sought relate to changes to the requirements on the development plan. For the reasons set out in the following sections, the Committee does not support these changes and so no changes to the objectives are warranted.

(ii) Traffic

Council sought a requirement in the DPO to identify mechanisms to mitigate the impact of traffic external to the site.

The site owner did not agree, arguing the developer can only determine what the traffic impact will be when an actual proposal is prepared (that is, at the planning permit stage).

The Committee notes the numerous submissions about traffic congestion in the area. The DPO requires, for any permit:

A traffic report assessing the car parking requirements and traffic impacts of the proposed development.

The Committee agrees with the site owner that the traffic impacts can only be determined once the form of development is decided. The Committee notes that this could be done as part of the preparation of the development plan, ahead of any planning permit.

(iii) Integrated storm water management plan

Council sought the introduction of a requirement for a Stormwater and Integrated Water Management Plan. The site owner had no issue with this.

The Committee agrees that such a plan is appropriate, but thinks slightly different language to Council's suggestion is appropriate to better fit with the other requirements and stress that it is adverse environmental impacts that need to be minimised.

(iv) Shared path connection

A number of submitters including Council thought that a landscaped shared path should be provided connecting the north boundary of the site at Cambridge Road with the south boundary at the public reserve.

The site owner and Council agreed on the need for a landscaped shared path linking Cambridge Road to the north, and the oval and ultimately Elizabeth Bridge Reserve to the south. Council has sought for this to be three metres wide.

The Committee agrees that this important link creates a long term opportunity to enhance pedestrian and bicycle connections beyond the site itself, to Pembroke Primary School and the Brushy Creek trail to the north, and to Elizabeth Bridge Reserve and the residential area to the south. Several community submissions, especially from Ms Floyd (submission 7) and Mr and Mrs Phillips (submission 57), highlighted the pedestrian link, stating it is highly used; important to encourage increased community wellbeing through walking; and an important link from the north to the south.

The Committee agrees that there should be a shared path directly linking Cambridge Road to the south of the site. The design details should be resolved in the detailed design of the subdivision, considering the overall parameters of the DPO. For example, the location of trees to be retained may influence the pathway design.

The revised DPO schedule addresses the provision of a shared path.

(v) Parking and pavilion for the public open space

Current situation

There are currently severe restrictions for vehicles to access the oval. Vehicles access the site by driving on informal 'tracks' through the school site. Pedestrian access is via Colebrook Street, a small residential street 50 metres long. This allows for cars to park in Mountjoy Street and people to walk through. There is also pedestrian access via the disused school site, and via Elizabeth Bridge Reserve.

Recent policy

The adopted *Yarra Ranges Recreation and Open Space Strategy (2013-2023)* states that Kilsyth is well served for open space, and does not identify the need for any additional land. This plan is currently being revised. The Committee has been advised of the early conclusions of the new study, and in particular the “*case study of Elizabeth Bridge Reserve*”, including the oval now leased to the Council. The case study concludes that within the “*Urban Planning Area*” established for the study, (an undefined area but which includes Kilsyth) by 2036 there will be a shortfall of public open space, both for social recreation and sport.

Submissions

At the Hearing, Council submitted that about 2,300 square metres of the school site was needed for approximately 50 carparking spaces to support the oval. A small pavilion is also required.

The Committee notes that the area of land sought represents 6.5 per cent of the site, and so exceeds the amount – up to 5 per cent – provided for by the *Subdivision Act 1988*. The pedestrian link may draw on the open space contribution for its provision.

Requiring the provision of more open space than is typically required for land in the surrounding area as part of planning controls could be regarded as tantamount to recommending the land be reserved as open space. The Committee’s Terms of Reference specifically state the Committee is not to do this.

In its submission, the site owner noted that Council had not bought the site when it had the opportunity to do so. They did not support any part of the school site being allocated to support the use of the oval.

Discussion

Council is to be commended for undertaking timely future planning for open space, in response to changing demographics and community need. However, this plan is still in draft form, has not been presented to Council or tested in any community process. It can have no weight in formal decision making. When Council was offered the right to purchase the land under the State Government first right of refusal process, it declined to do so. There are processes available for Council to review that decision if it so decided.

It is unfortunate that Council did not consider issues of parking and a pavilion when it negotiated the lease for the oval.

There are other options available to Council to secure land if it is needed to support the oval. This includes negotiations with any developer as the development plan is prepared. It seems to the Committee that Council would need to purchase the additional required area of land from the site owner.

As there will be other demands on the open space contribution, for example, for the shared path, the best outcome will be achieved if these issues are resolved considering all the requirements and the best design response for the whole of the site.

Conclusion

The amount, location and purpose of open space across the site should be resolved as part of the preparation of the development plan.

(vi) Estimated dwelling yield

Council sought a requirement to present and estimate dwelling yield and overall floor space. The site owner was concerned that this would be used to limit overall development. The Committee shares the site owner's concerns and does not see this as a necessary requirement, or one that is strategically justified.

(vii) Housing types consistent with surrounding neighbourhood

Council sought changes that the range of dwellings ought to be consistent with the surrounding residential neighbourhood. The site owner submitted that Clause 21.04 and Clause 21.05 provided enough guidance. The Committee agrees with the site owner.

(viii) Incorporation of trees into open space

Council suggested that significant trees should be included in public open space where possible. The site owner accepted this.

(ix) Building setbacks to all interfaces

Council sought a provision setting out building setbacks to all interfaces. The site owner submitted that ResCode already does this, and so this was not required in a development plan. The Committee agrees with the site owner.

(x) Cambridge Road service road

Council sought the sealing of the service road along the length of the Cambridge Road frontage. The site owner submitted that it supported this and proposed text for a revised DPO schedule to address this.

(xi) Undergrounding electricity

Council submitted that the DPO should require existing electricity cables adjacent to the Cambridge Road frontage to be placed underground.

The site owner submitted that servicing requirements should be established having regard to the views of the relevant service authorities and that it would be premature to require this outcome without adequate consultation with the service authority, which may not support underground electricity provision.

The Committee agrees that this is a matter that can be determined at a later stage.

(xii) Garden areas

There was some discussion at the Hearing about the applicability of the garden area requirements in the NRZ. The NRZ provides:

An application to subdivide land that would create a vacant lot less than 400 square metres capable of development for a dwelling or residential building, must ensure that each vacant lot created less than 400 square metres contains at least 25 percent as garden area. This does not apply to a lot created by an application to subdivide land where that lot is created in accordance with:

- An approved precinct structure plan or an equivalent strategic plan;
- An incorporated plan or approved development plan; or
- A permit for development.

Clause 32.09-4 of the of the NRZ states:

An application to construct or extend a dwelling or residential building on a lot must provide a minimum garden area as set out in the following table:

Lot size	Minimum percentage of a lot set aside as garden area
400 - 500 sqm	25%
Above 500 - 650 sqm	30%
Above 650 sqm	35%

This does not apply to:

- An application to construct or extend a dwelling or residential building on a lot if:
 - The lot is designated as a medium density housing site in an approved precinct structure plan or an approved equivalent strategic plan;
 - The lot is designated as a medium density housing site in an incorporated plan or approved development plan ...

VCAT considered whether the above exemption applied to an ‘Urban Design Framework’ and DDO Schedule *in Demant v Darebin CC* [2019] VCAT 1256, which involved an application for four three storey dwellings, with a garden area slightly less than 25 per cent of the total site area. VCAT held:

For the purposes of the text from the exemption which I have quoted above, I am satisfied that the provisions of the quite specific Darebin Council ‘Urban Design Framework 2015’ (UDF 2015), in conjunction with the Design and Development Overlay Schedule 16 (DDO16), together constitute ‘an equivalent approved strategic plan’ for the purposes of the exemption. That is, the UDF2015/DDO16 has a corresponding function to an approved precinct structure plan.

The Committee agrees with submissions made at the Hearing that in preparing the development plan it would be possible to designate lots as ‘medium density housing’ sites so that they did not have to meet the garden area requirements. The issue is whether the DPO schedule ought to allow for this.

The Committee thinks that the issue of garden area ought to be left to the preparation of the development plan. It may well be that an overall plan could be developed that maintained the character of the area, but contained a number of lots that did not meet the garden area requirement. The flexibility to deliver this sort of outcome should not be ruled out at this stage.

(xiii) Passive surveillance to public spaces

Council submitted that:

- new lots should provide appropriate passive surveillance to public spaces
- the internal road network to allow dwellings abutting the southern oval to face the southern oval.

The site owner submitted that this was a general urban design requirement at Clause 15 of the Yarra Ranges Planning Scheme and in Clauses 55 and 56. The Practitioner’s Guide to Victorian Planning Schemes discourages repetition of such statements, where they are adequately expressed elsewhere in the scheme.

The site owner submitted that it supported a requirement that the internal road network allow dwellings abutting the southern oval to face the southern oval and proposed text for a revised DPO schedule to address this submission.

(xiv) Built form

Several community submitters, especially Mr Johnson (submission 26) argued that only single storey dwellings be allowed across the site.

The NRZ limits development to nine metres.

It was common ground between the site owner and Council that built form controls were needed. Elements on which there was agreement included that:

- any new dwellings abutting the existing houses on the boundaries must be a maximum of two storeys, to respect neighbouring amenity
- the interface with adjoining residential uses be compatible
- street frontages and open space have sufficient room to retain the existing canopy trees.

The DPO includes:

Protection of the amenity of adjoining site by providing for a maximum two storey-built form immediately adjacent to or opposite any existing single or double storey residential development.

Limiting development to single storey would be contrary to state wide policy for residential development. It is only through increasing the dwellings in areas such as this site, at an incremental level as permitted, that areas such as the foothills and rural townships of the Yarra Ranges can be protected from urban encroachment. Such a limit may also not make much sense on the site which slopes and has benching from previous development. In some locations, multistorey development could be absorbed into an otherwise relatively low scale development.

(xv) Notification

A number of submissions were concerned that the application of the DPO removed third party appeal rights. The DPO does not provides a mechanism for these to be introduced though in the past, some schedules included these provisions.

Some DPO schedules provide for community input to the process through requiring a “community engagement plan” albeit without the formal right of appeal. These tend to be more complicated DPO schedules.

In this case, the Committee thinks that the nature of the control over the site, and the site’s location and access, mean that Council ought to be able to represent the issues of adjoining residents. It would appear that nothing would prevent Council consulting its community on any proposed development plan.¹

5.3 Recommendation

The Committee recommends:

A planning scheme amendment be prepared and approved to:

- 3. Apply the Development Plan Overlay – Schedule 10, in the form shown in Appendix E.**

¹ Such consultation should avoid appearing as if it is formal notification under the Planning and Environment Act.

Appendix A: About the Government Land Standing Advisory Committee

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

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

The Committee currently consists of:

- Chair: Lester Townsend
- Deputy Chairs: Dalia Cook, Mandy Elliott, Trevor McCullough and Annabel Paul
- Members: Elissa Bell, Meredith Gibbs, Sophie Handley, Prue Mansfield, Cazz Redding, Lynn Sweeney and Rob Vines.

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

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

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

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

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

Appendix B: List of Submitters

No.	Submitter	No.	Submitter
1	Emily Richardson	43	Keriman Savini
2	Leon Mahoney	44	Susan McCormack
3	Nikki Zaicz	45	Ryan and Bernadette Bak
4	Penelope Ann Langdon	46	Sandra Rozenblat
5	Maureen Stewart	47	Fred Vander Werf
6	Shelley Large	48	Vincent George Squires
7	Janis Lillian Floyd	49	Janne Rees
8	Elysa Sang Cung Bik	50	Terence Redmond
9	Jacqueline Joy Furniss	51	Ashleigh Cunningham
10	Lynn LI	52	Denise Thomas
11	Sam Whitehead	53	Adolf and Susan Wurm
12	David Gooch	54	Donald Cameron
13	Kristelle Scott Cameron	55	Naomi Black
14	Jenna Rank	56	Friends of Elizabeth Bridge Reserve
15	Andy Kass	57	Mr and Mrs J Phillips
16	John Edgerley	58	Brian and Denise Jones
17	Bev Goodman	59	Tina Fiorentino
18	Karen Mitchell	60	Angelica Marshall
19	Davinder Kohli	61	Sue-Ann Bolitho
20	John Vennix	62	Mr and Mrs David A Gorfine
21	Trevor Gordon Smith	63	Zarryk Dod
22	Michele A Kinder	64	Lindsay Wilson-Barker
23	Masta Scaffold Melbourne	65	Kylie Brown
24	Edna Lim	66	James Matthew
25	Ian and Helen Boswell	67	William Page
26	Geoffrey Johnson	68	Yarra Ranges Shire Council
27	Andrew Harding	69	Vicky
28	Rhiannon Williams	70	Lydia Psomiadis
29	John Hourihan	71	Owen Tutty
30	David William Harrison	72	Sarah Ann Phillips
31	Carola Bland	73	Adele Richards
32	Andrew Mangan	74	Sue Hoogenboom
33	Anand Private	75	Ashley Jackson
34	Varli Naylor	76	Sarah Ann Phillips
35	Susan Cridge	77	Carol Benson
36	Dr Frances Gwynnyth Elliott	78	Amanda Hunt
37	Yvonne Hawke	79	Margaret Finch
38	Deborah Elizabeth Kirwan	80	Robert Finch
39	Megan Cincotta	81	Judith Cross
40	Henry Marciniak	82	Julie Kay Eversteyn
41	Bevan Robert Garrett	83	Janice Bailey-Chambers
42	Kelly Wilson	84	Peter Benson

Appendix C: Appearances

Party	Represented by
Department of Treasury and Finance	Matthew Gilbertson from Glossop Town Planning briefed by Kerrie Scott of the Department of Treasury and Finance
Yarra Ranges Shire Council	Damian Closs and Matthew Budahazy
Shelley Large	
Amanda Hunt	
Janis Jillian Floyd	
Geoffrey Johnson	
Mr and Mrs J Phillips	
Angelica Marshall	
Terence Redmond	
Colleen Sinclair	
Mr Dighton	

Appendix D: Document list

No	Date	Description	Presented By
1	22/11/19	Submission of Andrew Mangan	Mr Mangan
2	27/11/19	Site owner submission	Mr Gilbertson
3	— " —	Exhibited version of DPO	— " —
4	— " —	Site owner preferred version of DPO	— " —
5	— " —	Council submission	Mr Closs
6	— " —	Context map	— " —
7	— " —	VCAT cases: - Erfanian Developments Pty Ltd v Yarra Ranges SC [2017] VCAT 1828 - Chen v Yarra Ranges SC [2018] VCAT 1915	— " —
8	— " —	Council proposed NRZ schedule for the site	— " —
9	— " —	Yarra Ranges Shire Council Meeting Agenda 26 February 2019	— " —
10	— " —	Council preferred version of the DPO	— " —
11	— " —	Moreland Planning Scheme DPO12	— " —
12	— " —	Submission of Amanda Hunt	Ms Hunt
13	— " —	Submission of Mr and Mrs J Phillips	Mr Phillips
14	— " —	Submission of Janice Floyd	Ms Floyd
15	9/12/19	Submission of Council made after the Hearing	Mr Closs
16	16/12/19	Site owner response to Council submission made after the Hearing	Mr Gilbertson

Appendix E: Committee preferred version of Development Plan Overlay Schedule 10

Committee insertions: blue

SCHEDULE 10 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

~~1/20~~
C183

Shown on the planning scheme map as **DPO10**.

FORMER YARRA HILLS SECONDARY COLLEGE SITE – 150 CAMBRIDGE ROAD, KILSYTH

1.0 Objectives

~~1/20~~
C183

To provide a range of housing types.

To ensure that the design of new buildings provides an appropriate transition of scale and form to buildings on adjacent lots.

To ensure street frontages and open space provide sufficient room for canopy trees and vegetation.

To implement sustainable development.

2.0 Requirement before a permit is granted

~~1/20~~
C183

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority, provided it does not prejudice the preparation and approval of the development plan and is consistent with the Objectives in Section 1 of this Schedule.

3.0 Conditions and requirements for permits

~~1/20~~
C183

The following conditions and/or requirements apply to permits:

- [Construction of a sealed service road along the length of the Cambridge Road frontage.](#)
- A construction management plan must be submitted to and approved by the responsible authority. The plan must include:
 - Details of any staging proposed.
 - How the site is to be accessed during construction.
 - Details of tree protection zones for significant trees to be retained on the land.
 - Location of site office, off-street parking for construction vehicles and employees.
 - Details of the collection and disposal of construction waste and the storage of construction materials.
 - The methods to control adverse environmental effects including erosion and sediment runoff.
 - Details of how the amenity of the surrounding area is to be protection during construction.
- All works conducted on the land must be in accordance with the approved construction management plan.
- A landscape plan for the site must be submitted and approved by the responsible authority. The plan must include:
 - Landscape concept for the site.
 - Identification, protection and incorporation of significant trees on site and in the adjoining road reserve.
 - Arboricultural details of the significant trees to be protected.
 - Landscaping to include a majority of local native and indigenous species.
 - Details of how public open space areas are to be developed and managed.

- [Details of landscaping along the shared path \(as relevant\).](#)
- A traffic report assessing the car parking requirements and traffic impacts of the proposed development.
- [A Stormwater and Integrated Water Management Plan to the satisfaction of the responsible authority that demonstrates how stormwater will be managed and treated to minimise adverse environmental impacts.](#)
- Garages and carports associated with new developments are not visually obtrusive when viewed from the front street and are located behind the line of the buildings.

4.0 Requirements for development plan

—/—/20—
C183

A development plan must include the following requirements:

- The location, size and design concepts of proposed buildings including height and density.
- Any staging of the development.
- A range of housing types.
- Development sited and designed to retain existing trees where possible.
- [Significant trees incorporated into public open space where possible](#)
- Development sited and designed to avoid impacts on roadside vegetation.
- A report detailing how Environmentally Sustainable Design techniques such as energy and water conservation, waste minimisation and vegetation retention have been incorporated in the proposed development.

Built form

- Protection of the amenity of adjoining site by providing for a maximum two storey-built form immediately adjacent to or opposite any existing single or double storey residential development.
- Development provides a compatible interface to adjoining residential uses.
- Development abutting the service road orientated towards Cambridge Road.
- [Development abutting open space including the sports oval to the south, to be oriented to face the open space and provide passive surveillance.](#)
- Street frontages and open space provide sufficient room for the retention and planting of canopy trees.

[Landscape, access and connections](#)

- [A landscaped shared path connecting the northern boundary of the site at Cambridge Road with the southern boundary providing access to the oval.](#)