

**Government Land Standing Advisory Committee
Tranche 41 Report
43 Delatite Road, Seymour**

20 May 2024

Planning and Environment Act 1987

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Glossary and Abbreviations

BlueSphere EAO Advice	<i>Environmental Advice Regarding Proposed Environmental Audit Overlay Application</i> , BlueSphere Environmental Pty Ltd, 9 July 2021
Committee	Government Land Standing Advisory Committee
Council	Mitchell Shire Council
DPO	Development Plan Overlay
draft Amendment	draft Mitchell Planning Scheme Amendment C162mith
DTP	Department of Transport and Planning
EAO	Environmental Audit Overlay
EnviroProtect Report	<i>Visual Inspection After Asbestos Removal Works</i> , EnviroProtect Pty Ltd, 30 May 2017
EPA	Environment Protection Authority Victoria
EP Act	<i>Environment Protection Act 2017</i>
GRZ	General Residential Zone
GRZ1	General Residential Zone Schedule 1
MD1	Ministerial Direction No. 1 – Potentially contaminated land
Planning Scheme	Mitchell Planning Scheme
PPN30	Planning Practice Note 30: Potentially Contaminated Land
Proponent	Land and Property Group, Department of Transport and Planning
PRSA	Preliminary Risk Screen Assessment

About this report

On 3 December 2023, the Minister for Planning referred 43 Delatite Road, Seymour to the Government Land Standing Advisory Committee as Tranche 41.

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 43 Delatite Road, Seymour.



Lisa Kendal, Chair



Debra Butcher, Member

20 May 2024

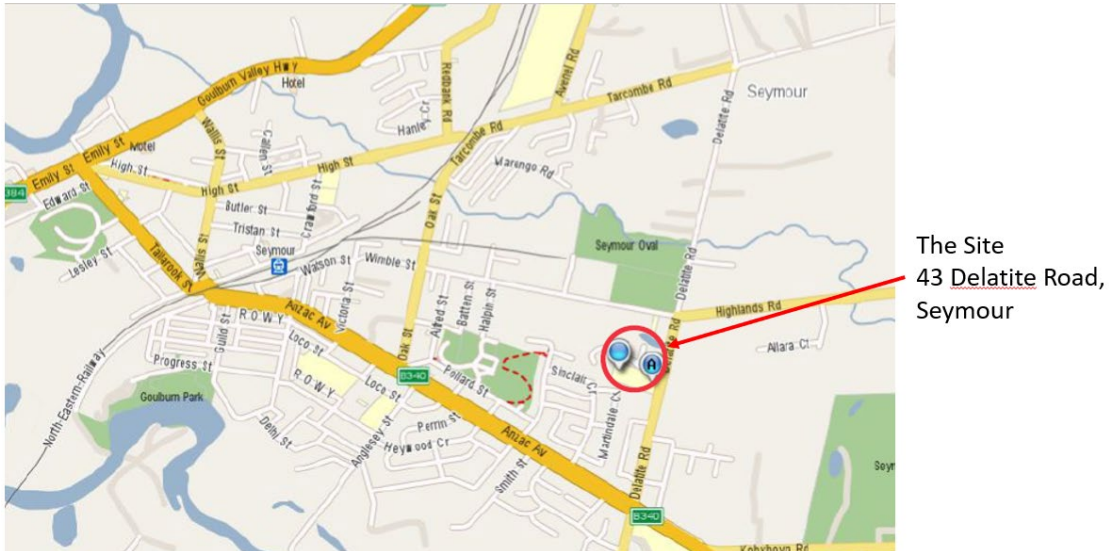
1 Summary and recommendation

1.1 The site

The site is located at 43 Delatite Road, Seymour (see Figures 1 and 2).

The 2.05 hectare site is the location of the former Seymour East Primary School, which closed in 2010. The site was declared surplus Victorian government land on 17 May 2016.

Figure 1 Site location



Source: Planning Report¹ exhibited with the draft Amendment

Figure 2 The site



Source: Explanatory Report

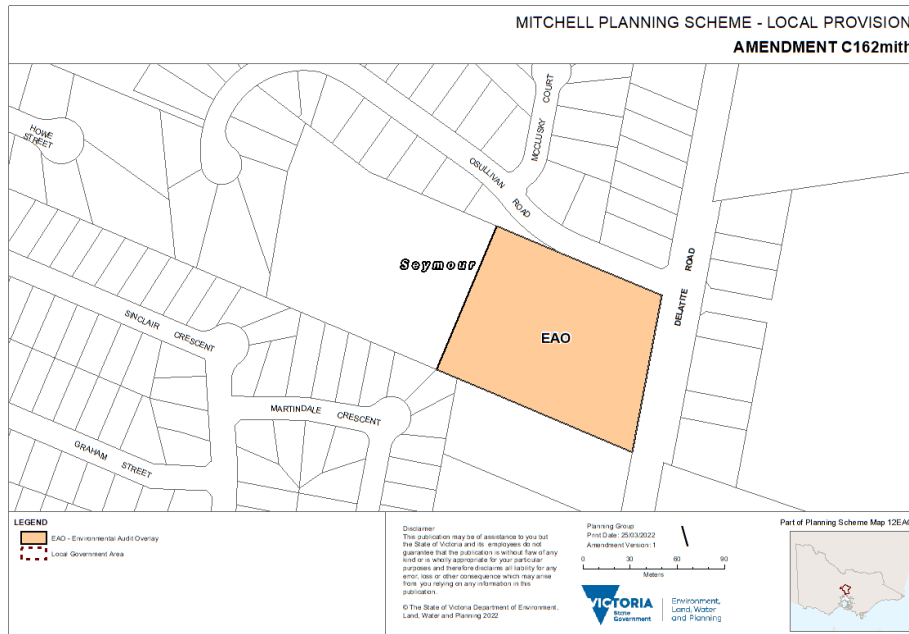
¹ 43 Delatite Road, Seymour: Proposed Amendment C162mth to the Mitchell Planning Scheme, Harlock Jackson, August 2023

1.2 The draft Amendment

Draft Mitchell Planning Scheme Amendment C162mith (the draft Amendment) to the Mitchell Planning Scheme (Planning Scheme) proposes to:

- rezone the land from Public Use Zone 2 Education to General Residential Zone Schedule 1 (GRZ1)
- apply the Environmental Audit Overlay (EAO) to the eastern portion of the site (Figure 3).

Figure 3 Proposed application of the EAO



Source: Exhibited Explanatory Report

1.3 Issues

(i) Exhibition and submissions

The Government Land Standing Advisory Committee (Committee) received four submissions during exhibition from 5 February to 19 March 2024.

Submissions raised the following matters:

- one submitter supported the land to be rezoned for provision of housing
- Goulburn Valley Water submitted there are no capacity issues for provision of reticulated water and sewerage, and if augmentation works are required these will need to be funded by the developer
- the Environment Protection Authority Victoria (EPA) raised a range of issues relating to application of the EAO to only a portion of the site and associated documentation
- Mitchell Shire Council (Council) submitted the surplus status of the site should be reconsidered. It said if the land is to be sold, the General Residential Zone (GRZ) is the appropriate zone, subject to applying a Development Plan Overlay (DPO) to the site and an abutting parcel of land at 5 O'Sullivan Road.

(ii) Committee’s approach and limitations

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

The Committee is required to consider matters within the scope of its Terms of Reference (see Appendix A). The Committee cannot consider whether or not it was appropriate to declare the land surplus. The determination of surplus status of government land is considered through a separate process.

The Committee accepts the submissions relating to rezoning the land to provide for housing and provision of water and sewerage infrastructure are consistent with the proposal and these have not been addressed specifically in this Report.

1.4 Committee conclusion and recommendations

The site owner proposes to rezone the subject land from Public Use Zone 2 Education to GRZ1. This is an appropriate zone if the land is to be sold because it broadly aligns with planning policy and will facilitate residential that respects the neighbourhood character of the area, encourages a diversity of housing types and growth in a well serviced area, and allows other land uses compatible with the surrounding neighbourhood.

The draft Amendment proposes to apply the EAO to a portion of the site. The land is potentially contaminated and is considered to have high potential for contamination as defined in *Planning Practice Note 30 – Potentially Contaminated Land* (PPN30). In the absence of an environmental audit it is appropriate to apply the EAO to the entire site.

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

Table 1 Existing and proposed controls

Current Planning Scheme controls	Exhibited planning scheme	Committee recommendation
Public Use Zone 2 Education	General Residential Zone Schedule 1	General Residential Zone Schedule 1
	Environmental Audit Overlay (eastern portion of the site)	Environmental Audit Overlay (entire site)

The Committee recommends:

- 1. Prepare and approve Mitchell Planning Scheme Amendment C162mith for 43 Delatite Road, Seymour to:**
 - a) Rezone the site to General Residential Zone.**
 - b) Apply the Environmental Audit Overlay to the entire site.**

2 Process overview

2.1 Process summary

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

Table 2 Proposal summary

Proposal summary	
Tranche	41
Site address	43 Delatite Road, Seymour
Previous use	Seymour East Primary School
Site owner	Department of Education
Proponent	Land and Property Group of the Department of Transport and Planning (DTP)
Council	Mitchell Shire Council
Exhibition	5 February to 19 March 2024, Engage Victoria website
Submissions	Four submissions: <ol style="list-style-type: none"> 1. Robert Wigg 2. Goulburn Valley Water 3. Environment Protection Authority Victoria 4. Mitchell Shire Council

Table 3 Committee process

Committee process	
Members	Lisa Kendal (Chair) and Debra Butcher
Information session	27 February 2024
Site inspections	4 April 2024 (Lisa Kendal), unaccompanied
Hearing	9 April 2024, by video conference
Appearances	Land and Property Group, Department of Transport and Planning (Proponent) represented by Joan Copland Mitchell Shire Council, represented by Justin Harding
Date of this Report	20 May 2024

2.2 Process issues

(i) Hearing process

The Committee wrote to parties on 21 March 2024:

- advising the Committee members nominated to consider the matter

- explaining the proposed process, draft directions and draft Hearing timetable
- providing an opportunity for parties to raise any procedural matters or comment on the draft directions or draft timetable by 27 March 2024.

No parties provided comment, and the Committee issued its final directions and the Hearing timetable on 2 April 2024.

(ii) The Environmental Audit Overlay

The Committee issued directions for the Proponent to address in its written submission (among other things):

...in response to the submission from the Environment Protection Authority Victoria (EPA) relating to application of the Environmental Audit Overlay:

- (i) explain how the proposal has had regard to current guidance including Ministerial Direction 1, Planning Practice Note 30 and the Planners Toolkit²
- (ii) explain the Proponent's response to issues raised in the submission, and details of any changes proposed to the Amendment in response (if any)
- (iii) seek and provide updated advice from the EPA on any proposed changes to the Amendment (if any).

In response, the:

- EPA provided a further submission to the Committee (Document 5) including its response to Committee directions, with attachments:
 - EPA submission dated 14 March 2024
 - DTP updated Explanatory Report in response to EPA submission
- Proponent provided a detailed response to issues raised by the EPA in its written submission (Document 6).

In closing the Hearing the Committee issued further directions for the Proponent as follows:

In the context of planning policy, the proposed planning provisions and planning guidance in relation to potentially contaminated land, the Proponent must, by **12 noon on Tuesday 23 April 2024**:

- provide an example of a special condition on title
- seek and provide updated advice from the EPA on:
 - the Proponent's updated Explanatory Report (Tabled Document 7), in particular whether it is satisfied with the response to 'other land uses'
 - example/s of comparable situations (if available) where the General Residential Zone and Environmental Audit Overlay are applied to land, and how potentially contaminated land for 'other land uses' is managed in circumstances where there is no permit trigger under other provisions of the Planning Scheme
- provide a response to the EPA's further advice, and details of any further changes to the Amendment
- provide a final version of the Explanatory Report showing tracked changes compared with the exhibited version.

In response to this direction, the Proponent provided an:

- example of a draft special condition on title (Document 10)
- updated Explanatory Report showing tracked changes (Document 11)
- email response from the EPA addressing the matters directed to it (Document 12).

² <https://www.planning.vic.gov.au/guides-and-resources/guides/all-guides/contaminated-land-and-planning>

3 Site constraints and opportunities

3.1 Planning context

The site is:

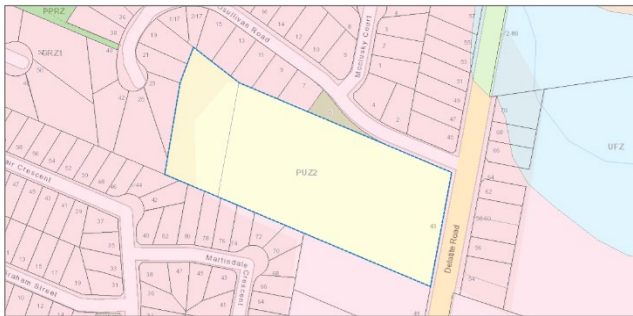
- zoned Public Use Zone 2 Education
- not subject to any overlays.

The surrounding land is zoned GRZ1 on all sides. Land further to west and north is zoned Urban Floodway Zone.

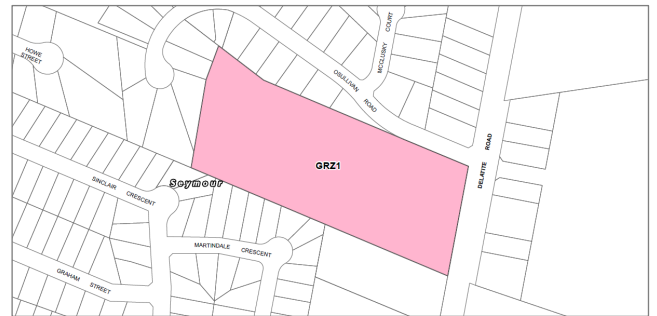
Figure 4 shows the current and proposed zonings.

Figure 4 Current and proposed zone controls

Current zoning



Proposed zoning



3.2 Site context and conditions

The site is located in a residential area on the eastern side of Seymour, and is approximately:

- 1.7 kilometres from the Anzac Avenue Activity Centre
- 2.5 kilometres from the Seymour Activity Centre
- 2 kilometres from both the Seymour Railway Station and Seymour College.

There are no buildings on the site. The land is mostly flat with scattered vegetation including canopy trees.

The site has interfaces with residential land on all sides. It has pedestrian access to the sports and recreation hub at Chittick Park, Seymour Sports and the Aquatic Centre, Seymour Tennis Complex and Chittick Community Place.

The site is identified as potentially contaminated land, as described by *Ministerial Direction No. 1 – Potentially contaminated land (MD1)*, due to the presence of two underground storage tanks located in the vicinity of the former school buildings and the use of pesticides and herbicides associated with former agricultural use. This issue is discussed in Chapter 5.1.

4 What zone is suitable?

(i) Submissions

The Proponent submitted that the Planning Report³ exhibited with the draft Amendment included a detailed analysis of why the GRZ1 was selected as the most appropriate zone. It said there had been no submissions objecting to the proposed zone.

Council submitted that if the land is to be sold on the private market it is appropriate to rezone it to GRZ1. It said Seymour is identified as an 'Emerging Regional Centre' in the Planning Scheme, and the site is an ideal location for residential growth, as envisaged in the Seymour Structure Plan 2018. It said the site:

- adjoins land zoned GRZ1 which is predominantly developed as a residential area
- is fully serviced and within the Seymour township boundary
- is located within walking distance of surrounding recreational facilities
- is flat, cleared land with several remnant native and exotic trees.

Council suggested a number of potential community and educational uses for the land.

One submitter said the land should be rezoned to address the housing crisis and provide higher density housing. No submitters objected to the proposed GRZ1.

(ii) Discussion

Rezoning the land to facilitate residential development is consistent with planning policy including:

- strengthening the role of Seymour as a regional centre
- providing an opportunity for more and diverse housing within the township boundary
- avoiding out of sequence development
- providing opportunities to improve connectivity to local facilities.

While the existing Seymour Structure Plan shown at Clause 11.01-1L-02 (Seymour) identifies the site as zoned for education, this reflects the current zone. The Committee is satisfied the rezoning is strategically justified, noting:

- Clause 74.02 (Further strategic work) includes preparation of the Seymour Structure Plan
- the letter from Council attached to the Proponent's submission advised it was in the process of reviewing the Seymour Structure Plan in the context of planning for an ultimate population of 20,000 people.

GRZ1 is an appropriate zone for the land. The site is well located in an existing residential area zoned GRZ1. Application of the GRZ1 will allow for use and development consistent and compatible with the surrounding neighbourhood.

(iii) Conclusion and recommendation

The Committee concludes GRZ1 is the appropriate zone for the land if it is to be sold.

The Committee recommends that Mitchell Planning Scheme Amendment C162mith be prepared and approved to:

Rezone the site to the General Residential Zone Schedule 1.

³ 43 Delatite Road, Seymour – Proposed Amendment C162mith to the Mitchell Planning Scheme, Harlock Jackson, August 2023

5 What overlays are appropriate?

5.1 Environmental Audit Overlay

(i) The issues

The issues are whether:

- potentially contaminated land has been adequately considered and assessed
- the draft Amendment, including the exhibited documentation, satisfies ministerial guidelines and planning guidance in relation to potentially contaminated land
- the EAO should be applied to the whole of the site.

(ii) Background

The exhibited draft Amendment proposed to apply the EAO to the eastern portion of the site.

Clause 13.04-1S (Contaminated and potentially contaminated land) seeks *“to ensure that contaminated and potentially contaminated land is used and developed safely”*.

MD1 applies to potentially contaminated land and seeks to ensure the land is suitable for a use which is proposed to be allowed under a planning scheme amendment and which could be significantly adversely affected by contamination. It includes a definition of potentially contaminated land and requirements that must be met in preparing a planning scheme amendment for potentially contaminated land.

For sensitive land uses, which includes residential uses, or for use of land as a playground or secondary school, MD1 requires that in preparing an amendment the planning authority must comply with the one of the following⁴:

- satisfy itself whether or not the land, or parts of the land, are potentially contaminated
- where it has determined that the land is not potentially contaminated, state the determination in the amendment Explanatory Report
- where it has determined the land, or parts of the land, are potentially contaminated, must state the determination in the amendment Explanatory Report and satisfy itself that the environmental conditions of that land are or will be suitable for that use.

MD1 states that when preparing an amendment which allows for sensitive uses, children’s playgrounds or secondary schools on land which is considered to be potentially contaminated, a planning authority must satisfy itself that the environmental conditions will be suitable, in one of the following ways:

- Before it gives a copy or notice of the amendment, by ensuring that an environmental auditor has issued a Preliminary Risk Screen Assessment (PRSA) statement stating that an environmental audit is not required for the uses.
- Before it gives a copy or notice of the amendment, ensure that an environmental auditor has issued an environmental audit statement stating that the land is suitable for the uses.
- Where a planning authority determines that complying with either of the above is difficult or inappropriate, defer the requirements of the above subclauses by applying an EAO or other appropriate measure.

⁴ Ministerial Direction 1 – Potentially Contaminated Land (15 August 2021)

PPN30 provides planning guidance on:

- how to identify potentially contaminated land
- the appropriate level of assessment of contamination in different circumstances
- appropriate provisions in planning scheme amendments
- appropriate conditions on planning permits.

PPN30 identifies the recommended assessment mechanism for a planning proposal (see Table 4).

Table 4 Recommended approach to assessing potentially contaminated land

Planning Proposal		Potential for Contamination	
		High	Medium
Uses defined in Ministerial Direction No. 1, the EAO, and clause 13.04-1S			
<ul style="list-style-type: none"> • Sensitive uses: Residential use, childcare centre, kindergarten, pre-school centre, primary school, even if ancillary to another use. • Children's playground • Secondary school 	New use, or buildings and works associated with a new use	A	B
	Buildings and works associated with an existing use	B	B
Other land use			
Open space Agriculture Retail or office Industry or warehouse	New use, or buildings and works associated with a new or existing use	C	D

Planning Scheme Amendment		Planning Permit Application
A	PRSA or audit option applies Proceeding directly to an audit is recommended.	PRSA or audit option applies Proceeding directly to an audit is recommended.
B	PRSA or audit option applies PRSA to determine need for audit is recommended.	PRSA or audit option applies PRSA to determine need for audit is recommended.
C	PSI to inform need for audit is recommended	PSI to inform need for audit is recommended
D	Planning authority to document consideration of potential for contamination to impact proposal	Responsible authority to document consideration of potential for contamination to impact proposal

Note: Where land is used for more than one purpose, the most sensitive land use should be used to inform the approach to determining if an audit is required.

Source: PPN30 Table 3 (July 2021)

Ministerial Direction 19⁵ requires planning authorities to seek the written views of the EPA in preparing a planning scheme amendment that “could result in use or development of land that may result in significant impacts on the environment, amenity and human health due to pollution and waste”. It requires that the views of EPA in relation to this Direction are also addressed in the Explanatory Report.

The following environmental assessments were exhibited with the draft Amendment:

- *Preliminary Environmental Site Assessment*, Senversa, 3 March 2015
- Stockpile sampling results, Senversa, split into three reports:
 - *Tank Sands and Stockpile Sampling Results* for locations Skip 1, Skip 2, Stockpile 3 and Stockpile 4 (29 June 2017)

⁵ Ministerial Direction 19 – Amendments that may result in impacts on the environment, amenity and human health

- *Stockpile 5 Sampling Results* (5 July 2017)
- *Stockpile 6 and Stockpile 7 Sampling Results* (5 July 2017)
- *Visual Inspection After Asbestos Removal Works*, EnviroProtect Pty Ltd, 30 May 2017 (EnviroProtect Report)
- *Soil Excavation Works and Groundwater Investigation*, Senversa, 15 August 2017
- *Environmental Advice Regarding Proposed Environmental Audit Overlay Application*, BlueSphere Environmental Pty Ltd, 9 July 2021 (BlueSphere EAO Advice).

The various reports confirmed that as a result of the previous use of the school site for grazing and subsequently as a school, the potential on-site sources of contamination primarily comprised:

- two underground storage tanks located in the vicinity of the former school buildings in the eastern portion of the site
- use of pesticides and herbicides associated with former agricultural use.

The EnviroProtect Report, related to demolition of building infrastructure at the site, confirmed that asbestos in school buildings had been removed, and no evidence of asbestos was observed in the BlueSphere EAO Advice.

The BlueSphere EAO Advice was prepared as a peer review of the earlier Senversa reports, and described them as follows:⁶

Senversa 2015 involved a Site history review, Site inspection, identification of contaminants of potential concern, and a targeted soil sampling program. The report is consistent with the scope of a Preliminary Site Investigation in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) (ASC NEPM).

Senversa 2017 involved a targeted soil remediation program associated with the removal of two underground storage tanks (USTs) and groundwater investigation to assess the condition of the groundwater in the vicinity of the USTs.

The BlueSphere EAO Advice concluded that, based upon the information presented in the two Senversa reports, the eastern portion of the site, which was formerly occupied by school buildings, would be classified as having 'high' potential for contamination (as defined in PPN30) due to the former presence of underground storage tanks (which have since been removed). On that basis, BlueSphere confirmed that to be consistent with MD1, an environmental audit would be required for the eastern portion of the site to support a planning scheme amendment that allows a sensitive use to be established.

The BlueSphere EAO Advice also concluded that the Senversa 2015 report demonstrated that the potential for contamination associated with the western portion of the site, which was formerly used as a school oval, was low. Accordingly, a PRSA or environmental audit was not considered to be necessary prior to any planning scheme amendment that allows a sensitive use on that land. Accordingly the BlueSphere EAO Advice was that an EAO should only be applied to the eastern portion of the site in the vicinity of the former school buildings.

This advice was reflected in the exhibited amendment material which as previously noted proposed the EAO only over the eastern portion of the site.

The current requirements associated with the management of contaminated land in Victoria are pursuant to the *Environment Protection Act 2017* (EP Act). The EP Act came into effect on 1 July 2021, with MD1 and PPN30 in their current format coming into play shortly after that date. Site investigations relating to land contamination were largely undertaken before introduction of the

⁶ BlueSphere EAO Advice, page 2

updated EP Act, and the BlueSphere advice was provided shortly after the new EP Act was introduced.

(iii) Submissions

Overview

Chapter 2.2(ii) of this Report includes details of directions issued by the Committee in relation to application of the EAO.

The Proponent provided three updated versions of the Explanatory Report:

- Explanatory Report (v1) that responded to the EPA's original submission (Document 6a)
- Explanatory Report (v2) that responded to the EPA's further submission (Document 7)
- a final updated Explanatory Report that responded to additional feedback from the EPA (Document 11).

The EPA provided three submissions:

- its original written submission
- its further submission (Document 5) in response to directions from the Committee to the Proponent with feedback on the Explanatory Report (v1)
- additional feedback (Document 12) in response to directions from the Committee to the Proponent with feedback on the Explanatory Report (v2).

EPA

The EPA's original submission commented on the exhibited material, including the Explanatory Report. The EPA submitted:⁷

- The application of the EAO to the eastern portion of the Site is not in accordance with guidance outlined in the Planners Toolkit. The EAO should be applied to the current cadastral area boundary (or entire Site). Alternatively, the steps outlined in the Planners Toolkit should be followed if proposing to define a new boundary for any audit system requirements.
- The reason for deferring audit system requirements has not been documented in the Explanatory Report. This should be clearly stated in the Explanatory Report, having regard to when the application of the EAO is considered appropriate, in accordance with Planning practice note 30 'Potentially Contaminated Land'.
- The Explanatory Report refers to a previous version of MD1 which has since been revoked. Whilst the Amendment commenced prior to 15 August 2021 (introduction of MD1, revocation of former direction) considerable time has lapsed and the Amendment should align with current policy and guidance.
- Consideration should be made to 'other land uses', as defined in Planning practice note 30 'Potentially Contaminated Land'. If these uses are proposed in future, the EAO would not trigger audit system requirements. Therefore, the planning authority should consider how this risk is to be addressed and ensure that potentially contaminated land is managed appropriately.

The EPA attached to its submission a summary of its written advice to the Proponent provided during preparation of the draft Amendment. The EPA's advice addressed the change in approach with the new EP Act, and said given the timing it had elected to apply "*discretion*" regarding alignment of the draft Amendment with the requirements of the new EP Act.⁸

⁷ EPA Submission (14 March 2024), page 3

⁸ EPA submission (14 March 2024), page 4

In response to directions from the Committee and considering the updated Explanatory Report (v1), the EPA said its issues relating to deferral of the audit and ‘other land uses’ had not been resolved (Document 5).

In response to directions from the Committee and considering the updated Explanatory Report (v2), the EPA provided additional feedback (Document 12) summarised as follows:

- In relation to ‘other land uses’, having reviewed its previous submission and post exhibition correspondence, the EPA said in this instance its previous position was disproportionate to the risk and that it is unlikely such uses would locate on the site. The exception to this is public open space which has its own set of requirements under Clause 7 of MD1, and the planning authority should address this accordingly (as relevant).
- In relation to the proposed use of a ‘special condition on title’, the EPA said the assessment required by the condition is not in accordance with the recommended assessment within PPN30.
- There have been occasions where provisions relating to audits have been drafted into other planning controls, and while the EPA administers the environmental audit system enacted by the EAO, it is DTP that provides guidance on appropriate planning tools.

The Proponent

In response to directions of the Committee and the EPA’s submission, the Proponent:

- proposed the EAO be applied to the entire site
- provided a final updated Explanatory Report (Document 11) which included:
 - reference the current version of MD1
 - provided further justification in relation to the deferral of the audit issues and its response to MD1 and PPN30
 - a ‘special condition on title’ requiring an environmental audit in the unlikely event that ‘other land uses’ (defined in PPN30 as open space agriculture, retail, office, industry and warehouse) are proposed on the site
- provided an example of the potential wording of a ‘special condition on title’ as well as an example of where a similar type of condition had been used on another property.

The Proponent submitted that due to changes to EPA policy:⁹

... the site was caught up in the transition to the new approach with emphasis on remediation. Deferring the audit through the EAO allows the audit to be undertaken at a more appropriate time, that being once future detailed land use and development plans are known. The site presents a lower level of risk from a contamination perspective, since initial remedial works are largely complete. However, further assessment that may be needed to satisfy an audit is difficult to appropriately scope without knowing the land use intentions of the entire site.

The final updated Explanatory Report (Document 11) explained the environmental audit was proposed to be deferred and that *“Sensitive use of the site will be subject to issuance of a planning permit which in turn will be subject to completion of the environmental audit”*.

Council

Council submitted that it supported application of the EAO to part of the site as exhibited. Council did not make any further submissions on this matter or contest the application of the EAO to the whole of the site as subsequently proposed by the Proponent.

⁹ Document 6, page 6

(iv) Discussion

MD1 defines potentially contaminated land as land:

- a) used or known to have been used for industry or mining;
- b) used or known to have been used for the storage of chemicals, gas, waste or liquid fuel (other than minor above-ground storage that is ancillary to another use of the land);

The BlueSphere EAO Advice dated July 2021, in conjunction with the earlier Senversa reports confirmed the presence of underground heating oil storage tanks on the site as well as the use of pesticides and herbicides associated with former agricultural use.

Accordingly, the Committee is satisfied that the site comprises potentially contaminated land.

MD1 and PPN30 require that where a planning scheme amendment allows sensitive uses on potentially contaminated land, a process under the environmental audit system must be required to demonstrate the land is suitable for its intended use. As shown in Table 4, for land with high potential for contamination, a PRSA or environmental audit applies. In the circumstance where it is considered difficult or inappropriate to meet environmental audit requirements, an EAO must be applied.

A key issue raised by the EPA was that the exhibited documentation did not satisfy ministerial guidelines and planning guidance as outlined in MD1 and PPN30. Specifically the EPA had concerns in relation to the deferral of audit requirements, how to deal with 'other land uses' and the extent of the proposed application of the EAO.

In relation to the issue of deferral of the audit requirements, PPN30 outlines three matters that should be considered where requirements under the audit system are to be deferred, as follows:

- Whether there is reasonable confidence that the land can be made suitable for its proposed use – i.e. that contamination will not preclude that use.
- Whether there will be a practical mechanism available to mitigate or manage any contamination identified during the environmental audit process (for example, through the design of the development).
- Whether there will be a subsequent planning approval required; this may afford an opportunity to include any restrictions on use or conditions on development recommended by the environmental audit.

The Committee is satisfied that these matters are all able to be satisfactorily addressed in relation to the site, noting:

- The main source of contamination, specifically the underground storage tanks, have been removed and the 2017 Senversa report concluded that the area around these storage tanks is not considered to present an unacceptable health or environmental risk under a future sensitive land use or to nearby surface water receptors.
- The future form of the development of the site is unknown. Given the size of the site and its intended future residential use and development, it is expected that should mitigations measures be required, such as development design, there will be flexibility to do so.
- There are likely to be a number of future planning approvals required for the site (most likely commencing with a planning permit for subdivision) that could include future restrictions required by an audit, if required.

Further, the issue of timing and transition to the new EP Act and the earlier acceptance by the EPA of the proposal to defer audit requirements by applying the EAO, did in part lead to the current situation where an audit has not yet been undertaken. The Committee accepts the deferral is justified in this instance.

While the Committee acknowledges the transition issue identified by the Proponent, the updated EP Act has now been in place for nearly three years. It is expected that for future sites, all contaminated land assessment work will reflect and respond to the current requirements of PPN30, including undertaking a PRSA or environmental audit where applicable.

In relation to the risk associated with 'other land uses' on the site raised by the EPA, the Committee makes the following observations:

- The Committee considers the site is unlikely to be used for 'other land uses' (comprising agriculture, retail, office, industry and warehouse) due to a range of factors including the planning policy setting, the proposed future zone, and the physical setting of the site in an established residential neighbourhood with extensive abutments to conventional density residential development.
- Whilst some of the land may well be used as open space in the future as part of a residential development, to use land for public open space purposes triggers separate requirements under MD1 and would also require a planning permit for subdivision to create a lot for open space purposes. It is unlikely the whole site will be used for open space or that the land could be used for open space purposes without triggering the need for an environmental audit.

If management of risks associated with 'other land uses' is a broader concern for the EPA it may wish to discuss options with the DTP as part of a separate review process.

The Committee does not comment on the merits of the Proponent's proposed use of a 'special condition' on title as a tool to manage 'other land uses' as this is not a Planning Scheme tool and is outside the remit of the Committee. However, if the Proponent chooses to proceed with such an approach it would be prudent to liaise with the EPA about the specific requirements of the condition.

In relation to the extent of the EAO across the site, the Committee supports the EPA view, and the Proponent's revised approach to apply the EAO to the whole site. This is consistent with the relevant directions and guidelines in relation to the application of the EAO typically extending to mapped cadastral boundaries except in extenuating circumstances.

(v) Conclusions and recommendation

The Committee concludes:

- The site constitutes potentially contaminated land and is considered to have high potential for contamination as defined in PPN30.
- For a site with high potential for contamination that is to be used for sensitive uses in the future, additional documentation under the environmental audit system, specifically an environmental audit, is required to satisfy MD1 and PPN30 requirements.
- It is appropriate to defer the environmental audit as proposed.
- In the absence of an environmental audit it is appropriate to apply an EAO.
- The EAO should be applied to the whole of the site.
- The Amendment satisfies ministerial guidelines and planning guidance, subject to the final version of the Explanatory Report (Document 11) being used for the Amendment.
- Potentially contaminated land has been adequately considered and assessed.

The Committee recommends:

Apply the Environmental Audit Overlay to the whole of the site.

5.2 Development Plan Overlay

(i) The issue

The issue is whether the DPO should be applied to the site.

(ii) Submissions

Council submitted the DPO should be applied to the land. It provided a draft DPO schedule and draft residential lot layout which included objectives relating to:

- development of residential and/or private community facilities
- facilitating a permeable road network
- protecting established vegetation
- facilitating lot layout that has regard to the existing pattern of adjoining development.

Council sought the application of the DPO to the site and an abutting parcel of land that it owns at 5 O'Sullivan Road (see Figure 5). It said 5 O'Sullivan Road:

- is zoned GRZ1
- is a 584 square metre cleared site
- is difficult to develop independently of the site due to the lot configuration
- provides an opportunity for additional connectivity in the area.

Council submitted it was difficult to achieve a permeable transport network on the site without access through 5 O'Sullivan Road. It considered access would improve active transport options to nearby Chittick Park which is a major recreational facility. It said a DPO was the most appropriate planning control to *“ensure a holistic development outcome for both sites and to be transparent on the expectations of a shared path connection being provided”*.

Figure 5 Location of 5 O'Sullivan Road, the site and Chittick Park



Source: Council submission, with Committee notations

The Proponent submitted that application of the DPO was not warranted and not justified. It said:

The proposed amendment has not been exhibited with the DPO and if this was to form part of the amendment, it would need to be re-exhibited. Crucially the DPO removes notice requirements and 3rd party review rights.

The Proponent explained it had corresponded with Council in relation to the issue in 2022, and had advised Council that:

- application of a DPO on the land was unduly onerous and not adequately justified
- the new owner of the land would be forced to acquire the Council land at a time and price that was uncertain
- the site has frontage to O'Sullivan Road and access can be provided on this road further east, which would also avoid an intersection opposite McClusky Court
- as the Responsible Authority, Council would have the opportunity to assess a planning permit application on its merits
- as the owner of 5 O'Sullivan Road Council would have the opportunity to negotiate with the owner of the site.

In response to a Committee direction to explain how the proposal considers protection of vegetation, as relevant, the Proponent said:

- the majority of trees were planted by the school
- Clause 52.17 (Native vegetation) applies to the site as the land is greater than 0.4 hectares
- Council can consider this when a planning permit application is lodged for the site.

(iii) Discussion

The Committee does not support application of a DPO on the site. The DPO schedule proposed by Council has not been strategically justified and is not warranted to achieve the design objectives sought by Council. Specifically:

- the Proponent has advised access to the site can be obtained further east along O'Sullivan Road
- access along O'Sullivan Road will satisfy the expectations for transport permeability and active transport and will broadly allow lot layout with regard to the existing pattern of development
- the DPO is not required for vegetation protection as this can be satisfied through a planning permit assessment process and if relevant Clause 52.17.

Further:

- future development options are not yet known and it is logical to ensure planning controls provide adequate flexibility
- it is not appropriate to remove notice and third party rights in the situation where the site is located in a residential neighbourhood, particularly when strategic work has not been undertaken to inform an appropriate overlay.

The site is relatively unencumbered and its future development is not yet known. Flexibility may be required to respond to development opportunities that are suitable in the residential neighbourhood setting. This can be appropriately achieved through application of the GRZ1 as discussed in Chapter 4.

(iv) Conclusion

The Committee concludes it is not appropriate to apply the DPO to the site.

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 June 2020.

The Committee currently consists of:

- Lead Chair: Lester Townsend
- Chairs: Tim Hellsten, Lisa Kendal, Alison McFarlane
- Deputy Chairs: Michael Ballock, Elissa Bell, Mandy Elliott, Annabel Paul
- Members: Brodie Blades, Debra Butcher, Geoffrey Carruthers, Sally Conway, Shannon Davies, Noelene Duff, Peter Edwards, Meredith Gibbs, Jonathan Halaliku, John Hartigan, Elizabeth McIntosh, Gabby McMillan, Michael Malouf, Rachael O'Neill, Kate Partenio, Cazz Redding, John Roney, Lynn Sweeney, Adam Terrill, Jessica Tulloch

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

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

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

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

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

Appendix B Document list

No.	Date	Description	Party
2023			
1	3 Dec	Letter of referral	Minister for Planning
2024			
2	21 Mar	Draft Panel Directions and Timetable	Planning Panels Victoria (PPV)
3	22 Mar	Notification report	Government Land Planning Service (GLPS)
4	2 Apr	Final Panel Directions and Timetable	PPV
5	4 Apr	Environment Protection Authority Victoria's further submission - Email enclosing EPA's response to Committee Direction 4.c)(iii), enclosing: <ul style="list-style-type: none"> a) EPA submission dated 14 March 2024 b) DTP updated Explanatory Report (v1) 	Environment Protection Authority Victoria (EPA)
6	5 Apr	Submission, enclosing: <ul style="list-style-type: none"> a) Updated Explanatory Report (v1) (same as Document 5b) b) Bushfire Planning Assessment – 43 Delatite Road, Seymour – 31 July 2019 (v1) c) Letter from Council to Harlock Jackson – 13 July 2022 d) Letter from Department of Treasury and Finance to Council – 24 August 2022 in response to 6c) 	Proponent
7	8 Apr	Updated Explanatory Report (v2)	Proponent
8	10 Apr	Further Committee Directions	PPV
9	10 Apr	Hearing presentation	Proponent
10	23 Apr	Example of special condition on title (TP969540X for CA2177)	Proponent
11	23 Apr	Final updated Explanatory Report	Proponent
12	24 Apr	EPA additional feedback on further directions and additional information on special condition on title	Proponent