

METROPOLITAN PLANNING AUTHORITY

Part B Submission

to Planning Panels Victoria for

Amendment C190 to the Casey Planning Scheme

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1. Introduction

This Part B Submission is to be read together with the Part A Submission circulated on 12 April 2016.

It addresses the submissions received in response to exhibition of the Amendment that remain unresolved and the matters raised in direction 22 of the Panel's directions dated 22 March 2016, namely:

- a. the expert witness reports and statements from the meetings of experts;
- b. MPA's final position on the Amendment;
- c. past learnings from previous PSPs, Panel reports and other processes and how this PSP responds to those learnings; and
- d. a view on the UGZ Schedule and how it sits within the range of approved UGZ schedules associated with PSPs.

Each of these matters will be addressed under the following headings:

1. biodiversity;
2. traffic;
3. Schedule to the Urban Growth Zone; and
4. Ranfurly Golf Club.

With respect to traffic issues, MPA relies on the expert witness report of Mr Chris Butler of Cardno.

2. Biodiversity

There are unresolved submissions relating to:

1. the Southern Brown Bandicoot;
2. the Dwarf Galaxias; and
3. native vegetation.

Expert witness reports on biodiversity have been circulated by:

- Alan Brennan of Brett Lane and Associates on behalf of UDIA Consolidates Pty Ltd (Watsons);
- Aaron Harvey of Biosis on behalf of UDIA Consolidates Pty Ltd (Watsons);
- David Fairbridge of Frankston City Council;
- David Nicholls of the Southern Brown Bandicoot Regional Recovery Group;
- Austin O'Malley of Practical Ecology on behalf of the Green Wedges Coalition; and
- Sarah Maclagan of Deakin University on behalf of the Green Wedges Coalition.

2.1. Southern Brown Bandicoot

Issues relating to the Southern Brown Bandicoot were raised in the following submissions referred to the Panel:

- submission 13 by the Southern Brown Bandicoot Recovery Group;
- submission 16a by the City of Casey (items 28 and 30);
- submission 17 by the Natural Resources Conservation League of Victoria (resolved);
- submission 21 by the City of Frankston (item 3); and
- submission 22 by the Green Wedge Coalition.

2.1.1. Issue

The above submissions broadly seek vegetation contributions within the Brompton Lodge precinct for habitat suitable for Southern Brown Bandicoots. These submissions envisage vegetated corridors linking habitat within the precinct to habitat external to the precinct, particularly between the Royal Botanic Gardens Cranbourne to the east and areas within Frankston City Council to the west.

Two of the submissions consider Southern Brown Bandicoots to be present within the precinct. The City of Casey (submission 16a, item 30) requests a targeted survey to determine the potential implications of the PSP development on the Southern Brown Bandicoot. The Green Wedges Coalition (submission 22) requests referral for assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EBPC Act**) and *Flora and Fauna Guarantee Act 1988* (Vic).¹

2.1.2. Background

a. Logical Inclusions process

As noted in the Part A Submission, the Brompton Lodge precinct was included in the UGB in 2012 as part of the Logical Inclusions process.

Report No. 2 of the Logical Inclusions Advisory Committee focused on the South East Growth Area, including Brompton Lodge as part of 'Casey Area 1'. With respect to biodiversity on the Brompton Lodge land, the Advisory Committee noted:²

The only known or likely biodiversity value reported by DSE was that Dwarf Galaxias has been recorded in the drainage lines in Casey Area 1. One affected party submission stated that the Southern Brown Bandicoot has been seen in this area.

The Victorian National Parks Association submission and that of Ms West on behalf of the Green Wedges Coalition raised concerns about the inclusion of Casey Area 1. They both claimed this would isolate the significant population of bandicoots at the Cranbourne Botanic Gardens. They suggested that provision needs to be made for permanent biolinks through existing proposed development areas. In response to these submissions, Casey Council confirmed that DSE had decided not to pursue a biolink to the west (across either Casey Areas 1 or 2) from the Cranbourne Botanical Gardens

The Advisory Committee commented that:³

The Committee accepts the advice of DSE that biodiversity issues can be managed via subsequent planning processes. The Committee accepts the position of Casey Council and DSE that there are no biodiversity issues that would preclude the land from being included in the UGB.

¹ The *Flora and Fauna Guarantee Act 1988* applies to public land only.

² *Logical Inclusions (AC)* [2011] PPV 115 (11 November 2011), Report No. 2, page 52.

³ *Logical Inclusions (AC)* [2011] PPV 115 (11 November 2011), Report No. 2, page 53.

The Advisory Committee did not comment specifically on the Southern Brown Bandicoot.

b. PSP background reports

The biodiversity considerations of the Brompton Lodge PSP have been informed primarily by the *Flora and Fauna Assessment* dated May 2014, prepared by Alan Brennan of Brett Lane & Associates (**2014 Flora and Fauna Assessment**). Mr Brennan will be called to give expert evidence at this hearing by Watsons.

The 2014 Flora and Fauna Assessment describes the field assessment conducted, which recorded 48 fauna species, but no listed threatened fauna species.⁴

The 2014 Flora and Fauna Assessment also considers the likelihood of occurrence within the precinct of 33 fauna species listed under the EPBC and FFG Acts previously recorded within the broader region, based on the number of records in the region and the presence of suitable habitat within the precinct.⁵

Table 5 in the 2014 Flora and Fauna Assessment includes the following information relating to the Southern Brown Bandicoot:⁶

| | |
|----------------------------------|---|
| Common name: | Southern Brown Bandicoot |
| Scientific name: | <i>Isoodon obesulus obesulus</i> |
| EPBC Act status: | Endangered |
| FFG Act status: | Listed as threatened |
| Habitat: | Heathy forest, woodland, coastal scrub and heathland (Menkhorst 1995) |
| Number of records: | 79 |
| Year or last record: | 2008 |
| Likelihood of occurrence: | Study area is in close proximity to known populations. Potential to occur. |

It subsequently states that:⁷

One listed mammal species is considered to have the potential to occur in the study area. The likelihood of occurrence in the study area and vulnerability of this species to possible impacts from the proposed development is discussed below.

▪ Southern Brown Bandicoot

This species occurs along the coast along the length of Victoria in Heathy forest, woodland, coastal scrub, swamp scrub and heathland. Known stable populations of the species exist within the Cranbourne Botanical gardens directly east of the study area. Connectivity for the species occurs through the reserve for Ballarto Road and private

⁴ Page 29.

⁵ Page 30.

⁶ Page 32.

⁷ Page 34.

property in the east which possesses suitable habitat albeit patchy on the subject property.

While some connectivity exists along Ballarto Road, the Cranbourne-Frankston Road acts as a strong barrier in the movement of the species in the local region. Therefore, based on the isolation of habitat on site, as well as the low quality nature of the vegetation present within the study area, it is considered that the species is unlikely to occur.

This is supported by the State Governments Southern Brown Bandicoot Sub Regional Strategy that does not designate the study area as providing core habitat or an important habitat corridor for the species.

In considering the relevant legislative requirements, the 2014 Flora and Fauna Assessment concludes that no EPBC Act referral is required.⁸ Specifically in relation to the Southern Brown Bandicoot, it notes:

One EPBC Act listed fauna species, the Southern Brown Bandicoot was initially considered to have potential to occur based on the close proximity of known populations. However, based on the isolation of habitat, as well as the low quality nature of the vegetation present within the study area, it is considered that this species is unlikely to occur.

The 2014 Flora and Fauna Assessment notes that the presence of the Dwarf Galaxias and any legislative implications were being dealt with as part of a separate assessment and conservation management plan.⁹

c. EPBC Act framework

The EPBC Act provides the legal framework for protecting and managing matters of national environmental significance, which include listed threatened species and communities. The Southern Brown Bandicoot is included on the EPBC Act list of threatened fauna.¹⁰

Referral to the Commonwealth Environment Minister is required under the EPBC Act when a proposed action has the potential to have a significant impact on a listed threatened species.¹¹ Referrals are provided to the relevant Commonwealth and State ministers and the general public for comment, before the Commonwealth Environment Minister decides whether the proposed action is a 'controlled action' and therefore requires approval under the EPBC Act.¹²

If a proposed action does require approval, the Minister must choose one of six different approaches for assessment, which determines the time in which the Minister must make the approval decision.¹³

⁸ Page 37, and repeated in the executive summary on page 1.

⁹ Pages 1 and 29-30.

¹⁰ Section 178 of the EPBC Act

¹¹ Sections 18, 67 and 68 of the EPBC Act.

¹² Sections 74 and 75 of the EPBC Act.

¹³ Sections 87 and 130 of the EPBC Act.

d. Brompton Lodge EPBC Act referral

The background reports for the Brompton Lodge PSP additionally include the *Conservation Management Plan for the dwarf galaxias (Galaxiella pusilla) for the development of Brompton Lodge (Conservation Management Plan)*, Cranbourne South dated June 2014, prepared by John McGuckin of Streamline Research Pty Ltd.

Mr McGuckin prepared an EPBC Act referral with respect to the Dwarf Galaxias dated 6 June 2013 that was submitted by Watsons.

The Commonwealth responded to the referral on 16 July 2013, requesting additional information. The request included:

Further discussion on the likely presence or absence of the following listed threatened species and/or their habitat within the proposed action area:

- *Clover Glycine (Glycine latrobeana);*
- *Matted Flax-lily (Prasophyllum frenchii);*
- *Small Snake-orchid (Diuris pedunculata);*
- *Latham Snipe (Gallinago hardwickii);*
- *Southern Brown Bandicoot (Isoodon obesulus obesulus);*
- *New Holland Mouse (Pseudomys novaehollandiae); and*
- *Golden Sun Moth (Synemon plana).*

Mr Brennan of Brett Lane and Associates assisted Watsons with the provision of the additional information by letter dated 1 August 2013.¹⁴ In relation to the Southern Brown Bandicoot, the letter states:

The study area contained small patches of remnant native vegetation scattered within the study area, and planted non-indigenous native trees with an exotic grassy ground cover. It comprises a small proportion of the site. This habitat was isolated and surrounded by existing houses and roads, and lacked any significant linkages to any larger patches of native remnant forest or woodland in the region. The site also has several windbreaks and roadside linear strips of vegetation. Roadside vegetation occurs along both the Westernport Highway and the Cranbourne–Frankston Road along with the Western Section of Ballarto Road within the study area. This habitat is considered to be low to medium quality habitat for fauna.

This species inhabits Heathy forest, woodland, coastal scrub, swamp scrub and heathland. Known stable populations of the species exist within the Cranbourne Botanical gardens directly east of the study area. Connectivity for the species occurs through the reserve for Ballarto Road and Private property in the east which possesses suitable habitat albeit patchy on the subject property.

The AVW contained large number of records of the bandicoot from the region (80 records), some of which were recent records (2008). The records were mainly from the Cranbourne botanic Gardens and from the Darra block, Frankston.

Despite the occurrence of the species in the area and the proximity of the study area to the Cranbourne Botanic Gardens; it is not expected that a viable population will inhabit the study area regularly; the reason for this small likelihood could be attributed to;

¹⁴ This assistance is noted at pages 2-3 of the 2014 Flora and Fauna Assessment.

- *Presence of small patches of this species' core habitat. The bandicoots were found in close by areas to prefer large patches of dense vegetation, particular the dense growth of blackberries. No such dense patches are found within the study area.*
- *The Cranbourne-Frankston Road is a barrier in the movement of the species in the local region.*
- *The study area falls within the area subject to the State Governments Southern Brown Bandicoot Sub Regional Strategy and is not designated as providing core habitat or an important habitat corridor in this strategy.*
- *A targeted survey has been undertaken on a parcel of land south of the study area. The area was densely covered by suitable vegetation, but still no bandicoots were recorded (Brett lane & Associates; unpubl. report)*

Due to the isolation of habitat on site it is considered that the species is unlikely to occur.

On 17 September 2013, the Commonwealth decided pursuant to section 75 of the EPBC Act that the proposed action was not a controlled action and therefore did not require further assessment.

The Victorian Department of Environment, Land, Water and Planning (**DELWP**) did not raise issues relating to the Southern Brown Bandicoot in its non-objecting submission to the Amendment (submission 19).

MPA subsequently sought advice from DELWP regarding whether an EPBC referral was required in respect of the Southern Brown Bandicoot. DELWP confirmed by email dated 3 March 2016 that it had assessed the 2014 Flora and Fauna Assessment against the *EPBC Significant impact guidelines 1.1 – matters of national environmental significance* (2013) and 'concluded with a very clear result' that the proposed action did not constitute a 'significant impact' requiring EPBC referral.

e. Sub-regional Species Strategy for the Southern Brown Bandicoot

The *Sub-regional Species Strategy for the Southern Brown Bandicoot* (**Strategy**) was published by the Victorian Department of Environment and Primary Industries (DEPI, now DELWP) in January 2014.

The Strategy was prepared as part of the 'Melbourne Strategic Assessment', conducted under Part 10 (Division 1) of the EPBC Act in response to the 2009-10 expansion of the UGB. In 2009, the Victorian and Commonwealth Governments agreed that the expansion of the UGB was likely to have an impact on matters of national environmental significance and for that impact to be assessed as a whole.

The Strategy was informed by technical reports prepared by Practical Ecology in 2011, Biosis in 2013, and Ecology Australia in 2013.

The Strategy is intended to deliver the following outcomes:¹⁵

Functioning sustainable populations within and adjacent to the growth areas, with connectivity between populations

¹⁵ Page 3.

Protection and enhancement of all populations, including the population at the Royal Botanic Gardens, Cranbourne.

The Strategy establishes a 'Southern Brown Bandicoot Management Area'. It notes that:¹⁶

This approach differs in some respects from that of the draft strategy released for public comment in 2011. In particular, designated habitat corridors linking the Royal Botanic Gardens Cranbourne to areas of habitat outside the urban growth boundary proposed in the draft strategy are now understood to be less cost-effective than alternative conservation measures designed to achieve the required outcomes for the species.

The obligations in the Strategy do not apply to land outside the expanded 2010 UGB. They therefore do not apply to the Brompton Lodge precinct.

Section 4.3 describes how the Strategy was developed.¹⁷ This involved ecological experts¹⁸ discussing and prioritising potential management interventions identified in the 2011 Practical Ecology and 2013 Biosis reports and assessing the resulting list of interventions against:

- an estimate of their potential benefit to the species;
- practicality of delivery; and
- cost.

Table 1 in the Strategy ranks the potential management interventions in order of preference for 'anticipated effectiveness ([benefit x feasibility] / cost)'.¹⁹ 'Broad-scale integrated predator control' ranked highest with a score of 4. Low on the list with a score of 0.75 was 'Plan and create urban habitat corridors'.

The Strategy elaborates that:²⁰

This assessment across a range of interventions across the south central population indicates that the creation of urban habitat corridors, while potentially of high benefit to the species within limited areas is a low priority due to other factors. This type of approach is essentially untested. The combination of elevated predation levels in the urban area, the emphasis on secure fencing to mitigate this threat and high land and infrastructure costs, indicates there is uncertainty that the desired outcomes would be achieved; there are also practical delivery difficulties and high cost.

The Strategy instead comprises:²¹

- an intensive, integrated and long-term predator control program;
- an incentive program for habitat security and management on private land
- habitat security and management on public land;
- long-term funding to assist with conservation management of the population in the Royal Botanic Gardens Cranbourne, particularly relating to protection from foxes;

¹⁶ Page 3.

¹⁷ Page 15.

¹⁸ From DELWP's Arthur Rylah Institute.

¹⁹ Page 16.

²⁰ Page 18.

²¹ Pages 21-31.

- a range of activities focused on the population at the former Koo Wee Rup Swamp;
- improving the quality of appropriate areas within the Southern Brown Bandicoot management area;
- research programs, including new survey technologies;
- consideration of planning controls, such as the Environmental Significance Overlay; and
- a monitoring program.

2.1.3. Evidence

a. Alan Brennan, Brett Lane and Associates

Mr Brennan draws a conclusion consistent with his 2014 Flora and Fauna Assessment that:²²

*Existing records for the **Southern Brown Bandicoot (SBB)** occurred in the search region and small isolated areas of suitable habitat were identified in the study area. While some habitat connectivity for SBB was considered to exist along Ballarto Road, the Cranbourne Frankston Road was considered to act as a strong barrier in the movement of the species in the local region. Therefore, based on the isolation of habitat on site, as well as the low quality nature of the vegetation present within the study area, it was considered that the species was unlikely to occur in the study area.*

This was recognised by the State Governments Southern Brown Bandicoot Sub-Regional Strategy (DEPI 2014) which does not designate the study area as providing core habitat or an important habitat corridor for the species. Therefore this species was not considered to be susceptible to impacts.

b. Aaron Harvey, Biosis

Mr Harvey's expert witness report includes a review of the 2014 Flora and Fauna Assessment. With respect to the Southern Brown Bandicoot, Mr Harvey summarises his own view as follows:²³

- *The Brompton Lodge Precinct is in close proximity to a large population of Southern Brown Bandicoot (the Royal Botanic Gardens, Cranbourne).*
- *The Brompton Lodge Precinct supports a limited amount of habitat of a type known to be used elsewhere by Southern Brown Bandicoot.*
- *Southern Brown Bandicoot has high dispersal capabilities and is known to successfully cross large roads such as the South Gippsland Highway at Koo Wee Rup.*
- *Given the above, it is likely that individual Southern Brown Bandicoot dispersing from the Royal Botanic Gardens are occasionally present within the Brompton Lodge Precinct.*

Mr Harvey notes the 2014 Flora and Fauna Assessment did not include targeted surveys for the Southern Brown Bandicoot. He agrees such a survey is not warranted because:²⁴

²² Page 11.

²³ Page 14.

²⁴ Page 15.

- *It is unlikely that the study area supports a resident population, due to the limited nature of the available habitat.*
- *Any Southern Brown Bandicoot within the study area would be reliant upon the key source population in the Royal Botanic Gardens.*
- *Targeted surveys may detect Southern Brown Bandicoot but even if they did not, my opinion would still be that the study area would be used by the species occasionally.*
- *A targeted survey could be undertaken for Southern Brown Bandicoot in the study area, but such a survey is unnecessary as it would not materially change the conclusion, as reached by BLA (2014) and supported by my review that the area is not considered to be of high value to the species.*

Having considered the submissions raising issues regarding the Southern Brown Bandicoot, Mr Harvey offers the following response:²⁵

- *Various studies have been undertaken to identify potential fauna linkages between the Royal Botanic Gardens, The Pines FFR and Langwarrin FFR.*
- *The Pines FFR and Langwarrin FFR are not considered to be important sites for the conservation of Southern Brown Bandicoot in the finalised Sub-regional Species Strategy for Southern Brown Bandicoot (DEPI 2014).*
- *The Southern Brown Bandicoot is almost certainly extinct in The Pines FFR and Langwarrin FFR. Both reserves continue to have threatening processes in place that make it unlikely that Southern Brown Bandicoot can establish there, even if habitat links were established to enable the species to recolonise from the Royal Botanic Gardens.*
- *Land between the Royal Botanic Gardens, The Pines FFR and Langwarrin FFR is highly modified through native vegetation removal, urban development, roads and quarries, which reduces connectivity for Southern Brown Bandicoot and some other native fauna.*
- *No habitat corridors are proposed between these sites and the Royal Botanic Gardens in the finalised Strategy (DEPI 2014).*
- *There is no legal requirement for private landowners along the route of the proposed corridor between the Royal Botanic Gardens and The Pines FFR to reserve land for a habitat corridor.*
- *While such a corridor could be provided, its effectiveness in providing functional connectivity for Southern Brown Bandicoot is unproven.*
- *I feel that the high level of habitat modification in the landscape, including significant barriers and surrounding urbanisation, mean that a habitat corridor established between the Royal Botanic Gardens and The Pines FFR is unlikely to effectively maintain functional connectivity for Southern Brown Bandicoot in the long term.*

c. David Fairbridge, Frankston City Council

²⁵ Page 22.

Mr Fairbridge provides his statement ‘in support of incorporation of biolinks or habitat corridors within the Brompton Lodge development that will contribute to a high priority link between the significant fauna habitat in Frankston and the Royal Botanic Gardens Cranbourne’.²⁶

Mr Fairbridge relies on a 2012 report prepared for Frankston City Council by Practical Ecology titled *Frankston Fauna Linkages and Crossing Structure (Practical Ecology report)*. That report identifies a 10.5km vegetated link between The Pines Flora and Fauna Reserve in Frankston and the Royal Botanic Gardens Cranbourne (**Pines-RGBC link**) to provide connectivity for at least 25 fauna species, including the Southern Brown Bandicoot.

Within the Casey municipality, the proposed Pines-RGBC link follows an alignment north of Ballarto Road, crossing land owned by the Natural Resources Conservation League of Victoria, the Ranfurly Golf Club and four other private properties.

Mr Fairbridge acknowledges the proposed Western Port Highway and Ballarto Road interchange as part of the Western Port Highway upgrade represents a significant barrier for the link, ‘through which a large and complex fauna crossing (e.g. an underpass) would need to be designed and constructed and casts a level of uncertainty over the viability of the link’.²⁷

Consequently, Mr Fairbridge identifies a more feasible crossing approximately 450 metres south of the Ballarto Road intersection at the Dandenong-Hastings Reserve.²⁸ This was viewed as part of the Panel’s accompanied site visit on 11 April 2016. Such a crossing would require the link to traverse part of the Brompton Lodge precinct. Mr Fairbridge suggests potential alignments at figures 2 and 3 of his report with a ‘notional’ width of 75m, but notes biolinks 20-30m wide can provide functional connectivity.²⁹

d. David Nicholls, Southern Brown Bandicoot Regional Recovery Group

Mr Nicholls considers there to be ‘clear scientific agreement’ that connections between the Royal Botanic Gardens Cranbourne and habitat corridors are required to ensure long-term sustainable populations of the Southern Brown Bandicoot in Melbourne’s south-east.³⁰ Mr Nicholls identifies these connections and also relies on the Practical Ecology report.

Mr Nicholls identifies a number of instances of successful wildlife corridors, including how road barriers have been overcome.³¹ Mr Nicholls considers the Pines-RGB link relatively easy to implement, having regard to the number of private properties it would traverse.³²

²⁶ Page 1.

²⁷ Page 3.

²⁸ Page 3.

²⁹ Pages 3-4.

³⁰ Page 3.

³¹ Pages 4-5.

³² Page 5.

Mr Nicholls refers to sightings of bandicoots beyond the Royal Botanic Gardens Cranbourne, including one adjacent to the Brompton Lodge precinct, along the Cranbourne-Frankston Road near the Pearcedale Road intersection.³³ He further identifies a number of design features that could improve the habitat for breeding and dispersing bandicoots within the precinct.³⁴

e. Austin O'Malley, Practical Ecology

Mr O'Malley's report responds to a number of specific questions put to him by the Green Wedges Coalition. He provides his opinion on these matters, including:

- that Southern Brown Bandicoot corridors should be a minimum of 20-100 metres wide;
- that narrower corridors could be possible, depending on measures implemented to control predation;
- on the principles underpinning the alignment of the Pines-RGB link and why this did not traverse Brompton Lodge;
- on bandicoot dispersal across roads of varying widths;
- that a habitat corridor with a dense groundcover is an essential requirement for the Southern Brown Bandicoot and bandicoots may use adjacent land if the predation risk is low;
- that measures to improve the permeability of the Brompton Lodge precinct would include:
 - a network of urban baiting stations (impermeable to domestic dogs and children etc);
 - permeable fencing;
 - fenced bandicoot shelters; and
 - no domestic cats and dogs on leashes; and
- that determining whether an EPBC Act referral is required should be informed by the results of a targeted multi-seasonal survey.

f. Sarah Maclagan, Deakin University

Ms Maclagan provides an overview of the key findings of her PhD research on the use of linear strips of habitat by the Southern Brown Bandicoot, which includes two years' of field data.

Ms Maclagan's key findings include that:

- high numbers of bandicoots were captured at some of the linear sites and evidence of breeding activity was observed at all six linear sites in her study;
- motion camera footage and landowner reports suggest cats predate on juvenile bandicoots;
- radio-tracking bandicoots suggests they use the linear strips as permanent habitat, rather than transiently moving through;
- bandicoots' movements are largely contained within the linear strips, but some individuals frequently venture into residential areas, particularly to take advantage of novel food sources such as pet food; and
- while most bandicoots nest within the linear strips, some nest under houses, amongst refuse and garden plants.

Ms Maclagan considers these results to emphasise the adaptability of the Southern Brown Bandicoot and its ability to persist in narrow corridors of vegetation, provided its needs (particularly predator control) are met.

³³ Page 6.

³⁴ Page 7.

Ms Maclagan provides a concept diagram for a minimum habitat corridor within an urban area at figure 6 of her report. This includes a minimum core habitat of 30 metres.

g. Conclave statement

The biodiversity conclave statement succinctly summarises the points of agreement and disagreement between the six biodiversity experts as follows:

Points of agreement:

1. *Southern Brown Bandicoot (SBB) are moving beyond the boundaries of the Royal Botanic Gardens, Cranbourne.*
2. *At present, SBB are unlikely to be resident at Brompton Lodge.*
3. *However, we accept that SBB may occasionally move through the site.*
4. *There is potential habitat for SBB at Brompton Lodge.*
5. *There is potential to enhance the habitat for SBB at Brompton Lodge.*
6. *Landscape plantings should be sympathetic to SBB.*
7. *Additional native vegetation should be retained wherever possible.*
8. *Efforts should be made to improve the quality and extent of retained native vegetation from a biodiversity perspective, particularly for SBB.*
9. *We accept that SBB live within linear strips of habitat at Koo Wee Rup. However, we have reservations about extending SBB results from Koo Wee Rup to Cranbourne due to differences in urban density and site characteristics.*

Points of disagreement

1. *We differ in opinion on the amount of suitable SBB habitat at Brompton Lodge.*
2. *We have mixed views on the value of a habitat corridor for SBB from the Botanic Gardens through Brompton Lodge to The Pines.*
3. *We have mixed views on the need for cat restrictions.*

2.1.4. MPA's position

The submissions arguing for the setting aside of land within the Brompton Lodge precinct for the purpose of creating a wildlife corridor are not supported by MPA for two principal reasons.

First, the setting aside of wildlife corridors primarily for the protection of the Southern Brown Bandicoots does not enjoy policy support in the Strategy, which represents the Victorian Government's adopted policy for bandicoot recovery.

As noted above, the proposal to create new wildlife corridors was before the authors of the Strategy during its formation. It appears to have been thoroughly considered as part of the policy process, to the extent that it was presented in an earlier draft provided for public consultation. However, it was not the preferred outcome in the final Strategy for reasons of sound public policy. The Strategy represents a considered approach to policy founded in scientific cost-benefit analysis. Applying cost-benefit analysis, this particular approach to bandicoot recovery ranked relatively low in the Strategy's assessment.

Second, the proposal to create wildlife links through the Brompton Lodge precinct constitutes a competing policy demand within the PSP. MPA accepts that the creation of wildlife corridors would, considered in isolation, be a positive outcome. However, in contrast to the Strategy, which explicitly

does not advocate for the creation of new wildlife corridors, there is a wealth of specific planning policy that supports the development of a mixture of residential and commercial uses across the PSP area. This is important, even paramount, policy in Melbourne where the State has identified a limited number of growth areas to supply a large proportion of the city's future growth.

Without substantial amendment to the PSP documentation, it is difficult to see how a corridor could be realised in this precinct. These amendments would come at a cost to the PSP and therefore to the community in a context where there is no further proposed release of urban land within Melbourne. Integrated planning decision-making demands that competing objectives be balanced.³⁵

There are pertinent points of agreement arising from the conclave of biodiversity experts. It is agreed that there is unlikely to be Southern Brown Bandicoots resident within the PSP area. The experts express reservations about assumptions regarding Southern Brown Bandicoots using corridors in this area on account of 'differences in urban density and site characteristics'. On MPA's reading, this amounts to agreement on the limited impact that the corridors may have in the extended dispersal of Southern Brown Bandicoots. It strengthens the balancing of policy considerations set out above further in favour of the strong policy intent for urban development in the area.

The realisation of wildlife corridors throughout the precinct is not necessary, not supported by policy and would not represent an appropriate decision-making balance. It would necessarily come at the costs of achieving other significant planning policy.

The Brompton Lodge PSP is also consistent with the EPBC Act assessment by the Commonwealth. The Commonwealth received information, initially focused on the Dwarf Galaxias, but subsequently updated to include direct consideration of the Southern Brown Bandicoot. The Commonwealth has determined that the proposal is not a controlled action.

This assessment by the Commonwealth represents a conclusive assessment by the relevant body. MPA submits that the acknowledgement of the transient potential use of the site by the Southern Brown Bandicoot does not act to upset this assessment. As identified above, the critical test for the Commonwealth is a significant impact on the relevant environmental matter. Nothing in the observations of the conclave suggests the Commonwealth has incorrectly applied this test.

It follows that the appropriate course for this Panel is to proceed on the assumption that there is no controlled action and no recommendation required in relation to the Southern Brown Bandicoot. In the event that facts arise during development that indicate a different conclusion about the impact, this would be a matter for the developer under the EPBC Act. There is no need for the Panel to intervene in the operation of the EPBC Act.

³⁵ Clause 10.04 of the State Planning Policy Framework states that: 'Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations'.

2.2. Dwarf Galaxias

2.2.1. Issue

There is one unresolved submission in relation to the Dwarf Galaxias made by the City of Frankston (submission 21, item 2). That submission recommends that the existing habitat of the Dwarf Galaxias be retained and enhanced with connections to the waterway.

2.2.2. Background

The Conservation Management Plan describes the current man-made sandpit habitat of the Dwarf Galaxias as being ‘in poor ecological condition’ and ‘less than ideal habitat for the long term survival’ of the species.³⁶ It recommends ‘trading the poor quality habitat of the sand pits with wetland habitat that is purpose built for dwarf galaxias’.

The author of the Conservation Management Plan, Mr McGuckin, considered protection of the sandpits to constitute appropriate management in 2011.³⁷ However, subsequent habitat degradation between 2011 and 2013 led Mr McGuckin to conclude it would be unlikely the sandpits could sustain the Dwarf Galaxias population into the future.

Mr McGuckin additionally observes that there has been an invasion of Eastern Gambusia in the sandpits since flooding in 2010, resulting in competition and harassment for the Dwarf Galaxias.³⁸ Mr McGuckin considers the current habitat to be more amenable to the Eastern Gambusia than it is to the Dwarf Galaxias due to its minimal shade.³⁹

Mr McGuckin notes that to remove the Eastern Gambusia would require draining the sandpits, which is difficult as their water levels are related to groundwater, and future flooding could lead to another invasion.⁴⁰ This reliance on groundwater also presents a risk as the sandpits could dry out.

Mr McGuckin alternatively recommends a purpose-built wetland incorporating appropriate habitat, permanent water, fencing and revegetation.⁴¹

2.2.3. Evidence

a. Alan Brennan, Brett Lane and Associates

Mr Brennan defers to the assessment of Mr McGuckin with respect to aquatic fauna, including the Dwarf Galaxias, noting his own assessment is of terrestrial flora and fauna.

b. Aaron Harvey, Biosis

³⁶ Page 1.

³⁷ Page 10.

³⁸ Page 1.

³⁹ Page 10.

⁴⁰ Page 10.

⁴¹ Page 11.

Mr Harvey considers Mr Brennan should have assessed the likelihood of the Dwarf Galaxias persisting within the study area as part of the 2014 Flora and Fauna Assessment, but notes the assessment acknowledges Mr McGuckin's work.⁴²

Having regard to the merits of the existing and proposed Dwarf Galaxias habitat, Mr Harvey concludes that:⁴³

The new wetland for Dwarf Galaxias could potentially provide better quality habitat for Dwarf Galaxias than currently exists in the artificial sand pits. During design and construction of the wetlands, care must be taken to ensure that the shallow margins of the wetland are maintained, regardless of the depth of the wetland. The area of shallow water with fringing aquatic vegetation in the new wetland should exceed the area of shallow water currently available for Dwarf Galaxias in the sand pits.

c. David Fairbridge, Frankston City Council

Mr Fairbridge reiterates the concern raised in the City of Frankston's submission regarding the relocation of the Dwarf Galaxias. He states:⁴⁴

Melbourne Water has advised that the existing waterbody provides suitable habitat for the species and there are opportunities to extend the population through enhancement of this existing habitat. While it is known that Dwarf Galaxias can be translocated successfully, removing the existing habitat and translocating the population to a newly created wetland carries the risk that the population will not re-establish. It is recommended that the existing habitat be retained and enhanced with connections to the waterway.

The reports of Mr Nicholls, Mr O'Malley and Ms Maclagan do not consider the Dwarf Galaxias.

2.2.4. MPA's position

The protection of the Dwarf Galaxias forms part of the proposal advanced by the proponent. There exists no opposition to the protection of the community and only some difference in view by the City of Frankston as to the methodology to be adopted.

MPA supports the creation of new and appropriate habitat for the Dwarf Galaxias and adopts the position of Mr McGuckin, Mr Brennan and Mr Harvey as to the ability to create an appropriate aquatic environment.

While in general the position of the species is agreed and the requirement for binding protection acknowledged, MPA in preparation for this hearing has determined that more specific wording in the UGZ Schedule is warranted to secure the obligation for protection of the species. While this is included in the current schedule, it is considered the requirements for conditions should be updated to include:

⁴² Page 14.

⁴³ Page 19.

⁴⁴ Page 5.

- a requirement for the preparation of an agreement pursuant to section 173 of the *Planning and Environment Act 1987* prior to residential subdivision acknowledging the obligation on the future owners to secure the ongoing maintenance of the habitat; and
- a requirement that any permit application indicate how the Dwarf Galaxias habitat and management will be implemented (whether by owners corporation or alternative mechanism).

2.3. Native vegetation

2.3.1. Issue

The City of Frankston has submitted (submission 21, item 1) that a greater proportion of existing native vegetation on the precinct should be retained within the Native Vegetation Precinct Plan (**NVPP**), expressing concern that only five out of 144 indigenous trees will be retained under the current NVPP.⁴⁵

Watsons has submitted (submission 11, item 6) that the retention of existing trees should be re-considered, due to the level of earthworks anticipated in the immediate vicinity that would result in those trees being surrounded by retaining wall structures on three sides.

2.3.2. Background

The 2014 Flora and Fauna Assessment records the native vegetation within the precinct as constituting 144 scattered trees and 3.9840 hectares of Grassy Woodland (EVC 175).⁴⁶ It describes the proposed development as resulting in the loss of all native vegetation and fauna habitat, to develop the land for residential use and roads, and to restructure drainage lines across the precinct.⁴⁷

With respect to drainage, the *Surface Water Management Strategy* for the Brompton Lodge precinct prepared by Neil Craigie dated 13 June 2013 notes that:⁴⁸

Significant earthworks are proposed across the site to confine flooding extents, deepen waterways to service proposed urban development drainage systems, create wetlands and sediment basins, and to raise finished surface levels to provide minimum 600 mm freeboard above 100 year ARI flood levels along the waterways.

⁴⁵ The NVPP retains five trees that are indigenous to the local area and two trees that are Australian natives.

⁴⁶ Page 1.

⁴⁷ Page 1.

⁴⁸ Page 8.

Mr Craigie describes the proposed drainage design approach as primarily aiming for:⁴⁹

flood flow velocities and depths to be kept low so as to maximise public safety, water quality performance and protection of habitat, whilst slowing down and attenuating peak flow rates downstream.

Subsequent to both of the above background reports, MPA engaged Damien Navaud of Homewood Consulting to assess all of the 221 trees within the precinct and produce its background report titled *Pre-Construction Impact Assessment (Arborist Assessment)* dated 20 May 2015.

MPA relied on the Arborist Assessment to identify seven existing trees adjacent to the proposed waterway and wetland for retention, shown as ‘tree conservation/encumbered open space’ on Plan 2 (Future Urban Structure Plan) in the PSP.⁵⁰

Table 2 in the NVPP specifies the scattered trees to be retained as comprising:⁵¹

- five from the species *Eucalyptus cephalocarpa*, which are silver-leafed stringybarks indigenous to the local area; and
- two from the species *Corymbia maculate*, which are spotted gums native to Australia.

The trees are numbered:

- 145, 146, 147, 148, 149, 150 and 151 in the NVPP; and
- 65, 75, 77, 78, 79, 80 and 81 in the Arborist Assessment.

The Brompton Lodge NVPP was prepared concurrently with the PSP and sets out the requirements for the protection and management of native vegetation in the precinct. It identifies native vegetation which may be removed without a planning permit and the offsets to be achieved before permitted removal commences. It requires any permitted removal, destruction or lopping of native vegetation to meet the no net loss and offset objectives in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines* (DEPI, 2013).

2.3.3. Evidence

a. Alan Brennan, Brett Lane and Associates

Mr Brennan notes that between the 2014 site visits to inform his background report on which the NVPP is based and the 2016 site visits to inform his expert evidence, the number of scattered trees recorded on the site changed from 144 to 99.⁵²

⁴⁹ Page 19.

⁵⁰ Page 8.

⁵¹ Page 13.

⁵² Page 7.

Mr Brennan recommends that:⁵³

given the significant changes in the number of scattered trees present between 2014 and 2016, serious consideration is given to offset requirements being based upon the numbers of trees present in 2014.

Mr Brennan does not refer to the submissions made by Watsons or the City of Frankston in relation to the retention of existing trees near to the proposed waterway and wetland.

b. Aaron Harvey, Biosis

Mr Harvey identifies five aspects of the NVPP based on the 2014 Flora and Fauna Assessment that he considers shortcomings that should be addressed in the final version.⁵⁴ These relate to:⁵⁵

- more clearly specifying the land to which clause 52.16 of the Casey Planning Scheme will apply;
- considering whether the offset prescriptions have been ‘underestimated due to DELWP subsequently revising the area assigned to scattered trees and by incorrect EVC benchmarks being used for vegetation quality assessments’;
- misidentification of the types of native vegetation within the Precinct;
- the retention of very little native vegetation; and
- missing reference to the Conservation Management Plan.

With respect to the retention of native vegetation, Mr Harvey considers there to be scope for greater retention, stating:⁵⁶

it is feasible that more native vegetation could be retained, particularly along existing roadsides and future waterways, parks and open spaces, where existing mature trees could be incorporated into amenity plantings (subject to an arborist’s assessment of tree health and longevity).

c. David Fairbridge, Frankston City Council

Mr Fairbridge reiterates the concern raised in the City of Frankston’s submission regarding the retention of native vegetation. He observes that ‘most remnant vegetation within the precinct is linear, providing ample opportunity to retain much of this vegetation as buffers to the development and link with the proposed waterway link’.⁵⁷

The reports of Mr Nicholls, Mr O’Malley and Ms Maclagan do not consider native vegetation.

⁵³ Page 14.

⁵⁴ Page 16.

⁵⁵ Pages 16-17.

⁵⁶ Page 16.

⁵⁷ Page 5.

2.3.4. MPA's position

The appropriate mechanism to address native vegetation across the PSP area is the NVPP. The proposed NVPP provides approval for removal of the majority of native vegetation across the site.

This authorisation provides permission for the removal, but does not mandate it. Consistent with the conclave position on the Southern Brown Bandicoot, further native vegetation could be retained in the ultimate subdivision design. The NVPP would therefore provide appropriate flexibility for the developer.

MPA's position is that the NVPP represents an appropriate outcome to implement the urban development objectives that underpin the PSP. State policy on the appropriate or preferred approach to native vegetation within Victoria is not to retain elements within an urban environment but to have consolidated offsets appropriately managed.

This PSP is consistent with that approach by requiring offsets for the permitted removal to be secured prior to removal.

3. Traffic

Traffic issues were raised by a number of submitters. These may be broadly grouped into submissions relating to:

1. the construction of Ballarto Road along the northern boundary of the precinct between the Western Port Highway to the east and Frankston-Cranbourne Road / Pearcedale Road to the west and its associated intersections;
2. proposed intersection treatments along the existing Frankston-Cranbourne Road, including with Woodlands Road to the south; and
3. the proposed upgrade to Chevron Avenue, outside of the precinct to its south.

Expert witness reports on traffic have been circulated by:

- Chris Butler of Cardno on behalf of MPA;
- Jason Walsh of Traffix Group on behalf of UDIA Pty Ltd (Watsons);
- Mark O'Brien of O'Brien Traffic on behalf of Casey City Council; and
- Graeme Read of Frankston City Council.

On account of the submissions which broadly support the utilisation of Ballarto Road, the consideration of traffic has moved through the exhibition process to take account of utilisation of access to the Western Port Highway. This access is supported by VicRoads. Discussions between the proponent and MPA and the Council and MPA have also been addressed to this connection.

3.1. Ballarto Road

3.1.1. Issue

Plan 6 (Road Network) in the PSP shows Ballarto Road to the north of the precinct as a four lane arterial road with two signalised intersections between the Western Port Highway and Cranbourne-Frankston Road / Pearcedale Road.

The City of Frankston has submitted (submission 21, item 4) that:

- the PSP should require the provision of sufficient space for the signalised intersections; and
- the intersection treatment with the Western Port Highway should be clarified, as the Panel hearing considering the Western Port Highway (North) Upgrade concluded a north-facing interchange was required, but the PSP appears to set aside land for south-facing ramps.

The PSP does not currently include direct access between the Brompton Lodge precinct and the Western Port Highway and Ballarto Road intersection. Subsequent to the exhibition of the Amendment and receipt of submissions, the proponent raised the prospect of providing such access.

That intersection was the subject of a Planning Panel considering Planning Scheme Amendment Casey C199, Frankston C99 and Greater Dandenong C83 regarding the proposed upgrade of the Western Port Highway (north).

3.1.2. Background

a. PSP background reports

The PSP was informed by two background traffic reports:

- *Traffic Engineering Assessment* dated 10 June 2014 prepared by Traffix Group (Traffix Group report); and
- *Traffic and Transport Assessment* dated 10 November 2015 prepared by Cardno (Cardno report).

Both reports were prepared on the basis that there would be no direct access between the precinct and the Western Port Highway and Ballarto Road intersection.

The Traffix Group report was finalised before the Panel report in relation to the Western Port Highway upgrade. Traffix Group noted that the preferred outcome for the Western Port Highway and Ballarto Road intersection at the time was an overpass of the Western Port Highway at Ballarto Road, with no direct connection between the two roads.⁵⁸

By the time the Cardno report was finalised, the Panel report had been published.⁵⁹ With respect to Ballarto Road, the Cardno report observes:⁶⁰

A Ballarto Road extension connecting these two sections of Ballarto Road is ultimately proposed. The first section is to be provided via a two lane carriageway between the Woodlands Road extension and the Cranbourne-Frankston Road roundabout as part of the PSP area road works. The second road section between Woodlands Road and the Western Port Highway is to be delivered when the northern ramps at Ballarto Road to/from the Western Port Highway (Freeway) are constructed, which necessitates a four lane duplicated road between Western Port Highway and Cranbourne-Frankston Road. This road is to remain as a two-way/two-lane road until the Western Port Highway upgrade and Ballarto Road interchange are constructed.

In the interim period, the Ballarto Road carriageway will occupy the northern lanes of the ultimate design, allowing for one lane of traffic in each direction. No direct access to Ballarto

⁵⁸ Page 1.

⁵⁹ Page 6. The Panel report is dated 7 August 2015.

⁶⁰ Page 10.

Road is anticipated from lots within the Brompton Lodge PSP area, with access provided via controlled intersections at Woodlands Road extension (west) and Chevron Avenue extension (east).

b. Western Port Highway upgrade

The Part A Submission describes the background to the Panel hearing considering the Western Port Highway upgrade and sets out relevant extracts from the Panel report. Most notably, the Panel supported modifying the exhibited Public Acquisition Overlay (**PAO**) proposed for the Western Port Highway / Ballarto Road intersection to allow for the provision of northern ramps.⁶¹

The modified PAO was gazetted on 14 January 2016.

3.1.3. Evidence and MPA's position

The expert evidence in relation to Ballarto Road and its associated intersections is set out in the traffic conclave statement. The tables below replicate the commentary in the conclave statement and sets out MPA's position in relation to each point.

Table 1: Ballarto Road Function and Delivery

| Experts' positions and commentary | MPA position |
|--|--|
| <p>Agreed:</p> <ul style="list-style-type: none"> a) That Ballarto Road between Western Port Highway and Cranbourne-Frankston Road is desirable as a broader strategic road network connection. b) Traffic volumes would be approximately 50 percent attributable to Brompton Lodge at Western Port Highway (MOB view is at least 50 percent is attributable to Brompton Lodge. JW view is that no more than 50 percent is attributable to Brompton Lodge). c) That locally generated traffic (Brompton Lodge, Cranbourne West) will not warrant the future duplication of Ballarto Road on its own. | <p>MPA agrees that constructing Ballarto Road between the Western Port Highway and Cranbourne-Frankston Road would positively contribute to the wider road network.</p> <p>MPA also agrees that local traffic generated by the Brompton Lodge and Cranbourne West precincts would not of itself warrant the future duplication of Ballarto Road (therefore opening an interim position consistent with other PSPs of land take but not the delivery of the ultimate road).</p> |
| <p>Not agreed:</p> <ul style="list-style-type: none"> a) GR view that the full length of Ballarto Road should be delivered with PSP and timing of delivery confirmed, ideally with the full connection constructed as soon as practicable due to its' importance as a future direct connection between Cranbourne and Seaford and subsequent | <p>MPA considers that the full (interim) length of Ballarto Road should be delivered and 100% attributed to Brompton Lodge within the DCP.</p> <p>MPA notes traffic generation is relevant to the question of funding, but that attribution of cost does not necessarily need to equate to attribution of traffic flows.</p> |

⁶¹ Page 69 of the Panel report.

| Experts' positions and commentary | MPA position |
|---|--|
| <p>travel time / diversion impacts should this connection not exist.</p> <p>b) MOB agreed on the need for full connection given the broader strategic road network benefit (notably potential reduced need for future 6-lane Cranbourne-Frankston Road cross section) and noting concerns on the practicalities of staged delivery and subsequent risk of completion. CB and JW agree that while the broader strategic view is desirable it should not be wholly attributable to the Brompton Lodge PSP based on the traffic flows.</p> <p>c) JW view that DCP contribution to Ballarto Road delivery should apply to full length between Western Port Highway and Cranbourne-Frankston / Pearcedale Road, including connections to Western Port Highway and the Cranbourne-Frankston / Pearcedale Road roundabout. The contribution attributable to Brompton Lodge PSP should reflect the ultimate traffic attributable to the Brompton Lodge PSP area (no more than 50 percent).</p> <p>d) CB acknowledges JW position, noting that the connection to Cranbourne-Frankston / Pearcedale Road is not critical for PSP road network, however adds that the preferred Ballarto Road / Woodlands Road intersection (land and construction over above the projection of Ballarto Road through the intersection) should be included within the DCP.</p> <p>e) JW's view that delivery would progress from west with development front, with extent of delivery tied to DCP contribution and final section (likely connection to Cranbourne-Frankston Road / Pearcedale Road roundabout) to be delivered by others. Expected progressive delivery west to east acknowledged by CB and MOB. MOB needed to undertake further analysis to test whether the road network could cater for the PSP traffic flows in 2030 without the eastern connection of Ballarto Road to CFR/Pearcedale Rd R/B.</p> | <p>MPA does not dispute Mr Walsh's assessment that delivery would progress from the west to the east with the development front, though this is not clear in the absence of any staging or other process that this is the concluded or binding view of the proponent. MPA maintains that the whole length of Ballarto Road should be included within the DCP from a funding and delivery perspective.</p> <p>MPA further submits that the ultimate land take should be included within the DCP, consistent with the approach taken for growth area planning.</p> <p>The concept drawings included in the various evidence statements are considered below in further detail.</p> |

| Experts' positions and commentary | MPA position |
|---|--------------|
| <p>f) MOB does not support a DCP funding model that would likely result in the omission of connection to the Cranbourne-Frankston Road / Pearcedale Road roundabout (east of IN-02) for an indefinite period.</p> <p>g) GR's view is that DCP funding construction of Ballarto Road should be allocated on a section by section basis for the full length of the road (and made available as needed).</p> <p>h) Regarding future duplication, MOB is of the view that a four lane cross section west of Woodlands Road will be required if Western Port Highway is upgraded to a freeway in accordance with the WPF AECOM model scenario 2 and likely required if in accordance with WPF AECOM model scenario 8. Duplication east of Woodlands may be required under WPF AECOM model scenario 2. JW disagrees duplication of Ballarto Road will be required between Western Port Highway and Cranbourne-Frankston Road / Pearcedale Road roundabout. CB is of the view that duplication may be required west of Woodlands Road, but not required to the east.</p> | |

Table 2: IN-01 Ballarto Road / Woodlands Road Intersection

| Experts' positions and commentary | MPA position |
|--|---|
| <p>Agreed:</p> <p>a) A single lane roundabout option or signal option is appropriate for expected traffic volumes.</p> <p>b) Expected traffic volumes would not warrant localised duplication at signals (as per CB option which is in accordance to MPA guidelines for interim signals).</p> | MPA agrees with the traffic experts' consensus position that either a single lane roundabout or signal would be appropriate at this intersection and that the expected traffic volumes would not warrant localised duplication. |
| <p>Not agreed:</p> <p>a) JW view that intersection should not be a DCP item, but developer funded/delivered, excluding the projection of Ballarto Road through the intersection (this would be subject to a</p> | MPA is supported by the view of Mr Butler in submitting that this intersection should remain in the DCP and that pedestrian operated signals are required for the roundabout option. |

| Experts' positions and commentary | MPA position |
|---|---|
| <p>50 percent contribution for the Ballarto Road delivery). Intersection form can be identified in PSP.</p> <p>b) MOB view that PSP and DCP should be specific on the intersection layout and delivery. CB and GR agree that intersection should remain in DCP.</p> <p>c) JW of the view that pedestrian operated signals are not required for the roundabout option. CB and MOB of the view that these should be provided.</p> | <p>MPA is concerned Mr Walsh's suggestion that the intersection be funded by developers could face implementation difficulties, as the landownership will fragment and section 62(6) of the Act constrains Council's ability to impose permit conditions requiring a contribution for works.</p> <p>This is considered further below.</p> |

Table 3: IN-02 Ballarto Road / Eastern Connector Street Intersection

| Experts' positions and commentary | MPA position |
|--|--|
| <p>Agreed:</p> <p>a) Turn lanes are not needed at the interim T-intersection for traffic capacity.</p> | <p>MPA accepts the expert evidence that turn lanes are not needed at the interim T-intersection for traffic capacity.</p> |
| <p>Not agreed:</p> <p>a) MOB of view that the PSP and DCP should allow for the land to allow for the future cross intersection treatment and construction of the interim T-intersection treatment as per the Cardno plans CG150179T05 (T-intersection) and CG150179T06-02 (future cross intersection) dated 07/09/2015. CB agrees that land only should be included. JW's view is that this intersection (land and construction) should not be a DCP item.</p> <p>b) MOB also of the view that a west-south right turn lane may be warranted at the interim T-intersection for safety reasons subject to traffic volumes and application AustRoads warrants</p> | <p>MPA adopts the view of Mr Butler and Mr O'Brien that the PSP and DCP should allow for the land required to achieve both the interim T-intersection and future cross intersection.</p> <p>MPA does not submit that the DCP should include the costs of construction.</p> |

Table 4: IN-06 (new) Ballarto Road / Western Port Highway intersection

| Experts' positions and commentary | MPA position |
|---|---|
| <p>Agreed:</p> <p>a) Connection of Ballarto Road east to current Western Port Highway / Ballarto</p> | <p>MPA agrees that the connection of Ballarto Road to the current roundabout at the Western Port Highway should be included in the PSP.</p> |

| Experts' positions and commentary | MPA position |
|--|--|
| <p>Road roundabout can and should be delivered by PSP (JW qualification that costs to the PSP should be apportioned as per Ballarto Road; others disagree).</p> <p>b) Equivalent eastern approach and internal roundabout works on both options, with MOB eastern approach lane configuration acceptable to CB. Difference being line marking.</p> | |
| <p>Not agreed:</p> <p>a) CB disagrees that the left turn lane on the north Western Port Highway approach as shown by MOB is necessary for Brompton Lodge traffic. MOB to review modelling and advise further.</p> | <p>MPA shares the view of Mr Butler that left turn lane is not required for Brompton Lodge traffic.</p> <p>MPA does not suggest that any additional works for this intersection should be included in the DCP.</p> |

Table 5: IN-06 (new) Ballarto Road / Western Port Highway intersection

| Experts' positions and commentary | MPA position |
|--|--|
| <p>Agreed:</p> <p>a) Current proposed treatment is acceptable with sufficient capacity to accommodate expected traffic.</p> <p>b) PSP should not contribute to future additional intersection improvements.</p> | <p>MPA accepts the views of the traffic experts that the current proposed treatment for this intersection is acceptable and future improvements to the intersection should not be included in the DCP.</p> |
| <p>Not agreed:</p> <p>N/A</p> | |

It arises through the evidence that the proponent or at least its expert is contending that a number of works, being intersections at Ballarto Road and other intersections to the south, should not be included in the DCP. This constitutes a significant departure from the structure of the Amendment. MPA reserves its position and its ability to respond to how this argument is ultimately framed by the proponent.

In advance however MPA expresses concerns about the conceptual approach of removing intersections from the DCP and leaving these matters to permit conditions. It makes the following comments in this regard:

- Leaving the determination of intersections outcomes to permit conditions represents an ad-hoc approach to growth area planning. The DCP structure is that all of the charge area contributes to the intersections. In a situation where the intersection upgrades may or may not be triggered by early subdivision but may then be required later could result in inequitable contributions being passed to the end user.

- This also leaves the ultimate intersection outcome uncertain and subject to the particular views of the proponent, authorities and Council at the relevant time. The absence of certainty is inappropriate in a growth area context with a structure planned community.
- The timing of delivery of works by permit condition is difficult to manage. It is possible that no one development may trigger the need for the development with the effect that it is either difficult for the responsible authority to achieve the outcome or the costs are disproportionately attributed.
- Any claims that the owner holds a majority or even total control of the PSP area at the current time do not provide any comfort to MPA. As the area is developed, it may be that ownership splinters and that accordingly this does not hold.
- If it were the case that the owner were to remain the sole or near sole owner then the only matter that would change is that funding would be via permit condition within is administratively unwieldy – the cost base would not shift.
- It is not possible to have co-contributors of contributions to intersections on account of the operation of section 62(5) and section 62(6). These limitations were the very genesis of modern development contributions. This is a principle frequently and firmly applied in the Tribunal, for example: *Green v Hobsons Bay CC (Correction)* [2013] VCAT 2091 (8 January 2014).

A DCP is the exhibited and appropriate means of managing development contributions.

In respect of the additional items sought to be included in the DCP on account of the Ballarto Road precinct, the MPA acknowledges that these will increase the overall cost of development contributions within the precinct. It is recognised by MPA that it is necessary for development contributions to have a reasonable nexus and not compromise affordability within the area.

MPA has provided figures of the cost impacts and notes that these, if all development is included, increase the DCP rate per hectare from approximately \$290K to approximately 340K. On an average dwelling yield of 19 dwellings per hectare this is an approximate \$2,500 increase in cost per lot.⁶²

MPA notes that this particular PSP is included within the UGB on account of the process of logical inclusions. It is a small PSP area by contrast to a number of the other PSP/DCPs being considered at this time being Rockbank and Wollert at approximately 1400 and 750 hectares respectively. A consequence of this is that there is a smaller area to attribute development costs to and inclusion of projects has a consequential impact on cost.

While the DCP cost of approximately \$340K would represent the upper end of contributions, it is not unreasonable when viewed through the end user cost. In all it is not considered an unreasonable impost in circumstances where the site is at the end of the development area and therefore apportionment is difficult to realise.

In response to the issues raised by the City of Frankston, MPA further submits that:

- with regard to the signalised intersections:
 - the Precinct Infrastructure Plan at Table 7 of the PSP provides for the purchase of land for both intersections; and
 - the DCP at Table 3 includes projects for the land purchases (IN-01 and IN02), which will provide sufficient space for their subsequent treatment;

⁶² This cost diminishes if more than the minimum average is achieved.

- with regard to the Western Port Highway interchange, the extent of land identified within the PSP for the purposes of freeway reservation reflects the PAO extent recommended by VicRoads and approved by the Minister for Planning.

3.2. Cranbourne-Frankston Road

3.2.1. Issue

Plan 6 (Road Network) in the PSP shows two new signalised intersections along the Cranbourne-Frankston Road, aligning with Woodlands Road and Chevron Avenue to the south, as well as one left-in/left-out access.

Three submissions raise issues in relation to the Cranbourne-Frankston Road intersections that remain unresolved:

1. Robert Dean (submission 10) raises concerns regarding amenity impacts on residents of Woodlands Road following signalisation of its intersection with Cranbourne-Frankston Road and requests that the cost of sealing Woodlands Road between Cranbourne-Frankston Road and Carr-Boyd Road be included within the DCP, as well as a traffic management system to mitigate safety issues.
2. Watsons (submission 11, item 7) opposes the design and layout of the intersections on the basis that the use of land required is excessive.
3. The City of Frankston (submission 21, item 5) submits that the intersections will add to existing delays along the Cranbourne-Frankston Road between the Frankston and Casey municipalities and is not persuaded that the signalisations are justified.

3.2.2. Evidence and MPA's position

The expert evidence in relation to the Cranbourne-Frankston Road intersections is set out in the traffic conclave statement. The tables below replicate the commentary in the conclave statement and sets out MPA's position in relation to each point.

Table 6: IN-03 Woodlands Road / Cranbourne-Frankston Road intersection

| Experts' positions and commentary | MPA position |
|--|---|
| <p>Agreed:</p> <p>a) With connection of Ballarto Road to Western Port Highway a second right turn lane on the north approach is not required for capacity (interim and ultimate) but desirable. The second right turn lane can be reduced in length but the proposed land take is appropriate.</p> <p>b) MOB and CB agreed that a 6 lane cross section for CFR would be able to be delivered in the road reservation shown on the plans however the left turn deceleration and bus jump queue lane on the southern side will be sacrificed and/or lane, median and verge widths</p> | <p>MPA accepts the evidence that it is appropriate to retain the proposed land take for a second right turn lane on the north approach, although this may be reduced in length.</p> <p>MPA notes Mr Butler and Mr O'Brien's suggestion to communicate that the left turn deceleration and bus jump queue lane on the southern side of the Cranbourne-Frankston Road would be sacrificed or dimensions reduced to achieve delivery within the road reservation shown on the plans.</p> |

| | |
|---|--|
| reduced. Stakeholders should be made aware of this as they approved the plans assuming features as currently shown. | |
| Not agreed: <ul style="list-style-type: none"> a) MOB position that north approach second right turn lane could be a short lane only. CB not opposed to this but his view is that current land take should be retained and that particulars of second right turn lane be reviewed at delivery. b) JW view that intersection should not be a DCP item, but developer delivered. Not agreed by CB, MOB and GR. c) MOB concerned that the ultimate intersection option does not reasonably consider the existing retention structure along the south side of Cranbourne-Frankston Road as designed with additional land take on northern side of Cranbourne-Frankston Road potentially required. CB disagrees and notes delivery of Cranbourne-Frankston 6-lane cross section is by others. JW opposed to additional land take from Brompton Lodge within PSP. | <p>MPA supports Mr Butler's view that the currently proposed land take for the north approach second right turn lane should be retained, with its specifications to be reviewed at the time of delivery.</p> <p>MPA does not agree with Mr Walsh that this intersection should be excluded from the DCP.</p> <p>As above, MPA is concerned Mr Walsh's suggestion that this intersection be funded by developers could face implementation difficulties, as the landownership will fragment and section 62(6) of the Act constrains Council's ability to impose permit conditions requiring a contribution for works.</p> |

Table 7: IN-04 Chevron Avenue / Cranbourne-Frankston Road intersection

| Experts' positions and commentary | MPA position |
|--|---|
| Agreed: <ul style="list-style-type: none"> a) The ultimate intersection (6 lane Cranbourne-Frankston Road cross section) will accommodate expected traffic. | MPA notes the experts' view that the ultimate proposed intersection will accommodate the expected traffic. |
| Not agreed: <ul style="list-style-type: none"> a) MOB of the view that the interim intersection (4 lane Cranbourne-Frankston Road cross section) may not accommodate expected traffic volumes should Ballarto Road not be connected between Western Port Highway and the Cranbourne-Frankston / Pearcedale Road intersection. JW and CB do not agree. b) Lack of left turn slip lanes on Cranbourne-Frankston approaches will impact effectiveness of north-east bound bus queue jump lane (MOB). | <p>MPA does not share Mr O'Brien's concern that the interim intersection may not accommodate expected traffic volumes if Ballarto Road were not connected between the Western Port Highway and Cranbourne-Frankston Road.</p> <p>MPA further disagrees with Mr O'Brien that the absence of left turn slip lanes on the Cranbourne-Frankston Road approach would impact the effectiveness of the north-east bound bus queue jump lane.</p> |

| Experts' positions and commentary | MPA position |
|--|--|
| <p>c) MOB view that interim and ultimate intersection needs refinement to properly consider existing retention structure and level changes along the south side of Cranbourne-Frankston Road (specifically impact on pedestrian connectivity). Additional land take on northern side of Cranbourne-Frankston Road potentially required to resolve. Acknowledged by CB but management within land allowed as per IN-03 above. JW opposed to additional land take from Brompton Lodge within PSP.</p> <p>d) JW view that intersection should not be a DCP item, but developer delivered. Not agreed by CB, MOB and GR.</p> | <p>MPA also disagrees with Mr Walsh's view that this intersection should be excluded from the DCP.</p> <p>As above, MPA is concerned Mr Walsh's suggestion that this intersection be funded by developers could face implementation difficulties, as the landownership will fragment and section 62(6) of the Act constrains Council's ability to impose permit conditions requiring a contribution for works.</p> |

Table 8: Cranbourne-Frankston Road / Western Port Highway intersection

| Experts' positions and commentary | MPA position |
|--|---|
| Agreed: N/A | |
| <p>Not agreed:</p> <p>a) MOB and GR view that improvements may be required should Ballarto Road not be provided in full between Western Port Highway and Cranbourne-Frankston / Pearcedale Road intersection. CB and JW view that this is a broader strategic road network consideration and not relevant to the PSP.</p> | MPA strongly agrees with Mr Butler and Mr Walsh that any future improvements to the Cranbourne-Frankston Road / Western Port Highway intersection fall outside the scope of this PSP. |

3.3. Chevron Avenue

3.3.1. Issue

Concerns regarding the impact of the PSP on Chevron Avenue were raised in submissions by a number of local residents, namely:

- submission 2 by Mary and Rob Quinn;
- submission 4 by Kyle Davenport;
- submission 5 by John Lappin;
- submission 6 by Pat Martin;
- submission 7 by Stavros Kipirzius;

- submission 8 by Bruce Schwaize;
- submission 12 by Mark Jones;
- submission 14 by Greg and Lisa Strong; and
- submission 18 by Athena Jones.

With the exception of submission 18, which is silent on the point, the submitters seek for the cost of upgrading Chevron Avenue to be included in the DCP.

Three submissions (5, 6 and 7) recommend that Chevron Avenue be gated to prevent its use as a thoroughfare between the Brompton Lodge and Settlers Run / Botanic Ridge precincts. A further submission (14) suggests the provision of speed humps.

The submissions identify amenity concerns resulting from the anticipated increase in traffic. Submission 18 in particular specifies the potential for noise impacts, loss of neighbourhood character, impact on local fauna, loss of property value and visual amenity impacts.

Conversely, Watsons (submission 11, item 5) query the 100% attribution within the DCP of the cost of upgrading Chevron Avenue, on the basis that it is an existing local road providing through-traffic.

3.3.2. Background

Table 3 of the DCP (Road and Intersection Projects) includes as Project RD-2:

Chevron Avenue upgrade. Upgrade of existing carriageway for 587m, excluding intersections, to an urban standard.

The indicative provision trigger is the time of subdivision.

3.3.3. Evidence and MPA's submission

The expert evidence in relation to the Chevron Avenue upgrade is set out in the traffic conclave statement. The table below replicates the commentary in the conclave statement and sets out MPA's position in response.

Table 9: Upgrade of Chevron Avenue to urban standard

| Experts' positions and commentary | MPA position |
|---|--|
| Agreed: <ul style="list-style-type: none"> a) The Brompton Lodge town centre and signalisation of the Cranbourne-Frankston Road / Chevron Avenue intersection will result in additional traffic on Chevron Avenue between Cranbourne-Frankston Road and Pearcedale Road. | <p>MPA agrees that the development of the Brompton Lodge town centre and signalisation of the Cranbourne-Frankston Road / Chevron Avenue intersection will increase traffic flows along Chevron Avenue to the south of the precinct.</p> |
| Not agreed: <ul style="list-style-type: none"> a) The full cost for upgrade works should fall to the Brompton Lodge PSP. Based on apportionment (of BL local town centre traffic) JW of the view that current use warrants upgrade and that that of ultimate traffic, approximately 40 percent is attributable to Brompton Lodge. CB has not considered apportionment, but traffic increase as a result of Brompton Lodge is significant. | <p>MPA considers Chevron Avenue to be already in need for an upgrade, irrespective of the future development of the Brompton Lodge precinct.</p> <p>MPA does not dispute that the development from Brompton Lodge will increase the traffic carried by Chevron Avenue. In the circumstances, MPA submits that a fair and reasonable proportion of costs for inclusion within the DCP would be 50%, with the balance to be attributed to the Council.</p> <p>This represents a fair and reasonable meeting of current traffic demands, the likely further actions of the Council required irrespective of the PSP and the need to control DCP cost.</p> |

4. Schedule to the Urban Growth Zone

The submission from Watsons (submission 11) requests two amendments to the exhibited Schedule 11 to the Urban Growth Zone (**UGZ**):

- that the applied zone to residential areas within the PSP be changed from the General Residential Zone (**GRZ**) to the Residential Growth Zone (**RGZ**) (items 1 and 2); and
- that the wording in clause 3 with respect to density requirements be broadened to recognise the need for higher density development in the precinct (item 3).

4.1. Residential Growth Zone

MPA supports the application of the RGZ across the residential areas identified within the PSP. It supports this position on two principal bases:

- First, MPA considers that the proper interpretation of the UGZ and PSP renders consideration of the purposes of applied zones unnecessary and that, when read in this light, the RGZ forms the most appropriate zone control to be applied.
- Second, this PSP area, which is the product of a logical inclusions process, bears the appropriate characteristics to support the application of the RGZ and that the uncontested elements of the PSP concerning housing support the application of this zoning.

MPA adopts its position in reliance on Plan Melbourne, which recognises the need for growth areas to depart from the traditional application of the general residential zone to explore the application of alternate zones. Plan Melbourne states:⁶³

Amend the Precinct Structure Planning Guidelines to ensure that housing diversity will be achieved by providing a variety of lot sizes and housing types across a precinct, including lower-density, standard lots and higher-density housing in areas of higher amenity. Precinct structure planning should apply the suite of reformed residential zones and Mixed Use Zone to encourage the delivery of a diversity of lot sizes and housing types in the short and long terms.

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Encourage use of the Residential Growth Zone in Melbourne's greenfield locations in growth areas to allow for residential change and redevelopment in appropriate locations over time.

The starting proposition must accordingly be that the RGZ has a role to play in the delivery of Melbourne's newest suburbs. What this policy calls for is application of the reformed zones in growth areas, but more particularly the RGZ in certain 'appropriate locations'.

In applying the RGZ, MPA notes that the delivery of growth areas operates in an alternate statutory context where the UGZ applies zones, which then provide the machinery provisions by which statutory planning applications can be processed.

MPA considers that the hierarchy of documents in the statutory planning process where the UGZ is applied is materially different to the context of ordinary permit applications, in particular because the UGZ and its purposes, and the PSP itself, provide the guiding principles for development.

It is therefore the case that the purposes of the applied zone are not relevant to the consideration of the permit applications within the framework.

The purposes of the UGZ include:

To manage the transition of non-urban land into urban land in accordance with a precinct structure plan

*To provide for a range of uses and the development of land **generally in accordance with a precinct structure plan.***

[Emphasis added]

If a structure plan is in force, then Part B of the UGZ applies (that is, clauses 37.07-9 – 37.07-16). These provisions include:

A requirement that a permit granted must be generally in accordance with the precinct structure plan applying to the land'.

Any requirement in the Table of uses and any requirement specified in the schedule to the zone must be met.

The PSP provides guidance on locally relevant or specific planning purposes relating to the PSP area. For example, the PSP includes a range of policies concerning Vision (Section 2.1), Objectives (Section 2.2), Character (Section 3.1) and so on. The net effect of these provisions and the detail

⁶³ Page 49.

contained therein is that the generic State standard purpose provisions of the applied zones do not have the usual role in guiding discretion. The guidance is instead found in the PSP and UGZ decision guidelines, augmented by the application of machinery provisions in the applied zones.

In MPA's submission, it would be difficult to reconcile or elevate to a material level of importance, a generic purpose of a residential zone in the face of the clear and specific UGZ purposes and specific guidance in the PSP.

In short:

- The provisions of the PSP guide the exercise of the discretion whether or not to grant a permit.
- The purposes of the relevant applied zone do not apply.⁶⁴
- Whether the RGZ or the GRZ is applied, it is possible, broadly, to deliver the same outcomes. Although it is noted that the GRZ comes with height limitations. The terms of the PSP and the general requirement that any development be generally in accordance with the PSP guide the exercise of the discretion.

MPA has previously applied the RGZ in the growth areas in the manner proposed. Other precincts where a RGZ has been applied to the whole precinct include:

- (a) Casey Planning Scheme
 - (i) UGZ6 – Thompsons Road
 - (ii) UGZ7 – Clyde Creek
 - (iii) UGZ8 – Casey Fields South
 - (iv) UGZ9 – Berwick Waterways
- (b) Wyndham Planning Scheme
 - (i) UGZ8 – Ballan Road
 - (ii) UGZ9 – Westbrook
 - (iii) UGZ10 – Truganina
 - (iv) UGZ11 – Riverdale
 - (v) UGZ13 – Tarneit North

It is proposed to be included in the Rockbank PSP, a matter where the issue is contested and there is a common Panel member to this hearing. The recent Wollert PSP which is the subject of a Part 1 Panel report applies the RGZ for all land within 400 metres of the nominated town centre.

MPA's second tranche of argument pertaining to the application RGZ in this instance relates to particular characteristics of the PSP environment. These characteristics are presented both supplementary and in the alternative to the argument advanced above.

The PSP as a logical inclusion PSP is relatively small in size. It has 81 Ha⁶⁵ of net developable area. The result is a more compact urban structure than in the larger PSPs such as the recent Rockbank example listed above, the Wollert example or the now exhibited Donnybrook/Woodstock PSPs.

⁶⁴ Or to the extent that the Panel were to disagree, can be given so little weight in the context of the UGZ and PSP that they do not meaningfully operate over the exercise of discretion. It is noted that this approach is not consistent with the only reported decision of the Tribunal that grapples with this decision making process, *Develco Capital v Melton CC* [2015] VCAT 1619 (13 October 2015), which was decided by a non-planning member and which did not directly grapple with the arguments advanced by the MPA in this case.

⁶⁵ Section 2.3.

Plan 4 of the PSP demonstrates this proximity well. It shows that a substantial proportion of the PSP area is within the 400 metre catchment of the town centre.

R6 of the PSP relates to residential subdivision and establishes requirements for a broad range of lot sizes and dwelling types. It is not a provision which is contested to the knowledge of MPA. In particular, it provides that:

- Higher density lots/housing should be predominantly provided within the 400 metre catchment of the town centre and in areas overlooking, abutting or within close proximity of public transport, public open space, activity centres and community hubs.
- Higher density is given the meaning of 'a variety of forms such as apartments, terrace/townhouse development'.
- Medium and lower density lots can occur in the area outside of the 400 metres catchment of the town centre.

Analysis of the PSP demonstrates that a large proportion of the potential residential areas are proximate to or adjacent to the types of areas identified by R6. Specifically:

- all land within the 400 metres catchment of the town centre;
- the local park in the eastern corner;
- the local park in the western corner;
- the extensive waterway features throughout the west of the PSP area;
- the internal bus capable streets identified on Plan 7; and
- the external bus capable streets and proposed bus stops external to the 400 metre catchment.

What necessarily flows from this analysis is that the majority of the PSP area is influenced by the operation of the R6 higher density requirements. This spread of influence and the absence of large parcels of undefined general residential areas means that the RGZ is the appropriate zoning in this particular PSP. This example is to be contrasted with the Wollert example where the PSP was of such a size that it was appropriate and administratively logical to apply separate zone provisions.

Based on the provisions of this PSP and wide impact of R6 an attempt to apply dual applied zoning would be unwieldy.

It is also relevant that such an attempt would not serve any particular function with the RGZ being capable of delivering both conventional lots and higher density lots.

Importantly, having regard to the applicable planning policy objectives expressed in the PSP, it is distinctly possible that this is an area that could in the longer term transition from the UGZ represent an area appropriate for wholesale application of the RGZ.

Finally, MPA notes the desire expressed by the proponent in its submission to have the opportunity for development to extend beyond the heights permitted in the GRZ. This opportunity should be afforded in all of the circumstances.

MPA regards the appropriate applicable zone for residential areas to be the RGZ.

4.2. Density requirements

The proponent in submission 11 raises a concern that the density provisions of the UGZ and PSP do not adequately provide for individual subdivisions of land which may not in themselves achieve the

overall density guidelines within the PSP. It is argued that Clause 3.0 of the UGZ Schedule needs to be amended.

MPA does not accept this submission. At page 13, the PSP states that the average delivery density is 16 dwellings per hectare of NDA. It further indicates that this PSP will exceed that with an average dwelling density of 19 dwellings per hectare. This figure is marginally above the State policy and identified as an average.

It follows that some subdivisions may produce higher or lower subdivisional density outcomes.

This is consistent with the introduction to Clause 3.0 of the UGZ Schedule which relates to the application requirements under the zone. It provides that the responsible authority has discretion where it considers that a particular requirement is not relevant to a particular application. It states that a requirement may be waived or reduced.

MPA considers there exists sufficient flexibility within the PSP and UGZ Schedule to give effect to the density provisions in the manner identified by the proponent.

5. Ranfurly Golf Club

The Amstel Golf Club, which owns the Ranfurly Golf Club, has made a submission (submission 1) that remains unresolved relating to:

1. a request for contribution to construct a fence along its southern boundary to mitigate future risk once the adjoining land within the precinct is developed (item 1);
2. protection for trees along the Club's southern boundary adjacent to the planned Ballarto Road construction (item 2); and
3. inclusion of their land within the UGB through the Brompton Lodge PSP process (item 3).

5.1. Fencing

Amstel Golf Club is concerned about the proximity of the Ballarto Road reserve and the future road formation within it to the operating golf course at the Ranfurly Golf Club. The Panel will recall this proximity having attended the golf course as part of the site inspection on 11 April 2016.

Aerial photography suggests that the edge of the nearest green is separated from the fence, which is the assumed boundary of the Ballarto Road reserve, by an order of 12 metres from the fenceline and as few as 6 metres from a tee.

MPA understands the primary concern relates to the potential hazard created by golf balls travelling beyond the course boundary.

MPA submits that the presence of the road reserve is a known constraint. To MPA's knowledge, no indication has been given that the Ballarto Road reserve in this area is surplus to needs. Indeed, that would be a surprising outcome in circumstances where Ballarto Road is formed but for this segment.

The question that follows is where the responsibility for course management and control of golf balls lies. MPA's position is that this responsibility rests with the club. As it would, with respect to any of its boundaries, the Golf Club must manage its operations in a manner that does not impact on its neighbours or cause a nuisance. The same applies to any use of land.

In MPA's submission, the existence or otherwise of a conflict of uses rests with the location of the green with respect to the boundary. In effect, the Golf Club has been using the road reserve as a buffer to the playing of the game.

It follows that, from MPA's view, there is no need and no planning or legal rationale for the proponent or the public more generally to provide a buffer for the club or to manage the Club's risks through the construction of a protective fence funded by public money. Rather, the Club needs to investigate appropriate means to protect itself, which may include the erection of netting or the relocation of the hole and/or the planting of shelter belting.

A private golf facility currently deriving a benefit from the absence of a formed road within a road reserve does not, in MPA's view, take precedence over the substantial weight of planning policy which supports the delivery of approximately 1,484 new homes.

For these reasons, MPA does not support any limitation on the operation of the road reserve in favour of the Ranfurly Golf Club and does not regard the existence of the club as an influence upon the planning of the road reserve.

5.2. Tree protection

Cross-section 1 on page 44 of the PSP is proposed for the Ballarto Road Secondary Arterial (4 lane (34m)). MPA considers this cross-section to allow adequate room within the verge to ensure that the root systems of trees within the Ranfurly Golf Club will not be adversely impacted.

Specifically, the pavement of the road surface is identified to be 34 metres in the ultimate cross section with a 7.5 metre verge accommodating a shared path before the pavement on the Ranfurly side.

This cross section provides a reasonable level of spacing between the intended public and existing private uses.

5.3. Inclusion within the UGB

MPA understands that the Logical Inclusions Advisory Committee recommended the inclusion of the Ranfurly Golf Club land within the UGB in 2011, at the same time as the Brompton Lodge precinct.⁶⁶ However, this recommendation was not pursued.

MPA does not regard this submission as coming within the scope of the amendment. Further there is no independent information called by the submitter that would justify any commentary on the inclusion of the area within the UGB. The history of the area is addressed in MPA's Part A Submission but this is not a matter that falls for consideration in this forum.

From a policy perspective, MPA understands that there exists no current policy for any expansion of the UGB or further review of the UGB by the Victorian Government. From a procedural perspective, MPA notes that Part 3AA, Division 3 of the Act sets out the requirements for ratification by the Victorian Parliament for amendments to the UGB. Section 46AH prescribes the procedure for

⁶⁶ *Logical Inclusions (AC)* [2011] PPV 115 (11 November 2011), Report No. 2, pages 2 and 54.

ratification, which includes the amendment being laid before each House of Parliament within 7 sitting days of that House after it is approved. This is clearly a more involved and complex arrangement than, for instance, a rezoning.

It follows that notwithstanding any argument about locational characteristics of that site being proximate to the Cranbourne West PSP and now the proposed Brompton Lodge PSP it would not be appropriate within the context of this Amendment to consider the alteration or to plan the delivery of infrastructure⁶⁷ in a manner that assumes or relies upon delivery of urban development of the golf course.

6. Summary

MPA commends this Amendment to the Panel.

Approval of the PSP and associated changes would realise a substantial positive implementation of planning policy for growth areas and support the growing need of Melbourne in both housing and employment.

It is noted that no party contends that the Amendment should not be approved, but at the highest argue that the Amendment should be altered to reflect changes to the DCP/PSP. This is a positive endorsement in circumstances where there exists substantial community interest.

MPA awaits the submissions of the other parties and will respond to these submissions at the appropriate time.

19 April 2016

HARWOOD ANDREWS

On behalf of the Metropolitan Planning Authority

⁶⁷ Such as Ballarto Road.