

**Hume Planning Scheme Amendment C253hume
Rezoning of 105 Vineyard Road, Sunbury**

Panel Report

Planning and Environment Act 1987

27 June 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning, a formal change will be made to the Planning Scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

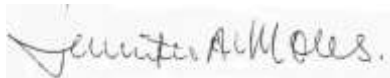
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Hume Planning Scheme Amendment C253hume

Rezoning of 105 Vineyard Road, Sunbury

27 June 2022

A handwritten signature in dark ink, appearing to read 'Jenny Moles'.

Jenny Moles AM, Chair

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Glossary and abbreviations

CFA	Country Fire Authority
Council	Hume City Council
dB	decibels
DELWP	Department of Environment, Land, Water and Planning
DPO	Development Plan Overlay
EPA	Environment Protection Authority
GRZ	General Residential Zone
Interface Guidelines	VicTrack Rail Development Interface Guidelines, August 2019
INZ3	Industrial Zone Schedule 3
PAO	Public Acquisition Overlay
PE Act	<i>Planning and Environment Act 1987</i>
PSI	Preliminary Site Assessment by Ground Science, 2017
PSP	Precinct Structure Plan
Rail Noise Policy	Victorian Passenger Rail Infrastructure Noise Policy, April 2013
Sunbury HIGAPS	Sunbury Hume Integrated Growth Area Plan Spatial Strategy, July 2012
TfV	Transport for Victoria
VicRoads	Now part of Department of Transport

Overview

Amendment summary

The Amendment	Hume Planning Scheme Amendment C253hume
Common name	Rezoning of 105 Vineyard Road, Sunbury
Brief description	Proposed rezoning from Industrial 3 Zone to General Residential Zone and application of Development Plan Overlay Schedule 32
Subject land	Part of 105 Vineyard Road, Sunbury
The Proponent	TF and A Millett Pty Ltd
Planning Authority	Hume City Council
Authorisation	9 September 2021
Exhibition	5 October to 8 November 2021
Submissions	7 Submissions (2 Opposed) from: <ol style="list-style-type: none"> 1. Lawrence Seyers 2. Marty Grace 3. Evan Patterson 4. Country Fire Authority 5. Sam Pezzano 6. Department of Environment, Land, Water and Planning 7. Melbourne Water

Panel process

The Panel	Jenny Moles AM
Directions Hearing	By Video Conference on 26 April 2022
Panel Hearing	By Video Conference on 24 and 25 May 2022
Site inspections	Accompanied on 6 May 2022
Parties to the Hearing	<p>Hume City Council represented by Ms Kim Piskuric, Harwood Andrews, lawyers, instructed by Ms Elsie Retter, Strategic Land Use Planner.</p> <p>TF and A Millett Pty Ltd (Proponent), represented by Mr Jason Kane, barrister, instructed by Ms Julie Lancashire of Urban Design and Management Pty Ltd. He called the following expert witnesses:</p> <ul style="list-style-type: none"> - Mr John Glossop of Glossop Town Planning Pty Ltd on town planning - Ms Nina Barich of Invictus Pty Ltd on drainage <p>Lawrence Seyers</p>
Citation	Hume Planning Scheme PSA C253hume [2022] PPV
Date of this report	27 June 2022

Executive summary

Hume Planning Scheme Amendment C253hume (the Amendment) seeks to rezone some 20 hectares of the land at 105 Vineyard Road, Sunbury from Industrial 3 Zone (INZ3) to the General Residential Zone (GRZ) and apply a new schedule (Schedule 32) to the Development Plan Overlay (DPO) to guide the future development of the rezoned land.

The land is located at the developing southern edge of Sunbury township and has historically been used for rural purposes. The land is currently vacant. It has frontage to the eastern side of Vineyard Road and abuts the Melbourne-Bendigo rail line on its eastern boundary. There is a Western Water sewage pumping station located on a small lot between the land and the rail line. The land is crossed by Harpers Creek from the north west to the south eastern corner, where it drains under a railway viaduct to the east. A small sedimentation pond is located in the north east corner of the land.

The land to the north across Deveny Road is currently used for light industrial purposes, and developing residential land is located to the west across Vineyard Road (the Rosenthal Estate) and to the immediate south in the Sunbury South Precinct Structure Plan (PSP) area. The more established residential neighbourhood of Jacksons Hill is located to the east beyond the rail line.

There was no opposition to the residential rezoning of the land by any party to the Panel proceeding nor any substantial objection in any written submission.

Only one of the seven submitters who responded to public notice of the Amendment pursued their concerns to the Panel Hearing. Mr Seyers' concerns principally related to required improvements to the road and shared path network though this general area of Sunbury and in particular the creation of additional east-west connections across the Bendigo rail line. He favoured using the underpass beneath the heritage listed railway viaduct near the south eastern corner of the land to provide a link to and from the Jacksons Hill residential area as had first been proposed by Places Victoria (now Development Victoria) some decades ago. He sought to have the additional connections and some other changes included as part of DPO Schedule 32, as well as legal agreements made under the *Planning and Environment Act 1987* (PE Act) relating to the provision of the roadway.

Panel findings

The Panel considers that, strategically, the land is not inappropriate for residential use given its siting adjacent to other developing residential estates and urban facilities. This use is also clearly supported in Council's HIGAPS strategy; and the PSP affecting land to the immediate south also envisages this use for the land.

The development of the land is not without some constraints, however. They include the proposed provision on the north east corner of the land of a large Melbourne Water stormwater filtration and retarding basin servicing the wider Watsons Creek catchment together with an outfall to the creek; the abuttal to the sewage pumping station, which is mooted for expansion; the adjacency of the rail line with its associated noise and vibration impacts; and the presence of significant archaeological and cultural heritage features on the land. The abutting railway reserve contains both the viaduct of State heritage importance and vegetation of national environmental significance. Immediately beyond the rail line is a high pressure gas pipeline. The site is also included in a designated Bushfire Prone Area¹.

¹ It is not, however, included in a Bushfire Management Overlay.

Most of these constraints have been satisfactorily addressed in reports submitted as part of the rezoning request or by aspects of the Concept Plan and Development Plan requirements.

The Panel raised concerns about two matters at the Hearing, however, which in its view might require modification to the DPO32. They were the timing of an acoustic assessment of how railway noise affects the land (this was also raised by EPA in written correspondence provided to the Panel late in the Hearing process) and the possible inclusion of Melbourne Water requirements. Mr Glossop, the planning witness called by TF and A Millett Pty Ltd (the Proponent) for the Amendment, also recommended inclusion of bushfire management provisions in DPO32.

These issues are discussed in the Report and have led to recommended DPO changes.

The Panel is of the view that it is appropriate to add bushfire management provisions to DPO32 and recommends changes to introduce an earlier assessment of noise and vibration impacts of the rail line in order that a wider range of ameliorating design responses can be considered in the Development Plan. It is suggested that other noise provisions of DPO32 require more precise definition. The Panel recommends that consideration be given to a more explicit statement of Melbourne Water's requirements in DPO32.

For the most part, however, the Panel does not consider the changes to the Amendment requested by the submitter should be included.

Despite there being real east-west road connectivity problems in Sunbury, as recognised in local policy and identified by the submitter, the Panel does not support the submitter's view that a road link should be required to be provided from the subject site through the railway viaduct to Jacksons Hill. The Panel considers this connection is being adequately addressed by the strategic road network planning introduced by the PSP. The Panel also considers that there appear to be not insubstantial construction problems if a roadway was intended to be built through the viaduct. There would seem to be difficulties with protection of the structural integrity of the viaduct which already has steel strapping on the culverts. There is also a need to adequately allow overflow from the retarding basin to pass through the viaduct together with other local catchment waters (piping as an alternative appears to also present difficulties as described by Ms Barich, the drainage witness for the Proponent). Further, design constraints arise due to proximity of the cultural heritage site to the viaduct, and there are potential impacts on native vegetation within the rail reserve. Lastly, there is the further issue that the land beneath the viaduct is owned by VicTrack and owner's support for the creation of the roadway would be required, as well as approval under the *Heritage Act 2017*.

The issue of the fairness of such a roading impost on the landowner was raised by the Proponent and Council at the Hearing. It was argued that the development of this land did not necessitate such a linkage to the east and it would at best be of benefit to residents of Jacksons Hill, or perhaps the broader, community.

The Panel comments that arguments about fairness in infrastructure provision frequently arise in planning decision making. It is often a moot point about what proportion of a benefit falls to users of the development land rather than to the wider community. It is, however, not uncommon for off-site facilities to be required as conditions of approvals which have benefits that are more widely enjoyed than by the subject land alone.

The Panel considers, rather, that any unfairness in this case would appear to arise from effectively requiring the Proponent to provide a facility as a condition of approval of the rezoning when there is considerable uncertainty around its feasibility. The Panel also notes that the Proponent is already providing other social and physical infrastructure. The construction uncertainties and

requirement for other approvals for the linkage through the viaduct across VicTrack land, when combined with the physical site constraints, recommend against any requirement for a roadway.

The Panel does consider, however, that the construction of a shared pathway (for bike riders and pedestrians) through the viaduct, with its lesser space and construction demands, is not beset with quite the same level of uncertainty as a roadway. This is despite Ms Barich's view that a pathway through the viaduct would not be permitted by Melbourne Water as drainage authority because of flooding hazards. The Panel has noted that, in contrast to her evidence, Melbourne Water, who have responsibility for floodplain management for Watsons Creek, offered no objection to the exhibited Amendment in their letter of 2018 nor in their further written submission, despite the reference in DPO32 to a possible future link beneath the viaduct. Council supported the desirability of a shared pathway in this location and appeared to continue to consider it might be possible to develop it. This pathway is supported by the HIGAPS strategy for development of the Sunbury area and there can be no doubt that provision of such a link is supported by contemporaneously strengthened policies relating to active movement and linkages between parts of the Sunbury area.

Nonetheless, the Panel considers that there remain sufficient uncertainties around future approvals of even a shared path (including by VicTrack and Heritage Victoria and Melbourne Water), that it is not possible at present to go beyond the requirement in the exhibited DPO32 for a pathway stopping at the eastern boundary of the subject land which it is said might allow a possible future link to an off-site pathway. The Panel considers that any pathway through the viaduct should be promoted by Council who also have responsibility for other road and path works east of the rail line.

The submitter also sought to have the onsite shared pathway system extended to both sides of Watsons Creek rather than provided on only one side, and the shared paths required to be constructed of concrete. The Panel accepts the evidence led by the Proponent that space limitations around the detention basin and other safety issues, together with relative remoteness of the basin from casual surveillance, preclude the additional pathway. The Panel recommends, however, that reference should be made to the pathways onsite being designed so as to be suitable for all-weather use.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Hume Planning Scheme Amendment C253hume be adopted as exhibited subject to the following:

- 1. Amend Clause 4 of the Development Plan Overlay Schedule 32 as follows:**
 - a) where reference is made to a required landscape master plan, add the following dot point: shows shared paths to have an all-weather sealed surface**
 - b) in relation to the Development Plan requirements, add the following sections:**

Bushfire Management Assessment

A Bushfire Management Assessment that demonstrates:

 - the staging of development and the likely bushfire risk at each stage**
 - an area of land between the development edge and all non-urban areas consistent with the separation distances specified in AS3959-**

2009 where bushfire risk is managed to enable the development, on completion, to achieve a BAL-12.5 rating under AS3959-2009

- **the measures to be undertaken by the developer to reduce the risk from fire within any surrounding rural or undeveloped landscape and protect residents and property from the threat of fire.**

Acoustic assessment

An acoustic and vibration assessment of how train traffic on the adjoining Bendigo-Melbourne train line affects the land including:

- **the identification of internal and external acoustic standards for dwellings**
- **the measures required to alleviate any excessive noise and vibration impacts, including site layout, setbacks from the rail line, and building design measures.**

- c) where reference is made to a stormwater management strategy to the satisfaction of Melbourne Water and Council, add the following:**

including:

- the proposed alignment for any 1 in 5 year drainage infrastructure and any overland flow paths directions for the 1 in 100 year ARI flood event***
- a lot layout and number of lots that adequately accommodate the overland flows***
- all new lots filled to a minimum of 300mm above the 1 in 100 year flood level associated with an existing or proposed Melbourne Water pipeline and major overland flowpath; and 600mm above a 1 in 100 year flood level associated with any Melbourne Water retarding basin, waterway, wetland, whichever is greater***
- the details of the outfall/s for the developed land and the calculated appropriate flow volumes and flood levels for the 100-year ARI storm event within the land***
- adequate outfall from the land and a copy of written approval from parties affected by the arrangement of appropriate drainage outfall for the developed land***
- any road or access way intended to act as a stormwater overland flow path designed and constructed so as to comply with the floodway safety criteria either as outlined in Melbourne Water's Land Development Manual, or where appropriate to Council's requirements and standards***
- stormwater runoff from the developed land that achieves State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater***
- all development adjacent/near a waterway in accordance with Melbourne Water Waterway Corridors Guidelines***

2. Amend Clause 3 of Development Plan Overlay Schedule 32 as follows:

- a) In relation to conditions and requirements applying to all permits, clarify the extent of the residential area where an acoustic assessment is to be undertaken and its recommendations applied.**

- b) In relation to conditions and requirements applying to permit applications for buildings and works and/or subdivision, clarify the areas where acoustic measures are to be applied by specifying a daytime, night time, 24 hour or L_{max} noise figure.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to rezone part of the land at 105 Vineyard Road, Sunbury, from the Industrial 3 Zone (INZ3) to the General Residential Zone (GRZ); and apply a Development Plan Overlay Schedule 32 (DPO32) to guide the development of the land for housing and other purposes.

Specifically, the Amendment proposes to:

- amend Planning Scheme Map No 6 to show the land as GRZ²
- amend Planning Scheme Map No 6DPO to apply DPO32 to the whole of the rezoned land
- insert a new Schedule 32 to the DPO.

Figure 1 shows the proposed rezoning and overlay area outlined by a black hatched line.

Figure 1 Area of rezoning and overlay



Source: Amendment Explanatory Report

(ii) The subject land

The land is formally known as known as Lot 2 PS510978 and part of Lot C PS645987.

It is located at the developing southern edge of Sunbury township and has historically been used for grazing and cropping. The land is currently vacant. There is a temporary small sedimentation

² The Panel notes that the Explanatory Report refers to the land being rezoned to GRZ but exhibited map changes show the land as to be rezoned to GRZ Schedule 1. This schedule already is included in the Planning Scheme.

pond in the north east corner of the land (part of Lot C) treating stormwater runoff from land beyond the site.

The land to be rezoned has a frontage of some 422 metres to the eastern side of Vineyard Road and abuts the Melbourne-Bendigo rail line on its eastern boundary (which is some 575 metres³ in length). The land also has frontage to the southern side of Deveny Road of some 260 metres. The southern boundary of the land is around 400 metres in length. The area of the land proposed for rezoning is some 18.11 hectares⁴.

The land is crossed by Harpers Creek from the north west to the south eastern corner, where it exits to the east under an historic railway viaduct just south of a Western Water sewage pumping station on a small lot zoned INZ3 between the subject land and the rail reserve (in the Transport Zone Schedule 1). The viaduct on the railway reserve is included on the Victorian Heritage Register and is included in the Heritage Overlay (HO64) of the Planning Scheme.

The land to the north across Deveny Road is currently zoned and used for light industrial purposes (the Sunbury Business Park). Developing residential land is located to the west across Vineyard Road (the Rosenthal Estate) and to the immediate south in the Sunbury South PSP area. The longer-established residential neighbourhood of Jacksons Hill is located to the east beyond the rail line.

Other features of the site and surrounding area include a sizeable area of high cultural heritage significance adjacent to the pumping station and viaduct; a mooted northward expansion of the pumping station (onto land in the proposed GRZ); vegetation recognised as of national significance along the rail reserve (included in Environmental Significance Overlay Schedule 4); a high pressure gas pipeline along the eastern side of the railway reserve⁵; and a north-south shared pathway located just east of the railway land. A large retarding basin to manage stormwater runoff from the wider Harpers Creek catchment is proposed in the north eastern part of the subject land (part Lot C) replacing the small sedimentation pond. This is being funded and required as a Development Services Scheme by Melbourne Water. The site of the retarding basin is included on the land to be rezoned to GRZ and is shown on the exhibited Concept Plan at Figure 1 of DPO32.

The remaining western portion of Lot C, at the corner of Deveny and Vineyard Roads with an area of approximately 2.3 hectares, is not included in the Amendment and will remain zoned INZ3. The Panel was advised that a planning permit is being sought to use this land for a petrol station, fast food outlets and a car wash, and if approved the site of these uses will be created as a separate lot by subdividing Lot C along the zone boundary.

(iii) Details of the Amendment

The GRZ has the following purposes:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

³ This distance is by scaling from VicPlan. Other distances are from the site analysis plan or title information. The figures provided to the Panel were not consistent.

⁴ Council submission also included that the total net developable area of the land is some 10.71 ha.

⁵ Deer Park-Sunbury high pressure gas transmission pipeline.

In the GRZ, the use of land for dwellings is as of right, as is the development of land for dwellings except on small lots of less than 300 square metres or where there is more than one dwelling on a lot. Subdivision requires planning permission.

The DPO at Clause 43.04 of the Planning Scheme is used to identify areas that require the form and conditions of future use and development to be shown on a Development Plan before (most) permits are granted. It also exempts permit applications from notice and review where a Development Plan has been prepared to the satisfaction of the responsible authority. It further includes that a schedule to the DPO can set out particular Development Plan requirements.

The proposed DPO32 includes Development Plan objectives relating to housing mix and affordability; respect for environmental and cultural (heritage) features on the land; providing an appropriate interface with land in the Sunbury South PSP area and in relation to the gateway function of Vineyard Road; providing good access to and along open space; and ensuring integration with the surrounding road, transport and movement networks.

DPO32 includes conditional permit exemptions at Clause 2 for a small list of applications lodged in advance of preparation of the Development Plan.

Clause 3 includes conditions and requirements for other permits. The clause provides that the conditions of all permits (except those in Clause 2) must give effect to the provisions and requirements of the Development Plan, including the provision of infrastructure and landscaping, and the maintenance of landscaping – all to the satisfaction of the responsible authority. The conditions also include the implementation of the recommendations of an acoustic assessment report for residential land abutting the rail corridor.

Specific requirements are also included in Clause 3 for buildings and works and subdivision applications. They include that any applications for medium density housing must include a mix of dwelling types that includes 2-bedroom dwellings within walking distance (400 metres) of shops and the future Sunbury South train station to the satisfaction of the Responsible Authority.

Applications for buildings and works and subdivision are also required to include a professionally-prepared acoustic report which takes into account the Victorian *Passenger Rail Infrastructure Noise Policy, April 2013* (Rail Noise Policy) and addresses any recommendations for noise attenuation for areas above 63 decibels (dB).

Clause 4 includes requirements for the Development Plan. The requirements relevantly include:

- the layout to be generally in accordance with the Concept Plan at Figure 1 of the Schedule
- a Site Context Analysis that identifies the key attributes of the land and its surrounding context and demonstrates how the plan responds to these
- other particular requirements such as servicing and stormwater management strategies, connections with existing or planned open space networks, a landscape master plan including the location of shared pathways
- residential requirements which include an appropriately designed interface with the rail corridor and the provision of social housing
- a plan showing details of encumbered and unencumbered open space areas, including a 2.5 metre wide shared path within the approved waterway corridor adjacent to Harpers Creek and the retarding basin in the general location shown on the Concept Plan
- Movement and Transport requirements including:
 - The provision of a shared path for walking and cycling up to the site's eastern property boundary with the rail line to facilitate a future link through the viaduct to the Jackson's Hill residential estate on the other side of the rail line, in the general location shown in Figure 1.

- A 2.5 metre wide shared path for walking and cycling along the waterway corridor ...
- A 2.5 metre wide shared path for walking and cycling along Vineyard Road ... [up to Deveny Road] ...

A plan is also required showing the proposed street and pedestrian movement network including linkages to surrounding land.

The Concept Plan at Figure 1 of DPO32 is included below as Figure 2. Broadly it shows residential development separated from the industrial estate to the north by the part of Lot 2 remaining in the INZ, the retarding basin, encumbered and unencumbered open space along the creek, a local park and the 'no go' area of cultural heritage significance. Residential development will also be setback from the rail line by these features except in the south east corner of the land where residential land use is shown as abutting the railway reserve. A connector street is shown providing a linkage to the PSP land to the south and to Vineyard Road together with a shared pathway bordering the residential area and terminating at the eastern boundary of the land.

The exhibited documents included two agreements under section 173 of the *Planning and Environment Act 1987* (PE Act) between the Proponent and Council. One relates to development contributions; the other to social housing provision.

Figure 2 Concept Plan in exhibited DPO32



1.2 Background

1.2.1 Initial lodgement and preliminary authority comments

In June 2018, Urban Design and Management Pty Ltd on behalf of the Proponent formally lodged a request with Council to undertake an amendment to the Planning Scheme.

Around this time, Council officers undertook preliminary consultation with a number of authorities including Melbourne Water, VicRoads⁶ and Transport for Victoria (TfV).

Melbourne Water responded by letter dated 28 August 2018 that it did not object to the proposed Amendment but said that a stormwater management strategy would be required before any consent for development, and outlined certain construction requirements. Melbourne Water later made a formal submission to the exhibited Amendment⁷. This is discussed below.

The VicRoads and TfV written responses of 20 and 13 September 2018 respectively were generally supportive of the Amendment subject to further detailed assessment.

Relevant to the main issues at the Panel Hearing, the VicRoads' letter noted that the Sunbury South PSP included a ring road in conjunction with the road network for that area which would provide a crossing over the railway. The letter said in reference to a Public Acquisition Overlay (PAO) which had been in place on part of the subject land since 1990, designed to provide an east-west road linkage across the subject land and through the viaduct to Jacksons Hill:

Therefore, the existing PAO which is located within this parcel of land will no longer be required.

The TfV letter, which focussed on non-roading movement issues, relevantly included:

- TfV supports the proposal to encourage residential development and growth at this site. It is important to ensure that any new development at this site is suitably integrated into the surrounding environment, including suitable connections to the public transport and active transport networks.
- Given the focus of the recently released Victorian Cycling Strategy 2018-2022 is to get more people cycling by delivering a safer better connected network and more inclusive cycling space, the provision of cycling space through the site is encouraged. TfV are supportive of the proposed cycle link, as discussed at the meeting with Council, to be provided across the railway corridor connecting the site with Jacksons Hill Estate.

Having discussed the proposed connector road to the south in the PSP area, the letter went on to say:

- TfV does not object to the removal of the Public Acquisition (PAO) located within the site. The Sunbury South Precinct Structure Plan (PSP) now provides for a similar crossing over the rail corridor to the south of the site. Access across the rail corridor in this location is therefore no longer required.

TfV also raised a further matter about which the Panel itself raised queries at the Hearing. TfV commented:

- The applicant is proposing to rezone a section of land adjoining the rail corridor. No acoustic information has been provided as part of the submission demonstrating whether acoustic treatments or urban design responses to mitigate the effects of railway noise on residents will need to be provided as part of any future submission.

1.2.2 Resubmitted request, authorisation and EPA response

Council raised a number of issues associated with the proposed amendment request with the Proponent by email dated 19 February 2020.

The Proponent resubmitted the Amendment request with changes and additional information on 4 June 2020.

Council resolved to seek authorisation to prepare and exhibit the Amendment on 21 September 2020.

⁶ As it then was. Now Department of Transport.

⁷ Exhibition took place from 5 October to 8 November 2021.

Council also notified the Environment Protection Authority (EPA) of the forthcoming Amendment in early February 2021. The EPA provided a response by letter dated 23 February 2021 referring to the notification.⁸

The EPA response raised a number of matters:

- Assessment of potential land contamination. The EPA reviewed the preliminary site assessment (PSI) which had been lodged as part of the request for the Amendment and commented:
 - EPA notes that the PSI has not identified any medium or high potential sources of contamination. The PSI appears to indicate that there is a low risk of contamination on the site based on the investigation undertaken, concluding that the site is suitable for the proposed future occupants of the land.
 - In accordance with PPN30, the planning authority should undertake their general duty under section 12(2)(b) of the Planning and Environment Act 1987. Whilst the PSI indicates that there is a low risk to the future occupants of the land, should Council have any remaining concerns with potentially contaminated land at the site, EPA recommends that an independent review of the PSI is sought.⁹
- Potential amenity impacts. They were identified as:
 - Industrial uses to the north of the site¹⁰.
 - Sunbury and Bendigo Railway corridor to the east.
 - The Western Water Pump Station on the eastern part of the site.

In relation to noise from the rail corridor, the letter provided:

EPA notes that the site is located adjacent to the Sunbury and Bendigo railway line and it is understood that the railway corridor handles freight traffic. The movement of freight trains can cause significant disturbance that can affect normal activities if adequate noise and vibration attenuation and siting measures are not incorporated into the design of the sensitive uses.

Clause 48.04-3¹¹ of the Hume Planning Scheme provides noise impact standards for apartment developments. While this may not be directly relevant to the scale of residential development proposed, Table D3¹² provides a Noise Influence Area which indicates the extent to which noise and vibration can impact sensitive uses.

For a railway servicing freight in Metropolitan Melbourne, a Noise Influence Area of 135 metres is specified from the centre of the nearest track of the railway to the closest part of a proposed building. EPA notes that the separation between the proposed sensitive uses and the centre of the nearest railway track is approximately 38m. This represents potential for significant noise and vibration impacts.

EPA recommends that Council consider the requirement for a Noise and Vibration Amenity Impact Assessment to determine the suitability of the proposed sensitive uses given the proximity of the nearby rail activity, and to understand the required noise and vibration attenuation measures, if applicable. Noise and vibration attenuation measures may include setbacks from the rail reserve or design requirements at the receiver during the construction and development phase.

The planning authority must also have regard to the Passenger Infrastructure Noise Policy (Victorian Government, 2013), whereby a land use is being changed near an existing passenger rail corridor. The planning authority may also choose to seek the comments of the relevant transport body.

⁸ This EPA letter was not provided to the Panel until late in the Panel Hearing.

⁹ The Panel has reviewed the PSI report on soil contamination and considered the EPA response together with the Hearing material on this issue. The Panel is satisfied that no significant issues of potential site contamination arise. This matter is not further addressed by the Panel.

¹⁰ In relation to industrial noise from the land to the north that the zoning was incorrectly identified by EPA as for general industrial use (INZ1). Accordingly noise impacts are not likely to be as anticipated by EPA.

¹¹ This is believed to be an incorrect reference to Clause 58.04-3.

¹² Table D3 is now Table D5.

The EPA also pointed to potential odour and noise impacts from the sewage pumping station and the possibility of spills. It was said that these factors recommended a buffer to residential uses.

Reference was also made to management of potential construction activity contamination of the waterway.

Of the issues raised by EPA, the principal issue is rail noise. This is discussed further in Chapter 6 this Report.

The PAO, to which the VicRoads and TfV letters above refer, was removed from the subject land on 4 August 2021 by Amendment C254hume.

Authorisation to prepare and exhibit the Amendment was granted on 9 September 2021 on three conditions:

- The Country Fire Authority (CFA) and the Victorian Planning Authority (VPA) be notified of the Amendment
- Before exhibition, the Explanatory Report be amended to include a response to Clause 13.05-1S (Noise Impacts) of the Planning Scheme (as amended by Amendment VC203)
- The altered documentation be provided to the Department of Environment, Land, Water and Planning (DELWP) before exhibition.

In satisfying the authorisation conditions, the following was included in the Explanatory Report for the Amendment:

Clause 13.01-1S Noise Abatement seeks to assist the control of noise effects on sensitive land uses.

Potential noise impacts from the adjoining railway will be identified and subsequently managed by requiring an acoustic report to be submitted as part of any development application for any noise affected areas. The acoustic report must consider the Victorian Passenger Rail Infrastructure Policy 2013 and address its recommendations for noise attenuation.

DELWP was provided with the updated Explanatory Report and DELWP made a submission in response to the exhibited Amendment indicating it had no objections.

Council also notified CFA and VPA of the Amendment as required by authorisation.

The VPA queried whether the gas pipeline operator should be notified. Council wrote to the pipeline licensee on 21 October 2021 but received no response. On 22 October 2021 VPA confirmed that it had no further comment.

The CFA later made a submission to the exhibited Amendment. This is described in Section 1.2.3 below.

1.2.3 Submissions and Panel request

(i) Submissions received

In response to exhibition in October-November 2021, seven submissions were received. Five did not request changes and/or offered comments and/or supported the Amendment, and two objected or sought changes that could not be supported by Council.

Submitter 1, Mr Seyers, a nearby resident of Jacksons Hill Estate, supported the rezoning but submitted that an additional road crossing of the rail line on the eastern boundary of the site was required and should be a requirement of the DPO and be the subject of legal agreements between Council and the Proponent. He supported the road utilising the railway viaduct underpass at the south eastern corner of the land to cross the rail corridor as had earlier been proposed in 2011. Alternatively or additionally, he supported the creation of a shared pedestrian and cycling pathway

in that location linking the end of the dead end pathway on the subject site shown on the Concept Plan to the shared pathway running north-south beyond the eastern boundary of the rail corridor. He also submitted that some other improvements were required to the shared pathway system envisaged for the Development Plan. This submitter pursued his concerns to the Panel Hearing. They are discussed in Chapters 3-5.

Submitter 2 was concerned about theft and traffic caused by new residences being developed nearby and preferred that the land remained in an industrial zone. As Council submitted, there is no basis for such fears and the Panel agrees that the submission should be rejected.

Submission 3 made observations about industrial development in the area but offered no objection. This submission was later formally withdrawn. Submitter 5, another neighbour to the subject land, supported the Amendment. These submissions do not require Panel comment.

The remaining submitters were CFA (Submitter 4), DELWP (Submitter 6) and Melbourne Water (Submitter 7).

DELWP offered no objection simply noting that a better interface with residential land to the south would result.

The submission by CFA indicated support for the Amendment in its present form but included comments relating to bushfire management. The comments included:

- The Sunbury area can be exposed to significant fast running grassfire events that can expose the community to direct flame contact, radiant heat exposure and limited ember attack.
- While grass fire events will occur, through good design layout planning the risk exposure can be greatly reduced ...
- During staged construction, the Developers must ensure that grass fuel loads are always reduced to under 100mm height throughout the Declared Fire Danger period.
- A Bushfire Management Statement outlining actions to reduce the “likelihood and consequence” of fire on the development should be developed and included within the Planning Scheme Amendment.

The bushfire issue is addressed in Chapter 6 of this Report.

The submission by Melbourne Water indicated that it had no concerns about the Amendment and gave in principle support to it as drafted. The submissions included general observations that the information relating to stormwater and drainage:

... is very preliminary in nature and that more detailed investigation work (compliant with all relevant authorities standards and requirements) will need to occur prior to implementation of any of the outcomes proposed as part of the amendment as drafted and the supporting background reports.

The submission also noted that any earlier and subsequent comments by Melbourne Water should be taken into account.

Melbourne Water’s views are addressed in the discussions in Chapters 3-6 of this Report.

(ii) Council response to submissions and changes to section 173 agreement

Council resolved to refer all unresolved submissions to a Panel and determined not to make any changes to the exhibited Amendment in response to the submissions.

At the Panel Hearing, however, Council advised that some refinements to the exhibited section 173 agreements are now proposed to provide additional flexibility for the type of affordable housing to be provided and in particular to allow delivery of housing suitable for NDIS-approved

participants and which could include Specialist Disability Accommodation. The Panel was also advised that it is now intended that this housing be provided off-site in the Rosenthal Estate.

There were no comments by the other participants on these matters and the Panel accepts the appropriateness of these changes to the section 173 agreements. This issue is not discussed further.

1.3 Procedural issues

1.3.1 Request for documents

Prior to the Panel's Directions Hearing, Mr Seyers requested the supply of certain documents relating to the development of the land. These included:

- documents related to the removal of the PAO from the land and adjoining land that had earlier been intended to provide for the road link from Vineyard Road through the land and under the railway viaduct to link with a north-south roadway in the Jacksons Hill area east of the railway
- a copy of the legal agreement between Council and Development Victoria discharging an obligation to create the road across the subject site
- further information around a permit application to create the road linkage which had been sought by Places Victoria (as Development Victoria then was) from Heritage Victoria for the VicTrack land and why the permit application had lapsed. He considered this relevant to whether an accessway might now be provided as a modification of the Amendment
- flood study information for the land and Melbourne Water views on this matter.

At the Directions Hearing, all Hearing participants were afforded the opportunity to make submissions about these requests¹³.

The requests relating to the roadway and PAO removal were opposed by Council and the Proponent including on the basis that they were not relevant to the Panel's consideration, and the permit application documents were dated and not in Council's or Proponent's possession. Council said that in any case the possible creation of a road link would fall outside the proper consideration of the Amendment; and that consideration of what benefits there might be to the Jacksons Hill community if the Amendment was modified, was not a proper component of the Amendment's consideration. It was also said that the PAO had been overtaken by a new approach to east-west road provision in the PSP area which applies to abutting land. In relation to flooding, it was noted that drainage evidence was being called by the Proponent and that the Melbourne Water responses to referral would be addressed by Council.

The Panel made a written ruling of 3 May 2022. It noted that flooding information was to be provided. In relation to the roading issue, the ruling was as follows:

So far as the requested documents relating to the road issue are concerned, the Panel notes that Development Victoria, VicTrack¹⁴, and Heritage Victoria, are not hearing participants and accepts the Council's advice that access to the older permit application documents held by them is unlikely to be forthcoming. Mr Seyers did not proffer any arguments supporting his request for the agreement between the Council and the Development Victoria that discharges an obligation to provide the road, . While the agreement may have a role to play in the Council planning of the area, the Panel cannot see that the document is relevant to the Panel's consideration.

¹³ These submissions to the Panel are set out in more detail in the Panel's written ruling of 3 May 2022.

¹⁴ VicTrack being the landowner of the railway corridor.

The Panel declines to direct the supply of the road documents at this stage.

The Panel nevertheless considers that the issue behind the request for documents - of whether the development of the subject land is appropriately integrated with the road and pathway network of the broader area - is a proper matter for the Panel's consideration. Section 12(1) of the PE Act includes that a planning authority such as Hume Council must:

- (a) implement the objectives of planning in Victoria;
- (b) provide sound, strategic and **co-ordinated** planning of the use and development of land in its area (Panel emphasis).

Orderly planning as referred to in the planning objectives at Section 4 of the Act requires consideration of coordination of development and public infrastructure provision. Indeed the Panel notes that the objectives of the proposed Schedule 32 to the Development Plan Overlay applying to this site include:

- To ensure development of the land integrates with the surrounding road, transport and movement networks.

This being said, if it was to be the case that the Panel were to find that the Amendment failed to achieve the required level of integration, whether the roading change suggested by Mr Seyers (assuming it was an appropriate strategic course) might be recommended as a change to the Amendment, remains a moot point. It may be that any such change would go beyond modification of the Amendment and effectively propose a different amendment¹⁵. At the very least it would likely raise issues of notice.

The Panel would be assisted by further submissions on this issue as well as the substance of the roading and pathway issues.

Having considered the substance of the roading and pathway issues as presented at the Hearing on 24-25 May 2022, for the reasons given in Chapters 3-4 of this Panel Report, which deal separately with roading and shared pathway linkages, the Panel has not found it necessary to take this procedural issue further.

1.4 The Panel's approach

The Panel has considered all written submissions made in response to the exhibition of the Amendment, and the submissions, evidence and other material presented to it during the Hearing. The Panel's understanding of the issues has been assisted by its accompanied site inspection.

The principal issues to be dealt with by the Panel are those identified by Mr Seyers who was the only submitter raising substantial objections and who made an extensive presentation at the Hearing. The issues raised by Mr Seyers are discussed in Chapters 3-5.

While Mr Kane's submission for the Proponent, that the reason the Panel was convened was to deal with Mr Seyers' issues, may be correct, the Panel does have a more general responsibility to assess the Amendment. A number of additional matters requiring attention and recommendation arose during the Hearing and from review of background documents.

Some of the issues that might have been problematic in terms of the development of the land for housing, including soil contamination, and protection of cultural heritage sites and natural environmental values, have, in the Panel's view, been adequately addressed in material supporting the application for the Amendment and/or addressed in the Concept Plan. There is no further comment provided on these matters.

The Panel is also generally satisfied that the Western Water pumping station amenity impacts raised by EPA can be considered at a later stage and managed even if the facility is to be expanded.

¹⁵ Acknowledging that the Supreme Court has recently revised thinking on change to versus the transformation of permits (*Mondib Group Pty Ltd v Moonee Valley City Council* [2021] VSC 722 (5 November 2021), the discussion in *Melton C52 (PSA)* [2007] PPV 29 (19 April 2007) and the nature of acceptable change to amendments appears to remain pertinent.

In this respect it would seem to be beneficial that the expanded area for the pumping station be zoned GRZ, rather than INZ3 or some other public utility zoning, as this would likely enable a deeper level of future planning scrutiny. The Panel also considers that there are commonly used methods of managing run off and potential water pollution during construction activities, which were further concerns of EPA, and which do not need to be replicated in DPO32.

There are, however, two issues that, at the least, give rise to a questioning of the suitability of the layout of the site or adequacy of the DPO32 provisions and require more detailed assessment and comment. They are the issue of the railway abuttal and its consequences for noise and vibration impacts, and the management of bushfire hazards. These are discussed in Chapter 6 together with Melbourne Water requirements.

This Report deals with the issues under the following headings:

- Strategic justification
- Roading integration
- Integration with wider pathway network
- On site improvements to the shared pathways
- Other DPO provisions.

Appendix A contains a list of documents provided to the Panel.

2 Strategic justification

2.1 Submissions

Council's Part A submission elaborated on the strategic context for the rezoning and intended future layout of the land as provided by a number of broad planning policies relating to the growth of Sunbury township, State and local strategic policies. These had also been set out in the exhibited Explanatory Report for the Amendment.

The submissions for the Proponent did not challenge the policy framework as set out by Council. Mr Seyers did not oppose the residential rezoning nor this policy framework.

(i) Urban growth plans

The following key strategic policies and plans referenced in the Planning Scheme were set out by Council.

Plan Melbourne 2017-2050, the metropolitan strategy, identifies the land as being in an urban area.

The Sunbury/Diggers Rest Growth Corridor Plan referred to in Clause 21.01-1 of the Planning Scheme depicts the land as existing urban and with an interface to the south with an area identified as 'Business with Residential'.

The Strategic Framework Plan in Clause 21.01 identifies the land as future employment land at an interface with future residential land to the south.

Clause 21.02-1 refers to the Sunbury Hume Integrated Growth Area Plan Spatial Strategy, 2012 (Sunbury HIGAPS) and the Hume Corridor Hume Integrated Growth Area Plan, 2015 as providing long term strategies and infrastructure delivery plans for the two main growth corridors in the municipality.

The Sunbury HIGAPS applies to Sunbury and depicts the future spatial structure of Sunbury on various plans. The most detailed plan for the area of Sunbury South at Map 5.2 shows the subject land as future residential to the south of Harpers Creek, with a portion designated for medium density housing, and the area north of Harpers Creek as for 'employment'. The road and shared pathway linkages through the area are also shown. The illustrated road system includes a new southern link from the area of Sunbury township east of the rail line west towards Vineyard Road. The rail crossing is shown as just north of the proposed Sunbury South railway station. A shared pathway crossing the rail line along the Watsons Creek alignment (through the viaduct) is also shown (see Figure 3 below).

(ii) Municipal Strategic Statement

Clause 21.02-3 of the Planning Scheme highlights new growth areas of the township and a new southern orbital road.

Clause 21.04-1, relating to built environment and heritage, includes an objective of providing a network of well-designed and connected open spaces and waterway corridors.

Clause 21.07 relates to transport connectivity and infrastructure. The clause includes:

Transport connectivity and mode choice are critical to achieving productive, sustainable and socially just cities ...

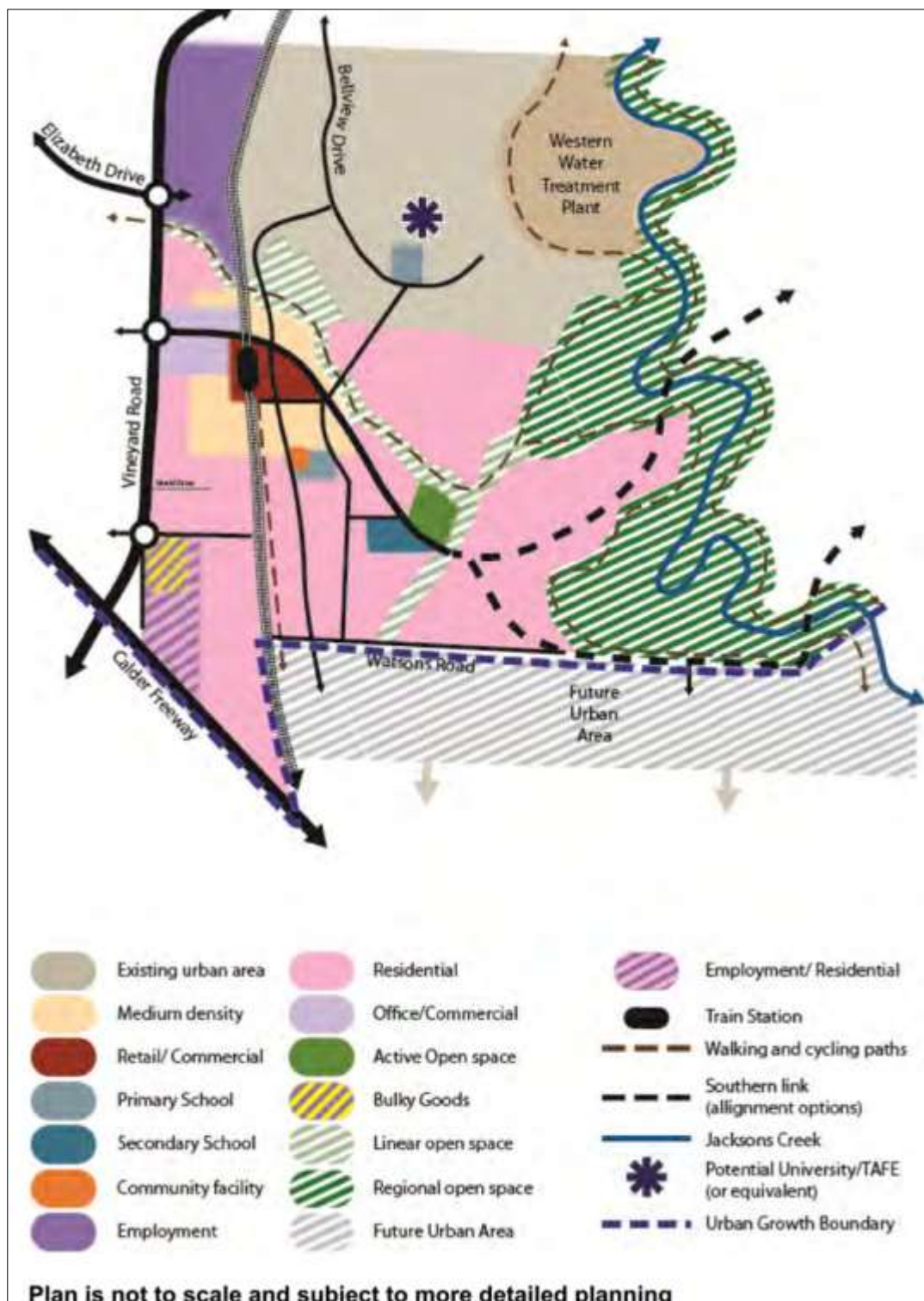
New and upgraded roads will be critical to unlocking new development areas. However new train stations, train and bus services, and walking and cycling infrastructure will be required

to provide the level of connectivity and mode choice required to manage this demand fully and sustainably ...

There are a number of creeks, train lines and freeways that present significant barriers to transport connectivity, notably in Sunbury and the southern and eastern areas of the Hume Corridor. Overcoming these barriers is expensive but necessary to connect communities, increase accessibility to jobs, and provide genuine travel choice ...

The Strategic Transport Plan at Figure 1 identifies new and upgraded transport infrastructure required to support Hume's proposed future urban structure.

Figure 3 Part of Sunbury HIGAPS Future Spatial Structure Plan for Sunbury South



Source: Council Part A submission

The Figure 1 referred to in Clause 21.07 shows an orbital road crossing the train line near the proposed Sunbury South train station.

Objective 1 of Clause 21.07 seeks:

To improve the connectivity and capacity of the transport network’.

Among its strategies is to:

Facilitate the delivery of crossings of the Jacksons Creek and train line in Sunbury.

Clause 21.08 seeks:

‘To protect, conserve and enhance natural heritage for biodiversity, amenity and landscape character purposes’.

It also seeks to protect water quality and ensure that development minimises stormwater discharge and manages it effectively. It also seeks to manage the risk to life, property and the environment from bushfire risk.

(iii) Sunbury South Precinct Structure Plan

The PSP applying to land to the immediate south was gazetted in January 2019. It shows the Future Urban Structure of the area at PSP Plan 3 (reproduced at Figure 4).

The area to the south of the subject site is identified as future residential. A connector road is shown extending into the subject site from the south and the east-west ‘orbital’ is again shown as crossing the train line close to the Sunbury South train station and associated neighbourhood activity centre (about 450 metres from the boundary of the subject land). The north-south connector road and another on the Jacksons Hill side of the railway are shown as providing links to Watsons Road further to the south which has an at-grade rail crossing.

Funding for road works in the PSP area are to be funded through the Sunbury South and Lancefield Road Infrastructure Contributions Plan.¹⁶

(iv) State policies

State policies supporting the Amendment are set out in the Explanatory Report. They include:

- Clause 11 Settlement which encourages new development to be close to transport corridors.
- Clause 12 Environmental and Landscape Values which seeks to enhance river corridors and waterways.
- Clause 13 Environmental Risks and Amenity which refers to:
 - planning scheme amendments properly assessing bushfire risk and including appropriate bushfire protection measures. It is to be noted that the subject land is identified as being within a Bushfire Prone Area
 - the protection of the flood storage functions of rivers and waterways
 - proper assessment of potential land contamination
 - noise abatement to assist the control of noise effects on sensitive land uses.
- Clause 15 Built Environment and Heritage policies include that subdivision design should achieve attractive, liveable, walkable and cyclable neighbourhoods. Aboriginal cultural heritage is to be protected.
- Clause 16 Housing supports new housing in locations with good access to jobs, services and transport. A diversity of housing types is sought.

¹⁶ Awaiting approval at the time of the Panel Hearing and approved on 6 June 2022.

- Clause 19 Infrastructure includes policies encouraging provision of a linked open space network and walking and cycling trails.
- Clause 18.01 Land use and Transport.
Council's submission included that since exhibition but before the Panel Hearing¹⁷, Clause 18.01 of the Planning Scheme, as relevant to the main issues at the Hearing, had been amended.

Clause 18.01 now supports the timely delivery of transport services, and supports urban development that makes services and jobs more accessible by taking advantage of all available modes of transport. Most relevantly, the strategies now include:

Plan improvements to public transport, walking and cycling networks to coordinate with the ongoing development and redevelopment of urban areas.

Design neighbourhoods to:

- Better support active living.
- Increase the share of trips made using sustainable transport modes.
- Respond to the safety needs of all users.

(v) Council-adopted strategies

A number of strategic documents adopted by Council were also relied upon as support for the Amendment.

The Housing Diversity Strategy, June 2020 highlights the need for more small dwellings in Sunbury to respond better to household type.

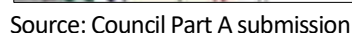
The Affordable Housing Policy, adopted on 27 September 2021, supports a net increase in the diversity, provision and quality of affordable housing in the municipality and encourages the supply of affordable housing outcomes for very low and moderate income households. The policy seeks to secure an affordable housing contribution equal to 10 per cent of the total proposed dwellings/lots or an equivalent financial contribution when land is rezoned to residential.

The proposed Amendment provides for affordable housing in a manner consistent with the policy secured by an agreement under section 173 of the PE Act.

(vi) Melbourne Industrial and Commercial Land Use Plan

This plan, released by the State Government in 2020, identifies the site as locally significant industrial land. This local, rather than state or regional, classification allows Council to consider whether the land is still required for industrial purposes or may transition to other uses. Council's submission identified that it is satisfied that there is adequate other industrial land available in the Sunbury area. The Proponent had provided an economic analysis supporting this view.

¹⁷ Implemented by VC204 on 9 December 2021.



On 10 June 2022, some weeks after the Panel Hearing, Amendment VC216 introduced changes to the policies of the Planning Scheme. Amendment VC216 was described as follows:

Two policy changes in particular are potentially relevant to consideration of the Amendment.

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The strategies are now expressed as:

Ensure that development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions.

Minimise the impact on human health from noise exposure to occupants of sensitive land uses (residential use, child care centre, school, education centre, residential aged care centre or hospital) near the transport system and other noise emission sources through suitable building siting and design (including orientation and internal layout), urban design and land use separation techniques as appropriate to the land use functions and character of the area.

The relevant policy documents continue to list the Rail Noise Policy of 2013 - which was provided to the Panel and parties before the Hearing – and add the *VicTrack Rail Development Interface Guidelines* of 2019. The residential noise standards in both guidelines nevertheless correspond.

Clause 15.01-3S (Subdivision design) was amended to update the objective and strategies, including a new strategy that supports biodiversity in urban areas, minimising air and noise pollution exposure near the transport system, urban structure responses to support Environmentally Sustainable Design outcomes.

The strategies now include:

- Reduce car dependency by allowing for:
 - Convenient and safe public transport.
 - Safe and attractive spaces and networks for walking and cycling.
 - Subdivision layouts that allow easy movement within and between neighbourhoods.
 - A convenient and safe road network.
- Minimising exposure of sensitive uses to air and noise pollution from the transport system.

The changes to the above clauses have not been referred by the Panel to the Hearing parties for comment, for the reason that these policy changes simply continue the previous direction of strategic policy, as addressed in State and local policy and other strategic documents, albeit the directions were earlier expressed in slightly different terms. The Panel has not relied on these new expressions of policy but they are included for completeness.

2.2 Discussion

The Panel has reviewed the relevant strategic documents. While there is some inconsistency as to whether the land is shown only as residential or residential/employment, and whether it is envisaged that the residential development might include some medium density housing, nevertheless it is generally the case that residential use is supported by these broad policy documents. This not surprising as the land is well sited in relation to other residential neighbourhoods and has ready access to neighbourhood activity centres and public transport. The loss of industrial land has also been assessed by Council as envisaged by the Melbourne Industrial and Commercial Land Use Plan and agreed as acceptable. There was no opposition to the loss of this relatively small area of local industrial land.

The various plans for the development of the general locality also show the planned movement network for the area with which the proposal generally accords.

The Panel notes the agreement to be made in relation to affordable housing and considers this also accords with the contextual strategic policies.

As described in Section 1.1(ii), however, the land does have some development challenges for residential use. The effect of these on the DPO component of the proposed Amendment are discussed in Chapter 6.

2.3 Conclusions

The Panel concludes:

- There is support in the strategic plans and policies for residential use of this land generally as envisaged in the Amendment.
- There is a need to review how the site constraints might affect the development of the site as proposed.

3 Roading integration

3.1 The issue

The issue to be addressed is whether the Amendment should be modified to provide for a collector road from Vineyard Road beneath the railway viaduct connecting through to Yirrangan Road in the Jacksons Hill area.

3.2 Submissions and evidence

It was Mr Seyers' submission that the road connection through the viaduct is necessary in order to meet the DPO32 objective 'to ensure development of the land integrates with the surrounding road, transport and movement network'. He noted the support in policy for coordinated planning of roads and residential development.

Mr Seyers said that limited east-west road access had long been a problem in Sunbury and serious consideration had been given to the construction of a collector road through the viaduct previously in 2011.

His submission included that when the planning permit for the road through the viaduct had been lodged by Places Victoria with Heritage Victoria, approvals were obtained from VicTrack, V/line, Melbourne Water, Telstra, GasNet Australia and the Wurundjeri Tribe Land and Cultural Heritage Council.

Mr Seyers proposed that DPO32 include a requirement for the landowner to enter into an agreement with Development Victoria and Hume City Council to 'construct a connector road to Yirrangan Road' (in the south east segment of Jacksons Hill) and that there should be an amendment to the Concept Plan contained in Figure 1 of the DPO32 to show this road.

Council submitted that the exhibited rezoning and DPO provisions would not result in any unacceptable traffic impacts, would appropriately integrate with the surrounding transport network and that the Department of Transport had not raised any objection to the Amendment. It went on to say:

The provision of a signalised intersection at Vineyard Road and a connector road from Vineyard Road to the future Sunbury South PSP connector road will ensure safe and appropriate access to and from the Land, is consistent with current transport planning for the area and provides for the integration of the Land with the surrounding transport network and broader infrastructure and facilities.

Council opposed an additional road beneath the viaduct as a part of the Amendment on the following grounds:

A road connection to Jacksons Hill Estate under the viaduct was proposed at one time but was determined not to be feasible due to issues relating to cultural heritage, native vegetation, structural integrity of the viaduct, sight lines and flooding. ... through the PSP an alternative connection of Yirrangan Road to Buckland Way was identified (effectively a north-south connection between Jacksons Hill Estate and Sunbury PSP area), which connects to Watsons Road and from there to Vineyard Road. In addition, the Sunbury South PSP identifies a new train station and railway crossing within 400-500m of the southern boundary of Jacksons Hill estate that will also connect the Jacksons Hill area to Vineyard Road.

The strategic planning for the Land and its surrounds no longer provides for a road connection under the viaduct as a result of the alternative connections identified by the Sunbury South PSP and the removal of the obsolete PAO on the Land.

The Amendment responds to the current strategic planning for the Land and its surrounds and integrates effectively with the existing and proposed road network.

Council submits that a road connection under the viaduct is not necessary to achieve the objectives of the DPO32 and transport policy objectives within the policy framework in the Scheme and integrate the Land with the surrounding road network.

Council's Part A submission identified that the north-south extension of Yirrangan Road within the PSP area, its intersection with the orbital road within the PSP area, the southern link road and its rail underpass, connection to Vineyard Road and to the east, were all proposed to be funded through the Sunbury South and Lancefield Road Infrastructure Contributions Plan which was recently processed as Amendment C243hume.¹⁸ Council also advised that a PAO applies to the Yirrangan Road extension within the PSP area and that Council owns the land for that road extension within the Jacksons Hill area. Council is responsible for the delivery of all of the Yirrangan Road extension. The Panel was advised that the north-south connector road shown in the PSP west of the rail line connecting to the east-west connector road on the subject land, would be required to be provided by developers as part of the development of that land.

Mr Kane for the Proponent endorsed Council's response on this issue. He said that Mr Seyers request for linkages through the viaduct could not be supported for a number of reasons including that the Amendment does not apply to that land; the Proponent does not control or own that land; VicTrack as owner of the land beneath the viaduct has not made a submission seeking to facilitate the link; the land near and beneath the viaduct is significantly constrained by flooding, waterway and cultural heritage values, native vegetation and issues around the structural integrity of the viaduct. He also said the strategic vision for a road connection and pathway beneath the viaduct has altered with the removal of the PAO and the vision for road linkages in the Sunbury South PSP. He further said that the suggestions by Mr Seyers were not necessary to facilitate the rezoning of the land.

Mr Kane called Ms Barich, a drainage engineer, to give evidence concerning the feasibility of providing the roadway and/or shared pathway beneath the viaduct as requested by Mr Seyers. Ms Barich was adamant that Melbourne Water would not allow such a roadway due to flooding hazards.

Mr Kane also called Mr Glossop to give planning evidence concerning the Amendment and the issues raised by Mr Seyers. Mr Glossop indicated that he also considered that the required improvement to east-west linkages in Sunbury were now adequately being dealt with by the planned Sunbury South road network.

The Panel also notes that VicRoads (now Department of Transport) in its correspondence of 20 September 2018 pointed to the ring road crossing the rail line at the proposed Sunbury South station in the PSP area and commented that the PAO and road across the subject land was no longer required. TfV made the same observation.

The issue of the fairness of such a roading impost on the landowner was also raised by the Proponent and Council. It was argued that the development of this land did not necessitate such a linkage to the east and it would at best be of benefit to residents of Jacksons Hill, or perhaps the broader, community. It would only be if the roadway were necessitated by the development of this land, Council said, that it might be fairly imposed.

¹⁸ At the time of the Panel Hearing it had been forwarded to the Minister for approval. It was approved on 6 June 2022.

3.3 Discussion and conclusions

The Panel has considered the material and submissions about the issue of whether a connector road should be provided through the viaduct as sought by Mr Seyers and whether it is necessary to satisfy the policy objectives relating to connectivity and overcome existing limitations.

The Panel appreciates that, as referenced in Clause 21, there have historically been inadequacies in terms of east-west connections through the southern part of Sunbury. It is also appreciated that, given the presence of a PAO for a road across the subject land, there had been a long standing community expectation that a link through the subject site and the viaduct between Jacksons Hill and Vineyard Road would be part of the access improvements. The Panel considers that the strategic road planning now in place, however, offers an equally appropriate road connectivity solution.

The Panel is of the view that the east-west connectivity problem in this area of Sunbury South is being adequately addressed by the strategic road network planning introduced by the Sunbury South PSP. The rail crossing proposed near the new Sunbury South rail station is only some 450 metres from the southern boundary of the land. The rail crossing at Gap Road to the north is also being grade separated which will assist movement, and a further crossing will continue to be available further south at Watsons Road (to be linked into the wider network).

Mr Seyers was concerned that it would be many years before the provision of the new links to the south would be completed. The Panel, however, is satisfied by the Council responses concerning the advancement of the Infrastructure Plan for the PSP area and the budgeting for the Yirrangari Road extension that this will not be the case. The Panel also notes that residential development on the land to the south of the subject land in the PSP area is already underway.

The Panel also considers that there appear to be not insubstantial construction problems if a roadway was intended to be built through the viaduct.

The evidence suggests that the space demands of a two way road, and a possible parallel shared pathway, may exceed the available space beneath the three arches of the viaduct, which need also to allow for passage of waters from the retarding basin and other parts of the Watsons Creek catchment. The roadway would also be subject to flooding from time to time as set out in Ms Barich's evidence (unless the creek waters were piped). The topography immediately south west of the viaduct together with the viaduct pillars are constraining on sight lines, as Council submitted. The structural integrity of the viaduct - the culverts of which already have structural supports in place - would appear to be placed under additional pressures by the construction of road foundations and pavement, and the possible laying of waterpipes to carry Watsons Creek through the archway as a possible means to manage flooding.¹⁹

Concerning the arguments about fairness, the Panel observes that this issue often arises in planning decision making with respect to infrastructure provision. It is often a moot point about what proportion of a benefit falls to users of the development land rather than to the wider community. It is, however, not uncommon for off-site facilities to be required as conditions of approvals which have benefits that are more widely enjoyed than by the subject land alone.

The Panel considers, rather, that any unfairness in this case would appear to arise from effectively requiring the Proponent to provide a facility as a condition of approval of the rezoning when there is considerable uncertainty around its feasibility. The Panel also notes that the Proponent is

¹⁹ Ms Barich's evidence nevertheless was that piping of the waterway would not be possible and/or allowed by Melbourne Water because of inadequate grades.

already providing other social and physical infrastructure. The construction uncertainties and requirement for other approvals for the linkage through the viaduct across VicTrack land, when combined with the physical site constraints, recommend against any requirement for a roadway.

The Panel concludes that the Amendment should not be altered to require an east-west connector road across the subject land linking Vineyard Road and the Jacksons Hill road network.

4 Integration with wider pathway network

4.1 The issue

The issue is whether the Amendment should be altered so as to require a shared pathway, as shown in the Sunbury HIGAPS strategy and referred to in DPO32, to link the subject land to the pathway network in the Jacksons Hill area east of the rail line via the viaduct underpass.

4.2 Submissions and evidence

Mr Seyers made the following points in his submission concerning the provision of a shared pathway beneath the viaduct:

- there was increasing support in planning policy for facilitation of alternative forms of transport including walking and cycling
- the shared path extending north-south along the western edge of Jacksons Hill was part of a strategic network of major cycleways and the subject site should be connected to this
- the provision of increased connectivity in the general area was required and supported by policy
- the Amendment and subsequent development of the subject site presented the last opportunity to fund the shared pathway through the viaduct.

Mr Seyers noted that the extent of pathway required to be constructed off the subject land to link to the north-south pathway east of the rail line was only in the order of 67 metres.

Council submitted the following:

The proposed DPO32 provides for shared paths:

- along the interface between the residential land and Harpers Creek from Vineyard Road to the south-eastern boundary of the Land proximate to the viaduct;
- along Vineyard Road up to the intersection with Elizabeth Drive, providing access to the Rosenthal Neighbourhood Activity Centre to the north;
- between Harpers Creek and the proposed connector road connecting to the Sunbury South PSP area, which will provide connections to the proposed train station, activity centres and broader transport and open space networks within the Sunbury South PSP.

The proposed DPO32 does not provide for the continuation of the shared path under the viaduct to Jacksons Hill Estate but it provides the opportunity for a future link to be provided by others. The land to the east of the Land and under the viaduct is not land owned or controlled by the proponent or Council but by VicTrack. Given the heritage significance of the viaduct, the nearby cultural heritage and the flood level requirements, further investigation of path design will be required to confirm the feasibility of this opportunity.

Given the broader proposed shared path network and connections provided by the Land and surrounding land, Council considers that the connection under the viaduct to be desirable but not required to facilitate the rezoning of the Land.

Council's submission noted the lesser space requirements for a shared pathway when compared to a roadway but noted that there are nevertheless significant constraints affecting its development. It said that in order to require the provision of the shared path works, it would have to be satisfied that the rezoning generated the need for them. Instead, it was Council's view that other shared path improvements would adequately upgrade connectivity. Further it would be unfair to require the proponent to deliver the works in light of these factors and in light of other development contributions being made.

Council submitted in short that it is supportive of a shared pathway under the viaduct but it is not reasonable or necessary to require the Proponent to deliver it.

Mr Kane's submission opposing the roadway in this location raised general objections which also applied to a pathway. He similarly submitted that a pathway should not be required. He relied on the evidence of Ms Barich to address the flooding issues associated with construction of the pathway beneath the viaduct. Ms Barich was adamant that Melbourne Water would not allow a pathway to be constructed through an area subject to a 1 in 10 event flooding. In response to questioning by Mr Seyers about other examples of pathways through areas subject to infrequent flooding, she said that Melbourne Water's policies had tightened in that respect in recent times. She did not accept that any of the approaches to precluding access to flooded pathways put to her by Mr Seyers, including 'drown outs', signage or boom gates as illustrated in Melbourne Water's Shared Pathway Guidelines of 2009, would be seen as acceptable in this case.

4.3 Discussion and conclusions

The Panel agrees with the submitter and Council that a shared path linkage through the viaduct is desirable in terms of providing an integrated movement network in this part of Sunbury. Such a pathway would offer the opportunity for access by residents of the subject land to the larger open space areas east of the railway and to the north-south principal bike route along the rail line. In this way the land itself would benefit from the works if required. A shared pathway would also allow direct access for those living east of the railway to the neighbourhood centre on the Rosenthal Estate as well as the local trails and open space facility on the subject land.

There can be no doubt that provision of such a link, shown on plans in the Sunbury HIGAPS strategy, is also supported by the contemporaneously strengthened policies relating to active movement and better linkages between parts of the Sunbury area.

The construction of a shared pathway through the viaduct would also appear to be a much less challenging engineering exercise than construction of a roadway. It would appear to offer a lesser threat than a roadway to the structural integrity of the viaduct.

Council does appear to remain of the view that a shared path link through the viaduct might be a possibility, with the exhibited DPO32 requirement for onsite pathway works which are to stop at the eastern boundary of the land described as providing a potential link to a possible future pathway through the viaduct. Council would be acting improperly if it had included this requirement and description in the Amendment if it were already of the view that such a link would not be possible.

The Panel has noted Ms Barich's very definite statement that Melbourne Water, who have responsibility for floodplain management of Watsons Creek, would never allow a pathway through the viaduct as the underpass is subject to levels and velocities of flooding/outfall from the retarding basin which would present a risk to the public. It is the case, however, that Melbourne Water was provided with the Amendment documents on two occasions at least, documents which refer to a future shared pathway through the viaduct, and they raised no objection to the Amendment in either their letter to Council of 2018 nor in their recent written submission.

Nonetheless, the Panel considers that there remain sufficient uncertainties around future approvals of a shared path (including by VicTrack, Melbourne Water and Heritage Victoria)²⁰ that it is not possible to go beyond the requirement in the exhibited DPO32 for a pathway stopping at the eastern boundary of the subject land allowing a possible future link to an off-site pathway. It would be unfair to impose the requirement on the Proponent given these uncertainties.

²⁰ And possibly the gas pipeline owner.

The Panel considers that any pathway through the viaduct should be promoted by Council who also have responsibility for other road and pathway works east of the rail line.

The Panel concludes that the Amendment should not be altered to require a shared pathway through the railway viaduct to the east of the subject land.

5 On site improvements to shared pathways

5.1 The issue

The issues are:

- whether the onsite pathway network should be expanded by adding a shared pathway to the northern side of Watsons Creek and around the retarding basin
- whether the shared pathways should be required to be of concrete construction.

5.2 Submissions and evidence

Mr Seyers submitted that the shared pathway should be extended to both sides of Watsons Creek as was the approach with other waterways in the locality. He also sought to have it extended around the northern side of the retarding basin. Mr Seyers said the benefit of this was a consistency of approach with other shared pathways in the area and allowance for circular walking and riding trips.

Mr Seyers also submitted that the onsite pathways should be required to be of concrete construction as this would ensure all-weather usability. He noted that there were other gravelled shared pathways in the area that in wet weather conditions became muddy and hazardous for users.

Council opposed these changes arguing that a pathway on both sides of the creek was unnecessary given the level of connectivity already provided. Council noted public safety concerns about access around the retarding basin due to flooding. It was nevertheless noted that this issue could be revisited in future if circumstances changed.

Council opposed specification of concrete surfacing for the shared pathways saying that the surfacing should not be fixed but determined as part of the landscape planning for the land.

The Proponent opposed the suggested changes, noting in particular that it was Ms Barich's evidence that the pathway extensions were not appropriate from a public safety perspective. She described the design of the retarding basin edge and the potential hazards it presented to path users if an abutting pathway was constructed. She noted the space constraints around the retarding basin which also limited a full width pathway. Mr Glossop's evidence also referred to the area north of the retarding basin as somewhat remote from casual surveillance and unsafe from that perspective.

5.3 Discussion and conclusions

Concerning the layout of pathways on the site, the Panel agrees with Mr Seyers that having a pathway on both sides of the creek and around the retarding basin would be desirable from the point of view of user enjoyment and choice. It would add to the enjoyment of some if not all users if they were able to choose to walk or ride on a circuit, or to travel to and from a destination via an alternative route rather than have to retrace their path.

The Panel considers, however, that no matter how desirable it might be to provide looped pathways along and around waterbodies, it is simply not possible to install such pathways in all locations due to site constraints and consideration of public safety. There are very many places where shared pathways are provided along only one bank of a waterway as paths on both sides are precluded by site constraints.

The Panel accepts Ms Barich's evidence that space constraints, retarding basin design and consequent public hazards, together with the dangers presented by flood waters extending across pathways, preclude the pathway system being extended around the retarding basin and to the second side of Watsons Creek.

The Panel also considers that it is too great a stretch to the concept of neighbourhood character to say that all waterways in South Sunbury must be treated in the same way (with pathways on both sides) to accord with neighbourhood character as was asserted by Mr Seyers.

Concerning the use of concrete, the Panel considers that this should not be required as a blanket requirement as it would be inadequately site responsive. The objective of an 'all-weather sealed path' should instead be introduced in DPO32. This would allow flexibility to introduce different pathway surfaces in response to site conditions and landscape objectives. The Panel recommends accordingly.

The Panel concludes, however, that the Amendment should not be altered to require a shared pathway around the northern side of the retarding basin or along the northern side of Watsons Creek.

5.4 Recommendation

The Panel recommends:

In the General section of Clause 4 of the Development Plan Overlay Schedule 32, where reference is made to a required landscape master plan, add the following dot point:
shows shared paths to have an all-weather sealed surface.

6 Other DPO provisions

6.1 The issues

While most of the potential site constraints were adequately addressed by material submitted with the request for the Amendment or subsequent material, including a PSI, cultural heritage management plan, an assessment of ecological values and a traffic study, the Panel considers that three matters relating to the DPO content require further consideration:

- bushfire management provisions
- Melbourne Water's request for further detailed drainage requirements
- the response to rail noise impacts.

6.2 Bushfire management

(i) The issue

The matter to be addressed is the possible inclusion of additional provisions in DPO32 relating to bushfire management.

(ii) Submissions and evidence

As noted earlier, the subject land is included in a Bushfire Prone Area.

As also noted in Section 1.2.3(i), the CFA responded to exhibition of the Amendment. It commented that the area can be subject to fast running grass fires, the consequences of which might be ameliorated by appropriate development layout. It was recommended that a Bushfire Management Statement, outlining actions to reduce the likelihood and consequence of fire on the development, should be developed and included within the Amendment.

Council indicated in their submission that liaison with CFA officers had since confirmed that a Bushfire Management Statement may not be required if construction and development could demonstrate design outcomes that prevent fire threat. Council submitted that bushfire risk could be appropriately managed at the development stage. It was noted that the land to the immediate south was already being developed and the subject land would not have a rural interface for long.

Part of Mr Glossop's evidence concerned the bushfire issue. Before the Hearing, he had recommended that a bushfire assessment be undertaken for the land in response to the issues raised in the CFA written submission.

A Bushfire Management Assessment for 105 Vineyard Road Sunbury was then prepared by Urban Design and Management Pty Ltd on 10 May 2022. It concluded:

The subject site is at low risk from a bushfire from most directions due to managed properties, gardens and proposed infrastructure surrounding and within the site. A classified vegetation is considered 'upslope' from the site so fire risk is at a low level. There are residential buildings to the west and east of the subject site, while to the north is the industrial zoned Sunbury Business Park. To the south is the Sunbury South PSP land which is under construction for residential purposes. The responsible management of the land (and requirements set out in the Municipal Fire Management Plan) can reduce the bushfire risk to an acceptable level. Continued land management, fuel reduction and compliance with the bushfire protection measures stipulated in Clause 53.02 will reduce the risk to human life and property to an acceptable level. The proposed perimeter roads to the subject site will assist to leave [sic: alleviate?] potential bushfire risks and access safe urban areas and Neighbourhood Safer Places/Bushfire Places of Last Resort (NSP/BPLR) nearest to the site in accordance with the Municipal Fire Management Plan and CFA recommendations (Riddells Creek 14.9km north).

Mr Glossop nevertheless recommended that additional wording be added to DPO32 to address bushfire issues. This was supported by the submission for the Proponent and was not opposed by Council or the submitter.

The additions suggested were the inclusion of a new part to the Development Plan requirements of Clause 4 as follows:

Bushfire Management Assessment

A Bushfire Management Assessment that demonstrates:

- The staging of development and the likely bushfire risk at each stage.
- An area of land between the development edge and all non-urban areas consistent with the separation distances specified in AS3959-2009 where bushfire risk is managed to enable the development, on completion, to achieve a BAL-12.5 rating under AS3959-2009.
- The measures to be undertaken by the developer to reduce the risk from fire within any surrounding rural or undeveloped landscape and protect residents and property from the threat of fire.

(iii) Discussion

In the circumstances that the subject site is soon to be developed for urban purposes, and will, even before that, be completely surrounded by developed urban land (with the possible exception of the grassland along the adjoining rail reserve), the Panel is content to adopt the changes suggested by Mr Glossop and makes recommendations accordingly.

It is to be noted, however, that the bushfire assessment is suggested to occur as input to the Development Plan rather than be a requirement of later permit applications as appeared to be Council's preference. The Panel considers that the outcome of any such assessment is fundamental to the layout of housing and roads on the site as well as treatment of individual properties.

(iv) Conclusion and recommendation

The Panel concludes a bushfire management assessment should be a required input to the Development Plan in DPO32.

The Panel recommends:

In Clause 4 of Development Plan Overlay Schedule 32 relating to the Development Plan requirements, add the following further section:

Bushfire Management Assessment

A Bushfire Management Assessment that demonstrates:

- **The staging of development and the likely bushfire risk at each stage.**
- **An area of land between the development edge and all non-urban areas consistent with the separation distances specified in AS3959-2009 where bushfire risk is managed to enable the development, on completion, to achieve a BAL-12.5 rating under AS3959-2009.**
- **The measures to be undertaken by the developer to reduce the risk from fire within any surrounding rural or undeveloped landscape and protect residents and property from the threat of fire.**

6.3 Railway noise

(i) The issue

The issue is whether noise from the abutting Bendigo rail line is adequately addressed in DPO32.

(ii) Submissions and evidence

Rail noise impacts was an issue raised in the TfV written correspondence with Council in September 2018. TfV said:

The applicant is proposing to rezone a section of land adjoining the rail corridor. No acoustic information has been provided as part of the submission demonstrating whether acoustic treatments or urban design responses to mitigate the effects of railway noise on residents will need to be provided as part of any future submission.

The authorisation of the Amendment by DELWP also referenced rail noise. It included that the Explanatory Report needed to include a response to Clause 13.05-1S (Noise Impacts) of the Planning Scheme (as amended by Amendment VC203). The following text was included before exhibition:

Clause 13.01-1S Noise Abatement seeks to assist the control of noise effects on sensitive land uses.

Potential noise impacts from the adjoining railway will be identified and subsequently managed by requiring an acoustic report to be submitted as part of any development application for any noise affected areas. The acoustic report must consider the Victorian Passenger Rail Infrastructure Policy 2013 and address its recommendations for noise attenuation.

Following this change, DELWP indicated it had no objection to the exhibited Amendment.

Both the Council Part A submission and the Proponent's submission included information on the rail noise issue.

Mr Kane's submission noted that DPO32 requires an acoustic report that provides an assessment against the Victorian (Passenger – *sic*) Rail Infrastructure Noise Policy 2013 (Rail Noise Policy), and includes a requirement to implement any noise attenuation works. He omitted to say at what stage of the process the assessment was required. This DPO32 requirement is included in Clause 3 that relates to permit conditions and application requirements rather than Clause 4 relating to Development Plan requirements.

Mr Glossop's evidence also mentioned that an acoustic assessment for land abutting the rail corridor was required by the schedule but again omitted to say when such a report would be required.

The Council submission attached copies of the letters from various authorities including TfV, and the submission referred to the required change to the Explanatory Report. It also referred to the DPO32 Clause 3 requirement for applications for buildings and works to include an acoustic assessment as follows:

An acoustic report is to be prepared by a qualified acoustic engineer or other suitably qualified professional. The acoustic assessment report must take into consideration the Victorian Passenger Rail Infrastructure Noise Policy 2013 and address any recommendations for noise attenuation for areas above 63dba.

The Panel raised with the parties the issue of whether the acoustic assessment of rail noise should not instead be made earlier in the development process. The Panel suggested that rather than leave it to the final permit stage, it should perhaps be an input to the preparation of the Development Plan.

This led to Council referring to invited correspondence received from EPA in February 2021 about the Amendment, which had raised rail and other noise issues. That letter, which had not previously been provided to the Panel, was then supplied.

The noise matters raised in the EPA correspondence are set out in full at Section 1.2.2 of this Report. Notably, concern was expressed about levels of noise that might be received at dwellings on the site given the proximity of the rail track. EPA noted the particular noise and vibration impacts of freight trains which are believed to be in use on this line. Reference was made to the apartment noise impacts standards of Clause 58.04-3 of the Planning Scheme which were suggested might serve as a guide to the assessment. The EPA noted that additional setbacks for housing might be required in addition to design measures at the permit stage given dwellings are proposed in the Concept Plan as close as 38 metres from the centre of the nearest track. It was noted that Clause 58.04-3 refers to 135 metres from the track being a noise affected area when metropolitan freight trains use the line.

The Rail Noise Policy, referred to in the Planning Scheme and the EPA letter, sets noise rather than distance investigation thresholds for noise from passenger trains (only) where there is a land use change near an existing rail corridor. The Policy says that if the thresholds are exceeded, noise mitigation needs to be considered. The external investigation thresholds are:

- 65 dB LAeq or 85 dB LAmax for daytime (6am to 10pm)
- 60 dB LAeq or 85 dB LAmax for nighttime (10pm to 6am).

Council provided an acoustic assessment report prepared by Vipac Engineers and Scientists Limited for land to the immediate south of the subject land²¹ which is under development and which similarly abuts the rail line. That report adopted the Rail Noise Policy external investigation thresholds for rail noise and internal noise standards based on a single LAmax figure. The internal standard was said to be 'based on previous Victorian Civil and Administrative Tribunal decisions for developments near rail corridors' and the author's own experience. It was asserted that a single reading is adequate as trains are infrequent at night. The acceptable upper limits were said to be LAmax 50 dB(A) for bedrooms and LAmax 55 dB(A) for living rooms.

The report included that the measured noise showed no exceedances of the standards and records that noise levels were below LAmax 65 dB(A). It also identified that no noise measurements had been made of passing freight trains.

(iii) Discussion

The Panel considers that the rail noise issue has been somewhat underplayed for the land to date.

The Bendigo rail line passes at height above parts of the eastern boundary of the land with no acoustic barriers or bunding. The line not only carries suburban trains but also Vlocity and other fast country trains, and apparently carries freight trains.

According to EPA and the policy documents, a considerable area of the land could be noise affected – perhaps 135 metres from the centre of the nearest track.

The Panel notes the relatively low levels of train noise recorded over two days on land to the south. It is not clear why freight trains were not using the line during the investigation period and the Panel is unaware of the topography of that site and the relative height of the track there, as well as train speeds at the time (as might be affected by rail works). These are all factors which

²¹ 155 Vineyard Road

influence noise propagation. The Panel is not able to draw any conclusions about regular noise effects for the subject land from the information provided about the land to the south.

The Panel also considers that vibration impacts may also require assessment given the aged rail infrastructure.

The Panel is of the firm view that an early acoustic assessment of the land is required. As the EPA and policy indicate, the resolution of excessive noise problems may necessitate additional setbacks from the noise source as well as other changes to subdivision layout. It is clear that individual building construction and design measures can be used to reduce internal noise for dwellings but there are other more fundamental measures that can be explored as well. The issue of external noise levels at dwellings also should be considered.

Also as noted in Section 1.1(iii) of this Report, in the GRZ, the use and development of land for a single dwelling (where the lot is greater than 300 square metres in area) is exempt from planning permission. Accordingly, if building construction acoustic measures are to be employed, where subdivision of lots above 300 square metres precedes housing construction, the required acoustic building measures would need to be applied as conditions of the subdivision permission. This may present difficulties unless a general internal noise standard was adopted and applied irrespective of whatever dwelling design eventuated.

It is recorded, however, that the housing area which appears most likely to require some layout adjustment is that in the extreme south east corner of the land as other housing areas tend to be somewhat set back from the track by the proposed outfall works, open space area and the 'no go' area of cultural heritage significance.

The Panel considers that an acoustic assessment report should be required as input to the Development Plan. This would enable layout changes as required, but also allow secondary building construction acoustic measures to be applied if required at the later subdivision stage as already required by Clause 3. An early assessment could also take into account noise from the pumping station and perhaps from the main road.

At the Hearing, when the issue of earlier timing for the acoustic assessment was raised by the Panel, Council pointed to the residential requirements applying to the Development Plan at Clause 4 of DPO32 which include that there is to be an appropriately designed interface with the rail corridor. However, the Panel does not believe that this is necessarily to be understood as being directed to acoustic measures. It may simply be a reference to fencing or landscaping adjacent to the rail reserve.

Clause 3 of DPO32 which includes conditions to be applied to all permits already refers to applying the recommendations of an acoustic assessment report for 'residential land abutting the rail corridor'. This appropriately allows for second order building construction ameliorative measures. The Panel considers this to be rather imprecisely worded, however, and it should be worded to include the whole of the DPO area or a nominated distance from the nearest rail line (such as 135 metres as recommended by EPA).

Clause 3 also provides that applications for buildings and works and subdivision are required to include a professionally-prepared acoustic report which takes into account the Rail Noise Policy and addresses any recommendations for noise attenuation for areas above 63dB.

The Panel again considers that the wording of this requirement should be more precisely defined. For example is the 63dB a measure of noise across day time or night time or over a 24 hour period, or is it reference to a L_{max} reading?

(iv) Conclusion and recommendations

The Panel concludes that assessment of the acoustic environment of the land should occur earlier than proposed in the exhibited DPO32. Rather than only be undertaken at the time of development applications, an acoustic and vibration assessment should be completed before the design of the Development Plan so as to facilitate a wider range of ameliorative measures for train and other noise if necessary.

The Panel recommends:

In Clause 4 of Development Plan Overlay Schedule 32 relating to the Development Plan requirements, add the following further section:

Acoustic assessment

An acoustic and vibration assessment of how train traffic on the adjoining Bendigo-Melbourne train line affects the land including

- **the identification of internal and external acoustic standards for dwellings**
- **the measures required to alleviate any excessive noise and vibration impacts, including site layout, setbacks from the rail line, and building design measures.**

In the section of Clause 3 of Development Plan Overlay Schedule 32 relating to conditions and requirements applying to all permits, clarify the extent of the residential area where an acoustic assessment is to be undertaken and its recommendations applied.

In the section of Clause 3 of Development Plan Overlay Schedule 32 relating to conditions and requirements applying to permit applications for buildings and works and/or subdivision, clarify the areas where acoustic measures are to be applied by specifying a daytime, night time, 24 hour or L_{max} noise figure.

6.4 Melbourne Water**(i) The issue**

The issue is whether additional matters raised in Melbourne Water's correspondence and/or submission should be added to DPO32.

(ii) Evidence and submissions

The Melbourne Water letter to Council of 28 August 2018 indicated that Melbourne Water did not object to the proposal but offered advice which it 'strongly recommends' form part of DPO32 to ensure that drainage, flooding and water quality requirements are not compromised. These included that prior to any consent being given for development, including subdivision, a stormwater management strategy must be prepared and submitted for approval to Melbourne Water and Council. Detailed requirements for the strategy are set out in the letter as follows:

1. The proposed alignment for any 1 in 5 year drainage infrastructure and any associated overland flow paths directions for the 1 in 100 year ARI flood event.
2. The lot layout adequately accommodates the overland flows and the current layout and/or number of lots may need to change.
3. All new lots are to be filled to a minimum of 300mm above the 1 in 100 year flood level associated with an existing or proposed Melbourne Water pipeline and major overland flowpath; and 600mm above the 1 in 100 year flood level associated with any Melbourne Water retarding basin, waterway, wetland; whichever is greater.

4. The details of the outfall/s for the development and calculate the appropriate flow volumes and flood levels for the 100-year ARI storm event within the property.
5. The Developer must ensure adequate outfall from the site. A copy of written approval from the relevant affected parties to the satisfaction of Council for the arrangement of appropriate drainage outfall for the subdivision must be provided to Melbourne Water.
6. Prior to the commencement of works, it is necessary to control the discharge from the subdivision to the existing capacity of the downstream drainage system.
7. Any road or access way intended to act as a stormwater overland flow path must be designed and constructed to comply with the floodway safety criteria either as outlined in Melbourne Water's Land Development Manual, or where appropriate to Council's requirements and standards.
8. Stormwater runoff from the subdivision will achieve State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater.
9. All development adjacent/near a waterway must follow Melbourne Water Waterway Corridors Guidelines, extent of the waterway is subject to change upon further investigation of the site.

The letter went on to say that assets were to be constructed to Melbourne Water standards and fully funded by the developer; and that sediment laden runoff or pollution must not be discharged directly or indirectly into drains or waterways.

These matters were not addressed in full in DPO32 despite the Explanatory Report for the Amendment claiming that discussions with Melbourne Water had occurred and the Concept Plan in DPO32 accords with the agreed design requirements for the Harpers Creek corridor.

Melbourne Water's later submission in response to exhibition, while it again did not object, noted that information relating to stormwater and drainage remained very preliminary and that more detailed investigation work would need to occur prior to implementation of any of the outcomes proposed by the Amendment.

Council and the Proponent did not support the inclusion of more detailed Melbourne Water requirements in DPO32.

(iii) Discussion

The Panel itself had raised this issue of whether more of the detailed Melbourne Water requirements should be added to DPO32. While some or most of these are standard conditions, they have been applied to the circumstances of the land and perhaps should be viewed as fairly signalling what may be required in preparing a drainage and flooding management strategy for the land.

(iv) Conclusion and recommendation

The Panel is of the view that the Melbourne Water detailed requirements for a stormwater management strategy as relate to the land should be included in DPO32. The Panel has recommended accordingly. The requirements have been edited for clarity.

The Panel recommends:

In Clause 4 of Development Plan Overlay Schedule 32 relating to the Development Plan requirements, under the requirement for 'A stormwater management strategy to the satisfaction of Melbourne Water and Council' add the following:

including:

- the proposed alignment for any 1 in 5 year drainage infrastructure and any overland flow paths directions for the 1 in 100 year ARI flood event**

- a lot layout and number of lots that adequately accommodate the overland flows
- all new lots filled to a minimum of 300mm above the 1 in 100 year flood level associated with an existing or proposed Melbourne Water pipeline and major overland flowpath; and 600mm above a 1 in 100 year flood level associated with any Melbourne Water retarding basin, waterway, wetland, whichever is greater
- the details of the outfall/s for the developed land and the calculated appropriate flow volumes and flood levels for the 100-year ARI storm event within the land
- adequate outfall from the land and a copy of written approval from parties affected by the arrangement of appropriate drainage outfall for the developed land
- any road or access way intended to act as a stormwater overland flow path designed and constructed so as to comply with the floodway safety criteria either as outlined in Melbourne Water's Land Development Manual, or where appropriate to Council's requirements and standards
- stormwater runoff from the developed land that achieves State Environment Protection Policy (Waters of Victoria) objectives for environmental management of stormwater
- all development adjacent/near a waterway in accordance with Melbourne Water Waterway Corridors Guidelines.

Appendix A Document list

No.	Date	Description	Provided by
1	10 May 2022	Stormy Water Solutions flood modelling	Proponent
2	10 May 2022	Victorian Passenger Rail Infrastructure Noise Policy, 2013	Council
3	10 May 2022	Traffic Assessment Report by Traffic Consultants, June 2019	Council
4	10 May 2022	Economic Assessment Report by Dimasi and Co, May 2020	Council
5	10 May 2022	Preliminary Site Investigation Report by Ground Science, 2017	Council
6	10 May 2022	Further Council documents: a) Request to Amend Scheme including attachments (see also Exhibits 3, 4 and 5) b) Sunbury South PSP c) Sunbury HIGAP Spatial Strategy, July 2012	Council
7	13 May 2022	Council Part A submission including Section 19 responses from Melbourne Water, VicRoads and Transport for Victoria from late 2018	Council
8	17 May 2022	Stormwater Management witness report by Nina Barich, Invictus, 16 May 2022 (and slides from 23 May 2022 and design of stormwater basin)	Proponent
9	17 May 2022	Town Planning witness report by John Glossop	Proponent
10	18 May 2022	Bushfire Assessment Report by Urban Design and Management, May 2022	Proponent
11	23 May 2022	Council Part B submission	Council
12	23 May 2022	Proponent submission	Proponent
13	23 May 2022	Tracked changes on DPO Schedule by Glossop	Proponent
14	23 May 2022	Mr Seyers' submission	Lawrence Seyers
15	25 May 2022	Environment Protection Authority letter to Council 23 February 2021 (section 19 response)	Council
16	25 May 2022	Letter from Council of 22 September 2021 to owner of 155 Vineyard Road and acoustic report for that property by Vipac, 16 November 2021	Council
17	25 May 2022	Plan of proposed retarding basin fencing	Proponent
18	25 May 2022	Aerial image of site showing c.135 metres from rail line	Proponent
19	25 May 2022	Melbourne Water Shared Pathway Guidelines	Lawrence Seyers
20	25 May 2022	2011 diagram of proposed road and waterway piping through viaduct as part of permit application to Heritage Victoria by Places Victoria. Shows incorrect definition of Cultural Heritage Site	Proponent
21	7 June 2022	Email response to Panel from Council clarifying error in EPA letter, 23 February 2021	Council