

Planning and Environment Act 1987

Advisory Committee Report

Rosemaur Gallery Proposal Harkaway

Draft Amendment Casey C273case

12 May 2021

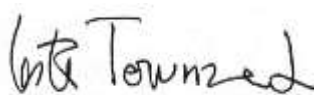
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Advisory Committee Report pursuant to section 151 of the PE Act

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12 May 2021



Lester Townsend, Chair



Jonathon Halaliku, Member



Kate Partenio, Member

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Glossary and abbreviations

Term	Meaning
AUD	Australian Dollars
BEMP	Bushfire Emergency Management Plan
BMO	Bushfire Management Overlay
BMS	Bushfire Management Statement
CFA	Country Fire Authority
Council	Casey City Council
DELWP	Department of Environment, Land, Water and Planning
ESD	Environmentally Sustainable Development
FGGW	Friends of the Glenfern Green Wedge
GWAZ	Green Wedge A Zone
GWZ4	Green Wedge Zone – Schedule 4
PE Act	<i>Planning and Environment Act 1987</i>
SLO1	Significant Landscape Overlay – Schedule 1
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

Amendment summary

The draft Amendment	Draft Amendment Casey C273casecase to the Casey Planning Scheme
Common name	Rosemaur Gallery Advisory Committee
Brief description	Draft amendment C273 seeks to apply specific controls to 193-209 King Road, Harkaway, to facilitate the use and development of an exhibition centre (art gallery), function centre, restaurant and two dwellings known as the 'Rosemaur Gallery'
Subject site	193-209 King Road, Harkaway
The Proponent	Rose and Maurice Hogg Gallery Ltd
Referral to the Committee	9 November 2020
Consultation	21 September to 6 November 2020
Submissions	Number of Submissions: 521 submissions (See Appendix B)

Advisory Committee process

The Advisory Committee	Lester Townsend (Chair), Kate Partenio and Jonathan Halaliku
Directions Hearing	26 November 2020 by video conference
Advisory Committee Hearing	1, 2, 3, 9, 10, 11, 12, 15, 16, 17, 18, 22, 23, 24 and 25 March 2021 by video conference
Site inspections	Partially accompanied on 23 February 2021
Parties to the Hearing	See Appendix C
Citation	Casey Planning Scheme PSA C273case [2021] PPV
Date of this Report	12 May 2021

Executive summary

The 'Rosemaur Gallery Advisory Committee' (the Advisory Committee) was appointed pursuant to Part 7, section 151 of the Planning and Environment Act 1987 (PE Act) to report on the proposed use and development of an exhibition centre (art gallery), function centre, restaurant and dwellings known as the 'Rosemaur Gallery' at 193-209 King Road, Harkaway.

The purpose of the Advisory Committee, as set out in its Terms of Reference is:

2. ... to advise the Minister for Planning on all relevant planning matters associated with the proposed use and development, and the suitability of the planning controls proposed to be introduced by Casey Planning Scheme Amendment C273case to facilitate the proposal.

The 'Rosemaur' art collection is significant; Creative Victoria advised:

The state is fortunate to be able to consider the opportunity for a gallery to be constructed and contain the Rosemaur collection without public financial contribution.

It is proposed to permit the use and development of the site by an incorporated document under the Specific Controls Overlay.

There is clear policy support for cultural facilities, but the site the proponent has chosen presents a number of policy and merits concerns. There were a significant number of objections opposed to the proposal.

Several submissions suggested alternative sites. The Proponent is seeking to do something on 193-209 King Road and the task of the Advisory Committee is to consider the proposal on this site. The fact that some submitters think that other sites may be more suitable is not a relevant consideration for the Advisory Committee.

The nature of the collection was discussed. The cultural significance of the collection of the proposed art gallery and the accessibility of that collection is a relevant planning consideration and can be seen as the main strategic justification for the Amendment.

The subject site is an attractive site in the green wedge, and the proposal is conceived to have an intrinsic connection to the surrounding green wedge. Considering the relevant policy, the Advisory Committee concludes that an art gallery with a significant collection is consistent with green wedge policy, but the policy of this part of the green wedge means that particular attention needs to be paid to offsite effects.

The Advisory Committee concludes that the Incorporated Document has appropriate requirements to ensure that the gallery has access to a significant art collection and displays its collection.

Many submissions questioned the significance of the collection – the detail of which are not public – and the motives of the current owner of the collection, Mr Lindsey Hogg.

A charitable structure has been established to manage the collection – this is unremarkable and an established way to manage such collections. The fact that the collection will be owned by the charity and not a state or local government entity is not a relevant planning consideration. In terms of criticism of the nature of the gift to the people of Victoria, the Advisory Committee has concluded that the 'gift' to the people of Victoria is the ability of people to experience the art collection.

While the site is exposed to some bushfire risk, expert evidence and the CFA conclude that these risks are adequately dealt with.

The architectural quality of the proposal is of a high standard. The buildings are proposed to fit into the natural topography and vegetation of the site and broader Casey Foothills. The Proponent's Visual Impact Assessment demonstrates the minimal visual impact of the design. The rural green wedge setting is appropriately acknowledged in the site design with large open areas for wildflowers, protection of existing on-site native trees, and garden paths.

The built form of the proposal is consistent with green wedge policy, but the landscape proposal needs further detail and refinement. The site can deliver an attractive development consistent with green wedge policy.

Examining the proposed usage patterns and car parking supply it appears to the Advisory Committee that the overflow car park may be used more often than expected by the planners unless maximum patron numbers are further limited. The overflow car park is not appropriate for regular use and patronage limits should be modified to control this.

No consideration of the adequacy of the bus parking provision has been given and a traffic report should be prepared to inform this requirement.

The proposal will need to upgrade King Road. The upgrade would allow King Road to accommodate traffic associated with the proposal of up to 580 patrons at any one time. An upgraded King Road would not support the proposed major events as the site has made limited allowance for bus parking.

The upgrade on King Road could maintain its rural character taking into account the number of trees that might need to be removed.

The existing equestrian trail along King Road is an important community asset and should be retained. Should the development proceed, the existing on-road equestrian trail will need to be changed to an off-road trail. A constructed off-road trail should be provided to cater for horses, pedestrians and cyclists.

Noise and light spill impacts can be adequately controlled by conditions dealing with hours of operation, patron limits and related matters.

There will be some amenity impacts on the Harkaway Village, however for the typical daily events and quarterly exhibition openings this could be reasonably acceptable to accommodate a state significant art collection in the area, subject to a reduction in the maximum permissible patronage for typical days.

It is proposed to allow for three major events each year. No evidence was provided to support the inclusion of conditions allowing major events with over 580 patrons at any one time.

The three major events per year are likely to have a significant unacceptable impact on the Harkaway Village and community.

It is appropriate to permit the removal of native vegetation along King Road as part of the approval for the proposal.

Recommendations


Based on the reasons set out in this Report, the Advisory Committee recommends that the Minister for Planning approve an amendment to the Casey Planning Scheme to:

1. Facilitate the establishment of the Rosemaur Gallery at 193-209 King Road, Harkaway by:
 - a) Applying the Specific Control Overlay (Clause 45.12) to 193-209 King Road King Road.
 - b) Incorporating '*Rosemaur, 193-209 King Road, Harkaway, Incorporated Document, XXXX 2020*' as shown in Appendix F.
2. Remove the need for a planning permit for the removal of native vegetation along King Road subject to the conditions of the *Incorporated Document* by including King Road in the Special Control Overlay or the Schedule to Clause 52.17.

1 Introduction

1.1 The proposal

(i) The site

The Amendment applies to 193–209 King Road, Harkaway, shown as  in Figure 1, an 8.0-hectare site at the eastern end of King Road approximately two kilometres east of the centre of Harkaway and at the intersection of Hilden Drive. It is just under 4.5 kilometres northeast of Berwick as the eagle flies.


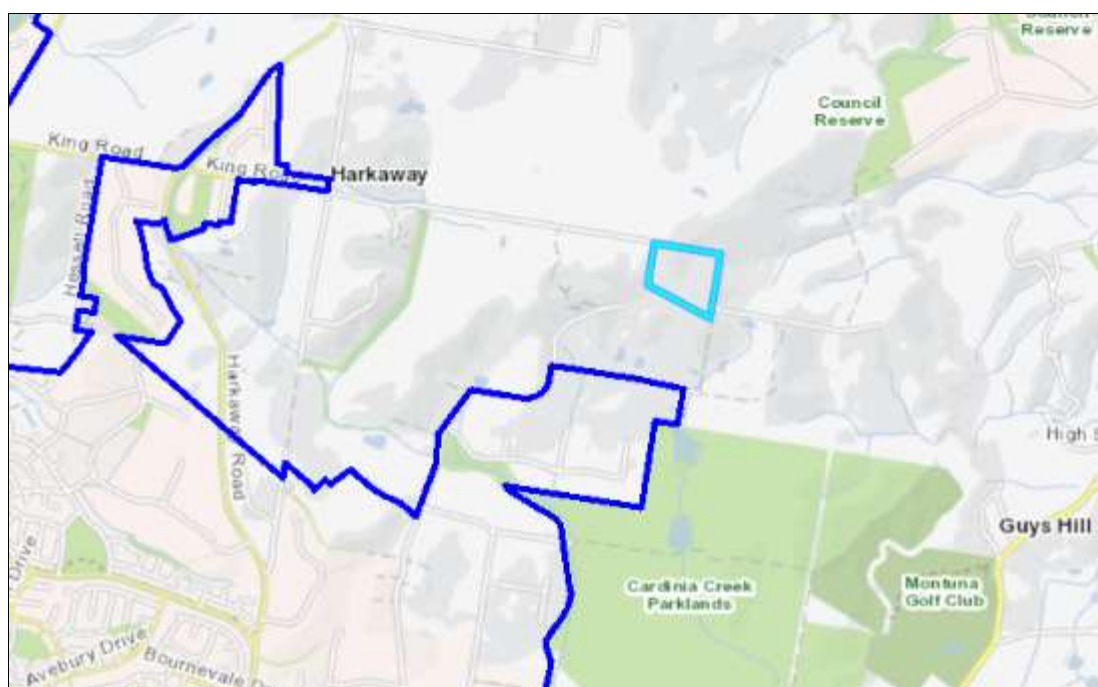
The site is outside the Urban Growth Boundary, , and zoned Green Wedge A Zone – Schedule 4 (GWAZ4). It is also covered by the Significant Landscape Overlay – Schedule 1 (SLO1) and partly covered by the Bushfire Management Overlay (BMO).

Figure 1: The site



The site is vacant green pasture with a northwest to southeast slope of approximately 50 metres. There is a dam on the east boundary of the site, along Hilden Drive.

There are 15 trees on the site. Two trees are deemed to be of high retention value and are identified as Tree 1 – a mature *Quercus robur* (English Oak) and Tree 7 – a mature *Eucalyptus viminalis* (Manna Gum). These are located on the south-eastern and north-eastern side of the site.

Lining the west and part of the south boundaries of the site are rows of large Cypress trees approximately 12 metres in height.

(ii) What is proposed?

This is a proposal for an ‘Exhibition centre’ (the art gallery), ‘Function centre’ and ‘Restaurant’, and two dwellings. The art gallery is intended to house the Rosemaur art collection – a collection the Advisory Committee has been told is of state significance. The collection has

been assembled by Mr Lindsey Hogg over a period of decades. Creative Victoria staff have viewed some of the major pieces from the collection and:

... through enquiry satisfy themselves that the value of the collection is significant and the opportunity for this collection to be shared with Victorians would be of value. It is rare that a private collection such as that held by Mr Hogg is available to the broader community. Mr Hogg has collected significant artworks through art auction houses, via highly respected international agents and through the gallery network for over 40 years. His collection includes many valuable and highly desirable gallery pictures by major twentieth century contemporary artists.¹

The Rose and Maurice Hogg Gallery Ltd has been established for the public charitable purposes of designing and building the 'Rosemaur' gallery, and operating it as a public art gallery by acquiring, cataloguing, exhibiting, conserving, restoring, and interpreting works of art. As proposed:

- the art gallery will also host travelling exhibitions, including by local artists
- the site will also provide educational activities and cater for art conferences
- the restaurant will provide a fine dining experience for visitors to the gallery, locals and other visitors to the area to augment the overall gallery experience and provide funds to support the ongoing operation of the gallery
- Rosemaur will also host occasional other functions, such as weddings, private functions and benefits
- the landscaped grounds will be open to the public, include a bird sanctuary and sculptural art works, and provide the opportunity for picnics, and guided walks.

The site layout was modified after exhibition and before the Hearing to respond to submissions. Figure 2 shows the modified site layout, marking:

- ① entrance to the site is from King Road
- ② an internal driveway that connects to a loading and area, a bus drop of area and an overflow car park – ⑤
- ③ car park
- ④ gallery, and restaurant buildings
- ⑤ overflow car park
- ⑥ dam/wetlands.

Figures 3, 4, 5 and 6 show visualisations of the proposal.

The proposal includes widening and sealing of King Road, and the construction of services which may need to traverse nearby private land.

¹ Creative Victoria submission

Figure 2: Site layout

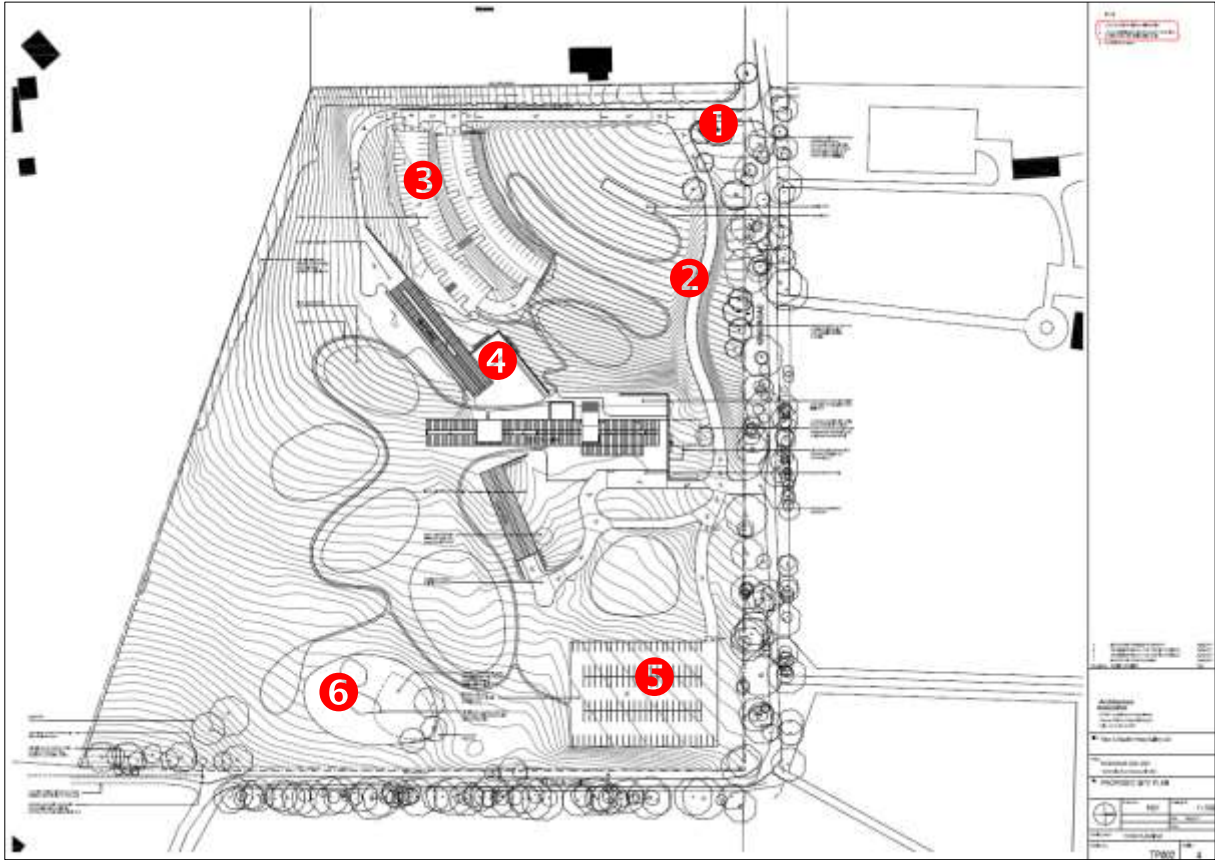


Figure 3: Visualisation looking northwest



Figure 4: Visualisation – facing east from the secondary internal driveway



Figure 5: Visualisation – facing south from King Road



Figure 6: Visualisation – facing west from Hilden Drive



Site works including car parking

The plans as exhibited contain two parking areas providing a total of 273 spaces:

- the main 120 space sealed car park in the south west corner of the site containing, including 4 disabled bays
- an unsealed overflow car park indicatively accommodating 153 spaces at the at the northeast corner of the site.

A coach drop off zone, providing parking for 1 coach, is provided on the east side of the central building. A double garage for residents is also provided in the central building with access from the coach zone.

The modified site layout includes a re-designed sealed car park, an internal connecting road to the overflow car park and eastern loading docks and coach zone, details on grades and retaining walls, and restriction of the eastern access to King Road for vehicle use only.

Due to the fall of the site, the two-tiered main car park will not be visible from the public realm.

The lower 'overflow' car park is visible from King and Hilden Roads. This carpark is proposed only to facilitate overflow parking during major events.

(iii) Interfaces

The northern boundary of the site is King Road, an unsealed local road (from Baker Road to the subject site) about 5.5 metres wide. King Road is a designated safe equestrian trail in the City of Casey Equestrian Strategy.

Directly opposite the site and on the northern side of the road is 194 King Road – the Shannon's property. This land has a centrally located dwelling including a tennis court, a swimming pool, large dam, outbuilding and horse-riding area abutting King Road.

Directly to the east of the subject site is Hilden Drive, a local unsealed road that intersects with King Road at the northeast corner of the site. Hilden Drive forms a continuation of the designated safe equestrian trail in the City of Casey Equestrian Strategy. Continuing south from Hilden Drive is a fire access tack connecting down to Farm Lane.

Directly to the west of the site is 169-191 King Road, also known as 'Foxmoor' (Messrs McKinnon and Rich) which is occupied by two dwellings, one a caretaker dwelling. Each dwelling has been provided with its own vehicle cross-overs. The site also includes fenced arenas, large outbuildings, and stables near the middle of the east boundary close to the site.

To the south of the site is 198-238 Beaumont Road, the Josephine Avril Hogg (JA Hogg) property, occupied by a single dwelling with landscaped gardens and open pasture.

The interfaces to the west and south are screened with dense and mature cypress trees lining the boundary.

(iv) King Road

King Road is a local rural road running east from Harkaway Road, an arterial road, to the northeast corner of the subject site. This road then turns into Hilden Drive and then Sewell Drive, providing access to eight properties beyond the subject site before terminating with no through connection.

King Road is sealed between Harkaway Road and Baker Road, where it runs through Harkaway Village. The village is a small rural township consisting of a primary school, general store/post office, hall and reserve and a number of residential properties. King Road through the village has a pavement width in the order of 5.5 metres and a gravel shoulder, except where the footpath travels alongside the road in front of the primary school and the drops down to run along a sealed shoulder, protected by some guide posts. There is minimal or no provision for pedestrians along the north side of the road.

East of Baker Road, King Road is an unsealed rural road with a width varying from around 4 to 5.5 metres, except for a short section of seal in the vicinity of the Walsdorf Creek crossing. Its narrowest points are at the Walsdorf Creek crossing and outside the site where it narrows to a single lane in both locations. The road undulates with some steeper sections.

King Road is used as part of a designated equestrian trail and has no footpaths east of Baker Road. It has a posted speed limit of 50 km/hr.

(v) Why is an amendment needed?

Under the Green Wedge A Zone (GWAZ), the following uses are prohibited:

- a second Dwelling – while providing accommodation the proposed houses are technically part of the gallery use and not ‘Dwellings’ as such
- the Function centre and Restaurant as it is not proposed to be used ‘in conjunction’ with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.

The Amendment will also approve the use and development of the proposal without a planning permit allowing it to proceed in accordance with conditions contained in an Incorporated Document.

(vi) Amendment description

The Amendment

The Amendment proposes to update the Casey Planning Scheme by:

- Inserting a new Specific Control Overlay (Clause 45.12) to reference the proposed site-specific control and Incorporated Document.
- Updating the schedule to Clause 72.03 to include a map showing the location of the proposed Specific Control Overlay.
- Updating the schedule to Clause 72.04 to include reference to ‘Rosemaur, 193-209 King Road, Harkaway, Incorporated Document, XXXX 2020’.

The Incorporated Document

The Incorporated Document will permit the use or development carried out by or on behalf of Rose and Maurice Hogg Gallery Limited and includes conditions that require:

- the submission of detailed plans including landscape plans
- several other plans including:
 - a Waste Management Plan
 - an Environmentally Sustainable Development Management Plan
 - a Green Travel Plan
 - a Construction Management Plan
 - an Operational and Management Manual

- a Bushfire Management Plan
- the sealing of King Road between Baker Road and the western site accessway with a generally 6.0 metre wide pavement from Baker Road to the western site accessway and an unconstructed equestrian trail to the satisfaction of Casey City Council.

For the management of the gallery the Incorporated Document provides:

- that the land must be transferred to the Rose and Maurice Hogg Gallery Ltd and evidence must be provided that the Rose and Maurice Hogg Gallery Ltd holds a minimum of \$500 million worth of art.
- the Art Gallery must:
 - be operated and maintained in compliance with *National Standards for Australian Museums and Galleries*, as amended from time to time
 - be operated and maintained in such a way that it remains compliant with, and able to act as a 'Borrower' within the meaning of that term in the *International Council of Museum Guidelines for Loans*, as amended from time to time
 - display in the first 10 years of its operation, for a minimum of 90 days per year, a selection of works held by the Rose and Maurice Hogg Gallery Ltd across a minimum of 50 per cent of the total available gallery display space.

The hours of operation and patron numbers in the Incorporated Document provide:

- the use of the land:
 - Sunday to Thursday: 7am – 11pm
 - Friday and Saturday: 7am – 12 midnight
- closure on Code Red fire days
- that any activity, function or event not held in the restaurant building (including terrace) must end by 9:30pm
- the maximum number of patrons on the site after 10pm on any night is 150
- all patrons must be off-site by 12 midnight.

Liquor must only be served or consumed in those areas that are shown on the plans as licensed areas – these areas are confined to the buildings – and alcohol is not to be taken outside the licensed area by patrons at any time. The licensed hours are:

- Monday to Thursday (excluding ANZAC Day and Good Friday) – 7am to 11pm
- Sunday – 10am to 11pm
- Good Friday and ANZAC Day – 12 noon to 11pm
- Friday and Saturday (excluding ANZAC Day and Good Friday) – 7am to 11:30pm.

The Incorporated Document provides that:

- not more than 580 patrons may be present on the site at any one time
- not more than three large events (events where more than 580 patrons may be present on the site at any one time) may be conducted on the site within any 12 month period
- events where more than 580 patrons may be present on the site at any one time must be conducted in accordance with an Event Management Plan which is approved to the satisfaction of the Responsible Authority.

1.2 Background material

The draft Amendment documents comprise:

- Draft Incorporated document, Rosemaur Gallery
- Draft explanatory report
- Draft instruction sheet
- Draft planning scheme map
- Proposed schedule to Clause 45.12 (Specific controls overlay)
- Proposed schedule to Clause 51.01 (Specific sites and exclusions)
- Proposed schedule to Clause 72.03 (What does this planning scheme consist of)
- Proposed schedule to Clause 72.04 (documents incorporated in this scheme).

The following background documents were provided to support the draft Amendment:

- Architectural plans (prepared by Architecture Associates Pty Ltd, June 2020)
- Visualisations (prepared by Architecture Associates Pty Ltd, September 2020)
- Town Planning Report (prepared by Urbis Pty Ltd, September 2020)
- Employment Forecasts (prepared by Urbis Pty Ltd, June 2019)
- Landscape Vision Report (prepared by Urbis Pty Ltd, September 2020)
- Landscape Vision Impact Assessment (prepared by Urbis, September 2020)
- Traffic Impact Assessment (prepared by Cardno, June 2020)
- Bushfire Management Statement (prepared by Terramatrix, September 2020)
- Preliminary Bushfire Emergency Management Plan (prepared by Terramatrix, June 2020)
- Environmentally Sustainable Development (ESD) Report (prepared by Atelier Ten, September 2020)
- Preliminary Arboricultural Assessment (prepared by Artio Consulting, November 2016)
- Site Serving Strategy (prepared by Irwin Consulting, September 2020)
- Site Survey (prepared by Charlton Degg, July 2018).

Table 1 Chronology of key events provides a chronology of key events in respect of the proposal.

Table 1 Chronology of key events

Date	Event
2016	Rosemaur Gallery engaged with Government stakeholders including the City of Casey and Creative Victoria.
13 August 2018	City of Casey wrote to the Minister for Planning endorsing proposal and outlining support.
20 August 2018	Rosemaur Gallery requested that an amendment to facilitate the development of the gallery be approved without notice.
17 October 2018	Minister for Planning advised Rosemaur Gallery that notice would be required and that Department of Environment, Land, Water and Planning (DELWP) would work with Rosemaur Gallery, Council and other stakeholders to progress the proposal.

Date	Event
29 October 2018	Mr Hogg wrote to the Minister for Planning expressing his disappointment with the decision and outlining the benefits of the proposal.
3 May 2019	Council wrote a further letter of support to the Minister for Planning, urging him to reconsider Mr Hogg's request to use your powers of intervention under Section 20(4) of the Act to facilitate the development of what would be an internationally significant cultural facility.
22 May 2019	Creative Victoria wrote to DELWP advising of its strong support of the development of "this State significant gallery" and the use of a section 20(4) process.
24 June 2019	Council also affirmed its support in correspondence noting that Council had worked with the Proponent to prepare a site-specific amendment.
6 September 2019	Architecture Associates, on behalf of Rosemaur Gallery, wrote to the Minister for Planning setting out the additional work that had taken place since the 2018 request and explaining the proposal, including its State significance.
16 September 2019	Council wrote to the Premier seeking support for the amendment to the Planning Scheme to facilitate the development, noting the tourism, economic development and cultural value of the proposal for the municipality and the broader region.
6 May 2020	Minister for Planning decided to undertake limited consultation with potentially affected parties about the proposal under section 20(5) of the Act and appoint an advisory committee to review the suitability of proposed Amendment C273 and any submissions received.
20 August 2020	The Minister approved the proposed consultation process and appointed the Rosemaur Gallery Advisory Committee under section 151 of the Act.
30 August 2020	Minister for Planning appointed the Advisory Committee and advised that some but not all changes to the Incorporated Document proposed by Rosemaur Gallery had been accepted. In relation to the 'value on display' condition, the Minister declined to change the minimum value of artwork to be on display at the gallery on the basis that, in the circumstances, it was <i>"reasonable to expect that a significant proportion of the collection will be displayed"</i> .
16 September 2020	Direct notice was posted to owners and occupiers of 36 properties adjoining the site and the unsealed part of King Road. Names and addresses were provided by Casey City Council. A total of 54 letters were posted. Five landowners own multiple properties in the notification area, and in these cases, each nominated entity or person received one letter.

Date	Event
17 September 2020	Direct notice was also emailed to the following key stakeholders and authorities in accordance with Clause 13 of the Rosemaur Gallery Advisory Committee Terms of Reference: <ul style="list-style-type: none"> - Casey City Council - Creative Victoria (part of the Department of Jobs, Precincts and Regions) - Country Fire Authority - Melbourne Water - South East Water - AusNet Services - APT Group Pty Ltd.
21 September 2020 to 6 November 2020	Consultation period with the amendment and supporting documents published on the DELWP website. Originally scheduled to conclude on 23 October 2020, the Minister for Planning provided an additional two weeks for submissions to be received.
9 November 2020	Minister for Planning referred Amendment including submissions to the Advisory Committee.
26 November 2020	Committee Directions Hearing The proponent agreed to prepare a feasibility assessment for the potential widening of King Road to an appropriate consistent width, sealing and provision of an equestrian path for King Road.
12 and 23 November 2020, 20 January 2021	Minister for Planning referred late submissions to the Committee.
Wednesday 24 February 2021	Traffic experts hold a meeting to identify points of agreement and disagreement.
1–3, 9–12, 15–18, 22–25 March 2021	Committee Hearing.
25 March–1 April 2021	Further correspondence from parties with response to Proponent and Council closing submissions.

1.3 Summary of issues raised in submissions

The Committee were referred a total of 521 submissions. Of these, 432 (83 per cent) were opposed to the proposal and 89 (17 per cent) were in support. Casey City Council (the Council) supported the proposal.

The key issues for the Proponent were:

- the significance of the art in both value and uniqueness that is currently held as a private collection
- the gift of the art to a public charity
- the proposed location for the Rosemaur Gallery and associated uses due to current family landholding.

The key matters raised in support were:

- the significance of the collection
- the cultural, economic, employment and tourism benefits

The key issues raised in opposition were:

- the location
- security (value of artworks in one location)
- impact and appropriateness of development and use in the GWAZ4 and character of the area
- the process and setting a precedent
- bushfire
- traffic including volume, speed and widening / use of unsealed road
- biodiversity, wildlife, flora and fauna
- impact to equestrian trail
- services and infrastructure
- noise
- pollution
- cultural heritage
- amenity impacts.

1.4 The structure of this Report

The Advisory Committee considered all written submissions made in response to the exhibition of the Proposal, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Advisory Committee in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- The Advisory Committee's approach
- The use
 - Is a significant art collection a planning matter?
 - Is the use suitable in the green wedge?
 - Is the Rosemaur collection significant?
 - The 'gift'
 - Display
- Bushfire
- Is the proposed site development appropriate?
 - Built form
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- Is access along King Road east of Baker Road acceptable?
 - Can the road be made suitable?
 - The impact of making the road suitable on landscape and character

- The equestrian trail and personal sustainable transport
- Native vegetation removal permissions in the Incorporated Document?
- Are the amenity impacts acceptable?
 - The adjacent properties
 - Amenity impacts of increased traffic in Harkaway Village
 - Other local road impacts
- Overall assessment.

2 The Advisory Committee's approach

(i) What needs to be considered

This is a site-specific proposal. If it were a permit application, Clause 65.01 would require the Responsible Authority to consider, as appropriate:

- the Planning Policy Framework
- the purpose of the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area
- factors likely to cause or contribute to land degradation, salinity or reduce water quality
- the extent and character of native vegetation, the likelihood of its destruction, and whether it can be protected, planted or allowed to regenerate
- the degree of flood, erosion or fire hazard associated with the location of the site and the use, development or management of the site so as to minimise any such hazard.

For planning scheme amendments, Direction No. 11: Strategic Assessment of Amendments states that in preparing an amendment a planning authority must evaluate (among other things):

- How does the amendment implement the objectives of planning in Victoria?
- How does the amendment address any environmental, social and economic effects?
- How does the amendment address any relevant bushfire risk?
- How does the amendment support or implement the Planning Policy Framework and any adopted State policy?
- ... how does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
- How does the amendment address the views of any relevant agency?
- Does the amendment address the requirements of the Transport Integration Act 2010?

There are competing policy objectives to be considered; Clause 71.02-3 Integrated decision making states that planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and:

... balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

The Advisory Committee agrees with submissions that its task is to assess the net community benefit of the proposal (for present and future generations) and determine whether the proposal is acceptable.

Weighing up Net Community Benefit is informed by community concerns, but must look to planning policy to determine how impacts are to be judged. These impacts can be economic, environmental or social. In Ballarat C185 (PSA) [2015] PPV 103, the Panel considered a proposal to relocate the Saleyards just outside the urban fringe suburb of Miners Rest. It made a number of observations about social impacts which the Advisory Committee adopts:

... Fear of change is not a social impact; nor is distrust of the Council or the approval process. A social impact is something that changes the way your community functions.

Simply not wanting something in your town is not a social impact. Trying to address these types of concerns by privileging prejudice over objective assessment would have a significant social impact; it would undermine the fair, orderly and proper planning of areas.

Broadly the relevant factors in weighing relevant environmental, social and economic effects are:

- the objectives of planning in Victoria
- the Planning Policy Framework
- the orderly planning of the area
- the purpose of the zone, overlays and other provisions that apply
- the effect on the amenity of the area
- the extent and character of native vegetation, the likelihood of its destruction, and whether it can be protected, planted or allowed to regenerate
- bushfire risk
- the views of any relevant agency
- the requirements of the *Transport Integration Act 2010*.

(ii) Issues about transformation

A number of concerns were raised about the changes in the Incorporated Document proposed during the course of the Hearing. This was characterised as a ‘transformation’ of the proposal. It is not clear to the Advisory Committee that it is appropriate to characterise changes proposed in response to submissions as a transformation, or what the implication would be if indeed it were a transformation.

The Advisory Committee is dealing with a draft amendment proposal that, if it proceeds, will do so under the powers conferred on the Minister by section 20(4) of the PE Act. That would be the formal amendment process. The Advisory Committee is bound by natural justice – provided parties have adequate time to respond to the changes, the Advisory Committee can see no harm in refining the proposal to respond to submissions. This is particularly the case where those changes would reduce the impacts of the proposal.

(iii) Alternative sites

A number of submitters suggested alternative sites. Mr Hogg said the site was in his DNA. Several submitters criticised this: in these submissions the fact that Mr Hogg had never lived on the land was seen as relevant. Nola and Leigh Manley, for example, submitted:

The Proponent does not have any DNA or connection to the community other than owning a block of land on King Road.

It is not for the Advisory Committee (or anyone else really) to determine what is personally meaningful to another person. The Advisory Committee simply accepts for personal reasons Mr Hogg wants the gallery constructed on this site.

Mr Hogg has clearly stated that if the proposal is not permitted on this site, he will not pursue it in Victoria. This was categorised as a ‘threat’ by some submitters.

Mr Hogg’s statement does not have to be conceived as a threat. The Advisory Committee can simply accept it at face value, as condition of the gift. As the Proponent pointed out in its closing submission, benefactors placing condition on gifts is in no way unusual. If Mr Hogg’s offer is confined to this site, then so be it.

In any case, from a practical point of view it does not change the task of the Advisory Committee which is to consider whether the proposal is acceptable on this site. The fact that it might not proceed if not here, does make its benefits more significant or its disbenefits any less. While the gallery may have substantial benefits for the people of Victoria it is not an essential service – it does not have to proceed.

Certainly, there would be other sites that do not raise as many issues, but those are not before the Advisory Committee. In relation to alternative sites, the panel for Ballarat C185 (PSA) [2015] PPV 103 commented:

We agree that it is not our task to identify alternative locations (including the upgrade of the existing facility). While panels and the Tribunal do not assess alternative sites (or proposals), they do, when required, assess the strategic logic of a selected site. This is not to determine that the site is the optimum location, or indeed that it is suitable compared to other sites, but rather that there has been some analysis of what makes a suitable site, and the subject site meets those criteria. The benefit of fully informing a panel about site selection is to help inform the assessment of what makes a site suitable.

In this matter, the Advisory Committee does not have the benefit of well-articulated site selection process – this does not strengthen the Proponent’s case but weakens it. But the Advisory Committee is not completely in the dark as to why the site was chosen. The project is conceived to have a connection to the landscape. The issue is whether this proposal (in its totality including necessary road works) delivers acceptable outcomes.

The Advisory Committee concludes:

The task of the Advisory Committee is to consider this proposal on this site, the fact that other sites may be more suitable is not a relevant consideration.

(iv) The controls

The draft Amendment does essentially two things:

- changes the planning scheme requirements so that a restaurant and function centre can be established in conjunction with a gallery
- grants permission for a specific proposal (this aspect of the proposal could more or less be delivered by way of a planning permit).

The changes to the controls are relatively straightforward: they seek to allow the establishment function centre and restaurant operated by or on behalf of a gallery operator. In the zone as it stands these uses are only permissible if used ‘in conjunction with’ Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.

The use of the Special Control Overlay (SCO) as facilitative planning tool was discussed with a focus on the “*extra-ordinary*” circumstances that should underpin the use of the SCO as a planning tool. On this issue, Mr McGurn gave evidence that there was very strong policy support for the application of the SCO in this instance:

The planning system should be agile enough to facilitate exceptional, but unanticipated positive outcomes – even where a Planning Scheme amendment is required on a site specific basis. The nature of the proposal is certainly one which I consider is exceptional in terms of the cultural offer, the architectural quality and the celebration of the natural (semi natural) setting which is a valued quality of the locality.²

² Para 68 McGurn

It is certainly not an ordinary proposition in planning for art galleries with a state significant (or higher) value collection seeks to establish in an area. As Council submitted:

Council supports the Rosemaur Gallery project because it is so unique an opportunity that if delivered, the art collection would be an enormous community asset albeit held by a charitable not for profit entity. It would in turn, in addition to its cultural significance and through the proposed development, offer a high-quality tourism destination, economic development opportunities, and social benefits not just for Casey municipality but for the State of Victoria. At all points, and on any view, accepting the legitimate concerns held by submitters, it is none the less a once in a generation opportunity to facilitate a wholly unique arts and culture experience to the public. Even putting aside the enormous monetary value of the collection, (which we think merely is a signal to its importance) the importance of the collection itself and using it as a central focus of a facility focussed on the facilitation and appreciation of the arts in a contemporary, comfortable, and beautiful landscape setting is of itself worthy of support.

Not all submitters took the same approach; for example, Mr Bruce Wood submitted:

We must preserve designated planning zones and must not bend the rules on a whim from well-funded lobbyists.

This matter is Black and White, the Advisory Committee has the responsibility and obligation to recommend to the Minister the Hon Richard Wynne MP to keep the Green Wedge designation for the Harkaway area in the planning scheme for what it is meant to be.

The Advisory Committee thinks that the changes to the controls can be considered in advance of considering the specifics of this proposal. The questions are thus: should green wedge provisions allow consideration of a restaurant and function centre in conjunction with an art gallery that:

- displays a state significant art collection?
- has been designed to have a connection with landscape?

In the mind of the Advisory Committee, the more unusual or significant a proposition is the higher up the policy hierarchy one needs to go to properly consider it. This is an unusual proposal, not because of the nature of the uses, but by dint of the nature of the quality of the art that is proposed to be displayed.

The Advisory Committee accepts that it may be appropriate for a gallery of the type proposed to have a restaurant associated with it. A restaurant would provide a service to gallery patrons and such restaurants are typically found in galleries. The Advisory Committee thinks a similar logic applies to the function centre, though the connection is less clear it could serve to make the art available to a wider range of patrons. The uses would also provide financial support.

The fact that this provision is not already part of the GWAZ is likely to be more a product of trying to limit proposals that do not have an intrinsic connection to the land, than any explicit consideration of galleries with significant collections. The Advisory Committee thinks this approach would only be a relevant precedent to other galleries with similar value collections.

The Advisory Committee concludes that if the gallery is permitted, it is appropriate to allow consideration of a function centre and restaurant operated by or on behalf of the gallery owner – that is to say these uses should be determined assessing their impacts against policy. Details of the use would need to be considered including:

- ensuring the gallery remained the primary use
- amenity impacts of the restaurant and function use.

Submissions that we should not ‘bend the rules’ misunderstand the nature of the Victorian planning system which relies less on fixed rules and more on achieving objectives. If this submission were taken literally there would be no need for the SCO. It is not a matter of ‘not bending the rules’, it is a matter of achieving planning policy. Having said that, there are strong objectives on preserving the green wedge which militate against the proposal.

The Advisory Committee concludes:

The Specific Controls Overlay is a tool for facilitating site specific developments, in this regard it is the merits of the development that is the central justification for its use.

(v) Not binary

Council submitted that this was not simply a “*yes or no proposition*”. The Advisory Committee agrees that its decision need not necessarily be binary. Between a full yes or a full no there is a spectrum of what might be permitted as a compromise if it were thought that the off-site impacts were too great in the balancing of competing objectives.

The levers or the weights appear to be things such as:

- hours of operation
- patron limits for the gallery and restaurant/function centre uses
- should coaches be allowed or for example should only mini buses be contemplated
- should functions be permitted
- should large events be permitted.

(vi) Avoiding piecemeal planning

JA Hogg raised concerns about piecemeal planning. The Advisory Committee does not accept the proposition that the proposal ought not proceed because not all permissions are able to be granted.

While there will be a range of further permissions needed if the Amendment were to be approved, these are not so great that the Amendment could not proceed. Staged approvals are common in planning, not least because there is a need to have some sort of security of approval before more detailed work is undertaken.

3 The proposed use

3.1 Is a significant art collection a planning matter?

(i) The issue

Is the significance of the collection a planning matter?

(ii) Relevant policy

Planning policy deals explicitly with tourism and cultural facilities and includes:

17.04-1S Facilitating tourism

Objective

To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

Strategies

Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.

Seek to ensure that tourism facilities have access to suitable transport.

Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions.

Create innovative tourism experiences.

Encourage investment that meets demand and supports growth in tourism.

17.04-1R Tourism in Metropolitan Melbourne

Objective

To maintain and develop Metropolitan Melbourne as a desirable tourist destination.

Strategies

Supporting artistic and cultural life.

Improving public facilities, amenities and access.

19 31 INFRASTRUCTURE

Planning is to recognise social needs by providing land for a range of accessible community resources, such as ... cultural ... facilities.

19.02-3S Cultural facilities

Objective

To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities.

Strategies

Encourage a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres in the Central City and at Metropolitan Activity Centres.

Reinforce the existing major precincts for arts, sports and major events of state wide appeal.

Establish new facilities at locations well served by public transport.

19.02-3R Cultural facilities - Metropolitan Melbourne

Strategies

Maintain and strengthen Melbourne's distinctiveness as a leading cultural and sporting city with world-class facilities.

19.02-4S Social and cultural infrastructure

Objective

To provide fairer distribution of and access to, social and cultural infrastructure.

Strategies (include)

Identify and address gaps and deficiencies in social and cultural infrastructure, including additional regionally significant cultural and sporting facilities.

Encourage the location of social and cultural infrastructure in activity centres.

Ensure social infrastructure is designed to be accessible.

Support innovative ways to maintain equitable service delivery to settlements that have limited or no capacity for further growth, or that experience population decline.

(iii) Evidence and submissions

While many submissions questioned the significance of the Rosemaur collection (discussed in Chapter 3.3), there were also submissions about whether the significance of an art collection, as a general proposition was a planning matter. John and Lisa Shannon entertained doubts that the significance was a planning matter:

27. ... The cultural impacts of the Proposal, and even by extension the value of the collection, may be a valid planning consideration ...

Council submitted that it supported:

... the Rosemaur Gallery project because it is so unique an opportunity that if delivered, the art collection would be an enormous community asset albeit held by a charitable not for profit entity.

... it is ... a once in a generation opportunity to facilitate a wholly unique arts and culture experience to the public. Even putting aside the enormous monetary value of the collection,(which we think merely is a signal to its importance) the importance of the collection itself and using it as a central focus of a facility focussed on the facilitation and appreciation of the arts in a contemporary, comfortable, and beautiful landscape setting is of itself worthy of support.

(iv) Discussion

The Advisory Committee has not doubt that cultural impacts are a valid planning issue. The planning system regularly deals with cultural significance in matters ranging from heritage protection to support for live music.

Leaving aside the fact that it would be a poor city whose planning ignored culture, planning policy clearly sets out objectives:

19.02-3S Cultural facilities – To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities.

19.02-4S Social and cultural infrastructure – To provide fairer distribution of and access to, social and cultural infrastructure.

(v) Conclusion

The Advisory Committee concludes:

The cultural significance of the collection of a proposed art gallery and the accessibility of that collection is a relevant planning consideration.

3.2 Is the use suitable in the Green Wedge?

(i) The issues

The issues are:

- whether an art gallery can have an intrinsic connection to the landscape, or, to put it crudely is simply an ‘urban use’ simply looking for cheap land.
- whether or not an art gallery displaying a significant art collection (with an in conjunction Function centre and restaurant) is an appropriate use in the green wedge, in general, having regard to policy, and this locality in particular.

(ii) Relevant policy

State policy and the core planning provisions

There are competing policy objectives:

- policies on cultural infrastructure (set out in the preceding section of this Report)
- green wedge policies which include support for tourism uses in certain locations.

Clause 11.01-1R Green wedges – Metropolitan Melbourne provides guidance on the protection of land within the green wedges and the need for careful planning and land management of these areas. This clause seeks to protect the distinct attributes that make up the green wedges, and also supports appropriate development that respects these unique qualities. Relevant strategies include:

Promote and encourage the key features and related values of each green wedge area.

Support development in the green wedge that provides for environmental, economic and social benefits.

The core planning provisions of Clause 51.02 The Metropolitan Green Wedge set out provisions to apply across all green wedges. It includes the protection of agricultural land, the importance of compatibility to context and for scale, and importantly the:

Protection of metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.

The Clause 51.02-2 land use table sets out prohibited land uses, and where allowable, permitted land uses with specific conditions and “*in conjunction*” relationships. As relevant to this proposal they include that a Function centre and Restaurant:

- must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery
- no more than 150 patrons may be present at any time counting the total number of patrons present at a combined Function centre and Restaurant.

Plan Melbourne

Plan Melbourne 2017-2050 is the key strategic plan to manage growth and development in Metropolitan Melbourne that reflects the changing needs of our city and state, as well as the aspirations for the protection and future development of the green wedges.

Direction 4.5 of Outcome 4 identifies the need to plan for green wedge areas and peri-urban areas and to facilitate tourism and development that maintains the integrity of the natural environment and provides social benefits for communities and visitors and contributes to local communities.

Outcome 5 seeks to ensure that Melbourne is a city of inclusive, vibrant and healthy neighbourhoods. Direction 5.3 focuses on the need to deliver social infrastructure to support communities to meet their social, health, education, cultural and community needs.

Table 2: Relevant Plan Melbourne directions

Outcome	Directions	Policies
Melbourne is a productive city that attracts investment, supports innovation and creates jobs	<p>Direction 1.4 – Support the productive use of land and resources in Melbourne’s non-urban areas.</p> <p>Melbourne’s green wedges and peri-urban areas are immensely important to the state’s economy, community and environment and support a wide range of non-urban land uses and activities.</p>	<p>Policy 1.4.1 – Protect agricultural land and support agricultural production.</p> <p>Policy 1.4.2 – Identify and protect extractive resources (such as stone and sand) important for Melbourne’s future needs.</p>
Melbourne is a distinctive and liveable city with quality environments	<p>Direction 4.5 Plan for Melbourne’s green wedges and peri-urban areas</p> <p>As Melbourne grows, planning for Melbourne’s green wedges and peri-urban areas is required to:</p> <ul style="list-style-type: none"> protect biodiversity assets, including national and state parks, Ramsar wetlands and coastal areas support existing and potential agribusiness activities, forestry, food production and tourism protect major state infrastructure and resource assets, including water supply dams and water catchments and waste management and recycling facilities support renewable energy sources such as wind and solar farms protect extractive industries provide a recreational resource, which contributes to public health outcomes for all Victorians. 	<p>Policy 4.5.1 – Strengthen protection and management of Green Wedge land.</p> <p>Policy 4.5.2 – Protect and enhance valued attributes of distinctive areas and landscapes</p>

Outcome	Directions	Policies
	These valued features, assets and industries should be prioritised before other land uses.	

Green Wedge A Zone

Practice Note 62: Green wedge planning provisions provides, among other things, an overview of the three zones generally found with Melbourne's green wedge. Notably, the Green Wedge Zone contemplates:

... opportunity for all agricultural uses and limits non-rural uses to those that either support agriculture or tourism, or that are essential for urban development but cannot locate in urban areas for amenity and other reasons (such as airports, schools, waste treatment plants, landfills and reservoirs).

The GWAZ is anticipated to provide for:

... opportunity for all agricultural uses and limits non-rural uses to those that either support agriculture or tourism, schools, major infrastructure or rural living ...

The site is zoned GWAZ (Clause 35.05). The purposes of the GWAZ are:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area.

To ensure that use and development promotes sustainable land management practices and infrastructure provision.

To protect, conserve and enhance the cultural heritage significance and the character of rural and scenic non-urban landscapes.

To recognise and protect the amenity of existing rural living areas.

The zone provides opportunity for agricultural uses and limits non-rural uses to those that either support agriculture or tourism, schools, major infrastructure or rural living.³ The zone allows for a Function centre and restaurant in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.

Local policy

Clause 22.08, 'Non-agricultural uses in green wedge areas policy', anticipates uses that do not necessarily fall under the definition of 'Agriculture' within the Planning Scheme will nevertheless be proposed in certain circumstance. This policy anticipates such uses may be proposed within these areas and provides for assessment against the following objectives (as they relate to the proposed use) to help determine appropriate uses:

To discourage the intrusion of urban-type uses into Green Wedge areas.

To ensure that non-agricultural development provides a positive contribution to the character and appearance of Green Wedge areas.

To ensure that non-agricultural uses do not adversely affect or prejudice the operation of existing and/or future agricultural activities.

³ Planning Practice Note 62

To ensure that non-agricultural uses do not have an adverse impact on areas of high environmental or natural resource value

To ensure that, where appropriate, non-agricultural uses are sensitively integrated into the surrounding area.

To reduce car dependency in Casey by consolidating non-agricultural uses in urban and township areas.

To encourage the retention of existing agricultural land uses within Green Wedge areas.

Clause 22.08-3, 'Policy', sets out considerations for non-agricultural uses with green wedge areas which contemplate:

The loss of agricultural land

Visual amenity (including the scale and design of new buildings)

Land use and offsite amenity impacts

The primacy of sustainable agricultural production

Proximity urban or township areas

The reduction of car dependency and access to public transport

The preference for locating non-agricultural land uses along sealed roads, and roads capable of carrying anticipated traffic volumes

Net benefit and convenience to the local community

The character and function of the surrounding area

Site capabilities and the need for new development to connect to site services including reticulated water, sewerage, power and stormwater.

The Clause 22.08-4, 'Performance standards', provide a for more detailed assessment for non-agricultural use into green wedge land including:

The design and appearance of all buildings and works should be low-impact, having regard to the surrounding rural environment.

The site should be located adjacent to an urban or township area and on or close to a designated public transport route (except where the non-agricultural use would operate in conjunction with existing agricultural activities on the land).

The site should abut or have direct access to an arterial road to minimise traffic impacts on the surrounding rural environment (except where the non-agricultural use would operate in conjunction with existing agricultural activities on the land).

Hours of operation should be restricted to maintain the amenity of any nearby dwellings

The site should be landscaped to minimise the visual impact of the development on the rural landscape.

The site should have convenient and practicable access to reticulated services (except where the non-agricultural use would operate in conjunction with existing agricultural activities on the land).

(iii) Evidence and submissions

Connection to the landscape

The detailed impacts of the design are discussed in Chapter 5.1. This section deals with the overall notion of a 'non-urban gallery'. The Advisory Committee was taken to several examples of non-urban galleries in Victoria, such as Tarrawarra, and overseas.

Professor Mark Jacques was called by the Proponent to provide urban design evidence in relation siting. His opinions included:

- 44 In my view of building typology, what characterises the Harkaway project as a non-urban type gallery as opposed to an urban-type gallery is the decision to allow the reading of the building as one dictated by its landscape context as opposed to a reading which seeks to assert its presence or to create dissonance within its context.

The Proponent submitted:

Professor Jacques' comparisons between urban-type and non urban-type galleries illustrates this point well. He confirmed that the use is neither inherently urban or non-urban, but the built form proposed at Rosemaur, and the relationship with the landscape, make it non-urban.

Suitability of the uses

The Council supports stronger green wedge controls as a principle however in its support for the proposal acknowledges that there are *"tourism and economic development opportunities of high significance that arise from time to time where a site-specific consideration is warranted where despite technical non-compliance"*, stating:

The Rosemaur proposal aligns with the overarching tourism emphasis of the City of Casey's local Green Wedge policies and strategies. Furthermore, it is submitted that the high standard of architectural and *"urban"* design is consistent with the expectations of such a development within the green wedge and a *"non-urban"* context.

Further, the Council submitted that as the Gallery is outside the main township of Harkaway, it will not detrimentally impact upon the quiet nature of the Harkaway township, asserting that the:

... very low scale of development of the site by buildings is consistent with the character of the area. The careful approach to urban design in terms of the development itself and the upgrading of King Road will ensure that the development is a good fit in the area even though it is new development. While it will attract more activity to the area, one can discern that activity creation particularly for tourism is quite consistent with the broader policy framework.

To the contrary, the Friends of Harkaway had concerns about the intensity and location of the development and concerns about the upgrade of King Road on the character of Harkaway, and the green wedge more broadly. They said:

This element of the proposal is a threshold issue and another factor that *"tips the policy ledger"* against the proposal. The sheer size, scale and intensity proposed is unacceptable, resulting in the need to undertake extensive works along King Road, impacting on the loss of a substantial number of mature trees of very high amenity value, the loss of habitat and the relocation of the equestrian trail.

Similarly, Mr Battye submitted that:

The inevitable upgrade of King Road that will involve its widening ... will adversely and irreversibly destroy the character of that part of Harkaway and the GWAZ.

The Save the Casey Foothills Association submitted that:

The changes that a development like the Rosemaur proposal would foist on to this unique area would be devastating and irreversible. Harkaway's 175 year old history, its unspoiled non-urban character, its wonderful landscapes and its high-value biodiversity must not be sacrificed on the altar of post-Covid economic and development strategy.

The Friends of the Glenfern Green Wedge Inc. opposed the proposal on the range of grounds including the proposal undermining the principles and protection of the green wedge and

undesirable precedent as well as the degradation to the environment that would result from the King Road upgrade.

Mr and Mrs Shannon submitted:

In relation to the purported “*equity of access*”, we note that the Site is not serviced by public transport and has a single point of access and egress via a single rural road. Put simply, it does not provide equitable access to what has been labelled a ‘State significant’ cultural facility because access can only be provided by private vehicle.

Further, the Proposal will represent an intense, out-of-centre commercial-scale (and indeed, State-significance scale) use and development in a rural living area that has poor accessibility. It cannot be said that the Proposal represents orderly planning.

The Save the Casey Foothills Association said:

Facilitating an exception to the constraints of the current Green Wedge legislation also sets a dangerous precedent for in Harkaway’s vulnerable surrounding green wedge countryside and diminishes its role as an important gateway to the Dandenong Ranges.

The Green Wedges Coalition said that current controls are soundly based and designed to protect the Green Wedges and should not be set aside to accommodate a proposal. They said:

... this proposed project would result in a net community disbenefit to the community with the economic aspect of the proposed project being to the detriment both to the integrity of the Green Wedges as a whole and to the social well being and amenity of the local community, including most importantly protection of human life from bushfire.

The Friends of Harkaway submitted that green wedge planning policy is fundamental to the sustainable planning of Melbourne and Victoria and that approving the development that is contrary to green wedge policy sets a dangerous precedent that incrementally unravels what that policy aims to achieve.

The Friends of Harkaway called strategic planning evidence from Emeritus Professor Michael Buxton. Professor Buxton’s findings resonated many of the Friends of Harkaway’s concerns in relation to the policy continuum that underpins Melbourne’s green wedge policy:

Assessed against this policy continuum, the amendment is inconsistent with the principle of protecting the non-urban character of green wedges included in all metropolitan strategies from the 1971 plan to Melbourne 2030 and Plan Melbourne. It would breach the principle of policy continuity in protection and establish an undesirable precedent for further inappropriate developments.

The Proponent called two planning experts in support of the proposal. Ms Sophie Jordan’s evidence in chief focussed primarily on the amenity impacts of the proposal though relevantly commented upon the inherent complexities in balancing the protection and management of development within Melbourne’s green wedges:

The planning and management of green wedge land is therefore a complex task that must balance objectives surrounding the protection of environmental assets with the need to maintain a degree of productivity and capacity for growth so as to achieve social, environment and economic benefits to the broader community. The ongoing role of the green wedge areas around Melbourne is therefore not about quarantining land in a manner that does not permit growth or change, but rather, is about ensuring it retains a non urban character.

Mr Stuart McGurn was called by the Proponent to provide expert strategic planning evidence. It was Mr McGurn’s evidence that:

Parts of the proposal (that is, the gallery and its buildings) would be able to be the subject of a 'regular' planning permit application process under the existing Zone and Overlay provisions. All of the proposed land uses are also permitted by the Metropolitan Green Wedge Provisions (Clause 51.02), subject to conditions.

The main element of the proposal that would not be permissible under the current controls is use of the land for a 'restaurant' or 'function centre' on the basis that they do not meet the conditional requirement to be in 'associated with' a 'winery' or 'agricultural' use (amongst other limited and specified land uses).

In both instances a permit may be granted for a restaurant or function centre of up to 150 patrons at any one time. Such uses are also (under the Green Wedge A Zone -4, but not under the Metropolitan Green Wedge provision) required to occupy a minimum lot area of 8 hectares – a restriction which is met by the proposal. In essence, however they are the type of uses that can be permitted in the Green Wedge A Zone in association with the specified uses.

It was Mr McGurn's opinion that potential amendment is "*relatively discrete*" in that "*it would not seek to vary from land uses which may be permitted in the Green Wedge A Zone provided they are in association with other uses.*" His opinion is that the proposal has a "*broad alignment with the Green Wedge A Zone themes and policy for the region*".

JA Hogg called planning evidence from Ms Sandra Rigo. In her opinion, the proposal fails to provide a robust strategic argument:

I do not believe a sufficiently robust strategic argument has been made for the establishment of these uses on the land (at the scale proposed), which are inconsistent with Green Wedge policy and the purpose of the zone. I note other similar cultural / hospitality venues such as Tarra Warra Estate (which is on a significantly larger landholding compared to the subject site) are operated in conjunction with agricultural uses such as wineries.

Whilst it was the evidence of the Mr Milner that the green wedges provide an escape from the City to "*nourish the mind, body and soul*" it was also his evidence that that zoning and local policy encourages rural living as a primary activity. He said that "*while tourism is enabled by the zone, the purposes of the GWAZ (compared with the GWZ) do not explicitly encourage tourism*".

The Proponent advanced the various levels of policy support that the proposal exhibits and the importance of balancing considerations while acknowledging an emphasis on landscape values, visual amenity, rural character and amenity. Specifically, the Proponent advanced that:

At the most specific level, we have the Green Wedge A Zone. In the context of a planning scheme amendment, the zone is not determinative of outcomes. The provisions of the zone do however provide useful guidance about what uses will be consistent with, or contribute to, the identified green wedge values for the area. This guidance can then be used in assessing the Rosemaur proposal for its consistency with State and local green wedge policy.

Mr McGurn gave evidence for the Proponent, his view was that:

83. In particular within the Casey Foothills (Clause 21.14), tourism activities 'which support and enhance local agriculture, outdoor recreation facilities or rural industry' are encouraged. And while the proposed Amendment is necessitated by the current zone restrictions – the building siting, the open space and ability for people to recreate within the landscape is a feature which I consider is aligned with this policy.
84. I consider that an opportunity of this significance, which will celebrate and have a connection to the landscape, and which has public benefits such as the ability for cultural programming, appreciation of the arts and opportunities for education should be

supported. The development and maintenance of ‘strong cultural environments’ which increase access to arts, recreation and other cultural facilities are objectives which seek to ‘maintain and strength Melbourne’s distinctiveness as a leading cultural and sporting city’(Clause 19.02-3R Cultural Facilities -Metropolitan Melbourne’).

In response the Green Wedges Coalition submitted:

The importance of understanding the underlying purpose of this green belt is paramount in addressing this proposal for the Rosemaur Art Gallery complex. Because there is a tendency for each proposal to be viewed through the lens of issues relating predominantly to the immediate locality of the site but the implications for the Green Wedges as a whole are often overlooked or substantially diminished.

Ms Maslen submitted:

As I said in my objection, I have been working in Harkaway for more than 20 years at different private residences and have enjoyed the tranquillity of what Harkaway is all about. Regularly coming up here from the Cranbourne area provides a healing respite from the demoralising soulless environment of the overdeveloped suburbia that’s spreading further and further to the south.

I love the quaint Harkaway village with its small school, the corner shop and people who still know who lives next door to them. I get to see all the different wildlife and birds which are long gone in the suburbs where people live in houses on blocks the size of a postage stamp and face increasingly gridlocked traffic getting to and from work, and even just going to the shopping centre.

(iv) Discussion

Connection to landscape

The Advisory Committee notes that the gallery has been designed to have a connection to the landscape and the Proponent advises that this is how Mr Hogg conceives of it – indeed Mr Hogg sees that the collection has a connection to this particular site. Figure 7 shows the view from the site – showing the opportunity for a connection with nature.

Figure 7: The view from the site



The Advisory Committee thinks the salient question is whether the patrons of the facility will see that connection. While the connection may be central to Mr Hogg choosing this site, his view of the connection would be largely irrelevant if the building turned its back on the landscape; it does not. The Advisory Committee expects that visitors will gain enjoyment from the surrounding landscape setting.

Strategic justification

The issues with this proposal cannot be divorced from wider green wedge issues, or even broader development in the area. The Committee notes that Mr Turner referred to what he saw as a *“tsunami of unrelenting suburban sprawl”*.

The Advisory Committee agrees that it is unsound to assess individual proposal through the lens of issues relating predominantly to the immediate locality of the site and lose sight of the implications for the Green Wedges as a whole, but observes that green wedge policy includes:

11.01-1R Green wedges – Metropolitan Melbourne

Support development in the green wedge that provides for environmental, economic and social benefits.

The local policy includes:

21.05-3 Objective 2 To take advantage of Casey’s competitive edges to create local employment opportunities across a diverse economic base to secure a sustainable and prosperous future

Tourism

2.14 Recognise and promote emerging tourism and eco-tourism opportunities within Casey, ensuring that the design and development of tourist-related facilities reflects the farming and environmental attributes of the locality.

Planning controls do not rule out tourism in the green wedge but acknowledge that support for tourism is not as strong in the GWAZ as it is in the Green Wedge Zone.

Equitable access to Victoria’s green wedges would be underpinned by a cultural facility that draws tourism to the local area and surrounding communities. Where land is deemed not fit for productive agricultural purposes, Clause 22.08, among other policy guidance, acknowledges the role that green wedge areas play in providing for non-urban purposes (such as recreation and tourism⁴) but also provide guidance in the manner of performance standards in considering such uses. Put simply, the VPP anticipates tourism in such areas. The Advisory Committee notes that the primary use, the gallery, is a permitted use in the zone.

The Advisory Committee accepts that this is a unique proposal, insofar as the collection is unique, and does not see any wider implications for green wedge policy if the proposal were to proceed. The Advisory Committee does not think the proposal represents *“one of a thousand cuts that detract from the established protectionist approach to our green wedges”*.

There is broad net community benefit from protecting the green wedge, but this protection does not exclude tourism uses. If the proposal were located on an arterial road in the Green Wedge Zone (as opposed to at the end of a narrow road in the GWAZ), all its policies stars would align. This brings into focus the policy tensions for this site:

- the less fulsome support for tourism in the GWAZ
- the potential impacts on neighbours and the locality.

On balance, the Advisory Committee believes that the proposal represents an appropriate land use that emphasises the attributes of the green wedge, without detracting from the broader strategic objectives of green wedge policy. The proposal will facilitate equitable

⁴ It is acknowledged within then policy basis of Clause 22.08-1 (Non-agricultural uses in a green wedge policy) that green wedge areas “provide important resources for agriculture, as well as for other non-urban purposes such as recreation and tourism”.

access for the broader community to a part of the green wedge that is currently enjoyed by only a few.

Tourism is not specifically listed within the purpose to the GWAZ, but the weight of higher order policy objectives to facilitate cultural and tourism opportunities in Victoria's green wedges lend support to this site-specific proposal. Critical to an overall assessment is whether the local impacts outweigh the broader land use benefits. The following chapters discuss these issues.

(v) Conclusions

The Advisory Committee concludes:

The proposal is conceived to have an intrinsic connection to the site and the surrounding green wedge.

The use of the land for an art gallery with a significant collection is not inconsistent with green wedge policy, but the policy of this part of the green wedge means that particular attention needs to be paid to off-site effects.

3.3 Is the Rosemaur collection significant?

(i) The issue

The strategic justification rests on the Rosemaur collection being significant; the value of the Rosemaur collection was questioned.

(ii) Evidence and submissions

John and Lisa Shannon submitted:

27. The "*significance of the gift*" is also not *in itself* a valid planning consideration and, again, should not be given any weight by the Advisory Committee (or the Minister) ...

The Advisory Committee notes that while a number of submissions questioned the quality of the Rosemaur Collection, there were no submissions that a collection of \$500,000, would not be of state significance. The fact that collection was not as valuable as some earlier estimates is not relevant to these proceedings. It is clear what value is required by the Incorporated Document.

The Friends of the Glenfern Green Wedge (FGGW) submitted:

Reducing a collection to its crude dollar value excludes a large group of artists from potentially being displayed, importantly the majority of Australian artists'. ... if the gallery does go ahead (here or at another location), this clause should be amended in relation to the display-value conditions, as the Proponent has requested.

FGGW went on to say that whether by choice or just because they thought it increased their chances of winning the case, it is revealing that European art from the last century has been used as the main drawcard to win over government and public opinion saying that perhaps this is partly why the planning response has been to 'hone-in' on the dollar value):

This reflects a long tradition in Australia, still strong today, to pay homage the Grand masters of Western art (as wonderful as they are – I'm not denying that) but to the exclusion of every other type of art, including Australian. Clause 7c locks the gallery into this very conservative *modus operandi*. ... the gallery needs to be able to display work from other collections including contemporary Australian art, even though its dollar

value is generally less. And I would add, what about art by women? None are mentioned here, and, this would bring down the dollar value even further below the \$500-million display value (due to the inherent prejudices against women artists). And the art of the First Australians – wouldn't this make it a truly world-class gallery and a gift to the people if we had this diversity in the art works on show?

(iii) Discussion

While ensuring that the Rosemaur Collection is of state significance is a threshold question that needs to be determined, it is not necessary for the Advisory Committee to determine this issue. The Advisory Committee can proceed on the basis that the collection is as significant as reported and, on this basis, consider the provisions needed in the Incorporated Document to ensure the display of an appropriate art offer.

Confirming the value of the collection (which the Advisory Committee does not doubt) does not have to be done before the Amendment is approved provided the Incorporated Document makes it clear that the project cannot proceed until the value of the collection is confirmed. The Incorporated Document proposes:

7. Prior to the commencement of the development, the Land must be transferred to the Rose & Maurice Hogg Gallery Ltd. Prior to the commencement of the use evidence must be provided to the satisfaction of the Minister for Planning that the Rose & Maurice Hogg Gallery Ltd a [holds] minimum of \$500 million worth of art. Any valuation must be undertaken by an 'approved valuer' authorised by the Department of Communication and the Arts as an 'approved valuer' under Australian Government's Cultural Gifts Program.

Oscar Wilde is credited with the quote *"The cynic knows the price of everything and the value of nothing"*. While the Advisory Committee accepts that the price of the works may be a convenient way of determining that there is a significant collection at play, it is important not to reduce the value of the collection to its price. This applies equally to art as it does to the values of the green wedge, or the quiet enjoyment of your own home. Having said that the monetary value of the collection is an appropriate metric to determine the overall value of the collection. It becomes more problematic as a metric for the value of any particular exhibition.

The Advisory Committee does not support the changes sought by Council to this condition so that it only refers to the collection of Mr Lindsey Hogg (the Rosemaur collection). It should be open to Mr Hogg to retain some of his collection for himself or others (either permanently or temporarily) provided a significant collection is made available.

(iv) Conclusions and recommendations

The Advisory Committee concludes:

The Incorporated Document has appropriate requirements to ensure that the gallery has access to a significant art collection.

3.4 The 'gift' of the collection

(i) The issue

It is not simply that the Rosemaur collection is significant but that it is held in a 'public' gallery. Submissions questioned the nature of the proposed gift of the collection.

(ii) Evidence and submissions

Save the Casey Foothills Association submitted:

No-one is suggesting that Mr Hogg's art collection isn't formidable and valuable, but we **are** suggesting that it isn't being gifted to the people of Victoria at all.

Many of the submissions were personal in tone and criticised:

- how the collection would be gifted (or indeed if it were even a gift)
- the motives of Mr Hogg
- Mr Hogg's connection to the local area.

Some submitters even went as far to characterise Mr Hogg *"as a bully determined to get his own way, and not the behaviour of someone who genuinely wants to bestow a great gift on the people of Victoria."*

These submitters were not willing (or able) to simply accept the generosity of Mr Hogg. In this view *"the proposed development is simply a commercial operation intended to generate a profit that has been structured as a charity"* (Mr and Ms Battye).

JA Hogg questioned why the nature in of the art was being concealed and argued that there was no actual gift proposed.

(iii) Discussion

Apart from not being relevant planning matters, submissions about the motives of Mr Hogg simply do not make sense. To suggest, as some submissions did, that this whole proposal is set up for private gain does not bear even the most cursory examination. In any case, the motives of a proponent in a planning matter are never determinative; well-meaning proponents can propose unacceptable outcomes, and profit driven developers produce sustainable and engaging places. It is the merit of the proposal, not the Proponent that matters.

In terms of the merits of this proposal, the Advisory Committee agrees with Mr Battye that it is not the gift itself, but the ability of the public to view it that needs to be considered.

By extension, it is not the precise legal structure around the ownership of the art but the public's ability to view it. It is not about who owns the art but who can experience the art. Ownership without the ability to experience art is meaningless; once the ability to experience the art is secured, ownership becomes more an issue of managerial responsibility. Establishing a charitable entity would seem the most transparent and best regulated way to ensure the ongoing management of the collection.

The submitters' views of Mr Hogg are not a relevant matter (nor Mr Hogg's views of the submitters) – what matters is the accessibility to the art. The Advisory Committee presumes that making a \$500 million dollar art collection available for public enjoyment would be viewed as an act of extraordinary generosity by most people – just not the majority of submitters.⁵

⁵ The Committee notes that it is entirely possible to accept the generosity of Mr Hogg, but reject the gallery as an unacceptable outcome; essentially, 'thanks, but no thanks'.

(iv) Conclusions and recommendations

The Advisory Committee concludes:

The 'gift' to the people of Victoria is the ability of people to experience the art collection.

The fact that the collection will be owned by the charity and not a state or local government entity is not a relevant planning consideration.

The charitable structure established to manage the collection is unremarkable and an established way to manage such collections.

3.5 Display of the collection

(i) The issue

The significance of the collection is one thing: ensuring it is displayed is the issue.

(ii) Evidence and submissions

The Incorporated Document includes parameters around the display of the collections. Concerns were raised as to whether these were adequate. The deepest of these concerns was that the gallery would not display any significant works at all, with one submitter arguing that the conditions would allow Mr Hogg to hang the walls of the gallery with pictures of his dog.

The exhibited document proposed at Clause 7(c) requires the owner to agree:

That for a minimum of 40 weeks per calendar year, it will publicly display artwork of a combined value of no less than the Agreed Value. For the purposes of this clause, Agreed Value means \$500,000,000 (AUD) and is to be determined by reference to the audited accounts and financial statements of Rose & Maurice Hogg Gallery Ltd, which must be provided to the Responsible Authority at the conclusion of each financial year, to the satisfaction of the Responsible Authority. Any valuation must be undertaken by an 'approved valuer' authorised by the Department of Communication and the Arts as an 'approved valuer' under Australian Government's Cultural Gifts Program.

The part C version of the controls proposes:

10. Unless otherwise agreed in writing by the Minister for Planning, in the first 10 years of the art gallery use, for a minimum of 90 days per year, a selection of works held by the Rose & Maurice Hogg Gallery Ltd will be on display across a minimum of 50 per cent of the total available gallery display space.

Council proposed that this should not be limited to 10 years.

Creative Victoria supported the exhibited clause:

Creative Victoria strongly supports the clauses in the amendment as the application for Rosemaur Gallery focuses on it being a facility of state significance. To ensure the significance of Rosemaur Gallery for future years and justify the proposed planning application approach, the clauses for a collection value to be on display of \$500 million and independent assessment of the collection need to reflect this significance.

Rosemaur Gallery will deliver an exemplary landmark contemporary building project for Victoria. As per the application the gallery will house a proposed unique and rare permanent art collection. Creative Victoria considers a collection of at least \$500 million to be on display is acceptable given the total value of the collection and the value of some of the significant individual pieces. **A lower value threshold could enable this requirement to be met with a very small number of high-value artworks.**

The proposed contemporary building design will meet international gallery loaning standards, enabling reciprocal loaning from leading global art institutions. It is considered that by ensuring a collection value of \$500 million is displayed, the gallery will develop an international reputation.

The Proponent submitted that the exhibited form of the document was 'highly problematic' for several reasons:

1. An international-standard contemporary art gallery must be provided with sufficient flexibility of programming. It is well known that the public desire dynamic, changing and evolving content. This is what drives repeat visitation. Put simply, people will not come back to a gallery if the same works are on display permanently.
2. The proposed value is a minimum value. This point is critically important and cannot be overstated. There will be some months when that value will be drastically exceeded, and the full collection may be on display. There will be other months where the value exceeds the minimum, but by a lesser amount.
3. The value only relates to works on display at any one time. The value of the entire collection securely housed at the gallery and not on display will of course be greater than the amount required to be on display.
4. From an art conservation perspective, works must be regularly rested. Each piece has a limit of UV light it can reasonably be exposed to over the course of a year. Every reputable institution 'rests' works so they can be preserved for future generations. Curators must be given sufficient flexibility to rest and rotate works.
5. A collection on display to the value of \$100M far surpasses the value of most publicly displayed collections in Victoria, and indeed Australia. By way of comparison, the entire Tarrawarra Estate collection was valued in 2019 at \$67M, noting the value on display at any given time would presumably be less than that. As another example, in 2017 the Museum of Sydney held an exhibition exhibiting 90 works from prominent Australian artist Lloyd Rees. The value of the entire collection on display was estimated to be worth around \$1M.
6. The 'value' of visual art is not only monetary. Reducing a collection to its crude dollar value, excludes a large group of artists from potentially being displayed, importantly the majority of Australian artists.

Several other submissions from people with experience in art gallery management echoed these concerns.

The Proponent further submitted⁶ that Rosemaur had recently undertaken an analysis of wall space available within the gallery, and established that to display the entire Rosemaur collection, a minimum of four complete hangs would be required. That is, the collection takes up four times the amount of wall space in the gallery, or only a quarter of the collection can be on display at any given time.

(iii) Discussion

In terms of other controls, there is an inherent tension between preserving curatorial independence, and requiring that a meaningful amount of the collection is displayed. There is also a tension between specifying a dollar value and requiring that a meaningful amount of the collection is displayed. As Creative Victoria points out this sort of condition could be met with a few highly valuable works unless a high figure is specified.

The importance of the art on offer is part of the strategic justification for the proposal, in particular the justification for the restaurant and function centre. The risk is that the

⁶ Part A, paragraph 73

restaurant and function centre become the dominant uses on the site and the art offer is limited in interest or time of display.

It is clear that the gallery must operate for the other uses to operate. The Incorporated Document states:

9. If the Gallery use ceases, the use of the land as a Function Centre, Restaurant and Dwellings must be discontinued until such time as the Gallery is reopened to the satisfaction of the Responsible Authority.

The Incorporated Document also includes:

8. Unless otherwise agreed in writing by the Responsible Authority, the Exhibition Centre (Art Gallery) must:
 - a) be operated and maintained in compliance with *National Standards for Australian Museums and Galleries*, as amended from time to time; and
 - b) be operated and maintained in such a way that it remains compliant with, and able to act as a 'Borrower' within the meaning of that term in the *International Council of Museum Guidelines for Loans*, as amended from time to time.

The *National Standards for Australian Museums and Galleries* sets out 'principles', 'standards' and 'benchmarks'. These make clear statements about the display of the collection. It includes:

Principle B2

The museum presents its most significant collection items, stories and themes through engaging exhibitions and programs.

- Standard B2.1 The museum selects significant collection areas, stories or themes to highlight, based on what is most relevant to its purpose and audiences.
 - Benchmark B2.1.1 The museum's significant collection areas, themes or stories are outlined in a written policy or plan.
 - Benchmark B2.1.2 Exhibitions, displays and activities are changed to attract and interest new audiences and repeat visitors, using a variety of collection items, themes and stories.
 - Benchmark B2.1.3 A variety of methods are used to present stories, exhibition themes, and the collection, to museum audiences.
 - Benchmark B2.1.4 The significance of the museum's objects, buildings and site is explained to the public.
 - Benchmark B2.1.5 Efforts are made to research and interpret significant stories, themes and collection areas, from the past up to the present day, and from a range of perspectives.

Principle B3

The museum is committed to its current and potential audiences, and caters for their needs and interests through its communications, programs and services

- Standard B3.1 The museum knows who its current and potential audiences are and has strategies to attract and retain them.
 - Benchmark B3.1.1 Records are kept of visitor numbers, and of types of visitors.
 - Benchmark B3.1.2 Records of visitor numbers are evaluated to help the museum understand visitation patterns and to assist in planning for the future.
 - Benchmark B3.1.3 Visitors are invited to give feedback about their museum experience, and this information is evaluated and used in planning.
 - Benchmark B3.1.4 The forward plan includes strategies to attract existing audiences as repeat visitors, and ideas for drawing in other potential audiences.

- Standard B3.2 The museum promotes its collection, key attractions, programs and services.
 - Benchmark B3.2.1 A range of promotional tools are used to make potential audiences aware of the museum and to encourage them to visit
 - Benchmark B3.2.2 Promotional material is up to date.

These guidelines were not subject to detailed discussion at the Hearing, but it seems to the Advisory Committee that these guidelines combined with the charitable objectives of the gallery entity should ensure that the gallery meets expectations on the general display of its collection.

The Advisory Committee accepts the submissions that the requirement in the exhibited version of the Incorporated Document was not workable for the reasons set out. Requiring a gallery to have its complete collection permanent on display, particularly when those works include works on paper, does not make sense.

The Advisory Committee agrees the need for curatorial independence and believes the revised Incorporated Document has appropriate conditions.

This issue would become contested if the works displayed are seen to be insignificant to justify the restaurant use and function centre use. It was not discussed at the Hearing, but the Advisory Committee thinks that, to potentially provide some insights if this matter is contested in the future, the gallery should keep records of:

- gallery attendance
- restaurant attendance
- restaurant attendance when the gallery is closed
- function centre attendance.

These records must be made available to the responsible authority on request.

(iv) Conclusions and recommendations

The Advisory Committee concludes:

The Incorporated Document has appropriate requirements to ensure that the gallery displays its collection.

If the proposal were to proceed the Incorporated document should be further refined to require:

- The gallery must keep records of:
 - gallery attendance
 - restaurant attendance
 - restaurant attendance when the gallery is closed
 - function centre attendance.
- These records must be made available to the responsible authority on request.

4 Bushfire issues

(i) The issue

The relevant bushfire issues include:

- the bushfire risk to the site and surrounds
- the siting and built form
- emergency measures.

(ii) Relevant policies, strategies and studies

The township of Harkaway and its surrounds are in a Bushfire Prone Area.⁷

Figure 8: Harkaway and its surrounds identified as Bushfire Prone Area



A BMO applies to the eastern portion of the site.

Figure 9: Location of the Bushfire Management Overlay (BMO) (source: DELWP)



Clause 13.02-1S Bushfire Planning must be applied to all decision making within a designated bushfire prone and BMO. The objective of this policy is:

⁷ Per section 192A of the Building Act 1993.

- To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

The related strategies are set out under five headings:

- Protection of human life
- Bushfire hazard identification and assessment
- Settlement planning
- Areas of biodiversity conservation value
- Use and development control in Bushfire Prone Area.

The strategies for the protection of human life include:

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low-risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
- Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.

As part of the bushfire hazard identification and assessment, an assessment to identify appropriate risk requires the considerations of landscape, local and neighbourhood conditions, as well as the subject site itself.

The relevant emergency management agencies and the fire authority are required to be consulted and to implement their recommendations for appropriate bushfire protection measures. The policy requires that strategic planning documents, planning scheme amendments, and approvals assess bushfire risk and include appropriate bushfire protection measures.

Settlement planning strategies for resilient communities will prioritise the protection of human life by:

- Directing development to low-risk locations, being those locations assessed as having a radiant heat flux of less than 12.5 kilowatts/square metre under AS 3959-2009 Construction of Buildings in Bushfire prone Areas (Standards Australia, 2009).
- Ensuring the availability of, and safe access to, areas assessed as a BAL-LOW rating under AS 3959-2009
- Construction of Buildings in Bushfire prone Areas (Standards Australia, 2009) where human life can be better protected from the effects of bushfire.
- Ensuring the bushfire risk to existing and future residents, property and community infrastructure will not increase because of future land use and development.
- Achieving no net increase in risk to existing and future residents, property and community infrastructure, through the implementation of bushfire protection measures and where possible reducing bushfire risk overall
- Assessing and addressing the bushfire hazard posed to the settlement and the likely bushfire behaviour it will produce at a landscape, settlement, local, neighbourhood and site scale, including the potential for neighbourhood-scale destruction.
- Assessing alternative low-risk locations for settlement growth on a regional, municipal, settlement, local and neighbourhood basis.
- Not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of

development in an area that has, or will on completion have, more than a BAL-12.5 rating under AS 3959-2009 Construction of Buildings in Bushfire prone Areas (Standards Australia, 2009).

Clause 53.02 Planning for Bushfire

Clause 53.02 bushfire planning applies to the proposal. In addition to the implementation of higher order planning policy, the protection of human life and the need to strengthen community bushfire resilience is reiterated. Relevant purposes of this policy include:

- To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.
- To ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level.

The proposal requires a pathway 2 response per Clause 53.02-4 that mandates an assessment under the BMO (Clause 44.06).

Bushfire Management Overlay

Further to the implementation of the Planning Policy Framework, the purposes of the BMO include:

- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

Integrated decision making

The VPP anticipate that development will occur within areas that inherently carry bushfire risks, but Clause 71.02 explicitly states that:

... in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

In place of a prohibition on the development in such areas, the VPP provide assessment tools such as the BMO (and accompanying policies and standards) to determine if a development that protects and prioritises human life can be delivered. It is the performance against these assessment tools that the Advisory Committee gives weight. In this matter, the Planning Scheme requires decision makers to prioritise human life over cultural experience. If there is a credible risk to human life, then the proposal ought not proceed.

(iii) Evidence and submissions

Many submitters provided emotive accounts of traumatic events witnessed and suffered by them personally or others in the area because of catastrophic fire events of 1983 and 2009.

The BMS prepared by Terramatrix describes the four broader landscape types that are identified as carrying different landscape risk levels⁸ in the technical guide *Planning Applications Bushfire Management Overlay*.⁹ The BMS says that:

⁸ The landscape type classifications are a sliding scale whereby the risk increased from type 1 to type 4.

⁹ DELWP, 2017.

... the four types range from low-risk landscapes where there is little hazardous vegetation beyond 150 metres of the site and extreme bushfire behaviour is not credible, to extreme risk landscapes with limited or no evacuation options and where fire behaviour could exceed BMO presumptions.

Figure 10: Local and Neighbourhood Landscape Assessment Map (source: Terramatrix)



The site and surrounding landscape is within broader landscape Type 3. No evidence was led to the contrary and the CFA has endorsed this assessment.

It follows that the landscape is not one of extreme bushfire risk. The classification of BMO/AS 3959-2009 Woodland model¹⁰ places the site as being within approved measure 2.1 landscape of clause 53.02-4.1:

¹⁰ Bushfire behaviour is likely to be within BMO expectations and design parameters. The topography is relatively benign and the fuel hazard of the minor areas of windbreak and roadside vegetation is less than that presumed in the BMO/AS 3959-2009 model for Woodland.

The bushfire risk to the development from the landscape beyond the site can be mitigated to an acceptable level.

Figure 11: Bushfire Hazard Site Assessment Plan



On the matter of bushfire, The Friends of Harkaway called evidence from Emeritus Professor Michael Buxton. Professor Buxton said that *“Amendment C273 contradicts the priority that (13.02-1) gives to the protection of human life above all other planning considerations”*.

Professor Buxton gave evidence that it is prudent to employ the ‘precautionary principle’ noting that the 2009 Victorian Bushfires Royal Commission pointed to a need to anticipate harm through the planning system. His evidence was that *“land use planning is the single most important mitigation measure in preventing future disaster losses in areas of new development”*.

In essence, Professor Buxton said the precautionary principle has been used to anticipate harm from climate change on coastal development and should be applied in planning for bushfires. It is Professor Buxton’s opinion that:

... more fundamental problems arise with such assessments of bushfire risk. The likelihood that the proposal will comply with the statutory requirement for hazard assessment does not guarantee survival of life or property. The notion of appropriate location is a more fundamental means of addressing a broader concept of risk by preventing harm. This requires anticipatory policy and practice.

The Friends of Harkaway Association were concerned that the proposal presents an unacceptable risk to life from bushfire threat that is inconsistent with bushfire provisions of the planning scheme. The Association disagrees with the findings in the BMS and BEMP and disagrees that risk to human life is safely managed through the BEMP. The Association believes that:

The paramount and indeed overriding importance of the need to ensure the use and development of the site without risk to life, property and the natural environment is made plain in relevant policy in the Casey Planning Scheme.

A peer review of the Terramatrix BMS and BEMP was completed by Wakefield Planning and submitted by Ms Rosalie Counsell. This submission concluded that due to the location of the proposal and its intrinsic nature of the operation that the proposal:

... constitutes an elevation of risk to human life which is contrary to the clearly stated policy objectives of VPP 13.02. While matters within the site can be addressed, the overall risk context is considered too high for this form of development in this location. I am not of the view that the issues raised are capable of being remedied by appropriate conditions ...

To support the proposal, the Proponent tabled expert evidence from Mr Hamish Allen¹¹ of Terramatrix. The evidence of Mr Allen reviewed the exhibited Bushfire Management Statement (BMS) (September 2020) and the Bushfire Emergency Management Plan (BEMP) (Preliminary Draft v1.3, June 2020). In his evidence in chief, Mr Allen arrived at the following conclusions:

I have reviewed the BMS and BEMP prepared by my colleagues for the use and development proposal. I identify no significant matters arising and conclude that the BMS and BEMP require only minor corrections and updates. Overall, I agree with the assessment of the hazard, proposed bushfire protection measures, and that the development appropriately responds to and complies with the applicable objectives of the BMO and associated Clause 53.02.

I have assessed the proposal against the objective and applicable strategies of Clause 13.02 Bushfire in the Planning Policy Framework and consider that it meets the objective and appropriately responds to and satisfies all of the applicable strategies.

The Country Fire Authority (CFA) is the relevant referral authority. The CFA supported the precautionary approach to bushfire that was been presented with the BMS and BEMP and generally agree with the information and bushfire assessments provided by Terramatrix. The CFA submitted it was accepted that:

The proposed buildings will be used as a shelter in place option.

The proposed buildings to be used as shelters in the event of a bushfire will be built to a minimum construction standard of BAL12.5.

¹¹ Mr Allen is experienced in land use planning (environmental, strategic and statutory planning), environmental management and bushfire planning including as a Park Ranger and Environmental Planner for State and local governments.) In his evidence in chief Mr Allen acknowledged that his Level 3 Accredited Bushfire Practitioner - Bushfire Planning and Design, Fire Protection Association Australia Accreditation Number BPAD29090 status had temporarily lapsed, however the Advisory Committee sees that nothing of substance turning on this.

These buildings will largely be compatible with defensible space requirements required under Table 3 of Clause 53.02, that the radiant heat exposure of the building will be 10kW/sqm.

The shelter in place option is capable of accommodating the maximum number of people at the site, on normal capacity days.

A separate events based BEMP will be developed on occasions whereby normal capacity is exceeded.

The site will be closed on days where the fire danger index is classified as Code Red.

The CFA did not object to the bushfire emergency planning proposed and offered no objection to the central bushfire related conditions subject to the incorporation the CFA additions.

Several submitters were concerned about the appropriateness and use of the fire track between Hilden Drive and Farm Lane for emergency evacuations purposes. The concerns were based on the steep gradients, confined width, tall vegetation alongside the track and unsealed surfacing as being inappropriate and unsafe in the event of an emergency evacuation.

It was Mr Allen's evidence that 4WD CFA vehicles commonly use such access tracks in the event of bushfire emergency and that the fire track is likely an inappropriate evacuation route.

The CFA confirmed that in the event of an emergency, the preferred operational response to reach to the site would be via King Road. The fire track was considered during their assessment noting that:

- CFA has considered the location and use of this track in its assessment of the proposal and its existence and future maintenance has been one of many factors that has helped form the Advisory Committee's views on the proposal.
- CFA supports the continued use of the track by the fire authority for access purposes in the event of bushfire.

The CFA supported the evacuation procedures set out in the BEMP and preferred the fire track to be primarily for the purposes of CFA vehicles accessing the area rather than the fire track being an evacuation route. Ultimately the CFA deferred to operational discretion in the event of emergency evacuation.

The Council deferred to the CFA as the determining authority:

... a permit would be required under the overlay for buildings and works associated with the proposed Rosemaur development. An application for works must be accompanied by all necessary bushfire hazard site assessments, a bushfire hazard landscape assessment and a bushfire management statement. The Proponent and Planning Authority have consulted with CFA in this case and CFA is a party to this Advisory Committee process in the review of the proposal.

The Proponent submitted that in addition to the BMS and BEMP, the proposal is supported by qualified expert evidence on bushfire, and draws support from the determining authority, with the following favourable features:

- it is proposed that the site will be closed on Code Red days
- the Gallery and Restaurant buildings will provide Shelter-In-Place buildings
- King Road will be upgraded to a sealed and widened access road which will provide a benefit to emergency vehicles accessing the site
- the fire access track that extends between Hilden Drive and Farm Lane track provides an additional layer of fire safety.

The Proponent said that the bushfire risk is appropriately managed due to:

- the proposal appropriately responds to and complies with the applicable objectives of the BMO and associated Clause 53.02
- the site is not in an extreme bushfire risk location
- protection of human life can be prioritised by implementing the measures in the Bushfire Management Statement, to comply with the BMO objectives, including providing a viable shelter-in-place location to ensure life safety.

(iv) Discussion

The Advisory Committee is acutely aware of the community's concerns in relation to bushfire risk. The community of Harkaway and its neighbours continue to carry the memories of extensive fire damage from the 1983 Ash Wednesday and 2009 Black Saturday fires. Numerous residents of Harkaway and the surrounds share living memory of catastrophic fire events that have influenced many of the current bushfire development controls and bushfire related planning policies in the Casey Planning Scheme.

The Advisory Committee agrees that much care should be taken when siting and designing new development within bushfire prone areas but recognise that the design standards and assessment pathways set out in the BMO provide performance-based measures for managing risk and prioritising and protecting human life in bushfire affected areas.

The objective of Clause 13.02-1S bushfire planning is:

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. (Advisory Committee emphasis)

In other words, a "*risk-based planning approach*" anticipates that development may occur in bushfire affected areas. There is not a precautionary prohibition on development in such areas. More so, development in these areas must demonstrate that the risks associated with a proposal are appropriately managed, and consequently, protect and prioritise human life.

To this end, the Advisory Committee does not subscribe to Professor Buxton's view of a general prohibition of proposed land uses within a bushfire prone area and site affected by a BMO. The Advisory Committee accepts that the bar is set high in bushfire prone areas.

Bushfire risk (site and surrounds)

The Advisory Committee agrees that the risk can be mitigated to an acceptable level if the appropriate bushfire protection measures can be implemented with BMO requirements, and the construction of an unsealed fire access track through Reserve No. 1 on LP115396, located between Hilden Drive and Farm Lane, to CFA specifications as proposed in Condition 26 of the Incorporated Document.

The siting and built form

The Advisory Committee is satisfied that the siting and design requirements are either achieved or capable of demonstrating compliance under conditional endorsement with the BMO and broader bushfire policies. These include:

- The provision of 62 metres of defendable space predominately located within the site, noting that where there is an overlap of the defendable space¹² the alternative measure 3.3 is invoked,¹³ and the minor area of overlap is unlikely to compromise the effectiveness of the defendable space.
- The provision of a vegetation management plan per condition 51 of the Incorporated Document ensuring that vegetation within the 62 metre defendable space buffer is maintained and does not detract from the buffers effectiveness.
- The two galleries and restaurant will be built to a BAL-12.5 construction standard and provided with 62 metres of defendable space. Elements of the building will be partially underground, with above ground surfaces largely clad with non-combustible materials.
- The vehicle access, design and construction as endorsed by the CFA and called up conditions of the Incorporated Document.
- The provision of a static water supply for firefighting and property protection in accordance with the approved measure 4.2 in Clause 53.02 and referenced in condition 50 of the Incorporated Document.¹⁴

(v) Conclusion

The Advisory Committee concludes:

While the site is exposed to some bushfire risk these risks expert evidence and the CFA conclude that these risks are adequately dealt with.

¹² 2.5 metres to the southern boundary and 22.5 metres at the northern boundary.

¹³ Alt Measure 3.3 "Adjoining land may be included as defendable space where there is a reasonable assurance that the land will remain or continue to be managed in that condition as part of the defendable space".

¹⁴ The floor area of the proposed gallery (4,215 square metres) and restaurant (785 square metres) totals 5,000 square metres and thus a static water supply of 40,000 litres is required; an actual water supply of 200,000L will be available. The remote outlet to the water tank(s) will be sited so that CFA tankers can get within 4 metres of the remote outlet(s). The tank(s) will be non-combustible, dedicated solely for firefighting and the remote outlet will be provided with CFA fittings and couplings. (Terramatrix BMP).

5 Is the proposed site development appropriate?

5.1 Built form

(i) The issues

The issue is whether the built form impacts are appropriate.

(ii) Evidence and submissions

Several submitters thought that the buildings would impose themselves on the landscape. Mr Phillip Wild put to the Advisory Committee that there has been no attempt to camouflage the built form. Mr Tony and Mrs Karen Cavanagh opposed the building design by submitting:

The proposal architectural drawings show an imposing structure resembling a tree falling with the central part of the building seeming to be underground. The tree has massive branches showing obtrusive oblong structures which we understand to be wings relating to the function centre, the gallery, and the restaurant.

Council supported the built form, architectural expression and general siting of the development. Council reasoned that the proposal performed well against the policy and development objectives within the Foothills setting observing:

The careful approach to urban design in terms of the development itself and the upgrading of King Road will ensure that the development is a good fit in the area even though it is new development. While it will attract more activity to the area, one can discern that activity creation particularly for tourism is quite consistent with the broader policy framework.¹⁵

From a development perspective, it must be acknowledged that the architectural quality is of a very high standard. The building and site design are such as to fit into the natural topography and vegetation of the site and broader Casey Foothills, consistent with the SLO, Casey Foothills Local Area Planning Policy, and Casey Foothills Strategy.¹⁶

The Proponent's Visual Impact Assessment also demonstrates the minimal visual impact of the design. The rural green wedge setting is appropriately acknowledged in the site design with large open areas for wildflowers, protection of existing on-site native trees, and garden paths.¹⁷

In the main, the design and siting of the buildings attracted support from the planning and design experts. Professor Mark Jacques was called by the Proponent to provide urban design evidence in relation to design and siting, wider site and works and changes to King Road. His opinions included:

- 30 The massing, planning and distribution of built form on the site results in a skilful kind of sleight of hand where the majority of the project's built form disappears from view, concealed under site topography. Similarly, the arrangement of the 3 wings mean that the building cannot be seen as a whole from any vantage point on the ground. The proposal reads as a series of parts, concealed by landscape and by itself.
- 41 The material strategy of the building's facade and wall proposes a mottled, deep and patinated treatments that will result in a rich and changing surface and that will show age and weathering - a proxy of the kind of weathered timber and steel agricultural sheds that can be seen in rural areas.

¹⁵ Council submission page 12

¹⁶ Council submission page 13

¹⁷ Council submission page 13

His support for the design and siting was echoed by Mr David Crowder who said:

I have no in-principle objection to the proposed buildings, which will generally be respectful of their rural context (design, materials etc) and partially excavated into the slope of the land.

Under examination, Ms Rigo agreed that the architecture and siting of the buildings were of high quality and that they achieve the preservation of the landscape and scenic values of the area.

The Proponent reiterated the importance of the association and interaction of the gallery within the landscape, and the interrelationship between form and setting that underpins the proposal. To this end Mr McGurn observed:

In addition to the public benefits, my observation is that the gallery has been designed to be integrated with and appreciated within the landscape. This ... complements the Green Wedge A Zone and Significant Landscape Overlay more broadly given that the uses will relate to their context through their siting and opportunities for patrons to engage with the landscape.¹⁸

(iii) Discussion

The Advisory Committee is mindful that the VPP do not prevent all development in the green wedge; the VPP call for new development in the green wedge to be sensitively designed, respectful of, and reinforce those attributes that are sought to be protected. The VPP anticipate providing opportunities for all Victorians to share in the amenity of the green wedge areas.

Melbourne's green wedges have distinctive landscapes and vistas. This section of Harkaway is no exception and the qualities that attract the proposal should be complemented by the design and siting of the buildings.

Development within green wedges must acknowledge and contribute to the landscape values, to the vistas and characteristics of the area. Throughout the layers of policy guiding aspirations in the green wedge, a common thread is the call for sensitive and low-impact design responses that have regard for the surrounding rural environment.

In other words, buildings, their siting and respective works, should take cues from the physical context of the site, incorporate them into the design, and where possible, be ingratiated within the topography.

The Advisory Committee agrees with Professor Jacques that:

... the proposed built form design satisfies the policy objectives of 22.08 Non-Agricultural Uses in Green Wedge Areas Policy to ensure that new buildings do not detract from the landscape and scenic values of Green Wedge areas and to ensure that non-agricultural uses are sensitively integrated into the surrounding area.

... the proposed built form design satisfies the policy objectives of 42.03 Significant Landscape Overlay; to conserve and enhance the existing pattern of vegetation to maintain landscape quality and remaining natural ecosystems, to encourage development that is in harmony with the hilly terrain and rural landscape of the Casey Foothills and to protect the rural character of land surrounding the settlements of Harkaway and Narre Warren North.

¹⁸ para 63

The location of the buildings along the contours of the site together with the benching in of the buildings below the ridgelines ensure the buildings are subservient to the landscape and do not detract from the openness of the landscape that they will sit in.

The assembly and angles of the buildings position them along the topography ensures they are not presented in an agglomeration of built form foreign to this rural landscape. To the contrary, the buildings are sensitively integrated to create of harmony within the landscape.

The Advisory Committee finds that the built form and siting will make a positive contribution to landscape character of the area. The built form will be largely concealed from the public realm along King Road. Where the buildings are visible, they remain subservient to the natural setting.

The Advisory Committee finds that where the form is not concealed, it will not generate unreasonable visual amenity impacts to the immediate or broader surrounds.

(iv) Conclusion

The Advisory Committee concludes:

The built form outcomes are consistent with green wedge policy.

5.2 Landscaping

(i) The issue

The issue is whether site landscaping is appropriate.

(ii) Relevant policies, strategies and studies

Plan Melbourne envisages sustainable year-round tourism and new tourism (including diverse attractions, accommodation, and eating establishments) that maintains the integrity of the natural environment. Certainly, new development in areas of landscape and scenic sensitivity should draw a contextual reverence from physical and policy setting.

A core theme within the GWAZ is the protection, conservation and enhancement of scenic landscapes, character and scenic non-urban landscapes. This theme is consolidated through local policy and overlays.

The Casey Foothills are known for the breathtaking views among ridges and vantage points. The hilly terrain and rural landscape of Harkaway and Narre Warren North provide a scenic backdrop to the low-lying areas of Casey. The existing pattern of vegetation, rural nature and open pasture make up some of the key elements identified in SLO1 sought to be protected and enhanced in the green wedge. This *“enhancement”* is echoed throughout the Planning Scheme, including Clause 21.14 (Casey Foothills) that seek:

To ensure the long-term protection and enhancement of the Casey Foothills for its:

- Valued rural landscape and character.
- Significantly exposed hilltops and ridge lines.
- Vegetation that forms the *“green backdrop”* for Casey.

(iii) Evidence and submissions

Concerns were expressed about the impact of the proposal on the broader landscape particularly the Cardinia Creek corridor as this area had been identified as a release site for the Helmeted Honeyeater.

Council submitted that the proposal:

... presents a unique opportunity to create more publicly accessible space in the Casey Foothills where more of the local community can come experience the bush and pasture landscapes and impressive views and environment of the Casey's Foothills.

The landscape vision was prepared by Urbis.¹⁹ The planting palette proposed is of a mix of native and exotic species. The planting scheme anticipates the selection of native plants from the Ecological Vegetation Community schedule, landscaping for bushfire prone areas, and the Casey Council indigenous plant guide.

Broadly landscaping concepts to be delivered on-site include:

- Planting patterns arranged in natural groupings of species
- Planting areas close to buildings to be of low fuel load to limit fire risk, while maintaining colour, texture and interest.

On-site attributes will include:

- The existing dam to be enlarged and islands created to encourage local birdlife. Dam to be planted with natural edge and features to encourage sanctuary conditions for wildlife
- Rows of new native trees to be planted along King Road and Hilden Drive
- Screen planting north of the overflow parking area.

Professor Jacques evidence peer reviewed the exhibited landscape vision and his opinion was that:

the Landscape Vision lacks a strong narrative and decisive approach to the spatial location of vegetation within the project, including the use of planting to integrate infrastructure, existing ecologies and the building itself into a bigger idea.

Professor Jacques made a series of recommendations to strengthen the landscape design. They are centred around the reestablishment of pre-colonial ecological vegetation classes and the active land management using indigenous ecologies. Professor Jacques also recommends the landscape vision consider curatorial ambitions of the collection and manners which may facilitate the external exhibition within the wider landscape.

(iv) Discussion

The Advisory Committee is satisfied that a landscaping program that compliments and contributes to the vegetation objectives and scenic values can be delivered by the landscape vision for the site.

The Advisory Committee finds that the proposal represents as an opportunity to vegetate the site in a manner that achieves the SLO1 and rural character objectives of green wedge policy. The Advisory Committee is satisfied that the landscape vision will ensure that the built form is accompanied by a landscape design that compliments the siting, scale and architectural

¹⁹ Rosemaur Landscape Vision (193-209 King Road, Harkaway), 10 September 2020, Final.

expression, as well as provide opportunity to integrate with the existing flora and fauna habitat.

(v) Conclusions

The Advisory Committee concludes:

The landscape proposal needs further detail and refinement but is capable of delivering an attractive area consistent with green wedge policy.

5.3 Car parking

(i) The issues

The issues are:

- whether the supply of sealed and overflow parking is adequate
- whether the design of the parking and access roads is appropriate.

(ii) Relevant policies, strategies and studies

Clause 52.06 of the PE Act set out the requirements for car parking. The standard provision for parking is set out in the table to Clause 52.06-5 of the PE Act for the three uses is as follows:

- Gallery: 0.3 spaces per patron
- Restaurant: 0.4 spaces per patron
- Dwellings: 2 spaces per 3-bedroom dwelling and 1 space per 1-bedroom dwelling.

(iii) Evidence and submissions

The Proponent submitted a revised car parking and roadways plan prior to the Hearing.²⁰ This reduced the sealed parking area to 108 spaces, including 4 disabled bays, resulting in a total of 261 spaces.

The Part C Incorporated Document allows up to 580 patrons at any one time including a maximum of 150 patrons in the restaurant building. A further provision provides for the responsible authority to approve up to 3 events a year that exceed the 580-patron limit.

Condition 1e) requires the plans to include a dedicated coach/bus drop off area independent to areas shared by other vehicles. Condition 17 of the Incorporated Document includes a requirement for an Operation and Management Manual to be prepared prior to the use starting. This is to include management of buses and coaches. The same requirement is included in the requirement for an event management plan for major events over 580 patrons at Condition 20.

The Proponent, in its Part A submission²¹ provided an operational assessment by Architecture Associates of typical patronage levels for typical operations on weekdays and weekends as well as for large events attracting up to the 580 patron limit. The large events are for gallery openings expected to attract up to 1,300 patrons over the day and occur up to 4 times a year for exhibition openings. These large events exclude major events attracting a greater peak patronage than 580 patrons which would require the approval of the responsible authority.

²⁰ Document 82.

²¹ Document 33.

Architecture Associates estimated a typical peak patronage levels as follows:

- 90 patrons: Typical Tuesday lunch
- 60 patrons: Typical Tuesday evening
- 136 patrons: Typical Friday Lunch
- 150 patrons: Typical Friday evening
- 150 patrons: Typical Saturday lunch:
- 120 patrons: Typical Saturday evening
- 250 patrons: Thursday evening exhibition opening
- 510 patrons: Saturday exhibition opening.

Mr Walsh gave traffic evidence on behalf of the Proponent. Using the standard rates set out in Clause 52.06-5, he determined that an event maximum would consist of 580 patrons at a gallery function attracting a demand for 174 parking spaces plus 3 spaces for residents requiring a total of 177 spaces.

Under typical operation he assumed a total of 400 patrons at any one time, split with 250 patrons in the gallery and 150 patrons (the maximum proposed for the restaurant use) in the restaurant. On this basis, he determined that the typical operation would attract up to 138 cars at any one time which would result in an overflow of around 30 cars into the eastern car park.

Mr Cooper gave traffic evidence on behalf of the Council. In his written evidence, he assumed for an event maximum of 580 patrons this would consist of 150 patrons in the restaurant and 430 patrons in the gallery requiring a total of 189 spaces.

Mr Cooper also included a first principles assessment for a typical Saturday and Sunday and estimated that the peak demand for typical operation would be 120 spaces, including up to 86 patron vehicles and up to 40 staff vehicles.

At the request of the Advisory Committee, the traffic experts held an expert conclave prior to the Hearing and submitted a joint statement.²² In that statement they agreed that the statutory parking requirement for 580 patrons is 189 spaces, inclusive of 4 disabled bays. They also agreed that the minimum number of sealed parking spaces should be 105 spaces, including 4 disabled bays. This excluded the parking for residents (3 required), noting a double garage is provided in the central wing.

Mr Walsh, in presenting his evidence, noted that in his written evidence he had relied on the earlier amendment material for his assumption of 250 patrons in the gallery in typical operation. Based on the Part A material he came to the revised conclusion that the expectation is that that 250 patrons at any one time would be infrequently met. Accordingly, for the joint statement he determined the amount of sealed parking based on typical operation accommodating 150 restaurant patrons at 0.4 patrons per space (60 spaces) plus 150 patrons in the gallery at 0.3 patrons per space (45 spaces)—300 total patrons and 105 spaces.

Neither traffic expert considered the parking demands for the three major events per year attracting over 580 patrons at any one time, referring to the need for approval of an event management plan by the responsible authority.

²² Document 76.

Nor did the traffic experts consider bus parking demands. Mr Walsh advised, under questioning, that some consideration of conditions was needed for how buses would be accommodated for the quarterly events as well as consideration for buses in the event management plan for major events.

Ms Jordan advised, under questioning by Mr Ewan regarding visual impacts, that the overflow car park would not be used on a daily basis and was not intended for staff parking. It would remain a grassy field and used on limited occasions, and three occasions of use was not a big imposition. In response to a question from the Advisory Committee she added that there may be other occasions when the maximum patronage was on-site that the overflow car park may be used.

(iv) Discussion

The amount of sealed parking is a critical element of the proposal.

The planning and urban design evidence proceeded on the assumption that the overflow parking would be rarely used, generally for the gallery openings four times a year and the three additional major events, based on untested or qualified advice from Architecture Associates on its estimates of patronage.

The Advisory Committee agrees that the overflow parking should be limited to such use. It provides for limited amenity, with no shade proposed, no line marking or paved surface, and is located at some distance, approximately 165 metres, down a path to the lower end of the site from the central building and even further through that building and across to the restaurant wing.

On this basis, it would be appropriate to limit typical operations to 300 patrons in total at any one time, which the traffic experts agreed could be accommodated in the sealed car park, with 580 patrons being the limit for the four large events. This limit on typical operations provides twice the patronage estimated for the typical operation estimated by Architecture Associates and is greater than its estimate for a Thursday evening gallery opening.

In respect to the proposed three major events, the Advisory Committee has not been provided with any evidence for such events and therefore is unable to support the inclusion of a condition allowing events over 580 patrons. Whilst some surplus overflow parking exists, it is not clear how a greater patronage could be ferried to the site with the limited coach parking and the constraint of King Road as discussed Chapter 7.

In respect to buses, the Advisory Committee notes that this site is not directly accessible by public transport with the nearest public transport being at Berwick, beyond a walkable distance. A major cultural tourism venue is likely to attract buses and as discussed elsewhere it is preferable under planning policy to locate such uses in a location accessible by public transport. Buses may be generated by school groups, chartered tour groups or privately chartered buses for events and functions.

The Advisory Committee understands that the overflow parking is not to be used by coaches, and does it consider it to be suitable for this use. Without evidence of the demand for buses it cannot be satisfied that the provision of parking for one bus at a time is appropriate for this site, noting the distance of the site from Melbourne or potentially suitable layover parking areas. This is a matter that needs to be further considered before the finalisation of the site layout.

In relation to the dwellings, Clause 52.06-5 requires the provision of three spaces. The Advisory Committee does not consider that the provision of a double garage and a third space shared within the sealed car park, which is some distance and has limited surveillance from the dwellings, is appropriate.

(v) Conclusions

The Advisory Committee concludes:

The overflow car park may be used more often than expected by the planners unless maximum patron numbers are further limited.

The overflow car park is not appropriate for regular use and patronage limits should be modified to control this.

The provision of convenient parking for the dwellings is not sufficient and three secure spaces should be provided in proximity to the dwellings.

No consideration of the adequacy of the bus parking provision has been given and a traffic report should be prepared to inform this requirement.

No evidence has been provided to support the inclusion of conditions allowing major events with over 580 patrons at any one time.

If the proposal were to proceed the Incorporated document should be further refined to:

- Limit the maximum patrons on site for a typical operation to 300 patrons with allowance for up to 4 large events, quarterly exhibition openings, with up to 580 patrons at any one time.
- Omit any allowance of major events allowing more than 580 patrons at any one time.
- Include a requirement for an assessment to be undertaken prior to finalising the layout of the site of the bus parking demand and the site layout adjusted accordingly, to the satisfaction of the Responsible Authority.
- Require the provision for the garaging of three cars associated with the dwellings.

5.4 Design of parking and access roads

(i) The issues

The issues are:

- whether the site layout conforms to relevant design standards, including those of the CFA
- whether the site layout provides appropriate turning circles.

(ii) Relevant policy and studies

Clause 52.06-9 of the PE Act sets out the design standards for car parking. This includes dimensions for car parking spaces, access ways and grades.

Table 5 of Clause 53.02-5 sets out the vehicle access design and construction access requirements applicable to an application under Clause 44.06 – Bushfire Management

Overlay. The requirements of Clause 53.02-5 have been referenced in the Bushfire Management Statement for the site prepared by Terramatrix, September 2020.²³

Australian Standard for Off-Street Car Parking Facilities (AS 2890.1:2004) provides guidance on widths of car parking spaces, aisles and roadway grades for off-street car parks. Australian Standard for Off-Street Commercial Vehicle Facilities (AS 2890.2:2018) provides design guidance for off-street areas used by buses and trucks.

(iii) Evidence and submissions

The revised plans were considered in the traffic conclave by Mr Walsh and Mr Cooper as well as by Mr Matheson of Taylors, who provided written evidence on road design on behalf of Mr Mackinnon and Mr Walsh.

In the joint statement, the three traffic experts agreed:

- Car parking dimensions should be provided in accordance with Clause 52.06-9 of the Planning Scheme.
- Car parking and roadway grades should be designed in accordance with the Australian Standard for Off-Street Car Parking Facilities (AS 2890.1:2004), except for roadways to/from loading and coach areas where roadways should be designed in accordance with the Australian Standard for Off-Street Commercial Vehicle Facilities (AS 2890.2:2018).
- The Incorporated Document should include conditions to give effect to both of the above.
- The inclusion of an east-west internal road provides for better connectivity between the formal and overflow car parks.

Mr Walsh also noted in his written evidence that where adjacent retaining walls, the width of accessways should be increased by 300 mm for each side that the accessway abuts a retaining wall. Ms Coxon, of the CFA, questioned Mr Walsh on the Bushfire Management Statement's²⁴ requirement for a greater 500 mm offset where encroachments exist in a 4 metre vertical envelope. Mr Walsh was of the opinion that the 500 mm offset only applies when the roadway is limited to a 3.5 metre width.

In response to a question from the Advisory Committee, Mr Walsh advised that he had not checked whether a bus could enter the access road running to the east if vehicles were queued to exit that road.

The Part C Incorporated Document, at condition 1 f) includes conditions requiring, among other things:

- Vehicle access that is designed and constructed in accordance with Table 5 to Clause 53.02-5.
- Car parking dimensions should be in accordance with Clause 52.06-9 of the Planning Scheme.
- Car parking and roadway grades should be designed in accordance with the Australian Standard for Off-Street Car Parking Facilities (AS 2890.1:2004), except for roadways to/from loading and coach areas where roadways should be

²³ Bushfire Management Statement for the proposed construction of a gallery at 193-209 King Road, Harkaway VIC 3806, Terramatrix September 2020.

²⁴ Above 39.

designed in accordance with the Australian Standard for Off-Street Commercial Vehicle Facilities (AS 2890.2:2018).

Council submitted that Condition 26 should include a requirement to demonstrate that internal access and circulation carriageways are designed to minimise the loss of existing native trees and native vegetation.

(iv) Discussion

The revised site layout is an improvement of the application plans and generally complies with the recommended car park dimensions and gradelines. The Advisory Committee considers the inclusion of the internal accessway link between the western entry and the eastern parking facilities to be a beneficial inclusion both for internal connectivity as well as to reduce impacts on King Road, as discussed below.

In respect to the need for an offset to the retaining walls, the Advisory Committee disagrees with the evidence of Mr Walsh that the accessways need only be widened by 500mm when the roadway is only 3.5 metres in width. The diagrams shown at page 26 of the Bushfire Management Statement clearly indicate that a 0.5 metre clearance is required even where the road is required to be widened to 6 metres in width to allow for vehicles passing and the wording in Clause 53.02-5 of the Planning Scheme does not provide any limitation to the requirement for a clearance zone.

In addition, the Bushfire Management Statement also requires the road to include passing bays every 200 metres, of 6 metres in width, plus the clearance, when over 200 metres in length, as required by Clause 53.02-5.

In relation to swept paths, the Advisory Committee notes that Condition 1 g) requires a swept path assessment. This may result in some changes to the internal roadway widths, but this is not considered to be significant.

Given the cleared nature of the site, the Advisory Committee does not think that it is necessary to explicitly specify that native vegetation is avoided.

(v) Conclusions

The Advisory Committee concludes:

The proposed revisions to the car park layout and roadway plans represent an improvement in the plans. The Part C Incorporated Document includes appropriate conditions to address grades and car park dimensions and give effect to the revised plans.

The design of the accessways, in respect to offsets from the proposed retaining walls, does not comply with the requirements of Clause 53.02-5 or the Bushfire Management Statement for the proposed construction of a gallery at 193-209 King Road, Harkaway VIC 3806, Terramatrix, September 2020, but could be modified to do so.

The Part C Incorporated Document includes a requirement to comply with Clause 52.03-5 at condition 1 f) but it could be strengthened for clarity by reference to the Bushfire Management Statement.

If the proposal were to proceed, the Incorporated document should be further refined to:

- Require the design of the accessways to comply with the requirements of the Bushfire Management Statement for the proposed construction of a gallery at 193-209 King Road, Harkaway VIC 3806, Terramatrix, September 2020.

6 Servicing the site

6.1 Sewer, water and electricity

(i) What is the issue

The issue is whether the site can be serviced.

(ii) Evidence and submissions

The Proponent prepared a site sieving strategy – The Irwinconsult Site Servicing Strategy²⁵ – that concluded:

Our investigations have determined that the site may be serviced via the existing infrastructure surrounding the site, subject to agreement with neighbouring landowners to the south to allow new water and sewer lines to be installed. The possibility of routing services from Berwick through the adjacent track easements and nature reserve will also be considered.

Specific service issues proposals are shown in Table 3.

Table 3: Service proposals

Service	Authority	Proposal
Sewer Drainage	South East Water	720m extension of mains from Beaumont Road via private property or tracks/reserve.
Domestic Cold Water	South East Water	1300m extension of mains from an existing 150mm main in Beaumont Road via private property or tracks.
Recycled Water	South East Water	N/A. No recycled water supply exists in the area.
Firefighting Water	South East Water	Authority supply not feasible due to insufficient pressure and flow. Full capacity on-site storage tanks proposed.
Stormwater	City of Casey	Property not serviced by a municipal drainage system. Site will be discharged via gravity to the point of discharge with overflow to soakage/rubble pit.
Gas	APA Group	To be confirmed. 650m extension of mains from Farm Lane via private property or tracks, or on-site LPG storage.
Electricity	AusNet	Connection to existing overhead electricity in King Road. On-site indoor substation provided.
Telecommunications	Telstra	Connection to existing Telstra underground services in King Road.
	NBN	N/A. The site is not eligible for NBN servicing.

The Site Servicing Strategy proposes sewer lines be extended from the main on Beaumont Street north across access tracks and reserves and across two private properties to reach Rosemaur Gallery.

²⁵ Rosemaur Gallery, 10 September 2020 Revision 4

The sewer extension may need to traverse private land owned by Ms Talbot in Farm Lane – Ms Talbot opposed this. It was put to the Advisory Committee that the Proponent had not consulted with any of the private landowners in relation to servicing and that acquisition of proprietary rights over private land to facilitate the sewer line extension had not been consented to, nor reasonably consulted upon.

JA Hogg submitted that these matters of infrastructure and servicing are:

... centrally important at this stage due to the use of the Incorporated Document and the removal of the requirement to obtain subsequent approvals ‘in connection with’ the Proposal and the removal of third-party rights at a subsequent stage.

Figure 12: Irwinconsult preliminary services extension plan



(iii) Discussion

Condition 6 of the Incorporated Document requires:

- a) The building(s) is/are connected to reticulated water supply, drainage and underground electricity to the requirements of the relevant servicing authority.
- b) The buildings are connected to reticulated sewerage to the requirements of South East Water, or to an on-site waste water treatment and disposal facility to the satisfaction of the Responsible Authority.

Sewer and other matters of site servicing are threshold considerations. There are nevertheless separate service authority approvals, outside of the planning process, that the Proponent is required to obtain. These approvals, even across private land, are for the Proponent to resolve.

On the material before the Advisory Committee, it is clear that the site is capable of being serviced, though designing those services and obtaining the relevant permissions is not a

trivial matter. While the Advisory Committee has some sympathy for Ms Talbot, there is a clear legislative regime to that deals with these issues.

The Advisory Committee concludes:

The site is capable of being serviced.

6.2 Drainage

Mr John Counsell was concerned that there would be *“altered water flows, plus things we cannot anticipate”*.

The site is not serviced by the Municipal drainage system. Consequently, the proposal must demonstrate how and where it will be discharged. The site servicing strategy suggests:

Stormwater will be designed as per AS 3500.3 and the whole site will be discharged via gravity to the point of discharge with overflow to soakage/rubble pit.

Spoon drains will be designed to intercept any the overland runoff from the upstream areas and any overflow from the rainwater tank will be discharged to the nearby stormwater pits.

The basement drainage will include the spoon drain with floor wastes along the interior perimeter of the building and Ag drains along the outer perimeter which will be discharged to the pit at the ground level.

Since the level at the existing dam (point of discharge) is lower than the finished floor level of the basement, the basement drainage will be discharged via gravity and no pump will be required.

Conditions 14 (e), 26 (d), 31 and 32 of the Incorporated Document will deliver these design suggestions and call up best practice integrated water management initiatives.

The Incorporated Document contains conditions to ensure:

- 14(e)** Integrated Water Management initiatives are incorporated
- 31** stormwater is discharged by means of controlled discharge from the proposed dam
- 26(d)** the dam is designed in accordance with engineering practice to the satisfaction of the Responsible Authority
- 32** polluted stormwater is not discharged.

There was nothing put before the Advisory Committee to suggest that these conditions could not be met.

The Advisory Committee concludes:

Appropriate drainage can be delivered.

7 Is access along King Road, east of Baker Road, acceptable?

7.1 The issues

The issues are:

- can the King Road east of Baker Road be made suitable to accommodate the traffic generated by the development?
- what is the impact of making the road suitable?
- is adequate provision made for the equestrian trail and active transport?

Amenity and traffic impacts through the Harkaway Village are discussed in Chapter 7.5.

7.2 Can the road be made suitable?

(i) The issue

The issue is:

- can the road be made suitable to accommodate the traffic generated by the development?

(ii) Relevant policy

Clause 18.02-3S Road System, includes a strategy to:

- Ensure that road space complements land use and is managed to meet community and business needs.

Clause 35.05 GWAZ, includes the following relevant decision guideline:

- The impact on the existing and proposed rural infrastructure.

(iii) Evidence and submissions

A number of submitters raised concerns with the traffic generated along King Road by the development.

Mr Wild and Mr Battye spoke about constraints at Walsdorf Creek with steep approach grades and trucks potentially not yielding on approach to the one lane crossing and parking associated with the walking track along the creek.

Mr and Mrs Shannon submitted that they do not see how the Advisory Committee can be satisfied of the need for more than 580 patrons and if there are, whether the impacts have been adequately assessed. They also submitted that King Road should be sealed down to the eastern emergency access noting that there is a secondary consent mechanism to allow its use by more than just emergency vehicles.²⁶

In accordance with direction from the Advisory Committee, the Proponent provided the *King Road Options Investigation Paper*, prepared by Traffix Group.²⁷ This paper provides three options for the sealing of King Road between Baker Road and the subject site:

²⁶ Condition 2 allows for the medication of endorsed plans to be consented to by the Responsible Authority.

²⁷ Document 28a.

- Option 1: existing width
- Option 2: 5.5 metre pavement
- Option 3: 6.0 metre pavement.

The options also include a 2.0 metre off-road equestrian path.

The King Road Options paper was accompanied by a paper titled *Review Drainage and Constructions Options for King Road Harkaway City of Casey*, prepared by Charlton Degg Land Development Consultants and a *Desktop Cultural Heritage Assessment* undertaken by Dr Tim Stone.²⁸

The drainage and construction assessment notes that:

- Option 2:
 - The existing surface provides a robust base minimising works, but a 1.5 metre zone beyond the pavement width would be impacted to re-establish drainage.
 - A shoulder would typically be considered along the edge of a rural road, however the existing low speed roads in the surrounding area have generally not adopted a shoulder and would require extensive earthworks to install on both sides due to considerable cross falls in areas.
 - Option 2 will result in minimal disruption to existing traffic and minimise impacts on existing vegetation.
- Option 3:
 - A 6.0 metre width is the typical minimum width for new rural roads.
 - Option 3 will result in more disturbance than Option 2.
 - The increase paved area will increase watershed and have a greater impact on existing drainage.
 - The 6.0 metre pavement also impacts negatively the proposed off-road equestrian trail west of Walsdorf Creek and may require a retaining wall to minimise impacts on vegetation.

The Cultural Heritage desktop review did not identify any Aboriginal or historic sites in the road reserve but noted that the part of the road within 200 metres of Walsdorf Creek may require a Cultural Heritage Management Plan, depending on an assessment as to whether any works would be classified high impact activity.

Mr Walsh gave evidence that King Road, east of Baker Road carries in the order of 250 vehicles per day and has a 50 km/h speed limit.

He determined a daily traffic generation based on the patronage data provided by Architecture Associates in the Proponents' Part A Submission.²⁹ As shown in Table 4 of his evidence, Mr Walsh assumed that the daily patron generation on a typical week will peak on a Friday with 578 patrons attending over the whole day. He estimated that these patrons will generate around 545 vehicle trips per day (two way) on a typical Friday. At the end of a function, he estimated that around 60 vehicle trips may occur in a half hour period as patrons leave the venue, including some two way Uber/taxi movements.

For a quarterly exhibition opening he assumed an attendance of 1,290 patrons across the whole day on a Saturday, generating around 1,600 vehicle trips per day (two way). He did not

²⁸ Documents 28b and 28c.

²⁹ Document 33.

assess the traffic generation for the additional three major events, noting only that a separate management plan would be required for those larger events.

He noted that in respect to a future typical daily volume in the order of 660-800 vehicles per day:

This will represent a noticeable change to existing traffic volumes on King Road.

Mr Walsh recommended the road be sealed up to the western driveway with a width of 5.5 metres, which he adopted as it is the typical width for a new residential street with daily volumes up to 2,000 vehicles per day. He noted that the road could operate unsealed with regular maintenance.

Professor Jacques gave evidence that:

In my view, Option 2 which proposes a sealed 5.5 meter carriageway between Baker Road and the eastern most access to the subject development should be supported on the basis that it requires only marginal widening and on the basis that the existing meander of the road is maintained.

Whether native or not, the vegetation of King Road makes a major contribution to landscape character and aesthetic quality of the site and in a wider sense, roadside planting retains a substantial proportion of the remaining native vegetation in Casey. With this in mind, I strongly support the use of locally narrowed sections to retain trees even if this requires the introduction of local changes in speed, signage and road design.

Mr Cooper gave evidence that daily traffic generation would be in the order of 440 vehicles per day for typical weekend operation and around 1,300 vehicles per day for quarterly events, this was also based on the same assumption of patronage provided by Architecture Associates. As with Mr Walsh, Mr Cooper did not assess the impact of the proposed three major events, referring to the requirement for a management plan for such events.

Mr Cooper considered that King Road east of Baker Road should be sealed with a 6.0 metre width to allow a heavy vehicle to pass a car. He advised that a 6.0 metre sealed road width is consistent with City of Casey standard drawing number S-111-V1, Low Speed – Rural Roads Typical Geometric Cross Sections.³⁰ Notwithstanding this, he considered that the sealed width could be narrowed to 5.64 metres where other constraints such as vegetation exist subject to satisfactory sight lines.

At the traffic conclave, Mr Walsh and Mr Cooper did not form an agreement in relation to the width of the road, excepting that it could be narrowed at some points below the desirable width for environmental reasons. They did agree that no works were required east of the site's western access subject to the eastern access being limited to emergency vehicles only.³¹

The Proponent also submitted a memorandum of opinion from Mr Brett Lane of Nature Advisory³² in relation to the potential loss of native vegetation as a result of sealing King Road, however, Mr Lane was not called by the Proponent to give evidence. Mr Lane concluded that there would be some loss of native vegetation and described the difference in impact between Option 2 and 3 as minor.

³⁰ Document 100.

³¹ Document 76.

³² Document 85.

Council in its closing submission advised that a 6.0 metre cross-section was preferred as the general standard and the road would be constructed with a gravel shoulder on at least one side to facilitate the passing of two large vehicles.

The Proponent, in the Part C Incorporated Document, accepted a change to condition 26 requiring the sealing of King Road between Baker Road and the western driveway at a width of 6 metre, narrowing where required to 5.64 metres, except for the creek crossing.

(iv) Discussion

The development will generate a significant volume of traffic along King Road particularly for the quarterly exhibition openings and any additional major events. The Advisory Committee agrees with the traffic experts that this will be most noticeable east of Baker Road where existing volumes are very low.

Of particular concern is that the traffic assessment has been based on the assumptions of patronage from Architecture Associates. Whilst the Incorporated Document is written to allow up to 580 patrons at any one time (plus more for the three major events) and patrons may come and go at any time, the traffic generation estimates has only assumed that this will be reached across a whole day on a Friday. This is based on untested assumptions provided by the Proponent in the Part A submission and appears to be at a significant discord to the approval being sort, given there is no proposed limit to daily attendance figures.

The proposed widening and sealing of King Road east of Baker Road with a width suitable for two way traffic, with some narrower sections, would provide sufficient capacity for the expected traffic increase along this section of road for the levels of traffic estimated, noting that a two way road capacity is separate to environmental impacts which are discussed later in this chapter, and amenity impacts discussed in Chapter 7.5.

The Advisory Committee agrees with Council that, if the development is approved, the road should be constructed to generally a 6.0 metre width, with some limited narrowing. It is not a local suburban road which would typically only attract local residents, the occasional visitors, weekly garbage trucks and some delivery vehicles. This is a rural road with the associated potential for large vehicles and the development would attract a substantial number of visitors to the area who are unfamiliar with the road, as well as an unknown number of buses. Limited driveways, drainage culverts and a lack of a shoulder also make it a much less forgiving roadside environment than a suburban street. Having said that, some localised narrowing for significant environmental reasons would be acceptable given volumes are expected to stay around 2,000 vehicles per day with typical operation and for the quarterly exhibition openings with up to 580 patrons at any time.

However, the Advisory Committee is not satisfied that allowing additional and larger events, being the 'major' events over the 580 patron limit at any one time, would be acceptable. The Advisory Committee was not given any information as to the potential traffic generation for these major events or how it would be managed. Being a site located along a rural road, which is a no through road, some distance from the arterial road network and a significant distance from the freeway network with no access to public transport within walking distance makes managing the traffic difficult.

Whilst the traffic experts have left the reliance to an event management plan, such plans generally rely on a large number of patrons arriving by bus and parking provided off-site with patrons either bussed on walking to the site from a remote car park.

In this instance, the site cannot accommodate several buses and there is no identified parking nearby, noting an unwelcoming community, nor is there any reasonable access to public transport.

(v) Conclusions

The Advisory Committee concludes:

King Road could accommodate traffic associated with the proposal of up to 580 patrons at any one time if it is upgraded east of Baker Road as proposed in the Incorporated Document.

An upgraded King Road would not be support the proposed major events because the site has made limited allowance for bus parking.

If the proposal were to proceed the Incorporated document should be further refined to:

- Omit allowance for 'major' events.

7.3 The impact of making the road suitable, on the landscape and character

(i) The issue

The issue is:

- what is the impact of making the road suitable?

(ii) Relevant policy

Clause 21.14 Casey Foothills includes the following Profile statement:

The Casey Foothills area is important because its hilly terrain offers topographical and scenic relief to the otherwise low-lying built-up areas of Casey. Its visual qualities contribute to a positive image of the municipality as a desirable place to live, being complemented by a unique township-living environment in Narre Warren North and a village atmosphere in Harkaway. The area is protected for its long-term environmental and landscape qualities that ensure the special rural character is not compromised. The older parts of Narre Warren North township have a character and quality that is clearly recognised and valued by the community

Clause 52.17 – Native Vegetation seeks to ensure no net loss to biodiversity through the removal lopping or destruction of native vegetation, following a guideline to avoid, minimise and offset losses.

Clause 35.05 GWAZ, in particular includes the following purposes:

- To protect, conserve and enhance the biodiversity, natural resources, scenic landscapes and heritage values of the area.
- To protect, conserve and enhance the cultural heritage significance and the character of rural and scenic non-urban landscapes.
- To recognise and protect the amenity of existing rural living areas.

Relevant decision guidelines include:

- The need to protect the amenity of existing residents.

- Whether the site is suitable for the use or development and whether the proposal will have an adverse impact on surrounding land uses.
- The need to minimise adverse impacts on the character and appearance of the area or features of architectural, scientific or cultural heritage significance, or of natural scenic beauty or importance.
- An assessment of the likely environmental impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of effluent, noise, dust and odours.

Clause 42.03 SLO1 Casey Foothills includes the following relevant character objective to be achieved:

- To protect the rural character of land surrounding the settlements of Harkaway and Narre Warren North.

Relevant decision guidelines include:

- Whether vegetation will be removed, and the proximity of this vegetation to a watercourse.
- The need to revegetate or landscape the site.

(iii) Evidence and submissions

The sealing of the road, its width and design is a contentious component of the proposal that the Advisory Committee received many submissions about. Functionality aside, the central proposition from those in opposition was that the sealing and widening King Road would fundamentally change the rural character of King Road.

It was put to the Advisory Committee that the sealing of King Road will cause irrevocable detriment to the rural character and will ultimately be transformative of the area from a rural to suburban “like” setting.

For many, the sealing of King Road and redesign of the equestrian trail were interrelated changes that will result in unacceptable detriment to the local character that is not supported by policy or from a physical perspective.

The perceived extent of loss of roadside vegetation and the absence of a detailed road design was an aggravating concern for many resident objectors. There is substance to these concerns but for, the road design (that is, width and channelling), would be subject to a separate design and engineering process with Council, as the statutory road authority, and decision maker.

In principle, Council supported the sealing and widening of King Road noting its intention to minimise impact to roadside vegetation where appropriate.

Nature Advisory undertook an assessment of all native vegetation potentially affected by the widening of the road, including 1.5 metres for drainage works, considering all vegetation to the north of the road west of the creek and to the south of the road east of the creek.

The Proponent submitted:

- 158 While Mr Lane, the author of the Nature Advisory report, was not called to give evidence, this is simply a matter that goes to weight. The decision to not call Mr Lane was made only after JA Hogg advised that she would not be calling ecological evidence, despite Ms Towson’s advice to the Advisory Committee at the directions hearing that ecological evidence would be called. Again, the inference to be drawn is that the ecological evidence would not have assisted JA Hogg’s case.

- 164 There is therefore likely to be limited actual loss of native vegetation. To the extent that there is nevertheless deemed loss of this native vegetation, then offsets will need to be provided for vegetation that actually survives

In relation to other trees, Charlton Degg said:

The existing gravel surface over the subject section of King Road generally appears to be in good condition and shows no signs of deformation or potholing. On this basis it appears the current road base is robust and unlikely to require significant re-construction prior to sealing works.

Council submitted that:

... concerns about loss of vegetation and its detriment to the green wedge are overstated. Either concept 2 or concept 3 involves the loss of something in the order of ~20-25 trees over a stretch of road 1.6 km. Loss of understorey will occur but it is submitted that of all the impacts identified, this is manageable through replanting and properly addressing the no net loss requirements of state policy by offsets within the current planning framework. It is also important to note that with a the 20 metre wide road reservation of King Road there are plenty of opportunities for revegetation in a way that preserves and consolidates the rural character. A 20 metre rural road reserve allows those opportunities even with a constructed equestrian trail alongside the road.

Mr Chisolm was concerned about the ecological role played by King Road:

Should the Rosemaur proposal proceed, we will lose the best – probably the last – opportunity to create a meaningful east-west biolink in the Foothills. Three east-west roads in the Green Wedge zone – Noack, Rowallan and Hyde Hill – stop well short of the Cardinia Creek corridor; it would be a very slow, difficult process to create east-biolinks on private land in those locations. In the case of Chadwick Road, there is significant roadside vegetation near to the creek but the vegetation link peters out when you reach the western end, where there is a busy main road.

A fully functional east-west biolink and Equestrian Trail along King Road is urgently needed; we have an opportunity to connect with the Walsdorf Creek corridor to the south and to the large, vacant Harkaway Quarry site to the north. To create such a facility will require consultation, planning and the additional protection and incentives that are recommended by Ecology Australia. What we don't need is a wider road and faster traffic impinging upon potentially the most important east-west equestrian and habitat link remaining in this Green Wedge area.

(iv) Discussion

There is no dispute that roadside vegetation contributes to the character of King Road – although there are stretches with few trees in the road reserve. The Incorporated Document requires plans for the upgrade of the road to retain vegetation, which includes additional planting of native or non-native vegetation. With these measures in place, impacts will be minimised, and minimal, and will have limited ecological and amenity impacts.

Many rural roads in and beyond the Green Wedge are sealed. The Advisory Committee agrees that sealing King Road (with associated works) will change King Road. However, it is whether the change would be an unacceptable change to the character of the area.

The widening will result in the loss of some trees. This will have a character and ecological impact. The character impacts can be ameliorated with new planting, and the Advisory Committee agrees with Council that the character of the road could be maintained as clearly 'rural'.

It is not clear that the road works will have a significant detrimental impact on ecological values given the nature of the road and the land it passes through compared to the vegetated areas along the Cardinia Creek to the east of the site.

(v) Conclusions

The Advisory Committee concludes:

The upgrade of King Road will maintain its rural character considering the number of trees that might need to be removed and the replanting regime contemplated by Council

7.4 The equestrian trail and personal sustainable transport

(i) The issue

The issue is:

- The impact on the equestrian trail and the provisions for active transport.

(ii) Relevant policy and strategies

Clause 21.06 includes a local transport policy which includes a strategy to:

- Consider the needs of equestrian users, both recreational and professional.

Clause 21.14 Casey Foothills includes the following objective:

- To upgrade public spaces and community facilities to meet changing needs and, where possible, link them with a network of trails reflecting the strong equestrian heritage of the area.

This is reflected in the following particular strategy for Harkaway:

- Recognise the key role of equestrian links in the area, including on-road links and along waterways where possible, as part of the 'Casey Trail Network'.

*Casey Equestrian Strategy – Reference Document, September 2011, prepared by SGL for City of Casey.*³³

Clause 18.02-1S Sustainable personal transport, includes a strategy to:

- Provide direct and connected pedestrian and bicycle infrastructure to and between key destinations including activity centres, public transport interchanges, employment areas, urban renewal precincts and major attractions.

(iii) Evidence and submissions

A number of submissions raised concerns in relation to conflict of traffic with the designated equestrian trail along King Road. Some, like Mr and Mrs Cavanagh, believed the equestrian trail would be lost as the road would no longer be suitable for horses, noting that cars and trucks can spook horses when passing which is likely to lead to a flight response. They believed that any off-road trail should be sand or grass not crushed rock, due to potential for hoof bruising. Ms Rankin considered that the path would need to extend at least two horse lengths in width from the road with some trees and vegetation within the width acceptable. Ms Ferguson suggested that a proper study was needed to determine how to accommodate the equestrian trail safely.

³³ Copy provided in the Proponent's Part A submission.

Council submitted that a 2 metre wide constructed off-road path was required for the equestrian trail along King Road and this was appropriate in response to the proposed development impacts. Council supported some on-road use at Walsdorf Creek.

Mr Cooper gave evidence that there would be some vegetation constraints to providing a 4 metre wide by 4 metre height clearance if required to conform to the Casey Equestrian Strategy. He clarified that this is a clearance width not the path width that would sit within it.

The Proponent referred to the hierarchy of paths sets out in the Casey Equestrian Strategy and considered that the hierarchy indicates a preference for an unconstructed path in a low volume environment, over a constructed path.

The Proponent submitted a letter and video from Dr John Stewart, a qualified equine veterinarian and behaviourist.³⁴ Dr Stewart, in his letter, expressed the view that in the event the road is sealed provision should be made for horses to travel along the verge wherever possible as a sealed road is not a desirable surface for horses. He did not comment on the required width of the off-road trail but noted that a loose natural or grass surface was preferred, over a compacted granitic sand surface that is often used for bike trails, and that this trail can also be used by people bushwalking.

Dr Stewart commented on the flight response of horses and supported signage to warn motorists of the likely presence of horse and advise to slow to below 10km/hr when passing horses.

Mr Walsh expressed the view that a 2 metre unconstructed off-road path was appropriate given traffic volumes are expected to stay under 1,000 vehicles per day, which he considered to be a “*low volume*”.

Professor Jacques gave evidence that:

... the proposed off-road equestrian trail width of 2 metres is consistent with a series of existing shared granitic sand trails throughout the municipality as stated in the Casey Equestrian Strategy.

In the memorandum of opinion from Mr Brett Lane of Nature Advisory³⁵ Mr Lane expressed the opinion that an off-road equestrian trail, whether constructed or unconstructed the design could be designed along the native vegetation principles of avoid and minimise.

(iv) Discussion

The importance of equestrian trails in the Casey foothills is clearly identified in local policy. The importance of Harkaway and King Road to the horse community is clearly shown by the designation of King Road as an on-road equestrian trail, location of dressage horses adjacent the subject site, horse breeding across the road and horse agistment in Hilden Drive. The keeping of horses is an ‘agriculture’ use and hence supported by the GWAZ.

It is clear that to maintain the route in the event the road is sealed that it will need to be changed to a roadside or off-road route. This leads to the consideration of whether the trail needs to be a constructed trail or an unconstructed trail. The Casey Equestrian Strategy indicates that a constructed trail is least preferred and that unconstructed trails are suitable to achieve minimal impact on vegetation and natural surroundings.

³⁴ Documents 83 and 84.

³⁵ Document 85.

The evidence and submissions appear to concur that an unconstructed trail could be suitable for the equestrian trail, however the Committee has not had the benefit of a preliminary design or complete vegetation impact assessment to make the determination of whether an unconstructed trail would be suitable or whether it would best be constructed either fully or in part.

In relation to the dimensions, the Equestrian Strategy is not clear on what width a constructed trail should be. Rather it refers to a general clearance envelope and widths that appear to relate to off-road paths shared with a fire emergency track. To this end the Advisory Committee welcomes the inclusion in the Incorporated Document of a requirement to consult with a horse expert in developing plans for a roadside trail.

Consideration will also need to be given to other potential users of the track such as pedestrians and cyclists and the limited verge space available in general given the amount of existing vegetation and a need to avoid and minimise the loss of native vegetation in particular.

At the Hearing there was little consideration given to personal sustainable transport. The proposed gallery and particularly the restaurant will not only service the tourist traffic but also attract local residents given the lack of a local eatery in the village. Clause 18.02-1S requires consideration of personal sustainable transport and in addition to this, the needs of local residents to walk and cycle from the village to the site, must also be considered.

This leads to a conclusion, as requested by Council, that a constructed trail is required.

Should the path be constructed, the Advisory Committee does not expect that the path itself would need to be greater than 2 metres in width. However, vegetation removal to provide a clearance envelope for horses, pedestrians and cyclists to pass as well, as vertical clearance, should generally be provided wherever practicable.

(v) Conclusions

The Advisory Committee concludes:

The existing equestrian trail along King Road is an important community asset and should be retained. Should the development proceed the existing on-road equestrian trail will need to be changed to an off-road trail. A constructed off-road trail should be provided to cater for horses, pedestrians and cyclists.

Some loss of native and non-native vegetation will result from the change to an off-road path, but this will not fundamentally change the character of the road.

Should the path be constructed it is unlikely to require a constructed width greater than 2 metres.

If the proposal were to proceed the Incorporated document should be further refined to:

- Include reference to the provision of a constructed roadside trail in the requirements for construction of King Road.

7.5 Native vegetation removal permissions in the Incorporated Document?

(i) The issue

Council submitted that consideration should be given to including native vegetation removal along King Road as part of what the Incorporated Document permits.

(ii) Relevant policies, strategies and studies

Clause 52.17 provides that:

A permit is required to remove, destroy or lop native vegetation, including dead native vegetation. This does not apply:

- If the table to Clause 52.17-7 specifically states that a permit is not required.
- If a native vegetation precinct plan corresponding to the land is incorporated into this scheme and listed in the schedule to Clause 52.16.
- To the removal, destruction or lopping of native vegetation specified in the schedule to this clause.

(iii) Evidence and submissions

The King Road works would require the removal of vegetation, the removal of native vegetation requires a permit for removal.

Council submitted that:

... Mr Lane's report shows the general extent of native vegetation that would need to be removed and ... the offset requirements.

While precise extent of the extent of vegetation removal in connection with the Equestrian Trail will not be clearly known until the detailed construction plans under condition 25 of the Incorporated Document is approved by Council, that design will be generally in accordance with the alignment set out in the concept plan and changes set out in this submission.

The determination of the road alignment and cross section and the minimisation of the need to remove native vegetation associated with the equestrian trail will need to be an iterative process consistent with condition 25(b) of the Day 1 Incorporated Document.

We submit that notwithstanding that the exact details of the King Road Upgrade are still to be finalised in the form of detailed construction plans, we think that what ought to come out of this process is some clarity on the preferred concept for the upgrade of King Road. That concept should provide guidance as to:

- The cross-section at various points along the extent of King Road; and
- The need to incorporate any narrower points along the way to minimise the loss of vegetation or where topography is a limiting factor; and
- The most appropriate alignment of the road given its intended cross section –all having regard to the principle of minimizing the loss of native vegetation; and
- How an equestrian trail could be accommodated along one or more sides of the road within the road reserve to the requisite standards, as described in the equestrian section below.

The concept plans achieve this level of information.

Having regard to this, given that the role of the Advisory Committee is to advise on how the proposal can be facilitated, it thinks that that some consideration should be given to whether the Incorporated Document can be modified to provide the permission to remove native

vegetation in King Road subject to the approval of detailed plans (under secondary consent by the responsible authority) for that vegetation removal and offset plans.

(iv) Discussion

Vegetation removal along King Road is a threshold issue. If the road cannot be widened with acceptable impacts, then the proposal ought not proceed. The Advisory Committee is satisfied that it has enough material to understand the impact of the removal. The Committee considered the impact of the King Road works in Chapter 7.3. The Committee concluded:

The upgrade on King road could maintain its rural character taking into account the number of trees that might need to be removed.

Requiring a permit for the removal of the vegetation, as opposed to permitting it as part of this process, would add complexity to the approvals needed for the project without adding any value.

The SCO could be extended along King Road to achieve this, together with text changes to the Incorporated Document, or alternatively (but not discussed at the Hearing) the Schedule to Clause 52.17 could provide the exemption. The Advisory Committee prefers this approach as it confines the mapped area of the SCO to the site.

(v) Conclusion

The Advisory Committee concludes:

It is appropriate to permit the removal of native vegetation along King Road as part of the approval for the proposal.

8 Are the amenity impacts acceptable?

8.1 The adjacent properties

(i) The issue

The issue is whether the amenity of residents is reasonably protected from intrusion by noise and light spill.

(ii) Relevant policy

Clause 35.05 GWAZ, in particular the following purpose:

- To recognise and protect the amenity of existing rural living areas.

Relevant decision guidelines include:

- The need to protect the amenity of existing residents.
- An assessment of the likely environmental impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of effluent, noise, dust and odours.

(iii) Evidence and submissions

Mr McKinnon and Mr Rich own the property 'Foxmoor' located immediately west of the subject site. Mr McKinnon and Mr Rich submitted that Foxmoor is a picturesque, quiet and private property and the noise and light from the development would have unacceptable amenity impacts on their keeping of horses.

Mr McKinnon and Mr Rich own several equestrian horses and compete on both the national and international arena. Their stable block, which includes a tack room and horse wash bay, is located on the eastern boundary of their property, with the stables facing King Road to the north, a turn out paddock (paddock 1) is also located on the boundary.

They advised that they do not use the dwelling located at the front of their property, approximately located 40 metres from the development's access road, to avoid disturbance to the horses, as horses require a tranquil and consistent environment in terms of stimuli; nevertheless, the amenity impact on that dwelling must be considered.

They contend that the row of conifers along the boundary between the two properties does not act as a screen from visual stimuli nor as a noise barrier.

Mr McKinnon called evidence from Dr Andrew McLean of Equational Science International, a horse behaviourist (ethologist) and trainer.

Dr McLean considered that:

The impact of an adjacent function centre and carriageway has the potential to detrimentally affect the welfare of the horses at Foxmoor, the quality of life for residents at Foxmoor and to lower the efficiency of the dressage training programme.

He advised that equestrian horses are selectively bred to be responsive and reactive and as a result tended to react to unexpected stimuli, like the opening of an umbrella, and sudden noises. He advised that people walking behind hedges can be terrifying to horses as they can hear the people but cannot clearly see them.

In additional vehicle noise and headlights may lead to sleep disturbance which is detrimental to animal health.

The Proponent advised that the proposed new car park plan results in the road dropping down behind a retaining wall as it passes the stable area. In addition a retaining wall around the restaurant terrace will limit noise as will the limitation of the drinking and servicing of alcohol to the proposed 'red line' area around the buildings.

Dr McLean accepted that these would mitigate some of the impacts.

Mr and Mrs Shannon own the property directly opposite the subject site on King Road. The Shannons breed horses and are concerned with the impact of noise and light spill into their property from traffic entering and leaving the site via the western access. They advised their foaling paddock and training arena is located directly opposite that access point.

Both property owners suggested a solid fence along part of their boundaries would help mitigate impacts.

Ms Grave is also a local horse breeder on King Road and expressed concern that noise pollution will be significant and impact her breeding livestock. Mr Bayard also expressed concerns with noise along King Road.

Mr and Mrs Shannon and JA Hogg considered that noise limiters should be placed on all external speakers to ensure that noise controls were adhered to, noting that this would remove the burden on complainants and the Council in relation to any enforcement.

The Proponent called noise evidence from Mr Darren Tardio of Enfield Acoustics. Mr Tardio provided noise mapping considering noise from cars, trucks, patrons and music, including sleep disturbance.

He advised that SEPP N-1 and SEPP N-2 compliance would be achieved at all nearby dwellings as well as sleep disturbance parameters.

In respect to music impacts, Mr Tardio's evidence was that the noise mapping has been based on a reverse engineered scenario where the limit at the sensitive location was set to determine the maximum permissible noise level at the source. Based on this he was satisfied that the proposed conditions in relation to outside music were appropriate, including the prohibition of amplified live music outside and limitation of other amplified music to 'background' music. He did not consider that noise limiters to outside speakers was necessary.

Mr Tardio provided an addendum to his expert report during the Hearing.³⁶ This responded to issues raised in Dr McLean's evidence as well as the amended car park and site plan. Based on the amended plans he concluded that noise screening to the west boundary was not required, noting that in his original evidence he had only recommended noise screening out of caution. He did not consider noise screening was required to the Shannons' property at all.

On the final day of the Hearing, the Proponent advised that they had come to a private agreement with Mr MacKinnon and Mr Rich that would:

Ensure that any perceived or actual amenity impacts of the proposal on the Foxmoor dwellings, Foxmoor stables, Foxmoor horses, and general use and enjoyment of the Foxmoor property are acceptable.

³⁶ Document 83.

This was advised by a typed but unsigned and undated document titled *“Joint statement of the Proponent, Mr MacKinnon and Mr Rich”*.³⁷

The joint statement provides for a 1.3 metre high stone ‘splay wall’ to be constructed along the boundary between the two sites from the frontage merging into the retaining wall along the main driveway as shown on the Proposed Site Plan, TP002, Rev 4 dated 26/02/2021, attached to the joint statement.

The joint statement also advises that a private agreement will be entered to provide a stone wall along part of the frontage to Foxmoor at the Proponent’s cost and that this second wall is:

... put forward as a mutually agreed, voluntary outcome, and that it is not a necessary measure to mitigate any perceived or actual amenity impacts of the proposal onto the Foxmoor land and it is their wish that the Council will facilitate planning approval of the wall.

(iv) Discussion

Mr Tardio’s acoustic evidence was tested at some length during cross examination, and the Advisory Committee notes that despite several submitters calling expert evidence, no contrary acoustic expert evidence was called.

The Advisory Committee accepts that the residential amenity at the surrounding dwellings will not be unreasonably impacted by noise from the development, if controlled as proposed in the proposed conditions in the Incorporated Document.

In respect to impacts on horses, the Advisory Committee notes the keeping of horses is nested under Agriculture in the planning scheme and hence it is appropriate to consider how the development would impact on such use.

The Advisory Committee accepts the advice of Dr McLean that horses are sensitive to some stimuli and that it can trigger undesirable behavioural response, although the science is not determinative.

On this basis the Advisory Committee considers that in the spirit of caution it would be appropriate to provide a solid barrier between the development and the Foxmoor property.

In relation to impacts from traffic along King Road and exiting the site onto King Road, while the development would represent a change in conditions there is less evidence to suggest that such a change would result in unacceptable impacts on the Shannon’s property. That property is set further away from the noise sources and the stabling is not impacted by light from car headlights.

In relation to the joint statement between the Proponent and Mr Mackinnon and Mr Rich, the Advisory Committee considers that the agreement to the boundary treatment should be included in the Incorporated Document, so that it clear that no further permission is required to undertake that work.

³⁷ Document 217.

(v) Conclusions

The Advisory Committee concludes:

Noise and light spill impacts can be adequately mitigated.

If the proposal were to proceed the Incorporated document should be further refined to:

- Reflect the agreement with Mr Mackinnon and Mr Rich.

8.2 Amenity impacts of increased traffic in Harkaway Village

(i) The issue

The issue is the impact of increased traffic in the Harkaway Village.

(ii) Evidence and submissions

Several submitters raised concerns with the traffic generated by the development along King Road through the Harkaway Village, with particular concern about the safety of school children in the village and congestion at the primary school during drop off and pick up periods when parked cars reduces the available road width and cars needing to U-turn to park in front of the school, as well as safety near the local hall.

Submitters also raised concern with the existing traffic congestion of Harkaway Road at the King Road roundabout and the safety of pedestrians in general noting that most roads in the area do not have footpaths.

In respect to the operation of King Road through the village, Mr Walsh gave evidence that there would be no material difference in the operation of that section of road and he did not expect a significant generation of traffic during the school peak pick up and drop off periods due to the timing of breakfast and lunchtime sittings in the restaurant. He noted that past the school King Road has a 40 m/hr speed limit and the road has an existing volume in the order of 2,500 vehicles per day. In response to questions from The Friends of Harkaway Association, he advised that adding 500 vehicles per day to the 2500 vehicles existing is not a significant difference.

In his evidence Mr Cooper analysed the impact on the Harkaway Road / King Road roundabout and found that under his modelled scenarios the intersection operates with a Level of Service A.

At the traffic conclave the Mr Walsh and Mr Cooper agreed that no works were required west of Baker Road, including at the Harkaway Road intersection.

The Proponent advised that:

the township of Harkaway is in Township Zone, not a GWAZ, which of course tempers amenity expectations (for example it is not unexpected that there will be traffic passing through a township zone).

(iii) Discussion

As discussed earlier, the Advisory Committee has concerns that the daily traffic generation is based on untested assumptions of patronage numbers which are at a discord with the approval being sort. Indeed, the daily patronage for the typical peak weekday is assumed to be less than the proposed maximum patronage at any one time. Should the venue prove more

popular than Architecture Associates has assumed then a greater traffic generation could ensue.

Reducing the typical weekly maximum patronage level at any one time to better accord with the patronage assumptions, as discussed in the section on car parking in Chapter 7, would assist in providing a greater level of confidence on the daily traffic generation.

The Advisory Committee notes the limited footpaths through the village and the presence of a primary school and its associated parking impacts. The Advisory Committee does not consider that the typical extra daily traffic posed by the development would have an unreasonable impact. Whilst it is not a wide road this assists in limiting crossing exposure and a school crossing already provides a safe crossing point before and after school. It is also typical to experience some congestion around schools during the pick up and drop off periods and motorists are expected to tolerate some delay at these times. The 40 km/hr speed limit is designed to help maintain a safe environment. Keeping the daily traffic in the order of 3,000 vehicles per day would be consistent with its design and function.

Except for functions and events, the gallery traffic is expected to be well spread out during the day minimising impacts. With functions, the Advisory Committee accepts that most of this traffic will occur clear of school peak times, with the greater volume occurring in the evenings when other traffic including pedestrian traffic would be lower.

In respect to events, the Advisory Committee notes that the quarterly exhibition opening events could see traffic volumes through the village reach in the order of 3,500–4,000 vehicles per day and have a greater amenity impact. This would be a significant increase, particularly if it is a popular event attracting continuing patronage throughout the day and potentially several buses, resulting in a higher traffic generation than that assumed whilst staying within the patron limit at any time.

Overall, allowing such an impact on a small number of occasions, for a collection of state significance, would not be unacceptable or unmanageable and the Advisory Committee notes Council's support as the road manager.

However, the Advisory Committee again notes that a lack of information in relation to the generation of traffic for the proposed additional three events a year with more than 580 people. Such events are likely to have a significant impact on the village and in effect make the overall impact of larger events a much more frequent occurrence. This would have a significant overall impact on the small village and, given the narrow road through the village, limited parking and provision for sustainable transport as well as the equestrian trail. The Advisory Committee does not consider that this would be acceptable.

(iv) Conclusions

The Advisory Committee concludes:

There will be some amenity impacts on the Harkaway Village, however for the typical daily events and quarterly exhibition openings this could be reasonably acceptable in order to accommodate a state significant art collection in the area, subject to a reduction in the maximum permissible patronage for typical days.

There is no evidence to support the inclusion of conditions allowing three major events per year and this is likely to be a significant impact on the Harkaway Village and community.

If the proposal were to proceed the Incorporated document should be further refined to:

- Include a lower maximum patronage level for typical weeks and omit allowance for 'major' events, as previously noted.

8.3 Other local road impacts

(i) The issue

The impact of traffic on other local roads was raised.

(ii) Evidence and submissions

Several submissions, including Mr Williams, Ms Weaver and the Save the Casey Foothills, raised concern regarding traffic using Baker Road north of King Road as a short cut to the site. Baker Road is a narrow, unsealed road with no footpaths and is signed as an environmentally sensitive area. To the north of King Road, it provides a connection through to Harkaway Road to the north of the village offering a slightly shorter route than travelling through the village for trips to and from the north. The submitters noted that navigational maps such as Google maps will direct you to the site via Baker Road from the north.

Ms Hansford also raised concern that traffic will use Olive Avenue and George Rae Avenue if traffic is banked at the Harkaway Road roundabout. Olive Avenue and George Way Avenue are sealed residential roads within the Harkaway Village and Ms Hansford advised that traffic already uses these roads to avoid congestion at the roundabout and is concerned that this will be exacerbated by the development.

Neither of the traffic experts addressed these concerns in their evidence.

(iii) Discussion

The Advisory Committee agrees with the submitters that it would not be desirable for traffic generated by the development to use these local roads. Traffic should be directed to arrive and depart via the King Road/Harkaway Road roundabout, avoiding more sensitive areas.

To this aim the Advisory Committee notes that tourism venues typically install directional signs on the arterial network, subject to the approval of the relevant road authority. Should this development be approved, it would be appropriate for such a signage package to include signs that direct motorists to the roundabout to discourage the use of Baker Road north and other local streets.

(iv) Conclusions

The Advisory Committee concludes:

The use of Baker Road north of King Road and the Olive Avenue/George Rae Avenue route to access the site is not appropriate and would need to be discouraged to minimise amenity impacts on these roads.

If the proposal were to proceed the Incorporated document should be further refined to:

- Include a requirement for directional signage to be installed that encourages venue traffic to enter and exit King Road via the Harkaway Road roundabout, subject to the approval of the relevant road authority.

9 Overall assessment

(i) The task of the Committee

The task of the Advisory Committee is to consider this proposal on this site, the fact that other sites may be more suitable is not a relevant consideration.

The SCO is a tool for facilitating site specific developments, in this regard it is the merits of the development that is the central justification for the use of the overlay.

(ii) Ensuring a gallery of significance

Many submissions were directed at the collection and whether it was in fact being made available. The Advisory Committee has concluded:

- The cultural significance of the collection of a proposed art gallery and the accessibility of that collection is a relevant planning consideration.
- The Incorporated Document has appropriate requirements to ensure that the gallery has access to a significant art collection.
- The 'gift' to the people of Victoria is the ability of people to experience the art collection.
- The fact that the collection will be owned by the charity and not a state or local government entity is not a relevant planning consideration.
- The charitable structure established to manage the collection is unremarkable and an established way to manage such collections.

An unresolved issue is the requirement to display certain amount of art. The Committee is persuaded that the Part C Incorporated Document has appropriate requirements to ensure that the gallery displays its collection. These requirements relate not just to the explicit requirement to display part of the Rosemaur collection but the requirement to adhere to the National Standards for Australian Museums and Galleries.

(iii) Net Community Benefit

Mr Crowder said that this is a challenging matter because:

- The proposal enjoys high level strategic support given its social, cultural, educational and employment community benefits that will mainly benefit the broader community.
- There is local policy discouragement for the proposal and, in particular, the establishment of a substantial non-agricultural use in a rural lifestyle area abutting a local rural cul-de-sac (that is – not accessed via a sealed arterial or collector road) – that will mainly disbenefit the local community.

Conducting an assessment of Net Community Benefit involves identifying the impacts of a proposal and determining whether they are benefits and disbenefits with reference to policy. This is not just the impacts of the specific proposal but the implications of a consistent application of planning policy over time to achieve a desired outcome (Clause 71.02-2).

The broad benefits of the proposal include:

- The cultural benefits of making a state significant art collection available
- A more equitable distribution of cultural facilities
- Improved tourism facilities in the green wedge. The proposal is conceived to have an intrinsic connection to the site and the surrounding green wedge. The use of the land

for an art gallery with a significant collection is not inconsistent with green wedge policy, but the policy of this part of the green wedge mean that particular attention needs to be paid to offsite effects.

The broad disbenefits include:

- Increased development in a quiet pocket of the green wedge. These impacts fall far short of the impacts envisaged by the most critical submissions but do need to be managed
- Impacts on immediate neighbours
- the need to widen and seal King Road with its consequent impact on the equestrian path
- the impact of traffic from large events on the Harkaway Village.

Acceptable outcomes

An objective of planning is to be fair: achieving a net community benefit is not a licence for some aspects of a proposal to be unacceptable, in this case specific concerns relate to:

- Bushfire
- Site development appropriate
- Servicing
- King Road
- Amenity impacts.

The Advisory Committee has concluded:

- Bushfire:
 - While the site is exposed to some bushfire risk these risks expert evidence and the CFA conclude that these risks are adequately dealt with.
- Site development:
 - The built form outcomes are consistent with green wedge policy.
 - The landscape proposal needs further detail and refinement but is capable of delivering an attractive area consistent with green wedge policy.
 - The overflow car park may be used more often than expected by the planners unless maximum patron numbers are further limited and is not appropriate for regular use – patronage limits should be modified to control this
- Servicing:
 - The site is capable of being serviced.
 - Appropriate drainage can be delivered.
- King Road:
 - King Road could accommodate traffic associated with the proposal of up to 580 patrons at any one time if it is upgraded east of Baker Road as proposed in the Incorporated Document.
 - An upgraded King Road would still not support the proposed major events as the site has made limited allowance for bus parking.
 - The upgrade on King Road could maintain its rural character taking into account the number of trees that might need to be removed.
 - The existing equestrian trail along King Road is an important community asset and should be retained. Should the development proceed the existing on-road equestrian trail will need to be changed to an off-road trail. A constructed off-road trail should be provided to cater for horse, pedestrians and cyclists.

- Some loss of native and non-native vegetation will result from the change to an off-road path, but this will not fundamentally change the character of the road.
- Should the path be constructed it is unlikely to require a constructed width greater than 2 metres.
- Amenity impacts:
 - Noise and light spill impacts can be adequately mitigated.
 - There will be some amenity impacts on the Harkaway Village, however for the typical daily events and quarterly exhibition openings this could be reasonably acceptable subject to a reduction in the maximum permissible patronage for typical days.
 - The use of Baker Road north of King Road and the Olive Avenue/George Rae Avenue route to access the site is not appropriate and would need to be discouraged to minimise amenity impacts on these roads.

Overall, the Advisory Committee concludes that the proposal would deliver a net community benefit for the gallery and associated restaurant and function centre uses, but not for the major events.

There is no evidence to support the inclusion of conditions allowing three major events per year and this is likely to be a significant impact on the Harkaway Village and community. The role and impact of these events is not well defined, and the Advisory Committee has concluded that their local impacts will outweigh their broader benefits. There was no evidence that they are needed for the gallery to be a viable operation, and if this were the case the benefits to the gallery use would appear to be financial and not because the uses reinforced one another.

(iv) Conclusion

The proposal would deliver a net community benefit, but as currently conceived the proposal would have several localised impacts that are unacceptable. These can be made acceptable by changes to the proposal and limiting the intensity of the use, in particular the patron numbers and the ability to hold 'major events'.

The removal of native vegetation along King Road should be included in the proposal. If the impacts of this removal were so great that a permit for removal might be refused then the proposal in total should not proceed.

The Advisory Committee recommends:

The Minister for Planning approve an amendment to the Casey Planning Scheme to:

- 3. Facilitate the establishment of the Rosemaur Gallery at 193-209 King Road, Harkaway by:**
 - a) Applying the Specific Control Overlay (Clause 45.12) to 193-209 King Road King Road.**
 - b) Incorporating 'Rosemaur, 193-209 King Road, Harkaway, Incorporated Document, XXXX 2020' as shown in Appendix F.**
- 4. Remove the need for a planning permit for the removal of native vegetation along King Road subject to the conditions of the Incorporated Document by including King Road in the Special Control Overlay or the Schedule to Clause 52.17.**

Appendix A Terms of Reference

Rosemaur Gallery Advisory Committee

Version: July 2020

Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to report on the proposed use and development of an exhibition centre (art gallery), function centre, restaurant and dwellings known as the 'Rosemaur Gallery' at 193-209 King Road, Harkaway.

Name

The Advisory Committee is to be known as the 'Rosemaur Gallery Advisory Committee'.

1. The Advisory Committee is to have members with the following skills:
 - a. Statutory and strategic planning, with an understanding of green wedge policy and provisions;
 - b. Urban design;
 - c. Traffic management.

Purpose

2. The purpose of the Advisory Committee is to advise the Minister for Planning on all relevant planning matters associated with the proposed use and development, and the suitability of the planning controls proposed to be introduced by Casey Planning Scheme Amendment C273case to facilitate the proposal.

Background

3. Architecture Associates Pty Ltd has requested that the Minister for Planning facilitate consideration of the development of an exhibition centre (art gallery), function centre, restaurant and dwellings known as the 'Rosemaur Gallery' at 193-209 King Road, Harkaway, using his powers of intervention under section 20(4) of the Act to prepare, adopt and approve Amendment C273case.
4. The site is approximately 8 hectares and located 2 kilometres east of the Harkaway township in an area that is predominantly used for rural living purposes. King Road provides access to the site and is currently unsealed at this location.
5. The site is within the Green Wedge A Zone (GWAZ4) and is affected by the Significant Landscape Overlay and the Bushfire Management Overlay.
6. The proposed development is expected to attract up to 1,500 visitors per week in peak periods, and up to 2,500 visitors when large events are held. The restaurant would be open from 7 am until late, seven days per week, and is proposed to host events. The two dwellings are proposed to accommodate specialist persons such as a caretaker, visiting artists away from their normal place of residence or security personnel.
7. A planning scheme amendment is proposed to facilitate the proposal as the dwellings and use of the land for a function centre and restaurant, not in conjunction with an agricultural or winery use, are prohibited by the Casey Planning Scheme.
8. Amendment C273case proposes to apply the Specific Controls Overlay to the land and introduce an incorporated document into the planning scheme to exempt the proposed use and development from the need for a planning permit, allowing the project to proceed in accordance with conditions.
9. On 6 May 2020, the Minister decided to undertake limited consultation with potentially affected parties under section 20(5) of the Act and appoint an Advisory Committee to review the proposal and consider any submissions received.

Method

General

10. The Advisory Committee may apply to vary these Terms of Reference in any way it sees fit before submitting its report.
11. The Advisory Committee may inform itself in anyway it sees fit, but must consider:
 - a. The relevant provisions of the *Planning and Environment Act 1987*, the Casey Planning Scheme and any adopted plan, strategy or planning scheme amendment;
 - b. The views of the Proponent, Casey City Council, Creative Victoria and referral authorities including the Country Fire Authority and South East Water;
 - c. All relevant material prepared by or for the Proponent, and provided to the Advisory Committee;
 - d. All submissions and evidence received.

Notice

12. The Department of Environment, Land, Water and Planning (DELWP) must liaise with the Advisory Committee to agree on the public exhibition dates and if required, directions and public hearing dates. The agreed dates are to be included on all notices.
13. DELWP will provide direct notice (by letter) inviting submissions within a four week period, to:
 - a. Landowners and occupiers adjoining or surrounding the site
 - b. Casey City Council
 - c. Creative Victoria
 - d. Referral authorities including the Country Fire Authority and South East Water
14. All submissions are to be collected by DELWP via email or post. All personal information will be handled in accordance with the *Privacy and Data Protection Act 2014*.
15. DELWP will refer submissions received to the Advisory Committee by letter. The letter of referral will be a public document.
16. Electronic copies of submissions will be provided by DELWP to the Proponent, Casey City Council and any submitter upon request.
17. Petitions and pro-form letters will be treated as a single submission and only the first name to appear on the first page of the submission will receive correspondence on Advisory Committee matters.
18. The Advisory Committee is not expected to carry out any additional public notification or referral, but may do so if it considers it to be appropriate.

Hearing

19. The Advisory Committee may carry out a public hearing if, after considering the matters raised in submissions, it is deemed necessary. The Hearing may be undertaken using video conferencing or similar technology.
20. The Advisory Committee may limit the time of parties appearing before it, and prohibit or regulate cross- examination.

Outcomes

21. The Advisory Committee must produce a written report for the Minister for Planning providing the following:
 - a. An assessment of submissions to the Advisory Committee.
 - b. A (without prejudice) draft incorporated document including relevant conditions.
 - c. Any other relevant matters raised in the course of the Advisory Committee hearing.

- d. A list of persons who made submissions considered by the Advisory Committee.
- e. A list of persons consulted or heard.

Submissions are public documents

- 22. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly until a decision has been made on its report or five years has passed from the time of its appointment.
- 23. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain 'in camera'.

Timing

- 24. The Advisory Committee should commence its hearings as soon as practicable after the completion of the notice period.
- 25. The Advisory Committee is required to submit its report in writing as soon as practicable but no later than 30 days from the completion of its hearings.

Fee

- 26. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the Planning and Environment Act 1987.
- 27. The costs of the Advisory Committee will be met by the Proponent, Architecture Associates Pty Ltd.



HON RICHARD WYNNE MP

Minister for Planning

Date: 30 / 08 / 2020

Appendix B Submitters to the Amendment

No.	Submitter
1	Mr Tim Bayard
2	Ms Georgia Coward-Smith
3	Ms Sabine Sass
4	Ms Erin and Mr James Commerford
5	Ms Barbara Coward
6	Mr Brendan and Ms Eileen Elliot
7	Mr Jamie Hogg
8	Mr Bruce Wood
9	Ms Melanie Harley
10	Ms Corinne Sweeney
11	Mr Sean Sweeney
12	Ms Lisa Williams
13	Mr Dean Morrison
14	Ms Tara and Jason Wilson
15	Ms Margaret and Bryan Quirk
16	Mr Paul and Maral Finn
17	Mr Chris and Marilyn Kelly
18	Ms Sharon Ellis and Mr Michael Brooks
19	Ms Julie McEwan
20	Ms Chloe Imrie
21	Ms Dianne Goodear
22	Mr Jason Granata
23	Mr Shaun Williams
24	Mr Lloyd and Mia Rankin
25	Ms Julia Grave
26	Mr Roderic Grave
27	Mr Bill and Heather Redpath
28	Mr John and Shirley Fletcher
29	Ms Guin Wilson
30	Ms Helen Henderson
31	Ms Marilyn Ferguson

No.	Submitter
32	Mr Donald Ferguson
33	Mr Fabio Ramunni
34	Ms Kathryn Jarvis
35	Ms Nicole Young
36	Ms Kathryn Clamp
37	Ms Nicole Wills
38	Mr Alan Timms
39	Ms Heather Perrott
40	Mr Barry Fullwood
41	Ms Samantha Elsner
42	Mr John Irving
43	Mr Barry Hucker
44	Mr Wayne Thomas
45	Ms Roberta Bright
46	Mr Terry Goodear
47	Mr Mike Pender
48	Ms Sarah Bertoncello
49	Mr Peter McLean
50	Mr Benjamin and Amanda Tibenszky
51	Ms Heidi Reece
52	Ms Valerie Dunn
53	Ms Helen Coinu
54	Ms Alison Barry
55	Mrs Karen and Mr Tony Cavanagh
56	Ms Geertruida Schreurs
57	Dr Kirsten Neil BVSc (Hons)
58	Mr Eddie Cruise
59	Ms Brittany Van Steensel
60	Ms Anne Johnson
61	Ms Georgia Wilmot
62	Mr Edward Cruise

No.	Submitter
63	Ms Haley Dicks
64	Ms Lisa Bird
65	Ms Sandra Feleppa
66	Ms Effie Ploudias
67	Mr Vincent Mercuri
68	Mr Damien Wright
69	Ms Carole Moore
70	Nat Wallace
71	Ms Sally Harrop
72	Mr David and Susie Utting
73	Mr Giulio Ivancich
74	Mr David Wilkinson
75	Ms Jennifer Black
76	Anet Newey and family
77	Mr Anne Vallata
78	Ms Rachel Elliot
79	Mr Rod Esmore
80	Mr Michael Hawkins
81	Ms Eliza Floyd
82	Mr Richard Williams
83	Ms Sharyn Pender
84	Ms Kristy Armstrong
85	Ms Jenny Yuen
86	Ms Annmarie Saffin
87	Mr Frank Reid
88	Mr Michael and Suzannah Commerford
89	Ms Jacki Mackenzie
90	Ms Jennifer Brunton
91	Ms Brooke White
92	Mrs Jill and Bruce Watson
93	Mr Paul Banks
94	Ms Liz Beardon
95	Ms Sue Allan

No.	Submitter
96	Mr Ian Battye
97	Ms Jade Hawkins
98	Ms Natasha Haakman
99	Ms Maria Schreurs
100	Mr Matthew Wills
101	Ms Noell Clark
102	Dr Barbara Uhlenbruch
103	Mr Jack Wilson
104	Ms Sasha Williams
105	Mr Paul Dolan
106	Mr Lynette Dolan
107	Ms Margaret Salter
108	Ms Carolyn MacDonald
109	Mr Stephen Kime
110	Ms Sharyn Masson
111	Mr Justin Kime
112	Mrs Karen and Rod McNeil
113	Ms Adrienne Hearn
114	Dr Damian Smith
115	Mr Malcom Morris
116	Ms Catherine Robinson
117	Mr Marc Dixon
118	Mr Christopher Warren Crossley
119	Mr David de Crespigny
120	Ms Sarina Cowle
121	Mr Murray and Ms Dawn Newby
122	Mr Terry Taylor
123	Ms Stacey Leonard
124	Ms Rebecca Starchenko
125	Ms Karin Monk
126	Christine Stork
127	Mrs Kerrie and Martin Crawford
128	Ms Gabrielle Bibby

No.	Submitter
129	Ms Michaela Johnston
130	Ms Sandra Nicholson
131	Berwick Business Group
132	Ms Yasmine Rankin
133	Ms Tracy Thurmond
134	Ms Bev Campbell
135	Ms Jo Roszkowski
136	Ms Michelle Westerveld
137	Mr Innis Tynan
138	Mrs Nola and Leigh Manley
139	Ms Hannah Tehennepe
140	Mr Geoff La Gerce
141	Mr Edwyn Wills
142	Ms Karen Dimech
143	Dr Walter Uhlenbruch
144	Ms Eva Welch
145	Ms Anastasia Giudice
146	Mrs Meredith and Michael Dale
147	Mr Dominic Lawrenson
148	Ms Angela Kenney
149	Mr Robert Cochrane
150	Mr Jon Cattapan
151	Ms Joanne Fullwood
152	Ms Mikayla Imrie
153	Mr John Smyth
154	Deleen Robinson
155	Ms Maddison Brandi
156	Friends of the Glenfern Green Wedge Inc.
157	Ms Alice Dawson
158	Mrs Jacqi and John Dawson
159	Mr Bruce and Joanne Odgers
160	Ms Natalie Redfern
161	Ms Elizabeth Costa

No.	Submitter
162	Ms Keatha Stewart
163	Mrs Walburga Menk
164	Ms Sophie Ullin
165	Mr Alex Kathriner
166	Mr Gordon A Stewart
167	Ms Julie Buzasi
168	Mr Brett Lindqvist
169	Ms Amanda Khan Niazi
170	Ms Georgia and Mr Warrwick Scanlan
171	Ms Jackie Ouellette
172	Mr Liam Harkin
173	Ms Christine Gleeson
174	Mr David and Antoinette Wilson
175	Ms Jane Marshall
176	Mr George Aslanis
177	Mrs April Harnwell
178	Ms Michelle Hamer
179	Ms Merryn Ashcroft
180	Mr Brett McEvoy
181	Mr Daniel Dimech
182	Dr Raymond Hearn
183	Ms Quita Hazard
184	Mr Roland Crantock
185	Mrs Faith Vann
186	Ms Louise Joyce
187	Mr Peter Van Den Berghe
188	Ms Tessa Wallis
189	Mr Bryan and Sheilah Harper
190	Ms Libby Goy
191	Dr Luke Crantock
192	Ms Kirsty Manger
193	Hang Vo
194	Mr Mario Giudice

No.	Submitter
195	Ms Carol Chong
196	Mr Francis and Christine Gatt
197	Ms Josephine de Cartere
198	Ms Kate Rousseaux
199	Ms Brittany Esmore
200	Ms Sophie Bayard
201	Ms Cherise Giudice
202	Mr Mark Chapman
203	Dr Jane Crantock
204	Ms Jo Ryan
205	Ms Kadence Bodard
206	Mr Murray Meltzer
207	Ms Jennifer Matthews
208	Ms Alison Kennedy
209	Ms Georgina Till
210	Mr Robert Hewett
211	Ms Elizabeth Sullivan
212	Mr Denis Robertson
213	Ms Maggie Rouse
214	Mr Russell Dunn
215	Ms Robyn Cass
216	Mr Phil Wild
217	Ms Emily Tuck
218	Dr Wendy Bowler
219	Mr Richard Pease
220	Mr Matthew Jones
221	Ms Marie Schmidt
222	Mr Peter Fancke
223	Dr Roald Fullerton
224	Mr Ian Chisholm
225	Harkaway Primary School
226	Ms Megan Wimmers
227	Mr Ian MacDonald

No.	Submitter
228	Mr Warwick Glendenning
229	Ms Rebecca Morozoff
230	Ms Katherine Dowse
231	Ms Annie Bickford
232	Ms Caroline Parker
233	Ms Angela Walker
234	Mr Tom Beech
235	Ms Daniela Maslen
236	Ms Sue Wild
237	Mrs Sue and David Axelsson
238	Mr Chris and Megan Allan
239	Ms Shannon Stabb
240	Mrs Marilyn and Mr Gary Stabb
241	Ms Virginia Borgonha
242	Mr Chris Lawton
243	Mrs Rita and Stephen Menheere
244	Mrs Joy and Graham Waddingham
245	Ms Cheryle Thomas
246	Ms Janis Rossiter
247	Ms Emily Johnston
248	Mr Gavin Johnston
249	Mr Benjamin Lindner
250	Mr Fabio Ramunni
251	Ms Mary Drost OAM
252	Ms Robin Jansen
253	Ms Ruby Lang
254	Mr Richard and Ms Pamela Hourigan
255	Ms Anna Cooke
256	Ms Kay Maglage
257	Ms Ana Chiefalo
258	Ms Diana Wills
259	Mr Aidan Trinh
260	Ms Bridget Stein

No.	Submitter
261	Mr Paul Walker
262	Mr Cameron Edgar
263	Mr Ranjit Solanki
264	Mr Jack Kirszenblat
265	Mr Peter Watson
266	Mr Litsa Grace
267	Ms Cynthia Burgess
268	Dr Vera Moeller
269	Ms Jenny Caire
270	Mr Mark Mulready and Ms Marie McNeill
271	Ms Kaye Glendenning
272	Mr Mark Whitmore
273	Mr Sarah Lumsden
274	Mr Kirsten Tarry-Smith
275	Ms Alicia Hansford
276	Mr Trevor Hansford
277	Mr Alex Smart OAM
278	Mr Michael Roche
279	Mr Morgan Crantock
280	Mr Ian and Ms Jodie Mitchell
281	Mr Stan and Ms Pauline Delaney
282	Mr Robert Mould
283	Mr Matthew Morris
284	Ms Christine Weaver
285	Ms Alicia Ladson
286	Mr Murray M. Ashdown
287	Ms Margaret Ashdown
288	Mr Phillip and Ms Sally Battye
289	Ms Kellie Pender
290	Ms Siobhan Jones / Priest
291	Ms Natalie McDonell
292	Ms Michelle Gainger
293	Mr Adrian Counsell

No.	Submitter
294	Mr Duncan Dean
295	Mr Morfydd Campbell
296	Mr Steve Harnwell
297	Ms Sarah Skidmore
298	Ms Anne Reynolds
299	Ms Katie Vassiliou
300	Ms Brittany Jubb
301	Mr Nick Cooper
302	Mr Jan McGuinness
303	Ms Diana Thornley
304	Mr Alf and Ms Robyn Forster
305	Ms Emma Joyce
306	Ms Anne-Maree Lang
307	Ms Karen Oakley
308	Mr Ben Wild
309	Ms Helen Comport
310	Ms Merrienne Rosanove
311	Mr Mike Wood
312	Ms Sonia Murphy
313	Ms Estelle Scaife
314	Ms Jillian Ronald
315	Ms Joan Talbot
316	Mr Stan Anderson
317	Ms Marianne Martin
318	Ms Jennie Adams
319	Arts Show Pakenham
320	Ms Bettina Ashworth
321	Ms Josephine Hogg
322	Ms Tania Lancaster
323	Ms Heidi Murphy
324	Ms Kirstie Law
325	Mr Richard Law
326	Mr Derek Wills

No.	Submitter
327	Ms Jamie Wills
328	Mr David Bonacci
329	Ms Zoe Wills
330	Green Wedges Coalition
331	Ms Charlotte Ford
332	Ms Rosemary West
333	Ms Daphne Lai
334	Mr Liam Lysaght
335	Ms Rose Griffiths
336	Mr Dennis Yuen
337	Ms Marion Young
338	Ms April Harnwell
339	Ms Giovanna Nigro
340	Ms Kylie Peddle
341	Ms Rachel Young
342	Ms Amanda Dunstan
343	Ms Gaynor Gatty-Saunt
344	Ms Susan Dunn
345	Ms Sharon Smith
346	Jamie Payet
347	Ms Sharon Smith
348	Ms Lindsay Campbell
349	Mr Vincent and Ms Mary Barry
350	Ms Shannyn McArthur
351	Ms Allison Quagliani
352	Mr Shane Rogers
353	Mr Geoff Caldecoat
354	Ms Carol Clifford
355	Ms Rebecca Brady
356	Mr Stefan Gouws
357	Ms Carolyn Ebdon
358	Mr Howard McDonald
359	Ms Jennifer Coates

No.	Submitter
360	Ms Karen Parrish
361	Mr Chris Phillips
362	Ms Kristen Clarke
363	Mr David Clarke
364	Ms Camille Grainger
365	Mr Lee Horsley
366	Ms Kelly Lampard
367	Ms Melissa Robertson
368	Ms Jessica Morrison
369	Ms Fiona Matthews
370	Ms Phillipa Jupp
371	Ms Lisa Horton
372	Mr Michael Robinson
373	Ms Carolyn Panetta
374	Ms Anne Hewett
375	Ms Maryanne Alderson
376	Ms Jacinta Noonan
377	Ms Phillipa Meyer
378	Ms Sharene Borsi
379	Mr Robert Prentis
380	Ms Lisa Humphrey
381	Public Galleries Association Victoria (PGAV)
382	Ms Lesley McKay
383	Ms Elizabeth Davis
384	Ms Mary Jenkins
385	Ms Angela Hurford
386	Ms Cynthia Murphy
387	Ms Susan Bell
388	Mr Stuart Robinson
389	Ms Kenneth Davis
390	Ms Janine Cooper
391	Mr Lee Bartholomew
392	Ms Jenny Robinson

No.	Submitter
393	Ms Jo Ward
394	Victorian Artists Society
395	Mr Ray Heathcote
396	Ms Liddy Sheather
397	Ms Rosalie Counsell
398	Mr Michael Mackinnon and Clinton Rich
399	Mr John and Lisa Shannon
400	Friends of Harkaway Association
401	Ms Marcia Adams
402	Ms Beck Stock
403	Ms Julie Kennedy
404	Mr Allan Cowley
405	Ms Honnie Polman-Bulle
406	Ms Kim Kleverlaan
407	Ms Sarah McAndrew
408	Ms Leo Kennedy
409	Ms Antoinette Timothy
410	Mr Patrick Kelly
411	Ms Liz Grigg
412	Mr Hugh Turner
413	Ms Jodi De Maio
414	Ms Danielle Gaitley
415	Ms Daina Tender
416	Ms Filomena De Maio
417	Ms Shiranna Garlands
418	Ms Charlie De Maio
419	Ms Caroline Ferguson
420	Ms Jacquelin Ryan
421	Ms Lyn Baines
422	Deirdre McGarry
423	Ms Georgia May
424	Mr Brodie McPhee
425	Ms Sally Webster

No.	Submitter
426	Ms Sarah Monckton
427	Mr Ian and Ms Jan O'Regan
428	Ms Melissa Kruyt
429	Mr Lachlan Barry
430	Ms Luoane Burnett
431	Dr Caroline Lloyd
432	Ms Indigo Betts
433	Ms Lisa Roper
434	Ms Charlotte Gibbons
435	Ms Sally Taylor
436	Ms Alicia Meehan
437	Mr Hayden McEwan
438	Ms Anne McCallum
439	Ms Mirella Marks
440	Ms Gwyn Morgan
441	Mr Gabriel Bonacci
442	Ms Mary-Ann O'Reilly
443	Mr Jarrod Morey
444	Ms Gabby Loizou
445	Ms Courtney Rohlf
446	Ms Clare Odgers
447	Ms Judy Affleck
448	Ms Kaylene Butterworth
449	Ms Julie Westerling
450	Ms Liana Hansford
451	Ms Sarah Phillips
452	Ms Kelly Lloyd
453	Ms Karin Cerasani
454	Ms Nikki Ashman
455	Mr Peter Harley
456	Ms Amy Young
457	Ms Kerry Lindsay
458	Ms Kaylene Mellor

No.	Submitter
459	Ms Jan Bugg
460	Ms Georgina White
461	Ms Lana and Greg Matson and Adam Brown
462	Ms Madeleine Haussegger
463	Ms Nick Matson
464	Mr Luke Kimberley
465	Ms Alice Mustin
466	Ms Chelsea Harrak
467	Ms Lindy Priest
468	Mrs Fiona Robe
469	Ms Delia Sims
470	Ms Amna Zoobi
471	Mr David Gibb
472	Mr David Ryan
473	Mr Lyndell White
474	Ms Christine Hirschfield
475	Ms Jessy Wills
476	Mr John Counsell
477	Ms Gloria O'Connor
478	Mr Andrew Sear
479	Mr Adam Prideaux
480	Mr Andrew Mackenzie OAM
481	Mr Bret Walker
482	Mr David Cooney
483	Ms Elizabeth Hastings
484	Mr David Atkin
485	Mr Evan Hughes
486	Mr Ivor Braka
487	Ms Jane Clark
488	Ms Pamela Irving
489	Mr Peter Young AM
490	National Trust of Australia (Vic.)
491	Mr Richard Nagy

No.	Submitter
492	Ms Sabine Rewald
493	Mr Michael Brand
494	Casey City Council
495	Ms Cindy Waddingham
496	Mr Allan Abbott
497	Ms Jenny Vowell
498	Mr Steven Wright
499	Mr Lorenzo Giudice
500	Ms Jacqueline Rudan
501	Ms Sally Adsett-Brown
502	Ms Sarah Morrissy
503	Westernport and Peninsula Protection Council
504	Ms Claire Counsell
505	Ms Maree Fellows
506	Ms Judy Wallace
507	Mr Barry Humphries AO CBE
508	Country Fire Authority
509	Amanda Frith
510	South East Water
511	Mr Boris Liberman
512	Mr Gary and Ms Vicki Croft
513	Mr Julian Burnside
514	Mr David and Ms Kathleen May
515	Mr John Chandler
516	Tate Museum London
517	Mr Tom Crantock
518	Beyeler Museum
519	Van Gough Museum
520	Creative Victoria
521	Mr G A and Ms A Knights

Appendix C Parties to the Advisory Committee Hearing

Submission Number	Full Name	Representation
	Proponent	<p>Juliet Forsyth SC and Alexandra Guild of Counsel instructed by Tyrone Rath and Rob McKendrick of Planning & Property Partners who called expert evidence on:</p> <ul style="list-style-type: none"> - town planning from Sophie Jordan of Sophie Jordan Consulting - traffic from Jason Walsh of Traffix - acoustics from Darren Tardio of Enfield Acoustics - urban and landscape design from Mark Jacques of Openwork - bushfire management from Hamish Allan of Terramatrix - economics from Chris McNeil of Ethos Urban - town planning from Stuart McGurn of Urbis
	Department of Environment, Land, Water and Planning	Lauren Peek, Senior Planner and Hayley Becker, Manager Planning Services (South) of the Department of Environment, Land, Water and Planning
1	Tim Bayard	
137 / 51	Innis Tynan and Heidi Reece	
8	Bruce Wood	
9	Melanie Harley	
19	Julie McEwan	
23	Shaun Williams	
24	Mia and Lloyd Rankin	
25	Julia Grave	
31	Marilyn Ferguson	Julia Grave
52	Valerie Dunn	Madeleine Haussegger
55	Karen and Tony Cavanagh	
75	Jennifer Black	Peter Van Den Berghe
86	Annmarie McCreesh	
100	Matthew Wills	
138	Nola and Leigh Manley	

Submission Number	Full Name	Representation
141	Edwyn Wills	Matthew Wills
146	Meredith and Michael Dale	
156	Friends of the Glenfern Green Wedge Inc.	Johanna Selleck
159	Joanne and Bruce Odgers	
184	Roland Crantock	
187	Peter Van Den Berghe	
216	Phil Wild	
223	Roald Fullerton	
224	Ian Chisholm	
228	Warwick Glendenning	
235	Daniela Maslen	Madeleine Haussegger
236	Sue Wild	Phil Wild
245	Cheryle Thomas	
251	Planning Backlash Inc	Mary Drost OAM
258	Janet Diana Wills	Matthew Wills
275	Alicia Hansford	
277	Australian Plants Society – Wilson Park Berwick Group	Alex Smart OAM
284	Christine Weaver	
288	Sally and Phillip Battye	
290	Siobhan Jones Priest	Rosalie Counsell
296	Steve Harnwell	
298	Anne Reynolds	
308	Ben Wild	Phil Wild
321	Josephine Avril Hogg	Peter O'Farrell and Carly Robertson of Counsel, instructed by Andrea Towson of Gadens who called expert evidence on: <ul style="list-style-type: none"> - town planning from Robert Milner of Kinetica - town planning from David Crowder of Ratio Consultants - town planning from Sandra Rigo of Hansen Partnership
330	Green Wedges Coalition	Alan Thatcher

Submission Number	Full Name	Representation
356	Stefan Gouws	
357	Carolyn Ebdon	
397	Save the Casey Foothills Association	Rosalie Counsell
398	Michael Mackinnon and Clinton Rich	Michael Mackinnon called expert evidence on: - road engineering and design from Andrew Matheson of Taylors - dressage from Dr Andrew McLean of Equitation Science International
399	Lisa and John Shannon	Dan McQuinn of District Consulting
400	Friends of Harkaway Association	Peter Tesdorpf of Land Use Town Planning Services who called expert evidence on: - planning and bushfire from Emeritus Professor Michael Buxton
412	Hugh Turner	Warwick Glendenning
435	Sally Taylor	Phil Wild
462	Madeleine Haussegger	
472	Rosina and David Ryan	Madeleine Haussegger
475	Jessy Wills	
476	John Counsell	
491	Richard Nagy	
494	Casey City Council	Terry Montebello of Maddocks Lawyers, who called expert evidence on: - traffic engineering from Toby Cooper of GHD Pty Ltd
503	Westernport and Peninsula Protection Council	Louise Rawlings
504	Claire Counsell	
508	Country Fire Authority	Anne Coxon
514	Kathleen and David May	
515	John Chandler	

Appendix D Document list

No.	Date	Description	Presented by
2020			
1	6 Nov	Email – Planning Property Partners (PPP) to Advisory Committee (AC) requesting adjournment	Mr T Rath, PPP
2	9 Nov	Letter –DELWP to AC referring submissions	Ms L Peek, DELWP
3	10 Nov	Notification Letter – Planning Panels Victoria (PPV)	PPV
4	“	Email – PPP advising availability of Counsel	Mr T Rath
5	12 Nov	Letter –DELWP to AC referring late submissions	Ms L Peek
6	20 Nov	Email – video conferencing link to submitters	“
7	23 Nov	Letter – PPP to AC response to Directions and detail hearing days required	Mr T Rath
8	“	Letter – DELWP to AC referring late submissions	Ms L Peek
9	25 Nov	<i>Superseded by Document 73 – Notification Report, November 2020 (DELWP)</i>	“
10	27 Nov	Email – request for expert witness details	PPV
11	1 Dec	Email – request to PPP to confirm response to impact of proposal on King Road – PPV	“
12	“	Email – confirmation from PPP that response will be received	Mr R McKendrick, PPP
13	3 Dec	Letter – PPP to AC response to Direction 3	“
14	4 Dec	Directions and Timetable (version 1)	PPV
15	17 Dec	Email – Mr D McQuinn for Lisa and John Shannon providing documents required by Direction 4	Mr D McQuinn, District Consulting
16	18 Dec	Letter – City of Casey providing documents required by Direction 4	Mr J Mizzi, City of Casey
17	24 Dec	Email – PPV to represented parties reminding to supply Direction 4	PPV
2021			
18	12 Jan	Email – PPV to represented parties further reminding to supply Direction 4	PPV
19	20 Jan	Letter – DELWP to AC referring late submissions	Ms L Peek
20	28 Jan	Email – PPV to represented parties requesting expert witness details	PPV
21	“	Email – PPP with link to file share	Ms J Fiorella, PPP
22	29 Jan	Email – PPP requesting additional time to provide investigation paper for King Road upgrade including:	Mr R McKendrick

No.	Date	Description	Presented by
		a) concept sketch	
23	“	Email – Mr B Wood requesting PPP provide further analysis of King Road options	Mr B Wood
24	30 Jan	Email – Ms S Feleppa comments regarding bitumen surface proposed in King Road options	Ms S Feleppa
25	“	Email – Ms S Feleppa correcting email comments regarding bitumen surface proposed in King Road options	“
26	1 Feb	Email – Mr D McQuinn for Lisa and John Shannon response to Direction 5 – site inspection request	Mr D McQuinn
27	“	Evidence statement – Mr Darren Tardio	Mr R McKendrick
28	4 Feb	Email – PPP including expert timetable and possible conclaves and King Road options including: <ul style="list-style-type: none"> a) King Road Options Investigations Paper prepared by Traffix Group b) Drainage and Construction Report prepared by Charlton Degg Land Development Consultants c) Desktop Cultural Heritage Assessment undertaken by Dr Tim Stone 	Mr T Rath
29	6 Feb	Email – Mr B Wood response to King Road investigations options including attachments: <ul style="list-style-type: none"> a) VicRoads Engineering Feature Survey Specification b) Bruce Wood CV 	Mr B Wood
30	7 Feb	Letter – Mrs R Counsell on behalf of save the Casey Foothills Association response to Direction 5 – site inspection request	Mrs R Counsell
31	8 Feb	Email – Ms A Towson on behalf of Ms Josephine Avril Hogg response to Direction 5 – site inspection request	Ms A Towson, Gadens
32	“	Letter –Creative Victoria submission (received 8 February 2021)	Mr M Cottman, Creative Victoria
33	“	Proponent Part A submission	Mr R McKendrick
34	“	Letter – Mrs R Counsell on behalf of Save the Casey Foothills Association response to King Road investigations options	Mrs R Counsell
35	9 Feb	Email – PPP request leave to supply letter of valuation from Mr R Nagy to form part of Council’s Part A submission including attachment: <ul style="list-style-type: none"> a) Valuation of Rosemaur collection Mr R Nagy 	Mr T Rath
36	10 Feb	Email – PPV to parties with traffic / engineering experts advising of traffic / engineering conclave	PPV
37	“	Email – PPV to PPP advising the Committee grant leave for the circulation of the letter of valuation	“

No.	Date	Description	Presented by
38	12 Feb	Directions and Timetable (version 2) and Zoom guide	“
39	15 Feb	Email – Mr M Mackinnon seeks leave to supply supplementary evidence statements	Mr M Mackinnon
40		Evidence statement – Mr Andrew Matheson	“
41	“	Evidence statement – Mr Michael Buxton including attachments: a) Map 1 b) Map 2	Mr P Tesdorpf
42	“	Evidence statement – Mr Toby Cooper	Mr B Colbourne, City of Casey
43	“	Email – Ms A Towson advising of delayed circulation of evidence statements	Ms A Towson
44	“	Email – PPV to Mr M Mackinnon granting leave to supply late evidence statement	PPV
45	“	Email – PPV to Ms A Towson granting leave to supply late evidence statement	“
46	“	Letter – PPP providing link to expert witness statements	Mr T Rath
47	“	Evidence statement – Mr Stuart McGurn	“
48	“	Evidence statement – Mr Jason Walsh	“
49	“	Evidence statement – Mr Hamish Allen	“
50	“	Evidence statement – Mr Mark Jacques	“
51	“	Evidence statement – Mr Chris McNeil	“
52	“	Evidence statement – Ms Sophie Jordan	“
53	16 Feb	Email – Mr D McQuinn for Lisa and John Shannon requesting Mr Hamish Allen give oral evidence	Mr D McQuinn
54	“	Further Directions – Traffic Conclaves	PPV
55	“	Email – Mr M Mackinnon requesting Mr Mark Jacques be available for cross examination	Mr M Mackinnon
56	“	Email – Mr M Mackinnon advising Mr Andrew Matheson is available to participate in conclave and timeframe for additional evidence statement	“
57	“	Evidence statement – Mr Rob Milner	Ms A Towson
58	17 Feb	Evidence statement – Mr David Crowder	“
59	“	Evidence statement – Ms Sandra Rigo	“
60	“	Email – PPV to all parties advising of impact of COVID-19 restriction to accompanied site inspection	PPV
61	18 Feb	Evidence statement – Dr Andrew McLean	Mr M Mackinnon

No.	Date	Description	Presented by
62	“	Email – PPV to parties of accompanied site inspection advising date and time	PPV
63	19 Feb	Email – PPP circulation of CAD version of King Road upgrade options including attachments: a) 5.5 metre option b) 6 metre option	Mr T Rath
64	20 Feb	Email – Mr B Wood noting concerns / issues with CAD version of King Road upgrade and limitation of COVID-19 restrictions on site inspection	Mr B Wood
65	“	Email – Ms S Feleppa advising inability to open evidence statements	Ms S Feleppa
66	“	Email – Mrs R Counsell for Save the Casey Foothills Association advising inability to open evidence statements	Mrs R Counsell
67	“	Email – Ms M Haussegger requesting evidence statements be provided in PDF	Ms M Haussegger
68	21 Feb	Email – Ms C Ebdon requesting documents be provided in Word or PDF format	Ms C Ebdon
69	“	Email – Ms M Haussegger requesting evidence statements be provided in PDF	Ms M Haussegger
70	22 Feb	Email – PPV to all parties advising of purpose of site inspection	PPV
71	“	Email – PPV to parties of accompanied site inspection including: a) Site inspection map	PPV
72	“	Email – PPV to all parties regarding document format and access	PPV
73	26 Feb	Notification Report, February 2021 (DELWP)	Ms L Peek
74	“	Directions and Timetable (version 3)	PPV
75	“	Document List (version 1)	“
76	“	Statement of Facts and Outcomes (Traffic) prepared by Traffix Group	Ms J Fiorella
77	“	Letter – enclosing ‘Day 1’ version of draft Incorporated Document and advising of documents to be uploaded including attachments: a) Tracked change ‘Day 1’ version of draft Incorporated Document – PDF version b) Tracked change ‘Day 1’ version of draft Incorporated Document – Word version	Mr R McKendrick

No.	Date	Description	Presented by
78	28 Feb	Map of Casey Equestrian Strategy Plan mapped onto Google Map as presented to the Committee at the site inspection	Mr T Rath
79	“	Still sequence 1 prepared by Architecture Associates	“
80	“	Still sequence 2 prepared by Architecture Associates	“
81	“	Revised Site Plan (TP002 R4) referred to in Day 1 Incorporated Document	“
82	“	Revised Car Parking and Roadways Plan (TP008 R4)	“
83	“	Addendum to Evidence statement – Mr Darren Tardio in response to evidence of Dr Andrew McLean regarding revised car park layout	“
84	“	Memorandum of opinion – Dr John Stewart regarding equestrian trail a) Video of Dr John Stewart	“
85	“	Memorandum of opinion – Mr Brett Lane	“
86	“	Letter – Link to documents and comments regarding value and display of collection	“
87	“	Letter – Mr B Wood to City of Casey Manager Planning Services South dated 13 October 2020	Mr B Wood
88	“	Letter – Mr B Wood to City of Casey Director Planning Services South dated 13 October 2020	“
89	“	Letter – Mr B Wood to City of Casey Chairperson of Administrators regarding traffic dated 18 October 2020	“
90	“	Letter – Mr B Wood to City of Casey Chairperson of Administrators regarding due diligence dated 22 October 2020	“
91	“	Letter – Mr B Wood to Rosemaur Gallery Advisory Committee dated 26 October 2020	“
92	“	Email – Mr B Wood to Luke Donnellan dated 29 October 2020	“
93	“	King Road Basis of Design	“
94	“	City of Casey Typical Section Low Speed Rural Road	“
95	“	Victorian Heritage Data Base Report - Harkaway Township	“
96	“	Catchment and Land Protection Certificate	“
97	“	Guide to Road Design - Part 8 Process and Documentation	“
98	“	Geometric Design of Rural Roads	“
99	“	Road Drainage Design	“
100	“	City of Casey Standard Drawings	“

No.	Date	Description	Presented by
101	“	Drawing discussion from BJW Survey	“
102	“	Road Safety Audit	“
103	“	Guidelines for Treatment of Stormwater Runoff from the Road Infrastructure	“
104	“	Crash Risk & Rural Road Geometry	“
105	“	Guidelines for the Treatment of Stormwater Runoff from Roads	“
106	“	Guide to Road Design – Part 2 Design Considerations	“
Hearing Week 1			
107	1 Mar	Letter – Rigby Cooke Lawyers advising Ms J Talbot no longer seeks a time allotment in the Hearing timetable	Ms G Robinson, Rigby Cooke Lawyers
108	“	Boroondara Planning Scheme Amendment C143 Panel Report	Mr T Rath
109	“	Casey Planning Scheme Clause 11.01-1R	“
110	“	Casey Planning Scheme Clause 21.14	“
111	“	Casey Planning Scheme Clause 22.08	“
112	“	Casey Planning Scheme Clause 35.05	“
113	“	Casey Planning Scheme Clause 35.05 – Schedule 4	“
114	“	Casey Planning Scheme Clause 51.02	“
115	“	Plan Melbourne 2017-2050 - Direction 4.5	“
116	“	Submission presentation on behalf of DELWP	Ms L Peek
117	3 Mar	Submission presentation – Mr Mark Jacques	Mr T Rath
118	“	Signed declaration for expert witness – Mr Mark Jacques	“
119	“	Email – PPV to all parties advising of alteration to commencement time on Day 4, 9 March 2021	PPV
120	5 Mar	Document List (version 2)	“
Hearing Week 2			
121	6 Mar	Email – Mr B Wood circulating link to photographs	Mr B Wood
122	9 Mar	Email – Mr B Wood forwarding photographs taken by other persons	“
123	“	Email – Mr B Wood forwarding email requesting information of the Proponent	“
124	“	Proponent Part B submission	Mr T Rath
125	“	Proponent opening submission	“
126	“	Tracked change ‘Part B’ version of draft Incorporated Document – PDF	“

No.	Date	Description	Presented by
127	“	Clean ‘Part B’ version of draft Incorporated Document – Word	“
128	“	Jinalec Park Pty Ltd v Mornington Peninsula SC [2007] VCAT 1238	“
129	“	Letter – Mr Sam Keller of Foundation Beyeler	“
130	“	Submission presentation on behalf of City of Casey	Mr B Colbourne
131	“	Email – PPV to Mr B Wood and all parties forwarding request for documents sent 28 February 2021 from the Proponent	PPV
132	“	Email – PPV to Mr B Wood and all parties requesting direction photos to be provided in varied formats	“
133	10 Mar	Thompson v Clarke v Yarra CC [2000] VCAT 2421	Mr R McKendrick
134	“	Simopoulos v Yarra CC [2006] VCAT 1351	“
135	“	Keats v Darebin CC [2006] VCAT 1341	“
136	“	Remington v Hume CC [2020] VCAT 283	“
137	“	Submission presentation on behalf of Country Fire Authority	Ms A Coxon, CFA
138	“	City of Casey Municipal Fire Management Plan	Mr R McKendrick
139	“	Submission presentation – Mr Michael Mackinnon and Mr Clinton Rich	Mr M Mackinnon
140	“	Submission presentation on behalf of Australian Plants Society – Wilson Park Berwick Group	Mr A Smart OAM
141	“	Memorandum of opinion – Mr Darren Tardio	Mr T Rath
142	11 Mar	Letter – Ms Sandra Rigo advising and correcting error in evidence statement	Ms A Towson
143	“	Email – Ms A Towson advising of change in email / firm representation of Ms Josephine Avril Hogg	“
144	“	Submission presentation on behalf of Friends of Harkaway Association including attachment: a) Submission presentation appendix	Mr P Tesdorpf
145	12 Mar	<i>Superseded by Document 161</i> - Submission presentation – Ms M Haussegger	Ms M Haussegger
146	“	Email – Mr M Mackinnon supply of acoustic and visual barrier map including attachment: a) Acoustic and visual barrier map	Mr M MacKinnon
147	“	Article on horse behaviour	Mr R McKendrick
148	“	Distribution List and Timetable (version 4)	PPV

Hearing Week 3			
149	15 Mar	Letter – DELWP to AC referring late submission	Ms L Peek
150	“	<p>Submission presentation on behalf of Ms Josephine Avril Hogg including attachments:</p> <ul style="list-style-type: none"> a) Signed Statement of Mrs Josephine Avril Hogg b) Pioneer Concrete (Qld) Pty Ltd v Brisbane City Council [1980] HCA 1 c) Victorian National Parks Association Inc & Ors v East Gippsland Shire Council & Warring [1995] 14 AATR 250 d) Panel report - Mt Mercer Wind Farm, Golden Plains Shire e) Panel and Advisory Committee - Woolsthorpe Wind Farm f) Panel and Advisory Committee - Woolsthorpe Wind Farm – amended permit g) Letter from Mr Hogg to the Minister for Planning (29 October 2018) h) Letter from Luke Donnellan MP to the Minister for Planning (11 September 2019) i) Letter from Gary Maas MP to the Minister for Planning (13 September 2019) j) Letter Creative Victoria to DELWP (25 February 2020) [47] k) Redacted email from Architecture Associates, addressee unknown (27 May 2019) l) Project Briefing Paper, City of Casey (5 September 2019) m) Closed Council meeting, Officer’s Report for Consideration (7 November 2019) n) Financial Review article (29 January 2021) – in electronic article format o) Herald Sun article (26 February 2021) – in electronic article format p) DELWP Assessor’s Handbook, 2018 q) Constitution of Rose and Maurice Hogg Gallery Ltd r) Site Coverage Plan – A Overflow s) McRae v Yarra Ranges SC [2017] VCAT 583 t) Department of Environment, Land, Water and Planning v Yarra Ranges SC (Red Dot) [2019] VCAT 323 	Ms A Towson
151	“	Peer review of Bushfire Management Statement and the Emergency Management Plan prepared by Wakefield Planning on behalf of Save the Casey Foothills Association	Ms R Counsell

152	16 Mar	Email – Mr Rob Milner to Ms Andrea Towson on behalf of Ms Josephine Avril Hogg confirming list of documents confirmed in Attachment 3 of evidence statement	Ms A Towson
153	“	Submission presentation on behalf of Green Wedges Coalition	Mr A Thatcher
154	“	Submission presentation – Mr Philip and Mrs Sally-Anne Battye including attachment: a) An overview of the Aboriginal archaeology within the “Casey Foothills”	Mr P Battye
155	“	Submission presentation – Mr Phil Wild including attachments: a) book cover b) extract from Page 126 c) extract from Page 127 d) extract from Page 128 and Page 129	Mr P Wild
156	“	Submission presentation – Mr John and Mrs Lisa Shannon	Mr D McQuinn
157	“	City of Casey Art Acquisition Policy – June 2018	Ms A Towson
158	“	Letter – City of Casey to Mr Michael Mackinnon and Mr Clinton Rich dated 26 October 2020	Mr M Mackinnon
159	“	Gippsland Coastal Board v South Gippsland SC & Ors (No 2) (includes Summary) (Red Dot) [2008] VCAT 1545	Mr P Tesdorpf
160	“	Distribution List and Timetable (version 5)	PPV
161	17 Mar	Submission presentation – Mrs Kathleen and Mr David May	Mr D May
162	“	Submission presentation – Ms Madeleine Haussegger including submissions on behalf of: a) Ms Valerie Dunn b) Ms Daniela Maslen c) Mr David Ryan and Mrs Rosina	Ms M Haussegger
163	“	Submission presentation – Dr Roald Fullerton	Dr R Fullerton
164	“	Submission presentation on behalf of Friends of the Glenfern Green Wedge Inc.	Ms J Selleck
165	“	Brumbys Road Investments Pty Ltd v Manningham CC [2018] VCAT 449.	Ms A Towson
166	“	Submission presentation on behalf of Save the Casey Foothills Association including attachment: a) Bushfire Risk – Ash Wednesday account	Mrs R Counsell
167	“	Submission presentation – Mr Phil Wild (completed version)	Mr P Wild
168	“	Submission presentation – Mrs Meredith Dale and Mr Michael Dale	Mr M Dale

169	18 Mar	Submission presentation – Mr Steve Harwell	Mr S Harnwell
170	19 Mar	Submission presentation – Ms Julia Grave	Ms J Grave
171	“	Submission presentation – Mr Tim Bayard	Mr T Bayard
172	“	Distribution List and Timetable (version 6)	PPV
173	“	Submission presentation – Ms Claire Counsell	Ms C Counsell
174	“	Submission presentation – Mr John Counsell	Mr J Counsell
175	“	Submission presentation – Ms Carolyn Ebdon	Ms C Ebdon
176	20 Mar	Submission presentation – Mr Bruce Wood	Mr B Wood
177	“	Submission presentation – Mr Warwick Glendenning including attachment and submission presentation on behalf of Mr Hugh Turner a) Maps b) Submission presentation on behalf of Mr Hugh Turner	Mr W Glendenning
178	“	Submission presentation – Ms Nola Manley and Mr Leigh Manley	Mrs N Manley
179	21 Mar	Submission presentation – Ms Christine Weaver	Ms C Weaver
180	“	Submission presentation – Mrs Karen and Mr Tony Cavanagh	Mrs K Cavanagh
181	“	Submission presentation – Ms Annmarie McCreech	Ms A McCreech
182	“	Submission presentation – Mr Shaun Williams	Mr S Williams
Hearing Week 4			
183	22 Mar	Submission presentation – Ms Siobhan Jones Priest	Ms R Counsell
184	“	Submission presentation – Ms Emily Johnston	Ms E Johnston
185	“	Submission presentation – Ms Merryn Ashcroft	Ms M Ashcroft
186	“	Submission presentation – Mr Bruce and Mrs Joanne Odgers	Mr B Odgers
187	“	Submission presentation – Ms Melanie Harley	Ms M Harley
188	“	Submission presentation – Mr Matthew Wills including submissions on behalf of Ms Diana and Mr Edwyn Wills	Mr M Wills
189	“	Submission presentation – Ms Jessy Wills	Ms J Wills
190	23 Mar	Submission presentation – Ms Cheryle Thomas	Ms C Thomas
191	“	Submission presentation – Mr John Chandler	Mr J Chandler
192	“	Submission presentation – Ms Alicia Hansford	Ms A Hansford
193	“	Submission presentation – Mr Ian Chisholm	Mr I Chisholm
194	“	Submission presentation – Mr Lloyd Rankin	Mr L Rankin
195	“	Submission presentation – Mrs Mia Rankin	Mrs M Rankin

196	“	Distribution List and Timetable (version 7)	PPV
197	“	Submission presentation – Mr Innis Tynan and Ms Heidi Reece	Mr I Tynan
198	“	Submission presentation on behalf of Westernport and Peninsula Protection Council	Ms L Rawlings
199	“	Submission presentation – Mr Peter Van Den Berghe and Ms Jennifer Black	Mr P Van Den Berghe
200	“	Submission presentation – Mrs Sue Wild	Mr P Wild
201	“	Submission presentation – Mr Ben Wild	“
202	“	Submission presentation – Ms Sally Taylor	“
203	24 Mar	Submission presentation – Ms Marilyn Ferguson	Ms J Grave
204	“	Email – Mr Dan McQuinn on behalf of John and Lisa Shannon response to questions of the Committee	Mr D McQuinn
205	“	Submission presentation – Ms Anne Reynolds	Ms A Reynolds
206	“	Closing submission – City of Casey	Mr B Colbourne
207	“	Tracked change Proponent ‘Part C’ version of draft Incorporated Document – PDF	Mr T Rath
208	“	Clean Proponent ‘Part C’ version of draft Incorporated Document – Word	“
209	“	Distribution List and Timetable (version 8)	PPV
210	“	Email – Mr Peter Tesdorpf on behalf of the Friends of Harkaway Association advising of position on conditions	Mr P Tesdorpf
211	25 Mar	Tracked change Council ‘Part C’ version of draft Incorporated Document – City of Casey	Mr B Colbourne
212	“	Email – Mrs Rosalie Counsell on behalf of the Save the Casey Foothills Association advising of position	Mrs R Counsell
213	“	Email – Mr Shaun Williams advising of position	Mr S Williams
214	“	Email – Mrs Mia Rankin with detail regarding letter sent to DELWP including attachments: a) Letter response from DELWP b) Copy of Clause 13.02-1S	Mr L Rankin
215	“	Tracked change version of draft Incorporated Document on behalf of Ms Josephine Avril Hogg	Ms A Towson
216	“	Proponent Part C submission including attachments: a) Protecting horses from excessive music noise – a case study by Cornelius (Neil) Huybregts b) Excerpt from Amendment C180 Kingston Planning Scheme – Hawthorn Football Club – Mr Rob Milner	Mr R McKendrick

		c) Letter to Proponent from Ms Alice Macdougall of Herbert Smith Freehills regarding matters of the clarity	
		d) PPN62 – Green Wedge Planning Provisions	
217	“	Joint statement between Proponent and Mr Michael Mackinnon and Mr Clinton Rich including attachment: a) King Road arrival plan	“
218	“	Addendum to submission presentation – Mrs Sue Wild	Mr P Wild
219	“	Email – Mr Bruce Wood email regarding feature survey	Mr B Wood
Hearing Close			
220	27 Mar	Email – Mr Bruce Wood email with comments regarding the Proponent’s Part C submission	Mr B Wood
221	30 Mar	Letter – Mrs Karen and Mr Tony Cavanagh comments regarding Council’s and the Proponent’s Part C submission	Mrs K Cavanagh
222	31 Mar	Letter – Mr Warwick Glendenning comments regarding the Proponent’s Part C submission	Mr W Glendenning
223	“	Email – Mr Dan McQuinn on behalf of Mr John and Mrs Lisa Shannon email comments regarding the Proponent’s Part C submission	Mr D McQuinn
224	1 Apr	Letter – Ms Johanna Selleck on behalf of Friends of the Glenfern Green Wedge Inc. comments regarding the Proponent’s Part C submission	Ms J Selleck
225	“	Letter – Mr Philip and Mrs Sally-Anne Battye comments regarding the Proponent’s Part C submission	Mr P Battye
226	“	Letter – Mr Peter Tesdorpf on behalf of Friends of the Friends of Harkaway Association comments regarding Council’s and the Proponent’s Part C submission	Mr P Tesdorpf
227	“	Letter – Mrs Rosalie Counsell on behalf of Save the Casey Foothills Association comments regarding Proponent Part C submission including attachments: a) Comments regarding Council’s Part C submission b) Qualifications of Mr Angus Witherby of Wakefield Planning	Mrs R Counsell

Appendix E Extract of National Standards for Australian Museums and Galleries – Version. 1.5

PRINCIPLE B1 THE MUSEUM IS USED, SUPPORTED AND VALUED BY DIVERSE COMMUNITIES AS A WORTHWHILE PLACE WHERE PEOPLE CAN EXPRESS, SHARE AND DISCOVER SIGNIFICANT STORIES, IDEAS AND OBJECTS

STANDARD B1.1 The museum includes a range of people in its operations and programs.

Benchmark B1.1.1 Efforts are made to represent the diversity of the museum's community in the governing body, management and workforce of the museum.

Benchmark B1.1.2 Community members are involved in a diversity of roles and activities.

Benchmark B1.1.3 Representatives and members of local and/or specialist organisations and communities are invited to contribute their knowledge, insights and expertise to museum planning, collection development, and programs.

Benchmark B1.1.4 Efforts are made to address the interests and needs of different audiences, age groups, and levels of ability, in museum activities.

STANDARD B1.2 The museum carries out its activities as part of a broader community and contributes to community events.

Benchmark B1.2.1 The museum participates in community events.

PRINCIPLE B2 THE MUSEUM PRESENTS ITS MOST SIGNIFICANT COLLECTION ITEMS, STORIES AND THEMES THROUGH ENGAGING EXHIBITIONS AND PROGRAMS

STANDARD B2.1 The museum selects significant collection areas, stories or themes to highlight, based on what is most relevant to its purpose and audiences.

Benchmark B2.1.1 The museum's significant collection areas, themes or stories are outlined in a written policy or plan.

Benchmark B2.1.2 Exhibitions, displays and activities are changed to attract and interest new audiences and repeat visitors, using a variety of collection items, themes and stories.

Benchmark B2.1.3 A variety of methods are used to present stories, exhibition themes, and the collection, to museum audiences.

Benchmark B2.1.4 The significance of the museum's objects, buildings and site is explained to the public.

Benchmark B2.1.5 Efforts are made to research and interpret significant stories, themes and collection areas, from the past up to the present day, and from a range of perspectives.

STANDARD B2.2 The museum's exhibitions, activities and events are based on sound research and current museological practices.

Benchmark B2.2.1 Research and scholarship are shared with the wider community through publications or other means.

Benchmark B2.2.2 All information and interpretation is well researched and sources are appropriately acknowledged.

Benchmark B2.2.3 Museum interpretation acknowledges differing points of view and any uncertainty about facts.

Benchmark B2.2.4 It is made clear to visitors that replicas, reproductions and props are not original objects.

STANDARD B2.3 The museum's exhibitions, activities and events actively encourage lifelong learning.

Benchmark B2.3.1 Information developed for visitors is accessible and clear.

Benchmark B2.3.2 Objects on display are arranged to convey significant collection areas, themes, stories and ideas.

Benchmark B2.3.3 Displays are well designed and text is clear, well organised and concise.

Benchmark B2.3.4 Activities and events include learning experiences suited to people of different ages, cultural backgrounds, and abilities.

Benchmark B2.3.5 Activities and events give visitors opportunities to respond and get involved.

Benchmark B2.3.6 Evaluations of exhibitions, activities and events are used to improve programs and inform future planning.

PRINCIPLE B3 THE MUSEUM IS COMMITTED TO ITS CURRENT AND POTENTIAL AUDIENCES, AND CATERS FOR THEIR NEEDS AND INTERESTS THROUGH ITS COMMUNICATIONS, PROGRAMS AND SERVICES

STANDARD B3.1 The museum knows who its current and potential audiences are and has strategies to attract and retain them.

Benchmark B3.1.1 Records are kept of visitor numbers, and of types of visitors.

Benchmark B3.1.2 Records of visitor numbers are evaluated to help the museum understand visitation patterns and to assist in planning for the future.

Benchmark B3.1.3 Visitors are invited to give feedback about their museum experience, and this information is evaluated and used in planning.

Benchmark B3.1.4 The forward plan includes strategies to attract existing audiences as repeat visitors, and ideas for drawing in other potential audiences.

STANDARD B3.2 The museum promotes its collection, key attractions, programs and services.

Benchmark B3.2.1 A range of promotional tools are used to make potential audiences aware of the museum and to encourage them to visit

Benchmark B3.2.2 Promotional material is up to date.

STANDARD B3.3 The museum provides information to help visitors locate the museum and find their way around while they are there.

Benchmark B3.3.1 The museum works with relevant authorities to have road signs installed in the surrounding suburb, town or city, to help people find the museum.

Benchmark B3.3.2 Information signs at the site include the museum's name, opening hours, entry fees and contact details, and information about access and facilities for people with disabilities.

Benchmark B3.3.3 There is orientation information to help visitors find their way around the museum and understand what there is to see and do there.

STANDARD B3.4 The museum has regular opening hours.

Benchmark B3.4.1 A roster is in place to make sure enough workers are on duty to maintain the museum's regular opening hours and/or prearranged appointment times.

Benchmark B3.4.2 Contact details are publicised so that visitors can access the museum by appointment if they wish to.

STANDARD B3.5 The museum offers visitors a welcoming experience, and its workers respond appropriately to visitor enquiries and feedback.

Benchmark B3.5.1 Visitors are given an appropriate welcome.

Benchmark B3.5.2 Staff and volunteers have a customer focus and are well informed about the museum's purpose, key objectives, and activities.

Benchmark B3.5.3 All face-to-face, telephone and email enquiries and complaints are managed efficiently and courteously.

Benchmark B3.5.4 Group and tour bookings are managed effectively.

Benchmark B3.5.5 Facilities for visitors are safe, comfortable and pleasant.

STANDARD B3.6 The museum's public programs are as accessible as possible to people of all ages and abilities.

Benchmark B3.6.1 There are regular evaluations to check the accessibility of the museum's public programs to people of all ages and abilities.

Benchmark B3.6.2 Informed, appropriate strategies are used to overcome any access limitations for young children, older people, people with disabilities, and people with special needs.

Appendix F Advisory Committee preferred version of the Incorporated Document

The track changes are in reference to the Part C version of the Incorporated Document.

[Tracked Added](#)

~~Tracked Deleted~~

CASEY PLANNING SCHEME

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

1.0 Introduction

This document is an incorporated document in the schedule to clause 45.12 and clause 72.04 of the Casey Planning Scheme (**Planning Scheme**) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in clause 3.0 of this incorporated document may be developed and used in accordance with the control contained at clause 4.0 of this incorporated document.

If there is any inconsistency between any provision of this incorporated document and any provision of the Planning Scheme, the control at clause 4.0 of this incorporated document shall prevail over any contrary or inconsistent provision in the Planning Scheme.

2.0 Purpose

To permit and facilitate the use and development of the land described in clause 3.0 of this incorporated document more commonly known as Rosemaur, Harkaway for the purpose of an Exhibition Centre (Art Gallery), Function Centre, Restaurant and Dwellings (the **Project**).

3.0 Land

The control in this document applies to all of the land 193-209 King Road, Harkaway being the land shown as Lot 5 on LP118783 (**Land**) [and the road reserve of King Road between Baker Road and the western access to the Land.](#)

4.0 Control

Any requirement in the Planning Scheme which:

- Prohibits use and/or development of land; or
- Requires a permit for use and/or development of land; or
- Requires use or development of land to be carried out in a particular manner.

does not apply to the following use and development of the Land identified in clause 3.0 of this document where such use or development is carried out by or on behalf of Rose and Maurice Hogg Gallery Limited:

- Use of Land for:
 - an Exhibition Centre (Art Gallery) and two ancillary residences
 - a Function Centre and a Restaurant with a combined patron limit of 150 patrons.
- Buildings and works associated with the construction of Exhibition Centre (Art Gallery), Function Centre, Restaurant and Dwellings.
- Removal, destruction and/or lopping of native vegetation.
- Car parking and associated works.
- Sale and consumption of liquor.

This Incorporated Document does not exempt application of the requirements of clause 52.05 (Signs) of the Planning Scheme.

This control is subject to the conditions in clause 5.0 of this document.

5.0 Conditions

The use and development of the Land must be carried out in accordance with the following conditions:

Submission of Plans to Responsible Authority for Endorsement

1. Before the development starts, plans to the satisfaction of the Responsible Authority must be submitted to and endorsed by the Responsible Authority. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Architecture Associates and marked '*Plans for Rosemaur Gallery Project 1601*', dated 15 June 2020, drawings TPO1 to TPO12, but modified to show:
 - a) Details of the extent of the area where liquor is to be consumed or sold, represented by a redline, which must be generally in accordance with the Plans 01-A, 01-B and 01-C described as Proposed Redline Plan for Liquor Supply and Consumption, Appendix B to the operations Statement dated 29/1/2021. The red line plan must be accompanied by a report from a suitably qualified building surveyor confirming the internal space and toilet facilities within the licensed area will accord with relevant building regulations based on patron capacity.
 - b) An amended Site Plan to show:
 - i. If applicable, the details, type, location and capacity of the waste water system including details of the setback distances of the dispersal field from any buildings or property boundaries.
 - ii. The maximum width of all cross-overs and material of construction.
 - iii. The provision of a minimum 5.5 metre wide vehicle crossing for the access points to King Road.
 - iv. The location of any proposed water tanks including the setback to the property boundaries.
 - v. The location of Tree Protection Zones for vegetation within the road reserve along the King Road frontage as detailed in the Preliminary Arboricultural Assessment prepared by Artio Consulting, dated 7 November 2016, and any Arboricultural Assessments submitted under condition 1i.
 - vi. A fence (or signage) which prohibits public vehicle access to the access road that services delivery/waste vehicles to the Restaurant area, and a notation that this access is to be used by staff, delivery and waste vehicles only.
 - vii. The surface of the overflow car parking area which must be consistent with Condition 27c).
 - viii. The addition of a new east-west internal road, revisions to the north-south access road and a revised layout of the south western car park, generally in accordance with the plan titled Proposed Site Plan, TP002, Rev 4 dated 26/02/2021.
 - ix. Any amendments necessary to reflect the Car Parking and Pedestrian Layout Plan. New A Splay Wall and retaining wall along the western side of the internal site access drive generally in accordance with the plan titled McKinnon and Rich Rosemaur boundary site treatment [insert date].
 - c) Amended Floor Plans to show:
 - i. The finished floor levels of the building(s) to correspond to the submitted survey plan prepared by Charlton Degg Land Development Consultants, reference 1084, dated 12 July 2018.
 - ii. The contour information to correspond to the submitted survey plan referred.
 - d) Amended Elevations Plans to show:
 - i. The maximum wall and building height above natural ground level on all four elevations.
 - ii. The finished floor levels and finished roof levels of the building(s) to correspond to the submitted survey plan prepared by Charlton Degg Land Development Consultants, reference 1084, dated 12 July 2018.

- iii. A schedule of construction materials, external finishes and colours which must complement the surrounding landscape.
 - iv. The colour of external water tanks.
 - v. Any proposed fencing.
- e) A Vegetation Plan that shows:
- i. Details of all vegetation on the Land including the stand of vegetation along the northside of the property, around the existing dam and within the road reserve including the location, height and species names and a notation of which vegetation is to be removed.
 - ii. The location of all trees on the Land and the location of Tree Protection Zones for vegetation within the road reserve along the King Road frontage as detailed in the 'Preliminary Arboricultural Assessment' prepared by Artio Consulting, dated 7 November 2016, and any Arboricultural Assessments submitted under Condition 2i.
 - iii. Compliance with the requirements of the Bushfire Management Plan referred to in condition 48.
- f) A Car Parking, Accessway and Pedestrian Layout Plan which provides the following:
- i. Vehicle access that is designed and constructed in accordance with Table 5 to Clause 53.02-5 [and the Bushfire Management Statement for the proposed construction of a gallery at 193-209 King Road, Harkaway VIC 3806, Terramatrix, September 2020.](#)
 - ii. Car parking dimensions should be in accordance with Clause 52.06-9 of the Planning Scheme.
 - iii. Car parking and roadway grades should be designed in accordance with the Australian Standard for Off-Street Car Parking Facilities (AS 2890.1:2004), except for roadways to/from loading and coach areas where roadways should be designed in accordance with the Australian Standard for Off-Street Commercial Vehicle Facilities (AS 2890.2:2018).
 - iv. Plans, and sections providing detail on the grades, retaining walls, and cut and fill in relation to the accessways and car parking areas of the site.
 - v. Maintains all sealed car spaces to the west or north-west side of the building, noting that overflow parking may be provided on the north-east side of the building.
 - vi. The pedestrian access between the car park(s) containing [Disability Discrimination Act 1992 \(DDA\)](#) car spaces should be designed for DDA compliance. If the overflow car park does not contain DDA car spaces then standard grades can apply to the pedestrian access from the overflow car park.
 - vii. The layout and design must:
 - Be sympathetic to the natural contours of the Land through the provision of terraced car parking areas;
 - Provide a sense of arrival that celebrates the views to the south-east;
 - Provide direct and convenient/central pedestrian connectivity to the Restaurant and Exhibition Centre;
 - Be sympathetic to the rural character of the land, including through the choice of the materiality of the car park; ~~and~~
 - Be designed for integrated water sensitive urban design;
 - Promote efficient and orderly traffic flow/vehicle movements; ~~and~~
 - Provide a dedicated coach/bus drop off area which is independent to areas shared by other vehicles (i.e. waste vehicles); ~~and~~
 - [Provide for three secure parking spaces for the dwellings; and](#)
 - [Be informed by the traffic report required in Condition 26 c\).](#)
 - viii. A minimum 8 metre setback to the northern boundary (King Rd road reserve) to allow for sufficient landscaping within the setback area and to ensure that vegetation within the road reserve is not impacted upon. A lesser setback may be permitted where it has been demonstrated that the vegetation within King Rd road reserve would not be impacted upon.

- ix. Signage at the site entry directing all vehicles to use the main (western) access point.
- x. Shows the location of bicycle facilities in accordance with Clause 52.34.
- g) A swept path assessment which demonstrates that waste vehicles, delivery vehicles, fire fighting vehicles and buses/coaches can satisfactorily enter and exit and manoeuvre within the Land. The assessment must demonstrate that there will be no conflict between waste vehicles, buses/coaches and delivery vehicles.
- h) A cross-section/s of the car parking areas and site access roads which accurately depicts the maximum extent of earthworks and location of vegetation within the King Road and Hilden Drive road reserves. All earthworks must be located outside of the Tree Protection Zone of the vegetation location within the King Road and Hilden Drive road reserves.
- i) An Arboricultural Assessment which responds to the final plans and details of the tree protection zones of all roadside vegetation within King Road within 10 metres of any part of the proposed development, including the car parking areas and passing bays within King Road. The report must demonstrate that the development does not impact on any existing roadside vegetation within King Road.
- j) A minimum of 189 car parking spaces including a minimum of 105 sealed car spaces and a minimum of 4 disabled spaces.

Compliance with Endorsed Plans

2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. The layout of the uses and various activities forming part of the uses on the endorsed plans must not be altered without the written consent of the Responsible Authority.
4. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
5. The landscaping shown on the approved plans must be completed within six (6) months of occupation of the development or by such later date as is approved by and to the satisfaction of the Responsible Authority in writing.
6. Unless otherwise agreed in writing, before the use commences, the following works must be completed to the satisfaction of the Responsible Authority:
 - a) The building(s) is/are connected to reticulated water supply, drainage and underground electricity to the requirements of the relevant servicing authority.
 - b) The buildings are connected to reticulated sewerage to the requirements of South East Water, or to an on-site waste water treatment and disposal facility to the satisfaction of the Responsible Authority.
 - c) All proposed areas set aside on the approved plan/s for access, circulation and car parking (with the exception of the overflow car parking area) must be constructed with concrete, asphalt or other hard surfacing material, drained and the parking areas delineated. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.
 - d) All road and drainage infrastructure must be designed and constructed in accordance with plans and specifications approved by the Responsible Authority.
 - e) The existing vehicle crossings to be removed and the ground surface reinstated.
 - f) Water supply must be provided in accordance with the water supply requirements of the endorsed Bushfire Management Plan.
 - g) Existing vegetation must be managed in accordance with the defensible space requirements of the endorsed Bushfire Management Plan.
 - h) The buildings must be constructed in accordance with construction requirements of the endorsed Bushfire Management Plan.

- i) The equestrian trail from Farm Lane to Hilden Drive must be constructed as a functional Fire Access Track in accordance with the approved engineering plans to the satisfaction of the CFA and the Responsible Authority.
- j) King Road must be fully constructed with a sealed pavement between Baker Road and the main (western) site access point [and provision of a constructed roadside trail](#) in accordance with the approved engineering plans and to the satisfaction of the Responsible Authority.
- k) Any pruning, planting, signage or other mitigation measures required by the urban design, landscape architect, horse, ecological or arboricultural reports that accompany the Functional Layout Plans prepared under condition 26 to the satisfaction of the Responsible Authority.

[l\) Install directional signage of the surrounding road network as approved under condition 32A.](#)

The Gallery

- 7. Prior to the commencement of the development, the Land must be transferred to the Rose & Maurice Hogg Gallery Ltd. Prior to the commencement of the use evidence must be provided to the satisfaction of the Minister for Planning that the Rose & Maurice Hogg Gallery Ltd [holds](#) a minimum of \$500 million worth of art. Any valuation must be undertaken by an 'approved valuer' authorised by the Department of Communication and the Arts as an 'approved valuer' under Australian Government's Cultural Gifts Program.
- 8. Unless otherwise agreed in writing by the Responsible Authority, the Exhibition Centre (Art Gallery) must:
 - a) be operated and maintained in compliance with *National Standards for Australian Museums and Galleries*, as amended from time to time; and
 - b) be operated and maintained in such a way that it remains compliant with, and able to act as a 'Borrower' within the meaning of that term in the *International Council of Museum Guidelines for Loans*, as amended from time to time.
- 9. If the Gallery use ceases, the use of the land as a Function Centre, Restaurant and Dwellings must be discontinued until such time as the Gallery is reopened to the satisfaction of the Responsible Authority.
- 10. Unless otherwise agreed in writing by the Minister for Planning, in the first 10 years of the art gallery use, for a minimum of 90 days per year, a selection of works held by the Rose & Maurice Hogg Gallery Ltd will be on display across a minimum of 50% of the total available gallery display space.
- 11. No more than 2 (ancillary) residences may be constructed and used on the Land at any time. Those residences must at all times be used as part of the Gallery (such as by a caretaker (including a caretaker of the art), artist in residence, security, guest curator, short term accommodation for an owner of or person accompanying art on loan or for an existing or potential benefactor or similar), and not as separate dwellings.

Waste Collection

- 12. Before the use starts, a Waste Management Plan prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority. The plan must:
 - a) Outline the manner in which waste will be collected from the Land, and that waste is to be collected by a private waste contractor;
 - b) State that Responsible Authority will not at any time provide garbage, recycling, green or hard waste collection to this site;
 - c) Show the width and gradients of all access roads;
 - d) Detail the bin quantity, size and colour;

- e) Detail on a site plan showing location and space allocated to the garbage and recycling bin storage area and collection point;
 - f) Estimate garbage and recycling generation volumes for the whole development;
 - g) Detail the collection frequency and times. Waste collection must be outside the peak operation times;
 - h) Shows the waste and recycling collection locations (specifying number and size of bins) and the dedicated bin collection and bin storage locations (drawn to scale and dimensioned);
 - i) Detail the garbage and recycling equipment used, including details of the size and dimensions of the private waste collection vehicle;
 - j) Demonstrate that bin storage areas are suitably screened from public view and appropriately accessible by the waste contractor for collection; and
 - k) Show the waste vehicle route within the site and swept path diagrams for the waste vehicles, including required manoeuvres.
13. The Land must be used in accordance with the approved Waste Management Plan at all times to the satisfaction of the Responsible Authority.

Environmentally Sustainable Design

14. Before the development starts (or such other time agreed to in writing by the Responsible Authority), an Environmentally Sustainable Development Management Plan must be prepared by a suitably qualified environmental engineer or equivalent and must be submitted to and approved by the Responsible Authority. The report must be generally in accordance with the Environmentally Sustainable Design Report submitted (prepared by Atelier Ten, dated July 2017) but modified to show/include:
- a) Clearly specify Environmental Sustainable Design targets or performance outcomes and demonstrate how they will be achieved to meet sustainability objectives relating to energy management, water sensitive urban design, construction materials, indoor environmental quality, waste management and transport, which may use relevant tools such as either STORM, MUSIC or Green Star or an alternative assessment approach to the satisfaction of the Responsible Authority.
 - b) Clearly demonstrate how 'Australian Best Practice' or Green Star 5 Star equivalent will be achieved relating to energy management, water sensitive urban design, construction materials, indoor environment quality, canopy cover, waste management and transport.
 - c) Details of the specification on the initiatives to be incorporated in the development with regard to indoor environmental quality.
 - d) Details of the energy reduction initiatives that will be incorporated into the design and have regard to energy and greenhouse gas emissions. Include as appropriate provision for solar orientation, natural light, HVAC and the optimisation of energy and greenhouse gas emission of through an architectural strategy.
 - e) Details of Integrated Water Management initiatives to be incorporated including:
 - i. Document the means by which best practice Integrated Water Management including retention on-site and re-use will be achieved;
 - ii. A Melbourne Water STORM rating and MUSIC model demonstrating how initiatives will meet best practice stormwater management;
 - iii. Recycling treatment and re-use of stormwater to best practice;
 - iv. WSUD initiatives;
 - v. A water supply/demand analysis in relation to water collection, storage and re-use; and
 - vi. Clarification of water storage capacity and re-use including consideration of storm water and rainwater detention on site for non-potable applications including fire testing, toilets, urinals (if installed), air conditioning, and landscaping.

- f) A Green Travel Plan.
15. The Environmental Sustainable Design targets or performance outcomes works as specified within the approved Environmentally Sustainable Development Management Plan must be implemented to the satisfaction of the Responsible Authority.

Construction Management Plan, Operational and Management Manual and Event Management Plan

16. Before the development starts, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Construction Management Plan must be prepared by a suitably qualified person to the satisfaction of the Responsible Authority and must show and/or provide for the following:
- a) Details of the staging of all buildings and works;
 - b) Hours during which construction activity will take place;
 - c) The location of any temporary cabins and site sheds;
 - d) The location and storage of machinery on the site;
 - e) Security fencing and site access details;
 - f) A traffic management plan which ensures that no traffic hazards are created in or around the site and which must include the following details:
 - i. The movement of construction vehicles to and from the site;
 - ii. Details of the delivery and unloading points and expected frequency; and
 - iii. The location for parking of contractors' vehicles, which must be contained within the Land.
 - g) The location of the building refuse points and methods for ensuring the containment of waste within the Land during construction;
 - h) Methods to prevent discharge of construction materials and sediment;
 - i) Arrangements to ensure that no debris is deposited on any road while vehicles are travelling to and from the site, and details of the method and frequency of clean up procedures including facilities for vehicle washing;
 - j) The nomination of, and contact details for, a dedicated liaison officer for contact by the Responsible Authority in the event of relevant queries or problems experienced;
 - k) An outline of any necessary requests to occupy public footpaths or roads and anticipated disruptions to local services;
 - l) The measures necessary to minimise noise/dust and other amenity impacts from mechanical equipment and demolition/construction activities; and
 - m) The erection of a sign on the site prior to any work commencing which is clearly visible from the adjacent road reserves stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The signs may only be removed on satisfactory completion of the works.
17. Before the use starts, an Operational and Management Manual to the satisfaction of the Responsible Authority must be prepared and submitted to the satisfaction of the Responsible Authority. The Operational and Management Manual must include the following:
- a) The contact details of the nominated person(s) responsible for the day to day management and control of the building(s);
 - b) A complaint handling process to effectively manage any complaints received from neighbours including a Complaints Register. The Complaints Register to be kept at the Gallery must include details of the complaint received, any action taken and the response provided to the complainant. The Complaints Register shall be maintained and available for inspection by the Responsible Authority at all reasonable times;

- c) Details of delivery vehicle and waste collection times which must not occur prior to 7am Monday to Saturday, prior to 9am on Sunday or public holidays, or after 6pm on any day;
 - d) Details of hours of operation;
 - e) Management of buses and coaches;
 - f) Measures to direct all persons accessing the site to use the main (western) access point, except in the case of emergency or otherwise with the consent of the Responsible authority;
 - g) Nomination of smoking areas for patrons;
 - h) Requirements for security staff to be present for events of a nominated size;
 - i) Management procedures for the orderly departure of patrons; and
 - j) Location of safety signage.
18. At all times the Gallery, Restaurant and Function Centre must be operated and managed to the satisfaction of the Responsible Authority in accordance with the approved Operational and Management Manual.
19. Within two years of the use commencing, the owner must engage a qualified consultant to prepare and provide a car parking demand assessment to the satisfaction of the Responsible Authority. The car parking demand assessment must address the following:
- a) A car parking survey outlining the car parking demand for weekday operation, weekend operation, ~~and~~ one exhibition opening weekend ~~and one event where over~~ where over 300 patrons were on the site at any one time (if any have occurred within the two period period);
 - b) An analysis of whether the parking provision on site is satisfactory, having regard to the actual parking demand;
 - c) If the car parking provision is not adequate to cater to the actual demand, recommendations including the potential need for construction of more parking spaces on the Land;
 - d) If the recommendation requires the provision of more formal car parking spaces on the site, a further car parking demand assessment must be undertaken within one year of the additional car parking spaces being provided to demonstrate that the provision is sufficient;
 - e) Consideration of any written complaints / enquiries received by the Responsible Authority as part of the approved Operational and Management Manual.
- ~~20. At least three months prior to any event where more than 580 patrons or visitors will be present, an Event Management Plan to the satisfaction of the Responsible Authority and the Country Fire Authority must be prepared and submitted for approval. The Event Management Plan must include (where appropriate):~~
- ~~a) Details of the nature of the event;~~
 - ~~b) Details of the duration and hours of the event;~~
 - ~~c) Details of any external speakers or noise equipment;~~
 - ~~d) The number of anticipated patrons/visitors;~~
 - ~~e) Demonstrate that there is sufficient car parking on site which is delineated on a site plan;~~
 - ~~f) Details of any additional parking that is required for the event;~~
 - ~~g) A Bushfire Emergency Plan to the satisfaction of the Country Fire Authority; and~~
 - ~~h) A Traffic Management Plan which details how traffic and carparking will be managed including:~~

- ~~ii. The means by which the direction of traffic and pedestrian flows to and from car parking areas will be controlled both on- and off-site;~~
- ~~iii. Management of buses and coaches;~~
- ~~iv. Measures to discourage patron car parking within King Road through appropriate signage or other communication;~~
- ~~v. Measures to preclude staff parking in designated patron car parking areas;~~
- ~~vi. Staffing and other measures to ensure the orderly departure and arrival of patrons especially any large groups departing at closing time.~~

Landscaping and Vegetation

21. Before the development starts (or such other time agreed to in writing by the Responsible Authority), a Landscape Plan prepared by a suitably qualified person must be submitted to and approved to the satisfaction of the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show:
 - a) A survey (including botanical names) of all existing vegetation to be retained and/or removed including within the King Road reserve between Baker Road and the eastern access of the Land;
 - b) Details of surface finishes of pathways and driveways;
 - c) A planting schedule of all proposed trees, shrubs and ground covers on the Land and within King Road reserve, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant; ~~and~~
 - d) Details of any structural elements such as planter boxes, edging or other non-vegetation landscaping features; ~~:-~~
 - e) A planting palette drawn from native and indigenous species;
 - f) The provision for the integration of art within, and as part of, the landscape;
 - g) Details of integrated water sensitive urban design for the south western car park; ~~:-~~
 - h) Planting to assist with the concealment of the car park surface and the cars themselves from the property to the west and from the public domain; ~~:-~~
 - i) The position of any bollard or security lighting to the car park, pathways and exterior landscaped spaces.

All species selected must be to the satisfaction of the Responsible Authority. Landscaping must demonstrate the use of sustainable practices and, if irrigation is to be provided, it must not use potable water. No tree planting is to be undertaken within any easement.
22. The landscape works must be carried out in a manner which is consistent with the recommendations set out in the 'Preliminary Arboricultural Assessment' prepared by Artio Consulting, dated 7 November 2016, and any Arboricultural Assessments submitted under condition 2i, to the satisfaction of the Responsible Authority.
23. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority. Areas shown on the endorsed plan as landscaped must not be used for any other purpose. For the avoidance of doubt, maintaining landscaping includes the removal and replacement of any dead, diseased or damaged plants.
24. Before the development starts, a tree protection fence must be erected around the Tree Protection Zone of any affected vegetation within King Road along the frontage of the Land. The fence must be constructed of star pickets and chain mesh or similar to the satisfaction of the Responsible Authority. The tree protection fence must remain in place until construction is completed and the ground surface of the Tree Protection Zone must be covered by a 100mm deep layer of mulch before the development starts and be watered regularly to the satisfaction of the Responsible Authority.
25. No vehicular or pedestrian access, trenching or soil excavation or filling is to occur within the Tree Protection Zone without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.

Engineering

26. Before the development starts, detailed construction plans must be submitted to and approved to the satisfaction of the Responsible Authority and Casey City Council if it is not the Responsible Authority. The plans must be drawn to scale with dimensions and three copies must be provided to the Responsible Authority and Casey City Council if it is not the Responsible Authority.. The plans must show:
- a) The construction of an unsealed fire access track through Reserve No. 1 on LP115396, located between Hilden Drive and Farm Lane, to CFA specifications and requirements.
 - b) The sealing of King Road and provision of a constructed roadside trail between Baker Road and the western site accessway including:
 - i. Functional Layout Plans for the sealing of King Road showing:
 - a generally 6.0 metre wide pavement from Baker Road to the western site accessway;
 - localised narrowing to not less than 5.64 metres wide in places where the narrower width is required to accommodate roadside features such as significant trees;
 - the crossing of Walsdorf Creek maintained without widening to provide for one-way traffic movements; ~~and~~
 - provision for unsealed parking at the commencement of the Walsdorf Creek nature trail, and.
 - provision for a constructed roadside trail
 - ii. Detailed design of all roadworks and drainage for the sealing of King Road and provision of a constructed roadside trail in accordance with the approved Functional Layout Plans.

The Functional Layout Plans must be prepared having regard to:

 - i. the need to maintain the rural character of the road, including where practicable the retention of vegetation (including trees that are not 'native vegetation'); ~~and~~
 - ii. the three step approach to native vegetation in *The Guidelines for the removal, destruction or lopping of native vegetation*; ~~and~~
 - iii. road safety

The Functional Layout Plans must be accompanied by a report from:

 - i. a qualified traffic engineer;
 - ii. a qualified civil engineer;
 - iii. a qualified urban designer or landscape architect that addresses the extent to which the plans maintain the rural character of the road, including proposed mitigation measures such as additional tree planting;
 - iv. a horse expert that addresses any localised works reasonably required for the safety of horse riders using the roadside verge for the purposes of ~~an unconstructed~~ a constructed roadside equestrian trail to the satisfaction of Casey City Council, including signage as required; ~~and~~
 - v. a qualified ecologist or arboriculturist that addresses the impact of the works on vegetation and any mitigation measures proposed; ~~and~~
 - vi. oOther reports or information which may be required by the Responsible Authority and Casey City Council if it is not the Responsible Authority, such as a Cultural Heritage Management Plan.
 - c) The construction of all internal vehicle access and circulation carriageways and parking areas. The plans must show the provision of the following to the satisfaction of the Responsible Authority:
 - i. An all-weather pavement finished in concrete, asphalt or other approved hard surface material for areas shown as sealed parking areas (excluding overflow parking areas).
 - ii. Any overflow parking levelled and reinforced with plastic mesh or similar within the grassed area as necessary to prevent the formation of potholes and depressions according to the nature of the sub-grade and the vehicles which will use the areas.

Such parking area will be constructed and maintained to the satisfaction of the Responsible Authority. The permeable mesh product used needs to be to Australian Standards and be able to carry vehicles and function as a car park.

- iii. Drainage.
- iv. Signage, line marking, and parking space marking, including safe pedestrian paths designated through all parking areas (excluding overflow parking areas).
- v. Disabled parking spaces in accordance with Australian Standards.
- vi. Parking for buses and coaches and access to three secure parking spaces for the dwellings.

The Functional Layout Plans must be prepared having regard to:

- i. The need for bus and coach parking.
- ii. Provision for access to three secure parking spaces for the dwellings.

The Functional Layout Plans must be accompanied by a report from:

- i. a qualified traffic engineer that provides an assessment of the expected bus and coach parking demands.

- d) Any dam to be designed in accordance with engineering practice to the satisfaction of the Responsible Authority. The plans must show:
 - i. Location of the proposed dam and distances to property boundaries.
 - ii. Storage volume of the dam.
 - iii. Dimensions, contours and finished levels.
 - iv. Cross section(s) showing depth, wall height & finished levels.
 - v. Location, design and dimensions of the inlet and outlet.
 - vi. The wall of the dam designed to be watertight and support on a suitable foundation.
 - vii. The spillway and overflow system of the dam to be constructed of suitable material.
 - viii. The extent and type of vegetation proposed to be removed for the dam construction.
 - ix. Proposed location for the disposal of spoil from excavations.
 - x. Measures to limit the rate of stormwater discharge from the dam in minor storm events to the predevelopment rate.
- 27. Before the use starts or occupation of the buildings, the area/s set aside for the parking of vehicles and access lanes as shown on the endorsed plans (except for the overflow parking spaces) must be:
 - a) constructed and properly formed to such levels that they can be used in accordance with the permitted use and development;
 - b) surfaced with an all-weather-seal coat;
 - c) drained, sealed, and line marked to indicate each car space and all access lanes; and
 - d) line marked to show the direction of traffic along access lanes and driveways, all to the satisfaction of the Responsible Authority.
- 28. Sealed car spaces, access lanes and driveways must be kept available for these purposes at all times.
- 29. All works must be undertaken in a manner that minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion, to the satisfaction of the Responsible Authority.
- 30. Except with the written consent of the Responsible Authority, during construction, a truck wheel-wash must be installed and operated so vehicles leaving the Land do not deposit mud or other materials on roadways to the satisfaction of the Responsible Authority.
- 31. Stormwater must not be discharged from the Land other than by means of controlled discharge from the proposed dam to the satisfaction of the Responsible Authority.

32. Polluted stormwater must not be discharged beyond the boundaries of the land from which it emanates, or into a watercourse or drain, but must be treated and/or absorbed on that land to the satisfaction of the Responsible Authority.

32A Before the use starts or occupation of the buildings, a directional signage package must be designed and installed to the satisfaction of the relevant road authority that directs arriving and departing motorists to enter and exit King Road via the Harkaway Road roundabout.

Hours of Operation

33. Unless with the further written consent of the Responsible Authority, the use of the Land may only operate between the hours of:
 - Sunday to Thursday: 7am – 11pm
 - Friday and Saturday: 7am – 12 midnight.
34. The Exhibition Centre (Art Gallery), Function Centre and Restaurant must be closed on days where there is a fire danger rating of Code Red.
35. Unless with the further written consent of the Responsible Authority, any activity, function or event that is not held in the restaurant building (including terrace) must conclude by 9:30 pm.
36. Unless with the further written consent of the Responsible Authority, all patrons must be off-site by 12 midnight.

Patron Numbers

37. ~~Unless with the further written consent of the Responsible Authority,~~ Not more than 300 patrons may be present on-site at any one time except for four large events per calendar year when 580 patrons may be present on the site at any one time. ~~This patron limit does not apply to three large events per calendar year which must be conducted in accordance with an approved Event Management Plan.~~
38. The maximum number of patrons on the site after 10pm on any night is 150. This patron limit does apply to the three large events per calendar year which must be conducted in accordance with an approved Event Management Plan.
39. The combined number of patrons at any one time using the site for the purposes of a Restaurant and/or a Function Centre must not exceed 150. This condition does not apply to functions which are part of or ancillary to the Exhibition Centre (Art Gallery).
40. Not more than 150 patrons may be present within the restaurant building at any one time (or as otherwise specified in an approved Event Management Plan). This condition applies regardless of whether the restaurant building is being used as a Restaurant or as a Function Centre or as an Exhibition Centre (Art Gallery).

The gallery must keep records of:

- gallery attendance
- restaurant attendance
- restaurant attendance when the gallery is closed
- function centre attendance.

These records must be made available to the responsible authority on request.

Events

- ~~41. Not more than three large events (events where more than 580 patrons may be present on the site at any one time) may be conducted on the site within any 12 month period.~~
- ~~42. Events where more than 580 patrons may be present on the site at any one time must be conducted in accordance with an Event Management Plan which is approved to the satisfaction of the Responsible Authority.~~

Sale and consumption of liquor

43. The layout of the licensed area as shown on the endorsed plan must not be altered or modified without the written consent of the Responsible Authority.

44. Except with the further consent of the Responsible Authority liquor must only be served or consumed in those areas that are shown on the plans as licensed areas between the following hours:
 - Monday to Thursday (excluding ANZAC Day and Good Friday) – 7am to 11pm.
 - Sunday – 10am to 11pm.
 - Good Friday and ANZAC Day – 12 noon to 11pm.
 - Friday and Saturday (excluding ANZAC Day and Good Friday) – 7am to 11:30pm.
45. Liquor must only be sold, stored or consumed in the areas shown on the plans as licensed areas to the satisfaction of the Responsible Authority.
46. Alcohol is not to be taken outside the licensed area by patrons at any time to the satisfaction of the Responsible Authority.
47. The predominant activity carried out within the Restaurant, must be the preparation and serving of meals for consumption on the premises.

Bushfire Management

48. Before the development starts, a Bushfire Management Plan to the satisfaction of the CFA and Responsible Authority must be submitted to and endorsed by the Responsible Authority. The plan must be generally in accordance with the Bushfire Emergency Management Plan prepared by Terramatrix dated June 2020 but updated to accord with the recommendation in Mr Allan's expert statement dated March 2021. . Once endorsed, the plan must not be altered unless otherwise agreed in writing by CFA and the Responsible Authority.
49. Prior to occupation of the buildings, a Bushfire Emergency Management Plan to the satisfaction of the CFA and Responsible Authority must be submitted to and endorsed by the Responsible Authority. The plan must not be altered unless otherwise agreed in writing by CFA and the Responsible Authority.
50. The bushfire protection measures shown on the endorsed plans, including those relating to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the Responsible Authority on an ongoing basis. This condition continues to have force and effect after the development authorised by this Incorporated Document has been completed.
51. Before the development starts, a Vegetation Management Plan to the satisfaction of the CFA and Responsible Authority must be submitted to and endorsed by the Responsible Authority. The plan must demonstrate vegetation management requirements in the area of defendable space around each building will continue to be met on an ongoing basis.

Amenity

52. The use of the Land must not cause any nuisance or annoyance to persons beyond the Land, by way of the emission of noise or otherwise to the satisfaction of the Responsible Authority.
53. Noise levels emanating from the Exhibition Centre (Art Gallery), Function Centre and Restaurant must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1, and (Control of Music Noise from Public Premises), No. N-2 or any policy which replaces those policies.
54. No amplified live music is permitted in any outdoor area, including on the outdoor terrace spaces.
55. Any music played with amplification or through loudspeakers in any outdoor area, including on the outdoor terrace spaces, must be limited to background only. For the purposes of this condition, 'background music' is defined as music played at a level that enables patrons to conduct a conversation at a distance of 600mm without having to raise their voice to a substantial degree.
56. All external plant and equipment must be acoustically treated or placed in soundproof housing to reduce noise to a level satisfactory to the Responsible Authority.

57. The development (including works associated with the construction of the development) must not detrimentally affect the amenity of the area, through the:
 - a) Transport of materials, goods or commodities to or from the Land.
 - b) Appearance of any building, works or materials.
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products or litter, grit or oil.
 - d) Presence of vermin.
58. All bins and receptacles used for the collection and storage of garbage, bottles and other solid wastes must be stored out of general view and storage areas maintained in a suitable condition to the satisfaction of the Responsible Authority.
59. External lighting must be designed, baffled and located to the satisfaction of the Responsible Authority so as to cause no loss of amenity to residents of adjoining properties. Lighting must be limited to what is reasonably necessary for way finding, security and safety.
60. The loading and unloading of goods from vehicles must only be carried out on the Land within the designated loading space/s and must not disrupt the circulation and parking of vehicles on the Land.
61. The loading and unloading of vehicles must always be carried out on entirely within the site and not interfere with other traffic.
62. Security lighting must be installed at the entrance to the building and within any car parking area and pedestrian access way, to the satisfaction of the Responsible Authority.

Native Vegetation

63. Prior to removal of native vegetation information about that native vegetation in accordance with Application Requirements 1, 5 and 9 of the *Guidelines for removal, destruction or lopping of native vegetation* (Department of Environment, Land, Water and Planning, (DELWP, December 2017) (the Guidelines) must be provided to the satisfaction of the Secretary to DELWP.
64. Prior to removal of native vegetation, the biodiversity impacts from the removal of that native vegetation must be offset in accordance with the Guidelines, and evidence that the required offset(s) has been secured must be provided to the Secretary to DELWP.
65. The secured offset(s) for the permitted development may be reconciled at the completion of the development but prior to the use commencing project in accordance with the *Assessor's handbook – Applications to remove, destroy or lop native vegetation* (DELWP, October 2018).

6.0 Expiry of the Incorporated Document

The control in this document expires in respect of the Land identified in clause 3.0 of the following circumstances apply:

- a) The development is not started within four (4) years from the date of approval of this document.
- b) The development is not completed within six (6) years from the date of approval this document.
- c) The use does not start within one (1) year of the completion of the development.
- d) The use is discontinued for a period of two (2) years.

The liquor component will expire if the operation of the liquor license does not commence within 12 months after the restaurant use commencing.

The Responsible Authority may extend the periods referred to if a request is made in writing before the expiry date or within three (3) months afterwards.