

Planning and Environment Act 1987

Panel Report

Cardinia Planning Scheme Amendment C235card

145 Rossiter Road, Koo Wee Rup

30 December 2019

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Panel Report pursuant to section 25 of the Act

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A handwritten signature in black ink, appearing to read 'Ian Gibson', with a long horizontal line extending to the right.

Ian Gibson, Chair

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
ARI	Average Recurrence Interval
Council	Cardinia Shire Council
DELWP	Department of Environment, Land, Water and Planning
DPO22	Development Plan Overlay Schedule 22
HO198	Heritage Overlay Schedule 198
LPPF	Local Planning Policy Framework
LSIO	Land Subject to Inundation Overlay
NRZ	Neighbourhood Residential Zone
NRZ1	Neighbourhood Residential Zone Schedule 1
PPF	Planning Policy Framework
SMP	Stormwater Management Plan

Overview

Amendment summary	
The Amendment	Cardinia Planning Scheme Amendment C235card
Common name	145 Rossiter Road, Koo Wee Rup
Brief description	The Amendment proposes to rezone the land at 145 Rossiter Road, Koo Wee Rup from Farming Zone to Neighbourhood Residential Zone - Schedule 1 (NRZ1), apply the Development Plan Overlay (DPO22) to the land and correct the mapping for the Heritage Overlay (HO198 "Shepton Mallet")
Subject land	145 Rossiter Road, Koo Wee Rup
The Proponent	Planning Central Pty Ltd acting on behalf of the US Investment Group Pty Ltd
Planning Authority	Cardinia Shire Council
Authorisation	7 February 2019 (subject to conditions)
Exhibition	27 June to 2 August 2019
Submissions	<p>Number of Submissions: 6 (one of which was subsequently withdrawn)</p> <p>Opposed: 2</p> <p>In addition, Melbourne Water and the Department of Transport – Metro South East generally supported the Amendment, but requested minor changes</p>
Panel process	
The Panel	Ian Gibson (Chair)
Directions Hearing	Cardinia Shire Council, Officer: 16 October 2019
Panel Hearing	Cardinia Shire Council, Officer: 22 November 2019
Site inspections	Unaccompanied, 16 October and 22 November 2019
Appearances	<p>Cardinia Shire Council represented by Genna Walkley, Senior Strategic Planner, assisted by Katherine Robertson, Development Assessment Engineer</p> <p>US Investment Group Pty Ltd, represented by Glenn Kell, Planning Central, and calling the following expert witness:</p> <ul style="list-style-type: none"> - Marc Noyce of Biofilta Pty Ltd (drainage/stormwater) <p>Suzan Smith</p>
Date of this Report	30 December 2019

Executive summary

Cardinia Planning Scheme Amendment C235card (the Amendment) seeks to rezone 24.6 hectares of land at 145 Rossiter Road, Koo Wee Rup from Farming Zone to Neighbourhood Residential Zone - Schedule 1 (NRZ1), apply the Development Plan Overlay (DPO22) to the land, correct the mapping for the Heritage Overlay (HO198 "Shepton Mallet") and update Clause 21.07-7 (Koo Wee Rup).

Key issues raised in submissions included:

- flooding and drainage
- traffic.

The Amendment follows the adoption by Cardinia Shire Council of the *Koo Wee Rup Township Strategy* in August 2013, incorporation of the Strategy in the Cardinia Planning Scheme through Amendment C189, and the subsequent updating of the Strategy in October 2015.

The Strategy refers to 145 Rossiter Road, which is the subject site of this Amendment. One of its short-term actions is to rezone and apply a Development Plan Overlay to the property and rezone it from Farming Zone - Schedule 1 to an appropriate residential zone. In 2017, a request was made to Council by Planning Central to proceed with the Amendment. A range of supporting documents covering matters such as environmental matters, heritage, cultural heritage, drainage and traffic were prepared, and the Amendment exhibited in June 2019.

The Panel concludes:

- the Amendment is consistent with State and Local Planning Policies, and is a logical step in the process of planning for the anticipated residential development of Koo Wee Rup
- the rezoning to Neighbourhood Residential Zone, inclusion of DPO22, modifications to HO198, and updating of Clause 21.07-7 (Koo Wee Rup) are appropriate planning tools, and are strategically justified
- a number of minor modifications to the Schedule to DPO22 improve its clarity, without changing the intent of the Development Plan
- minor changes to HO198 to include a trigger for tree controls are appropriate.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Council adopt Cardinia Planning Scheme Amendment C235card as exhibited, subject to the following modifications:

- 1. Amend Development Plan Overlay Schedule 22 as shown in Appendix C of this report**
- 2. Amend the tree controls relating to HO198 (Shepton Mallet, 145 Rossiter Road, Koo Wee Rup) to read "Yes" within the Schedule to Clause 43.01 Heritage Overlay.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to rezone 24.6 hectares of land at 145 Rossiter Road, Koo Wee Rup from Farming Zone to Neighbourhood Residential Zone - Schedule 1 (NRZ1), apply the Development Plan Overlay (DPO22) to the land, correct the mapping for Heritage Overlay (HO198 "Shepton Mallet") and update Clause 21.07-7 (Koo Wee Rup).

Specifically, the Amendment proposes to:

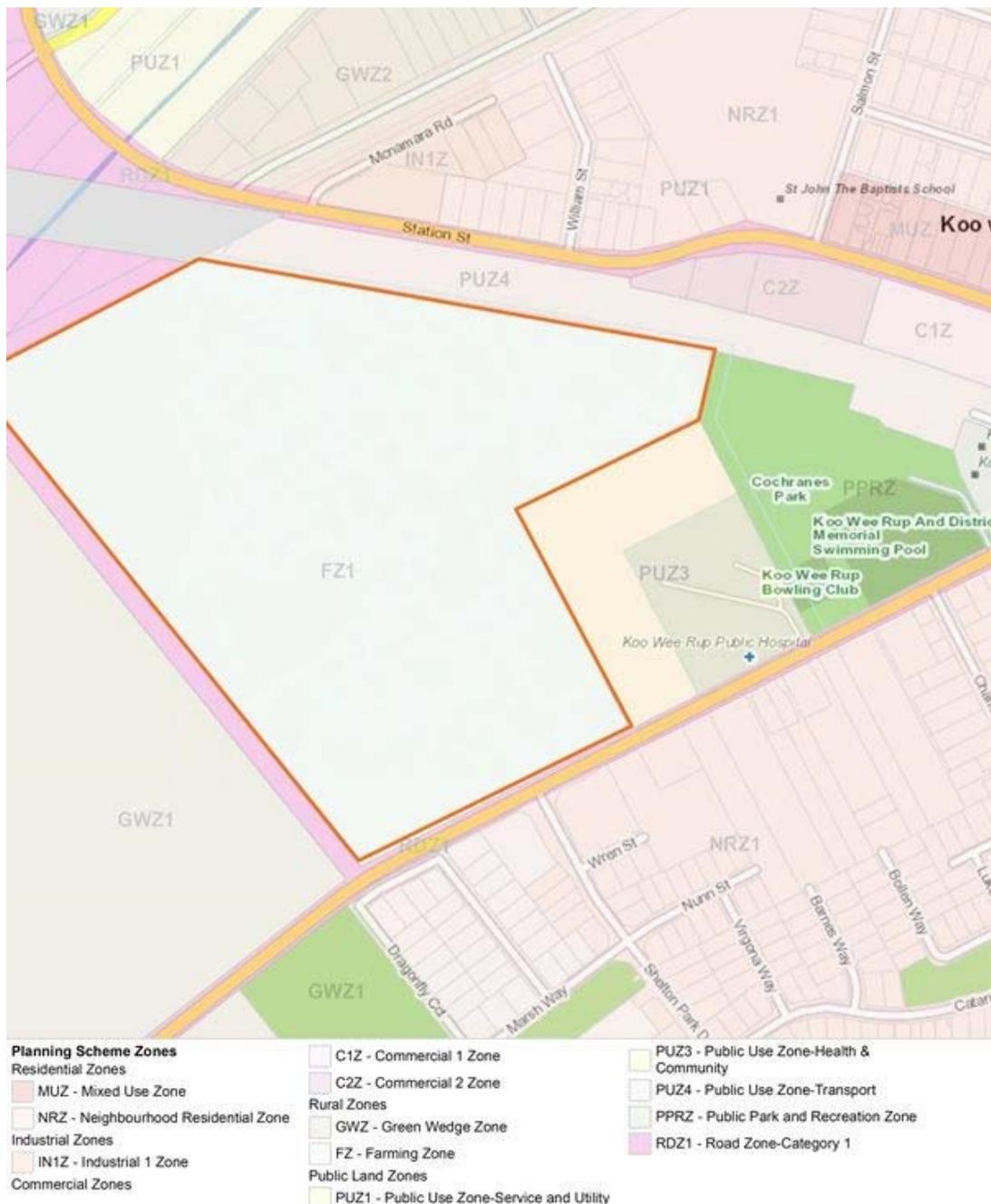
- rezone Lot 2 from Farming Zone to Neighbourhood Residential Zone Schedule 1 (NRZ1)
- amend Clause 21.07-7 (Koo Wee Rup) to recognise the further strategic work relating to the subject land has been undertaken
- insert Schedule 22 to Clause 43.04 (Development Plan Overlay) into the Cardinia Planning Scheme
- amend Planning Scheme Map HO27 to correct the mapping for HO198 "Shepton Mallet"
- amend Planning Scheme Maps 26ZN and 27ZN to apply the Neighbourhood Residential Zone - Schedule 1 (NRZ1) to the site
- amend Planning Scheme Maps 26DPO and 27DPO to apply Development Plan Overlay - Schedule 22 to the site.

The Amendment has been made at the request of Planning Central Pty Ltd acting on behalf of the US Investment Group Pty Ltd.

(ii) The subject land

The Amendment applies to land shown in Figure 1. This shows the subject site within the Farming Zone, and it is usually referenced as 145 Rossiter Road. Some of the supporting documents refer to the subject site as 165 Rossiter Road, but the consensus at the Hearing was that 145 Rossiter Road is the commonly used name.

Figure 1: The subject land



1.2 Background

The Amendment follows from strategic planning that led to the preparation of the *Koo Wee Rup Township Strategy* and its adoption by Cardinia Shire Council in August 2013. The Strategy was updated in 2014, and was the basis of Amendment C189, which aimed to incorporate the strategy itself into the Cardinia Planning Scheme. A Panel considered Amendment C189, and concluded:

Both the Strategy and the Amendment provide for the needs of the growing rural township and provide developers, investors and the local community greater certainty in relation to future development within the Koo Wee Rup township ...

The Panel further concluded:

- The Amendment complies with the Strategic Assessment Guidelines.
- The Strategy underwent significant public consultation in both its draft and final form.
- The Strategy sets aside sufficient areas to accommodate future growth for the township ...

This in turn led to the re-adoption of the Strategy in October 2015 and its inclusion as an incorporated document into the Cardinia Planning Scheme.

The Strategy specifically refers to 145 Rossiter Road, which is the subject site of Amendment C235card. One of its short-term actions is as follows:

Rezone and apply a Development Plan Overlay to the property surrounding the Koo Wee Rup Regional Health service, bounded by Rossiter Road, the Urban Growth Boundary and the Great Southern Rail Reserve from Farming Zone - Schedule 1 to an appropriate residential zone, to enable residential development to meet location housing needs.

In 2017, a request was made to Council by Planning Central acting on behalf of the US Investment Group Pty Ltd to proceed with the Amendment. A range of supporting documents covering environmental matters, heritage, cultural heritage, drainage and traffic were prepared, and the Amendment was exhibited in June 2019.

1.3 Summary of issues raised in submissions

(i) Individual submitters

The key issues by submitters were:

- flooding and drainage
- traffic congestion, heavy truck traffic along Rossiter Road.

These issues were not resolved and were the main considerations during the Panel Hearing.

(ii) Relevant agencies

Melbourne Water, the Department of Transport – Metro South East and the Department of Environment, Land, Water and Planning (DELWP) each requested minor changes to the Amendment. These modifications included:

- Melbourne Water sought a change in the Concept Plan in DPO22 to increase the size of the retarding basin in order to accommodate a 90-minute rainfall event instead of 30 minutes

- the Department of Transport – Metro South East sought to identify the correct authority referral and decision making in the Traffic and Transport section of DPO22
- DELWP requested change to the Schedule to the Heritage Overlay, turning on the tree controls as identified by the citation.

Council supported all of these requests to modify the exhibited Amendment. There were no submissions opposing the requested modifications.

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the submissions under the following headings:

- Planning context
- Issues.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Explanatory Report notes that the Amendment will assist in implementing State policy objectives set out in section 4 of the Act by providing the orderly and sustainable use and development of the land for residential purposes. The land has been previously identified as suitable for residential development and is located within the Urban Growth Boundary.

The Explanatory Report listed the following Clauses that are relevant to the Amendment:

- Clause 11.01-1S: Settlement
- Clause 12: Environment and landscape values
- Clause 13.02-1S: Bushfire Planning
- Clause 15: Built environment and heritage
- Clause 16: Housing
- Clause 19: Infrastructure.

The Explanatory Report described Council's view that the Amendment (amongst other things):

- ensures a sufficient supply of land is available for residential use
- achieves building design outcomes that contribute positively to the local context and enhance the public realm
- recognises, supports and protects neighbourhood character, cultural identity, and sense of place
- ensures the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods
- promotes a housing market that meets community needs
- ensures that planning for growth should be in a manner that allows for the logical and efficient provision and maintenance of infrastructure.

The Planning Report provided by Planning Central Pty Ltd as one of the supporting documents for the Amendment also identified Clause 13.03-1S relating to Floodplain management, which has the objective to assist the protection of:

- life, property and community infrastructure from flood hazard
- the natural flood carrying capacity of rivers, streams and floodways
- the flood storage function of floodplains and waterways
- floodplain areas of environmental significance or of importance to river health.

This is highly relevant to the Amendment, given the significance of flooding and drainage issues in any development within Koo Wee Rup.

Clause 21 (the Municipal Strategic Statement)

The Explanatory Report also identifies the relevant Clauses in the Municipal Strategic Statement:

- Clause 21.01-4 – Key Issues and Strategic Vision
- Clause 21.02 – Environment
- Clause 21.03 – Housing
- Clause 21.03 – Rural townships
- Clause 21.07 – Koo Wee Rup.

Council considered that the Amendment is consistent with these Clauses, and:

- supports the sustainable development of the growth area and rural townships
- recognises areas within the municipality that are liable to flooding and inundation and to minimise potential risk to life, property and the environment
- ensures that land is provided and developed for a range of open space functions to meet community needs for active and passive open space (including linkages) and for the protection of the environment
- protects and enhances the habitat of threatened flora and fauna species, including the growling grass frog and southern brown bandicoot
- provides for the protection and management of significant Aboriginal heritage sites, material culture, and places of historical and spiritual significance to relevant contemporary Aboriginal people
- provides for a diversity of housing types and densities, including increased housing density around activity centres
- provides for the sustainable development of townships in the municipality having regard to environmental and servicing constraints
- creates sustainable and functional townships that supports a range of commercial, retail, community and recreational facilities and services
- ensures that any proposed use or development within or around the Koo Wee Rup Township is generally consistent with the *Koo Wee Rup Township Strategy* (October 2015).

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Koo Wee Rup is within the Greater Melbourne metropolitan area, so Plan Melbourne is a significant consideration for the Amendment.

Council cited a range of relevant Directions and Policies within Plan Melbourne, including those relating to new housing, maintenance of the urban growth boundary, provision of choice and diversity in housing, respect for heritage and protection of Melbourne's Aboriginal cultural heritage. It argued that the Amendment is consistent with these directions and policies.

The Urban Growth Boundary in particular is relevant to the Amendment. The subject site is within the Urban Growth Boundary, while surrounding land is within the Green Wedge Zone (which is likely to constrain any further major expansion of Koo Wee Rup).

(ii) Koo Wee Rup Township Strategy

As noted above, the *Koo Wee Rup Township Strategy* (October 2015) provides strategic justification for the residential development of the site.

The land adjacent to the Koo Wee Rup Health Service is 24.6 hectares and currently zoned Farm Zone 1 (FZ1). It is bounded in the north by the Koo Wee Rup rail trail and the Urban Growth Boundary in the west. The southern boundary is Rossiter Road and to the east by Koo Wee Rup Regional Health Service and Cochrane Park. The rail trail reserve in particular has significant environmental values as it provides habitat for the endangered Southern Brown Bandicoot. Future development will require an extensive environmental management plan. Due to its close proximity to the township centre and the Koo Wee Rup Regional Health Service, this land is suitable for development and a combination of independent living and assisted living accommodation has been proposed (p. 23).

The Strategy (p. 13) includes the framework plan shown in Figure 2, which identifies the site as a “Residential Development Investigation Area”. The subject site is located near the reference to the Koo Wee Rup Health Service Centre in the framework plan.

The Strategy proposed the rezoning of the site to an appropriate residential zone and application of a Development Plan Overlay.

Figure 2: Koo Wee Rup Framework Plan



FIGURE 6: KOO WEE RUP FRAMEWORK PLAN

Council submitted that the Amendment is consistent with the objectives, strategies and actions outlined in the Strategy and provides for the future growth of Koo Wee Rup township.

2.3 Planning scheme provisions

(i) Zones

The Amendment proposes to rezone the subject site from the Farming Zone to Neighbourhood Residential Zone Schedule 1 (NRZ1). The purposes of the NRZ include:

- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

(ii) Overlays

The Amendment proposes to apply the Development Plan Overlay (DPO22) to the subject site and correct the mapping for the Heritage Overlay (HO198 "Shepton Mallet"). In addition to the Heritage Overlay, it is currently within the Land Subject to Inundation Overlay (LSIO) (a Floodway Overlay at nearby McGregor Drain is also close to the site).

The LSIO triggers a requirement for permits for buildings and works and for subdivision. Consideration of any permit will be considered within Melbourne Water's *Guidelines for Development within the Koo Wee Rup and Longwarry Flood Protection District* (July 2019), which will determine conditions applied to any planning permit. These Guidelines provide a consistent approach to subdivisions and development occurring within Koo Wee Rup.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discussed how the Amendment meets the relevant requirements of Ministerial Direction 11 - *Strategic Assessment of Amendments* and *Planning Practice Note 46: Strategic Assessment Guidelines* (August 2018).

Other Ministerial Directions relevant to the Amendment were also addressed in the Explanatory Report, which stated:

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the *Planning and Environment Act 1987* and meets the requirements of relevant Ministerial Direction No.1 ...

Ministerial Direction 1: Potentially Contaminated Land Section 12 (2)(a) of the *Planning and Environment Act 1987*. The subject land has previously been used exclusively for grazing and the land is not anticipated to be affected by contamination. This is based on assessment of the Department of Planning and Community Development's General Practice Note for *Potentially Contaminated Land* (June 2005). Preparation of an environment site assessment is a requirement at the development plan stage under the proposed DPO22.

The Panel accepts that the Amendment is consistent with Ministerial Directions.

Planning Practice Notes

Apart from Planning Practice Note 46: *Strategic Assessment Guidelines* (August 2018) and Planning Practice Note 30 *Potentially Contaminated Land* (June 2005), the key Planning Practice Note is Planning Practice Note 11: *Applying for a Planning Permit under the Flood Provisions* (August 2015). This Practice Note provides guidance about making an application for a planning permit where flooding is a consideration and explains how an application will be assessed. In this case, it describes the process relating to preparation and consideration of Permit applications triggered by the LSIO, which addresses the flooding and drainage issue that was a significant feature in the Hearing.

2.5 Discussion and conclusion

The Panel notes that there has been an extended process of strategic justification of residential development at the subject site. Koo Wee Rup has been earmarked as a location for residential development (up to the extent of its Urban Growth Boundary), and this site was clearly identified as a “Residential Development Investigation Area” in the *Koo Wee Rup Township Strategy* (October 2015). Amendment C189 considered the incorporation of the Strategy into the Cardinia Planning Scheme, and the Panel report (dated 16 September 2015) concluded that:

The Council has demonstrated sound strategic planning and justification in seeking to incorporate *the Koo Wee Rup Township Strategy* into the LPPF.

Subsequently, considerable background research has been reported in the background documentation for Amendment C235card. This included analysis of residential land supply in Koo Wee Rup by Spade Consultants (January 2017), which is Appendix C of the supporting documents for Amendment C235card. The report by Spade Consultants concluded:

Koo Wee Rup is located within the Greater Melbourne metropolitan area and, as such, is subject to metropolitan planning policy in regard to the addition of new residential supply. As the area outside the township boundary is in the Green Wedge Zone it is not anticipated that new land will be brought in to the township boundary in the foreseeable future. Even so, best practice in the management of residential land supply should apply to ensure the land market remains competitive ...

The Subject Land is inside the township boundary and identified as a future residential growth area. It is capable of providing around 4.5 years of additional residential supply and, importantly, as remaining vacant lots in the Tesoro Estate are fully consumed, provides an important element of competition in to the local residential land market.

Based on the residential supply assessment undertaken in this report development of the subject land is required to ensure a competitive and therefore affordable residential land supply framework is maintained in Koo Wee Rup.

The Panel accepts this assessment, which was not contested at the Hearing. There were no submissions that questioned the need for residential development at the site, even though concerns were expressed about aspects of the Amendment.

The Panel therefore concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapter.

The Panel recommends:

Council adopts the Amendment, subject to modifications to Development Plan Overlay Schedule 22 and Heritage Overlay Schedule 198 described in Chapter 3 of this report.

3 Issues

3.1 Flooding and drainage

(i) The issue

The exhibited DPO22 includes the following requirements within the Development Plan:

Infrastructure and Drainage

A Stormwater Management Plan prepared in consultation with the relevant water authority that includes a hydrogeological assessment, water sensitive urban design principles and a drainage and servicing assessment addressing all relevant drainage, flooding and water quality issues, and includes:

- A Fill Plan which identifies the depth and fill material, and staging in a manner and in a time designed to minimise any adverse impact on the amenity of nearby areas, and the treatment and mitigation of the created level differences with the adjacent land on the western boundary.

The issue is whether flooding and drainage issues have been adequately addressed by the Amendment.

(ii) Evidence and submissions

The township of Koo Wee Rup is prone to flooding, having been built on former swampland. Consequently, issues relating to flooding and drainage featured strongly in one of the objecting submissions and the Hearing.

Grant and Suzan Smith objected to the Amendment on the grounds that they feared that there would be an increased likelihood of flooding to the neighbours in the area:

...we believe that the land level will be increased which will cause the drainage not to be sufficient enough to take away the increased water capacity. The rezoning will increase the level of land on both sides of Rossiter Road near our home making it more prone to flooding which has already occurred with the increase of height on the land in the Shelton and Waterways estate. We believe a thorough and full community discussion regarding the drainage issues in the areas should be addressed along with the road overlay that is currently placed on the long lots should be constructed prior to any new developments being granted, both helping to alleviate the flooding problem ...

Land heights and drainage issues in the area are of a major concern of ours as we have been forced out of our home due to flooding issues in the past and is an issue we have been dealing with for at least the last 10 years.

At the Hearing, Suzan Smith noted that she expected that there will be residential growth in Koo Wee Rup but expressed a lack of confidence in Melbourne Water's practical understanding of the town's flooding issues. She stated that "the experts have failed me" in the past and submitted that flooding issues needed to be addressed in a professional and transparent way. To support her submission, Ms Smith presented a series of images demonstrating flooding within her property on the south side of Rossiter Road.

In its Part B Submission, Council argued that on-site drainage issues were covered within the Amendment. It addressed the drainage issues under the following headings:

Drainage not sufficient (on site)

Council cited the existing *Biofilta Stormwater Management Plan* (July 2017) as showing how drainage matters can be addressed in a way that does not increase the flooding on neighbouring properties. It noted that an updated version of the Stormwater Management Plan will be provided as part of the Development Plan, and this will incorporate Melbourne Water's more stringent requirements for managing stormwater at the site. It considered that the following measures will address on-site drainage:

- the provision of a wetland system/retarding basin to satisfy the retardation requirements and provide sediment control is proposed to be located in the north-west corner of the site
- a Fill Plan (as identified by DPO22) is to be prepared which will ensure the water flows away from Rossiter Road controlling the flows towards to the north-west corner of the site along the internal road network to the retarding basin
- the construction and location of the internal road network will provide the infrastructure to direct flows towards the retarding basin
- the subdivision design proposed for the site will need to respond to the requirements of the Stormwater Management Plan.

Council also referred to Melbourne Water's *Guidelines for Development within the Koo Wee Rup and Longwarry Flood Protection District* (July 2019), which provide a consistent approach to subdivisions and development occurring within Koo Wee Rup. These will be conditions applied to any planning permit.

Increased land levels along Rossiter Road from the future development of the subject land and the existing Waterways estate will cause flood pockets

Council referred to the need for a Fill Plan which will cater for a 1 in 100-year flood event, upgraded drainage infrastructure along the site's frontage abutting Rossiter Road, and the requirements relating to future planning permits applying to each lot. These are covered by Melbourne Water's *Guidelines*, and include:

- the need to address minimum requirements for floor levels of new dwellings
- fill pads above the flood level
- access to properties to limit the flooding of roads.

At the Hearing, Council's Engineer outlined the fact that Koo Wee Rup will periodically experience flooding, and this will not be avoided by developing 145 Rossiter Road. However, the Council's aim is to ensure that flooding is addressed within the development, and that neighbouring properties are not adversely affected.

Drainage issues and road construction to be resolved for the southern long lots facing Rossiter Road prior to any new development (Rossiter Road Rezoning)

Council noted that Melbourne Water had approved the Stormwater Strategy for the Waterways Estate to the south of Rossiter Road, which included fills plans as the flood mitigation strategy. Also, additional drains were also installed close to the neighbouring lots to enhance drainage capacity.

Furthermore, any plans for Rossiter Road as part of the traffic management plan for the development would require measurement of the capacity of the large drain to the south of 145 Rossiter Road, and further works may be required to mitigate any additional flows.

Additional community consultation is required to address drainage issues in Koo Wee Rup Township as a whole

Council argued that:

- this Amendment process provided the community an opportunity to provide a submission to the process
- Melbourne Water's *Koo Wee Rup-Longwarry Flood Protection District Advisory Committee* (KWRLFPD) assists with governing the drainage for the present ratepayers in the district
- additional community consultation for a drainage and sewerage strategy or solution for the Koo Wee Rup Township is outside the scope of the Amendment.

In his submission to the Hearing, Mr Kell on behalf of the proponents stated that "consideration of stormwater management is essential". He submitted that the Amendment addresses stormwater matters through the requirements of DPO22 and relied on the evidence of Mr Marc Noyce to support his case.

Mr Noyce provided concise evidence. He supported Melbourne Water's more stringent requirements and concluded that "all requirements of the Land Subject to Inundation Overlay (LSIO) can be met for this site with a further detailed design and final iteration of the SMP". It was his opinion that "none of the issues raised by Melbourne Water or objectors are insurmountable".

(iii) Discussion and conclusions

As noted above, flooding and drainage are key issues to be considered in any development in Koo Wee Rup.

Amendment C235card sets a framework for planning and decision-making regarding these matters, without covering the detail to be addressed at later stages of the planning process.

The Biofilta *Stormwater Management Plan* (July 2017) provides the level of detail consistent with the requirement for a Stormwater Management Plan including a Fill Plan. However, this plan requires updating to reflect Melbourne Water's current requirements and revisions in the layout of the proposed development.

The 2017 Biofilta plan therefore does not provide all the detailed analysis that would be required to be approved by Melbourne Water in the future, but the Amendment clearly establishes the need for an updated Stormwater Management Plan. The 2017 plan does provide confidence that it will be possible to update and redraft the plan and meet all drainage, flooding and water quality issues.

An issue discussed at the Hearing was the wording of the Objectives of the DPO22. As exhibited, the Objectives referred to protection and support of neighbourhood character, open space, recreation and environmental amenity, but not infrastructure (notably drainage) issues. Given the importance of flooding and drainage issues that are directly addressed within the Schedule, Council proposed that the following should be added to the Objectives:

- To ensure the stormwater is managed onsite up to the 1 in 100 year ARI storm event to pre-development flow rates.

The Panel supports this addition, which explicitly identifies an objective which is central to the remainder of the Schedule.

The Panel understands the level of community concern about wider drainage issues in Koo Wee Rup, but the preparation or modification of drainage strategies for the wider area should be considered separately from Amendment C235card. The focus of the Amendment is the subject site and any impact that its residential development may have on surrounding areas, and so any consideration of a township-wide strategy requires a separate process.

The Panel also accepts that Ms Smith may have lost confidence in the capability of the authorities to manage flooding and drainage issues in Koo Wee Rup. However, the current arrangements with State and local input to planning and decision-making will not change as a result of this Amendment. Ongoing communication and engagement between the parties will be necessary to restore confidence.

The site at 145 Rossiter Road is downstream of the properties south of Rossiter Road. Consequently, any impact of the residential development of the site on external properties is likely to be minimal, and capable of being addressed in the Stormwater Management Plan.

The Panel concludes that flooding and drainage issues will continue to provide challenges for development in Koo Wee Rup, but that the Amendment adequately addresses these challenges. Minor modifications proposed by Melbourne Water and Council are justified and should be included in the Schedule.

(iv) Recommendation

The Panel recommends:

Council add the following to the Objectives within Development Plan Overlay Schedule 22:

To ensure the stormwater is managed onsite up to the 1 in 100-year Average Recurrence Interval storm event to pre-development flow rates.

3.2 Traffic

(i) The issues

The issue is whether additional traffic generated by the proposed residential development has been addressed adequately by the Amendment.

The exhibited Amendment proposed the following requirements within the Development Plan:

- an Integrated Transport and Impact Assessment to determine the mitigation works required for the development site and Rossiter Road
- a Traffic Impact and Design Assessment, showing detailed arrangements for vehicle ingress and egress, road layout, construction standards, traffic management, traffic volumes and design vehicle swept paths
- design of local roads, addressing matters such as minimum widths for paved surfaces and road reserves, traffic management devices, access for waste and emergency

vehicles, road connections which assist with drainage and stormwater, and a boulevard entry to the site from Rossiter Road

- a road network which provide a high level of internal connectivity and external linkages for local vehicle, pedestrian and bicycle movements.

To be specific, the issue is thus whether the content of the Development Plan and the process of approval relating to traffic are satisfactory.

(ii) Submissions

Kim Gardiner submitted that:

I am concerned about the truck traffic that will impact me directly as I live on Rossiter Road and already the truck traffic is so bad that I cannot sleep in the front bedroom of my house. The road condition is already really bad and the extra traffic will only add to its bad condition. So how does the council propose to curb this?

In its submission, the Department of Transport - Metro South East requested minor changes to the wording in the Traffic and Transport section of DPO22, and requested that the Site Development Plan should retain flexibility in the location of the site's vehicular access to Rossiter Road.

Council supported the changes proposed by the Department of Transport. It noted that:

Rossiter Road is identified as a Road Zone – Category 1 in the Cardinia Planning Scheme. This road is the responsibility of and managed by VicRoads. Any additional traffic impacts by the future development will require mitigation resulting in appropriate traffic management techniques along Rossiter Road. These may include traffic slowing techniques, turning lanes or signalised intersections.

Following the implementation of the Environment Protection (Vehicle Emission) Regulations 2013, heavy vehicles (large trucks and buses over 4.5 tonnes) are no longer regulated by EPA. Heavy vehicles are managed under the Heavy Vehicle National Law by the National Heavy Vehicle Regulator and are administered in Victoria by VicRoads. Concerns about the noise levels should be directed to VicRoads in this instance.

It also argued that the requirements of the Development Plan (an Integrated Transport and Impact Assessment and a Traffic Management Plan) will resolve the concerns expressed by the submitter.

The proponent reiterated Council's response to traffic issues, concluding that traffic treatments "will ensure that any increase in traffic or noise (from this or other nearby development) is appropriately managed".

(iii) Discussion and conclusions

The Panel supports the wording changes proposed by the Department of Transport, and the request to add flexibility to the location of entry to the site from Rossiter Road on Site Development Plan – Diagram 1 within DPO22. The Diagram is conceptual rather than a detailed design, so flexibility is necessary at this stage to ensure that the safest and most efficient location is identified.

There is no doubt that there will be increased traffic along Rossiter Road, during the construction phase and when the residential area is developed. The issues are not whether

there will be more traffic, but whether this Amendment should be abandoned as a result of the impact of traffic, and whether the Amendment addresses the traffic issue appropriately at this stage of the planning process.

There have been no arguments to support the abandonment of the Amendment, and increased traffic is certainly not a factor that would be decisive. The key is to ensure that all traffic and transport issues are identified up-front, and that the planning requirements are clearly specified.

The exhibited DPO22 included high level but vague requirements for the Development Plan (such as “high level of internal connectivity and external linkages for local vehicle, pedestrian and bicycle movements”), which provided limited direction for design outcomes. Council proposed that the vague requirements should be deleted or amended, and specific objectives and standards (such as “minimum width for paved surfaces of for internal streets or carriageway of 7.3 metres”) should be retained.

The Panel considers that the proposed modifications are acceptable in retaining flexibility to ensure higher level objectives are met, while clarifying minimum requirements. It concludes that traffic matters have been addressed appropriately in the Panel preferred version of DPO22.

3.3 Heritage Overlay

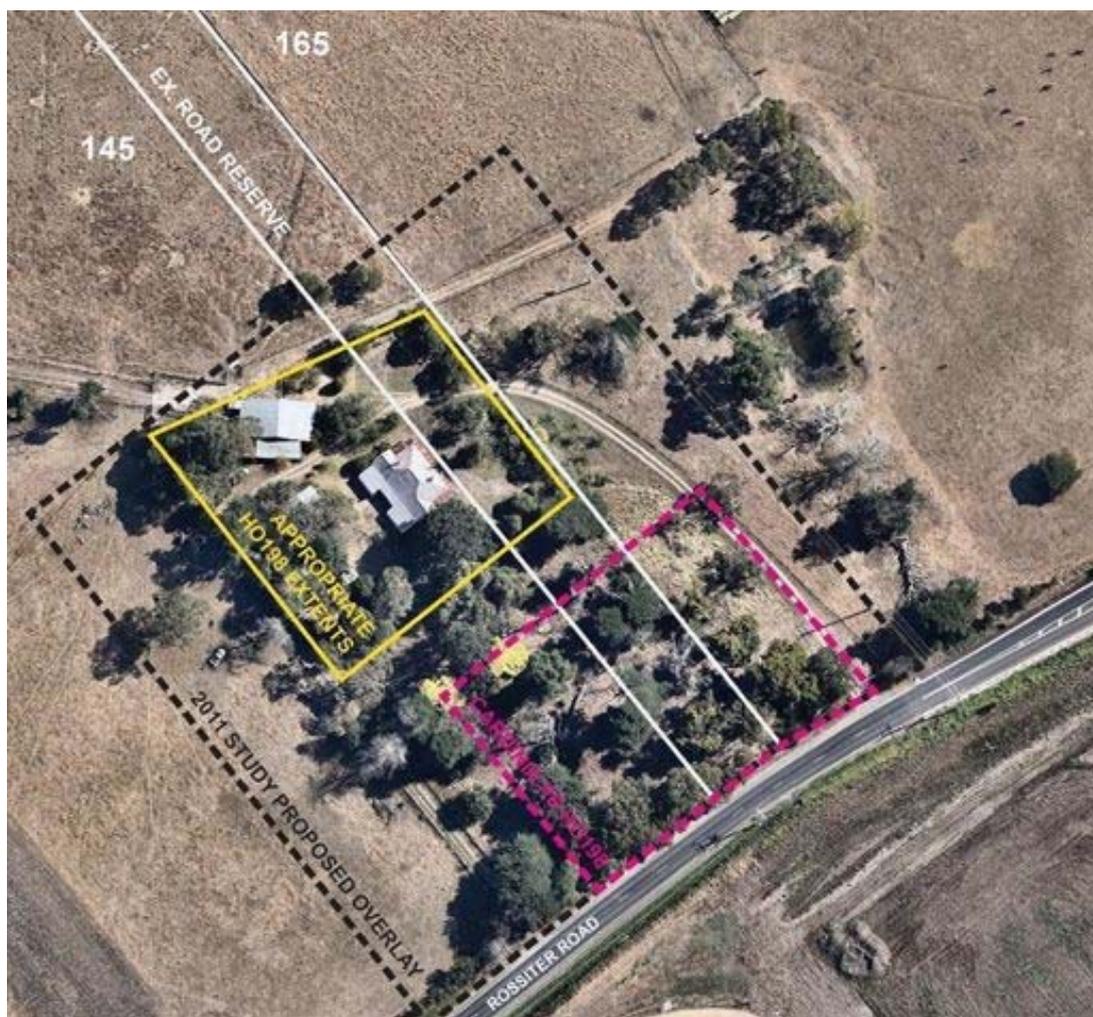
(i) The issues

The issues are:

- whether the proposed change to Heritage Overlay Schedule 198 to modify the mapping relating to Shepton Mallet is justified
- whether a request to modify the Schedule to HO198 to turn on the trigger of tree controls is justified.

The mapping change proposed in the exhibited Amendment is shown in Figure 3 (existing boundaries are pink, proposed boundaries are yellow). The subject site for the Amendment is identified as “165” in the figure.

Figure 3: Proposed changes to HO198 boundaries



(ii) Submissions

Council submitted that the map for HO198 requires correcting “to ensure that it applies only to the heritage elements that are identified within the citation”. The implication is that the Heritage Overlay will no longer be located on the subject site.

DELWP requested that there should also be a change to the Schedule to the Heritage Overlay, turning on the tree controls as identified by the citation. Council supported this proposed change.

(iii) Discussion and conclusions

The proposed modification to HO198 relied heavily on one of the technical reports prepared prior to the exhibition of the Amendment – identified as *Appendix I: Post Contact Heritage Assessment, 165 Rossiter Road, Koo Wee Rup* (March 2018), prepared by Michael Cook of John Patrick Landscape Architects Pty Ltd, with input from Bryce Raworth Pty Ltd.

With regard to the boundaries of the Overlay, the report concluded (p. 21):

If the Cardinia Heritage Overlay was to be amended to correctly include the house and a curtilage of surrounding land within HO198, the extent of the overlay should address the identifiable extant heritage values of the site, which are chiefly represented by the c. 1902 timber house and its immediate landscaped curtilage.

The Panel supports the change. The buildings and significant trees on the site are central to the citation relating to Shepton Mallet (in Context Pty Ltd, *Cardinia Heritage Study*, updated 2 September 2015, pp. 352-53), which includes a series of guidelines, including the following:

1. Conserve the fabric of the building/s or other built elements, which is identified as contributing to the significance of the place. This includes the original fabric as well as fabric that may demonstrate important successive stages in the historic development of the place and/or provide evidence of changing architectural styles or techniques

...

4. Conserve significant plantings on the property (refer to specific conservation guidelines for trees), and maintain a visual relationship between the plantings and the significant buildings on the property.

The Panel therefore concludes that it is appropriate to modify the boundaries of HO198 and add the option to protect significant trees, reflecting the intent of the citation.

(iv) Recommendation

The Panel recommends:

Council adopt:

- a) **Changes to the boundaries of Heritage Overlay Schedule 198 as exhibited.**
- b) **Changes to tree controls relating to HO198 (Shepton Mallet, 145 Rossiter Road, Koo Wee Rup) to read “Yes” within the Schedule to Clause 43.01 Heritage Overlay.**

3.4 Drafting of Development Plan Overlay Schedule 22

(i) The issue

During the Hearing, several drafting matters relating to DPO22 were addressed, including improvements in the clarity of wording, minor revision of the concept plan, removal of duplication and repair of typographical errors.

The issue is the need to ensure that the content of the Schedule reflects its intent.

(ii) Discussion and conclusions

The details of DPO22 were explored in detail during the Hearing. The most significant issues related to the content listed under “Urban Design and Character”, which duplicated items in other parts of the Schedule (particularly under “Environment and Landscape”, “Open Space” and “Traffic and Transport”). Other items were vague and provided no direction in the preparation or assessment of the Development Plan.

The Panel directed Council to prepare a track changes version of the Schedule, including the changes discussed at the Hearing, by 29 November 2019. This was carried out, and the revised version is included as Appendix C to this report.

The Panel supports the changes, which significantly enhance the clarity of the Schedule without changing any of its intent.

(iii) Recommendation

The Panel recommends:

Council adopt the Panel preferred version of Development Plan Overlay Schedule 22 as shown in Appendix C.

Appendix A Submitters to the Amendment

No.	Submitter
1	Kim Gardiner
2	Withdrawn
3	Grant and Suzan Smith
4	Melbourne Water
5	Department of Transport – Metro South East
6	South East Water

Appendix B Document list

No.	Date	Description	Provided by
1	22/11/19	Cardinia Shire Council Part B Submission	Ms Walkley
2	22/11/19	Revised Heritage Overlay Schedule	Ms Walkley
3	22/11/19	DELWP letter of Authorisation for Amendment dated 7 February 2019	Ms Walkley
4	22/11/19	Revised Development Plan Overlay Schedule 22 (incorporating changes proposed by agencies)	Ms Walkley
5	22/11/19	Planning Central submission on behalf of the proponent	Mr Kell
6	22/11/19	Images of flooding issues relating to Rossiter Road	Ms Smith
7	29/11/19	Revised Development Plan Overlay Schedule 22 (incorporating changes proposed at the Panel Hearing)	Ms Walkley

Appendix C Panel preferred version of Development Plan Overlay Schedule 22

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Proposed
C235card

SCHEDULE 22 TO CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO22**.

145 ROSSITER ROAD KOO WEE RUP (PART) – LOT 2, PS 321029

1.0 Objectives

--/20--
Proposed
C235card

- To integrate with the surrounding area by responding to existing neighbourhood character, enhancing the public realm and existing networks.
- To provide landscaping, open space, recreation and pedestrian/bicycle path facilities that is well connected, sustainable and meets the needs of the local residents.
- To create a subdivision layout and residential dwellings that protects Koo Wee Rup's environmental amenity.
- [To ensure the stormwater is managed onsite up to the 1 in 100 year Average Recurrence Interval storm event to pre-development flow rates.](#)

2.0 Requirement before a permit is granted

--/20--
Proposed
C235card

A permit may be granted to use or subdivide land, construct a building or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority if the responsible authority is satisfied that the permit will not prejudice the future integrated use and development of the land.

3.0 Conditions and requirements for permits

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Proposed
C235card

The following conditions and/or requirements apply to permits :

- Construction of the internal road network to the satisfaction of the responsible authority during the first stage of development, extending from Rossiter Road through Lot 2, PS32129 – 145 Rossiter Road, Koo Wee Rup which is generally in accordance with the Site Development Plan labelled Diagram 1.

4.0 Requirements for development plan

--/20--
Proposed
C235card

A development plan must include the following requirements, to the satisfaction of the responsible authority:

[The development plan must be generally in accordance with the Site Development Plan labelled Diagram 1 to this Schedule.](#)

Subdivision Layout

- An indicative lot layout showing how the subdivision addresses the size, dimension and orientation of lots and includes:
 - The provision of a range of lot sizes.
 - The provision of 80 percent of the lots greater than 700 square metres.
 - The avoidance of smaller lots of less than 600 square metres.
 - Lots to have a minimum width of 18 metres.

- A transition to the green wedge land to the western property boundary through larger lots of greater than 1000 square metres.
- A landscape buffer of a minimum 10 metres wide along the western boundary abutting Green Wedge land, a landscape buffer of a minimum 12 metres along the Rossiter Road boundary and a landscape buffer of a minimum 20 metres along the northern boundary and subdivision interface with the constructed wetlands.
- A perimeter road adjacent to the landscape buffers along the western boundary, northern boundary, constructed wetlands and part of the eastern boundary adjoining the Public Park and Recreation Zone.
- A service road internal to the site north of Rossiter Road and the associated landscape buffer to provide vehicular access to lots addressing Rossiter Road.
- A legible and convenient road network and pedestrian/bicycle network demonstrating appropriate road layout, traffic management and construction standards.
- An indicative building envelope for each lot providing:
 - A minimum front setback of 7 metres.
 - Minimum side setbacks of 2.5 metres.
- Incorporate the driveway and boundary of the heritage overlay for ‘Shepton Mallet’.
- Subdivision layout to be designed to overlook public spaces.
- ~~Be generally in accordance with the Site Development Plan at Diagram 1 of this Schedule.~~

Staging

- Details on the staging of the subdivision and anticipated timing of development.
- Open space to be delivered as part of the first stage.
- Construction of the internal road network to ~~to~~ be delivered as part of the first stage of development, extending from Rossiter Road through Lot 2, PS32129 – 145 Rossiter Road, Koo Wee Rup, ~~generally in accordance with the Site Development Plan – Diagram 1.~~

Open Space

- The provision of open space required for drainage by Melbourne Water to be provided in addition to the unencumbered public open space.
- [Open space to be designed to adjoin a road reserve, other open space areas or Public Park and Recreation Zone along all boundaries and must avoid any side or rear fences of residential lots abutting reserves.](#)
- Shared paths throughout the development to link the land to existing development to the north and east and to Rossiter Road.
- Provision of a shared pathway that connects with the Koo Wee Rup Rail Trail and Cochranes Park on the north-eastern boundary of the site.
- Multiple unencumbered local neighbourhood parks with minimum areas of 4000 square metres located generally in accordance with the Site Development Plan in Diagram 1 to this Schedule.
- Provision of a 3 metre shared pathway along the 12 metre wide tree reserve adjoining Rossiter Road that leads to Koo Wee Rup Town Centre.
- ~~Open space to be designed to adjoin a road reserve, other open space areas or public use zone along all boundaries and must avoid any side or rear fences of residential lots abutting reserves.~~

Environment and Landscaping

- A **Bushfire Management Assessment** and **Bushfire Management Statement** prepared by a suitably qualified professional including:
 - Details of how the development plan and lot layout responds to the bushfire planning policy in the planning policy framework and results in development that achieves no more than a BAL 12.5 rating under AS 3959-2009.
- An **Environment Site Assessment** prepared by a suitably qualified professional, indicating the land is suitable for the proposed use, and whether an environmental audit of the land is required in accordance with Part IXD of the *Environment Protection Authority Act 1970*.
- A **Environmental Management Plan** that addresses vegetation and trees to be retained and how vegetation removal on site will be avoided, and if it cannot be avoided, minimised or offset, including roadside vegetation, measures to protect the trees which includes buffer and tree protection zones, and provides:
 - A **flora and fauna assessment** (including a habitat hectare assessment) of the site prepared to the satisfaction of the responsible authority.
 - A targeted survey and plan for the Southern Brown Bandicoot and Growling Grass Frog by a suitable qualified environmental consultant during the summer period in consultation with ~~the Department of Sustainability and Environment and the Department of Environment, Land, Water and Planning~~ relevant responsible authority.
- A **Landscape Plan** that protects remnant vegetation, wetlands and manages the Southern Brown Bandicoot and Growling Grass Frog habitats, and includes:
 - A plan showing measures to implement Southern Brown Bandicoot and Growling Grass Frog protection including landscaping.
 - Ensure the protection and conservation of existing vegetation including street trees, landscaped buffers, roadside vegetation and grassed road verges.
 - ~~New plantings should be consistent with existing species of vegetation from connecting roads and reserves.~~
 - Ensure the ~~majority inclusion~~ use of native vegetation in ~~new~~ developments in all landscape plantings including connecting roads, reserve and roadside plantings.
 - Ensure the inclusion of street trees for shade and aesthetic quality ~~in new developments~~ at an early stage of development.
- A **Construction Management Plan** prepared by a suitably qualified professional that identifies methods to protect open space, remnant vegetation and aboriginal cultural heritage sites during construction.

Traffic and Transport

- An **Integrated Transport and Impact Assessment** prepared ~~to conform with arterial road access management policies~~ to determine the extent of mitigation works required for the development site and Rossiter Road to the satisfaction of the Responsible Authority and the relevant transport authority.
- A **Traffic Impact and Design Assessment**, showing arrangements for vehicle ingress and egress to the development, including the road layout, construction standards, traffic management, traffic volumes and design vehicle swept paths which includes waste and emergency vehicle access prepared to the satisfaction of the Responsible Authority and in consultation with the Roads Corporation.
 - ~~A clear, legible road network which provide a high level of internal connectivity and external linkages for local vehicle, pedestrian and bicycle movements.~~
 - ~~_____~~
- Design of local road ~~to~~ s generally in accordance with the Site Development Plan labelled Diagram 1 and provides:

- A minimum width ~~for paved surfaces~~ ~~of~~ for internal streets or carriageway of 7.3 metres to allow for parking on either side and access for emergency vehicles.
- A minimum width of 16 metres for road reserves or 14 metres for roads adjoining open space reserves.
- A design that excludes the use of ~~cul-de-sacs~~.
- Traffic Management devices required for roads over 180 metres in length.
- A road network that provides for loading and unloading of vehicles and means of access to them including waste and emergency vehicles.
- A road network that provides a predominantly north-south and east-west road connections to assist with water fall and stormwater catchment to the north and west of the subject site.
- A boulevard entry to the site from Rossiter Road.

Infrastructure and Drainage

- A **Stormwater Management Plan** prepared to the satisfaction of the relevant water authority ~~in consultation with the relevant water authority~~ that includes a hydrogeological assessment, water sensitive urban design principles and a drainage and servicing assessment addressing all relevant drainage, flooding and water quality issues, and includes:
 - A **Fill Plan** which identifies the depth and fill material, and staging in a manner and in a time designed to minimise any adverse impact on the amenity of nearby areas, and the treatment and mitigation of the created level differences with the adjacent land on the western boundary.
- An **Acoustic Report** prepared by a suitably qualified professional, indicating any impacts of the Koo Wee Rup Bypass on future residential land and includes methods to address the amenity issues identified.
- Provision of utility service infrastructure required to service the development and details on the arrangements for the provision of infrastructure underground.
- Provision of a reticulated sewerage system.
- Provision and location of the gas transmission easement and drainage easement will be accommodated as part of the development.

Urban Design and Character

- Configure dwellings to maximize retention of existing vegetation and allow only one access driveway to a lot.
- ~~Maintain a sense of spaciousness between dwellings of the residential areas.~~
- Avoid front fences. ~~If~~ If lots are fenced ~~in front of the building line~~ provide low front fences no more than 1.2 metres high.
- Respect and be sympathetic to the existing streetscape character consistent with the found in Koo Wee Rup Township Strategy.
- Provide generous footpaths with a minimum width of 1.8 metres.
- ~~A high level of quality in the design and construction of new development buildings must be sympathetic and which responds to the existing built form character of the Koo Wee Rup Township.~~
- ~~Dwelling design should be sympathetic to the adjoining heritage property 'Shelton Mallet' and its associated vegetation.~~
- Lots Dwellings located along interfacing Rossiter Road should provide active frontages facing ~~to~~ Rossiter Road.
- ~~Provide generous street, footpath and easement widths in new developments.~~

**Site Development Plan – Diagram 1
(Version 1 - as exhibited – to be deleted)**



**Site Development Plan – Diagram 1
(Version 2 - Council supported Plan following request from agencies – to be deleted)**



Site Development Plan – Diagram 1 (Version 3- Panel preferred version)

