

Planning and Environment Act 1987

Panel Report

Towong Planning Scheme Amendment C25



18 October 2016

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Panel Report pursuant to Section 25 of the Act

Towong Planning Scheme Amendment C25

18 October 2016

A handwritten signature in black ink, appearing to read 'M. Kirsch', with a long, sweeping horizontal stroke extending to the right.

Michael Kirsch, Chair

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List of Abbreviations

AQIAR	Air Quality Impact Assessment Report
DELWP	Department of Environment, Land, Water and Planning
DCP	Development Contributions Plan
DCPO	Development Contributions Plan Overlay
DDO	Design and Development Overlay
DPO	Development Plan Overlay
EPA	Environment Protection Authority
ESO	Environmental Significance Overlay
FZ	Farming Zone
ha	hectare
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
NECMA	North East Catchment Management Authority
NEW	North East Water
PPN37	Planning Practice Note 37 - Rural Residential Development
PPN42	Planning Practice Note 42 - Applying the Rural Zones
PUZ	Public Use Zone
RAZ	Rural Activity Zone
RGP	Regional Growth Plan
RLZ	Rural Living Zone
RUZ	Rural Zone
SLA	Statistical Local Area
SPPF	State Planning Policy Framework
TIAR	Transport Impact Assessment Report
VPP	Victoria Planning Provisions
WTP	Water Treatment Plant
WTS	Waste Transfer Station
WWTP	Waste Water Treatment Plant

Executive Summary

(i) Summary

Amendment C25 to the Towong Planning Scheme is a significant amendment that applies the Rural Living Zone to extensive areas of the Shire, particularly in the north-western area and in association with various towns. The Amendment builds on earlier amendments, including Amendments C14 and C31 that introduced planning frameworks for the Shire's rural areas and towns. It also implements various findings and recommendations drawn from two key strategic documents: the Towong Shire Rural Land Use Study 2010 and the Towong Shire Settlement Strategy 2010.

The Amendment has broad community support - reflected by the number of supporting submissions and the lack of any submissions that opposed or challenged the underlying strategic rationale on which the Amendment is based. Some submissions sought the rezoning of additional land, while others raised specific issues related to the content of the proposed overlays, buffer areas around public infrastructure and the funding of road infrastructure upgrades.

Given the lack of any submissions that fundamentally opposed the Amendment, the Panel has not formed any overarching views about its strategic merit and has instead focused on issues of detail raised in submissions. For this reason, the Panel recommends that the Amendment be adopted, subject to various changes to address specific issues.

The most significant of these changes relates to the proposed application of the Rural Living Zone Schedule 3 to the area immediately south of Tallangatta. Rural living development in this area is compromised by the need to provide buffers to various public infrastructure facilities and this issue has not been adequately dealt with in the Amendment. The Panel recommends that some of the proposed rezonings in this area not proceed until Council further investigates the need for, and extent of, buffers, and the implications of the buffers for determining which sites and areas might be suitable for rural living development.

Similar concerns were raised in relation to the proposed application of the Rural Living Zone Schedule 2 on Donaldson Street Corryong and the Panel has recommended that this rezoning be abandoned.

The Panel does not support the rezoning of additional land to the Rural Living Zone as sought in some submissions because of the lack of explicit strategic justification and the significant quantum of land that is involved. The exhibited Amendment rezones large areas for rural living and it is not clear that rezoning additional land is necessary or would be an appropriate planning outcome. Council should monitor the uptake of zoned land and, if justified, could seek to rezone additional land in the future.

One submission objected to the proposed application of the Rural Living Zone Schedule 3 in Walwa. The Panel recommends that this site be zoned Rural Living Zone Schedule 2 which has a larger minimum subdivision area. The Panel is satisfied that this will partly address the concerns raised by the submitter and is an appropriate planning outcome.

Finally, the Panel has recommended some relatively minor changes to the exhibited Design and Development Overlay Schedule 1 and the Development Plan Overlay Schedule 6. These

changes are generally consistent with the changes proposed by Council in response to submissions.

(ii) Recommendation

For the reasons set out in this Report, the Panel recommends:

Towong Planning Scheme Amendment C25 should be adopted as exhibited subject to the following:

- 1. Delete the rezoning of land from Rural Living Zone Schedule 2 to Rural Living Zone Schedule 3 on the south side of the Murray Valley Highway, south-west of Tallangatta.**
- 2. Delete the rezoning of land from Rural Activity Zone to Rural Living Zone Schedule 3 on the south side of the Murray Valley Highway, south-west of Tallangatta.**
- 3. Delete the rezoning of Lot 1 PS629163, 13 Parkhill Road Eskdale to Rural Living Zone 3.**
- 4. Delete the rezoning of Lots 1, 2 and 3 LP200992, Donaldson Road, Corryong to Rural Living Zone 2.**
- 5. Rezone Lot B PS349230, Reservoir Lane, Tallangatta (the site of the North East Water reservoir) to Public Use Zone Schedule 1.**
- 6. Rezone Lot 1 TP296821 Murray River Road Walwa to Rural Living Zone Schedule 2.**
- 7. Include the Design and Development Overlay Schedule 1 included at Appendix C of the Panel's report.**
- 8. Include the Development Plan Overlay Schedule 6 included at Appendix D of the Panel's report.**
- 9. Review the need for any consequential changes to the Planning Scheme in response to the Panel's recommendations and include them in the adopted Amendment.**

In addition to the above primary recommendation, the Panel provides the following post-adoption recommendation:

Council should review the issues discussed in the Panel's report relating to buffers for the Tallangatta Waste Water Treatment Plant and pivot irrigation site, and the Tallangatta Waste Transfer Station.

The review should assess whether buffers should be determined on the basis of Air Quality Impact Assessment Reports and whether an Environmental Significance Overlay should be applied to these buffers.

The review should be conducted in association with North East Water and the Environment Protection Authority.

The review should inform decisions about the preferred zoning and land uses in this area, including the suitability of the Rural Living Zone.

1 Introduction

Towong Planning Scheme Amendment C25 (the Amendment) was prepared by the Towong Shire Council as Planning Authority. As exhibited, the Amendment proposes to implement the recommendations of the Towong Shire Settlement Strategy 2010 and the Towong Shire Rural Land Use Study 2010 by:

- rezoning land
- applying overlays
- amending the Municipal Strategic Statement to delete Clause 22.07 (Rural Living)
- inserting a new Schedule 3 to the Rural Living Zone.

The Amendment was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 15 January 2016.

The Amendment was placed on public exhibition between 22 January and 7 April 2016 and attracted thirty two submissions, including six submissions that sought the rezoning of additional land to Rural Living Zone (RLZ) and three submissions that opposed elements of the Amendment. Twenty three submissions supported the Amendment.

At its meeting of 7 June 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 14 June 2016 and comprised Mr Michael Kirsch (Chair).

The Panel determined that a Directions Hearing was not necessary and advised Council and submitters of this in a letter dated 1 July 2016.

The Panel inspected the sites referred to in submissions on the day before the Public Hearing.

The Public Hearing was held at the Tallangatta Integrated Community Centre on 8 September 2016. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Towong Shire Council	Simon Hollis (Manager Planning) and Ron Mildren Councillor Fraser also spoke on behalf of Council.
CADC Investments Pty Ltd	James Laycock (Blueprint Planning)
Ross Moyle	
David Elder	
Peter Star	
Brian Caldwell	
Barry and Joan Elliott	Matthew Elliott (Tomkinson Group) and Martin Ireland
Justine McKenzie-McHarg	Peter O'Dwyer (EDM Group)

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

This report deals with the issues under the following headings:

- planning context
- strategic justification
- additional rezoning proposals
- buffers and sensitive uses
- Walwa rezoning
- road infrastructure funding
- overlays
- other issues.

2 The Amendment

2.1 Overview

The exhibited amendment proposes to:

- Rezone existing areas of “de facto” rural living in the western part of Towong Shire (within Towong Statistical Local Area (SLA) “A”) from Rural Activity Zone (RAZ) to Rural Living Zone (RLZ) (Refer to Figure 1).
- Rezone land in proximity to the existing settlements of Old Tallangatta, Walwa, Towong, Corryong and Eskdale (Refer to Figure 1).

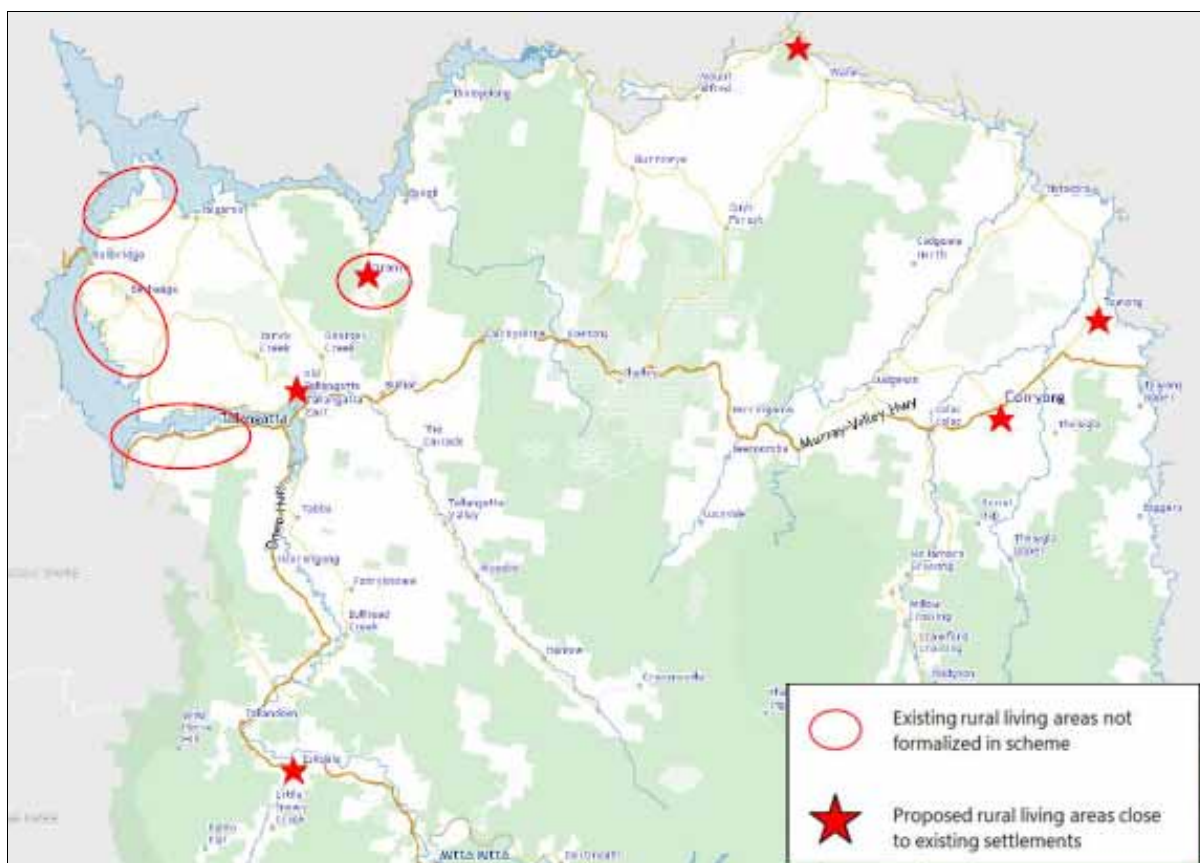


Figure 1 Location of proposed Rural Living Zone – Council submission

- Delete Clause 22.07 Rural Living. The Design and Development Overlay Schedule 1 (DDO1) and Development Plan Overlay Schedule 6 (DPO6) replace the local policy.
- Insert Schedule 3 to Clause 35.03 Rural Living Zone (RLZ3). The Schedule does not specify maximum building sizes and minimum setbacks to enable a greater range of merits based outcomes. The Schedule retains the default minimum lot size of 2 hectares and sets the minimum area for which no permit is required for a dwelling to 2 hectares.
- Amend DDO1 to enable a greater range of built form outcomes.
- Apply DDO1 to all areas proposed to be rezoned RLZ3 excluding land already subject to the DDO, land on Donaldson Street Corryong and the established part of Old Tallangatta.

- Insert a new DPO6.
- Apply DPO6 to land proposed to be zoned RLZ3, excluding land already affected by the DPO, land adjacent to Omeo Highway, Eskdale, land at Greenwattle Gap Road, Corryong, land on Donaldson Street, Corryong and the established part of Old Tallangatta.
- Apply DPO6 to land currently zoned RLZ north of Bellbridge and west of Tallangatta.

2.2 Background

Council advised that Amendment C25 has its genesis in Towong Planning Scheme Amendments C14 and C31.

Amendment C14 was approved in 2006 and translated the Rural Zone (RUZ) into the suite of new rural zones introduced at that time. That Amendment also applied the RLZ to limited areas of “*de facto*” rural living subdivision. The Amendment attracted a number of submissions that were considered by a Panel. That Panel generally supported the RLZ elements of the Amendment, concluding that:

The introduction of the RLZ via Amendment C14 can be characterised as a “toe in the water exercise”. As discussed earlier, the Scheme does not currently include the RLZ and anecdotal evidence suggests that the rural residential market has largely been satisfied through the creation of small lots within the current RUZ. Amendment C14 seeks to address this issue and the Panel supports Council efforts to direct rural residential development to appropriate locations that are suitably zoned.

Nevertheless, Amendment C14 is a limited and interim response to these issues until a more thorough analysis is undertaken. During the course of the Hearing Council acknowledged the need for a comprehensive rural residential strategy and the Panel believes that this should be a priority project.

Council subsequently completed the Towong Shire Rural Land Use Study 2010 and Towong Shire Settlement Strategy 2010.

The Rural Land Use Study provided a planning framework for managing the Shire’s rural areas, including rural living areas.

The Settlement Strategy identified opportunities for rural living rezonings in the western area of the Shire (SLA A) and in association with various towns. It recommended a range of specific RLZ rezonings and consequential changes to the Towong Planning Scheme.

These studies were implemented through Amendment C31 that introduced a new Municipal Strategic Statement (MSS). This amendment was approved in 2014 without the need for a panel hearing.

Amendment C25 was also informed by other studies, including:

- Landscape Scale Land Capability Assessment 2015
- Economic and Land Use Change in Western Towong Shire.

3 Planning Context

This chapter provides an overview of the policy context for the Amendment and highlights the relevant policy framework, planning scheme provisions and other material considered by the Panel.

3.1 Policy framework

(i) State Planning Policy Framework

The Panel has had regard to the following elements of the State Planning Policy Framework (SPPF):

- Clause 11.05-3 (Rural productivity) which includes the objective *“To manage land use change and development in rural areas to promote agriculture and rural production.”*
- Clause 11.05-4 (Regional planning strategies and principles) which includes the objective *“To develop regions and settlements which have a strong identity, are prosperous and are environmentally sustainable.”*
- Clause 11.10 (Hume regional growth) which identifies *“Strategic agricultural land”*¹ and includes the strategy *“Avoid encroachment from rural residential settlement and other land uses that are non-complementary to agriculture in areas identified as strategic agricultural land and direct proposals for settlement to existing centres and townships.”*
- Clause 11.10-4 (Infrastructure) which includes the strategy *“Provide for appropriate settlement buffers around sewerage treatment areas, solid waste management and resource recovery facilities and industrial areas to minimise potential impacts on the environment such as noise and odour.”*
- Clause 14.01-1 (Protection of agricultural land) which includes the objective *“To protect productive farmland which is of strategic significance in the local or regional context.”*
- Clause 14.01-2 (Sustainable agricultural land use) which includes the objective *“To encourage sustainable agricultural land use.”*
- Clause 16.02-1 (Rural residential development) which includes various strategies including:

Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.

Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.

Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.

¹ Map 6 – Hume Regional Growth Plan

- Clause 19.03-5 (Waste and resource recovery) which includes the strategy “*Ensure buffers for waste and resource recovery facilities are defined, protected and maintained.*”

(ii) Local Planning Policy Framework

Municipal Strategic Statement

The Panel has had regard to the following elements of the Municipal Strategic Statement (MSS):

- Clause 21.02-5 (Rural Land Use Planning) which identifies three rural planning units within the Shire:
 1. *Production Towong – this includes areas of farmland of strategic significance containing high quality agricultural land where agriculture and food production has primacy and where protection of agricultural land is paramount;*
 2. *Transitional Towong - being agricultural land of low to moderate quality where diverse land use planning outcomes are encouraged; and*
 3. *‘Peri Urban’ Towong - being land essentially located within the 40min travel/commute contour of nearby Albury – Wodonga where rural residential development is to be encouraged.*
- Clause 21.03-1 (Rural Residential Development) which includes the following commentary:

Rural living is the dominant land use in lakeside areas to the south of Bellbridge, near Tallangatta and in the Bethanga Creek catchment and it is increasingly evident that grazing at the scale traditionally undertaken in these areas has become comparatively less viable than it has been in the past. A clear response to decreasing viability has been a growth in demand for rural lifestyle options.

The retreat of traditional agriculture as a land use from the western Towong Shire landscape has been significant, sustained and appears inexorable. It is clear that there is progressive shift away from traditional full time farming and associated production-based land uses to a new multi-functional land use pattern with residents that commute to the nearby urban centre for employment. Much of western Towong Shire is closer to the central business districts of Albury and Wodonga than other key commuter centres and affords excellent scope for additional rural living opportunities.

The Towong Shire Settlement Strategy (2010) represents a study of the future needs for residential and rural based living in the Towong Shire. The Strategy identifies residential and rural living opportunities within the Shire and recommends the provision of additional residential and rural living opportunities adjacent to existing towns and further rural living opportunities, particularly in the western part of the Shire.

- Clause 21.03-4 (Strategies and Implementation) which includes “actions” to apply the RLZ in Corryong, Tallangatta, Bethanga, Cudgewa, Dartmouth, Eskdale, Granya, Mitta Mitta, Towong and Walwa. These rezonings are shown on Structure Plans for Corryong, Tallangatta and Bellbridge and are described in text for the other towns. It also includes “actions” to apply the RLZ to the Bethanga Peninsular, in particular the Bethanga Creek catchment, Talgarno Park and lakeside areas south of Bellbridge. These rezonings are drawn from the Towong Shire Settlement Strategy.

In each instance the rezoning of land is to occur in areas characterised by:

- *Proximity to existing settlements;*
- *Existing supporting infrastructure;*
- *Absence of environmental hazards;*
- *Absence of strategically important agricultural land;*
- *Rural residential use of the land (is) the prevailing dominant land use.*

The clause also includes “actions” relating to the DDO and DPO that are implemented in the Amendment.

The clause includes the “general strategic action”:

Implement the recommendations of the Towong Shire Settlement Strategy (2010), in particular the provision of additional rural living opportunities adjacent to existing towns and in the western part of the Shire.

The “strategic actions” for Corryong and Tallangatta include:

Provision of appropriate separation distances from the wastewater treatment facility utilising recommended EPA approved buffer distances to avoid adverse impacts from residual odour emissions.

- Clause 21.05 (Economy) which includes the “strategic action”:
Implement the recommendations of the Towong Shire Settlement Strategy (2010), including:
 - *Rezonings in accordance with the individual town Structure Plans; and*
 - *Provision of additional rural living opportunities in the western part of the Shire and adjacent to existing towns.*

Local Planning Policies

Clause 21.07 (Rural Living) applies to land zoned RLZ and includes various objectives and policies relating to rural living applications. Amendment C25 proposes to delete this policy and replace it with a revised DDO1 and a new DPO6.

3.2 Planning scheme provisions

3.2.1 Rural Living Zone

The “purposes” of the RLZ are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To provide for residential use in a rural environment.

To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.

To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.

To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The Towong Planning Scheme currently applies the RLZ Schedules 1 and 2. The RLZ1 and RLZ2 have minimum subdivision areas of 8 and 4 ha respectively.

3.2.2 Design and Development Overlay

The Amendment proposes to modify the existing DDO1 (Rural based living development) to incorporate material drawn from Clause 22.07 (Rural Living) that is to be deleted. This is consistent with the “strategic actions” in Clause 21.03 (Settlement).

The “purposes” of the DDO are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To identify areas which are affected by specific requirements relating to the design and built form of new development.

3.2.3 Development Plan Overlay

The Amendment proposes to introduce a new DPO6 (Rural Living Zone), consistent with the “strategic actions” in Clause 21.03 (Settlement).

The “purposes” of the DPO are:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.

To exempt an application from notice and review if it is generally in accordance with a development plan.

3.3 Planning Practice Notes

Planning Practice Note 37 - Rural Residential Development

The purpose of Planning Practice Note 37 - Rural Residential Development (PPN37) is to provide guidance when planning for, or assessing proposals for rural residential use and development.

Council provided a detailed assessment of the Amendment against PPN37 in accordance with a direction from the Panel. Mr Hollis submitted that the Amendment implements the detailed “actions” described in the current Planning Scheme and is consistent with the “overall strategic planning of the municipality and is explicitly recommended by the Settlement Strategy and the Rural Land Use Study”.

Planning Practice Note 42 - Applying the Rural Zones

The purpose of Planning Practice Note 42 - Applying the Rural Zones (PPN42) is to provide guidance to planning authorities about:

- *the strategic work required to apply the Farming Zone, Rural Activity Zone, Rural Conservation Zone, Green Wedge Zone, Green Wedge A Zone and Rural Living Zone*
- *the purposes and features of each zone and where they may be applied.*

Council provided a detailed assessment of the Amendment against PPN42 in accordance a direction from the Panel. Mr Hollis submitted that the Amendment implements the detailed “actions” described in the current Planning Scheme and that the RLZ is “the most appropriate zone to achieve Council’s rural strategic planning objectives”.

3.4 Discussion

The Panel’s assessment of the policy context confirms Council’s submission that the exhibited RLZ rezonings implement specific rezoning actions that are foreshadowed in the MSS and drawn from the Rural Land Use Study and the Settlement Strategy. For this reason, the Panel agrees that the broad strategic justification for the rezonings is provided by the existing MSS provisions, supported by the background reports. This is discussed further in chapter 4.1 of this report.

The policy support for submissions that sought the rezoning of additional land, particularly proposals to rezone large areas in the west of the Shire (Talgarno Park, and the general Talgarno and Bethanga areas), is less clear. These issues are discussed in chapter 4.2 of this report.

Other detailed issues raised in submissions are also relevant to the policy context, including:

- the impacts of sensitive use buffers, specifically in relation to the proposed Corryong and Tallangatta rezonings (discussed in chapter 4.3 of this report)
- the proposed Walwa rezoning (discussed in chapter 4.4 of this report)
- the funding of road infrastructure associated with future rural living development (discussed in chapter 4.5 of this report).

Overall, the Panel is satisfied that the Amendment is generally supported by, and implements, the relevant sections of the State and Local Planning Policy Frameworks, subject to the findings and recommendations about specific issues raised in submissions and discussed in this report.

4 Discussion

4.1 Strategic justification

Amendment C25 seeks to rezone substantial areas within the Shire to RLZ as highlighted by the following tables provided by Council.

Table 2 Council’s calculation of the area of “de facto” rural living areas being rezoned

Table 1: Property analysis of existing ‘de facto’ rural living areas to be rezoned by Amendment C25			
Proposed Area	Size of Proposed Area (ha)	Proportion of properties <20ha	Proportion of Properties with a dwelling
Lakeside / Bethanga	2275	69%	73%
Granya	387	77%	38%
Talgarno	942	49%	81%
Tallangatta	781	60%	73%

Table 3 Council’s calculation of the areas adjacent to existing settlements being rezoned

Table 2: Indicative lot yields from proposed rural living areas adjacent to existing settlements			
Area	Total Area (ha)	Approximate Developable Area (ha)*	Approximate Lot Yield
Old Tallangatta	33	6	3
Walwa	21	11	5
Towong	67	44	22
Corryong	51	12	6
Eskdale	63	11	5

*Proportion of nominated area not already developed and clear of physical constraints

Although these areas are substantial and will provide a significant level of supply, the Panel notes that:

- the rezonings are generally consistent with the recommendations of the Rural Land Use Study and the Settlement Strategy
- the rezonings are generally consistent with specific rezoning “actions” detailed in the MSS
- there were no submissions to Amendment C25 that challenged the strategic basis for the quantum of the proposed rezonings, in fact, most submissions expressly supported Council’s policies for the Shire’s rural areas and the proposed application of the RLZ.

Mr Hollis submitted that the issues raised in submissions are issues of detail rather than broad strategic issues, and that the strategic justification for the Amendment has not been challenged.

The Panel agrees with Council's submission that the strategic justification for the Amendment exists in the rezoning actions and other material detailed in the MSS, and approved by way of Amendment C31. For this reason (and because of the absence of any objecting submissions), the Panel has not assessed the strategic justification or merits of the Amendment from 'first principles'.

Nevertheless, the Panel has taken into account the quantum of land being rezoned and the potential lot yield in its consideration of submissions that sought the rezoning of additional land beyond those areas specifically identified in the MSS and the background reports. These submissions are discussed in the following chapter.

4.2 Additional rezoning proposals

4.2.1 The issue

The issue is whether additional land should be zoned RLZ as part of Amendment C25.

Various submitters sought the rezoning of additional land, beyond the areas included in the exhibited Amendment.

Mr Hollis advised that Council explicitly supported the Elliott (Talgarno Park) and Thelma Moyle (Tallangatta) submissions, and that it sought the Panel's advice on the merits of the other requests.

4.2.2 Elliott submission

(i) Submissions

Barry and Joan Elliott sought the rezoning of the northern area of Talgarno Park to RLZ3. They were represented at the Hearing by Matthew Elliott (Tomkinson Group) and Martin Ireland.

Talgarno Park comprises approximately 470 hectares of cleared farming land located in the north-west of the Shire. It is bounded on three sides by Lake Hume and is zoned Rural Activity Zone (RAZ). The southern section of the property is within a broader area that is proposed to be zoned RLZ3 in the exhibited Amendment. The northern area is to retain the Rural Activity Zone. Mr M Elliott provided an overview of the property and highlighted various features that he submitted made it suitable for rural living development. Mr Ireland submitted that the RLZ3 should apply to all of the property and that this would be consistent with the Hume Regional Growth Plan, Municipal Strategic Statement (MSS) and Planning Practice Notes 37 (Rural residential development), 42 (Applying the rural zones) and 55 (Planning in open drinking water catchments). Mr M Elliott also provided and relied upon an engineering report prepared by Tomkinson Group that assessed various development issues and concluded that the site could be suitably serviced for rural living development.

Council supported the rezoning of the remainder of the property and advised that:

Land at the Talgarno Park Peninsula was not initially included in Amendment C25 because previous discussions with the land owner indicated that they had no intention developing the land for rural living purposes even if it were to be rezoned and wanted to retain the land in agricultural production. Council respected this advice from the land owners and decided to not include the land in the Amendment. The land in question contains some of the best rural living land within Towong Shire with varied topography and water views on three sides of the small peninsula. Because the property comprises some of the finest rural living land in (the) municipality, Council is particularly keen to have it included in Amendment C25, given the submission of the land owner received during the Amendment exhibition period.

(ii) Discussion

There were no objections to the exhibited rezoning of the southern area of Talgarno Park and the Panel has not formed any views about the merits of that proposal.

In relation to extending the rezoning to the northern area of the property, the Panel raised various issues about this proposal before and during the Hearing, including:

- whether there should be some form of further notification
- the potential lot yield of the site under the RLZ3
- whether the rezoning was consistent with the Towong Shire Settlement Strategy.

Further notification

Mr Hollis advised that the issue of further notification had been raised with the regional office of DELWP which had advised that further notification was not necessary. Mr Ireland submitted that because the site was bounded by Lake Hume there were no adjoining 'landowners' and consequently no need for further notification.

The Panel believes that if this rezoning was to proceed, Council should seek comment from Goulburn-Murray Water and the North East Catchment Management Authority. These agencies might have an interest in the rezoning given the extensive interface with Lake Hume.

Lot yield

During the Hearing, the Panel asked Council and the proponent about the area of the northern part of the property and the potential lot yield under the RLZ3. Neither the landowners nor Council had calculated the possible lot yield, although Mr M Elliott provided a set of broad concept layout plans.

Following the Hearing, Council advised that the site is approximately 270 hectares, however:

The Wastewater Code of Practice (EPA publication 891.4) waterway setbacks (100m which may be reduced by 50m in some instances) and the Lake Hume setbacks (300m from FSL which may be reduced to 150m in some instances) will considerably reduce the developable part of this property.

Although the Panel accepts that various constraints will limit the potential lot yield of the site, it is still a large area of land, and it is not clear why it should be rezoned given the significant quantum of land being rezoned in the immediate area and elsewhere in the Shire.

Towong Shire Settlement Strategy

During the Hearing the Panel noted that the Settlement Strategy described Talgarno Park as a “*medium to longer term (rezoning) exercise*”. The Strategy noted that “*agriculture remains the dominant land use, and there is little evidence of rural living*”, although it also noted that “*despite the lack of existing rural living, the fundamental elements of an excellent rural living area exist at the site*”.

As noted earlier, the site was not included in the Amendment because of Council’s understanding that the owners were not interested in developing the site. In light of the owners’ submission to the Amendment seeking its rezoning, Council changed its position. Mr Hollis and Mr Ireland submitted that, in any event, the rezoning was consistent with the MSS, “*action*”:

The application of Rural Living Zone to areas indicated for rezoning by the Towong Shire Settlement strategy (2010), including:

Bethanga Peninsular, in particular:

- *Bethanga Creek catchment*
- *Talgarno Park*
- *Lakeside areas south of Bellbridge.*

They submitted that the reference to “*Talgarno Park*” justified the rezoning of the entire property as part of Amendment C25.

The Panel places more weight on the reference in the Settlement Strategy that describes the rezoning as a “*medium to longer term exercise*”, although the Strategy does not provide a specific timeline for its rezoning. In this context, it is not clear why the rezoning should proceed now, rather than in the future, particularly given the extensive areas being rezoned by the Amendment.

(iii) Conclusion

As discussed earlier, there were no submissions that opposed the exhibited rezoning of the southern area of Talgarno Park and consequently the Panel has not formed any views about its merits. However, the Panel does not support the rezoning of the northern area as now sought by the Elliotts and Council.

Although this area has characteristics that would be attractive for rural living development, the Panel notes that:

- Talgarno Park is identified in the Settlement Strategy as a medium to longer term, rather than an immediate, option
- the site is not a de facto rural living area
- the site is productively used for agriculture
- the development of this site, while subject to a number of constraints, would add to a significant supply of zoned land that will be created by the Amendment.

For these reasons, the Panel believes that the rezoning of this site is premature, although it acknowledges that it might be a suitable rezoning candidate in the future. The timing of any future rezoning would be partly contingent on the take-up of land being rezoned as part of the Amendment - a matter that Council should monitor.

4.2.3 Star submission

Submissions

Peter Star supported the Amendment and submitted that *“in the near future”* the RLZ3 should be extended to cover a broader area in the north and west of the Shire. Mr Star also indicated that he was *“sceptical”* about the initial take-up of zoned land.

Mr Hollis advised that Council was not opposed to the submission and believed that including this area *“would not be inconsistent with the LPPF and State Planning Policy, particularly the RGP”*. Mr Hollis also noted that the Amendment is *“quite generous”* in the amount of land being rezoned.

(i) Discussion

Mr Star’s submission described the area that he proposed for rezoning in general terms, leading the Panel to request a map that identified the area/s. This was not provided at the time of submitting this report, making it difficult to comment on this submission.

Nevertheless, the discussion at the Hearing indicated that the additional areas were very extensive and would add significantly to the supply of zoned land. In light of the extensive areas being rezoned by the Amendment, it is not clear why additional land is necessary either now or in the near future.

In addition, the rezoning of a significant area/s of additional land would require exhibition to provide interested parties (including land owners) with the opportunity to comment on the proposals.

For these reasons, the Panel does not support the rezoning of additional land as sought by Mr Star.

4.2.4 Other submissions

(i) Submissions

Thelma Moyle sought the rezoning of Lot 2 PS 30018 (Tallangatta) to RLZ3 and provided background information relating to buffer areas and previous planning decisions.

John and Rhonda Maddock supported the Amendment including the rezoning of land owned by them. They also sought the rezoning of additional land (CA 7 Sec 10 Parish of Beethang) that they owned. Mr Hollis advised that Council *“does not oppose the inclusion of the portion of the additional land external to the Bushfire Management Overlay”*.

Anthony Nichol sought the rezoning of land on Lake Road Bethanga to RLZ3. Mr Nichol submitted that this site is in close proximity to Albury Wodonga, has good access from Lake

Road and has suitable slope. He submitted that the land has similar attributes to “*land which is included in Amendment C25 such as high amenity and Lake Hume views*”.²

Des Packer supported the Amendment and sought the rezoning of land along Springdale Road between the Lake Road intersection and Bethanga to RLZ3. Mr Packer submitted that this area has a number of characteristics that make it more suitable for development than other areas included in the Amendment.

Mr Hollis advised that Council “*unequivocally*” supported the T Moyle submission and that it sought the Panel’s advice in relation to the other proposals.

(ii) Discussion

These rezonings were not included in the exhibited Amendment and potentially interested parties have not had the opportunity to comment on them³

Rezoning additional land would also add to the significant supply of zoned land that will be provided by the Amendment and there is no clear strategic basis on which additional rezonings should be supported as part of Amendment C25.

For these reasons, the Panel does not support these submissions and has not formed any views about the merits of the proposals. If Council supports these rezonings they should be pursued through a future amendment.

The T Moyle submission also raised other issues that are discussed in the following chapter.

4.3 Buffers and sensitive uses

4.3.1 The issue

The issue is whether the exhibited Amendment and the zoning changes proposed by Council and submitters adequately respond to the need to provide buffers between existing facilities with “*adverse amenity potential*” and “*sensitive uses*” that will be facilitated by the proposed application of the Rural Living Zone.

The relevant facilities include the:

- Tallangatta Waste Water Treatment Plant (WWTP) (subject to a “*Notional Sewerage Treatment Plant Buffer*” in the Tallangatta Structure Plan, Clause 21.03)
- Tallangatta pivot irrigation site (not subject to a specific buffer in the Tallangatta Structure Plan, Clause 21.03)
- Tallangatta Waste Transfer Station (WTS) (not subject to a specific buffer in the Tallangatta Structure Plan, Clause 21.03)
- Corryong WWTP (subject to a “*Sewerage Treatment Plan Buffer (700m)*” in the Corryong Structure Plan, Clause 21.03)
- Corryong Pivot Irrigation site (subject to a “*Pivot Irrigator Buffer (100m)*” in the Corryong Structure Plan, Clause 21.03)

² Mr Nichol lodged a supplementary submission in which he advised that he did not want to have the matter considered by the Panel.

³ Mr Hollis advised that Council had consulted with various parties about the T Moyle rezoning.

- Eskdale Water Treatment Plan (WTP) (not subject to a specific buffer in the Planning Scheme).

4.3.2 Submissions

The Environment Protection Authority (EPA) raised general concerns about residential encroachment on existing infrastructure, particularly the Tallangatta and Corryong Waste Water Treatment Plants (WWTP). The EPA recommended that Council:

... consider the impacts of C25 on existing infrastructure across the shire to ensure that adequate and enforceable separation distances are included with the Amendment.

North East Water (NEW) opposed the rezoning of land associated with or in proximity to the Tallangatta and Corryong WWTPs, the Tallangatta pivot irrigation site and the Eskdale WTP, including:

- Lot 1 LP88895, Corner of Tallangatta Lookout Road and Murray Valley Highway, Tallangatta
- Lot 2 PS300118, Tallangatta Lookout Road, Tallangatta
- Lot 1 PS442420, 622 Bryants Gap Road, Tallangatta
- Lots 1 and 2 PS622821, Murray Valley Highway, Tallangatta
- Lots 1, 2 and 3 LP200992, Donaldson Road, Corryong
- Lot 1 PS629163, 13 Parkhill Road, Eskdale.

NEW submitted that the protection of its assets *“is critical to current and long-term operation to service communities”*. NEW requested that *“the protection of its assets be included in the Amendment”* and offered to supply maps to assist in defining buffers through overlays and building envelopes.

James Laycock (Blueprint Planning) submitted on behalf of CADC Investments Pty Ltd. Mr Laycock submitted that:

- the Amendment should include Environmental Significance Overlay (ESO) buffers around the Tallangatta WWTP and the Tallangatta WTS
- the buffers should be informed by an Air Quality Impact Assessment Report (AQIAR) to determine the appropriate extent of the ESO and RLZ areas.

Mr Laycock reinforced the need for an ESO on the basis that a dwelling does not always require a permit in the RLZ, but does require a permit in the RAZ.

Mr Laycock concluded that the Tallangatta rezonings should be abandoned until the buffer issues are more fully investigated and an appropriate ESO is introduced.

Ross Moyle supported the exhibited RLZ3 rezoning of his land on the south-east corner of the Murray Valley Highway and Reservoir Lane intersection. This site is to the east of the Tallangatta WWTP.

Thelma Moyle sought the rezoning of additional land that abuts the eastern and southern boundaries of the Tallangatta WWTP to RLZ3.

Council proposed a number of changes to the Amendment in order to address the specific concerns raised by NEW. These included deleting the rezoning of the following sites from the exhibited Amendment:

- Land within Tallangatta wastewater treatment facility odour buffer (part Lot 1 LP88895 and Lot 2 PS300118)
- Lot 1 LP200992 Donaldson St Corryong which is adjacent to the Corryong wastewater irrigation infrastructure
- Lot 1 PS629163 (Parkhill Road Eskdale) which contains North East Water water supply infrastructure.

Mr Hollis advised that these changes were supported by NEW and addressed the relevant elements of its submission. On this basis he concluded that the buffer issues associated with the NEW facilities had been addressed.

In relation to the Thelma Moyle submission, Mr Hollis advised that “Council strongly supports the inclusion of the requested land external to the wastewater facility odour buffer”.

4.3.3 Discussion

(i) Tallangatta

A number of submitters raised issues about the proposed RLZ3 rezonings on the south side of the Murray Valley Highway, Tallangatta (Refer to Figure 2). These concerns related to allowing sensitive uses in proximity to the WWTP, pivot irrigation site and WTS. There was also a submission that sought an extension to the area proposed to be rezoned.

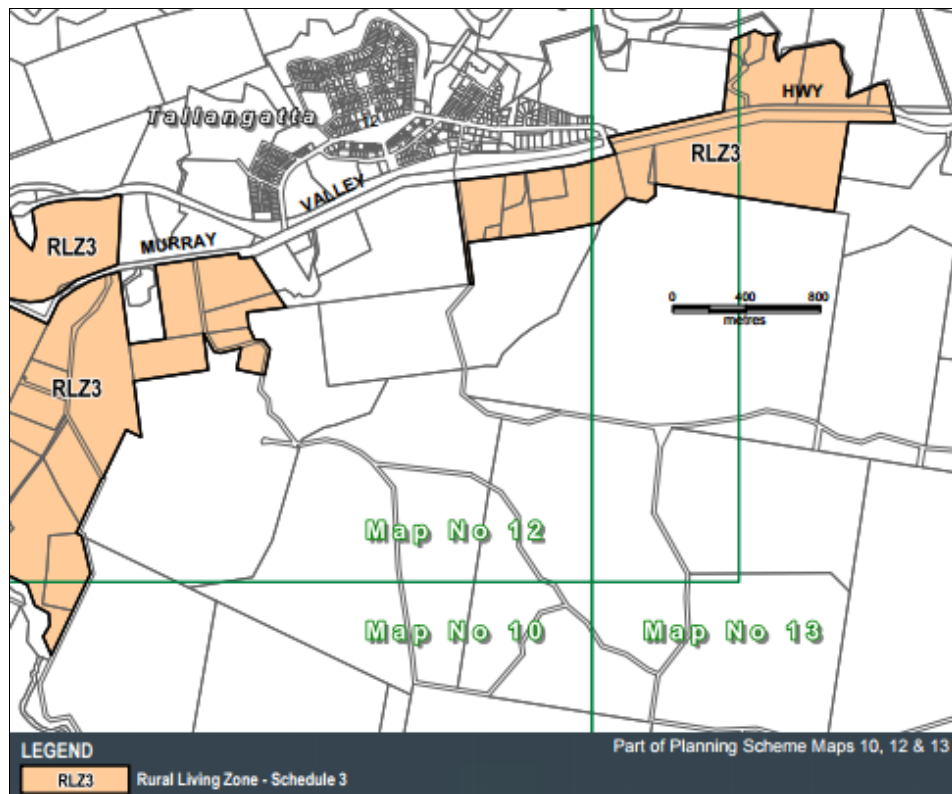


Figure 2 Exhibited RLZ3 – South of the Murray Valley Highway, Tallangatta

Council responded to these submissions by proposing to:

- rezone part of Lot 2 PS30018 to RLZ3 (the T Moyle property)
- delete the RLZ3 rezoning of land within the WWTP buffer (part Lot 1 LP88895 and Lot 2 PS300118).

This element of the Amendment raises a number of issues, including:

- the need to buffer the WWTP and pivot irrigation site
- whether a buffer should be provided to the WTS.

Waste Water Treatment Plant and pivot irrigation site buffers

A WWTP buffer is identified on the Tallangatta Structure Plan and is accompanied by the strategic action:

- *Provision of appropriate separation distances from the wastewater treatment facility utilising recommended EPA approved buffer distances to avoid adverse impacts from residual odour emissions.*

The Settlement Strategy also includes a WWTP buffer, but it appears that this buffer is inconsistent with the Structure Plan buffer⁴. The Settlement Strategy recommended that the buffer be protected by an Environmental Significance Overlay (ESO).

Mr Hollis provided a plan prepared by NEW that identified generic buffer areas based on EPA Guidelines for the WWTP and pivot irrigation site. This WWTP buffer does not appear to be consistent with the buffer in the Tallangatta Structure Plan and there is no pivot irrigation site buffer shown on the Structure Plan.

Mr Hollis also advised that NEW is gathering data that will enable it to refine the WWTP buffer.

The Panel is mindful of State and local policies relating to buffer areas, including:

- Clause 11.10-4 (Infrastructure) which includes the strategy *“Provide for appropriate settlement buffers around sewerage treatment areas, solid waste management and resource recovery facilities and industrial areas to minimise potential impacts on the environment such as noise and odour.”*
- Clause 19.03-5 (Waste and resource recovery) which includes the strategy *“Ensure buffers for waste and resource recovery facilities are defined, protected and maintained.”*

There are similar policies in the LPPF.

In light of these policies, it is clear that protecting the integrity of the WWTP buffer is a key factor in determining suitable zones and land uses in this area, and regulating the establishment of sensitive uses. While the existing Structure Plan buffer provides a useful starting point, a more accurate buffer (by way of an Air Quality Impact Assessment Report⁵) would provide a more definitive basis on which to define a suitable buffer area and to identify areas that might be suitable for rural living.

⁴ The scale and drafting of the plan (Figure 65) make it difficult to read.

⁵ As submitted by Mr Laycock.

As Mr Hollis advised, NEW is gathering data that will enable it to more accurately refine the extent of the buffer and the Panel supports this approach. The Panel also believes that Council should give further consideration to whether this and other buffers should be protected by an ESO as recommended in the Settlement Strategy and as sought in some submissions.

NEW also operates a pivot irrigation facility to the south-west of the WWTP and opposed the rezoning of adjacent land because of odour and wind drift concerns. NEW subsequently withdrew its objection on the basis of Council's advice that the sites were already in the RLZ. It is not clear whether NEW understood that the change in zone schedule would reduce the minimum subdivision area from 4 ha to 2 ha, potentially increasing the dwelling density.

Consistent with its views about the WWTP buffer, the Panel believes that the need to provide a suitable buffer to the pivot irrigation site is an important factor in determining suitable land uses and zones in this area. The extent of any buffer and how it might be protected and managed are issues that require further consideration by Council, in conjunction with NEW and the EPA.

In light of these issues, the Panel does not believe that any rezonings that will facilitate sensitive uses in the general vicinities of the WWTP and pivot irrigation site should proceed until further analysis of suitable buffer areas and controls is undertaken. Whether or not these analyses require an Air Quality Impact Assessment Report as sought by Mr Laycock is a matter for Council and the agencies.

Council Waste Transfer Station

Council operates a WTS on Hardys Road, Tallangatta that is bounded on three sides by land proposed to be zoned RLZ3 in the exhibited Amendment.

Mr Hollis advised that there is no formal buffer to the WTS in the Planning Scheme and that Council does not have a view about whether a buffer is required.

The Panel's reading of Clause 52.10 (Uses with adverse amenity potential) indicates that a buffer is likely to be required for a WTS. The extent of the buffer and how it should be managed are matters that require further consideration by Council, possibly in association with the EPA.

In the absence of this analysis, the Panel does not believe that any rezonings in the general vicinity of the WTS that will facilitate sensitive uses should proceed.

Thelma Moyle submission

This property abuts the eastern and southern boundaries of the WWTP and is partly within the buffer area identified by NEW, but largely outside the "notional" buffer area in the Structure Plan. Council supported rezoning the part of the property that is outside the NEW buffer area to RLZ3.

Mr Hollis advised that this site had not been considered for rezoning when the Amendment was prepared because it had been under consideration for a future DELWP depot and that the proposal had not proceeded.

As discussed earlier, the Panel does not support the rezoning of land in the general vicinity of the WWTP until Council undertakes further analysis of suitable buffer areas and controls in conjunction with NEW and the EPA. This includes the property referred to in this submission, all of which is within approximately 600 metres of the boundary of the WWTP.

The Panel also notes that Council's proposal to rezone part of the property would result in two zones applying to the lot, a practice that is not typically supported by Panels or DELWP.

Which areas should not be rezoned

During the Hearing, the Panel raised various buffer issues associated with infrastructure facilities in this area and foreshadowed that a possible Panel recommendation was to retain the current zoning until further work is done on the extent of the buffers.

In this context, the Panel invited Mr Hollis to identify (on a without prejudice basis) an area where the current zones might be retained, potentially on an interim basis. Mr Hollis declined the opportunity to do so, advising that Council did not intend to change its position on which land should be rezoned.

The Panel has considered which areas might be affected by revised buffers to the WWTP and pivot irrigation site, and by a new buffer to the WTS. The Panel has taken a relatively cautious approach to this, given that extensive areas are being rezoned RLZ throughout the Shire and there will be a significant supply of zoned land to offset any rezonings that do not proceed as part of Amendment C25. The Panel also notes that a comprehensive review of the buffer issues in this area might enable the rezoning of these sites in the future.

In this context, the Panel believes the following RLZ3 rezonings on the south side of the Murray Valley Highway, Tallangatta should not proceed at this time:

- The existing RLZ2 area to the south-west of Tallangatta. Development of this area is potentially compromised by the pivot irrigation site and the WTS. Under the current RLZ2 it can be subdivided into 4 ha lots, while the proposed RLZ3 would allow 2 ha lots and potentially an increase in development density.
- The existing RAZ area to the south-west of Tallangatta. This area straddles the WTS and includes land that abuts the WWTP (Council has agreed to remove this land from the Amendment). This is not a large area, but is potentially compromised by buffer issues.

The Panel is satisfied that the exhibited rezonings to the east of Reservoir Road can proceed (including Mr R Moyle's), given the distance of this area from the WWTP site (approximately 520 metres at its closet point). However, it does not support the rezoning of Mrs T Moyle's property to the west of Reservoir Road.

NEW Reservoir

NEW opposed the rezoning of its reservoir at Lot B PS349230, Reservoir Lane, Tallangatta from RAZ to RLZ. NEW requested that the site be zoned Public Use Zone 1 instead of RLZ3.

Mr Hollis advised that this had been agreed to, but it was not specifically listed in Council's table of proposed changes.

The Panel supports the zoning of this site to PUZ1, rather than RLZ3. This rezoning would correct a zoning anomaly and does not raise any notification issues.

Conclusion

The treatment of buffer issues to the south of Tallangatta was a particularly weak element of the Amendment and the proposed RLZ3 rezonings should not have proceeded in the absence of a more thorough analysis of buffer issues. While the Panel understands that Council is seeking to facilitate development, the benefits accruing from the provision of a relatively small number of rural living lots needs to be weighed against the potential costs of compromising the ongoing operation and future expansion of multi-million dollar public infrastructure assets.

As well as recommending that rezonings in this area not proceed, the Panel also recommends that Council further investigate the buffer issues with NEW and the EPA, and to develop an appropriate planning scheme response, potentially including an ESO.

(ii) Corryong

NEW objected to the rezoning of three lots adjoining the Corryong WWTP from Farming Zone (FZ) to RLZ2 that was included in the exhibited Amendment (Refer to Figure 3).

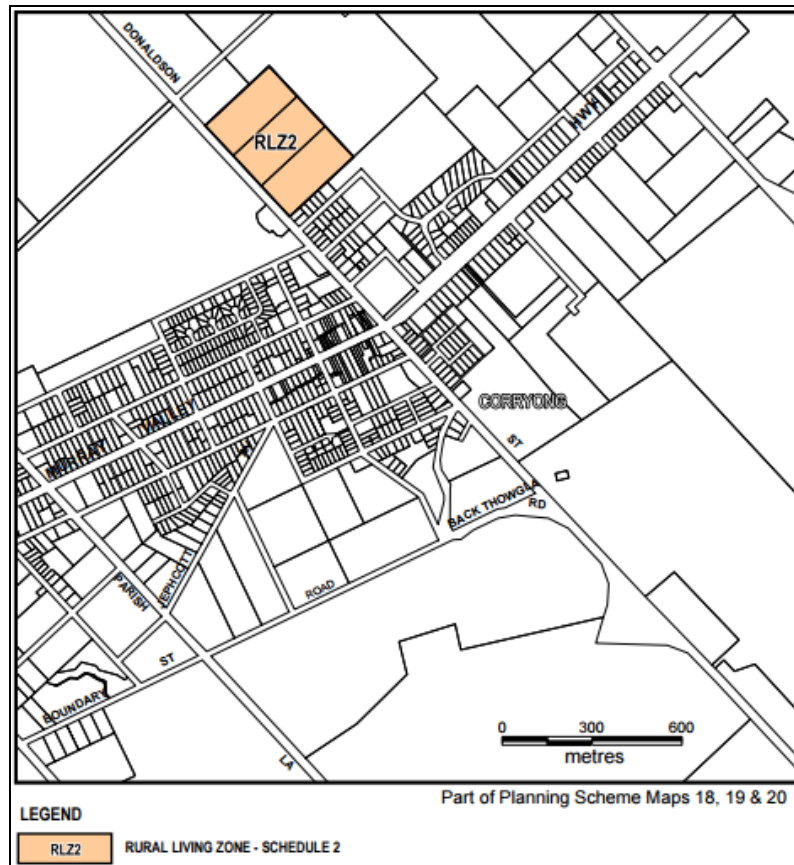


Figure 3 Exhibited RLZ2 - Donaldson Street, Corryong

Council decided to abandon the rezoning of one of the lots (Lot 1), but to proceed with rezoning the other two on the basis that they could not be further subdivided under the proposed RLZ2.

NEW agreed to this approach on the basis that “no additional lots can be created or dwelling constructed”.

Mr Hollis subsequently advised that NEW has a weather station at the WWTP and, although it has not done any odour modelling, it hopes to do that over the next 12 months.

The lots are currently zoned FZ and each is approximately 4 ha. All three lots are entirely within the WWTP buffer and partly within the pivot irrigation site buffer shown on the Corryong Structure Plan in Clause 21.03. This Clause includes the strategic action:

- *Provision of appropriate separation distances from the wastewater treatment facility utilising recommended EPA approved buffer distances to avoid adverse impacts from residual odour emissions.*

Neither the Structure Plan nor the strategic actions in the MSS identify these lots for rural living development, although the Settlement Strategy identifies them as one of a number of “preferred locations” for rural living. The Strategy does not discuss or make clear why land within a WWTP buffer is considered suitable for rezoning from FZ to RLZ.

It is not clear why Council pursued the rezoning of these lots given that they are affected by two buffer areas. Even though they will not be capable of further subdivision under the proposed RLZ2, one of the lots was vacant and could potentially be developed with a dwelling without a planning permit.

It seems to the Panel that the proposed rezoning will potentially create unreasonable residential amenity expectations that would be difficult to reconcile with the location of these lots within a WWTP buffer.

The Panel is not satisfied that Council has justified the rezoning of these lots or adequately explained what is to be gained by their rezoning. For these reasons, the Panel recommends that they not proceed. This position is consistent with the broader submissions and policies relating to the provision of buffer areas and protecting sensitive uses, including the EPA submission.

(iii) Eskdale

NEW objected to the exhibited rezoning of the Eskdale WTP (Lot 1 PS629163 (Parkhill Road, Eskdale)) from RAZ to RLZ3 and requested that the site be zoned Public Use Zone to reflect its public ownership. Council agreed to remove the site from the Amendment and advised that it will address the zoning issue in a future amendment.

The Panel supports Council’s position and has no concerns if Council decides to apply the Public Use Zone as part of Amendment C25, rather than in a future amendment.

4.3.4 Recommendations

The Panel recommends:

- 1. Delete the rezoning of land from Rural Living Zone Schedule 2 to Rural Living Zone Schedule 3 on the south side of the Murray Valley Highway, south-west of Tallangatta.**
- 2. Delete the rezoning of land from Rural Activity Zone to Rural Living Zone Schedule 3 on the south side of the Murray Valley Highway, south-west of Tallangatta.**

3. Delete the rezoning of Lot 1 PS629163, 13 Parkhill Road, Eskdale to Rural Living Zone 3.
4. Delete the rezoning of Lots 1, 2 and 3 LP200992, Donaldson Road, Corryong to Rural Living Zone 2.
5. Rezone Lot B PS349230, Reservoir Lane, Tallangatta (the site of the North East Water reservoir) to Public Use Zone Schedule 1.

In addition, the Panel makes the following post-adoption recommendation:

Council should review the issues discussed in the Panel’s report relating to buffers for the Tallangatta Waste Water Treatment Plant and pivot irrigation site, and the Tallangatta Waste Transfer Station.

The review should assess whether buffers should be determined on the basis of Air Quality Impact Assessment Reports and whether an Environmental Significance Overlay should be applied to these buffers.

The review should be conducted in association with North East Water and the Environment Protection Authority.

The review should inform decisions about the preferred zoning and land uses in this area, including the suitability of the Rural Living Zone.

4.4 Walwa rezoning

4.4.1 The issue

The issue is whether the exhibited rezoning of land on Murray River Road, Walwa, should proceed.

The Amendment proposes to rezone this 21 ha site from Rural Activity Zone (RAZ) to RLZ3 and apply the DDO1 and DPO6. The site is cleared farming land that abuts the Upper Murray Resort to the west (Refer to Figure 4).

Clause 21.03 (Walwa) promotes rural living opportunities in the Walwa hinterland and includes the following “*strategic action*”:

- *Application of the Rural Living Zone to suitable lands between Walwa and the Jingellic turn off on the southern side of the Murray River Road.*

The Settlement Strategy identifies the site within a broader area identified for rural living development, including land zoned RLZ1 as part of Amendment C14.

4.4.2 Submissions

Peter O’Dwyer (EDM Group) made a submission on behalf of the land owner (Justine McKenzie-McHarg) in support of the Amendment and the rezoning of the site. Mr O’Dwyer provided an overview of the site and general area, and advised that a planning permit had recently been issued for a dwelling. He also advised that a draft concept plan had been prepared for the site that would create four lots, although there were no plans to lodge an application at this time.

Mr O'Dwyer submitted that the rezoning was consistent with the Settlement Strategy and Rural Land Use Study, and that the site was the only realistic option that was suitable for the RLZ in the Walwa area.

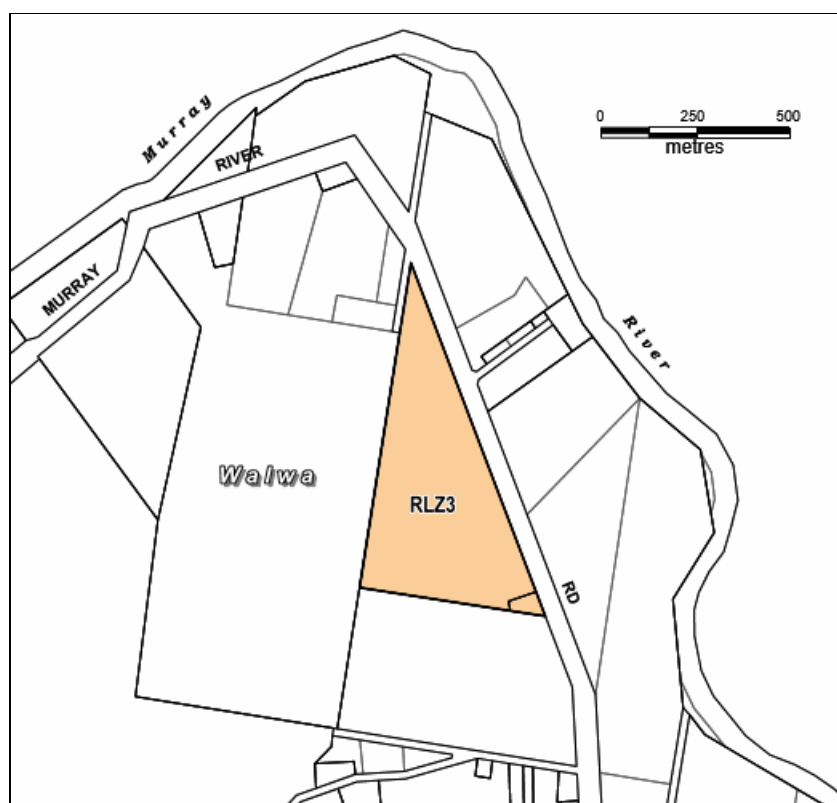


Figure 4 Exhibited RLZ3 - Walwa

He noted that there was only one objection to the rezoning and that the RAZ that currently applies to the site was not a zone that guaranteed or sought high amenity outcomes.

Brian Caldwell (owner of the Upper Murray Resort) provided the background to the Resort, including the cost of developing it, the number of employees and the values and features that were important to guests. He objected to the rezoning on the basis that rural living development would have a number of negative amenity impacts on the Resort, including noise and visual impacts, particularly on the “rural” views to the Murray River valley. Mr Caldwell questioned whether the site was suitable for rural living development given its distance from Walwa⁶ and expressed concern about potential fire impacts arising from future development.

Mr Caldwell concluded that development of the site would impact on the viability of the Resort.

Council supported the rezoning of the site on the basis that it is consistent with the Settlement Strategy and MSS. Mr Hollis submitted that the rezoning:

⁶ There were varying estimates of the distance between the Resort and Walwa, and the Panel measured it at approximately 5 kilometres by road.

... represents a logical opportunity for additional rural residential development in the Walwa and Jingellic area. It has excellent road access and is located outside areas of identified natural hazards such as flooding. It is also external to land being identified as being of strategic importance for agriculture.

Mr Hollis also advised that the selection of this site was the result of a comprehensive “sieving” process, although the process or its outcomes were not documented and consequently were not available to the Panel or submitters.

Mr Hollis concluded that Council understood Mr Caldwell’s concerns but were satisfied that the potential impacts on the Resort would be limited.

4.4.3 Discussion

The Upper Murray Resort is a significant local tourism facility and Mr Caldwell submitted that it derives much of its appeal from its elevation and extensive views over the Murray River valley. In contrast, Mr Hollis and Mr O’Dwyer characterised the area as a “mixed use area” that did not have a strong “rural” character (Refer to Figure 5). They submitted that allowing rural living development on the Amendment site would be consistent with the prevailing character of the area.

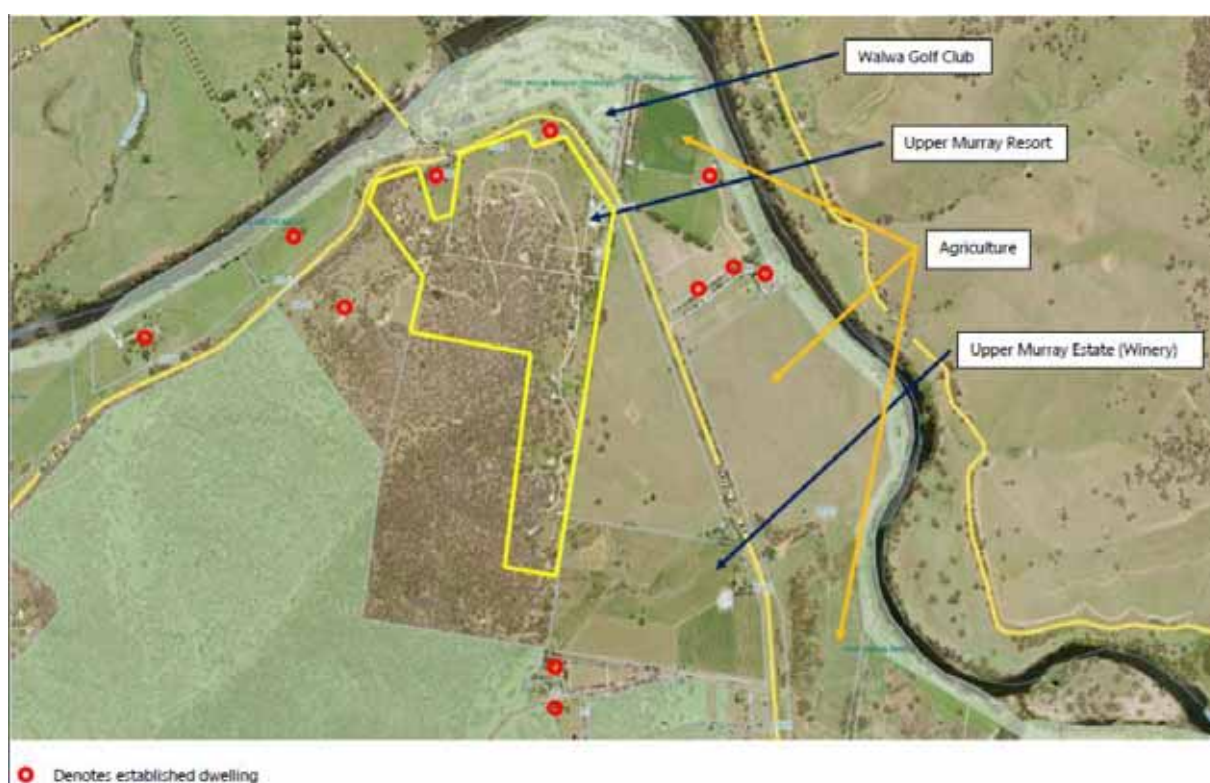


Figure 5 Walwa – land use context (Council submission)

The Panel inspected the site and disagrees with the assessments of Mr Hollis and Mr O’Dwyer. The area viewed from the Resort (to the east, across the Amendment site) has a strong rural character and the Murray River valley provides an impressive visual backdrop. Although the area contains some rural living and other development, it is not a strong element in the landscape.

Rural living development on the site (particularly with a 2 ha minimum subdivision area under the exhibited RLZ3) will clearly impact on views from the Resort, as will the recently approved dwelling, and those impacts are unlikely to be positive. However, the Panel notes Mr O'Dwyer's submission that those views are not protected under the current RAZ which provides for a number of uses that are either 'as of right' or permissible. Some of these uses would potentially have a more deleterious impact on views from the Resort than rural living development.

In response to questions from the Panel, Mr O'Dwyer advised that his client would support the application of the RLZ2 rather than the RLZ3. The RLZ2 has a minimum subdivision area of 4 ha, while the RLZ3 has a minimum subdivision area of 2 ha. The RLZ2 would reduce the potential number of lots and dwellings on the site⁷ and would allow the creation of a 4 lot subdivision generally consistent with the draft concept plan provided by Mr O'Dwyer. Mr Hollis advised that Council was not opposed to the RLZ2 "compromise".

The Panel agrees with Mr O'Dwyer that applying the RLZ to the site will provide greater certainty and control over future use and development than the current RAZ, and a better mechanism (in association with the DDO and DPO6) to manage built form impacts. In addition, applying the RLZ2 will be less impactful than the RLZ3 with its smaller minimum subdivision area.

Mr Caldwell raised other concerns about the rezoning, including increased bushfire fire risk. While this is a legitimate concern, it is a matter that would be addressed at the subdivision and development stage and does not preclude the rezoning. In fact, it is arguable that the RLZ and associated overlays provide a better mechanism to address bushfire risk than the current RAZ.

Mr Caldwell also submitted that rural living development on the site would affect the Resort's viability. While this might be true, the Panel believes that the range of possible development outcomes under the current RAZ could also impact on the Resort, possibly to a greater extent.

On balance, the Panel is satisfied that the site is suitable for the RLZ, but at the lower density permissible under the RLZ2 rather than the RLZ3.

4.4.4 Recommendation

The Panel recommends:

- 6. Rezone Lot 1 TP296821 Murray River Road, Walwa to Rural Living Zone Schedule 2.**

4.5 Infrastructure funding

4.5.1 The issue

The issue is whether the Amendment should be accompanied by a Development Contributions Overlay (DCPO) and Development Contributions Plan (DCP) to fund local road improvements associated with rural living subdivision and development.

⁷ The RLZ2 would theoretically allow 5 lots, while the RLZ3 would theoretically allow 10 lots.

4.5.2 Submissions

James Laycock (Blueprint Planning) submitted on behalf of CADC Investments Pty Ltd. Mr Laycock supported the “*strategic basis and intention*” of the Amendment but submitted that the extent of possible rural living development would create the need for significant road works and upgrades and that these should be funded by a DCP.

Mr Laycock also submitted that the Amendment should have been informed by a Transport Impact Assessment Report (TIAR) that identified traffic impacts on the local and regional road networks, including bridges, road cuttings and the Murray River Road.

Mr Laycock concluded that the Amendment should be abandoned until a TIAR, DCPO and DCP are included in a re-exhibited Amendment.

In response to a question from the Panel about the cost of a DCP, Mr Laycock estimated that it might cost between \$50,000 and \$200,000 to prepare.

Mr Hollis advised that Council did not support this submission and that:

... the Department of Land Water and Planning (DELWP) advised Council that it did not support the use of the DCPO for a Rural Living Zone amendment like Amendment C25. An audit of rural planning schemes across the state suggests that the DCPO has not been used in conjunction with RLZ.

Mr Hollis also advised that Council had considered options to address this issue, and had determined that:

... in the interim, planning permit conditions can for the most part adequately provide for on-site infrastructure needs and that Section 62 5(a) of the Planning and Environment Act also enables for the provision off-site infrastructure through the use of permit conditions and voluntary Section 173 Agreements.

Mr Hollis concluded that applying a DCP would be “*overkill*” given the projected rates of growth.

Mr M Elliott submitted (in relation to the rezoning of Talgarno Park) that any intersection upgrades required by the subdivision of this property would be funded by way of a planning permit condition. Mr Elliott also noted that there is only one DCPO in the north-east region and concluded that a DCPO was not necessary in a rural context or on a “*landscape*” basis.

Mr O’Dwyer on behalf of Justine McKenzie-McHarg submitted that applying a DCPO “*would not be a sensible or reasonable outcome*”.

4.5.3 Discussion

The Panel does not believe that a DCP is a necessary or appropriate mechanism to fund the rural living development envisaged in Amendment C25. Preparing and administering a DCP would be an expensive and cumbersome process, particularly in light of the relatively low rates of subdivision and development that are likely to occur.

The exhibited DPO6 includes a requirement that development plans address:

- *Where appropriate, a Transport Impact Assessment Report to determine the extent of mitigating works on arterial roads.*

Although this provision will not address all of the issues raised by Mr Laycock, it will provide a mechanism for identifying mitigating works on arterial roads and a basis for attributing costs.

4.6 Overlays

4.6.1 The issue

The issue is whether the exhibited Design and Development Overlay Schedule 1 (DDO1) and the Design and Development Plan Overlay Schedule 6 (DPO6) should be modified.

The Amendment proposes to revise the existing DDO1 (Rural Based Living Development) and introduce a new DPO6 (Rural Living Zone).

4.6.2 Submissions

VicRoads sought the inclusion of additional text in the DPO6 relating to the requirement for a Transport Impact Assessment Report (TIAR). Council supported this submission and included the text in its revised version of the Schedule.

The North East Catchment Management Authority (NECMA) sought the inclusion of additional text in the DDO1 to:

- reference “*environmental*” and “*landscape*” values
- require setbacks from waterways
- reference the Environmental Protection Authority Code of Practice – Onsite Wastewater Management
- reference the North East Planning Referrals Committee Guidelines for the Protection of Water Quality 2001.

The NECMA also sought the inclusion of additional text in the DPO6 to:

- reference site biodiversity values
- reference the North East Planning Referrals Committee Guidelines for the Protection of Water Quality 2001.

Council supported this submission and included additional text in its revised versions of the schedules.

Goulburn-Murray Water submitted that the overlays will “*enhance the protection of water resources*”.

The Department of Environment, Land Water and Planning (DELWP) supported the Amendment but recommended various changes to the schedules. Council supported elements of this submission and included some additional text in its revised versions of the schedules.⁸

⁸ DELWP lodged a supplementary submission in which it supported the changes proposed by Council.

4.6.3 Discussion

The Panel supports the changes proposed by Council in its revised version of the schedules and is satisfied that they address the issues raised in submissions.

The Panel's recommended versions are included at Appendices C and D and include some minor edits and additional material sought in submissions but not included in Council's version. These changes include the following Decision Guideline sought by the NECMA:

- *Whether the application is consistent with the North East Planning Referrals Committee Guidelines for the Protection of Water Quality 2001 (as amended).*

Before adopting the Amendment, Council should confirm that this document remains relevant.

The Panel has also recommended the inclusion of some additional text sought by DELWP in relation to "bushfire risk".

4.6.4 Recommendations

The Panel recommends:

7. **Include the Design and Development Overlay Schedule 1 included at Appendix C of the Panel's report.**
8. **Include the Development Plan Overlay Schedule 6 included at Appendix D of the Panel's report.**

4.7 Other issues

4.7.1 North East Water

North East Water (NEW) raised a number of issues in relation to protecting various assets, in addition to those matters discussed in chapter 4.3 of this report.

Mr Hollis advised that these issues had been discussed and resolved with NEW. This is reflected in the supplementary submission provided by NEW and does not require any recommendations from the Panel.

4.7.2 Rezoning of public land

The Department of Environment, Land, Water and Planning (DELWP) sought the rezoning of various parcels of Crown land associated with the Cudgewa – Wodonga Rail Trail. DELWP advised that some areas of the Trail are zoned RAZ but should be zoned Public Conservation and Resource, Public Park and Recreation, or Public Use.

This is a matter that should be addressed through a future Amendment once the relevant areas are identified and the appropriate 'public' zone is determined.

4.7.3 Consequential changes to the Planning Scheme

The Panel has recommended various changes to the Amendment that will require consequential changes to elements of the Planning Scheme. For example, the recommendations relating to proposed rezonings south of Tallangatta will require changes

to the Tallangatta Structure Plan at Clause 21.03. Council should review the Amendment and include any consequential changes that are necessary.

The Panel recommends:

- 9. Review the need for any consequential changes to the Planning Scheme in response to the Panel's recommendations and include them in the adopted Amendment.**

Appendix A List of Submitters

No.	Submitter
1	EDM Group on behalf of Mr and Mrs Maddock
2	EDM Group on behalf of Justine McKenzie-McHarg
3	Beverly Stewart
4	Barry and Joan Elliott
5	John and Trisha Maddock
6	John and Rhonda Maddock
7	Ross Moyle
8	Thelma Moyle
9	Brenda Clissold
10	Greg Hayes
11	John and Heather Morgan
12	Natalie and Trevor Butler
13	Mac Butler
14	Anthea and Graham Redman
15	Anthony Nichol
16	Alisha and Dax Woodall
17	Des Packer
18	Peter Star
19	Daryl and Faye Cornish
20	Allan Clissold
21	Adam and Tracey Ladanay
22	David Elder
23	Brendan Pearson
24	Blueprint Planning and Development
25	Robyn and Brian Caldwell (Upper Murray Resort)
26	Goulburn-Murray Water
27	VicRoads
28	North East Catchment Management Authority
29	Environment Protection Authority
30	North East Water

31 Department of Environment, Land, Water and Planning

32 Country Fire Authority

Appendix B Document list

No.	Date	Description	Tabled by
1	8/9/2016	Submission and attachments	Council
2	8/9/2016	Submission	J Laycock
3	8/9/2016	Submission	J Laycock
4	8/9/2016	Transport Integration Act Guide	J Laycock
5	8/9/2016	Submission	R Moyle
6	8/9/2016	Submission	D Elder
7	8/9/2016	Submission	M Ireland
8	8/9/2016	Engineering Report	M Elliott
9	8/9/2016	Submission	P O'Dwyer
10	8/9/2016	Submission 25B (Caldwell submission 11 May 2016)	P O'Dwyer
11	8/9/2016	Submission	B Caldwell

Appendix C Panel's recommended Design and Development Overlay Schedule 1

Tracked Added

~~Tracked Deleted~~

SCHEDULE 1 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO1**

RURAL BASED LIVING DEVELOPMENT

1.0 Design objectives

- To encourage development that protects environmental and landscape values.
- To encourage development that takes account of site constraints and opportunities.
- To ensure appropriate on-site management of wastewater.

2.0 Buildings and works

Buildings and works must be sited, designed and constructed in accordance with the following requirements:

- Building siting and design ~~that~~ are to responds to the constraints, opportunities, environmental and landscape values of the site.
- Building envelopes must be set back from waterways and adjoining Crown or vegetated land.
- Building envelopes are to avoid native vegetation, steep land, prominent ridgelines and other visually exposed areas.
- Access tracks and building envelopes are to be sited so that minimal earthworks are required and excessive site cuts avoided.
- External building materials, colours and textures must blend with the landscape.
- Wastewater from dwellings must be managed in accordance with the EPA Publication 891.4 *Code of Practice – Onsite Wastewater Management (as amended or updated)*.

3.0 Subdivision

Subdivision must be designed and constructed in accordance with the following requirements:

- Demonstrated design that responds to the constraints, opportunities, environmental and landscape values presented by the land.
- Identification of suitable building envelopes that are setback from waterways and avoid native vegetation, steep land, prominent ridgelines and other visually exposed areas.
- Vehicle crossings to be located, designed and installed in accordance with Council specifications.
- Demonstrate that site Wastewater from dwellings is achieved in accordance with the EPA Publication 891.4 Code of Practice – Onsite Wastewater Management (as amended or updated).
- ~~Vehicle crossings to be located, designed and installed in accordance with Council specifications.~~

4.0 Decision guidelines

Before deciding on an application the responsible authority must consider:

- The impact of the development on environmental and landscape values.
- Potential bushfire risk.
- Whether the on-site management of domestic wastewater can be undertaken in accordance with EPA Publication 891.4 Code of Practice – Onsite Wastewater Management (as amended or updated).

- [Whether the application is consistent with the North East Planning Referrals Committee Guidelines for the Protection of Water Quality 2001 \(as amended\).](#)

Appendix D Panel's recommended Development Plan Overlay Schedule 6

[Tracked Added](#)

~~Tracked Deleted~~

SCHEDULE 6 TO THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as **DPO6**.

RURAL LIVING ZONE

1.0 Requirement before a permit is granted

Before any planning permit is granted for the subdivision of the land the responsible authority must ensure that the proposal is consistent with any approved Development Plan and this overlay schedule.

A permit may be granted to use land, construct a building or single dwelling or construct or carry out works before a development plan has been prepared to the satisfaction of the responsible authority.

2.0 Requirements for development plan

The development plan should include a design response that addresses the following:

- Proposed lot layout, yield and density based on land capability assessment.
- Internal road layout and external road access, including future road linkages, with an emphasis on avoiding additional accesses to arterial roads where possible.
- Where appropriate, a Transport Impact Assessment Report to determine the extent of mitigating works on arterial roads. The need for a Transport Impact Assessment Report must be determined in consultation with VicRoads. The extent of mitigating works must be determined in consultation with VicRoads.
- Staging and anticipated timing of development.
- ~~Areas of active vegetation management or re-vegetation or other environmental improvements.~~
- [Areas of bushfire risk.](#)
- Building envelopes that take into account natural features such as drainage lines, ridge lines, steep land and native vegetation.
- Identification of site biodiversity values, and any proposed areas of active vegetation management or re-vegetation or other environmental [improvements or](#) constraints.
- Wastewater land application area sizing and location with notional equivalent sized backup land application areas based on land capability assessment that identifies all waterways and uses the methodology articulated by the following:
 - EPA publication No. 746.1 *Land Capability Assessment for Onsite Domestic Wastewater Management (as updated or amended)*.
 - *Publication 891.4 Guidelines for Environmental Management Code of Practice – Onsite Wastewater Management*. December 2008 (as updated or amended).
 - *Australian Standard AS/NZS 1547:2012 On-site Domestic Wastewater Management (as updated or amended)*.

3.0 Decision Guidelines

Before deciding on any application, the responsible authority must consider:

- Whether the design response addresses site constraints and opportunities and enables environmentally sustainable subdivision and development.
- [Potential bushfire risk.](#)
- ~~All~~ [Whether](#) lots and dwelling locations ~~must be~~ [have been](#) determined through a detailed land capability assessment, prepared in accordance with the EPA publication 746.1 *Land Capability Assessment for Onsite Domestic Wastewater Management, March 2003 (as updated or*

amended) and Australian Standard AS/NZS 1547:2012 *On-site Domestic Wastewater Management (as updated or amended)* that establishes that all effluent from the land and development can be treated, retained and disposed of on the land to comply with the *State Environment Protection Policy - Waters of Victoria* and the *Publication 891.3 Guidelines for Environmental Management Code of Practice – Onsite Wastewater Management (as updated or amended)*.

- [Whether the application is consistent with the North East Planning Referrals Committee Guidelines for the Protection of Water Quality 2001 \(as amended\).](#)
- Provision of appropriate infrastructure including where appropriate water supply, roads, drainage, telecommunications and reticulated electricity or alternative energy supply.
- Minimising the creation of additional access points to arterial roads.
- The following design principles:
 - Enhancement of existing biodiversity values including riparian and road reserve linkages.
 - Environmentally sustainable stormwater and drainage design and treatment.
 - Protection of significant ridgelines and landscapes.