

**Draft Amendment C193 to the Yarra Ranges Planning Scheme**  
**4 Melba Avenue, Lilydale (Lilydale Quarry)**  
EXPERT WITNESS STATEMENT – MARK WOODLAND (MAY 2021)

<b>Project number</b>	2590
<b>Prepared by</b>	Mark Woodland
<b>Reviewed by</b>	Mark Woodland
<b>Version</b>	2

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## 2. Introduction

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1. I have been instructed in this matter by Norton Rose Fulbright who act for HBI Lilydale Pty Ltd (HBI Lilydale). HBI Lilydale is a joint venture between Hume Lilydale Pty Ltd (Hume Lilydale) and LBJ Development Pty Ltd (LBJ Developments) who are the registered land owner of 4 Melba Avenue, Lilydale, which is subject to the Amendment C193 to the Yarra Ranges Planning Scheme ('the Amendment').
2. The Amendment proposes to apply the *Former Lilydale Quarry Comprehensive Development Plan, October 2020* (the CDP) and rezone approximately 143 hectares of land from a Special Use Zone – Schedule 1 (SUZ1) to the Comprehensive Development Zone – Schedule 1 to facilitate the development of the subject site for predominantly residential use supported by commercial, retail and other uses.
3. I have been asked to undertake the following tasks in relation to the Amendment:
  - a. *Review the background materials in the brief;*
  - b. *Confer with instructing solicitors where necessary;*
  - c. *Meet in conference to discuss your preliminary opinion;*
  - d. *Prepare an expert witness statement considering planning matters arising from the Proposed Amendment including the submissions; and*
  - e. *If necessary, appear before the Standing Advisory Committee to present my evidence.*
4. A copy of my instructions is contained in Attachment 2 to this Statement.
5. My instructions included an index of documents which includes in part, the proposed Amendment C193, submissions and various technical reports and plans.
6. I have relied upon this material to prepare this statement of evidence.

### 3. Expert Witness Statement

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**The name and address of the expert.**

Mark Woodland of 3 Prentice Street, Brunswick 3044.

**The expert qualification and experience.**

Mark Woodland holds a Bachelor of Planning and Design from the University of Melbourne. He is a member of the Victorian Planning and Environment Law Association and the Property Council of Australia.

A Curriculum Vitae is included Appendix 1

**The expert's area of expertise to make this report.**

Mark has a broad range of experience in planning and development matters with a sound understanding of statutory planning provisions and significant experience in strategic planning and policy development enabling him to comment on a wide range of planning and development issues.

**Other significant contributors to the report.**

Not applicable.

**Instructions that define the scope of the report**

Mark Woodland has been instructed by Norton Rose Fulbright who act for HBI Lilydale in regard to this proceeding.

**The identity of any person who carried out tests or experiments upon which the expert has relied on and the qualifications of that report.**

Not applicable.

**The facts and matters and all assumptions upon which the report proceeds.**

Mark Woodland relies upon the reports and documents listed in section 6.0 of this report.

**Documents and other materials the expert has been instructed to consider or take into account in preparing his report, and the literature of other material used in making the report.**

Mark Woodland has reviewed and taken into account the following reports and materials listed in section 1 of this report.

**A summary of the opinion or opinions of the expert witness**

A summary of Mark Woodlands opinions are provided for within section 3 of this report.

**Any opinions that are not fully researched for any reason**

Not applicable.

**Questions falling out of the expert's expertise and completeness of the report.**

Mark Woodland has not been asked to make comment on any matters outside of his area of expertise. This report is a complete statement of evidence.

**Expert Declaration**

I have made all the inquiries that I believe are necessary and desirable to prepare and present expert evidence in this matter and no matters of significance which I regard as relevant have to my knowledge been withheld from the Standing Advisory Committee.

I have read and accept the Panels Victoria Guide to the Expert Evidence and I understand my duties to the Standing Advisory Committee pursuant to this Guide.



Mark Woodland  
21 May 2021

## 4. Summary of Evidence.

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### 4.1. Appropriateness of the planning controls framework.

7. I consider that the Comprehensive Development Zone (CDZ) is the most appropriate planning tool to facilitate integrated development outcomes on the Site.
8. The staged approvals framework that is proposed by the CDZ1 and the incorporated CDP provides an thorough mechanism for managing the staged and orderly development of what is large and complex site that will be developed over many years.
9. The draft CDZ and CDP address all of the relevant policy outcomes identified in State Policy (at clause 11.02-2S), and therefore is an appropriate 'precinct planning' tool as envisaged under that policy.
10. The CDZ does not solely rely on the application of the incorporated CDP with regard to the assessment of future permit application to ensure that the desired outcomes are achieved. It includes a comprehensive array of additional agreements, requirements and plan-approval mechanisms that are intended to operate alongside the CDP.
11. This is necessary because some areas of the site are able to be developed in the shorter term whereas other areas require matters such as the filling of the quarry and determining whether a potential future station is possible on the site or not to be resolved.

### 4.2. Provision for affordable housing.

12. State policy confirms that the planning system has a role to play in facilitating such outcomes that help to meet identified affordable housing need, and the housing affordability analysis prepared by both Council and the proponent demonstrate that a need exists for the delivery of affordable housing, and
13. There are differences of opinion between the proponent and Council in relation to how much affordable housing should be delivered via a voluntary agreement on the subject site, and what mix of affordable and social housing should be provided to best address local affordable housing needs
14. The current legislative and policy framework does not envisage the planning system as a panacea to all affordable housing needs, but it does seek to ensure that some of the value created by the rezoning process is shared for policy priorities such as social and affordable housing.
15. The proposed requirement under the draft CDZ schedule to deliver affordable dwellings (or land lots for construction of affordable dwellings) equal to 5% of the total dwellings on the Site provides for some sharing of the value created by the rezoning process. It is also broadly comparable in scope to the requirements contained in other comparable recent urban renewal rezonings across metropolitan Melbourne.
16. I understand that the proponent is willing to enter into a Section 173 to deliver the above, and therefore the test of such an agreement being a voluntary as under current state policy on affordable housing will have been satisfied.
17. I consider that 5% is an acceptable contribution, having regard to the current state planning policy context in relation to the role of voluntary planning agreements in contributing towards the provision of affordable housing.



18. In my view the mix between social and other forms of housing should be one which is mutually agreeable to the parties to the voluntary agreement, and not one that is mandated by the responsible authority. In the event that the proponent and Council cannot agree on the preferred mix, then it will inevitably be left to others (be it the Minister in relation to the Amendment or VCAT in relation to decisions under the planning scheme) to determine the matter.
19. Having reviewed the propositions of both Council and the Proponent, as well the relevant legislation, policy and analysis, I consider the CDZ Schedule should require the owner of the land to enter into a Section 173 Agreement which requires the owner of the land to provide for a mixture of affordable and social housing as follows:

*“Delivery of Affordable Housing (as defined under the P&E Act), or land for the construction of Affordable Housing, equal to 5% of the total dwellings proposed to be delivered across the Site; or delivery of Affordable Housing by any agreed alternative method equivalent value to the above provision.*

*In satisfaction of the above requirement, delivery of Social or Affordable Rental Housing to be owned and managed by a Registered Housing Agency equal to 2.5% of the total dwellings proposed to be delivered across the Site via one or more of the following means:*

- *Making available Affordable Housing for purchase by either the Council or a Registered Housing Agency at a price which does not exceed an amount that is 25% less than the current 12-month median unit price for [XXXX locality], and/or*
- *Transferring serviced land to Council or a Registered Housing Agency for the purposes of constructing Affordable Housing, for nil financial consideration and/or*
- *If serviced land is not transferred or any of the Affordable Housing Dwellings are not purchased by the Council or a Registered Housing Agency then, with respect to any such land or unpurchased Affordable Housing Dwellings, the land owner must instead make to the Council or a Registered Housing Agency an Affordable Housing Payment.”*

20. I also consider that the CDZ Schedule should require the preparation and approval of an Affordable Housing Delivery Strategy to address these matters.

#### 4.3. Provision for infrastructure contributions.

21. I consider that the use of a Section 173 Agreement is an appropriate tool for the provision of infrastructure associated with the future redevelopment of the Site.
22. Whilst I am not qualified to comment on the technical basis for determining the design or scope of the infrastructure items that re yet to be agreed upon, from an ‘orderly planning’ perspective I consider that it will be necessary to resolve the scope of some of these contributions as part of finalising the Amendment, whereas certain other matters can be resolved as part of finalising the 173 Agreement and various plans and frameworks required under the CDZ Schedule.
23. My views in regard to how the various unresolved infrastructure contributions matters are best dealt with are as follows:

##### 4.3.1. Mitigation works on the external road network.

24. The table and plan contained in the CDZ and the Integrated Transport Plan October 2020 will need to be updated to reflect the final preferred approach to mitigation works on the external road network before the Amendment is finalised.

25. Once the Amendment is approved, then the more detailed scope, timing and cost of delivering roads and intersection projects identified in the CDP can be resolved in the course of finalising the Section 173 Agreement and Precinct Integrated Traffic and Transport Management Plan.

**4.3.2. The size of the active recreation reserve (6.77ha vs 8ha).**

26. The preferred size of the active recreation reserve will affect the land budget contained in the CDP and for this reason this issue will need to be resolved prior to finalisation of the Amendment.

**4.3.3. Whether or not a sports pavilion should be provided within the recreation reserve.**

27. The broad scope of any proposed community facilities (including the sports pavilion) that are intended to be delivered via development contributions must be resolved prior to finalisation of the Amendment.

28. I suggest that this could be done by updating the table and plan contained in the CDZ (if necessary) and by creating a summary 'community infrastructure plan', referencing this document in the CDZ1 and requiring that the Section 173 agreement give effect to the delivery of the infrastructure items contained within it.

29. The more detailed design scope of this and other facilities can then be resolved via the Section 173 Agreement.

**4.3.4. The size, final scope and location of the proposed community centre.**

30. Refer my views on community facilities above.

31. In terms of its potential location with the precinct, I consider that the CDP should make provision for the community to be located either centrally within Precinct 4, or within Precinct 2.

32. In terms of the size of land required for the community centre, there appears to be scope for the type of community centre envisaged for the site to potentially be delivered in a more compact urban format reflecting the transit-oriented aspirations for the Site, and that a land area smaller in size than 0.8ha might be sufficient. I therefore consider that the CDP and CDZ should provide flexibility for this outcome to be achieved via the infrastructure contributions agreement.

**4.3.5. The size of the proposed government specialist school (1.9ha vs 1.4ha).**

33. Requirement R5 in the CDZ references the proposed size of the school site, and so this issue will need to be resolved prior to finalisation of the Amendment. Given the CDPs aspirations to achieve urban densities and transit-oriented development on the site, consideration should be given to whether or not a more urban-scale specialist school facility might be appropriate on the site. If it is agreed that this is a desirable approach, then I suggest that the CDZ and CDP should provide flexibility for this outcome to be achieved.

**4.3.6. The approach to determining land area requirements for a potential future train station.**

34. In my opinion, a decision will need to be made about whether or not to set land aside for a future train station (even if there is no firm commitment to deliver the station) sooner rather than later, and the preparation of the Urban Design Framework for Precinct 4 is an appropriate time for that decision to be made.

35. I suggest the following alternative wording for CDZ1 in relation to this issue:

*"A permit must not be granted to subdivide land within Precinct 4 until land is set aside for a potential future train station, if required by the Department of Transport. In the event that the Department of Transport confirms the need for land to be set aside for such purposes, a design strategy for the potential future train station must be prepared to the satisfaction of the responsible Authority and the*

*Head Transport for Victoria, and the first plan of subdivision must have regard to the station design and access requirements set out in that Strategy. The design strategy must include the following...[insert bullet points from exhibited CDZ1].”*

#### 4.4. Appropriateness of pursuing transit oriented development on the Site.

36. I consider that it is appropriate for the CDZ and CDP to be framed around achieving transit oriented development on the site for the following reasons:
- State policy (at clause 16) supports development near existing and proposed railway stations realising transit-oriented development outcomes.
  - A rail line traverses the site, and it is agreed by all parties that opportunities may exist for a station to be constructed within the site in the future.
  - Given that opportunities exist for a station to potentially be constructed within the site in the future, it is appropriate for the CDP to identify the opportunity for transit-oriented development (TOD) and higher density housing within a walkable catchment of any such station.
  - Identifying the opportunity for a station and TOD does not commit the government to delivering the station on the site, but merely leaves the door open for future planning to consider whether this is possible, and make provision for it to be realised.
37. I consider that the overall densities proposed within the CDP (circa 25 dwellings/ha) are appropriate for a large infill site located close to ensuring transport, activity centres, employment and services, irrespective of whether or not a train station is delivered on the site.
38. The delivery of a train station at this site would be high beneficial to the precinct, and indeed it might warrant consideration to delivering even higher densities in the core part of the site over the longer term.
39. If there is government support for planning for a station on the site at that time then land can be set aside for that purpose, and the Framework Plan for that precinct can be cast in the context of that opportunity.
40. If there is no government support for planning for a station on the site at that time then the Framework Plan for that precinct can continue to be cast on the basis of the present land use mix and dwelling yields referred to in the current CDP.

#### 4.5. A response to other planning matters raised in submissions referred to in my instructions.

##### 4.5.1. Box Hill Institute (submitter 47).

##### Third party appeal rights:

41. It is common practice for planning frameworks for major urban renewal developments to limit future statutory third party notice and appeal rights once a development plan or similar has been subject to public input and then approved for the relevant precinct.
42. I acknowledge that the CDZ1 requires a range of future plans and agreements to be submitted and approved by the responsible authority, and that that the submitter and other parties will have an interest in being informed about these plans.

43. Given the scale and long-term delivery timeframes associated with the future development of the site, I would expect that Council would most likely elect to informally notify affected parties of the submission of such plans and agreements, and to consider any issues raised by parties before making any decisions in relation to them.

**Land acquisition for road works:**

44. The CDP does not propose that this land is acquired by a public authority or that the works are undertaken by a public authority. I therefore understand that it will be the responsibility of the developer to successfully negotiate land acquisition and the right to undertake these works via private treaty with the owners of the adjoining land.

**Southern Boulevard street:**

45. If the submitter agrees that these road and pedestrian works can be delivered (in part) on their land then I suggest that these works be identified in chapter 4.8 of the draft CDP and dealt with as part of the development contributions arrangements.

**Boundary interfaces:**

46. I consider that it is desirable for the development on the subject Site to address the adjoining Box Hill Institute land via a public road frontage rather than to back on to that site. As noted above, these outcomes can either be delivered entirely within the subject site, or partially on the adjoining site by mutual agreement between the landowners.

**Amenity impacts during works:**

47. In relation to construction works associated with the future urban development of the site, I consider that CDZ1 should contain a requirement for the preparation and approval of construction management plans for each of the 4 prior precincts prior to the commencement of subdivision and urban development works within each precinct.

**4.5.2. Lilydale Township Action Group (submitter 49):**

**Neighbourhood character**

48. The redevelopment of this part of the quarry will inevitably change the character and aspect of this interface. However, rezoning this site for any form of (urban) residential use would have the effect of changing the general character of this interface.
49. Whilst residential development of the nature proposed in the CDP will represent a change to the current character at this residential interface, I consider that the combination of a 2 storey height limit, 40m lot depth and 10m deep vegetation zone to be a reasonable interface in this location.
50. Precinct 4 (which nominates buildings ranging between 2 and 12 storeys in height) is circa 500m from the Sharnalee Court area. Whilst buildings of up to 12 storeys may be visible from a distance from certain view-points in area (depending on how much residential development on the intervening land screens such views), I do not consider that they will have a direct adverse impact on the character or amenity of this existing residential area.

## 5. The subject site

51. Whilst HBI Lilydale is the proponent of the Proposed Amendment, the registered proprietors of the Site are Hume Lilydale Pty Ltd and LBJ Developments Pty Ltd. The Site is comprised of four titles:
1. Certificate of Title Volume 11584 Folio 193, more particularly known as Lot B on PS731531Q;
  2. Certificate of Title Volume 11584 Folio 192, more particularly known as Lot A on PS731531Q;
  3. Certificate of Title Volume 08756 Folio 801, more particularly known as Lot 2 on PS325111E; and
  4. Certificate of Title Volume 08245 Folio 536, more particularly known as Lots 1, 2 and 3 on TP810358A.
52. Directly to the south of the Site is a 20 ha parcel (Lot A on PS 731531Q) which is also owned by Hume Lilydale and LBJ Developments and is "Stage 1" of the "Kinley" housing development. Stage 1 is not subject to the Proposed Amendment. Stage 1, was rezoned General Residential Zone - Schedule 1 (GRZ1) in November 2014 and is currently being developed for residential purposes under planning permit YR-2014/932/B.

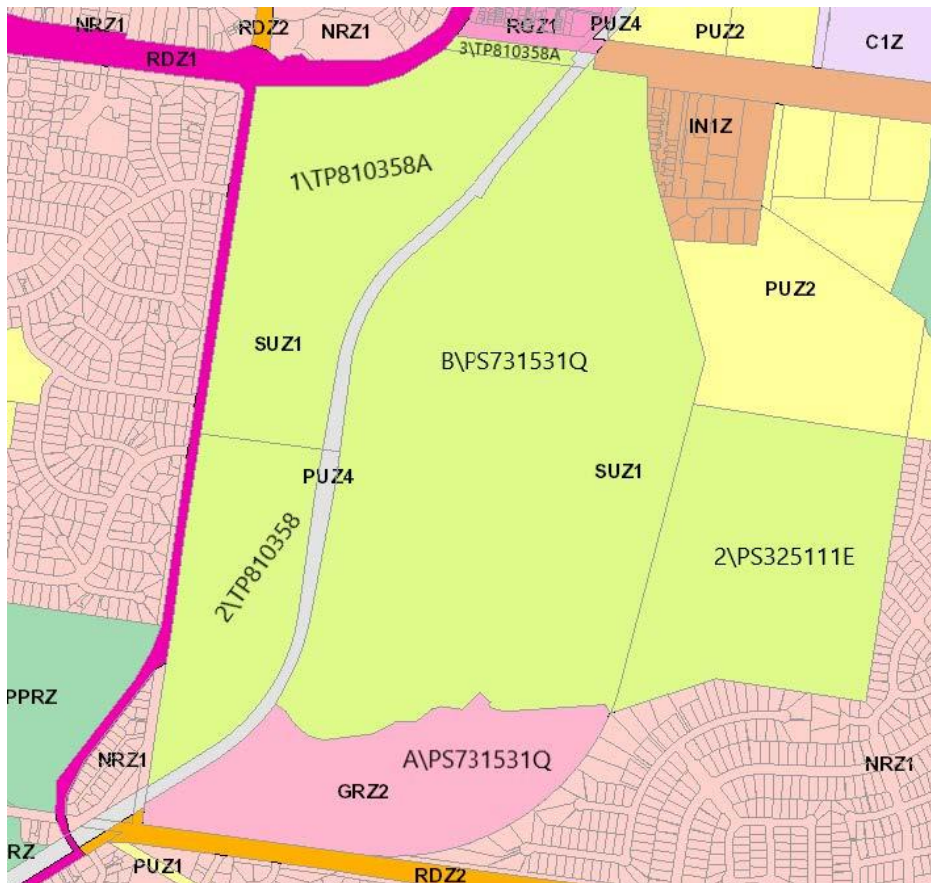


Figure 1. Zoning Plan and Titles.

53. The Site is currently zoned Special Use Zone Schedule 1 – Earth and Energy Resources Industry (SUZ1). It is subject to the following overlays:
- a. Bushfire Management Overlay;
  - b. Erosion Management Overlay, Schedule;
  - c. Heritage Overlay, Schedule 201 – Cave Hill Limestone Works (HO201);
  - d. Specific Controls Overlay, Schedule 13; and
  - e. Public Acquisition Overlay, Schedule 9;
54. The Site is:
- a. wholly within a bushfire prone area;
  - b. affected by an entry on the Victorian Heritage Register (VHR Number H2366 – Cave Hill Limestone Quarry);
  - c. affected by one or more areas of cultural heritage sensitivity; and
  - d. bounded by Mooroolbark Road to the west, Maroondah Highway and Melba Avenue to the north, Hull Road to the south and residential neighbourhoods to the east and south east.

## 6. The draft Amendment

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56. The draft amendment (the Amendment) inserts the CDP as an incorporated document to the Yarra Ranges Planning Scheme (the Scheme) and rezones approximately 143 hectares of land (formerly used as a quarry for limestone) from a Special Use Zone, Schedule 1 (SUZ1) to the Comprehensive Development Zone, Schedule 1 (CDZ1) to facilitate the development of the subject site for predominately residential use supported by commercial, retail and other uses.
57. Specifically, the Amendment will result in the following changes to the Scheme:
- Amend Planning Scheme Map No. 40 Zones (rezone amendment area to CDZ1)
  - Amend Planning Scheme Map No. 40HO (delete Heritage Overlay from the quarry pit)
  - Amend Planning Scheme Map No. 40PAO (identifies land for acquisition within the site for the widening of Mooroolbark Road)
  - Insert new Planning Scheme Map No. 40EAO (apply the Environmental Audit Overlay (EAO) to the part of the site to the east of the railway line)
  - In Local Planning Policy Framework – insert a new Clause 22.13 in the form of the Former Lilydale Quarry Local Planning Policy to require use and development of the subject site to be generally consistent with the CDP.
  - In Zones – Clause 37.02, insert a new CDZ1.
  - In Overlays – Clause 45.01, replace the Public Acquisition Overlay Schedule with a new Schedule that includes reference to the widening of Mooroolbark Road.
  - In Particular Provisions – amend the Schedule to Clause 51.03 (Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan) to include land zoned Comprehensive Development Zone in certain exemptions relating to buildings and works and vegetation removal.
  - In General Provisions – amend the Schedule to Clause 72.03 (What does this Planning Scheme Consist of?) to reflect the above map changes.
  - In Incorporated Documents – amend the schedule to Clause 72.04 (Documents Incorporated in the Planning Scheme) to insert the CDP as an incorporated document.
58. A copy of the proposed Framework Plan to be included within the local policy and CDZ is extracted overleaf.



Figure 2 –CDZ 1 Framework Plan (Urbis, 2020)



## 7. Relevant Background Material

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59. In preparing my opinion I have primarily had regard to the following documents:
- The Planning and Environment Act 1987
  - The Yarra Ranges Planning Scheme
  - Plan Melbourne 2017
  - Development Contributions Guidelines 2007
  - Governor In Council (GIC) order on income ranges for affordable housing
  - Ministerial Notice on specified matters pursuant to Section 3AA (2) of the P&E Act
  - Yarra Ranges Planning Scheme – Draft Amendment C193 and accompanying documents
  - The following plans and reports prepared in support of the Amendment:
    - Planning Report, prepared by Urbis (October 2020)
    - Development Contributions, prepared by Urban Enterprise (October 2020)
    - Community Needs Assessment, prepared by Ethos Urban (October 2020)
    - Affordable Housing Needs Assessment, prepared by Urbis (April 2020)
    - Kinley Affordable Housing, prepared by Urbis (April 2020)
  - Draft Yarra Ranges Affordable Housing Development Negotiation Framework, prepared by Affordable Development Outcomes (October 2019)
  - Draft Lilydale Quarry Affordable Housing Strategy, prepared by Affordable Development Outcomes with Yarra Ranges Council (November 2019)
  - Yarra Ranges Affordable Housing Background Report, prepared by Affordable Development Outcomes (June 2019)
60. I provide an outline of the most relevant parts from each of these documents over the following chapters as appropriate.

## 8. Matters addressed in this Statement.

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61. I have addressed the following matters in this Statement:

- The appropriateness of the planning controls framework
- Provision for affordable housing
- Provision for infrastructure contributions
- Appropriateness of pursuing transit oriented development on the Site
- A response to other planning matters raised in submissions referred to in my instructions

62. Given the specific and discrete nature of each of the above topics, I have set out my evidence in separate chapters with the following structure to each chapter (as relevant):

- What the amendment proposes
- Issues raised in submissions
- The relevant legislative and/or policy framework
- My opinion

## 9. Appropriateness of the proposed planning framework.

### 9.1. What the amendment proposes.

63. The Amendment proposes to introduce the following planning provisions:

- A new local planning policy to guide the future redevelopment of the Site.
- A Comprehensive Development Zone (Schedule 1) to be applied to the Site.
- A Comprehensive Development Plan for the Site to be incorporated under the Planning Scheme.

64. The scope of each of the above provisions is described below.

#### 9.1.1. Clause 22.13 Former Lilydale Quarry.

65. The proposed local policy introduces a new vision for the redevelopment of the Site, together with a series of objectives that are intended to be achieved via the redevelopment of the land.

66. The policy requires that the use and development of land of the former Lilydale Quarry site is generally consistent with the vision, objectives and requirements set out in the Former Lilydale Quarry Comprehensive Development Plan (October 2020) ('the CDP').

67. A copy of the Framework Plan from the CDP is included within this policy, and the following documents are reference documents under this policy:

- Cave Hill Quarry Conservation Management Plan, Lovell Chen (September 2015)
- Former Lilydale Quarry Heritage Interpretation Strategy, Lovell Chen & Biosis (April 2020)
- Former Lilydale Quarry Stormwater Strategy, Incitus (October 2020)
- Former Lilydale Quarry Integrated Water Management Strategy, Incitus (October 2020)
- Former Lilydale Quarry Integrated Transport Plan, Cardno (October 2020)
- Former Lilydale Quarry Sustainability Framework, WSP (October 2020)

#### 9.1.2. Comprehensive Development Zone Schedule1 (CDZ1).

68. The primary purpose of CDZ1 (working in concert with the local policy, incorporated plan and other provisions within the Planning Scheme) is to provide for the future orderly use and development of the Site primarily for residential purposes, whilst also encouraging a supplementary mix of community, education, retail, commercial and recreational activities.

69. CDZ1 contains a series of additional statements of purpose, and a Table of Uses that specify when a use is exempt, requires a permit or is prohibited.

70. CDZ1 requires that a permit for the use or subdivision land must be generally consistent with the incorporated CDP.

71. CDZ1 specifies that unless otherwise agreed to by the responsible authority, a permit must not be granted to subdivide or develop land within the Site until an agreement under Section 173 of the P&E Act has been entered into in relation to the following:

- Infrastructure Contributions
- Performance of filled land in Precinct 4

72. CDZ1 also specifies that prior to the granting of a permit for the 701's dwelling, an agreement under Section 173 of the P&E Act has been entered into in relation to the provision of affordable housing.

73. CDZ1 specifies that unless otherwise agreed to by the responsible authority, a permit must not be granted to subdivide or develop land within the Site unless a range of plans are prepared and approved to the satisfaction of the Responsible Authority. These requirements are summarised as follows:

REQUIREMENT	SUBDIVISION				BUILDINGS AND WORKS				BACKGROUND PLAN REF ?
	1	2	3	4	1	2	3	4	
PRECINCT #									
Urban Design Framework		X		X		X		X	Yes
Design Strategy (Potential Future Train Station)				X				X	
Geotechnical				X				X	
Integrated Traffic & Transport Management Plan	X	X	X	X	X	X	X	X	Yes
Stormwater and Integrated Water Management Plan	X	X	X	X	X	X	X	X	Yes
Landscape Plan	X	X	X	X	X	X	X	X	
Sustainability Management Plan	X	X	X	X	X	X	X	X	Yes
Heritage Interpretation Plan	X	X	X	X	X	X	X	X	Yes
Environmental Audit		X	X	X		X	X	X	

74. The CDZ references the various background plans/reports referred to in the draft local policy (clause 22.13), and requires that the relevant precinct-specific plan required under CDZ1 either be generally consistent with, or demonstrate how the objectives of these background plans/reports have been addressed.
75. CDZ1 specifies that certain works are to be provided in association with development, and it also specifies certain standards for open space to be transferred to Council.
76. CDZ1 provides for exemptions from notice and review for the use and subdivision of land, and it contains a series of application requirements and decision guidelines for the use, subdivision and *development of land*.

### 9.1.3. The Comprehensive Development Plan (CDP).

77. The CDP contains a Vision and Framework Plan for the site, together with a series of Objectives, Requirements and Guidelines that must be considered in the assessment of future use, subdivision and development proposals.
78. The CDP notes that:
- The Objectives are mandatory and development proposals must comply with these statements
  - The Requirements must be complied with, and they cannot be varied by the issuing of a planning permit
  - The Guidelines are matters that should be considered, but if the responsible authority is satisfied that an alternative to a guideline satisfies the objectives or requirements, then the alternative may be considered.

79. The CDP contains Objectives, Requirements and Guidelines in relation to the following matters:

- Housing, retail and commercial
- Commercial facilities
- Open Space
- Integrated transport
- Integrated water management and stormwater
- Built form and urban design
- Heritage
- Infrastructure and staging

80. The CDP includes a land budget, project yield table and street cross sections.

81. The CDP is drafted to operate in the same fashion as Precinct Structure Plans that operate under the Urban Growth Zone in Melbourne’s Growth Areas.

## 9.2. Relevant legislative and/or policy framework.

82. The Planning Policy Framework (clause 11.02-2S) promotes the use of structure plans as tools to facilitate the orderly development of urban areas.

83. Specifically, this policy requires that planning facilitate the preparation of a hierarchy of structure plans or precinct structure plans that:

- *Take into account the strategic and physical context of the location.*
- *Provide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate.*
- *Provide for the development of sustainable and liveable urban areas in an integrated manner.*
- *Assist the development of walkable neighbourhoods.*
- *Facilitate the logical and efficient provision of infrastructure.*
- *Facilitate the use of existing infrastructure and services.*

84. There are a range of planning tools available to achieve the above objective, including the use of local policies, zones, overlays, incorporated and reference documents, and combinations of all of these. Each is discussed briefly below:

- The Urban Growth Zone is the primary tool for implementing precinct structure plans in growth areas<sup>1</sup>. The growth-area specific nature of this control means that it is not applied to brownfield or urban renewal contexts.
- Where the land is essentially to be used for a single use (or the exact location of different uses is known in advance) conventional zones could be applied, alongside an Incorporated Plan Overlay, or Development Plan Overlay.
- A spatial plan could be included within a local policy, and conventional zones could be used in combination with built form controls such as a Design and Development Overlay.
- For larger or more complex development in urban renewal settings, the Comprehensive Development Zone can be used. The benefit of this zone is that its schedule can be fully customised to include a spatial plan and address land use, subdivision and development matters, without needing to use other overlay controls for that purpose.
- In limited circumstances, a Special Use Zone could also be considered, although this needs to be justified having regard to the matters set out in the relevant practice note for applying this zone.

<sup>1</sup> Ministerial Direction No 12 (Urban Growth Areas) applies to the application of the UGZ.

### 9.3. My opinion

85. I consider that the Comprehensive Development Zone (CDZ) is the most appropriate planning tool to facilitate integrated development outcomes on the Site.
86. In my view, the CDZ is preferred over other approaches (such as apply conventional zones and a Development Plan Overlay for instance) because:
- It provides a high degree of certainty over the delivery of the outcomes contained within the zone and incorporated plan via planning permit approvals
  - The planning controls for the Site need to be customised to address a complex array of planning and development matters. The CDZ schedule allows for such customisation.
  - It is not practical to specify zone boundaries for the mix of uses contemplated under the Framework Plan at this point in time. The CDZ Schedule provides flexibility for how this issue can be addressed.
  - The CDZ was created within the Victoria Planning Provisions for the explicit purpose of facilitating the delivery of urban renewal outcomes on large sites.<sup>2</sup>
87. The CDP can address all of the land use and built form matters within the one control, and it also allows for the site-specific land use and development matters to be comprehensively addressed via bespoke requirements that can be written into zone schedule.
88. The draft CDZ and CDP also address all of the relevant policy outcomes identified in State Policy (at clause 11.02-2S), and therefore is an appropriate ‘precinct planning’ tool as envisaged under that policy.
89. One of the key features of the CDZ is the proposed incorporation of a CDP into the planning scheme (ie the CDP becomes part of the planning scheme), and the requirement for permits for the use or subdivision land to be generally consistent with the incorporated CDP. This mechanism provides a high degree of statutory assurance over the ability to require the delivery of all of the outcomes described within the local policy, CDZ and the incorporated CDP.
90. In addition to this, the contents of the draft CDZ1 itself provide a sophisticated framework for the staged and orderly development of what is large and complex site that will be developed over many years.
91. The CDZ does not solely rely on the application of the incorporated CDP with regard to the assessment of future permit application to ensure that the desired outcomes are achieved. It includes a comprehensive array of additional agreements, requirements and plan-approval mechanisms that are intended to operate alongside the CDP.
92. This full suite of provisions and instruments that are proposed to guide the future use and development of the site are as follows:
- The Lilydale Quarry local policy
  - The CDZ1 provisions
  - The Lilydale Quarry CDP incorporated document which sets Objectives and Requirements which must be satisfied, as well as Guidelines for development
  - Section 173 agreements addressing the following:
    - Infrastructure contributions

<sup>2</sup> Refer to the Practitioners Guide to Victorian Planning Scheme, pg. 127

- Performance of filled land in Precinct 4
  - Provision of affordable housing
  - Future Urban Design Frameworks for Precincts 2 and 4
  - Design Strategy (Potential Future Train Station) for Precinct 4
  - Integrated Traffic & Transport Management Plans for all precincts
  - Stormwater and Integrated Water Management Plans for all precincts
  - Landscape Plans for all precincts
  - Sustainability Management Plans for all precincts
  - Heritage Interpretation Plans for all precincts
  - Environmental Audits for precinct 2 to 4
93. The proposed CDZ1 has been drafted to enable the various issues that apply to different parts of the site to be addressed at different points in time, whilst still tying the development outcomes for each precinct back to the incorporated Framework Plan.
94. This is necessary because some areas of the site are able to be developed in the shorter term whereas other areas require extensive filling and compaction before development can commence (eg in Precinct 4). In addition, determining whether a potential future station is possible on the site or not will influence the detailed planning of precinct 4.
95. For these reasons, I consider that it is appropriate for the CDP to provide an overarching urban structure, Objective, Requirements and Guidelines, and for a further level of detailed sub-precinct planning to be done via the proposed urban design frameworks for Precincts 2 and 4.
96. The integration of outcomes for each of the matters referred to in paragraph 48 across each of the precincts will occur via the satisfaction of requirement in the CDZ1 and local policy for future use, development and subdivision to be consistent with the CDP, and also by the requirements for that the relevant plans referred to above to either be generally consistent with, or demonstrate how to objectives of these background plans/reports have been addressed.
97. Importantly, planning permits cannot be granted for the use, subdivision and development of the land until all of the above requirements are satisfied.
98. In my view the approvals framework that is proposed by the draft Amendment is both comprehensive and sophisticated, and will allow for the orderly planning of the site as a whole, and of the staged development of individual precincts as contemplated under the CDP.

## 10. Provision of Affordable Housing.

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### 10.1. What the Amendment Proposes.

99. The Amendment proposes that affordable dwellings (or land lots for construction of affordable dwellings), be delivered at a quantum equal to 5% of the total dwellings proposed be delivered across precincts 1-4.
100. The proposed mechanism for delivering the affordable housing requirement is set out in the draft Schedule 1 to the Comprehensive Development Zone (CDZ1), as follows:

*“Prior to the granting of a subdivision permit for the seven hundred and first (701) dwelling, the owner of the land must enter into an agreement under section 173 of the Planning and Environment Act 1987 that requires the owner of the land to provide for either:*

- *Delivery of affordable dwellings, or land lots for construction of affordable dwellings, equal to 5% of the total dwellings proposed to be delivered across Precinct 1, Precinct 2, Precinct 3 and Precinct 4, rounded to the nearest whole number, or any lesser number of dwellings as agreed between the owner and the responsible authority; or*
- *The provision of affordable housing by any agreed alternative method generally consistent with the value of the above provision.*
  - *Where an alternative method is agreed, and the landowner has met all of its obligations under that method, any obligation of the landowner to provide for affordable housing has been fully discharged.*

*This requirement does not apply if an affordable housing agreement is registered on the land resulting from a buildings and works permit pursuant to Clause 37.02 (Schedule 1), Section 4.0.”*



## 10.2. Submissions - The Proponent's Affordable Housing Proposition.

101. The *Affordable Housing Proposition Report* (Urbis, April 2020) that accompanies the amendment proposes that 5% of the housing delivered on the site to be delivered as affordable housing (to qualifying households) via the following means:

*Social rented/crisis accommodation for very low and low income households:*

Facilitating the delivery of 28 units of social rented or crisis accommodation, via the provision of land to a third-party specialist entity to deliver the specified housing outcome on the project.

*Affordable rental accommodation for low and moderate income households:*

Facilitating the delivery of 40 affordable rental dwellings by selling dwellings to a registered housing provider at a discount – or if a sale cannot be realised paying the equivalent value (of the discount) as a contribution to a housing agency or council to use for affordable housing purposes.<sup>3</sup> Alternatively, the units could be leased for the purposes of affordable rent for the long term (circa 20 years).

*Affordable dwelling purchase for moderate income households:*

Facilitating the delivery of 65 dwellings (units) that are affordable for moderate income households via a combination of shared equity arrangements and the sale of units to target moderate income households at an affordable price point (as defined under the relevant GIC Order).

Facilitating the delivery of a further 30 dwellings (units) that are affordable for moderate income 'key worker' households by providing first right of opportunity to key workers to purchase outright or via shared equity at an affordable price point (as defined under the relevant GIC Order).

102. The *Affordable Housing Needs Assessment Report* (Urbis, April 2019) has informed the proponent's affordable housing proposition and it draws the following conclusions in relation to housing choice and affordability within the municipality:

- Housing choice is limited for residents of the local area
- Moderate income earners and above make up the largest proportion of households and the greatest opportunity across the municipality
- Key worker housing demand will continue to grow and the response will form an essential part of the Shire of Yarra Ranges' economic prosperity
- Future affordable housing needs can be met in a number of ways, including:
  - Delivering a range of densities to compensate for the scarcity of smaller dwelling types and enhance the ability to deliver against forecast dwelling demand from continued population growth
  - Deliver a range of price points (linked to the size and type) to include relatively more affordable options
  - Deliver homes targeting key workers to ensure talent continues to be attracted to this area and support the growth of these essential sectors to the Shire of Yarra Ranges local economy
  - Deliver targeted private rental stock adding supply to the section of the market that is experiencing affordability pressure
  - Exploring measures such as shared equity and rent to buy schemes that assist first home buyers to access the market
  - Affordable housing for purchase to qualifying households (criteria to be determined)

<sup>3</sup> The report does not specify the proposed percentage discount to market.

- o Explore Housing Association requirements and viability implications (for both the developer and Registered Housing Associations) for providing land with permits in place to deliver affordable housing.

### 10.3. Submissions - The Council's Affordable Housing Proposition.

103. Council has submitted that that the development of the quarry site should make provision for 8% of the housing delivered on the site to be affordable housing, comprising:
- A minimum 5 per cent Social Housing or other forms of Affordable Rental Housing to be owned and managed by a Registered Housing Agency, and;
  - A 3 per cent other Affordable Housing component, which may be delivered as additional Social Housing, Affordable Rental Housing or Affordable Home Purchase (such as shared equity home ownership).
104. Council's submission has been informed by the analysis contained in the Yarra Ranges Affordable Housing Background Report (June 2019) and the recommendations contained in the draft Lilydale Quarry Affordable Housing Strategy (November 2019).
105. The latter Strategy's recommendation for an 8% affordable housing is based on the Draft Yarra Ranges Affordable Housing Development Negotiating Framework.
106. The Background Report identified an estimated 2016 Affordable Housing Supply gap of 1,839 dwellings, which is forecast to increase to 2,237 dwellings by 2036. This is the estimated gap of dwellings that is required to respond to the housing needs of Very Low and Low Income households and is therefore considered by the report's author to best be delivered as Social Housing or Community Housing.
107. The Background Report also identified that one and two bedroom dwellings are the priority housing types to meet Affordable Housing needs, and that a percentage of Affordable Housing should be accessible and incorporate adaptable design features.

#### 10.4. Affordable Housing and the Planning and Environment Act 1987.

108. The Planning and Environment Act 1987 was amended in 2018 to establish a framework for voluntary arrangements relating to affordable housing in Victoria.
109. The Objectives of the Planning and Environment Act were amended to include the facilitation of the provision of affordable housing in Victoria.
110. The following legal definition of 'affordable housing' was also introduced into Section 3AA of the Act:

*“(1) For the purposes of this Act, affordable housing is housing, including social housing, that is appropriate for the housing needs of any of the following—*

- (a) very low income households;*
- (b) low income households;*
- (c) moderate income households.*

...

*(4) In this section—*

*“low income households” means households with a household income within the income range specified as a low income range by Order under section 3AB;*

*“moderate income households” means households with a household income within the income range specified as a moderate income range by Order under section 3AB;*

*“social housing” has the same meaning as in section 4(1) of the Housing Act 1983 ;*

*“very low income households” means households with a household income within the income range specified as a very low income range by Order under section 3AB.”*

111. Section 173 of the P&E Act was also amended to insert new provisions to enable a council to enter into a voluntary agreement with a land owner for the development or provision of land for affordable housing, as follows:

*“Without limiting subsection (1), a responsible authority may enter into an agreement with an owner of land for the development or provision of land in relation to affordable housing.”*

112. Section 3AA of the Act also makes provision for the Minister for Planning to publish guidelines on determining what is appropriate for the housing needs of very low, low and moderate income households, and it requires that regard be had to these guidelines, as follows:

*“(2) For the purposes of determining what is appropriate for the housing needs of very low income households, low income households and moderate income households, regard must be had to the matters specified by the Minister by notice published in the Government Gazette.”*

113. The Minister for Planning has published guidelines pursuant to the above provision (refer section 10.9 of my evidence for details).

#### 10.5. The Planning Policy Framework on Affordable Housing.

114. Clause 16.01-2S of the Planning Scheme contains the following objective in relation to housing affordability:

*“To deliver more affordable housing closer to jobs, transport and services.”*

115. This policy contains various strategies to achieve this objective, including

- Ensuring land supply continues to be sufficient to meet demand.
- Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.
- Promoting good housing and urban design to minimise negative environmental impacts and keep costs down for residents and the wider community.
- Encouraging a significant proportion of new development to be affordable for households on very low to moderate incomes.
- Increase the supply of well-located affordable housing by:
  - Facilitating a mix of private, affordable and social housing in suburbs, activity centres and urban renewal precincts.
  - Ensuring the redevelopment and renewal of public housing stock better meets community needs.
  - Facilitate the delivery of social housing by identifying surplus government land suitable for housing.

116. Clause 16.01-2S requires that planning consider *Homes for Victorians - Affordability, Access and Choice* (Victorian Government, 2017)

#### 10.6. Affordable Housing and Plan Melbourne (2017).

117. Plan Melbourne contains the following policies in relation to the role of the planning system in facilitating the delivery of affordable housing:

*Policy 2.3.3 - Strengthen the role of planning in facilitating and delivering the supply of social and affordable housing.*

*Policy 2.3.4 - Create ways to capture and share value uplift from rezonings.*

118. Plan Melbourne notes that past approaches (such as requiring section 173 Agreements under the Planning and Environment Act 1987 or applying requirements through tools such as Development Plan Overlays) had been criticised for not being sufficiently robust and inequitably applied.

119. Plan Melbourne also contains a commitment to clearly define social and affordable housing, create a head of power for affordable housing contributions, and clarify the role the planning system has to play in the delivery of new housing.

120. The Plan notes the following in relation to the delivery of affordable housing via major urban renewal developments:

*“There is an increasing need to encourage the development of more affordable housing, including the integration of social and affordable housing options within major urban renewal developments.*

*There is scope to capture some of the value created by the rezoning process for policy priorities such as social and affordable housing.*

*Urban renewal precincts and sites offer significant opportunities to deliver tangible broader public benefit through their rezoning for social or affordable housing, as well as local assets such as open space and community facilities.*

*Consideration needs to be given to developing a new requirement that when land is rezoned to allow for higher value uses, a proportion of the value uplift should be contributed to the delivery of broader public benefit outcomes such as social and affordable housing.”<sup>4</sup>*

## 10.7. Homes for Victorians (2017).

121. Homes for Victorians (‘HfV’) is the Victorian Government’s affordable housing strategy.
122. Released in 2017, HFV contains the following actions to increase the supply of affordable housing via the planning system:
- Ensure housing accommodates population growth by facilitating more than 50 000 extra new homes being built each year.
  - Increase development opportunities in the inner and middle suburbs.
  - Add zoned land for another 100 000 lots in the growth corridors to maintain a 15-year supply of land for new developments.
  - Introduce inclusionary housing obligations on surplus government land through a pilot
  - Develop new planning tools to increase the supply of affordable housing.
  - Streamline planning approvals to reduce costs and uncertainty for developers and target around a four month supply of lots on the market.
123. Progress has been made on all of the above actions, including the introduction of new planning tools (via amendments to the Planning and Environment Act 1987 which is discussed in section 9.4 of this evidence statement).
124. HfV states the following in relation to the provision of social housing in major developments:

*“The responsibility for making sure we have more affordable homes should also belong to developers.*

*It’s why there is growing appetite from local councils to apply affordable housing provisions as part of both rezoning, and permit applications for major developments.*

*Already a number of developers are offering packages that include the delivery of affordable housing, in exchange for rezoning approval or a permit uplift condition through a value capture style agreement. The partnership could take one of a number of forms:*

- *transfer of ownership of an agreed number of dwellings to a community housing association or the Director of Housing for use as social housing;*
- *the sale of dwellings to a community housing association at an agreed discounted price to be used in perpetuity as affordable rental; and*
- *offering units for sale to first home buyers through a shared equity scheme.*

*A clear framework will be developed to give developers, the community and local councils certainty around how a voluntary benefits scheme could be applied.*

<sup>4</sup> Plan Melbourne, page 56

To provide a clear framework for these voluntary arrangements, the following will occur:

- a legal definition of social and affordable housing will be put into legislation;
- the Victorian Planning Provisions and State Planning Provision Framework will be amended to provide clear direction;
- a new voluntary tool will be developed to enable affordable housing agreements; and
- a new value capture tool will be developed to set out how these arrangements can be structured.

This will enable councils to set up voluntary arrangements with developers and land owners to provide affordable housing in exchange for rezoning.”<sup>5</sup>

125. The abovementioned legal definition, VPP changes and voluntary tool (ie section 173 agreements) have now been established. The government is also in the process of undertaking an ‘inclusionary housing pilot’ on surplus government land as a means of testing potential value capture mechanisms.<sup>6</sup>

### 10.8. Yarra Ranges Shire Planning Policies on Affordable Housing.

126. The Yarra Ranges Housing Strategy was prepared in 2009 and it supports the delivery of affordable housing as well as the delivery of social housing accommodation for people who are unable to access the private housing market. The Strategy does not identify any specific requirements in relation to the delivery of affordable housing on urban renewal sites within the municipality.

127. The Yarra Ranges Planning Scheme (‘Planning Scheme’) contains a local policy to “encourage the provision of affordable housing components in new developments in identified consolidation areas and other locations that provide convenient access to town centres, commercial and community facilities.”<sup>7</sup>

128. The Planning Scheme also contains the following relevant local policies:

- Encourage 1 and 2 bedroom dwellings in all multi-unit developments.
- Support proposals for co-housing, retirement villages and residential aged care facilities in locations practical to the needs of an aging population and away from areas of environmental risk<sup>8</sup>

129. Amendment C148 to the Planning Scheme proposes to introduce a rewritten Municipal Strategic Statement (amongst other changes). The local policies relating to the provision of affordable housing are broadly similar to those currently contained within the Planning Scheme.

130. Amendment C148 proposes to include new policies (at clause 21.08-3) relating to the ‘Cave Hill’ redevelopment site (the subject Site). These draft policies do not make reference to the delivery of affordable housing in this location.

131. This Amendment was adopted by Council in March 2019 but is yet to be approved by the Minister for Planning.

132. Council adopted a document titled ‘Guiding Principles for Housing and Homelessness’ in August 2019. The purpose of this document is to influence decision making on how Council addresses housing and

<sup>5</sup> HfV, page 23

<sup>6</sup> <https://www.planning.vic.gov.au/policy-and-strategy/housing-strategy/inclusionary-housing-pilot>

<sup>7</sup> Yarra Ranges Planning Scheme, clause 21.04

<sup>8</sup> ibid

homelessness issues facing residents across the city. This policy notes the following in relation to Council's planning role:

### Council's planning role

- Facilitate more diverse, high quality and liveable housing including through:
  - negotiations with developers to include social housing as a component of larger developments;
    - pursue negotiated agreements for the inclusion of affordable housing on appropriate development sites as part of planning scheme amendment re-zonings
  - consideration of innovative proposals from the private sector to build more diverse housing stock to meet changing local needs e.g. our ageing population and diverse household structures; and
  - communicating Council's Guiding Principles to the development sector.

### 10.9. Resources for implementing affordable housing agreements.

133. The Department of Environment, Land Water and Planning (DELWP) has published the following guidance on what a Responsible Authority needs to do prior to entering into a voluntary affordable housing agreement:

*"A Responsible Authority (RA) must discharge its responsibilities fairly and reasonably. An RA first needs to establish a strategic basis for requesting a Section 173 Agreement. An RA can then seek to include a condition requiring a Section 173 Agreement for the provision of affordable housing on a planning permit.*

*The RA should have evidence to support the condition, ensuring that it is defensible at VCAT should the applicant lodge an application for review. In most cases an RA is a local council, and a strategic basis could be made in a Housing Strategy that identifies the relevant housing requirements that need to be addressed within a defined location.*

*To ensure development feasibility and fairness, any affordable housing requirement secured through a planning permit condition for a Section 173 Agreement should be identified early and by agreement with the applicant."*<sup>9</sup>

134. The following material has also been prepared by DELWP to support the implementation of the changes to the P&E Act:

- A Governor in Council Order ('GIC Order') has been prepared to define the relevant income ranges associated with the household income bands referred to under section 3AA of the P&E Act.
- A Ministerial Notice has been prepared to guide the determination of whether the affordable housing they are negotiating is appropriate for the needs of very low, low and moderate income households
- A model Section 173 agreement has been prepared to encourage 'best practice' and to provide consistency.

<sup>9</sup> <https://www.planning.vic.gov.au/policy-and-strategy/affordable-housing/resources>

135. The abovementioned documents (together with the new affordable housing sections contained in the P&E Act, and the affordable housing policies at clause 16.01 of the Planning Scheme) represent the extent of the framework implemented by government.
136. The scope of each of the above resources are outlined below.

**10.9.1. Specified matters under Section 3AA (2) of the P&E Act – Ministerial Notice.**

137. Parties to a voluntary agreements are also required to refer to the following Specified Matters under Section 3AA(2) - Ministerial Notice (the Notice) to determine whether the affordable housing they are negotiating is appropriate for the needs of very low, low and moderate income households:
- Allocation
  - Affordability (in terms of the capacity for very low income, low income and moderate income households that it is intended for)
  - Longevity (in terms of the public benefit of the provision)
  - Tenure
  - Type of housing, in terms of form and quality
  - Location, in terms of site location and proximity to amenities, employment and transport
  - Integration, in terms of the physical build and local community
  - The following official estimates of housing need:
    - Australian Bureau of Statistics Community Profiles
    - Census profiles for Victoria
    - Department of Health and Human Services Rental Report
    - Metropolitan regional housing plans to guide housing growth
    - Public housing waiting list (Victorian Housing Register list)
    - Victoria in Future data tables.

**10.9.2. GIC Order – Income ranges for affordable housing.**

138. The GIC Order specifies the following income ranges associated with the household income bands referred to under section 3AA of the P&E Act:

Table 1 – Greater Capital City Statistical Area of Melbourne

	Very low income range (annual)	Low income range (annual)	Moderate income range (annual)
Single adult	Up to \$ 26,090	\$26,091 to \$41,750	\$41,751 to \$62,610
Couple, no dependant	Up to \$ 39,130	\$39,131 to \$62,620	\$62,621 to \$93,920
Family (with one or two parents) and dependent children	Up to \$ 54,780	\$54,781 to \$87,670	\$87,671 to \$131,500

**Figure 1** – extract from GIC Order on income ranges for affordable and social housing (June 2020)

139. The above income ranges apply to households in metropolitan Melbourne, and they relate to affordable housing that is not social housing<sup>10</sup>. The above income bands were published in the government gazette in June 2020, and they are updated annually and parties to a voluntary Section 173 Agreement

<sup>10</sup> Separate income and asset limits apply to the eligibility for social housing. For details refer to <https://www.housing.vic.gov.au/social-housing-eligibility>



for affordable housing are expected to refer to above figures to determine income eligibility of individuals and households targeted in negotiations.

### 10.9.3. Section 173 Agreement template.

An example Section 173 Agreement has been developed to assist in the facilitation of negotiations for affordable housing provision.

The template agreement includes example clauses relating to the delivery of affordable housing via a number of ways, including direct transfer of housing stock at either nil financial consideration or at a discount to market price, and for shared equity arrangements.

It is not mandatory to use any part of the example agreement.<sup>11</sup>

## 10.10. My Opinion

140. My opinions on the appropriateness of the Amendment including provision for the delivery of social housing on the Site are as follows.

### 10.10.1. The policy and legislative basis for delivering affordable housing on the site:

141. I consider that it is reasonable for the Amendment to make provision for the delivery of affordable housing on the site for the following reasons:

- Facilitating the provision of affordable housing is now one of the objectives of planning in Victoria, pursuant to section 4 of the P&E Act.
- The P&E Act was amended in 2018 to establish a framework for the creation of voluntary arrangements between responsible authorities and land owners for the development or provision of land in relation to affordable housing. Section 173 of the P&E Act now makes explicit provision for agreements to be entered into in relation to the development or provision of land in relation to affordable housing.
- State Policy seeks to deliver more affordable housing closer to jobs, transport and services. It includes a number of strategies for achieving this, ranging from increasing the available choice in housing type, tenure and cost, through to facilitating the delivery of public and social housing. One of these strategies is to encourage a significant proportion of new development to be affordable for households on very low to moderate incomes.
- The policies contained within both Plan Melbourne and HfV support to increase the supply of affordable and social housing via the planning system, including by sharing value uplift from rezonings.

### 10.10.2. Need and strategic justification for delivering affordable housing on the site:

142. The Departmental guidelines on the use of Section 173 agreements as a mechanism for establishing voluntary affordable housing agreements states that a Responsible Authority (RA) needs to establish a strategic basis for requesting such an agreement. It notes that this could be established by a municipal Housing Strategy that identifies the relevant housing requirements that need to be addressed within a defined location.

143. The Yarra Ranges Housing Strategy (2009) is over a decade old and is therefore of very limited value in understanding what the present and emerging affordable housing needs are within the municipality.

<sup>11</sup> <https://www.planning.vic.gov.au/policy-and-strategy/affordable-housing/resources>

144. Neither the Yarra Ranges Housing Strategy nor the Planning Scheme provide direction in relation the need to provide affordable housing on the subject site. The affordable housing policies contained in these documents is worded in very broad terms, and the more recent proposed amendments to Clause 21 that relate to the Site make no mention of the need to provide affordable housing on the land.
145. The Yarra Ranges Affordable Housing Background Report (ADO, 2019), Lilydale Quarry Affordable Housing Needs Assessment (Urbis, 2020) and draft Lilydale Quarry Affordable Housing Strategy (ADO, 2019) on the other hand each contain a much more current analysis of present-day and potential future affordable housing needs within the municipality.
146. I am not qualified to comment on the socio-demographic basis of this analysis, although I note that these reports have each been prepared in the context of the Victorian Government GIC Order relating to household incomes, and each reference various official estimates of housing need as referred to in the Ministerial Notice.
147. On my reading of these reports, there appears to be broad ‘common ground’ between them that there is an unmet need for affordable housing within the municipality. The AHO and Urbis reports are aligned on there being an unmet demand for affordable (social) housing of 1,839 dwellings in 2016, and that this is likely to rise to 2,237 dwellings by 2036.
148. I consider that this analysis demonstrates that a need exists for the delivery of affordable housing and that the planning system has a role to play in facilitating such outcomes that help to meet this need in this municipality.
149. However, there are differences between the reports in relation to how much affordable housing should be delivered via a voluntary agreement on the subject site, and what mix of affordable and social housing should be provided to best address local affordable housing needs.
150. Each of these issues is discussed below.

**10.10.3. The total percentage of affordable housing to be provided:**

151. State policy does not prescribe a quantum or percentage of affordable housing that must be delivered as part of land rezoning or major development approvals.
152. This is a matter that therefore remains subject to negotiated voluntary agreements, or (potentially) via the mandating of any such requirement via either a planning scheme amendment or permit condition, where justified.
153. The proponent has proposed that 5% of the estimated overall site yield be provided as affordable housing, on the basis that this is *‘in line with the recent precedent examples at Hobsons Bay, City of Yarra and Glen Eira which are aligned with emerging policy in inner areas of Melbourne.’*<sup>12</sup>
154. Council has proposed that 8% of the estimated overall site yield be provided as affordable housing, on the basis that this is the percentage nominated for larger sites in a document titled the draft Yarra Ranges Affordable Housing Development Negotiation Framework (October 2019).

<sup>12</sup> Lilydale Quarry Affordable Housing Proposition (Urbis, 2020) page 14

155. The affordable housing percentage proposed by Council in that document is based on the notion that larger developments are expected to have a greater value creation and subsequently value share potential as a result of land rezonings<sup>13</sup>.
156. I note that it is a draft document and it is unclear whether it has been formally considered or adopted by Council at this point. I am unaware whether this Framework has been subject to public consultation or not. I also note that the document does not contain any economic analysis to support the value creation or the affordable housing value share propositions contained within it.
157. The recent planning precedents referred to by both Council and the proponent serve to reinforce that the current legislative and state policy regime do not support mandating affordable or social housing contributions via rezonings or major development approvals, as follows:

Fishermans Bend:

Affordable housing in Fishermans Bend is established in a (discretionary) local policy and an opt-in Floor Area Uplift mechanism. The independent planning Panel that considered these provisions noted the following:

*“The Review Panel does not support mandatory affordable housing contributions in Fishermans Bend. The current statutory and policy framework in Victoria is geared towards voluntary, rather than mandatory, contributions. This is reinforced by the recently passed Housing Affordability Act, which establishes a framework to support voluntary section 173 agreements to support the provision of affordable housing.....*

*The Review Panel is cognisant of Mr Mackintosh’s evidence that a mandatory requirement ‘to gift’ affordable housing could impact on development viability. These concerns may be lessened if the affordable housing is purchased at a market or discounted rate, or subsidised by government. .... until there is a suitable statutory framework in place to support mandatory contributions, they should remain as a policy and voluntary uplift scheme.”<sup>14</sup>*

East Village:

The East Village urban renewal precinct is expected to deliver a similar overall dwelling yield to that proposed at the Lilydale Quarry. It was not necessary for the Panel to make recommendations in relation to the provision of affordable housing in this case because the Section 173 agreement that was agreed between the landowners and Council on a voluntary, negotiated basis.

The independent planning Panel in this instance considered that the negotiated agreement between Council and the proponents was consistent with State policy and also with the Council’s affordable housing policies to “negotiate affordable housing contributions when land is rezoned”<sup>15</sup>.

Altona North:

In the case of the Altona North Comprehensive Development Plan, the independent planning Panel rejected Council’s submissions for a 10 percent affordable housing contribution to be applied to the precinct.

The Panel noted that ‘without a statewide policy framework in place, any notion of mandatory requirements, including the gifting of housing stock, cannot be supported’.<sup>16</sup>

<sup>13</sup> Draft Yarra Ranges Affordable Housing Development Negotiation Framework (2019), page 5.

<sup>14</sup> Fishermans Bend Planning Review Panel, page 94

<sup>15</sup> Glen Eira C155, Panel Report page 67

<sup>16</sup> Hobsons Bay Amendment C88 panel report, page 65

The Panel ultimately supported the introduction of a requirement that the landowner enter into an agreement to provide a number of dwellings equal to 5% of the total dwellings that are constructed on the land as Affordable Housing, to be provided through an agreement between the parties at a 25 per cent discount of the market value of those dwellings.

158. Notwithstanding that the current legislative and state policy regime does not support mandating affordable or social housing contributions, I consider that there is a sufficient justification for Council and the proponent of the Lilydale Quarry redevelopment to enter into a voluntary agreement for the provision of affordable housing on the Site.
159. The current legislative and policy framework relating to the provision of affordable housing via the planning does not see this mechanism as a panacea to this wider housing challenge but it does seek to ensure that some of the value created by the rezoning process is shared for policy priorities such as social and affordable housing.
160. The proposed requirement under the draft CDZ schedule to deliver affordable dwellings (or land lots for construction of affordable dwellings) equal to 5% of the total dwellings on the Site provides for some sharing of the value created by the rezoning process. It is also broadly comparable in scope to the requirements contained in other comparable recent urban renewal rezonings across metropolitan Melbourne<sup>17</sup>.
161. Additionally, I understand that the balance of the housing proposed in the development will provide a significant proportion on 1 and 2 bedroom dwellings which has been identified in Council's policy and analysis as being a housing gap within the municipality.
162. I understand that the proponent is willing to enter into such an agreement (subject to the resolution of the wording the requirements under the CDZ schedule) and therefore any such requirement would meet the test of the Section 173 agreement being a 'voluntary agreement'.
163. I therefore consider that 5% is an acceptable contribution, having regard to the current state planning policy context in relation to the role of voluntary planning agreements in contributing towards the provision of affordable housing.

**10.10.4. The mix of affordable housing to be provided:**

164. State policy does not prescribe the allocation, longevity, tenure or type of housing to be provided under voluntary affordable housing agreements. However, the Ministerial Notice requires that consideration is given to these matters in the setting of any such agreements.
165. There is a difference of opinion between the Council and proponent on what the allocation and tenure of affordable housing should be in the Lilydale Quarry redevelopment.
166. The AHO Background Report concluded that:
- The need is greatest for lower income households, particularly singles and couples for whom one and two bedroom rental housing is appropriate.
  - Affordable Housing that is appropriate for older persons, particularly single person households, is a key area of need.

<sup>17</sup> Fishermans Bend, East Village, Altona North, Alphington Mills – noting that the specific outcomes vary across locations, reflecting the different context, needs and negotiated outcomes. However, they are all broadly in the range of 5% (or less) of total dwelling yields.

- There is also a gap in affordability of home purchase for moderate income singles, couples and families.
167. The AHO Strategy (which Council has adopted as its position) recommends the delivery of a minimum percentage of social or affordable rental housing owned and managed by a Registered Housing Agency, with an additional percentage of other affordable housing comprising a mix of social housing, affordable rental and /or affordable purchase housing.
168. Council has identified a particular need for the delivery of social housing for lower income households. The draft Affordable Housing Strategy prepared by Council proposes that 5% of the total dwellings (ie circa 150 dwellings) be realised as social housing via one or more of the following options:
- Gifting completed dwellings to a Registered Housing Agency
  - Selling completed dwellings to a Registered Housing Agency at a discount rate
  - Gifting serviced land to a Registered Housing Agency<sup>18</sup>
169. The Urbis report on the other had proposes a response which comprises a smaller percentage of social housing and a larger percentage of affordable rental, shared equity and affordable purchase housing outcomes (refer figure 2 below).

Composition of 5% provision of affordable housing	%	Total
Crisis, Social Rented	17%	28
Affordable Rental	24%	40
Shared Equity, Affordable Purchase	40%	65
Key Worker	18%	30
	<b>100%</b>	<b>162</b>

**Figure 2** –Composition of affordable housing proposed by the Proponent.<sup>19</sup>

170. The social housing component of the Proponent’s proposal (68 dwellings) equates to circa 2.26% of the total dwelling yield on the site. The balance of the 55 affordable housing contribution is proposed to be delivered in the form of Affordable Home Purchase and Shared Equity Home Purchase arrangements.
171. The difference between the amount of social housing that Council would like to see facilitated by the developer of site and what the proponent is offering to deliver via the negotiated agreement is 82 dwellings.
172. The question in my mind is whether or not the current State policy and legislation arrangements are intended to allow the responsible authority to mandate how much affordable housing must be delivered as social housing via voluntary affordable housing agreements.
173. The affordable housing definition set out in the P&E Act requires that housing be appropriate to the housing needs of any very low, low and moderate income households. Whilst this definition encompasses social housing, it is not limited to that form of housing.

<sup>18</sup> draft Lilydale Quarry Affordable Housing Strategy, page 21

<sup>19</sup> Lilydale Quarry Affordable Housing Proposition (Urbis, 2020) page XX

174. The Planning Policy Framework (PPF) also encourages the delivery of housing which is affordable for households on very low to moderate incomes (this too is inclusive of but not limited to social housing).
175. The PPF also requires that planning has regard to the Homes for Victoria Strategy, which in turn recognises that there are a range of different ways in which developers might provide housing to meet the housing needs of very low, low and middle income households, including:
- Transfer of ownership of an agreed number of dwellings to a community housing association or the Director of Housing for use as social housing;
  - The sale of dwellings to a community housing association at an agreed discounted price to be used in perpetuity as affordable rental; and
  - Offering units for sale to first home buyers through a shared equity scheme.<sup>20</sup>
176. Whilst social housing is clearly a very important housing mechanism to meet the needs of very low and low income households, State policy does not require that all or even part of the affordable housing contributions made under voluntary housing agreements must be in the form of social housing.
177. So long as the housing is affordable for households on very low through to moderate incomes as defined in the GIC Order then it falls within the policy definition of affordable housing.
178. Whilst Council's preference is for the affordable housing mix on the Lilydale Quarry to predominately comprise social housing, this preference must be considered in the context that **a.** State policy supports the delivery of a wide range of affordable housing outcomes and **b.** State policy and legislation supports facilitating affordable housing in the planning system via voluntary negotiated agreements.
179. In my view the mix between social and other forms of housing should be one which is mutually agreeable to the parties to the voluntary agreement, and not one that is mandated by the responsible authority.
180. In the event that the proponent and Council cannot agree on the preferred mix, then it will inevitably be left to others (be it the Minister in relation to the Amendment or VCAT in relation to decisions under the planning scheme) to determine the matter.

#### 10.10.5. Potential requirements of the Section 173 Agreement

181. The CDZ Schedule could simply require that a Section 173 Agreement be entered into which provides for the provision of a minimum of 5 percent of affordable housing in accordance with the Affordable Housing definition set within the P&E Act.
182. However this approach defers resolving what are acceptable parameters are for the delivery of affordable and social housing on the Site. In my view it is preferable that the affordable housing parameters to be implemented via the proposed Section 173 agreement are clearly set out in the CDZ.
183. Having reviewed the propositions of both Council and the Proponent, as well the relevant legislation, policy and analysis, I consider the CDZ Schedule should require the owner of the land to enter into a Section 173 Agreement which requires the owner of the land to provide for a mixture of affordable and social housing as follows:

*Delivery of Affordable Housing (as defined under the P&E Act), or land for the construction of Affordable Housing, equal to 5% of the total dwellings proposed to be delivered across the Site; or*

<sup>20</sup> Homes for Victoria, page 23

*delivery of Affordable Housing by any agreed alternative method equivalent value to the above provision.*

*In satisfaction of the above requirement, delivery of Social or Affordable Rental Housing to be owned and managed by a Registered Housing Agency equal to 2.5% of the total dwellings proposed to be delivered across the Site via one or more of the following means:*

- *Making available Affordable Housing for purchase by either the Council or a Registered Housing Agency at a price which does not exceed an amount that is 25% less than the current 12-month median unit price for [XXXX locality], and/or*
- *Transferring serviced land to Council or a Registered Housing Agency for the purposes of constructing Affordable Housing, for nil financial consideration and/or*
- *If serviced land is not transferred or any of the Affordable Housing Dwellings are not purchased by the Council or a Registered Housing Agency then, with respect to any such land or unpurchased Affordable Housing Dwellings, the land owner must instead make to the Council or a Registered Housing Agency an Affordable Housing Payment.*

184. A range of important delivery issues are identified in Part B of the draft Lilydale Affordable Housing Strategy which need to be addressed in order to ensure the transparent delivery of any such Agreement.
185. I consider that the CDZ Schedule should also require the preparation and approval of an Affordable Housing Delivery Strategy to address these matters. The Strategy should set out how any Affordable Housing outcome proposed by the proponent be achieved including the identification of intended partners, timeframes, built form, and response to each of the Specified Matters set out by the Minister pursuant to section 3AA(2) of the Planning and Environment Act 1987.
186. CDZ1 requires that the section 173 agreement be entered into prior to the granting of a permit for the development of the 701's dwelling. I consider that CDZ1 should require that the abovementioned Affordable Housing Delivery Strategy be submitted and approved by the responsible authority within this same timeframe.

## 11. INFRASTRUCTURE CONTRIBUTIONS.

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### 11.1. What the Amendment Proposes.

187. The Amendment proposes to incorporate the Lilydale Quarry CDP into the Planning Scheme. The CDP identifies a range of infrastructure that is proposed to be delivered on and nearby to the Site. It contains a series of Objectives and Requirements relating to the delivery of this infrastructure, as well as an infrastructure delivery table that identifies the timing and responsible for the delivery of the nominated infrastructure items.
188. The draft CDZ (Schedule 1) states that a permit for the use and subdivision of land must be generally consistent with the incorporated CDP. It identifies certain works that must be provided in association with development, and it requires that a Section 173 Agreement must be entered into in relation to the delivery of various categories of infrastructure.
189. The draft CDZ (Schedule 1) states that the Section 173 Agreement should specify:
- The scope of work and location of infrastructure items required as a result of the development, including any land provision or acquisition
  - The expected timing of provision of each infrastructure item and who is responsible for delivery
  - The cost of any items that are the subject of financial contributions rather than direct delivery by the owner
  - The equitable apportionment of costs between the developer and Council for any items which exceed the needs of the development
  - Operational and administrative provisions.
190. It also requires that various plans relating to matters such as stormwater, landscaping, heritage, filing of land, urban design, etc. be prepared to the satisfaction of the Responsible Authority prior to permits being granted for subdivision or development of the Site.
191. The description of the proposed social infrastructure contained in Chapter 4.8 of the draft CDP has been informed by the recommendations of the Community Needs Assessment prepared by Ethos Urban (October 2020).
192. The proposed approach to development contributions in the Amendment has also been informed by the recommendations of Urban Enterprise (October 2020).



## 11.2. Issues raised in submissions.

193. The following issues have been raised in relation to infrastructure contributions in Council's submission:

- Extent of mitigation measures proposed for the road network - Council has reviewed the proposed measures and has identified a number of inadequacies. Among these is the need for the proponent to provide a signalised intersection at Maroondah Hwy / Hutchinson Street (subject to DoT agreement). The full extent of road mitigation measures will need to be agreed to by Council and DoT before the draft amendment is finalised.
- The extent of public open space for active recreation - Currently a 6.77 Hectare site is allocated at the northern end for two ovals and ancillary activities. Council has sought advice from community infrastructure consultants ASR which has demonstrated that an area of at least eight (8) hectares is required.
- The active open space (two playing fields) will require a developer funded pavilion that has not been included in the proposed project descriptions prepared by the proponent.
- A community centre is proposed for the site and the final scope, location and land area requirements need to be resolved. The description provided in the submitted Approach to Development Contributions report is considered to be inadequate.
- A Government specialist school with an area of 1.9 hectares is nominated in the CDP. At this stage it is not clear at what stage the Department of Education and Training intends to acquire the site.
- Land for a future railway station and associated car parking will need to be secured.

194. The proponent has also requested that the land area associated with the Government specialist school be revised to 1.4ha.

### 11.3. The Legislative and Planning Policy Framework on Infrastructure Contributions.

195. The Planning and Environment Act 1987 provides four mechanisms by which development contributions can be sought and collected through the planning system. They are:
- Development Contributions Plans (DCPs)
  - Infrastructure Contributions Plans (ICPs)
  - Conditions on planning permits, and
  - Voluntary agreements (pursuant to Section 173 of the P&E Act)
196. Clause 19 of the Planning Scheme contains the following policies in relation to the provision of infrastructure:
- *Planning for development of social and physical infrastructure should enable it to be provided in a way that is efficient, equitable, accessible and timely.*
  - *Planning should ensure that the growth and redevelopment of settlements is planned in a manner that allows for the logical and efficient provision and maintenance of infrastructure, including the setting aside of land for the construction of future transport routes.*
  - *Planning authorities should consider the use of development and infrastructure contributions in the funding of infrastructure.*
197. Clause 19.03-1S states that planning should consider as relevant Development Contributions Guidelines (Department of Sustainability and Environment, 2003- as amended 2007).

### 11.4. The Development Contributions Guidelines.

198. The Development Contributions Guidelines (2007) (the Guidelines) and Infrastructure Contributions Guidelines (2021) provide an explanation of the development contributions system in Victoria, as well as guidance on how each of the above contribution mechanisms are intended to be applied.
199. Voluntary agreements provide an alternative mechanism to a DCP or ICP for obtaining development contributions towards infrastructure provision.
200. The Guidelines note that a voluntary agreement in relation to infrastructure provision can be initiated when the council considers a planning scheme amendment request, in the following circumstances:

*“A voluntary agreement for the provision of infrastructure is appropriate when the parties agree to a mutually acceptable outcome. An acceptable agreement is more likely to be achieved when the circumstances involve a large individual development or a small number of landowners.”<sup>21</sup>*

<sup>21</sup> Development Contributions Guidelines (2007), page 5

201. The Guidelines note that voluntary agreement can provide for:

- the costs and standard of infrastructure provision;
- the timing of the provision of infrastructure;
- the parties' obligation to provide the infrastructure;
- timing of payments towards infrastructure the refund of cash contributions if infrastructure is not provided;
- the upfront provision of infrastructure by one landowner and the reimbursement of the cost by other landowners as they develop, or;
- works-in-kind in lieu of a cash contribution<sup>22</sup>

### 11.5. My Opinion.

202. I consider that the use of a Section 173 Agreement is an appropriate tool for the provision of infrastructure associated with the future redevelopment of the Site.
203. The Guidelines contemplate the use of Section 173 agreements in circumstances such as those that apply at the Lilydale Quarry. The land is in single ownership and the majority of infrastructure that is required by the development will be either provided on the site itself, or external to the site as impact mitigation works.
204. The Guidelines note that it is appropriate to use voluntary agreement for the provision of infrastructure in circumstances when the parties to the agreement agree to a mutually acceptable outcome.
205. There is broad (but not complete) agreement between Council and the proponent on the much of the infrastructure that is to be provided as part of the future development of the site.
206. Negotiations are continuing in relation to the scope of contributions for the following infrastructure items:
- Mitigation works on the external road network
  - The size of the active recreation reserve (6.77ha vs 8ha)
  - Whether or not a sports pavilion should be provided within the recreation reserve
  - The size, final scope and location of the proposed community centre
  - The size of the proposed government specialist school (1.9ha vs 1.4ha)
  - The approach to determining land area requirements for a potential future train station
207. I am not qualified to comment on the technical basis of the above infrastructure items.
208. However from an 'orderly planning' perspective, I consider that it will be necessary to resolve the scope of some of these contributions as part of finalising the Amendment, whereas certain other matters can be resolved as part of finalising the 173 Agreement and various plans and frameworks required under the CDZ Schedule.
209. My views in regard to how the various unresolved infrastructure contributions matters are best dealt with are as follows.

<sup>22</sup> Ibid, page 6

**11.5.1. Mitigation works on the external road network:**

- 210. Chapter 4.8 of the CDP ('Infrastructure and Staging') identifies the road and intersection projects that are intended to be delivered as infrastructure contributions. It contains a table which briefly describes the project, timing triggers and delivery responsibility, and a plan which identifies shows the relevant road and intersection works. This document will be incorporated under the Planning Scheme and future subdivisions must be generally consistent with this document.
- 211. CDZ1 states that a permit must not be granted to subdivide or develop land until a Precinct Integrated Traffic and Transport Management Plan is approved. This Plan must detail how the objectives of the Integrated Transport Plan October 2020 have been addressed.
- 212. CDZ1 also states that a permit must not be granted to subdivide or develop land until a Section 173 Agreement has been entered into which defines the scope, timing and cost of delivering roads and intersection projects.
- 213. I consider that the table and plan contained in the CDZ and the Integrated Transport Plan October 2020 will need to be updated to reflect the final preferred approach to mitigation works on the external road network before the Amendment is finalised.
- 214. Once the Amendment is approved, then the more detailed scope, timing and cost of delivering roads and intersection projects identified in the CDP can be resolved in the course of finalising the Section 173 Agreement and Precinct Integrated Traffic and Transport Management Plan.

**11.5.2. The size of the active recreation reserve:**

- 215. The preferred size of the active recreation reserve will affect the land budget contained in the CDP and for this reason this issue will need to be resolved prior to finalisation of the Amendment.

**11.5.3. Whether or not a sports pavilion should be provided within the recreation reserve:**

- 216. I am not qualified to comment on whether or not a sports pavilion should be delivered as a development contribution. However, I consider that the broad scope of any proposed community facilities (including the sports pavilion) that are intended to be delivered via development contributions must be resolved prior to finalisation of the Amendment.
- 217. I suggest that this could be done by updating the table and plan contained in the CDZ (if necessary) and by creating a summary 'community infrastructure plan', referencing this document in the CDZ1 and requiring that the Section 173 agreement give effect to the delivery of the infrastructure items contained within it.
- 218. The more detailed design scope of this and other facilities can then be resolved via the Section 173 Agreement.

**11.5.4. The size, final scope, timing and location of the proposed community centre:**

219. I am not qualified to comment on the range services that should be provided in the proposed community centre.
220. However, I consider that the broad scope and delivery timing of this facility must be resolved prior to finalisation of the Amendment, via the mechanisms discussed above. The more detailed design scope of the facility can then be resolved via the Section 173 Agreement.
221. Further consideration should also be given to the potential location and urban form of the proposed community centre, having regard to the mixed-use and transit oriented vision for the site.
222. Council has submitted that the CDP should show the proposed community facility as being located either in Precinct 2 or Precinct 4 (but outside of the quarry pit area). Council has noted that there is too much uncertainty to identify a location within the quarry pit area at this stage.
223. The Framework Plan makes provision for a potential future train station at the Site, and Precinct 4 is characterised as the ‘urban core’ of the site. It proposes that north-south and east-west urban avenues traverse Precinct 4, providing links to the potential station, and it also proposes creation of an urban plaza in the centre of the precinct.
224. Given the overall ‘transit oriented design’ aspirations of the plan, and the proposed urban structure described above, in my view the CDP should at least retain the option for the proposed community centre to be delivered centrally within Precinct 4.
225. I acknowledge that land within Precinct 4 will not be developed until the filled land in this area has satisfactorily settled, and that this will influence the potential timing of delivering the community centre.
226. However, I do not see any ‘in principle’ reason why a community centre cannot be constructed on filled land if that land has been certified as being able to support the type and scale of urban development contemplated under the CDP for Precinct 4 (pursuant to the requirements of the CDZ).
227. It will be necessary to determine whether to facilitate delivery of the community centre centrally within the precinct once that land is settled, or to enable the potentially earlier delivery of the community centre elsewhere in the site. I consider that this decision can be made at a later stage, as part of finalising urban design frameworks for Precincts 2 and 4, and finalising the Section 173 Agreements regarding infrastructure delivery.
228. I therefore consider that the CDP should make provision for the community to be located either centrally within Precinct 4, or within Precinct 2.
229. I also note that Council has submitted that a larger area of land (0.8ha) is needed to accommodate a community centre on the site. This submission is supported by advice from ASR that calculates that circa 0.6ha of land is needed to enable the creation of a kindergarten, community centre and community garden on the site. The ASR advice suggests that a further 0.2ha be allocated for further expansion of the facility.
230. Whilst I defer to the expertise of others in relation to the scope of services that should be provided in the proposed community centre, I consider that the approach to the design of this facility should take account of the proposed future urban context of the site.

231. The CDP proposes that the Lilydale Quarry be developed at an urban scale (circa 25 dwellings/ha), with development potentially up to 6 storeys in precinct 2 and up to 12 storeys in precinct 4<sup>23</sup>. Given this proposed urban scale, and the CDPs aspirations to achieve transit-oriented development, consideration should be given to the delivery of more urban-scale community infrastructure. This approach has been adopted in other urban renewal settings such as Fishermans Bend and the Bradmill Site in the City of Maribyrnong.
232. By way of example, the construction of a 2-level community centre (potentially with undercroft parking) would positively contribute to the vision for the Site, as well as requiring substantially less land area than the 0.8ha identified in the ASR report.
233. I expect that the priority for Council will be to ensure that the facility requirements of the centre are appropriately specified in the Section 173 agreement to deliver it. I consider that there is scope of the type of community centre envisaged for the site to potentially be delivered on a land area smaller in size than 0.8ha and that the CDP and CDZ should provide flexibility for this outcome to be achieved via the infrastructure contributions agreement.

**11.5.5. The size of the proposed government specialist school (1.9ha vs 1.4ha):**

234. The preferred size of the school site will affect the land budget contained in the CDP and for this reason this issue will need to be resolved prior to finalisation of the Amendment.
235. I understand from the submissions that the Department of Education and Training is currently seeking 1.9ha of land for the construction of a specialist school on the Site, and that no design work has been undertaken by the Department at this point to confirm the land area required for this facility (noting that a specialist school has different design requirements to a conventional government primary or secondary school).
236. Given the CDPs aspirations to achieve urban densities and transit-oriented development on the site, consideration should be given to whether or not a more urban-scale specialist school facility might be appropriate on the site. If it is agreed that this is a desirable approach, then I suggest that the CDZ and CDP should provide flexibility for this outcome to be achieved.

**11.5.6. The approach to determining land area requirements for a potential future train station:**

237. CDZ1 requires that a permit must not be granted to subdivide or develop land within Precinct 4 until a design strategy for the potential future train station has been prepared to the satisfaction of the responsible authority and the Department of Transport (DoT).
238. DoT has requested that this requirement be modified as follows:

*“Unless otherwise agreed to by the responsible authority and the Head, Transport for Victoria, a permit must not be granted to subdivide land within Precinct 4 until the Government has confirmed (or otherwise) the provision of a new rail station in the long term. In the event that the Government confirms the provision of a new rail station, the first plan of subdivision must have regard to the station design and access requirements of the Head Transport for Victoria.”*

239. I understand that DoT is concerned to ensure that the wording of the CDZ does not imply that the delivery of a train station on the site is committed.

<sup>23</sup> Refer table 3 from draft CDP. I note that Precinct 4 is intended to be developed at a higher density of circa 35 dwellings/ha and that development at this density is likely to be multi-storey but will not be universally at the upper end of the preferred heights referred to in Table 3.

240. However, I do not consider that the future development of land within Precinct 4 should be wholly dependent on whether or not DoT is prepared to make a decision about this issue.
241. The revised wording proposed by DoT could potentially give rise to a situation where the Department is unwilling to confirm (or otherwise) the provision of a new rail station, and as a consequence the future subdivision or development within Precinct 4 could be delayed indefinitely.
242. In my opinion, a decision will need to be made about whether or not to set land aside for a future train station (even if there is no firm commitment to deliver the station) sooner rather than later, and the preparation of the Urban Design Framework for Precinct 4 is an appropriate time for that decision to be made.
243. I note that this is similar to the approach taken in relation to the Development Plan Overlay that applies to the Orica Deer Park site under the Brimbank Planning Scheme (DPO16). In that instance, a potential long term opportunity to accommodate a rail freight line through the site was identified by the State Government, although it was one of a number of possible alignments and there was no firm Government commitment to the delivery of the project.
244. The independent planning Panel that considered this matter concluded that the planning scheme ought to make provision for the potential need (or otherwise) for a rail reserve to be set aside at the time that more detailed plans were to be prepared for the site.<sup>24</sup>
245. The relevant DPO requires that the future Development Plan for the site incorporate the following:
- “If required by the Department of Transport Planning and Local Infrastructure (Freight Logistics and Marine Division), identification of a railway corridor generally along the eastern boundary of the site to connect to a Western Interstate Freight Terminal Facility.”*
246. I consider that those circumstances are similar to the situation on the Site, and that a similar approach should therefore be taken. I suggest the following alternative wording for CDZ1 in relation to this issue:
- “A permit must not be granted to subdivide land within Precinct 4 until land is set aside for a potential future train station, if required by the Department of Transport. In the event that the Department of Transport confirms the need for land to be set aside for such purposes, a design strategy for the potential future train station must be prepared to the satisfaction of the responsible Authority and the Head Transport for Victoria, and the first plan of subdivision must have regard to the station design and access requirements set out in that Strategy. The design strategy must include the following...[insert bullet points from exhibited CDZ1].”*

<sup>24</sup> Amendment C128 to the Brimbank Planning Scheme

## 12. THE APPROPRIATENESS OF PURSUING TRANSIT ORIENTED DEVELOPMENT ON THE SITE.

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### 12.1. What the amendment proposes.

247. The vision for the site is described in the proposed clause 22.13 and the draft CDP as follows:

*“Lilydale Quarry will become a major new urban renewal precinct with a masterplan that prioritises liveability and sustainability. A true 20-minute neighbourhood, it will provide housing diversity, recreation opportunities, services and a transport network that supports the future community, and integrates with surrounding neighbourhoods. Designed to achieve high levels of walkability, the development will promote social interaction and encourage healthy, active lifestyles.”*

248. One of the purposes of the proposed CDZ1 control is as follows:

*“To create the opportunity for a transit-oriented development that encourages higher density housing within a walkable catchment of the potential future train station, local retail village and district level open space.”*

### 12.2. Issues raised in submissions.

249. Numerous submitters have argued that there should be a clear commitment to building the new train station and duplicating the train line between Mooroolbark and Lilydale.

250. The DoT submission raises concerns about planning for ‘transit oriented development’ on a site where there is no current commitment to deliver a train station. This submission is as follows:

*“While the CDP appropriately refers to the train station as a “future potential train station”, the reliance on the station to achieve ‘transit-oriented development’ (TOD) creates an expectation and implies a commitment to deliver a new station, when there is no current commitment. Thus, references and land use outcomes tied to a potential future train station should be presented as potential opportunities and not assumed outcomes.”*

251. Council is supportive of the delivery of a train station on the site, and of enabling transit oriented development around it. Council’s submission notes that the CDP contemplates the delivery of circa 1300 dwellings in Precinct 4 and it has submitted that further planning of this precinct 4 should only occur once a future train station is confirmed.



### 12.3. The Planning Policy Framework.

252. The Planning Scheme (at clause 11) promotes the creation of mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts. It also promotes opportunities for the consolidation, redevelopment and intensification of existing urban areas.
253. The Planning Scheme (at clause 16) promotes the development of housing and mixed use development opportunities in urban-renewal precincts and areas near existing and proposed railway stations that can support transit-oriented development.
254. The Planning Scheme (at clause 18) promotes the integration of public transport services into new development, and planning for the delivery and operation of public transport services.
255. Plan Melbourne seeks to create a city of 20 minute neighbourhoods (direction 5.1). It supports facilitating an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing jobs, services and public transport (direction 2.1). It supports the development of urban renewal precincts (direction 2.2), improving local travel options to support 20 minute neighbourhoods (direction 3.3), and improving outer-suburban public transport (direction 3.2).

### 12.4. My opinion.

256. The proposed development vision for the site as described in the proposed clause 22.13 and the draft CDP is strongly aligned to the 20 Minute Neighbourhood and other policy outcomes sought under clauses 11, 16 and 18 of the Planning Policy Framework, and Plan Melbourne.
257. The Amendment will enable effect to be given to the vision by facilitating the delivery of circa 3,000 dwellings as well as a neighbourhood activity centre, government school, and limited retail and commercial activities.
258. The overall housing density across the site is proposed to be in the order of 25 dwellings per hectare. I consider that this density is appropriate to an infill site than enjoys close access to existing town centres, transport, services and amenities, even if there is no train station available to the site.
259. To put this in context:
- The recently approved East Village PSP (East Bentleigh) proposes to deliver 3000 dwellings at a density of 150 dwellings/ha on an urban renewal site that is located circa 2km from the nearest train station, and;
  - Residential Precinct Plans in Melbourne's growth corridors typically require the delivery of 25+ dwellings/ha within the walking catchments of proposed future neighbourhood centres. These precincts typically do not have access to train stations, and are reliant on bus services and private cars for longer trips.
260. I acknowledge that the proposed housing densities within Precinct 4 of the Site are intended to be higher than across the balance of the site but the delivery of 1300 dwellings within the 36ha land area within Precinct 4 still only represents an overall density of circa 36 dwellings/ha.
261. In relation to the notion of creating opportunities for a transit-oriented development that encourages higher density housing within a walkable catchment of the potential future train station, my views are as follows:

- State policy (at clause 16) supports development near existing and proposed railway stations realising transit-oriented development outcomes.
- A rail line traverses the site, and it is agreed by all parties that opportunities may exist for a station to be constructed within the site in the future.
- Given that opportunities exist for a station to potentially be constructed within the site in the future, it is appropriate for the CDP to identify the opportunity for transit-oriented development (TOD) and higher density housing within a walkable catchment of any such station.
- Identifying the opportunity for a station and TOD does not commit the government to delivering the station on the site, but merely leaves the door open for future planning to consider whether this is possible, and make provision for it to be realised.

262. The delivery of a train station at this site would be high beneficial to the precinct, and indeed it might warrant consideration to delivering even higher densities on the site over the longer term. However, I do not consider that the absence of a commitment to a train station on this site warrants any consideration of lower housing densities on the site.
263. As I have noted earlier in my advice, the potential for delivery of a station within the site can be reviewed in the course of preparing a framework plan for Precinct 4 of the site.
264. If there is government support for planning for a station on the site at that time then land can be set aside for that purpose, and the Framework Plan for that precinct can be cast in the context of that opportunity.
265. If there is no government support for planning for a station on the site at that time then the Framework Plan for that precinct can continue to be cast on the basis of the present land use mix and dwelling yields (35 dwellings/ha) referred to in the current CDP, which I consider to be reasonable for this Site even if there is no commitment to deliver a train station.
266. The site is still reasonably close to Lilydale station and it can be readily connected to the Lilydale activity centre and various other destinations via bus services, walking and cycling connections. I also understand that the Maroondah highway level crossing removal at Lilydale will result in the delivery of a new train station in a location that is closer to the site than the present station.
267. I note that Council’s submission has identified that the transport impact assessment for the DCP has discounted traffic generation on the site on the assumption that a train station will be provided on the site. This is a matter that falls outside of my expertise, however I consider that the impact of there being no train station on the site should be considered in determining the likely impact of the development on the surrounding transport network.

## 13. OTHER MATTERS.

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268. I have been asked to consider the town planning matters contained in submissions made by Heritage Victoria (submitter 37), the Box Hill Institute (submitter 47), Lilydale Township Action Group (submitter 49) and the City of Maroondah (submitter 56).
269. The issues raised by submitters 37 and 56 relate to heritage and transport respectively, which are matters that are outside of my area of expertise. Similarly, submitter 49 raises issues relating to traffic, transport, retail, recreation and community infrastructure which are matters outside of my expertise.
270. My views in relation to the town planning issues raised in the remaining submissions referred to above are set out below.

### 13.1. Box Hill Institute (submitter 47).

#### 13.1.1. Submission – third party appeal rights:

271. CDZ1 removes third party rights where a proposal is generally consistent with the incorporated CDP. How will Box Hill Institute be consulted when the detailed investigations referred to in CDZ1 are complete.

#### 13.1.2. My Opinion:

272. The current Amendment process is intended to provide the opportunity for any issues or concerns from affected parties to be raised and addressed. The Amendment is accompanied by a draft CDP as well as a series of technical reports that have informed that plan. These provide a basis on which adjoining landowners can determine the potential impacts of proposed development, and this process provides the opportunity for issues or concerns to be raised and addressed by both the independent Panel and the Planning Authority.
273. It is common practice for planning frameworks for major urban renewal developments to limit future statutory third party notice and appeal rights once a development plan or similar has been approved for the relevant precinct.
274. However, I acknowledge that the CDZ1 requires a range of future plans and agreements to be submitted and approved by the responsible authority, and that that the submitter and other parties will have an interest in being informed about these plans.
275. It is not uncommon for responsible authorities to elect to informally notify affected parties of the submission of such plans and agreements, and to consider any issues raised by parties before making any decisions in relation to them. Whilst there is no requirement for Council to do this under the CDZ, it is a common practice of many local governments to undertake such informal public consultation prior to making a final decision to approve relevant plans under such a control.
276. Given the scale and long-term delivery timeframes associated with the future development of the site, I would expect that this is something that Council would elect to do in relation the future approval of plans and agreements required under CDZ1.

**13.1.3. Submission - Land acquisition for road works:**

277. It is not clear how the acquisition of land and development of road works on the Box Hill Institute site will occur.

**13.1.4. My Opinion:**

278. The draft CDP nominates the developer as being responsible for delivering the works referred to in the submission. It also nominates the developer as being responsible for acquiring or arranging legal rights of access over the land for these works.

279. The CDP does not propose that this land is acquired by a public authority or that the works are undertaken by a public authority. I therefore understand that it will be the responsibility of the developer to successfully negotiate land acquisition and the right to undertake these works via private treaty with the owners of the adjoining land.

280. I understand that once the land is acquired and the road works are completed, the land will be transferred to Council as a public road.

281. In the event that this is not able to be achieved it may be possible for the Council to acquire certain land and/or undertake certain work utilising its powers under the Local Government Act. If necessary, a Public Acquisition could potentially be placed on the land to facilitate the acquisition of the land by a public authority.

**13.1.5. Submission – Southern Boulevard Street:**

282. The CDP shows a southern boulevard street running along (and within the boundary of) the Box Hill Institute Land. These works should form part of the infrastructure nominated for delivery by the developer in the CDP.

**13.1.6. My Opinion:**

283. This road link is shown as being within the Site on Figure 2, but is shown partially on the Box Hill Institute's land in figure 12.

284. In circumstances where the only beneficiary of this road was the subject Site then I would expect that this road would ordinarily be delivered within the boundary of the site as 'works to be provided in association with development' under the CDZ (noting that only the connector road works are identified in the infrastructure framework plan in chapter 4.8 of the draft CDP).

285. However, there will be potential longer term benefits to the adjoining land owner of having access to this road, in which case that landowner may be agreeable to having the road partially built on their land.

286. The submission does not appear to object to this outcome (although this requires clarification), but it seeks assurance that these road or pedestrian/cycle access should form part of the infrastructure items to be delivered by the developer of the Site.

287. If the landowner agrees that the road and pedestrian works can be delivered (in part) on their land then perhaps these works ought to be identified in chapter 4.8 of the draft CDP and dealt with as part of the development contributions arrangements.

**13.1.7. Submission – interfaces:**

288. The CDP states that 'an activated frontage and high levels of permeability will be provided to the Box Hill Institute land via the shared boulevard street' and that 'public space (which may include open space, streets and/or dual use paths) will be provided along the site boundary with Box Hill Institute (as opposed to private lot boundaries) in Precincts 3 and 4'.

289. The use and future buildings on BHI land cannot be limited by abutting residential development and it must be acknowledged that campus hours may cause amenity impacts to surrounding residential areas, especially as community demand increases. How will this be managed?

**13.1.8. My Opinion:**

290. I consider that it is desirable for the development on the subject Site to address the adjoining land via a public road frontage rather than to back on to that site.
291. I would expect that the creation of a 'frontage road' facing the campus, with pedestrian paths, landscaping and open style fencing would provide an appropriate balance of physical separation, security and amenity along this interface.
292. The draft CDP provides for this outcome – it schematically identifies a road, local cycle paths, walking paths and green links along (and within) the southern boundary of the Box Hill Institute site.
293. As noted above, these outcomes can either be delivered entirely within the subject site, or partially on the adjoining site by mutual agreement between the landowners.

**13.1.9. Submission - Amenity impacts during works:**

294. The development requires extensive groundworks and the movement of large masses of soil and rock. How will the developers protect BHI land with the changes incurred to the surrounding land from these works?

**13.1.10. My Opinion:**

295. I understand that the site remediation works associated with the remediation of the quarry (including the filling of quarry hole) are dealt with under the existing work plan approval conditions.
296. In relation to construction works associated with the future urban development of the site, I consider that CDZ1 should contain a requirement for the preparation and approval of construction management plans for each of the 4 prior precincts prior to the commencement of subdivision and urban development works within each precinct.

**13.2. Lilydale Township Action Group (submitter 49).**

**13.2.1. Submission – Neighbourhood character:**

297. Residents in the Sharnalee Court have previously been told that there would be a green space buffer zone and access way to the Lake along their back fence. Now they find the plan is to have double story medium density homes in that area.
298. The high-rise buildings proposed for Precinct 4 of up to 12 stories are not appropriate for the area and the only 12 storey buildings currently between Lilydale and Ringwood. There is concern that the height of these proposed buildings would adversely affect views.

**13.2.2. My Opinion:**

299. The character of the existing residential streets adjoining the site to the south and south-east of the site comprises primarily single dwellings in landscaped garden settings. A number of these property currently enjoy a semi -rural aspect over the quarry site today.
300. The redevelopment of this part of the quarry will inevitably change the character and aspect of this interface. However, rezoning this site for any form of (urban) residential use would have the effect of changing the general character of this interface.

301. The CDP provides for dwellings along the southern and south-eastern residential interfaces to comprise lots with a minimum depth of 40m, including a 10m deep vegetation zone. The height of residential development is proposed to be limited to 2 storeys along this interface, which is typical of the permissible height under the more restrictive of Victoria's residential zones (the Neighbourhood residential zone).
302. Whilst residential development of the nature will represent a change to the current character at this residential interface, I consider that the combination of a 2 storey height limit, 40m lot depth and 10m deep vegetation zone to be a reasonable interface in this location.
303. Precinct 4 (which nominates buildings ranging between 2 and 12 storeys in height) is circa 500m from the Sharnalee Court area. Whilst buildings of up to 12 storeys may be visible from a distance from certain view-points in area (depending on how much residential development on the intervening land screens such views), I do not consider that they will have a direct adverse impact on the character or amenity of this existing residential area.

**Statement prepared by:**

Mark Woodland

21<sup>st</sup> May 2021

## Appendix 1 Mark Woodland CV

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## CURRICULUM VITAE

**Address:**  
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**Phone:**  
Work: 03 9940 1566  
(mob) 0437 467 024

**Date of Birth:**  
25<sup>th</sup> June 1970

**Nationality:**  
Australian

### Mark Woodland

#### Expertise:

- Strategic planning
- Development facilitation
- Project management & feasibility
- Structure planning
- Urban policy
- Stakeholder & Government relations
- Community consultation
- Media & communications.

#### Employment Overview:

Director, Echelon Planning  
(July 2012 –Present)

Strategic Planning Director– Growth Areas Authority  
(July 2010 – June 2012)

New Business/Strategic Planning Manager – Delfin Lend  
Lease  
(July 2007 – July 2010)

Senior Planning Adviser - Minister for Planning  
(February 2005 - June 2007)

Manager, Strategic Planning - City of Melbourne  
(September 2001 - January 2005)

Manager, Investment Development - Hume City Council  
(Jan 2001 - Aug 2001)

Manager, Strategic Planning – City of Kingston  
Sept 1997 - Dec 2000

Urban & Environmental Planning Consultant - Gutteridge  
Haskins & Davey Pty Ltd  
(Sept 1995 - Aug 1997)

Urban Planner – Cities of Port Phillip, Boroondara and  
Camberwell  
(1991 - 1995)

#### Qualifications:

- Bachelor Planning and Design 1990 - Melbourne University.
- Grad. Certificate, Business Administration. , 2000 - Monash School of Business.

#### Industry Memberships:

- Victorian Planning & Environmental Law Association
- Property Council of Australia

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Curriculum Vitae for Mark Woodland



## Appendix 2 –Instructions

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30 April 2021

**Privileged and confidential**

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**Your reference:**  
**Our reference:**  
4036949

Dear Mark

**Amendment C193 to the Yarra Ranges Planning Scheme  
Land: 4 Melba Avenue, Lilydale (Lilydale Quarry)**

We act for HBI Lilydale Pty Ltd (**HBI Lilydale**) in relation to proposed planning scheme amendment C193 to the Yarra Ranges Planning Scheme (**Proposed Amendment**). HBI Lilydale is a joint venture between Hume Lilydale Pty Ltd (**Hume Lilydale**) and LBJ Developments Pty Ltd (**LBJ Developments**). Hume Lilydale is itself a joint venture between Intrapac Property, Brencorp Properties, and Bayport Group.

**1 Background**

- 1.1 On 12 August 2020, the Minister for Planning directed the Victorian Planning Authority (**VPA**), to lead the preparation of the Proposed Amendment to facilitate the redevelopment of a 143.8 ha site in the south of Lilydale (being, 4 Melba Avenue, Lilydale, the **Site**). The Minister's direction came after HBI Lilydale had been working with the Yarra Ranges Council for a number of years in relation to the Preparation of the Proposed Amendment.
- 1.2 Part of the Site (around 25 hectares) was formerly used for the extraction and production of natural limestone and was known as the Lilydale Quarry. The Proposed Amendment, seeks to insert the Lilydale Quarry Comprehensive Development Plan (**CDP**) into the Yarra Ranges Planning Scheme and rezone the Site to facilitate the rehabilitation and future redevelopment of the Site for predominantly residential use supported by commercial, retail and other uses.
- 1.3 The redevelopment of the Site has been identified as a project on the VPA's Fast Track Program. Public consultation on the Proposed Amendment ran from 13 November 2020 to 18 December 2020 and 57 submissions were made.
- 1.4 Unresolved matters raised as part of the Public consultation process have been referred to the VPA's Projects Standing Advisory Committee (**SAC**) for consideration. The SAC will conduct a public hearing between 31 May and 11 June 2021.

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1.5 A Planning Report prepared by Urbis was released for public consultation with the Proposed Amendment. HBI Lilydale are seeking to call independent planning evidence for the SAC process.

## 2 Your engagement

2.1 Our client wishes to engage you to:

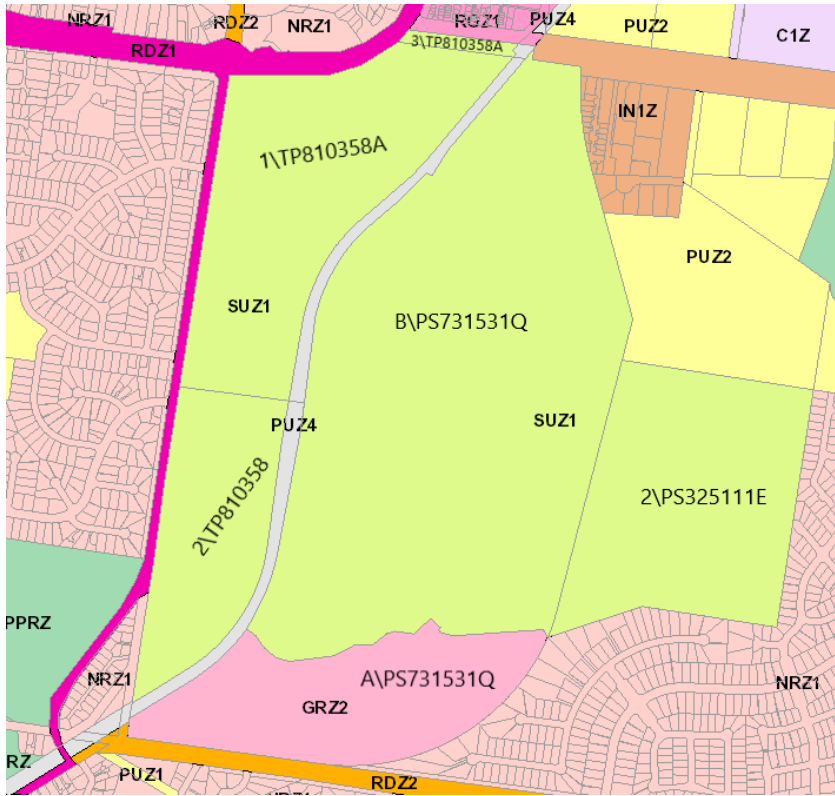
- (1) review the background materials in your brief;
- (2) confer with instructing solicitors where necessary;
- (3) meet in conference to discuss your preliminary opinion;
- (4) prepare an expert witness statement considering planning matters arising from the Proposed Amendment including the submissions; and
- (5) if necessary, appear before the SAC to present your evidence.

## 3 The Site

3.1 Whilst HBI Lilydale is the proponent of the Proposed Amendment, the registered proprietors of the Site are Hume Lilydale and LBJ Developments. The Site is comprised of four titles:

- (1) Certificate of Title Volume 11584 Folio 193, more particularly known as Lot B on PS 731531Q;
- (2) Certificate of Title Volume 11584 Folio 192, more particularly known as Lot A on PS 731531Q;
- (3) Certificate of Title Volume 08756 Folio 801, more particularly known as Lot 2 on PS 325111E; and
- (4) Certificate of Title Volume 08245 Folio 536, more particularly known as Lots 1, 2 and 3 on TP 810358A.

3.2 Directly to the south of the Site is a 20 ha parcel (Lot A on PS 731531Q) which is also owned by Hume Lilydale and LBJ Developments and is "Stage 1" of the "Kinley" housing development. Stage 1 is not subject to the Proposed Amendment. Stage 1, was rezoned General Residential Zone - Schedule 1 (**GRZ1**) in November 2014 and is currently being developed for residential purposes under planning permit YR-2014/932/B.



3.3 The Site is currently:

- (1) zoned, Special Use Zone Schedule 1 – Earth and Energy Resources Industry (**SUZ1**);
- (1) in part, subject to the following overlays:
  - (a) Bushfire Management Overlay;
  - (b) Erosion Management Overlay, Schedule;
  - (c) Heritage Overlay, Schedule 201 – Cave Hill Limestone Works (**HO201**);
  - (d) Specific Controls Overlay, Schedule 13; and
  - (e) Public Acquisition Overlay, Schedule 9;
- (2) wholly within a bushfire prone area;
- (3) affected by an entry on the Victorian Heritage Register (VHR Number H2366 – Cave Hill Limestone Quarry);
- (4) affected by one or more areas of cultural heritage sensitivity; and
- (5) bounded by Mooroolbark Road to the west, Maroondah Highway and Melba Avenue to the north, Hull Road to the south and residential neighbourhoods to the east and south east.

3.4 The Site is bisected north-south by the Lilydale Railway Line, separating the Site into the 'Eastern Land' and 'Western Land'.

1.2 The Site was used for the extraction and production of natural limestone products for over 137 years. Extraction operations ceased in October 2015. Hume Lilydale and LBJ Developments purchased the Site from Sibelco Lime (Victoria) Pty Ltd in 2016.

- 1.3 In the centre of the Site is an open quarry pit. The pit has a surface area of 25 ha and was extracted to a depth of approximately RL 15m AHD. Rehabilitation works are being carried out on the Site under Work Authority WA199 (**WA199**). WA199 includes an approved Work Plan and incorporates a rehabilitation plan.
- 1.4 The Work Plan for WA199 was approved on 28 May 2004, and varied on 31 December 2009 and 11 June 2020. It allows for the backfilling of the pit with materials from the existing overburden stockpiles to a level of approximately RL 100m AHD. A copy of the approved Work Plan is provided at **Tab 5** of your brief. Additional filing will be required above that approved under the Work Plan to achieve the planned finished surface levels.
- 1.5 To date, the pit has been filled to approximately RL 80. A time lapse video of the filling of the quarry pit can be accessed [here](#). The password to access the video is “reliveit”.
- 1.6 Once the Site is rehabilitated to a safe and stable condition WA199 is intended to be relinquished. Stage 1 was excised from the WA199 on 13 November 2019. The current boundary of WA199 is shown below in red.



#### 4 Proposed Amendment

- 4.1 The VPA released the Proposed Amendment for public consultation on 13 November 2020.

4.2 The Proposed Amendment seeks to:

- (1) insert the CDP as an incorporated document;
- (2) rezone the Site from SUZ1 to Comprehensive Development Zone, Schedule 1 (**CDZ1**) and insert a new CDZ1 into Clause 37.02;
- (3) reduce the extent of HO21 so it does not apply to the pit area;<sup>1</sup>
- (4) apply PAO, Schedule 12 to part of the Site to support the widening of Mooroolbark Road and replace the schedule to the PAO with a new Schedule that includes reference to the widening of Mooroolbark Road;
- (5) apply the Environmental Audit Overlay (**EAO**) to part of the Site to the east of the railway line; and
- (6) amend the Schedule to Clause 51.03 to include land zoned CDZ in certain exemptions relating to buildings and works and vegetation removal.

4.3 It is proposed that the Site will be redeveloped for the following uses:

- (1) residential dwellings (32% being low density, 49% being medium density and 20% being high density): approximately 3,200 dwellings;
- (2) affordable housing: 5% of dwellings delivered;
- (3) retail and commercial/office: 6,000sqm;
- (4) public open space: 15.67 ha; and
- (5) Government Specialist School: 1.9 ha.

*The Lilydale Quarry Comprehensive Development Plan*

4.4 To support the CDZ, the CDP will be incorporated into the Planning Scheme. The CDP itself is supported by the following six reference documents:

- (1) Conservation Management Plan prepared by Lovell Chen, which informs decision-making around heritage matters and provides guidance on how the Site's past should be appropriately managed in the context of new development;
- (2) Heritage Interpretation Strategy prepared by Lovell Chen, which establishes a recommended approach to the interpretation of cultural heritage values associated with the former Lilydale Quarry;
- (3) Integrated Water Management Strategy prepared by Incitus, which determines the required water management assets for an integrated approach to the supply of water, the removal of wastewater and the management of stormwater runoff;
- (4) Stormwater Strategy prepared by Incitus, which outlines a management plan for stormwater that will be generated from the urbanisation of the land, including a Drainage Strategy Plan;
- (5) Integrated Transport Plan prepared by Cardno, which contains high-level transport principles and priorities, providing an over-arching concept for the transport system and mix; and

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<sup>1</sup> The reduced extent of HO21 is shown on Heritage Overlay Map 40 (Tab 10 of your Brief).  
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- (6) Sustainability Framework prepared by WSP, which provides the high-level sustainability principles and an outcome-based framework against which development options are to be evaluated.

4.5 The CDP divides the Site into four precincts which will be designed and delivered progressively due to the 15 plus year development timeframe. The four precincts are:

- (1) **Precinct 1, Western Neighbourhood** – This precinct will accommodate a mix of traditional and medium density housing. The northern edge of the precinct will allow for a commercial mixed use or restricted retail development that responds to the Maroondah Highway frontage.
- (2) **Precinct 2, Heritage Village** – This precinct will accommodate mixed use activity, which will integrate the Site's heritage assets with residential uses including townhouses and small to medium-scale apartment buildings, and open spaces. Sport and recreation facilities will be provided in the precinct's north.
- (3) **Precinct 3, Eastern Neighbourhood** – The precinct will also accommodate a mix of traditional and medium density housing focused around a central park. Medium density housing will be concentrated at the Western end of the precinct in proximity to the potential future train station. The precinct will directly connect to Lilydale Lake.
- (4) **Precinct 4, Urban Core** - This precinct will also accommodate mixed use activity. Medium to high density housing and transit-oriented development will be focused around the potential future train station and urban plaza. Retail, commercial and community uses will be supported in the Urban Core.



- 4.6 The CDZ requires the detailed development outcome of each precinct to be agreed with the Responsible Authority through further detailed planning (requirements to be satisfied before planning permits can be issued within the area controlled by the CDZ and CDP).
- 4.7 The CDP also identifies a potential future train station along the Lilydale train line and at the core of the Site. The Integrated Transport Plan for the Site has been prepared on the assumption that the new train station will be delivered. The train station is not yet funded and the Government has not made any commitment to delivering station. The CDP makes no provision for an alternative development scenario in the event that the new station is not delivered. HBI Lilydale have acknowledged that a new Planning Scheme Amendment would need to be prepared in the event that the train station was not delivered.

## 5 Section 173 Agreements

- 5.1 The CDZ references three agreements under Section 173 of the *Planning and Environment Act 1987* that are required to be entered into by Hume Lilydale Pty Ltd and LBJ Developments Pty Ltd. The three agreements relate to infrastructure contributions, filling of the quarry pit and the provision of affordable housing.



### Infrastructure Contributions

- 5.2 The Infrastructure Contributions Section 173 Agreement will set out the requirements for direct delivery of required infrastructure, expected steps for the owner to facilitate its provision and the required quantum of open space. The CDZ schedule states that a permit must not be granted until the Section 173 Agreement to formalise infrastructure contributions has been entered into. The Section 173 agreement will replace the need for any public open space contributions under the Planning Scheme.

### Geotechnical Framework

- 5.3 The Geotechnical Framework Section 173 Agreement is in the process of being negotiated between Hume Lilydale Pty Ltd, LBJ Developments Pty Ltd and Yarra Ranges Council (**Council**) and is close to finalisation. This Section 173 Agreement is anticipated to provide a mechanism for and regulation of the filling of the quarry, including reference to a geotechnical framework to guide the filling of the quarry pit and defines the ultimate performance criteria for the filling of the quarry and is intended to allow Council a degree of oversight over the filling activities. Hume Lilydale Pty Ltd, LBJ Developments Pty Ltd and Council have been negotiating the terms of the agreement for in excess of 12 months and it is now close to finalisation.
- 5.4 The Geotechnical Framework referenced in the Section 173 Agreement has been prepared by Tonkin & Taylor and details the approach, filling specifications, fill process, monitoring, reporting, and survey assessment and investigation works to be undertaken. A copy of the Geotechnical Framework is provided at **Tab 23** of your brief.

### Affordable Housing

- 5.5 The Affordable Housing Section 173 Agreement must be entered into prior to a subdivision permit being granted for the 701st dwelling. The agreement must provide for either:
- (1) the owner to deliver affordable dwellings, or land lots for construction of affordable dwellings, equal to 5% of the total dwellings proposed to be delivered across precincts 1 to 4; or
  - (2) the provision of affordable housing by any agreed alternative method generally consistent with the value of the above provision.
- 5.6 HBI Lilydale has begun the process of negotiating the terms of the Affordable Housing Section 173 Agreement with Council, with its affordable housing proposition exhibited with the Proposed Amendment.

### **Exhibition and submissions**

- 5.7 The Proposed Amendment was released for public consultation between 13 November 2020 and 18 December 2020 and was supported by a number of background studies.
- 5.8 The documents released for public consultation are currently available on VPA's website at the following link:
- <https://vpa.vic.gov.au/project/lilydale-quarry-strategic-site/>
- 5.9 The Proposed Amendment documentation is also included at **Tabs 6 to 44** of your brief.
- 5.10 A total of 57 submissions were received during the public consultation period. Forty three of these submissions were from nearby residents. Transport and movement is the primary concern of nearby residents who raised the following key matters:
- (1) there should be a clear commitment to build the new train station, and a requirement for the train line to be duplicated between Mooroolbark and Lilydale;

- (2) the widening of both Hull Road and the Mooroolbark Road Underpass are a necessity for safety and congestion reasons; and
  - (3) upgraded turning lanes, particularly off Mooroolbark Road, and new signalled intersections in the area are required to address safety and congestion.
- 5.11 Council (submitter 36), raised a number of concerns relating to traffic, public transport, infrastructure contributions, affordable housing, aboriginal heritage and drainage. In relation to affordable housing the CDZ, as currently drafted, requires the owner to enter into a section 173 agreement providing for:
- (1) the owner to deliver affordable dwellings, or land lots for construction of affordable dwellings, equal to 5% of the total dwellings proposed to be delivered across precincts 1 to 4; or
  - (2) the provision of affordable housing by any agreed alternative method generally consistent with the value of the above provision.
- 5.12 Council is of the view that at least 8% of the total dwellings proposed to be delivered across precincts 1 to 4 should be affordable housing, comprising 5% social housing or other affordable rental housing and at least 3% other affordable housing. Council is also of the view that the drafting of the CDZ should be amended to detail exactly how the housing will be delivered.
- 5.13 In relation to infrastructure contributions, the CDP as currently drafted requires the delivery of a multi-purpose community facility. The CDP indicates that as a guide the community facility should be located in Precinct 2 or 4. The CDP does not otherwise show an indicative location or size for the community facility. Council is of the view that 0.8 hectares should be shown in the CDP either:
- (1) adjacent to the Government Specialist Education site and outside of the Quarry pit area (still within Precinct 4)
  - (2) within the Heritage Village (Precinct 2) with the potential to integrate with the future repurposed heritage buildings.
- 5.14 HBI Lilydale's view is that:
- (1) there is no basis for a community facility to be required outside of the quarry pit area if the land is otherwise deemed suitable for development from a geotechnical perspective;
  - (2) the 0.8hectares is based on Greenfields standards which are not appropriate in this context; and
  - (3) there should be an ability to deliver the facility across a smaller land area more appropriate for a high land value, infill context, with performance standards in terms of floor space requirements which may allow multi-level construction.
- 5.15 Other submitters included:
- (1) Heritage Victoria (submitter 37), who is concerned that the CDP, as it relates to Precinct 2, is not consistent with the approved Conservation Management Plan;
  - (2) Box Hill Institute (submitter 47), who does not object to the Proposed Amendment in principle but raised a number of concerns in relation to amenity impacts, the lack of third party rights of review under the CDZ1, interface treatments and identification of parts of its land in the CDP as required for road works and a drainage reserve;
  - (3) Lilydale Township Action Group (submitter 49), who raised concerns in relation to traffic congestion, housing density and the need for the duplication of the rail line between Mooroolbark and Lilydale;

- (4) Department of Transport (**DOT**) (submitter 54), who raised a number of concerns in relation to the Proposed Amendment, the most significant being the CDP's reliance on the proposed train station to achieve a "transit-orientated development" in circumstances where there is no current commitment to deliver the new station and its future is uncertain. It is also understood that DOT has some concerns regarding the mechanism proposed to secure the delivery of infrastructure contributions (i.e. use of the Section 173 Agreement); and
- (5) City of Maroondah (submitter 56), who raised concerns relating to traffic congestion and parking exhaustion at Croydon and Mooroolbark stations should the proposed new station not eventuate.

6 HBI Lilydale has worked closely with the VPA in the preparation of the Proposed Amendment and is fully supportive of the Proposed Amendment as drafted.

6.1 HBI Lilydale also provided the VPA with a response to the submissions made, which is located at **Tab 46** of your brief.

## 7 Standing advisory committee hearing and evidence

7.1 The Minister has now referred all unresolved submissions in relation to the Proposed Amendment to the VPA Projects Standing Advisory Committee (**SAC**).

7.2 The hearing, will occur between **31 May 2021 and 11 June 2021**. Request to be heard forms have been submitted by Council, VPA, DOT, CFA and two local residents. It is understood that planning evidence will be called by DOT and Council.

7.3 The directions which have been circulated by the SAC have witness reports due for circulation by noon on Friday, **21 May 2021**.

7.4 Please provide us with a **draft** report addressing the matters in paragraph 2.1(4) as soon as possible and by no later than **17 May 2021**.

## 8 Enclosed documents

8.1 We have uploaded a brief of documents to Dropbox. Please let us know if you have any queries or require any additional material to be provided to you.

8.2 Please ensure that you have regard to Planning Panels Victoria's Guide to Expert Evidence (April 2019) when preparing your evidence.

8.3 If you are required to give evidence at any hearing conducted remotely, please ensure that you have read and understood Planning Panel Victoria's Direction for witnesses providing expert evidence through remote conferencing.

## 9 Client details

9.1 Please arrange for your fee estimate and accounts to be provided directly to our mutual client at the following address:

Intrapac Property Pty Ltd  
Attention: Anthony Jansen  
E: [ajansen@intrapac.com.au](mailto:ajansen@intrapac.com.au)

## 10 Confidentiality

10.1 This letter and enclosed documents and all future communications between us and between you are confidential (**Confidential Information**), and are subject to a claim for privilege and must not be disclosed without our consent or the consent of our client.

- 10.2 The duty of confidentiality will continue beyond the conclusion of your instructions.
- 10.3 If you are obliged by law to disclose Confidential Information, it is not a breach of this engagement if you first give written notice to us of that obligation, if you can do so without breach of any law.
- 10.4 You must return all documents and other media, including copies, which contain Confidential Information to us. You must delete all electronically stored material immediately when requested to do so by us.
- 10.5 You must take all steps necessary to maintain Confidential Information and notes in strictest confidence.

## 11 Change of opinion

- 11.1 If for some reason, you change your opinion after delivering your report, please advise us as soon as possible. If that change is material, a supplementary report will need to be prepared, which explains the reasons for the change in your opinion.

Should you require any further information, please call Jacqueline Plant on 8686 6437.

Yours faithfully



Jacqueline Plant  
Special Counsel  
Partner: Tamara Brezzi  
Norton Rose Fulbright Australia

**BEFORE THE VPA PROJECTS STANDING ADVISORY COMMITTEE  
PLANNING SCHEME AMENDMENT C193 TO THE YARRA RANGES PLANNING  
SCHEME**

BETWEEN

**HBI LILYDALE PTY LTD**

**Proponent**

and

**YARRA RANGES COUNCIL**

**Responsible Authority**

**LAND: 4 Melba Avenue, Lilydale (Lilydale Quarry)**

## **Brief to expert**

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APAC-#117147405-v3

## Index to brief

### BACKGROUND

No	Document	Date
1.	Planning Property Reports and planning scheme extracts for: A. Lot 2 on TP810358; B. Lot 2 on PS325111; C. Lot 1 on TP810358; D. Lot B on PS731531; and E. Lot 3 on TP810358.	February 2021
2.	Certificate of title: A. Volume 11584 Folio 193; B. Volume 08756 Folio 801; and C. Volume 08245 Folio 536.	July 2019
3.	Planning Permit YR-2014/932/B and endorsed plans	7 September 2018
4.	Work Authority WA199: A. Original, dated February 2001; and B. Variation dated January 2010.	
5.	Approved Work Plan 001498 for WA 199	11 June 2020

### PROPOSED AMENDMENT

No	Document	Date
<b>Public Consultation Documents</b>		
6.	Explanatory report	November 2020
7.	Instruction sheet	November 2020
8.	Lilydale Quarry Comprehensive Development Plan	November 2020
9.	Zoning Map 40	November 2020
10.	Heritage Overlay, Schedule 201 Map 40	November 2020
11.	Public Acquisition Overlay, Schedule 12 Map 40	November 2020
12.	Environmental Audit Overlay Map 40	November 2020
13.	Clause 22.13 – Former Lilydale Quarry	November 2020

No	Document	Date
14.	Schedule 1 to Clause 37.02 – Comprehensive Development Zone	November 2020
15.	Schedule to Clause 45.01 Public Acquisition Overlay	November 2020
16.	Schedule to Clause 51.03 Upper Yarra Valley And Dandenong Ranges Regional Strategy Plan	November 2020
17.	Schedule to Clause 72.03 What Does This Planning Scheme Consist Of?	November 2020
18.	Schedule to Clause 72.04 Documents Incorporated In This Planning Scheme	November 2020
<b>Background studies</b>		
19.	Planning Report, prepared by Urbis	October 2020
20.	Development Contributions, prepared by Urban Enterprise	October 2020
21.	Community Needs Assessment, prepared by Ethos Urban	October 2020
22.	Open Space Strategy, prepared by TCL	April 2020
23.	Retail & Commercial Analysis, prepared by Urbis	October 2020
24.	Economic Benefit Snapshot, prepared by Urbis	June 2020
25.	Stormwater Strategy, prepared by Incitus	October 2020
26.	Engineering Servicing Report, prepared by Reeds Consulting	October 2020
27.	Geotechnical Overview, prepared by Urbis	October 2020
28.	Integrated Water Management, prepared by Incitus	October 2020
29.	Geotechnical Framework, prepared by Tonkin & Taylor	April 2020
30.	Sustainability Framework, prepared by WSP	October 2020
31.	Bushfire Assessment, prepared by Biosis	April 2020
32.	Conservation Management, prepared by Lovell Chen	September 2015
33.	Flora and Fauna Assessment, prepared by Nature Advisory	April 2020
34.	Heritage Interpretation, prepared by Lovell Chen	April 2020
35.	Environmental Site Assessment, prepared by Taylor & Tonkin	April 2020
36.	Housing Supply and Demand Analysis, prepared by SGS	December 2016
37.	Affordable Housing Needs Assessment, prepared by Urbis	April 2020
38.	Kinley Affordable Housing, prepared by Urbis	April 2020

<b>No</b>	<b>Document</b>	<b>Date</b>
39.	Train Station Cost Benefit Analysis, prepared by SGS	September 2017
40.	Cave Hill Station Concept Report, prepared by Raylink	September 2017
41.	Kinley Station Value Analysis, prepared by Intrapac	February 2020
42.	Integrated Transport Plan, prepared by Cardno	October 2020
43.	Supporting Traffic Impact Assessment, prepared by Cardno	October 2020
44.	Urban Design Report, prepared by Roberts Day	April 2020

**Other**

<b>No</b>	<b>Document</b>	<b>Date</b>
45.	Submissions	Various
46.	HBI Lilydale's comments on submissions	
47.	Not used	
48.	Not used	
49.	Not used	
50.	Not used	
51.	Correspondence from SAC attaching Letter of Referral and Terms of Reference	30 March 2021
52.	SAC Directions	26 April 2021