

Government Land Standing Advisory Committee

Tranche 31 Report

67B and 67C McCurdy Road, Herne Hill

5 November 2021

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List of Abbreviations

AusNet	AusNet Services (AusNet)
DDO	Design and Development Overlay
DDO14	Design and Development Overlay Schedule 14
DPO	Development Plan Overlay
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
EAO	Environmental Audit Overlay
ESA	Environment Site Assessment
GLSAC	Government Land Standing Advisory Committee
MD19	Ministerial Direction 19
NRZ	Neighbourhood Residential Zone
NRZ8	Neighbourhood Residential Zone – Schedule 8
Pathway	Gabrielle Blythe Memorial Walk
Pipeline	High-pressure gas pipeline owned and operated by AusNet
planning scheme	Greater Geelong Planning Scheme
PPN30	Planning Practice Note 30 – Potentially Contaminated Land
PUZ4	Public Use Zone – Schedule 4 (Transport)

About this report

On 2 May 2021, the Minister for Planning referred 67B and 67C McCurdy Road, Herne Hill to the Government Land Standing Advisory Committee as Tranche 31.

This is the report under Section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 67B and 67C McCurdy Road, Herne Hill.



Jonathan Halaliku, Chair



Dr Meredith Gibbs, Member

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



Lester Townsend

5 November 2021

1 Summary and recommendations

1.1 The site

The site is in Herne Hill, a suburban area of Geelong.

The site is approximately two hectares (19,295 sqm) and is a long parcel of land consisting of 12 separate titles. The site owner proposes to consolidate all current titles before sale. The site owner will retain a small portion of the site on its western side which houses significant railway signalling infrastructure and a telecommunications tower that are still in use.

The site has frontages to McCurdy and Derby Roads, a direct interface with the Kevin Kirby Reserve, as well as interfaces with side boundaries of residential properties fronting Great Britain, Marlborough and Fraser Streets. The site has a direct interface with the rear of the Geelong West CFA station which fronts McCurdy Road.

Figure 1 67B and 67C McCurdy Road, Herne Hill



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 submissions, the Committee has been assisted by the information provided to it throughout the Committee process (see Appendix C: Document List).

Issues raised in submissions related to:

- continued use of the land as public open space
- retention of the pathway for public access
- impacts on the existing community gardens
- impacts of built form on the area, including on surrounding trees
- potential impacts of any future development on an existing high-pressure gas pipeline
- provision of social or affordable housing
- contamination of the site
- traffic impacts
- requirement for land to be reserved for an intersection upgrade.

1.3 Committee conclusion

The site owner proposes to rezone the subject land from the Public Use Zone – Schedule 4 (Transport) (PUZ4) to the Neighbourhood Residential Zone - Schedule 8 (NRZ8). The Committee agrees that this is an appropriate zone and schedule if the land is to be sold.

Further, the site owner proposed to apply the Design and Development Overlay - Schedule 14 (DDO14) and Environmental Audit Overlay (EAO) to the site. The Committee agrees that the application of these overlays is appropriate 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 Draft Planning Scheme Amendment (Greater Geelong C414ggee)	Advisory Committee Recommendation
PUZ4	NRZ8	Apply NRZ8
No existing overlays	DDO14	Apply DDO14
	EAO over part of the site	Apply EAO over the entire site

1.4 Recommendations

The Committee recommends that:

1. **A planning scheme amendment be prepared and approved for 67B and 67C McCurdy Road, Herne Hill to:**
 - a) **rezone the site to Neighbourhood Residential Zone (Schedule 8)**
 - b) **apply the Design and Development Overlay (Schedule 14)**
 - c) **apply the Environmental Audit Overlay over the entire site.**
2. **Consolidate all current titles and apply easements and a reserve as proposed by the site owner, before sale.**

2 Process issues for this site

2.1 Process summary

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

Table 2: Proposal summary

Proposal summary	
Tranche	31
Site address	67B and 67C McCurdy Road, Herne Hill
Previous use	Railway. The site has most recently been used as public open space
Site owner	VicTrack
Council	City of Greater Geelong
Draft Amendment	Greater Geelong Planning Scheme Amendment C414ggee
Exhibition	28 June to 6 August 2021
Submissions	54

Table 3: Exhibited planning scheme changes

Existing controls	Exhibited changes
Public Use Zone – Schedule 4 (Transport) (PUZ4)	Neighbourhood Residential Zone – Schedule 8 (NRZ8) (Incremental change areas)
	Design and Development Overlay – Schedule 14 (DDO14)
	Environmental Audit Overlay (EAO)

Table 4: Committee process

Committee process	
Members	Jonathan Halaliku (Chair) and Meredith Gibbs
Information session	13 July 2021 (by video conference)
Hearing	8 October 2021 (by video conference)
Site inspections	A site inspection was not possible due to COVID-19 restrictions
Appearances	The site owner (VicTrack) represented by David Bergin of Eighth Street Planning City of Greater Geelong represented by Susan Williamson AusNet Services represented by Steven Davis of Urbis Department of Transport represented by Jozef Vass
Date of this Report	5 November 2021

2.2 Process issues

Draft Amendment C414ggee to the Greater Geelong Planning Scheme (the Amendment) was exhibited with supporting reports and documents. However, it was brought to the Committee's attention via written submissions and at the Directions Hearing that the documentation did not identify an existing high-pressure gas pipeline located within the site and abutting its boundaries. The Committee directed the site owner to provide a survey plan showing the correct alignment of the pipeline as it relates to site boundaries, the shared path and other assets.

The Committee also directed the site owner, Council and AusNet Services to meet prior to the Hearing to engage in discussions and identify whether an amended policy or development control regime (or other changes to the Amendment) may be appropriate for the protection of the pipeline or other planning benefits. A record of those discussions were provided to the Committee for consideration (Document 1, Directions 1 and 2).

Discussions between the site owner, Council and AusNet Services were held on 22 September 2021 and subsequently the site owner circulated Document 10 which detailed the discussions and in-principle agreements reached at the meeting. These issues are discussed in Chapters 3.2(vi) and 4.1.1.

3 Site constraints and opportunities

3.1 Planning context

The site is currently zoned PUZ4, which reflects the now defunct land use as a railway servicing freight between the Fyansford Cement Works and North Geelong.

Figure 2 Current zoning



Figure 3 Proposed zoning



The residential hinterland to the north is zoned NRZ8. Further west is zoned General Residential Zone (Schedule 1). The NRZ8 across Herne Hill is accompanied by DDO14 which is designed to manage dwellings over 7.5 metres in height in areas with access to views.

3.2 Constraints and opportunities

(i) History of the site

The site formed part of the rail corridor that serviced the Fyansford Cement Works between 1918 and the early 2000s. Following the closure of the cement works, and the dismantling of the railway infrastructure in 2011, the site now forms part of an informal north/south open space network and shared path.

(ii) Current site conditions

The site is vacant of built form save for the telecommunications compound located on lot 1 TP250463X (fronting McCurdy Street). The frontage to McCurdy Road is approximately 330 metres. The Derby Road frontage is approximately 145 metres. The topography is generally flat with slight undulation west to east.

Submitters emphasised that the site currently functions as a shared path and informal open space that promotes pedestrian connectivity in the surrounding area. Submitters asserted that the site has evolved to serve an important recreation function that provides for a well utilised walking track.

(iii) Vegetation

Forty-four trees of varying species and significance are located on the site, primarily along the perimeters of the site. Towards the southern end, near Fraser Street, vegetation is scattered across the site along with several community garden beds.

An Arboricultural Assessment and Report prepared by TreeLogic was exhibited with the Amendment¹ and identified the following within the site:

- one tree (Tree 80) with an arboricultural rating of 'High' (being prominent landscape features in good condition with a comparatively long useful life expectancy)
- four trees (Trees 89, 127, 157 and 158) rated Moderate A (being better than typical)
- ten trees (Trees 44, 45, 82, 88, 91, 116, 132, 165, 167 and 169) rated Moderate B (being generally typical of the species)
- 18 trees (Trees 46, 47, 78, 84, 86, 140, 141, 142, 144, 145, 146, 147, 155, 156, 164, 166, 168 and 170) rated Moderate C (being lesser than typical)
- 12 trees (Trees 130, 131, 143, 153, 154, 163, 171-176) rated Low (being an unremarkable tree of low quality or little amenity value)

The report recommended:

The decision on which trees are to be retained or removed should be based on sound arboricultural advice and be guided by the arboricultural rating attributed to each tree which relates to the combined tree condition factors, including age, health, structure, useful life expectancy and retention value.²

(iv) Pathway

A shared user pathway known as the Gabrielle Blythe Memorial Walk (Pathway) is located on and abuts the site. The Pathway forms part of the broader Tom McKean Linear Trail and is a combination of constructed and unconstructed surfaces.

The Gabrielle Blythe Memorial Walk extends north from the southern portion of the site (Hyland and Fraser Streets) along the eastern boundary, past Kevin Kirby Reserve, and further north along the western verge of Derby Road.

The section of Pathway located on the site has been leased to Council since 1969. It was accepted that if the site is sold, the old lease would no longer provide protection for the continued use of the Pathway and that alternate arrangements for its continued use are required. Both the site owner and Council made clear their commitment for the Pathway to continue its operation. Much discussion was centred around the appropriate mechanisms (planning policy or otherwise) for continued public use of the Pathway.

¹ Arboricultural Assessment and Report – VicTrack Land at 67B, 67C, McCurdy Rd, Fyansford and 274A Church Street, Herne Hill – TreeLogic (9 April 2019).

² TreeLogic Report, page 3.

Figure 4 Gabrielle Blyth Memorial Walk (blue) and the site (red)



Source: Document 14 (Council submission)

Figure 5 Southern alignment of Pathway



Source: Document 14 (Council submission)

(v) Traffic and Hyland Street/McCurdy Road intersection

There are three crossovers constructed over the length of the McCurdy Road frontage. There are no crossovers along the Derby Road frontage. Some submitters, including Council, raised concerns about the introduction of new crossovers for the site.

McCurdy Road and Hyland Street are part of the arterial road network (C118 Fyansford – Corio Road, bus route and cycle network), and the McCurdy Road/Hyland Street intersection has been identified by the Department of Transport as potentially requiring an upgrade to a new roundabout. The potential upgrade to the T-intersection could impact land in proximity of the intersection.

(vi) Pipeline

A high-pressure gas pipeline (Pipeline) owned and operated by AusNet Services (AusNet)³ runs through the site (see Figure 6).

³ AusNet operates the pipeline a 350mm diameter, 2700KPa, under Pipelines Licence 80 issued under the *Pipelines Act 2005*.

Figure 6 Locality Plan of AusNet Pipeline



Source: Document 5 (Asset Survey)

AusNet has rights to enter onto the site to use, install, maintain, and upgrade the Pipeline under a licence granted by VicTrack.⁴ It was accepted that if the site is sold, the Pipeline would not be afforded any protection under the licence. It was also accepted that where the Pipeline is located in a road reserve, the Pipeline has utility rights under provisions of the *Road Management Act 2004* which provides protection for, and rights to access, the Pipeline within the road reserve.

(vii) Contamination

Policy requires planning authorities to ensure potentially contaminated land is suitable for its intended use and development and that contaminated land is used safely.

Given the long history of use as railway land, the site is considered to have a high potential for soil and groundwater contamination according to the Planning Practice Note 30 – Potentially Contaminated Land (DELWP, 2021) (PPN30).

A Preliminary Site Investigation and an Environment Site Assessment (ESA) concluded:

⁴ Clause 2.1 of the General License number 96/334 between AusNet Services and VicTrack.

- the former railway corridor and potential imported fill material have contamination above adopted human health investigation levels required for residential use and the redevelopment
- rezoning of the site for sensitive uses would be subject to remediation or site management protocols being established to ensure risks associated with identified contamination is eliminated or managed to acceptable levels.

The ESA concluded that the nature of remediation or management required for the site is of a complexity that warrants oversight by an environmental auditor.

(i) Social and affordable housing

Council has adopted the Social Housing Plan 2020-2041 which includes key 'directions' in the City's Settlement Strategy to:

1. Support affordable housing in areas suitable for urban consolidation.
2. Investigate model voluntary agreements, inclusionary zoning and development of surplus government sites to deliver social housing.
3. Work with State Government community housing and the private sector to deliver more affordable and social housing options.

The potential rezoning of land to a residential land use presents an opportunity to deliver social and affordable housing.

4 Issues with the proposed changes

4.1 What changes are proposed?

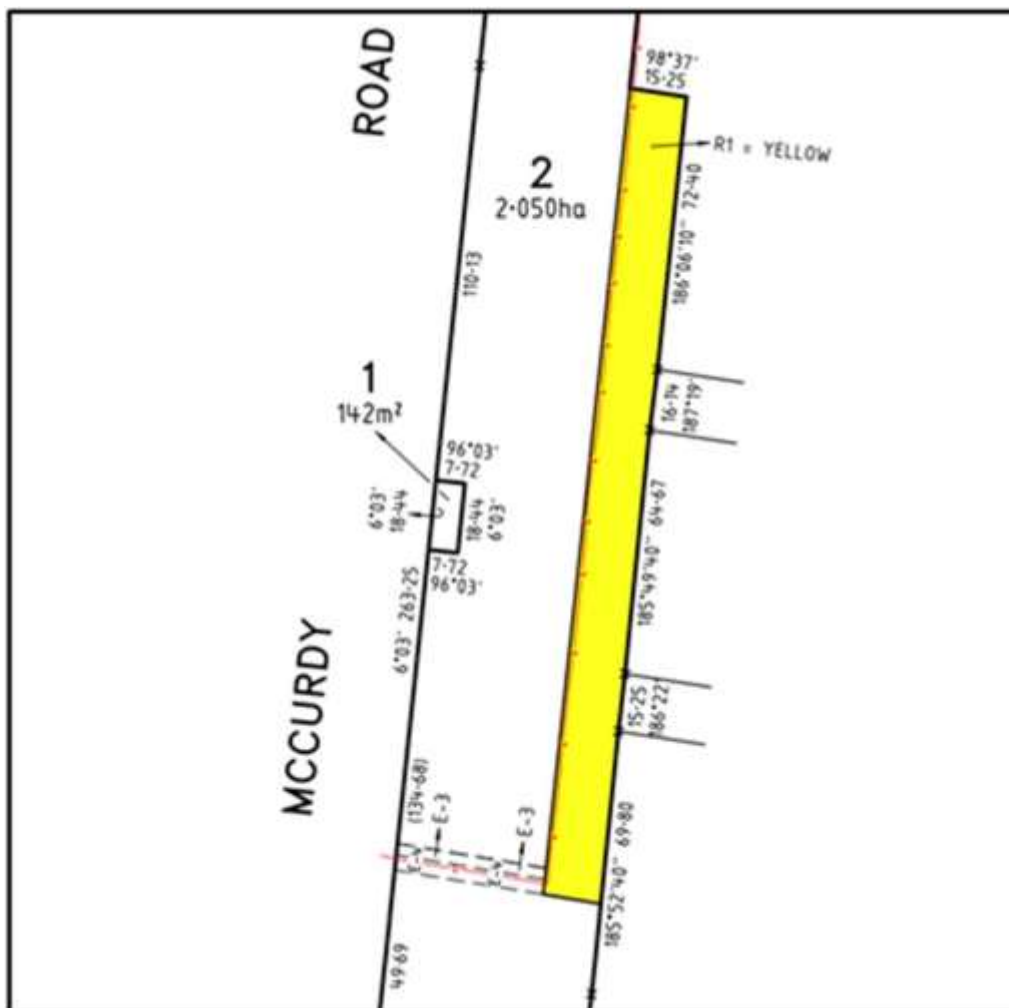
4.1.1 Pipeline

Submissions

The site owner submitted it would be appropriate to ensure that AusNet continues to have access to the Pipeline for maintenance and emergency works through a suitable legal mechanism. It indicated that it would provide, as part of the Plan of Subdivision for the consolidation of titles prior to sale of the site:

- an easement in favour of AusNet adjacent to the northern section of the Pipeline, on its western side (the eastern side of the Pipeline would be protected within the existing Derby Road, Road reserve)
- a road reserve as marked yellow on Figure 7
- an easement in favour of AusNet traversing the site east-west to McCurdy Road, following the existing Pipeline route and marked E-3 on Figure 7.

Figure 7 Proposed Road reserve and easement



The site owner referred to State policy Clause 19.01-3S (Pipeline infrastructure) which has the objective “To ensure that gas, oil and other substances are safely delivered to users and to and

from port terminals at minimal risk to people, other critical infrastructure and the environment” and the relevant strategy to:

Recognise existing transmission-pressure gas pipelines in planning schemes and protect from further encroachment by residential development or other sensitive land uses, unless suitable additional protection of pipelines is provided [emphasis added].⁵

The site owner submitted that the combination of road reserve and easements proposed is “suitable additional protection” for the Pipeline and as a result there is no need to recognise the Pipeline in the planning scheme. It also noted that AusNet is a determining referral authority in respect of any subdivision of the site (Clause 66.01).

AusNet submitted that the Pipeline is a high-pressure pipeline (2700 kilopascals) which is patrolled daily by AusNet and maintained in accordance with Australian Standards. It is protected under the *Pipelines Act 2005* (Division 3) and section 61(1)(b) of the *Gas Industry (Residual Provisions) Act 1994*. The *Pipelines Act 2005* states:

Section 118 Digging near pipeline

A person is guilty of an offence if the person carries out any excavation or bores or opens any ground within 3 metres of a pipeline without either obtaining the authority of the licensee or giving notice to the licensee in accordance with the regulations.

...

Section 120 Restriction on building on land near a pipeline

(1) A person must not construct a building so that any part of it is situated less than 3 metres from a point on the surface of the land whose position is vertically above a part of a pipeline below the surface unless the Minister has first consented to that construction.

AusNet submitted that only in the absence of an adequate easement would a planning scheme provision be required, and any easement created must be on the terms of the AusNet Gas Memorandum of Common Provisions MCPAA1261 (Document 13, page 3).

AusNet submitted the easements proposed by the site owner were inadequate because they were not wide enough, despite the fact that the site owner’s proposals met the statutory requirements (i.e., a proposed easement that allows for a minimum 3 metre clearance from the edge of the pipe), and that a planning mechanism is required for its protection (Document 19, page 7).

Discussion

The Committee considers that the site owner’s proposal of a combination of easements in favour of AusNet and road reserve provides suitable additional protection for the Pipeline and if this is achieved prior to sale, as proposed, there is no need to recognise the Pipeline in the planning scheme. The Committee notes that the exact nature of the easements (conditions of access, width and so on) are a matter for the parties to negotiate and does not make any comment other than to note that the site owner’s proposal meets the statutory requirements for clearance for the Pipeline.

4.1.2 Pathway

Submissions

The site owner submitted that it was committed to retaining the Pathway “by way of easement, restriction or other land title mechanism” in favour of Council (Document 18, page 19). It noted that retention of the Pathway was a condition of the ‘Land Clearance’ letter provided by the Department of Transport.

The site owner proposed that the Pathway would be protected in the same manner as the Pipeline, but with easements in favour of Council. The site owner submitted that once the Plan of

⁵ Document 18, page 16

Subdivision (Consolidation) was registered the road reserve would become an asset of the Council and Council would have power under section 12 of the *Road Management Act 2004* to discontinue the road, whilst retaining control of the reservation and allowing for its continued use as a shared user path.

Council generally supported the proposed alignment but differed slightly on the proposed mechanism, preferring a Council reserve rather than a road reserve. Council submitted the reserve and easements proposed should be wider.

AusNet submitted the Pathway should be offset by a minimum of 3 metres either side of the outer edge of the Pipeline, but it supported *“some limited encroachment of the path within 3.0 metres of the pipeline to the minimum extent possible and requests that ... the path not be designed to encroach for a continuous length of alignment”* (Document 19, page 3).

Discussion

The Committee considers that the site owner’s proposal for a combination of easements in favour of Council and road reserve provides appropriate protection for the Pathway and if this is achieved prior to sale, as proposed, there is no need for any recognition of the Pathway in the planning scheme. As with the Pipeline arrangements, the Committee considers that the exact nature of the easements (conditions of access, width and so on) are a matter for the parties to negotiate.

4.1.3 Traffic and intersection upgrade

Submissions

Several submitters expressed concern about the potential for increased traffic along McCurdy Road and the surrounding road network as a result of the development of the site. There was also concern around the impact of vehicle crossovers to Derby Road, particularly where they would cross the Pathway.

The Department of Transport submitted that part of the site would be required for a proposed upgrade to the McCurdy Road/Hyland Street intersection and sought through oral submissions at the hearing that the Road Zone should be applied to the portion of lots potentially impacted by an intersection upgrade (Submission 37). It provided early concept designs indicating the land that could be required for the upgrade.

At the Hearing, the Department submitted that traffic was already banking up on Hyland Street (turning left into McCurdy Road) and that there would be an expected 1,000 – 2,500 movements across the two-hour morning peak. These volumes were not anticipated when the sale clearance had been provided. Further, the Department of Transport submitted that Hyland Street and McCurdy Roads perform a redundancy role as an alternative route to Deviation Road (Hamilton Highway) for access from Geelong West to Fyansford.

The site owner submitted that the Department of Transport’s request for rezoning was made too late in the land disposal process and without evidentiary support, traffic data or otherwise. The site owner noted that the Department of Transport had provided clearance and support for the sale of the site in September 2018 without mention of the intersection upgrade and did not seek to purchase the site, or any part of it, during the ‘First Right of Refusal’ process in 2019.

Discussion

The Committee notes submitter concerns regarding the potential traffic impacts of the development of the site. However, no assessment of the traffic impacts of the proposed rezoning or of potential access points to the site was provided. No evidence of current or projected traffic conditions of the adjacent and surrounding road network was called. The Committee considers

that traffic impacts, including appropriate access points, can be adequately assessed at the permit application stage when further detail regarding development of the site is known.

4.1.4 Vegetation

Submissions

Many submissions were concerned about the potential loss of existing vegetation and the impact this would have on the character, biodiversity and the amenity of the site and its surrounds.

The site owner submitted that appropriate protections and assessment frameworks currently exist within the planning scheme, and together with the proposed zone and overlay controls, Council has sufficient tools to assess any future development proposals and their impacts on vegetation.

It referred to the following clauses within the planning scheme which it submitted would promote the retention and protection of significant vegetation as well as provide a sound assessment framework which subsequent permit applications would be tested:

- Clause 21.05 Natural environment
- Clause 55.01-1 Neighbourhood and site description
- Clause 55.03-8 Landscaping objectives
- Clause 56.01 Subdivision site and context description and design response
- Clause 56.05-1 Integrated urban landscape objectives.

It also noted that Clause 21.06-4 Neighbourhood Character has relevant strategies to:

- ensure that development is responsive to the established character of the area
- retain existing vegetation wherever possible, particularly vegetation that contributes to the municipality's tree canopy.

Council submitted that although there are a limited number of high value trees on site, the existing vegetation provides a great deal of amenity, both visually and “*the feel*” of the location. As a result, Council submitted that a specific planning provision was required to protect this amenity and that the retention of vegetation on site should not be left to the subdivision and planning permit process. Council submitted that a DDO should be applied that includes provisions regarding retention and integration of high value trees on site.

Submission 38 provided a detailed background and history of the community garden known as ‘Hilltop Garden’, stating that the garden is approximately 0.5 acres in size with existing mature trees and three community-planted garden beds (Submission 38, page 4):

A key aim in designing, creating, and managing the *Hilltop Garden* is revegetation ... The first deciduous trees were planted (crepe myrtles) and two garden beds were created in July-August 2019 (for a mix of herbs, vegetables, flowers, bulbs, perennials) ... A third garden bed was created in mid-2020, following removal of 3 oleander bushes which are poisonous and replaced with 4 coastal banksia trees (by local government officers). Additional deciduous trees (crepe myrtles, English oak) and fruit trees (apples, pears, plums, figs, pomegranate) have been planted in the garden. ... Seasonal produce is shared with community (e.g., rhubarb, artichokes, silverbeet, herbs). ... The garden's involvement provides an ongoing source of community engagement, shared learning, gardening advice, and a contribution to local heritage, events, and places.

Hilltop Garden members submitted (Submission 38, page 5):

The *Hilltop Garden* is providing a source of physical activity (using the trail path, walking in the garden), relaxation, overcoming social isolation, improving mental health/emotional wellbeing, facilitating a connection with nature, providing shade and cooling, entertainment of children by parents and grandparents, and offering refuge in nature during a crisis. For these

multiple reasons, the *Hilltop Garden* is highly valued by local community residents and visitors.⁶

The site owner acknowledged the existence of several garden beds located inside the site at its southern end near Fraser Street. After questioning by the Committee, the Council confirmed that these community gardens are not approved or supported by Council but are understood to have been created and maintained independently by the local community.

Discussion

Due to COVID-19 restrictions the Committee was unable to undertake a site inspection but was assisted by the site owner's submissions which included detailed photographs of the site and its vegetation.

The Committee agrees with the submissions of the site owner that much of the existing vegetation will be protected as a result of the proposed road reserve along the western edge of the site. The Committee considers that much of the amenity and habitat provided by the existing vegetation will therefore be retained.

The Committee notes that the majority of vegetation is located on the edges of the site and there are relatively few trees with an arboricultural rating of 'High' and 'Moderate A'. Nonetheless, the Committee accepts that the existing vegetation and mature trees, including the community gardens, provide considerable amenity and habitat.

Where vegetation exists outside the proposed reserve area, the Committee considers that the existing planning scheme policies and controls give Council sufficient discretion to ensure that any future development is undertaken in a manner that protects significant vegetation and maintains the amenity that the existing vegetation provides. No additional controls are required.

4.1.5 Social housing

Submissions

Council put to the Committee that the Amendment should include requirements for the site owner to undertake an assessment of social housing needs (a needs assessment) and further apply delivery mechanisms to the title (that is covenant or Section 173 Agreement) to ensure the delivery of social housing as a part of the rezoning process. Council advanced this suggestion based on the adoption Geelong's Social Housing Plan 2021 to 2041, and some supporting State and Local Planning Policy aspirations.

The site owner did not support a requirement for a needs assessment or the provision of mechanisms on title to deliver social housing as part of the process.

Discussion

While the Committee acknowledges Council's adoption of the Social Housing Plan, it is not clear on what statutory basis the requirement for a needs assessment is advanced. Currently, the planning scheme contains broad objectives to facilitate social housing in Clause 16 Housing and Clause 21.06-4 (Settlement and Housing). However, there is no clear statutory basis to require the site owner to provide a social housing needs assessment or to account for social and affordable housing as part of this rezoning exercise.

The application of social housing requirements should be accompanied with well resolved policy and supporting documents that provide clear direction for the methodology and quantum for determining the portion, type, and delivery of social housing on such sites. The planning scheme

⁶ Submission 38, page 5.

does not contain this guidance yet. In the absence of such direction, it is difficult for this Committee to extract or apply any clear methodology for testing or assigning a social housing quantum and therefore cannot make a recommendation to incorporate this provision.

In addition, the suggestion to apply covenants or Section 173 agreements on title as a delivery mechanism is outside the Terms of Reference of this Committee.

4.2 What zone is suitable

Submissions

Rezoning the site Neighbourhood Residential Zone (NRZ) was widely supported by parties to the Hearing. The site owner considered the NRZ to be the most appropriate zone as it *“would facilitate the highest and best use of the land, whilst also respecting the neighbourhood character with any future redevelopment of the site”*. The site owner submitted that the application of the NRZ was supported by the:

- pattern of the surrounding land use zoning
- inclusion of the land in an ‘Established urban area (Modest Infill Housing)’ in the Housing and Settlement Framework Plan in Clause 21.06
- existing zoning of the south-eastern portion of the land from Great Britain Street to Fraser Street.

The Committee was guided by the site owner through the general built form characteristics of Herne Hill, and the low scale, generally detached and lower density character of the area and was reminded of Planning Practice Note 91⁷ which seeks to apply the NRZ to areas where:

... there is no anticipated change to the predominantly single and double storey character... and to areas that have been identified as having specific neighbourhood, heritage, environmental or landscape character values that distinguish the land from other parts of the municipality or surrounding area.

Council supported the application of the NRZ primarily because it would be consistent with the zoning of the established surrounding residential area but also due to the zoning’s consistency with settlement and infill policies in the planning scheme having regard for NRZ’s propensity to deliver incremental change.

AusNet originally sought the application of the Public Use Zone 1 (services and utilities) to the land 5 metres either side of the pipeline. However, after discussions with other parties in the lead up to Hearing it withdrew this request.

The Department of Transport submitted that a combination of zones and overlays should be applied to the site, including rezoning land potentially impacted by a future upgraded intersection to a Road Zone 1. While the Road Zone suggestion was not pursued in detail by the Department in its written and oral submissions during the Hearing, it did refer to a *“potential”* DDO that could be drafted and applied to the land to meet the Department needs should they be realised. A draft DDO detailing the Department’s objectives was not tabled to assist the Committee.

A smaller portion of submitters sought the application of a publicly zoned *“green zone”* or public open space to protect the informal recreation space that has evolved since the dismantling of railway infrastructure, and the application of a zone to ensure the ongoing use of the Pathway. None of these submissions were advanced by parties at the Hearing.

⁷ Planning Practice Note 91: Using the residential zones (DELWP - December 2019)

Discussion

The Committee is not satisfied that the Department of Transport's request for rezoning a portion of land around the Hyland Street/Derby Road intersection was supported by empirical data or evidence demonstrating its need or that the design of the proposed intersection is certain. Preliminary concept plans for a roundabout dated September 2021 were provided to the Committee only upon request and without supporting data outlining empirical need. In this instance, the Committee is not minded to recommend rezoning to include a Road Zone 1 to portions of lots abutting the intersection.

Given the closure of the Fyansford Cement works and the redundancy of the railway connection, the site now stands as an anomaly against the surrounding residential fabric. It is reasonable and strategically supported throughout the layers of the planning scheme that the site serves an infill housing purpose and contribute to the incremental change envisaged in the surrounding area.

The Committee is satisfied that the land west of the Hyland Street/McCurdy Road intersection represents a logical demarcation between General Residential Zone (west) and NRZ land (east), and that the NRZ, its objectives and decision guidelines are appropriate for guiding development within this area.

The NRZ presents a logical zone to apply to the site given the surrounding zoning regime and the Committee agrees with the site owner and Council that rezoning is supported by the site's inclusion in an 'Established urban area (Modest Infill Housing)' in the Housing and Settlement Framework Plan in Clause 21.06.

Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved to:

Rezone the site to apply the Neighbourhood Residential Zone.

4.3 What zone schedule is appropriate

Submissions

The site owner advanced Schedule 8 (incremental change areas) to the NRZ for similar reasons to the application of the NRZ broadly (that is the pattern of surrounding zoning and consistency with the Local Planning Policy Framework) but reiterated the merits of the Schedule including:

- incremental change aspirations tempering future development in accordance with existing and preferred neighbourhood character
- the greater private open space provision compared to Clause 54 and 55
- the mandatory subdivision requirement within Clause 6.0 of the Schedule that requires the provision of a development application or approved planning permit for a site for the construction of dwellings on lots being created less than 500 square metres.

The site owner submitted that the Schedule provides appropriate performance standards and application requirements that will ensure the low scale existing and preferred character of the area will be protected upon subsequent permit applications under a new zone.

Discussion

The Committee notes that the application of NRZ8 was not opposed by parties to the Hearing and there appeared to be a consensus to its appropriateness. While this is not a strategic planning test in itself, it is indicative of its appropriateness in this context.

The Committee is satisfied that the Schedule includes adequate performance standards and application requirements to ensure Council has, together with the existing policy provisions of the

planning scheme, an appropriate assessment framework for future development applications that would focus on the protection of the existing, and achievement of the preferred, character of the area.

NRZ8 provides elevated application and ResCode requirements that when read in conjunction with the purposes to the parent provision, present as a well-conceived and complementary zone package appropriate for the site.

Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved to:

Rezone the site to apply Schedule 8 to the Neighbourhood Residential Zone

4.4 What overlays are appropriate

4.4.1 Design and Development Overlay

Submissions

The site owner advanced the DDO14 for similar reasons to the NRZ8 in:

- the alignment of surrounding land applying the DDO14
- to ensure that the siting, height, and visual bulk of future dwellings achieves a reasonable sharing of views between properties to significant landscape features of the surrounds.

The site owner was absolute in its promotion of the zone and overlay regime and submitted that the site should not be disproportionately regulated given it is a relatively small site. In other words, its submission was that the DDO14 (and zone combination) in its exhibited form, together with the layers of the existing policy framework in the planning scheme, are sufficient to guide the future development of the site, and an additional or amended DDO is unwarranted. It submitted:

... the Greater Geelong Planning Scheme has numerous local policies, schedules, and particular provisions to ensure any future development is sympathetic and respectful to the existing neighbourhood character, vegetation, and interface with adjoining properties.⁸

Council supported the application of the DDO14.⁹ However, Council further submitted that another DDO should be applied which would contain the following elements:

- direction on creation of a reserve for the pathway
- direction on re-routing the east-west section of the pathway to connect with Hyland Street
- retention and integration of high value trees on site
- restriction of access to the development site to McCurdy Road
- fencing treatment along the reserve in the section between Great Britain Street and Fraser Street
- stormwater management requirements.

The Department of Transport submitted¹⁰ that an amended DDO should be applied to the site and include:

- the intersection at Hyland Street and McCurdy Road
- any proposed new vehicular access to McCurdy Road
- the treatment of development abutting the Ted McKean Linear Park
- possible improvements or realignments of the Tom McKean Linear Park to better connect with the existing shared path on Hyland Street

⁸ Document 18, page 11.

⁹ Document 17, paragraph 74.

¹⁰ Document 20, slide 6.

- pedestrian connections to existing bus stop on McCurdy Road
- the relationship between bus stop infrastructure and the path layout to reduce potential conflicts.

AusNet did not oppose the application of DDO14 however sought increased protection for the Pipeline from the siting of future built form. It submitted the following alternate Development Plan Overlay (DPO) option:

In the absence of an easement on the Certificate(s) of Title, we respectfully submit that the Development Plan Overlay is an appropriate option for the Standing Advisory Committee to consider and that the rezoning of the subject land should include a Development Plan Overlay (DPO) which aims to ensure that future development appropriately manages and protects the interface treatments to the HPGP (*High Pressure Gas Pipeline*).¹¹

Ultimately each of the parties appearing at the Hearing sought the addition or refinement of a DDO for differing reasons.

Discussion

The Committee notes the range of written and oral submissions from parties about the type and form of additional planning controls that should be applied to the site. These submissions spoke to the increased control and guidance that parties suggested were appropriate in this context. The reasons for a new or amended DDO were put forward on the basis of considering:

- future built form and siting
- protection of the Pipeline
- continued delivery of the shared user path
- vegetation protection
- stormwater management
- the Hyland Street/McCurdy Road intersection.

Particularly, it was put by Council that a newly crafted, additional DDO should address a range of stormwater management, tree protection, access, and the continued delivery of the shared user path issues. However, there was no empirical assessment presented to the Committee demonstrating such issues existed beyond the standard contextual considerations for infill development, and that require a new, additional DDO.

Similarly, little detailed rationale or methodology for the content or application of a new DDO was advanced by the Department of Transport. Ultimately, the Committee was not assisted by the absence of a drafted alternative DDO for it to consider.

Although the site has a range of contextual considerations that will need to be considered in future development applications, the Committee considers that they are no greater in number or complexity than other similarly sized infill development sites. That is, the site is not of the size and complexity that would warrant layers of siting and design regulation beyond that which already exists in the planning scheme. It is the Committee's view that the planning scheme, its background documents, and referral mechanisms, provide a sound assessment framework for future development applications without the need to draft and apply a new DDO.

The Committee is not persuaded that a DDO is required for the protection of the Pipeline. As discussed in Chapter 4.1.1, the Committee considers that the site owner's proposals to protect the Pipeline, together with the fact that AusNet retains a Determining Authority status under Clause 66 (Referrals and notice provision) of the planning scheme, is an appropriate response to Clause 19.01-3S and the *Pipelines Act 2005*.

¹¹ Paragraph 38, AusNet Services submission

The detailed solutions for the creation of new and connection of existing easements, the transition of easements to road reserves and mechanisms to support the ultimate gifting of land required for the Pathway to Council provide a pragmatic approach to balancing the needs of Council, AusNet and the site owner without unreasonable impediment of additional layers of planning controls.

The Committee is satisfied that the exhibited DDO14 is an appropriate overlay and schedule to apply to the site and one that works in unison with the proposed NRZ8 development objectives; it is consistent with the surrounding controls and their purpose to deliver reasonable sharing of views between properties to significant landscape features.

Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved to:

Apply the Design and Development Overlay Schedule 14.

4.4.2 Environmental Audit Overlay

Submissions

The site owner submitted that it is appropriate to apply the EAO because:

- the site has previously been used as an active railway yard
- is within the list of uses with a high potential to contaminate land under PPN30
- the Amendment would rezone the site to allow sensitive uses (residential uses, childcare centres, kindergartens, pre-school centres or primary school).

The site owner further submitted that it was not appropriate to undertake an environmental audit at this stage of the process and an audit could be undertaken by a future owner of the site. The site owner referred to PPN30 which states:

Applying the overlay ensures the requirements will be met in the future but does not prevent the assessment and approval of a planning scheme amendment [emphasis added].

The Environment Protection Authority Victoria (EPA) submitted that application of the EAO was appropriate based on the preliminary site assessment information and the proposal to rezone the site to a residential zone. The site owner had sought the early views of the EPA in accordance with Ministerial Direction 19 (MD19).¹² The EPA supported the application of the EAO as consistent with MD19 and required due to the complex nature of remediation and management that could be required for the site. This position was confirmed in the EPA's submission dated 5 August 2021 (Submission 50).¹³

Council supported the application of the EAO.

Submission 38 raised concern about the identified contamination of the site and how it would be remediated.

Discussion

The Committee agrees with the site owner's submission and the position of the EPA that the application of the EAO is appropriate to ensure that potential land contamination matters are addressed prior to a sensitive use, or related building and works, commencing on the site.

The Committee notes that the EAO as exhibited does not appear to cover the entire site. The western edge area of the site from the southern edge of the Kevin Kirby Reserve to the southern

¹² Which requires planning authorities to seek early advice from EPA when undertaking strategic planning processes that may significantly impact Victoria's environment, amenity and/or human health due to pollution and waste

¹³ Note that between the EPA's initial response and the lodging of its formal submission, the *Environmental Protection Act 2017* came into force. The EPA's position did not change and took into account the new Act and updated MD1, MD19 and PPN30.

edge of the site where it meets Fraser Street (effectively the area that would be the continuation of Derby Road and where the Pathway is located) is excluded from the EAO, as shown in Figure 8.

Figure 8 Proposed EAO map (as exhibited)



No submissions were received on this point and the Committee notes that the exclusion of the western edge could have been a drafting error.

The Committee notes the entire site has been previously used for railway purposes and the reasons given in the Environmental Site Assessment for the application of the EAO (the nature of remediation and/or management required for the site is of a complexity that warrants oversight by an environmental auditor) apply equally across the whole of the site.

The Committee considers, therefore, that the EAO should apply to the whole of the site.

Recommendation

The Committee recommends that a planning scheme amendment be prepared and approved to:

Apply the Environmental Audit Overlay over the entire 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 May 2020.

The Committee currently consists of:

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

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

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

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

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

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

Appendix B List of submitters

No.	Submitter
1	Riley Ellett
2	Wadawurrung Traditional Owners Aboriginal Corporation
3	Stephen Davey
4	Maryann Stares
5	Brett Pearce
6	Neville Pearce
7	Rebecca Sahr
8	Brigid Green
9	Barwon Water
10	Sally-Ann Muller
11	Carly Faulkhead
12	Jennifer Robe
13	Jake Veale
14	Maree Hines
15	Brigitte Russell
16	Rebecca Godycki
17	Pauline Clancy
18	Melissa Stark
19	Dean Staley
20	Zander Kaufmann
21	Brooke Veale
22	Jayne Macbeth-kirton
23	Skye Eagles
24	Andrew Westcott
25	Bernice Mills
26	Leanne Jones
27	Michael Menzies
28	Erica Hunt
29	Sue & John O'Shea
30	Rebekah De Grandi
31	Kathryn Anderson
32	Christopher Tobias Arnott
33	Serena Beaulac
34	Lauren Codd

35	Giselle Allsopp
36	City of Greater Geelong
37	Department of Transport
38	Ms Janet Novak and Dr Anita Peerson – Hilltop Garden
39	Lisa de Groot
40	Kristy Bolton
41	Jeanette Anderson
42	Jennifer Gray-MacIntosh
43	Janet Novak
44	AusNet Services
45	Community Gardens Australia
46	Friends of Kevin Kirby Reserve Incorporated
47	Susannah Scott
48	Mark Roberts
49	Lavinia Edith Owen
50	Environment Protection Authority
51	Country Fire Authority of Victoria (withdrawn)
52	Amanda White
53	Downer Utilities Australia Pty Ltd
54	Gail Griffin

Appendix C Document list

No.	Date	Description	Provided by
1	14.09.21	Committee Directions	Planning Panels Victoria (PPV)
2	24.09.21	Titles and plans of subdivision for all affected lots	VicTrack
3	“	Feature and land survey	VicTrack
4	“	Boundary Re-establishment Survey	VicTrack
5	“	Asset Survey	VicTrack
6	29.09.21	Department of Transport submission to Department of Environment, Land, Water and Planning (dated 28.07.21)	Department of Transport (DoT)
7	“	Hyland Street – McCurdy Road, Fyansford roundabout functional design	DoT
8	“	Hyland- McCurdy footprint plan	DoT
9	04.10.21	Written response to Committee Direction 9	VicTrack
10	“	Summary of meeting notes and agreements in response to Committee Direction 2	VicTrack
11	05.10.21	Title Searches and Plans for Parcels: a) 1/TP250463 b) 2/TP960127 c) 1/TP686999 d) 1/TP956314 e) 1/TP960125 f) 1/TP968470	DoT
12	“	Email responding to Committee Direction 5 and enclosing: a) The Social Infrastructure Plan 2020-2023 b) Cycling and Trails Network Report c) Shared Trails Network Master Plan (March 2020) d) Extract from <i>About Corayo: A Thematic History of Greater Geelong</i> e) Combined historical plans showing location of Fraser Street and references to its closure f) Geelong 1864 – Balding Plan g) Image of Fraser Street h) Cement Lining of Water Main	City of Greater Geelong (CoGG)
13	06.10.21	Submission from AusNet Services in response to Direction 11	AusNet Services
14	“	Deed of Renewal of Licence	AusNet Services
15	“	General Gas License	AusNet Services

No.	Date	Description	Provided by
16	“	Memorandum of Common Provisions	AusNet Services
17	“	Submission from Council in response to Direction 10	CoGG
18	07.10.21	Submission from VicTrack enclosing attachments: a) Proposed Planning Scheme Controls b) Photos of Site and Surrounds c) Map Book of Site and Surrounds	VicTrack
19	“	Submission from AusNet Services	AusNet Services
20	“	Department of Transport hearing submission	DoT
-----Hearing Commencement (08/10/2021)-----			