

Planning and Environment Act 1987
Environment Protection Act 1970

Panel Report and report of the Chair of Works Approval Conference

**Ballarat Planning Scheme Amendment C185 and
Works Approval Application No 1001580**

Central Victoria Livestock Exchange Saleyards

4 September 2015

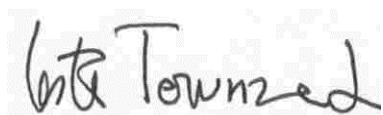
Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act
Ballarat Planning Scheme Amendment C185
Central Victoria Livestock Exchange Saleyards

Environment Protection Act 1970

Report of the Chair of the Works Approval Conference pursuant to Section 20B of the Act
Works Approval Application No 1001580
Central Victoria Livestock Exchange Saleyards

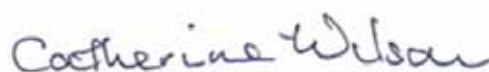
4 September 2015



Lester Townsend, Chair



John Hartigan, Member



Catherine Wilson, Member

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List of Abbreviations

AEP	Annual Exceedance Probability
ARI	Annual Return Interval
BLSC	Ballarat Livestock Selling Centre
CCTV	Closed circuit television
CHW	Central Highlands Water
CVLX	Central Victorian Livestock Exchange
dB	Decibel
dba Leq	Continuous sound level commonly referred to as average sound level.
EIP	Environment Improvement Plan
EOI	Expression of Interest
EPA	Environment Protection Authority
ESO	Environmental Significance Overlay
GHCMA	Glenelg Hopkins Catchment Management Authority
M	Million
MDA	Marshall Day Acoustics
MSS	Municipal Strategic Statement
MUSIC	Model For Urban Stormwater Improvement Conceptualisation
NIRV	Noise from Industry in Regional Victoria
ODP	Outline Development Plan
OU	Odour Unit
RFP	Request for Proposal
SEPP	State Environment Protection Policy
SEPP (AQM)	State Environment Protection Policy (Air Quality Management)
SEPP (WoV)	State Environment Protection Policy (Waters of Victoria)
SEPP N-1	State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No N-1
SIA	Social Impact Assessment
SLR	SLR Consulting Australia Pty Ltd, acoustics consultants
SPPF	State Planning Policy Framework
SUZ15	Special Use Zone Schedule 15
Tribunal	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions
WAA	Works Approval Application
WMG	Watson Moss Growcott Acoustics

Executive Summary

This is a contentious proposal. RLX Investment Company Pty Ltd (the Proponent) wants to relocate the Central Victorian Livestock Exchange (CVLX) from its existing site in central Ballarat to the north-west outskirts of the city approximately 10 kilometres from the centre of Ballarat, four kilometres from the perimeter of Ballarat and approximately one kilometre south-west of Miners Rest.

The subject site comprises 45 hectares of land. The site is bounded by the Sunraysia Highway to the north and east, Western Highway to the south and private property to the west.

The move will allow the development of a state-of-the-art facility that will provide livestock marketing and saleyard services for the Ballarat district and extending further into central Victoria.

Assessing the impacts

From a planning perspective this is not a difficult decision. There is a strong case to modernise the saleyards that serve the region, and a strong case to keep the modernised yards in, or near, Ballarat.

The selected site has emerged out of a long, perhaps tortuous, process, and there is a strong strategic logic and policy support for locating the modernised yards in the rural hinterland of Ballarat. The Proponent could apply for a planning permit for a saleyards on the site today. The subject site was short listed as part of two earlier site investigation processes. The site itself is relatively free from environmental constraints, has good access to the arterial road network and is far enough away from adjoining properties that it can meet all relevant environmental standards. There is some limited potential for increased traffic on one or two roads in Miner Rest, and some potential impact on the long-term development prospects of some land parcels. Neither of these issues makes the site unsuitable.

From an environmental management perspective there are clear assessment mechanisms to make a decision. The relevant experts in water and effluent management, some briefed by the water authorities, have reached unanimous agreement on the suitability of the wastewater management system. Three acoustic assessments have independently concluded that the off-site noise impacts will, subject to certain conditions be acceptable. An assessment of odour can be made based on the actual production of smells from the current and a similar facility. While there may be some limited impacts very occasionally on some nearby properties odour impacts should be able to be managed to be acceptable. As a licensed premises the saleyards will need to meet EPA requirements through the Works Approval process and then on an ongoing basis as a condition of licence.

From a community perspective this is a difficult decision. Many people do not have an accurate view of what is proposed, and have formed a view about the impacts based on an understanding that is far removed from the reality of what is proposed. Even the most fundamental aspects of the proposal, such as the land that would be used by the saleyards, were disputed in submissions. People have been told that their houses will be devalued by 20 per cent, without any justification. People have assumed that the Special Use Zone will

permit the use of an abattoir, when in fact such a use is prohibited. People have assumed that the proposal will facilitate a feedlot when it will not. People have been told that satellite photographs show that most of the land flooded in the 2011 floods but this photograph cannot be verified. This list goes on.

We are required to consider the social impacts of the proposal. Fear of change is not a social impact; nor is distrust of the Council or the approval process. A social impact is something that changes the way your community functions. Simply not wanting something in your town is not a social impact. Trying to address these types of concerns by privileging prejudice over objective assessment would have a significant social impact; it would undermine the fair, orderly and proper planning of areas.

In terms of fair, orderly and proper planning, the Proponent's and Council's efforts to present a thorough assessment of the proposal at the Hearing was criticised – not because it was inadequate, but because it was too thorough. A number of submitters commented on the amount of money the Proponent was spending on commissioning reports, as if the Proponent was somehow manipulating the system by commissioning technical assessment. Others argued that Council's (successful) testing of expert evidence somehow reflected a weakness in Council's case. These sorts of submission suggest that for some submitters the issues involve more than legitimate concerns over the impact of the proposal.

Moving forward

Any recommendation or decision to proceed with the proposal will be interpreted by many submitters as a decision to proceed with the proposal as they imagine it, not as it actually will be. This is a particular concern because some members of the community will suffer anxiety based on imagined adverse effects that will simply not occur, or will occur rarely and only at a low level.

One might hope that the community members who have taken a lead in this matter could accurately communicate the nature of the project and how its impacts have been assessed – whether or not they agree with our conclusions – to the broader community. Given the level of fear about this project to date, the mistrust of Council communicated in a number of submissions, and the unwillingness of a number of submitters to trust the expert assessments, it may be that the community will only be able to form an accurate view of what is proposed when it is actually constructed.

The benefits of relocating the saleyards for animal welfare improvements, operational improvements and broader community and economic benefits are clear. The impacts on nearby residents must meet or exceed relevant standards and will be subject to an EPA licence. It is not surprising that a saleyard proposal attracts community concern but the impacts on Miners Rest have been overstated and community sensitivities enflamed by misinformation despite Council's and the Proponent's attempts to communicate the actual impacts of the proposal.

There are no credible reasons why this project should not proceed.

(i) Amendment C185

Based on the reasons set out in this report, the Panel recommends:

Ballarat Planning Scheme Amendment C185 should be adopted as exhibited subject to the following changes:

P1 In Special Use Zone Schedule 15 include a requirement that:

P1.1 The access point from the Sunraysia Highway must not be gated.

P1.2 The Drainage Report (or alternative report on drainage and flood issues) is completed to the satisfaction of Central Highlands Water, Goulburn Murray Water and Southern Rural Water.

P1.3 The Stormwater Management Plan is completed to the satisfaction of the Glenelg Hopkins Catchment Management Authority, Central Highlands Water, Goulburn Murray Water and Southern Rural Water.

P1.4 Noise be assessed on the basis of Farming Zone 'source' to Farming Zone 'receptor'.

P1.5 Any public address system should not be more than 5 dBA above background at any nearby residences or other noise sensitive use and the public address system not be used between 10 pm and 7 am, except in an emergency.

P1.6 The Operation and Environmental Management Plan:

- **Specify anticipated stocking rate of cattle and sheep, including the use, management and monitoring of resting paddocks.**
- **Arrange for the waste to be sent for composting in preference to a licensed waste facility.**
- **Require that the sediment from the facultative pond be removed off site immediately and not be stored in the waste stockpile area.**
- **Require that if the waste cannot be properly managed to prevent environmental harm then increased frequency of waste collection should be an option, or failing that enclosure of the storage area with biofilters.**
- **Include measures for infection control including protocol for dealing with the products of abortion and deceased animals.**

P2 In Special Use Zone Schedule 15, amend the development and operating conditions schedule in accordance with Appendix C.

P3 In Special Use Zone Schedule 15 specify that:

- **A permit is not required to construct or carry out buildings or works associated with a use in Section 1 of Clause 1.0 of this Schedule.**

P4 In Special Use Zone Schedule 15 update the concept plan.

P5 That the management of solid waste be comprehensively and thoroughly detailed in the Operation and Environmental Management Plan.

P6 In the Incorporated Document:

- P6.1 Amend the expiry provisions to read 'The Responsible Authority may extend the periods referred to if a request is made in writing at least 3 months before the expiry date'.**
- P6.2 Include an exemption for the subject site from the provisions of any future Flood Overlay.**

(ii) Works Approval Application No 1001580

Based on the reasons set out in this report, the Chairman of the Conference under Section 20B of the *Environment Protection Act 1970* recommends:

Works Approval Application No 1001580 should be issued subject to the following:

- E1 The Works Approval should not seek to impose noise amelioration works unless required to achieve compliance and then only after an assessment as to their cost effectiveness.**
- E2 Before issuing of a Works Approval the EPA be supplied with further details in relation to solid waste including:**
- amounts to be stockpiled
 - the size of the stockpile and whether it will large enough to contain the waste generated
 - how stockpiled waste will be prevented from flushing into the facultative pond when there are heavy rainfall events
 - any covering of the waste storage area to control moisture
 - the identification of the location and the design of the area for storing stock mortalities and, if on site burial is to occur, where the burial site is to be located.
- E3 Before issuing of a Works Approval, the odour modelling be redone in consultation with the EPA.**
- E4 The EPA adopt a criterion of one odour unit at the site boundary facing sensitive uses to assess the proposal, but relax the one unit boundary condition at the interface between the site and the Western Highway as this is not a sensitive use.**

1 Introduction

(i) The Amendment and Works Approval Application

Ballarat Planning Scheme Amendment C185 was prepared by the Ballarat City Council as the Planning Authority. The Amendment was prepared at the request of RLX Investment Company Pty Ltd (the Proponent).

(ii) The Amendment

As exhibited, the Amendment proposes to rezone the land from Farming Zone to Special Use Zone (Schedule 15) to facilitate the relocation of the existing regional livestock exchange (saleyard).

The Amendment also proposes to introduce the 'Central Victoria Livestock Exchange, Ballarat December 2014' Incorporated Document into the Schedule to Clauses 53.02 and 81.01. This Incorporated Document seeks to exclude the land from certain controls contained within the Ballarat Planning Scheme on the basis that the relevant matters will be addressed in the Special Use Zone.

(iii) The Works Approval

The Amendment is a combined Planning Scheme Amendment and conference on Works Approval Application (WAA) submitted to the Environment Protection Authority of Victoria (EPA). A Works Approval from the EPA is required before any works can commence because livestock saleyards is a 'scheduled premises' (B02 Livestock saleyards), in the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007*. The WAA has been prepared and is being processed concurrently with the Amendment pursuant to section 20AA of the *Environment Protection Act 1970*.

(iv) Exhibition and submissions

The Amendment was placed on public exhibition between 12 February and 20 March 2015 with 55 submissions received by the initial deadline together with 41 late submissions considered by Council. Of these, 88 submissions were received from the community and eight submissions were received from referral/public authorities. Following the Council meeting of 22 April 2015, a further 88 submissions were received (bringing the total number to 184), with Council resolving at its meeting to forward any other late submissions directly to Planning Panels Victoria. Submitters are listed in Appendix A.

The main issues raised in submissions included:

- Proximity to houses and Miners Rest
- Odour and noise
- Trucks and traffic
- Operational matters
- Flooding and water quality concerns
- Current saleyards should continue.

At its meeting of 22 April 2015, Council resolved to refer the submissions to a Panel.

(v) The Panel

The Panel to consider submissions to Amendment C185 to the Ballarat Planning Scheme under the *Planning and Environment Act 1987* was appointed under delegation from the Minister for Planning on 28 April 2015 and comprises Lester Townsend (Chair), John Hartigan and Catherine Wilson.

The Panel Chair was appointed, with the agreement of EPA, as Chair of a works approval conference under section 20B of the *Environment Protection Act 1970*.

(vi) Panel Hearings

A Directions Hearing was held in relation to the Amendment on 18 May 2015. Following the Directions Hearing, the Panel undertook an inspection of the subject site and its surrounds.

An inspection of Barnawartha North facility near Wodonga, operated by the Proponent, was carried out on the evening of 17 June and morning of 18 June 2015.

The Panel then met at the Ballarat Turf Club, Miners Rest, on 22, 23, 24, 26, 29 and 30 June and 3, 6 and 7 July 2015, and at the Robert Clark Centre, Lake Wendouree, on 1 July 2015 to hear submissions about the Amendment. An inspection of the current facility was conducted on 24 June 2015.

The Panel also undertook a number of unaccompanied inspections of the existing facilities, the subject site and its surrounds and the local road network.

Those in attendance at the Panel Hearing are listed in Appendix B.

2 Background

2.1 The site land and surrounds

The subject site comprises 45 hectares of land approximately 10 kilometres from the centre of Ballarat, four kilometres from the perimeter of Ballarat and approximately one kilometre south-west of Miners Rest. The site is bounded by the Sunraysia Highway to the north and east, Western Highway to the south and private property to the west. The land is within three allotments, which the Certificates of Title describe as:

- Lots 1 and 2, TP840697G
- Lot 2, PS341031L
- Lot 1, TP944606J.

The site is currently used for grazing and there are no buildings or structures on the site. The site is within the Farming Zone under the Planning Scheme and no overlays currently apply.¹

2.2 What is proposed?

The Proponent proposes to relocate the Central Victorian Livestock Exchange (CVLX) from its existing site in central Ballarat to the subject site. The use is defined as a 'saleyard' under clause 74 of the Scheme being 'land used to hold, sell, and buy farm animals'.

The facility is proposed to accommodate 70,000 cattle and 1.6 million sheep annually, hosting 48 prime cattle sales per year, 51 sheep sales per year and 13 store cattle per year.

It is the proponent's intention that the proposed facilities will reflect best practice in the industry through:

- a high level of occupational health and safety standards, using design features that ensure the separation of animals and people
- ensuring animal welfare and meeting standards, through design features such as curved runs, roofed pen areas, soft flooring, and fencing and gates to minimise harm to the animals
- environmental features and meeting relevant standards, through a water management cycle comprising the features set to collect, treat and reuse water on the site.²

The proposed facilities will include:

- roofed and open air sheep and cattle yards
- a truck wash down area capable of accommodating 4 trucks
- 3,800 sqm approx of truck parking area
- 216 car parking spaces for vehicles
- an office and administrative building of approximately 1400 square metres which would include amenity and cafeteria facilities for the expected patronage and staff

¹ A Flood Overlay has been proposed for part of the site near the western boundary

² Council submission p24.

- a maintenance shed and feed store to the north of the cattle facilities.
- truck wash down area able to cater for 4 trucks (24 hour/7 day access)
- a water storage dam able to capture 5Ml of irrigation water
- a series of water treatment ponds designed to capture and treat all water runoff from the operational area of the site
- night lighting and CCTV camera security
- a maintenance and hay shed
- numerous specialty loading and unloading ramps.³

It is anticipated that the balance of the site will be used as irrigated grazing land and for effluent management. On this part of the site nutrients will be managed through a cut and carry program and stock only held here for short periods to rest and freshen up before or after sales or transport. The total irrigation area available on the site is 26.6 ha. Resting paddocks occupy 21 ha of the total irrigation area.

Size of the proposed yards

Following exhibition there was a change in the size of the covered yards used for the technical assessments.

Table 1: Size of the proposed yards

Element	Proposed (sqm)	Exhibited (sqm)
Roofed sheep yards at the centre of the site	27,125	12,840
External sheep yards	13,081	19,800
Total sheep yards	40,206	32,640
Roofed cattle yards to the north of the roofed sheep yards	9,046	4,200
External cattle yards	4,082	6,900
Total cattle yards	13,128	11,100

Source: Council submission p23

2.3 The current Ballarat Saleyards

The current saleyards are located in Delacombe in central Ballarat bounded by LaTrobe, Learmonth, Winter and Brazenor Streets. The existing site which has been operating at its current location since the late 1860s is approximately 12.3 hectares and is located to the immediate south of Victoria Park, a 120 hectare central open space. It is bisected by Gillies Street, which is used for loading and unloading stock from the saleyards, but which remains a public road.

³ Planning Assessment Report, Spiire, p73.

Council submitted that:

... the existing saleyards are physically constrained, which presents a range of limitations upon the acceptable conduct of the use.

In particular, Council considers that the current facility falls short of the necessary operating conditions for such a facility, highlighting the following areas for improvement:

- *Animal care and management;*
- *Occupational care and safety;*
- *Waste and water management;*
- *Parking and traffic movement;*
- *Efficiency of operation;*
- *Condition and suitability of building stock and yards;*
- *Off-site amenity impacts; and*
- *Accreditation standards.*⁴

The move of the saleyards to a greenfield site will allow the development of a state-of-the-art facility that will provide livestock marketing and saleyard services for the Ballarat district and extending further into central Victoria.

The saleyards have traditionally used land to the north-east of Winter Street in Victoria Park for grazing stock. The land is predominantly zoned Industrial 1 Zone, but it also includes some land in the Public Use Zone, which is identified for railway purposes (land leased from VicTrack but containing no rail assets). The land occupied by the saleyards is Crown Land reserved for saleyards purposes.

2.4 Previous saleyards proposal

The Learmonth proposal

In 2003, Council identified a site near Cardigan as a candidate for the relocated saleyards. Consultation regarding the Cardigan site indicated that the site was too small for a regional scale operation (which at that time included an abattoir proposal), and an alternative site of approximately 189 hectares at Learmonth was identified. The Learmonth site is bound by Sunraysia Highway to the south-west, Selwoods Road to the north and Morton Street to the south.

Between 2004 and 2006, Council initiated a planning scheme amendment process as the Planning Authority and Proponent to facilitate the use of the Learmonth site for the relocated saleyards. At that time, Council was both the owner and operator of the facility.

Amendment C87 was exhibited from 18 October to 21 November 2005 together with various technical materials and an overarching planning report prepared by Coomes Consulting. It proposed to rezone the Learmonth site from a Rural Zone to the Special Use Zone. Amendment C87 was also accompanied by a planning permit application for the use and

⁴ Council submission p6.

development of the land for an abattoir and saleyard. The exhibition of Amendment C87 attracted 483 submissions.

A panel hearing was convened over 10 days in March 2006. The panel report for Amendment C87 was finalised in May 2006. The panel recommended that Amendment C87 be abandoned and that no permit be issued for the use and development of the Learmonth site for the purposes of a saleyard and abattoir. The panel concluded that the proposal was not consistent with policy and more particularly that:

The provisions of the Ballarat Planning Scheme do not lend support for location of this proposal on this site, particularly in relation to environmental assessment and water issues;

The Learmonth Structure Plan is a document in transition and subject to further consultation prior to approval by Council;

The Panel was not fully informed about the matters relating to site selection. However, it is not required to undertake an analysis of other potential sites and it did not embrace discussion at the hearing about whether other sites might be more suitable than the selected subject site; and

Overall, there is little strategic merit for this amendment.⁵

The Amendment C87 panel expressed serious concern regarding technical matters, particularly in relation to the environmental context and water supply catchments. Notably, the Learmonth site is located within ESO3 (Water Catchment Areas). The ESO3 affects land within catchments providing potable water supply to Ballarat and urban areas to the north. The Amendment C87 panel was concerned that the location within two declared catchments did not result in greater emphasis on environmental management inputs. There was much debate surrounding this issue at the panel hearing.

Ultimately, the Amendment C87 panel felt that the site's hydrogeological and hydrological conditions had been inadequately assessed and consequently, the level of confidence in the assessment of, and ability to manage the risks associated with wastewater management was diminished.

After considering the panel report, Council resolved to abandon Amendment C87.

Ballarat Saleyards Relocation Committee

The Ballarat Saleyards Relocation Committee was formed in October 2006 following the abandonment of Amendment C87. The committee was convened to determine a way forward in relation to the saleyards relocation project. Its primary purpose was to identify, through consultation with key stakeholders and the public, an appropriate site or sites that the saleyards could be relocated to.

Once a site or sites had been identified, it was agreed that the recommendations of the committee would be referred to Council with a request for Council to undertake more

⁵ Amendment C87 and Planning Permit Application 2005/725 Panel Report (May 2006), page 7.

detailed analysis of the proposed site or sites. It was also agreed from the outset that the committee would have a finite lifespan. Its task was to undertake public consultation, identify a site or sites, and then refer the matter back to Council for detailed analysis.

The committee was comprised of approximately eight members who were saleyard stakeholders (including from the Ballarat Stock & Station Agents & Associates, the Victorian Farmers Federation and livestock transporters and buyers). It was convened by an independent property consultant.

The committee called for public nominations for sites and consulted with key stakeholders and agencies.⁶ It was determined that sites would be 'shortlisted' having regard to:

- transport and road network issues
- environmental issues, including zoning
- buffer distances to neighbouring uses
- topography
- availability of services
- land size 25 – 60 hectares.

Approximately 23 sites were nominated for consideration through the public invitation process. The committee shortlisted six sites against the above criteria. This included five sites within Ballarat (including the subject site) and one site within Moorabool Shire (Wallace). The Wallace site was noted to have environmental constraints and Central Highlands Water expressed major concerns regarding the use of this site due to water catchment issues.

Public meetings were held on 2 November 2006 and 21 February 2007 to discuss the outcomes of the nomination process. The shortlist was outlined at the public meeting of 21 February 2007. The shortlist was also presented to Council.

Coomes report

Following that process, Council appointed Coomes Consulting Group to undertake a strategic planning analysis of the municipality to ascertain potential sites for the relocated centre. The *Potential Relocation of the Ballarat Livestock Selling Centre – Strategic Planning Analysis Report (15 August 2007)* was provided to the Panel and interested parties on 10 June 2015.

The Coomes report was not finalised and not formally considered by Council. Coomes Consulting also qualified any outcomes of the report by noting that:

... this report is intended to provide a preliminary recommendation of those areas strategically suited to potentially accommodate a saleyards. It is not intended to be an exhaustive list of potentially suitable sites; but rather identifies key areas that are the most strategically relevant to this exercise. It is the basis upon which more sites may be explored; and upon which more

⁶ Including but not limited to: Council, Golden Plains Shire, Pyrenees Shire Council, Hepburn Shire Council, VicRoads, Central Highlands Water, EPA, Department of Human Services, Ballarat Tourist Association, Glenelg Hopkins CMA and Corangamite CMA.

detailed investigations can occur on specific sites, before pursuing any one option.

Irrespective of whether the options presented in this report are ultimately acted upon, it is recommended that before any decision is made on a particular site further detailed investigations take place. This should include site-specific investigations as appropriate, as well as discussions with relevant authorities such as DPI, EPA, VicRoads and water authorities.⁷

The intention of the Coomes report was to provide Council with a clear understanding of the range of issues that should be considered in any process to undertake a future development of a saleyards within the municipality. Importantly, the key considerations of the Coomes report were ultimately used to shape Council's procurement process for this development, most particularly the evaluation criteria against which a subsequent Expression of Interest for an operator of a relocated facility would be considered.

Council submitted that the Coomes report highlighted some important strategic issues.

Firstly, in preparing the report, Coomes had regard to the planning policy framework, land use zoning and the strategic documents in place and under preparation at that time (2007). Within its strategic analysis, the Coomes report reviewed the relevant State and local policy documentation. As noted at section 3.9.3 of the report, at that time Council was in the process of preparing a new Outline Development Plan for Miners Rest.

As an outcome of this strategic analysis, the Coomes report identified 11 sites for further investigation, including some of the sites that had been identified by the committee. The report noted that the sites that were selected:

- had sufficient land area to accommodate the saleyards and associated facilities (this was determined to be a minimum of 25 hectares)
- were in an area adjacent to or had reasonable access to a declared arterial road
- were accessible to the higher order road network with minimal need for vehicles to pass through residential areas
- had substantial separation from residential land uses or zones that specifically accommodate sensitive land uses.

The report notes the list of potential sites compiled was not exhaustive, but rather should be considered as 'strong candidate sites' when considered against the relevant strategic framework or the preferred design and siting criteria subject to further investigations.

Each site was considered in a comparative site analysis exercise. Of the 11 sites, 5 were discounted due to known significant physical constraints, including flooding conditions. Of the remaining sites, it was found that three sites (including the subject site) performed slightly better when considered against the design and siting criteria and directions of the applicable strategic policy framework.

⁷ At page 3.

Page 31 of the Coomes report highlighted the particular attributes of the subject site. The report concludes:

An assessment of the applicable statutory and strategic frameworks and current strategy documents finds that the north-western outskirts of the city of Ballarat is strategically the most appropriate vicinity in which to site the saleyard facility ...

It is recommended that the analysis and findings of this report form the basis for more detailed analysis and consideration of the sites identified in this report, and other additional sites as appropriate, before any one option is settled upon.

Where appropriate, the further analysis and consideration of sites should extend to site-specific matters including (but not limited to):

- *Soil stability and type;*
- *Propensity to flooding (... Sites 5, 7, 8, 9 [the subject site] and 11)*
- *Drainage;*
- *Access to or ability to access physical infrastructure;*
- *Flora and fauna;*
- *Archaeological sites;*
- *Agricultural productivity;*
- *Proximity of sensitive uses (not only residential);*
- *Other approved developments nearby;*
- *Patterns of ownership; and*
- *Impacts upon water catchments.⁸*

2.5 Appointment of the Proponent

Before 2010, the Ballarat Livestock Exchange was operated by the Council, but Council recognised that a private sector operator was likely to achieve greater efficiencies and be better placed to resolve the relocation issue.

On 24 October 2007, Council resolved to seek Expressions of Interest (EOI) to provide a new facility within the municipal boundaries. Council considered it critical to maintain the following objectives:

- protect and enhance the role of Ballarat as a regional centre for livestock sale and exchange
- ensure that livestock sale facilities provided in Ballarat meet or exceed best practice for the care of animals and the operation of such facilities
- secure for the Ballarat community the combination of ownership, operating and siting arrangements that offer the optimum return at the least risk, assessed in social, economic and environmental terms.

⁸ At page 18.

To achieve these objectives, Council invited proposals from suitably experienced companies to develop and manage a new saleyard complex meeting or exceeding best practice, either in their own right or as some form of viable joint venture with Council.

The EOI envisaged that any new saleyard would be an integrated, purpose built facility that would meet modern regulatory requirements and introduce modern technologies, best practice environmental practices and meet social expectations. In particular, the EOI specified that the new facility should ensure contemporary stock management methods, safe vehicle access and egress, accommodate animal welfare standards, include functional business facilities and efficient waste disposal.

Submissions to the EOI closed in December 2007, with four submissions received. Three of the submitters were invited to participate in a formal 'request for proposal' (RFP) tender process for the development of the livestock centre.

The RFP process sought two key outcomes:

- the RFP proponents were requested to assume management responsibility for the operation of the existing saleyards
- the RFP sought proposals for the development of a new, purpose built facility at a site to be identified and secured by the Proponent.

The RFP process confirmed that the process of identifying, selecting and securing a site for the proposed new facility was entirely a matter for the successful proponent. Proposals were required to provide information which satisfied Council that all relevant selection criteria had been contemplated and addressed. As part of the RFP, proponents were advised that Council had recognised that potential sites which satisfy the various planning, environmental and social requirements are limited. Consequently, Council advised that it had determined to consider RFP proposals which proposed sites outside the municipal boundary. However, proponents were advised that they would need to demonstrate a clear ongoing economic benefit to the City of Ballarat.

In October 2008, the Proponent was identified as the preferred candidate. The Proponent's proposal (through the RFP response) was to develop the new facility at a site adjacent to the Western Highway in Windermere. This site was adjacent to an existing large scale piggery operation.

Due to the Global Financial Crisis, the project was not formally progressed until May 2010.

2.6 Selection of the subject site

In May 2010 an agreement was reached with the Proponent to operate the existing facility and ultimately be responsible for the relocation of the facility to an alternate location, subject to statutory approvals.

By this time, the Proponent had secured an option on the subject site, and therefore put it forward as more suitable to accommodate the relocated facility. It is understood that the subject site was not available at the time of the RFP process.

As noted in the Council officer report of 11 June 2014:

[The Proponent] have been operating the Ballarat Saleyards as a private entity since May 2010. As part of the process of appointing [The Proponent], Council has attracted a private company that wishes to invest in the construction of a new purpose built Livestock Selling Centre (LSC) for Ballarat. This development will be achieved at no net cost to Council and will ensure Ballarat's place as a key focus of activity for the national livestock market is secured into the future.

Upon appointing [the Proponent] ... to manage the [Livestock Selling Centre] on Council's behalf, Council exited the direct delivery of saleyards activities. At that point, the process to determine the design, location and funding of the proposed new saleyards facility became a matter for the private sector. This decision was based upon Council's judgement that the private sector is best placed to make this sort of investment decision. This judgement reflects the key learning's derived through the review of the previous failed Learmonth development process, which was that ultimately the private sector is best positioned to determine how and where a multimillion investment into the livestock selling industry should best be made.⁹

The WAA approval report prepared by Spiire notes that:

[The Proponent] undertook an independent review of the potential sites with the boundaries of the City of Ballarat for the relocation of the Central Victorian Livestock Exchange. This assessment confirmed that the Miners Rest location presented a potentially suitable location for the livestock exchange. A decision was made by the [Proponent] to pursue statutory approvals for the operation of a livestock exchange on this site.¹⁰

⁹ Council officer report of 11 June 2014

¹⁰ At page 12.

3 What are the issues?

3.1 Who is impacted?

A saleyard produces off-site effects, but these are not as great as some people imagine. Policies set standards to protect ‘sensitive uses’ from these effects.

The closest sensitive use is a residential property located at 80 Victoria Street, east of the site and 1116 Western Highway. Miners Rest subdivision area (Residential 1 Zone) is approximately 800 metres from the site boundary. Table 2 provides a list of sensitive receivers, their distances from the site boundary and the nearest noise and/or odour emission sources. Figure 1 shows their locations in relation to the proposed saleyard (with the exception of the property owned by Mr and Mrs Ferguson at 19 Miners Rest Road).

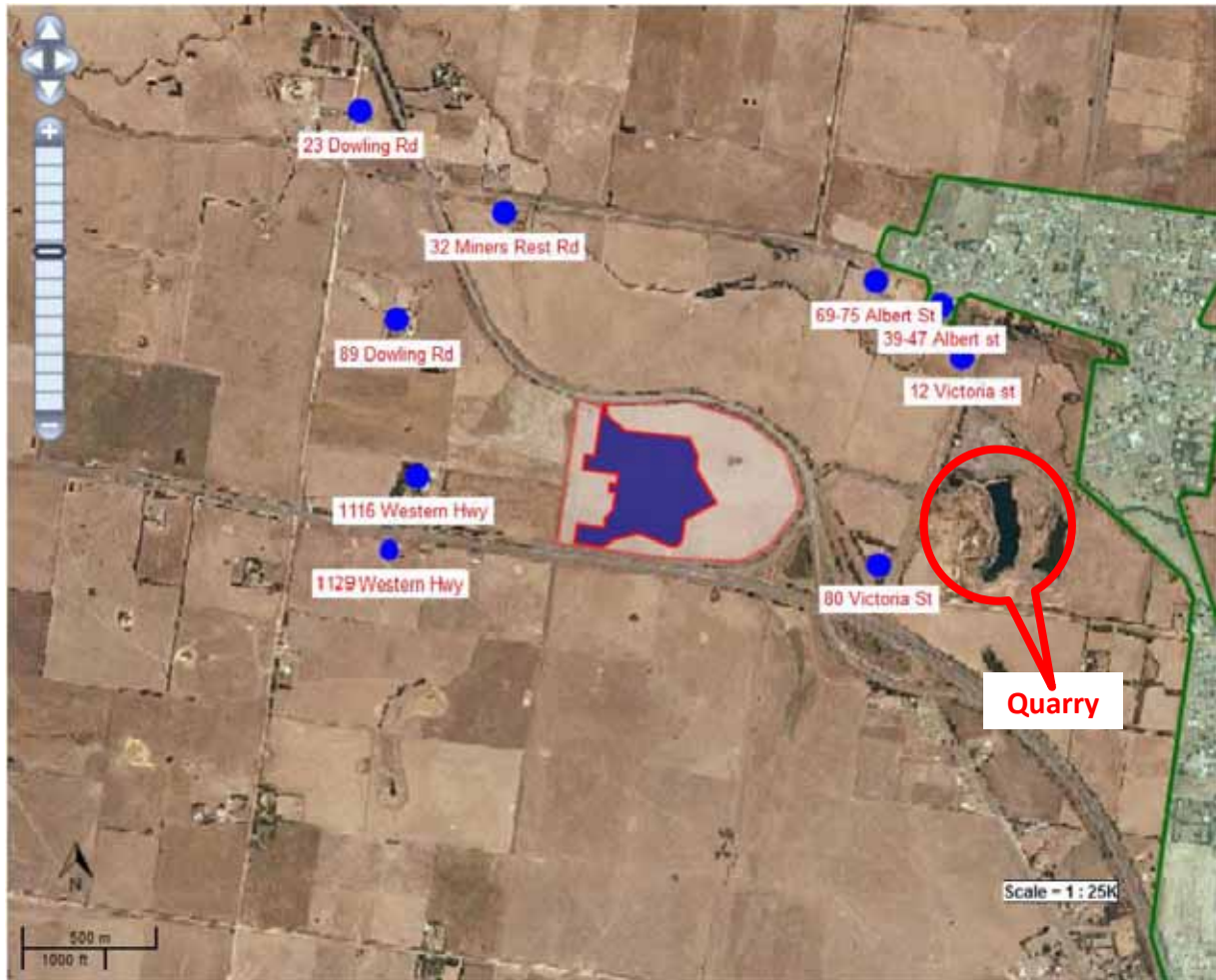
The Ferguson’s (submission #53) farming property at 19 Miners Rest Road is immediately to the north of the subject land. A planning permit was issued on 23 March 2011 for the construction of a dwelling and an associated shed in the north-east corner of the property, 20 metres from the Miners Rest Road frontage and approximately 134 metres north of the Burrumbeet Creek.

Table 2: List of closest sensitive receivers

	Distance to premises boundary (metres)	Distance to closest emission source (metres)
80 Victoria Street	390	670
12 Victoria Street	770	1100
39-47 Albert Street	880	1100
69-75 Albert Street	770	950
19 Miners Rest Road	600	>800
32 Miners Rest Road	780	840
23 Dowling Road	1400	1470
89 Dowling Road	760	850
1116 Western Highway	570	650
1129 Western Highway	640	750
‘Built up’ area of Miners Rest	770	1030

Source: EPA submission and submission at Hearing for 19 Miners Rest Road

Figure 1: Location of nearby properties



Note: Ferguson property not shown

3.2 Issues raised in submissions

A wide range of issues was raised in submissions, from the nature of the proposal, to its social and environmental impacts. Concerns included the following:

General concerns

- The Applicant has clearly demonstrated its position of profit over people.
- By purchasing the land well before the outcome of the current process is known, the Proponent has demonstrated a level of arrogance and disdain for community.
- The proposed maximum capacity of the saleyards to accommodate livestock has at no stage been specifically stated or explored.
- The proposal is severely lacking in detail and therefore cannot be properly assessed.
- It is not urgent to move the existing saleyards.
- There is no analysis of other potential sites in the municipality or region.
- There is a lack of technical detail or specifications.

Planning concerns

- The proposal lacks strategic planning and direction.
- There is no 'clear and consistent framework' to make such a significant land use decision of this magnitude and impact on a community.
- There is no evidence that the proposal is a 'fair, orderly, economic and sustainable use and development of the land' nor a balance between the present and future interests of the residents of Miners Rest and, indeed, the wider municipality.
- There is little substantial rationale outside the vested interests of the Proponent for the choice of the Miners Rest proposed site especially in the absence of strategic planning for the Miners Rest area.
- The proposal is located too close to a new and growing community.
- More time is needed to undertake rigorous strategic planning for Miners Rest to identify its potential and role in the municipality.
- The alternative will restrict the unknown and unconfirmed potential growth and development of Miners Rest that will forever more be influenced and dictated by the investment strategy of an international entity.
- There is no 'local planning' to support the proposal.

Social and economic concerns

- Miners Rest liveability will be reduced, community amenity will suffer, traffic, noise and odour will increase and by default, property will devalue and the reality of this on the mental health of the community will be a significant social impact.
- It is not fair that over 4,500 residents' lives may be impacted to varying degrees by this proposal and that profit from this proposed facility goes to a large international investment company but the social cost is borne by the local residents.
- There is no information provided on future growth for employment apart from direct jobs.
- The proposal does not build upon the local 'strengths' and 'economic potential' as are the requirements of major infrastructure development projects.
- A major omission is the absence of a Social Impact Assessment.
- There has been complete disregard for the local and community expectations
- The proposed Special Use Zone will allow the siting of incompatible land use given the close proximity to residential properties and the growing township of Miner's Rest.
- It is inappropriate to remove citizens' rights to participate in and influence the future development of the site and, therefore, their lifestyle, amenity and use and occupation of their homes and community surrounds not be removed through the re-zoning of the site to Special Use.

Traffic concerns

- The proposal will bring more traffic through Miners Rest.
- The entrance/exit point was identified because of the 'clear line of site' along the Sunraysia Highway, however, this is the only safe passing area for vehicles and other road users in the vicinity of the proposed site and, given the large increase in

truck traffic (including reference to B-triples), local and car traffic will be restricted and potentially placed in danger.

Environmental concerns

- The proposal is not a sustainable use and development of the land.
- The proposal only just complies with the specified 500 metre buffer.
- Major earthworks that will surely need to be conducted on the site and the impact that they may have on the landscape and the ability of the land to contain effluent and other contaminants is not specified.
- The potential, therefore, for an increased demand on the local water supply is evident as is the impact on the water supply system.

Other concerns

- The land allocated to 'grazing' on the site is an alternative and creative description of a stock feedlot.

Many of these issues were addressed in background material, but this did not always satisfy submitters:

And despite all the assurances, expert evidence, graphs, tables, plans and other information available and presented, I continue to strongly object to the proposed Central Victorian Livestock Exchange Ballarat Planning Scheme Amendment C185 and the EPA Works Approval Application Service Order Reference 1001580.

3.3 Issues dealt with in this report

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

This report deals with the issues under the following headings:

- Strategic Justification
- Social and economic impact
- Traffic and car parking
- Visual and vegetation impact
- Noise impacts
- Solid waste management and odour
- Wastewater management
- Stormwater management and flooding
- Other issues
 - Birdstrike
 - Biosecurity
- Planning controls.

4 Strategic Justification

4.1 The issues

A number of submitters objected to the Amendment on the basis that the strategic framework does not support the relocation of the facility to the subject site. Some argue that alternative sites need to be considered including suggestions that a refurbishment of the current site would be a better solution to current problems.

The potential for adverse impact on the strategic growth prospects of Miners Rest was also raised with a number of the submitters, particularly the Miners Rest residents, concerned that the saleyards would stall the growth of the township and fail to provide any net benefit to the Miners Rest community.

4.2 The task of the Panel

4.2.1 Planning scheme amendment issues

(i) The issue

The issue is the degree to which other sites need to be assessed and compared to the proposed site.

(ii) Submissions and evidence

Consideration of other sites

Council submitted that, as a general principle, the primary task of this Panel is to examine the site before it for consideration. Council took its cue from the comments of the Amendment C87 panel:

The Panel considers that it was not fully informed about the matters relating to site selection. However, it is not required to undertake an analysis of other potential sites and it did not embrace discussion at the hearing about whether other sites might be more suitable than the selected subject site ...¹¹

This is also consistent with the observations of Victorian Civil and Administrative Tribunal (the Tribunal) in its consideration of the proposed relocation of the Northern Victoria Livestock Exchange:

The issues and concerns raised about the use and development of the land at Barnawartha North [the proposed site] are clearly matters that are relevant to our consideration of the Application for Review. However, while the council and the permit applicant devoted a fair amount of time at the hearing to explaining or establishing a rationale for the decision to close the existing saleyards and relocate them, the relevance of that material is limited to providing context and background to those matters about which we are

¹¹ Amendment C87 and Planning Permit Application 2005/725 Panel Report (May 2006), page 42.

required to make a decision. Our consideration of relevant matters does not extend to undertaking a review of the council's decision to privatise the existing saleyards. Similarly we are not persuaded by the applicant for review's submissions that the decision by the current operators to close the existing saleyards and relocate it to Barnawartha North is relevant to our consideration of the application to use and develop the review site.¹²

Refurbishing the existing facility

A number of submissions suggested that the current Saleyards could be refurbished.

The existing saleyards are physically constrained which presents a range of limitations upon the acceptable conduct of the use. More particularly, the current facility falls short of the necessary operating conditions befitting such a regionally important facility and a major contributor to the local economy in the following areas:

- animal care and management
- occupational health and safety
- waste and water management
- parking and traffic movement
- efficiency of operation
- condition and suitability of the building and stock yards
- off-site amenity impacts
- accreditation standards.

These constraints compromise the community's standard of living and safety due to heavy vehicle movements, effluent management, noise and odour and a reasonable separation between the large animal storage facilities and residences and businesses cannot be achieved. The Amendment C87 panel noted:

The Panel recognises and acknowledges that the existing ... [saleyard] is nearing the end of its life, and accepts that the facility needs to be replaced. It would seem that few involved in this process would dispute that fact.¹³

There is little doubt that the centre needs to be relocated. As noted by the Amendment C87 panel:

A report was prepared by SKM (Ballarat Livestock Selling Centre – Medium Term Infrastructure Master Plan) in 2003 which addressed two key issues. Firstly, it analysed the infrastructure investment to support the existing facility over the next ten years, and secondly, it developed a preliminary costing for developing a new facility at a greenfields location. The report concluded that while it was possible for the ... [existing saleyard] to remain on its current site, the amount of capital investment required to upgrade the facility

¹² *Margery & Anor v Wodonga CC* [2012] VCAT 787 (Margery) paragraph [6]. The Proponent of this Amendment was also the permit applicant in that matter. *Margery* concerned the relocation of the then existing saleyard in Bandiana to a Farming Zone site in Barnawartha North.

¹³ Council submission p7.

(approximately \$6.6 million) would extract another 8 years before full capacity of the existing centre would be reached.¹⁴

(iii) Discussion

We agree that it is not our task to identify alternative locations (including the upgrade of the existing facility). While panels and the Tribunal do not assess alternative sites (or proposals), they do, when required, assess the strategic logic of a selected site. This is not to determine that the site is the optimum location, or indeed that it is suitable compared to other sites, but rather that there has been some analysis of what makes a suitable site, and the subject site meets those criteria. The benefit of fully informing a panel about site selection is to help inform the assessment of what makes a site suitable.

In this case there have been a number of processes to locate a preferred site and the subject site appears to have been part of the mix in all these processes. While a decision to proceed must necessarily rest on the particulars of a site there can be no doubt that the site has emerged from a systematic search.

In terms of the refurbishment of the existing site, again this is not a matter that we need to consider but it does have some relevance in assessing the net community benefit of the proposal. The issues with the existing Saleyards have been discussed in Section 2.3.

In determining whether this site is a suitable one for a saleyard (and whether the Special Use Zone is appropriate) the issues fall under the following topics:

- Strategic issues
 - Policy support
 - Fit with local structure plans
 - Appropriate planning tool
- Impact issues and conditions.

Section 4.3 of this chapter deals with the strategic issues.

(iv) Conclusion

We agree with the conclusion of the Amendment C87 panel:

... there is one question that needs to be addressed – is this site a suitable site for such a proposal? The Panel is not asking whether it is the best or optimum site, just whether it is a suitable site. While some submissions argued that other sites should be considered, and while some presented information on other sites, the Panel has not undertaken such an evaluation. It is not part of its board terms of reference as part of consideration of this planning permit application.¹⁵

¹⁴ Amendment C87 and Planning Permit Application 2005/725 Panel Report (May 2006), pages 11 & 130.

¹⁵ Ibid, page 131.

4.2.2 Works approval issues

(i) The issue

The *Environment Protection Act 1970* designates certain kinds of premises to be 'scheduled premises'. The proposal requires a works approval as it is a saleyard with a throughput of more than 10,000 animals per annum and, as such, is a 'scheduled premises'.¹⁶

In the context of the works approval application, this Panel has been convened pursuant to Section 20B of *Environment Protection Act 1970*. Section 20B empowers the EPA to hold a conference where it is satisfied that doing so will aid in the 'just resolution' of the matter under consideration. It further provides that the EPA must, in making a decision about the matter, consider any recommendations made by the chair of the conference.

(ii) Evidence and submissions

The Proponent submitted that, given that s20B is intended to aid in the just resolution of the works approval application, the best guidance on the kind of recommendations that might be made arises from an examination of the statutory framework which will guide the EPA's ultimate decision.

In particular, the Proponent highlighted four features of the decision-making framework for works approval applications under the *Environment Protection Act 1970*:¹⁷

- Works approval is the beginning of the assessment and not the end. The grant of a works approval does not entitle a project to operate. In order to operate, the operator of a scheduled premise must obtain a licence. Obtaining a licence is conditional, in large part, on demonstrating compliance with the conditions on the works approval.
- The test for the grant of a works approval is negative. Unlike many statutory approval regimes, the Act requires the EPA to grant a works approval unless the EPA is positively satisfied that there are grounds to refuse to grant the works approval.
- The grounds set out in s 20C are exhaustive. There is no general discretion to refuse an application under the Act. Instead, the Act specifies the grounds on which a refusal may be made.
- The grounds set out in s 20C(3)(a) are exclusive. That is, only one of them can apply to a proposal (or a given aspect of a proposal) at any time. In particular, it means that, where the emission of waste is governed by a relevant SEPP, the question for the EPA is whether there is compliance with that SEPP. If there is, there is no need for, and no capacity to undertake, a further enquiry into whether the proposal is likely to cause pollution or an environmental hazard.

¹⁶ Schedule 1, *Environmental Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic).

¹⁷ Opening submissions on behalf of the Proponent, Paragraph 43

The Proponent submitted:

That is not to say that the proposal should be waved through. Rather, it means that if the Panel has concerns about aspects of the proposed Saleyards, the proper course is to recommend the imposition of conditions requiring ... [the Proponent] to comply with appropriate standards.¹⁸

It is open to us to recommend the imposition of conditions and it may be appropriate for us to do so. In respect of this the Proponent submitted:

First, any conditions ought generally to be consistent with SEPP unless the Panel is satisfied that the imposition of more stringent conditions is authorised under the EP Act.

Second, broadly speaking, [the Proponent] is open to the imposition of a condition requiring the preparation of a 'Plan of Works' detailing how it will meet the specific conditions.¹⁹

(iii) Conclusion

We conclude:

- the provisions of the *Environment Protection Act 1970* mean that unless we form the definite view that the CVLX cannot operate in accordance with the applicable SEPPs we should recommend that the works approval be granted (with suitable conditions for compliance with appropriate standards).

4.3 Strategic issues

4.3.1 Policy support

(i) The issue

The issue is whether the proposal is supported by policy.

(ii) Submissions and evidence

Mr Milner, for Clark Developments and Sharon Clark, claimed that the Amendment fails to rely on 'any particular local vision, strategy or policy to substantiate the proposed relocation of the saleyards'.

In his evidence Mr Milner acknowledged his previous role in the Learmonth proposal:

Through that experience I established a considerable body of knowledge and understanding of the relevant issues.

A core issue then and now is choosing an appropriate and strategically justified site. In the case of Learmonth, the site had been chosen and committed prior to my involvement.

¹⁸ Opening submissions on behalf of the Proponent, Paragraph 45

¹⁹ Opening submissions on behalf of the Proponent, Paragraph 67

Before assisting Council to put its best case forward, I advised Council that the chosen site had a series of limitations that might mean that it may ultimately prove unsuitable.²⁰

During cross examination by Council it became clear that matters which Mr Milner addressed at Learmonth were not included in his evidence before this Panel. It also became clear that not all of Mr Milner's concerns on the Learmonth matter were presented in his evidence to that panel.

In respect of Learmonth, Ms Fay submitted:

That proposal was flawed because, in essence, of the lack of Planning support. Despite that, Mr Milner put the Applicant's 'best case' forward. His views were not supported by that Panel. Therefore, by logical conclusion is the determination that there was no Planning justification for the re-zoning of the site.

Now, in the Miners Rest Proposal, Mr Milner again expresses his opinion that it lacks sufficient strategic planning support.²¹

Mr Milner's evidence for Learmonth was that the proposal did have policy support.

Regarding the proposed Amendment, Council submitted:

Mr Milner's conclusions overlook the State, Regional and Local planning principles ... which promote agriculture and agricultural-related uses in this municipality in appropriate locations. In Council's submission, the Scheme clearly promotes a proposal of this kind in this location. That is, an agricultural-related use, surrounded by Farming Zone land and proposed Industrial land to the south, which was identified specifically for that purpose through Amendment C138. Mr Milner's evidence (on this particular point) also ignores the reality that a planning permit application could be lodged for this proposal within the current strategic framework.²²

Council submitted that the Amendment is strategically justified and that it can facilitate the sensitive redevelopment of this site to the net benefit of the community. Council considered that protecting the long term viability of the saleyard operation aligns closely with State and local strategies to enhance jobs and investment. These are presented below.

Regional planning strategies and principles

Clause 11.05-4 (Regional planning strategies and principles) outlines principles which seek the development of prosperous and environmentally sustainable regions with strong identities. Clause 11.05 requires that planning within regional cities and settlements

²⁰ Paragraphs 11 to 13

²¹ Paragraphs 69 and 70

²² Submissions on behalf of Ballarat City Council, paragraph 190. Refers to Ballarat Planning Scheme Amendment C138: Ballarat Industrial Strategy, 2011.

consider the relevant regional growth plan – the *Central Highlands Regional Growth Plan (Victorian Government, 2014)*.

Clause 11.06-1 (Central Highlands regional growth – Planning for growth), designates Ballarat as the ‘main centre for regional growth, services and employment with major growth focussed to the west’. Map 8 of the Regional Growth Plan (at page 42) notes Ballarat as an area of ‘Significant Growth’ with Smythesdale to the south-west and Creswick immediately to the north identified for ‘Medium Growth’. The settlement description (at page 45) of the plan outlines the future role of Ballarat within the settlement network, noting that it:

Services a network of settlements on a regional scale and can influence the role of smaller settlements surrounding them from a lifestyle and commuter perspective.

This is taken further at section 14.4 in considering the role and function of Ballarat:

... The growth and prosperity of Ballarat will have implications for the rest of the region, given the city’s influence on its hinterland and its role in providing jobs and services for residents in surrounding municipalities.

Clause 17 (Economic Development) directs planning to contribute to the economic well-being of communities by providing land, facilitating decisions and resolving land use conflicts so that each district may build on its strengths and achieve its economic potential.

Council submitted that:²³

It is considered that the development of the Central Victoria Livestock Exchange will secure an ongoing key asset in the economic potential of this district. Accordingly, Council considers that the Amendment is consistent with supporting greater economic self-sufficiency and resilience for the region as well as facilitating economic development opportunities based on the existing strengths of the region. This is consistent with the principles and directions of the Regional Growth Plan, particularly Principles 2, 5 and 8 (pg. ii).

Local planning strategies and principles

The regional planning strategies and principles are echoed in the Local Planning Policy Framework. In particular, clause 21.01 (Municipal Overview) notes that Ballarat is in a key strategic position at the centre of some of Victoria’s most important freight, tourist and commuter transport routes. It notes that Ballarat’s businesses offer a broad range of products which cater for the needs of the rural community. It has traditionally been a city which prospered on mineral and agricultural-based resources, however, the growth in other sectors including manufacturing, tourism, health and community services, education and retailing have combined to form the key drivers of economic growth in the region.

²³ Council submission 22 June 2015 p43

Clause 21.03 (Ballarat's Strategic Framework) provides the blueprint for the municipality. It includes the Overall Framework Plan which designates the subject site and land to the north, east and west as 'Rural Areas', with land immediately to the south as 'Long Term Industrial Growth'. Council considered that the Amendment is consistent with these strategic designations.

Clause 21.04 (Land Uses) outlines a number of objectives relevant to housing, industrial and rural land uses. Most relevantly:

- Residential growth is encouraged in accordance with the Residential Framework Plan at page 3. Strategy 1.5 specifically encourages residential development in the Ballarat West Growth Area in accordance with the Alfredton West Precinct Structure Plan (gazetted on 6 June 2011) and Ballarat West Precinct Structure Plan (gazetted on 1 November 2012). Miners Rest is not identified for residential growth.
- Industrial growth is encouraged in accordance with the plan at page 5. This was implemented as part of Amendment C138 on 26 July 2012. The area to the south of the subject land on the other side of the Western Highway is identified for industrial development.
- The rural areas of Ballarat are recognised at clause 21.04-8 as some of Victoria's richest agricultural areas, and farming activities are noted as having some of the highest value of production per hectare in the State. It notes that Ballarat's location in proximity to markets, local food processors and transport routes are also contributing factors that support agricultural industry in the municipality. Objective 2 seeks to support agriculture as an important element of the City's economic and employment base, and strategy 2.1 seeks to provide for agricultural value adding industries within the City in locations where appropriate services are available.

In considering how the interface between land uses can be managed, clause 21.05-3 (Liveability) states that compatible land uses should be able to occur within proximity to one another and incompatible uses should be separated to prevent adverse impacts from one another. It notes that Council will endeavour to minimise conflict through such means as landscaped setbacks and other forms of buffering.

Clause 15 (Built Environment and Heritage) seeks to ensure that new land use and development responds appropriately to its landscape, valued built form and cultural context, and protects places and sites with significant heritage, architectural, aesthetic, scientific and cultural value. The development will need to integrate appropriately within the context of its surrounds.

(iii) Discussion

It would be surprising if state and regional policy did not support saleyards in rural area where off-site impacts were acceptable.

The Tribunal in *Margery & Anor v Wodonga City Council* noted that the review site was not located within an area nominated as being of high quality agricultural significance, and further:

*With respect to the proposal's consistency with the purpose of the Farming zone, we are satisfied that the use is one that is inextricably linked with agricultural purposes and is a use that supports the agricultural industry in this region. We are satisfied that the use will not compromise the capacity of surrounding land to continue to be used for agricultural purposes. The use is therefore suitable in a Farming Zone.*²⁴

Clearly rural areas are the best locations for saleyards. We do not accept that saleyards would be best located in industrial areas. Saleyards have a relatively large footprint and establishing saleyards in serviced urban areas (if sites that met buffer distances could be found) would be an inefficient use of urban land. It would present difficulties in providing resting paddocks as part of animal welfare and would also more than likely increase traffic through established areas.

We also do not agree that a location 15 or 20 km from any built up area is appropriate as suggested by some submitters. We note the regional policy settings that support Ballarat and see that a location in the rural area around Ballarat (with appropriate buffers to sensitive land uses) would best meet policy objectives.

We did not find the evidence of Mr Milner convincing. Given the inconsistencies between the earlier evidence on the Learmonth proposal and this matter we think the evidence should be given the weight of a submission rather than expert opinion. This doesn't mean that the issues he raised do not need to be considered, but that they cannot be given the same weight as the technical evidence presented as part of the Hearing.

We were assisted by Mr McGurn's evidence where he posed a series of questions to reach a view as to whether the proposal had strategic merit:

Is there a sound strategic basis for the Amendment and future use and development of a regional livestock exchange (saleyard) and does it support and implement the State and Local Planning Policy Framework?

What are the relevant environmental considerations of the proposed Amendment?

Will the proposed future use and development of a regional livestock exchange (saleyard) unreasonably affect the amenity of the area?

*Are there any other matters of relevance to the proposed Amendment having regard to the 'Strategic Assessment Guidelines for Preparing and Evaluating Planning Scheme Amendments' (Planning Practice Note 6)?*²⁵

Mr McGurn examined each of these questions in detail. In summary he found that from a planning perspective these issues did not close off the possibility of finding that the saleyards were not justified, nor did they attempt to assist the Proponent in 'putting its best

²⁴ Margery & Anor v Wodonga CC [2012] VCAT 787, at paragraph [30].

²⁵ Expert Witness Statement June 2015, Page 12.

case forward'. We found this approach useful and transparent, and agree with his conclusion:

The proposed rezoning of the land to the Special Use Zone 15 has a sound strategic basis and is consistent with the State and Local Planning Policy Framework of the Ballarat Planning Scheme.

The conditions of the land are suitable for the future use and development of a Regional Livestock Exchange (saleyard) subject to the preparation of further detailed reports as required in preparation and approval of a Development Plan under the Special Use Zone.²⁶

We note Mr Rodda's observation that in his experience rural areas, including those on the periphery of local and regional towns, often host infrastructure associated with farming agricultural activity.

(iv) Conclusion

There is strong policy support for locating saleyards in the rural hinterland of Ballarat.

4.3.2 Impact on the strategic development of Miners Rest

(i) Issues

The issues are whether the proposal is in keeping with the strategic directions identified for Miners Rest and its potential impact on the future development of Miners Rest.

(ii) Evidence and submissions

Clause 21.08 (Local Areas) outlines the future expectations in relation to Miners Rest.

Mr Milner explained that detailed planning for the future growth and development of Miners Rest has been undertaken on two separate occasions during the past three decades, with outline development plans (ODP) prepared in 1994 and 2007.

The Miners Rest Outline Development Plan 1994

The Miners Rest Outline Development Plan 1994 (the '1994 ODP') underpins the current Miners Rest implementation strategy at Clause 21.08-1 of the Ballarat Planning Scheme.

The 1994 ODP directs short, medium and long-term expansion (0-20 years) of Miners Rest to the area north of Burrumbeet Creek. It provides for longer-term future growth (beyond 20 years) in the area south of Burrumbeet Creek and towards the Western Highway, including land within 100 metres of the subject site.

The 1994 ODP identifies the area closest to the subject site for re-subdivision in accordance with VicCode (ie 10 houses per hectare).

²⁶ Ibid, Page 23.

The long term potential of this land was tied to the future of the Miners Rest quarry, with the 1994 ODP indicating that residential development and other sensitive land uses be withheld until extraction of the quarry ceased.

Other non-sensitive uses, such as industry, business, recreation, farming and other open spaces uses were however considered to be appropriate uses of the land during the intervening period.

While not making any specific recommendation in relation to the quarry, the 1994 ODP indicated that Council should give early consideration to its future.

Miners Rest Outline Development Plan 2007

The Miners Rest Outline Development Plan, 2007 (the '2007 ODP') was prepared as a review of the 1994 ODP with the intent of establishing a clear framework for the future development of Miners Rest.

While the 1994 ODP identified the land to the south-west of Miners Rest and proximate to the subject site for long-term residential growth, the 2007 ODP recommended that the same land, including the quarry, be rezoned for light industrial use.

With specific reference to the future use of the quarry, the 2007 ODP included the following recommendation:

No specific recommendations are made with respect to a relocated Saleyards, excepting that by retaining the existing Farming zone within the Study Area, an application can be made for a planning permit under the current provisions of this zone.²⁷

The 2007 ODP provided no further discussion in relation to the prospect of 'saleyards' being relocated to Miners Rest.

The Panel appointed to consider Ballarat Planning Scheme Amendment C127 Miners Rest Outline Development Plan ultimately concluded that many of the key recommendations of the 2007 ODP lacked strategic justification and that they be removed from the amendment. After considering the panel's report Council abandoned Amendment C127.

Potential for conflict

Mr Milner stated:

Despite the history and future intent of planning for Miners Rest, Amendment C185 has sought to leverage the lack of recent and clear direction as justification for the use and development of the CVLX on the subject site.²⁸

Mr Milner's concern was the Amendment implies that the growth of Miners Rest towards the subject site is not currently supported in the planning scheme, contrary to the Miners Rest implementation strategy at Clause 21.08-1. Accordingly, Mr Milner contended that this

²⁷ Miner Rest Outline Development Plan 2007, Page 31

²⁸ Paragraph 88

Amendment fails to take into account many of the potential implications for the future growth and development of Miners Rest.

Mr Milner concluded:

The amendment establishes the potential for a short to medium term conflict.

This is highlighted by the noise and odour impact assessments that accompany the application. Both assessments have ... been advanced on the basis of no further residential growth to the south-west of Miners Rest.

The opportunistic approval of the amendment and rezoning for saleyards will have the effect of establishing strategically significant constraints on the further use and development of land south-west of Miners Rest for any future of residential use.

If the amendment was to proceed, it should be within the context of a structure plan or similar planning tool that evaluates if and how the CVLX and residential land use might co-exist on adjacent precincts.

Advancing the amendment in the absence of such settlement planning prematurely forecloses on growth options for Miners Rest.²⁹

Mr Milner suggested that a structure plan or similar planning tool should be prepared if the proposal was to proceed, and seemed to suggest that an industrial location should be preferred.

Council does not consider that the Amendment would conflict with the future expectations in relation to development in Miners Rest. The outcomes of Amendment C127 and the more recent Burrumbeet Flood Investigation confirm this. It is not clear whether Mr Milner has considered these implications in his evidence for Clark Developments. While some 'change' (as noted in the draft Ballarat Strategy) in Miners Rest is to be expected, and Council intends to consider this as part of local area planning, this should not be confused with significant expectations for residential growth. Growth is unmistakably directed to areas such as Ballarat West.

Clark Developments owns the Miners Rest quarry and parcels of adjacent land. The location of the quarry is shown on Figure 1. The submission on behalf of Clark Developments provided a series of documents relating to the now closed quarry, its rehabilitation and development potential. These show:

- rehabilitation plans, whilst mooted since 2013, have been rejected and cannot be said to be 'imminent', or even within the control of the landowner or Council (noting that the plan must be advanced and funded by Boral (who operated the quarry) and approved by the Department of Economic Development, Jobs, Transport and Resources)

²⁹ Paragraphs 108 to 112

- while the landowner may have aspirations to develop the quarry land, it is not clear what those plans are, and whether in fact they would be impacted by the saleyards or vice versa.

Council submitted that it has sought information from the quarry landowner for some time regarding its intentions for the site and this has not been clarified to date. Mr King on behalf of Clark Developments Pty Ltd and Sharon Clark submitted:

Clark developments have no definite plans for the future use of the rehabilitated quarry ...³⁰

(iii) Discussion

It is clear the 1994 ODP has been overtaken by events and more recent planning at a whole-of-Ballarat scale. The Amendment C127 panel said:

In considering the relevance of the current Clause 21.08-1 we note that designation of Miners Rest as a short to medium residential growth area was identified in the Ballarat Strategy Plan 1998 and the 1994 Miners Rest Outline Development Plan, and the areas identified for potential growth have already been developed. These Plans are now out of date and provide very little useful policy direction, and it cannot be automatically assumed that Miners Rest is still a short to medium term growth area without further strategic analysis. We note that the current Clause 21.08-1 also recognises the capacity of the Miners Rest township to accommodate future growth is limited due to the development constraints in the township.

The Residential Framework Plan identifies Miners Rest as an existing residential area, but does not identify the town as a having any further residential development potential. It is quite clear the focus of the current policy direction is to accommodate future residential growth within the Ballarat West Growth Area, and that Miners Rest is not identified as a focus for residential growth. It is also clear that the strategic framework recognises that development of Miners Rest is significantly constrained and its potential for further growth may be limited.

We believe that there is no existing strategic justification in the Planning Scheme to identify additional areas for future rezoning to 'Residential 1' or as 'Future investigation for urban purposes' in Miners Rest. The issue, therefore, is whether there is sufficient justification in the strategic work underpinning the current Amendment to change the framework plans in the MSS.³¹

The area Mr Milner refers to appears to have no more strategic justification than an idea recorded on the 1994 ODP. In more considered schemes it would be identified as a 'potential' area for growth. The recent flood study shows this potential to be limited.

³⁰ Submission on behalf of Clark Developments and Sharon Clark, page 2

³¹ Page 26

Part of the difficulty in understanding what the strategic impacts might be is that no proposals were put before us on development scenarios. We find it troubling given the number of submitters that referred (with some detail) to a proposed development that mirrored the proposal Mr Clark, as quoted in The Courier, was promoting.³² It seems Mr Clark was better able to communicate his vision to The Courier reporter than to his barrister.

If we ignore the considerable hurdles that Mr Clark's vision will have to overcome, we can simply ask what is the correct strategic choice given a 'live' proposal by an established operator for a much needed upgrade to local infrastructure, and the prospect of the residential development with significant hurdles, sometime in the future, in an area that is not identified for growth in current city-wide plans.

We are being asked to reject the saleyards on the basis that there might be development potential to the west of Miner Rest and around the quarry. Residential development in this area would also have interface issues with the industrial area to the south of the Western Highway.

In respect of the policy issues to be taken into account in the Farming Zone, in *Margery* the Tribunal concluded that:

*... Our conclusions about the suitability of the review site for the proposal are reinforced by the fact that the review site is not located within an area in which residential growth is directed. This is an important consideration because it provides a degree of security to the operators of the saleyards that its operations are unlikely to be adversely constrained by the encroachment of sensitive urban uses into its immediate environs.*³³

We think the same applies to Miners Rest. We do not think the absence of the saleyards from local structure plans is a particular issue.

We agree with Council that identifying a specific site in the MSS in advance of site specific assessment would be poor planning. At best the site could have been identified as 'potential saleyards site' but it is not clear what that might have ever achieved. Given the broad policy support for this type of use in the rural hinterland of Ballarat we do not think that strategic planning should give some form of 'in principle approval' ahead of the resolution of technical matters associated with a proposal such as this.

(iv) Conclusion

We conclude:

- the area to the west of Miner Rest has not been identified for significant residential growth in recent city-wide plans
- the 'plans' for a residential estate as part of rehabilitated quarry are speculative at best
- the fact that the saleyards is not shown on any local strategic plan is not a fatal flaw.

³² The Courier 10 April 2015 (<http://www.thecourier.com.au/story/3004122/saleyards-estate-fears/>)

³³ At paragraph [28].

4.3.3 Use of Special Use Zone

(i) The issue

The issue is whether the Special Use Zone is an appropriate use of the Victoria Planning Provisions.

(ii) Evidence and submissions

There was a great degree of confusion about what the Special Use Zone allowed and a number of submitters expressed concerns about what they had been told it would allow as opposed to its actual provisions.

Mr Milner stated:

The rationale of Amendment C185 is flawed for two main reasons.

Firstly, the outcome sought by Amendment C185 can be effectively achieved with a planning permit application and through the use of the existing Farming Zone, Development Plan Overlay and local policy, if it were proven to be a strategically justified outcome.

This method would provide for a ‘... tailored planning mechanism...’ for the CVLX while retaining an opportunity for third party engagement and review of the use and development proposal to be implemented.

Secondly, while Amendment C87 did seek to rezone the Learmonth site to the Special Use Zone, a concept supported by the Panel, the amendment was combined with a concurrent planning permit application for the use and development of an abattoir and saleyard.³⁴

Before resolving to seek Ministerial Authorisation for the Amendment, Council had resolved³⁵ to receive the rezoning application with targeted land use planning controls for the saleyards. That report to Council noted that various statutory frameworks had been considered, including the options of: a planning permit application; a combined rezoning and planning permit application; or a rezoning with targeted land use planning controls. The report to Council concluded that the third option was preferred, noting:³⁶

A rezoning with tailored controls created specifically for the saleyards and subject land will provide more certainty for all stakeholders on how development will be managed and allows for extensive public consultation.

Council submitted that:

Pursuing a planning scheme amendment also allowed the process to be combined with a works approval application and provide for one, holistic

³⁴ Paragraphs 132 to 135

³⁵ At its meeting of 11 June 2014.

³⁶ At page 29.

*process rather than multiple standalone planning permit / rezoning and works approval processes. The combined process also ensures all relevant information is presented to the community at the one time.*³⁷

As noted earlier, the site and its surrounds are currently in the Farming Zone. Amongst its purposes, the Farming Zone (in Clause 35.07) seeks:

- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage the use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

The fourth purpose was added to the Farming Zone via VC103 in 2013.

Saleyard is not listed in the table of uses in the Farming Zone and so falls within section 2 of the table, and a permit is required for both use (no specific conditions are attached) and for buildings and works. Whether or not a use is listed depends solely on whether it needs to be listed from a technical drafting point of view. There is no policy implication on whether or not a use is listed.

There are a number of matters that must be taken into account having regard to the decision guidelines of clause 35.07-6. On Council's evaluation, many of these matters (as relevant) appear to have been considered in the technical material supplied with the Amendment request including:

- land capability, including capability to accommodate effluent disposal
- site suitability and compatibility with adjoining and nearby land uses
- the utilisation of existing infrastructure and services
- soil quality and the impacts of removing land from agricultural production
- the impact of the proposal on the environment, including soil and water quality and biodiversity values
- impacts on the amenity of the surrounds and on existing infrastructure.

Mr Rodda examined this issue in his expert evidence on behalf of Council. He considered that notwithstanding the proposed rezoning, it is important that the SUZ15 provisions provide a sufficiently comprehensive assessment to ensure those matters usually considered in the Farming Zone are included in this proposal. He was satisfied that these matters will be adequately addressed in the development plan.

SUZ15 recognises and provides for the use and development of land for specific purposes as identified in a schedule to the zone. Importantly:

³⁷ Paragraph 223

- a permit is not required for any use listed in section 1 of the schedule, subject to any condition specified in the schedule
- a permit is required for any use listed in Section 2 of the schedule, subject to any condition specified in the schedule
- a use listed in section 3 of the schedule is prohibited.

The parent Special Use Zone also allows the schedule to specify the requirements in relation to the use of land, the subdivision of land and buildings and works.

The use of the SUZ therefore warrants consideration of the Practice Note – *Applying the Special Use Zone (June 2015)*³⁸ which provides guidance in relation to the use of the SUZ. The Practice Note provides that the SUZ can be considered when either:

- an appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements
- the site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.

The Practice Note is explicit in saying that the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

The Practice Note also identifies principles that need to be understood when considering the application of the Special Use Zone, including:

- *The complexity of planning requirements is reduced by keeping the number of zones used to a minimum.*
- *Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making on planning matters.*
- *The planning permit should be the principal method for land use or development proposal.*

Mr Rodda observed that while options exist to seek a planning permit under the Farming Zone, or to impose an overlay such as the Design and Development or Development Plan Overlay, neither will necessarily deliver the desired objective for planning approval certainty together with works approval certainty.

We were provided with other SUZ schedules. These include:

- SUZ2 to the Murrindindi Planning Scheme, which relates to a Major Tourism Facility in Marysville.
- SUZ9 to the Greater Shepparton Planning Scheme, which relates to the Tatura Milk Industries in Tatura.
- SUZ3 to the Strathbogie Planning Scheme, which relates to the Costa Exchange Mushroom Farm and Composting Facility in Nagambie.

³⁸ Most evidence was prepared under an early version of the Practice Note from February 1999. The revised version, as it relates to this Amendment, is the same.

When considering the ‘rezoning issues’ the C87 panel observed:

Overall, the Panel accepts that the strategic issues relating to the potential for rezoning of the site to accommodate the proposed uses does allow for a thorough analysis of the key issues, and that if it was to be approved, is an appropriate outcome. In this regard, the Schedule to the Special Use Zone is supported.³⁹

Council submitted:

... a tailored schedule to the SUZ and the requirement for a development plan to be prepared and approved by the responsible authority (with input from referral authorities as appropriate) will allow the relocation project to occur in a manner consistent with the objectives of planning in Victoria.

More particularly, the application of the SUZ is the most appropriate zone to provide certainty for the operation of the saleyards and flexibility for use and buildings and works that would otherwise require planning permits. The SUZ allows the controls to be tailored to the needs for the site. It also requires the applicant to, amongst other things, provide details of the management of noise and air emissions from the site. These details must be translated into a schedule of development and operating conditions which must be observed in the future use and development of the site.⁴⁰

Council submitted that this strategic exercise (that is, a combined planning scheme amendment and works approval, and the development of tailored planning scheme tools) has encouraged a greater strategic analysis of the key issues.

(iii) Discussion and conclusion

We are aware of a number of examples around Victoria where the Special Use Zone has been used to facilitate industrial or tourism development in regional areas.

The Special Use Zone Schedule 15 is more restrictive than the existing Farming Zone. In particular the proposed zone, as relevant to this Amendment, will prohibit an abattoir whereas in the Farming Zone a permit could be sought for an abattoir.

We have reviewed the proposed zoning and consider this approach will, coupled with EPA’s approval, form an effective planning control that allows for the development of the saleyard site whilst providing a level of certainty and protection to the surrounding properties.

We note that one of the purposes of the Special Use Zone is:

- *To recognise or provide for the use and development of land for specific purposes as identified in a schedule in this zone.*

³⁹ At page 41 of the Panel Report.

⁴⁰ Submissions on behalf of Ballarat City Council Paragraph 223-224

We do not think that a combination of the other available zones, overlays and local policies can give effect to the desired objectives of facilitating a saleyards but explicitly restricting other uses such as an abattoir.

We accept that there are other possible options for planning permission by way of a permit or by other planning zones or overlays, but the fact that a permit could be obtained does not rule out the current approach.

Ultimately this matter could always be pursued by permit, but abandoning this process on the basis that the Proponent should apply for a permit (and parties contest the matter again at VCAT) would seem to be a waste of everybody's time and emotional energy.

We agree that there is benefit in an approval process that better marries EPA approval and planning considerations and see that the Special use Zone is the most appropriate way to do this.

We agree with Mr McGurn:⁴¹

The Amendment ... [subject to minor changes] ... makes appropriate use of the Victorian Planning Provisions ...

We conclude that the use of the Special Use Zone is appropriate in the current circumstances.

⁴¹ Page 23

5 Social and economic impact

5.1 The issues

Social, economic and amenity impacts are best considered in terms of:

- Economic impacts that affect the economic prosperity of an area.
- Social impacts that affect the functioning of the community. This could include impacts having a significant adverse effect on the health, happiness or prosperity of many people in the community. This could include traffic issues.
- Amenity impacts that fall predominantly on individuals. These can include issues of noise, and odour and the like but could also include impacts where a proposal might be offensive or upsetting to some residents based on their particular beliefs or customs.

A number of social and amenity issues are dealt with in detail in other chapters of this report.

5.2 Economic impact

(i) The issues

The issue is whether the proposal will provide an economic benefit.

(ii) What technical assessments were carried out

Matthew Lee, for the Proponent, provided a broad review of the likely impacts of the proposal on the regional economy.

(iii) Evidence and submissions

This proposal concerns the relocation of an existing facility to an alternate location within the same municipality approximately 10 kilometres from the existing site.

The new facility is not introducing a new use to the City of Ballarat and the economic benefits of the proposal are not the same as those for a proposal which introduces a new business to the Ballarat economy. That does not mean the proposal is not without economic credentials or that the proposal will not realise substantial benefit for the Ballarat municipality.

The Ballarat saleyards are the largest sheep and cattle livestock exchange within Victoria. Part of this proposal seeks to confirm Ballarat's role as accommodating the livestock exchange and retain the direct economic benefits and multipliers that flow from that within the Ballarat community.

The new facility is expected to cater for existing livestock throughput with the potential for increased trade from a mooted closure of the Geelong saleyards.

We asked Mr Lee questions as to whether greater aggregation of the livestock industry in Victoria is in fact preferred. That is, whether a smaller number of livestock exchanges would

produce a better economic outcome. Mr Lee's response was that a network of exchanges was the most efficient means of providing livestock exchanges across Victoria.

Council submitted that, if such aggregation gave rise to the closure of any kind of facility for Ballarat, this would potentially reduce competition, increase travel and environment disadvantages associated with travel, but importantly would damage the fabric of Ballarat as those businesses such as the stock agents that serve the existing saleyards may no longer have a role within the city. It is clear that the retention of the saleyards in Ballarat does confer an economic benefit in and of itself.

Mr Lee described a number of potential disadvantages in his evidence. These were largely the disadvantages associated with direct loss of trade at the bakery adjacent to the existing livestock exchange and other ancillary sales in that area such as petrol. Both of these are impacts that would not be lost to the economy, but which would simply transfer to other areas – for example the cafe on the site of the saleyard or other petrol stations as both represent necessary expenditure items.

Perhaps the greatest economic benefit is the release of the current saleyards site for other purposes. It is a rare opportunity for a city or town to release a large relatively unconstrained tract of inner urban land. The Ballarat saleyards site at its existing location represents a very large site which is not put to its highest and best use and which on any assessment will confer a benefit to Ballarat if redeveloped.

Mr Lee is of the opinion that the release of this site will confer direct and indirect economic benefits in:

- The removal and remediation of the site which is itself an employment generator.
- The utilisation of the space for other activities such as show grounds or more of the light industrial uses. This area is near the Ballarat West growth area and the ongoing economic benefits generated from this site will be on any view substantial.

(iv) Discussion

The economic impacts of the relocation of the saleyards, in and of themselves, are minor. But the economic impacts of their closure entirely would be significant, and though we are in no position to judge the risk of this, it is not disputed that the current facility has a number of animal welfare and operational constraints.

We accept that there are broader economic benefits to Ballarat by realising the development potential of the existing site. We note that relocation also unlocks some strategic benefits:

- Council is currently undertaking a master planning exercise for Victoria Park which has expanded on the adopted vision for Victoria Park of 2012, *Victoria Park the Lungs of the City*. A copy of the Vision document was provided for our information.
- The master plan which is under development has been the subject of extensive consultation, with one of the key elements attracting interest being the potential use of the south-west corner of the park for a major events facility.
- The existing saleyards is also immediately east of the major Ballarat West Growth Area on Ballarat-Carngham Road. This makes the site very attractive for uses

identified in Mr Lee's evidence of restricted retail (bulky goods, commercial and light industrial) which would take advantage of the significant surrounding catchment and the major residential growth to the immediate west.

- The arterial road status of the roads surrounding the existing site also make it a sought after commercial site in the event that the saleyards are relocated. This is highlighted by the fact that there are no vacant parcels with arterial road frontage in the immediate vicinity.

(v) Conclusion

We conclude:

- the relocation will allow for the continuation and upgrade of important regional infrastructure and this will support a strong local economy.

5.3 Social impact

(i) The issues

The issues are whether the proposal should be subject to a formal Social Impact Assessment, and whether the social impacts are acceptable.

(ii) What technical assessments were carried out

There has been no formal social impact assessment prepared for the development.

(iii) Evidence and submissions

The need for a Social Impact Assessment

Evidence was tendered that the proposal should be subject to a formal Social Impact Assessment (SIA).

Ms Colbert gave evidence that:

It is my belief that a comprehensive and targeted SIA should be carried out prior to any consideration of the Planning Scheme Amendment and the subsequent establishment of a regional saleyard facility at Miners Rest.

The SIA needs to be carried out and evaluated as part of the social and strategic planning for Miners Rest and the relocation of the Ballarat Saleyards.⁴²

Ms Colbert tendered Social Impact Assessment guidelines from East Gippsland which she considered illustrate good practice.

Council submitted:

Council has heard the submissions of Clark Developments Pty Ltd and the evidence of Ms Colbert on behalf of that submitter regarding social impacts.

⁴² Paragraphs 3 and 4

It is considered that the categories of social and health impacts (as defined under the East Gippsland guidelines) would not be realised (even if they are accepted by the Panel as being an appropriate guideline on this issue) having regard to the evidence and material presented. For example:

- *if the Panel concludes that truck movements through Miners Rest can be managed (and largely avoided), then it does not flow that the proposal itself would pose a risk for the safety of children and young people; and*
- *similarly if the finding is that odour impacts can be managed, then people will still enjoy open spaces and their outdoor amenity as they do today.*

Ms Colbert's conclusion that there remains a perception of a social impact does not, in and of itself, demonstrate that there is in fact a social impact. Ms Colbert's evidence (as stated through re-examination) indicated that her discussions of perceived impact with the community related to operational failures, for example, that there will be an impact if machines and operations systems fail.

Council appreciates that the concerns of the residents are honestly held by them. However, Council is satisfied that with the appropriate controls in place, as approved by Council, the EPA and the other statutory authorities, that there is little likelihood that these concerns would eventuate to the extent and magnitude feared.⁴³

Council submitted that these concerns appeared to relate to amenity concerns rather than being demonstrative of a social impact. Council considered that any amenity impacts that flow from the proposal can be overcome through appropriate design measures and future management. This must be demonstrated to the satisfaction of Council and various authorities through the development plan approval process, and the operating conditions must be adhered to at all times.

Council did not accept the submission of Mr King that it had had no regard for the comments of the Amendment C87 panel or the social impacts of the Amendment. It is correct to say that the Amendment C87 panel recognised that perception issues should be acknowledged. However, it is not correct that the Amendment C87 panel also suggested that perceptions alone should drive the process, particularly where it can be shown that negative impacts can be mitigated.

Council said that it had:

... no quarrel or disagreement that the planning authority (and this Panel by extension) must take into account social effects where they are raised by a submitter. However, when one considers the types of social effects which the Strategic Assessment Guidelines call to be considered, it is submitted that the

⁴³ Council closing submission, 7 July 2015, paragraphs 7 to 10

inference that there will in fact be an impact (by extension of the arguments put by Mr King) cannot be substantiated.⁴⁴

On the copy of the *Planning Practice Note 46: Strategic Assessment Guidelines*⁴⁵ Mr King went through the list of social and economic issues that need to be considered and included a number of '?' symbols, questioning whether these matters have been satisfied. This was to support the argument that there are social impacts that have not been assessed. These were:

- *potential impact on buffers and threshold distances, and the likely effect on community amenity*
- *the likely effect on the economic well-being of the community*
- *potential changes to the economic and social life of the existing community*
- *the likely effect on potential capacity for growth of the immediate and surrounding areas, including the likely effect on the opportunities for expansion, improvement or redevelopment*
- *potential changes to the attractiveness and physical condition of the immediate and surrounding areas*
- *the likely effect on the attractiveness, amenity and safety of the public realm*
- *the likely effect on future public and private sector investment in the immediate and surrounding areas.*

At the heart of this issue is the level of mistrust a number of submitters feel about Council. As one submitter summed it up: the people of Miners Rest were 'not fools' implying that they had seen the 'conspiracy' in relation to the proposal:

We are not fools, far from it and like any other area of Ballarat there are people with all sorts of qualifications, job roles, and achievements that we are proud of, both the proponent and the Council needed to communicate with the ratepayers of Miners Rest in a mature and transparent manner and stop hiding what is going on!

(iv) Discussion

We are required to consider the social impacts of the proposal. Social impacts are changes in an area that affect the functioning of the community. For example installing lights on a netball court could have a positive social impact if it allowed more people to participate in netball and derive the health and social benefits that would flow from this. But it could also have negative amenity impacts on nearby residents. Social impacts can also include impacts that have a significant effect on the health, happiness or prosperity of many people in the community.

⁴⁴ Council closing submission, 7 July 2015, paragraph 14

⁴⁵ Page 4 of the guidelines were provided at tab 6 in supporting materials provided by Mr King

Considering the matters that Mr King questioned as to whether they had been satisfied – those he marked with a ‘?’ – an analysis indicates that they are satisfied:

- the technical evidence illustrated that all necessary buffers have been maintained, and that there will therefore not be an adverse effect on community amenity
- there is no evidence that there will be an effect on the economic wellbeing of the community, although Council recognised that the proposal will not necessarily result in a marked increase in economic activity in Miners Rest⁴⁶
- there is no evidence that there will be a change to the economic or social life of the existing community, particularly given how the proposal is intended to be operated and managed
- residential growth to the south-west of Miners Rest is already limited by other constraints
- while the proposal would undoubtedly result in a change in the existing built form on the subject land, it would not be completely out of step for the immediate context being abutted by farming and industrial land and can be further improved through development and perimeter landscaping.

The purported social impacts in the current matter are tenuous. The technical assessments show that people will barely hear, smell or notice the facility as they go about their daily lives in Miners Rest. There could be social impact if the increase in truck traffic caused a significantly different pattern of journeys to school, but based on the traffic evidence, and submissions about walking conditions and safety in Miners Rest, this is not likely to be a determinative factor.

The anxiety caused by the rezoning process is not a social effect of the proposal and fear of change is not a social impact of itself. Simply not wanting something in your town is not a social impact, or at least not a social impact that planning can address by refusing to progress proposals. Trying to address these types of concerns by privileging prejudice over objective assessment would have the significant broader social impact of undermining the fair, orderly and proper planning of areas.

We accept that the application has caused anxiety and would accept as a matter of general principle that the propensity of a community to suffer anxiety is not something that can be used to downplay these impacts. We don't see that anxiety about the proposal can be dealt with other than by providing an open forum for people's concerns. It can't be dealt with by placing unwarranted restrictive conditions on a proposal; such an approach would undermine fair and orderly planning and only feed misunderstanding, implying that there was indeed something to fear when there was not.

Aaron Bennett asked:

If the majority of Miners Rest doesn't want the saleyards, why are you going ahead with this idea?

⁴⁶ This was a lesson from the Learmonth proposal and which is referred to at page 8 of the Council Report of 22 April 2015.

It is a long established principle that it is not simply a community's perceptions that should be considered but whether these perceptions were reasonable. As stated in a Victorian Supreme Court decision:

In every decision, in which discretions are exercised of the kind required to be exercised in town planning applications, the responsible authority or the Tribunal must assess as best it can the weight of all the relevant considerations and seek to evaluate them in order to reach a conclusion. As a matter of fact an opinion held by a large number of residents may be given greater weight than the views of a few cranks, but it is for the relevant body to assess that in each case and, if it reaches a conclusion that a particular perception is unreasonable, then surely it does not have to give it substantial weight or indeed any weight.⁴⁷

Evaluating perceptions plainly means more than simply having regard to the number of objections; it requires consideration of their substance.

A panel or Tribunal cannot blindly accept the subjective fears and concerns expressed in the public submissions and must look to the evidence that could be objectively assessed before a finding could be made of an adverse effect upon the social life or amenity of the area. In the current case there is no evidence of any discernible impact on the built up areas of Miners Rest.

While a panel or Tribunal is entitled to have regard to the views of residents of the area, those views would be accorded little, if any, weight if there was no objective, specific, concrete, observable likely consequence of the establishment of the proposed use.

Assessment of social impacts does not require a formal Social Impact Assessment report. Such reports should only be required where there is some *prima facie* reason for thinking that there could be a social impact that would benefit from a more detailed exploration.

In the current case there has been a range of environmental and amenity impacts that present a *prima facie* case for a more detailed assessment. There have not been social impacts that present the same *prima facie* case in this instance. Community outrage is not a sufficient reason. In the example above of lighting a netball court, a Social Impact Assessment would assess whether there was currently a shortage of facilities, whether additional teams would use the facility, and these assessment could be based on community interviews and studies. In the case of the proposed saleyards there is no broader social impact to study that is not based simply on people's perceptions.

⁴⁷ Unreported, Supreme Court of Victoria, Ormiston J, 2 December 1988 ('Nicholson'). Quoted in Stonnington City Council v Lend Lease Apartments (Armadale) Pty Ltd [2013] VSC 505 (19 September 2013)

(v) Conclusion

We conclude:

- There are no discernible social impacts that would flow from the proposal apart from some sections of the community simply not wanting the proposal to go ahead. Amenity issues are addressed in other chapters of this report.
- In this case there are no social impacts identified that we can see would benefit from formal exploration by way of a Social Impact Assessment report.

6 Traffic and car parking

6.1 The issues

The issues are:

- whether traffic associated with the proposal will unduly impact on the local road network and whether the proposed measures and planning controls will be effective in ameliorating these impacts
- whether the access to the site is appropriate
- whether sufficient on-site car and truck parking is provided.

6.2 What technical assessment was carried out

In support of their request for the Amendment, the Proponent submitted to the Council a traffic assessment report prepared by the Traffix Group.

This traffic assessment evaluated:

- the exiting road network surrounding the site
- the likely traffic impacts of the proposed development
- the capacity of the road network to accommodate the traffic likely to be generated by the saleyards
- the capacity and effectiveness of a proposed truck diversion route including truck turning movements at certain intersections
- the location and design of the proposed entry/exit point for the facility including the design's capacity to handle the expected truck volumes
- the safety of the location and the impact on the operation of the Sunraysia Highway
- car and truck parking requirements.

In assessing the potential traffic and parking impacts of the saleyards proposal, we considered whether:

- the surrounding road network has the capacity to handle the traffic generated by the proposed saleyards and the proposed measures, and specifically the truck management plan, are adequate to ameliorate the impacts of additional traffic
- the proposed entry/exit point to the site will be safe
- the car and truck parking to be provided on-site is acceptable with respect to the planning scheme car parking provisions.

6.3 Capacity of the road network

6.3.1 Evidence and submissions

Submitters raised the following concerns in relation to traffic:

- the saleyard will generate an unreasonable increase in traffic and lead to a deterioration in the surrounding road network especially in Miners Rest
- increased traffic, especially heavy vehicle traffic, will increase the risks to other road users, cyclists and pedestrians including in proximity to the local Primary School and kindergarten

- the advisory truck route and the truck management plan in diverting trucks around Miners Rest may not be effective
- the potential for saleyards bound traffic to use Dowling Road (an unsealed road) as a short cut between the Western Highway and the Sunraysia Highway.

At the Hearing the following additional concerns were raised:

- there would be delays on the Sunraysia Highway due to slow moving trucks entering or leaving the saleyards which could result in other traffic seeking alternative routes through Miners Rest
- in the future high productive vehicles such as B-triples would be used for livestock transporting and what impact these vehicles could have on Miners Rest roads.

Mr Walsh of Traffix Group prepared a traffic impact assessment. In summary,⁴⁸ Mr Walsh indicated that:

- With the available regional network routes to and from the site, the level of additional heavy vehicle traffic through Miners Rest was expected to be very low in realistic terms and not materially different to the current use of the Ballarat-Maryborough Road as an access route to the existing saleyard.
- Notwithstanding the expected low volumes travelling through Miners Rest, a Truck Management Plan, that encourages heavy vehicles to use a diversion route via Sunraysia Highway to Learmonth-Sulky Road to Ballarat-Maryborough Road, is an appropriate strategy to minimise heavy vehicle traffic through the Miners Rest township.
- To accommodate B-double vehicles along this route it is recommended improvement works are constructed at the intersection of Learmonth-Sulky Road and Ballarat-Maryborough Road to accommodate the B-double movement from north to west.

As to the efficacy of the proposed truck management plan, Mr Walsh considered it would be influential particularly on regular drivers to the site. He noted that it would be likely that drivers of large vehicles would be regular visitors to the site. With directional signage along the proposed truck diversion route and a site induction briefing for drivers, he believed that the truck management plan would be effective in minimising heavy vehicle traffic through Miners Rest.

Mr Walsh expected that there would be a minimal number of B-doubles seeking to use Ballarat-Maryborough Road even though the route was a designated B-double route. Mr Walsh expressed a high degree of confidence in the traffic analysis as it was based on good data from the Ballarat Saleyards including the origin/destination of visitors.

Mr Walsh did not anticipate that there would be use of Dowling Road by saleyards traffic. It was not a designated B-double route and from his experience truck drivers preferred to stay

⁴⁸ Summary prepared by the Panel based on Mr Walsh's statement to Planning Panels Victoria, dated 12 June 2015

on paved roads. Should use of Dowling Road emerge as a problem, the Council could impose a load limit.

The Proponent responded to the concerns about increased truck traffic through Miners Rest by saying:

The proponent relies on the evidence of Mr Walsh of the Traffix Group. Mr Walsh's analysis:

- *Considers the directional input from existing vendor and purchaser activity at the CVLX and identifies the directions from where this activity is derived and therefore the probable vehicle routes used. Mr Walsh considers the various proportions of travel from each direction.*
- *Demonstrates that there are already vehicles travelling through Miners Rest to attend the CVLX site currently within Ballarat.*
- *Confirms that at its highest, the case of the submitters can only be that this site continues to encourage trucks to use the road through Miners Rest in the same numbers and proportion as currently.*

The proponent has identified an alternate truck route using designated B-double routes that will bypass Miners Rest. The proponent puts its case on the basis that it will consent to an operational condition and undertake reasonable works to facilitate the use of the alternate truck route.⁴⁹

The Proponent submitted that a strength of the proposal was its location at the confluence of the Western and Sunraysia Highways, with the site ideally situated for a use which involves numerous truck movements.

VicRoads is more concerned about a likely increase in the number of heavy vehicles. It acknowledged that it was difficult to control the routes used by trucks as B-doubles are permitted to use all arterial roads.

The Council's traffic engineers evaluated the traffic assessment prepared by the Traffix Group.

Council informed the Panel that:

Having reviewed this material and considering the development implications associated with the proposal, Council's traffic engineers were satisfied that the increased levels of traffic activity generated by the development would be within an acceptable range for the surrounding road network. Moreover, Council's engineers concluded that the movements would be well within the road capacity.⁵⁰

Council noted submitters' concerns regarding the volume of truck traffic and the impact that this would have on local roads and advised:

⁴⁹ Merits submission on behalf of the Proponent, para 43, page 10.

⁵⁰ Submissions on behalf of Ballarat City Council, para 284, page 66.

Council agrees with the data analysed in the Traffix Group evidence that generally, vendors and buyers who visit the saleyards are broadly located throughout Victoria, with a relatively small percentage of locally generated traffic. Further, Council is comfortable with the conclusion that the majority of traffic is likely to be attracted to the primary roads (Western Highway (east-west) and Midland Highway (north-south)). Of those vehicles most likely to use the Ballarat-Maryborough Road (towns such as Blowhard, Clunes, Talbot and Maryborough), the data indicates that the level of traffic would be relatively small (ie. up to 6 additional vehicles for sheep vendors, 1 additional vehicle for prime cattle and 5 additional vehicles for store cattle for the relevant unload periods). Council's traffic engineers agree that this traffic is likely to already utilise this access arrangement for the existing facility in Delacombe.

Notwithstanding this, Council would support the preparation of a truck management plan illustrating the alternative route as set out in the Traffix Group report which implements a diversion route via Sunraysia Highway to Learmonth-Sulky Road to Ballarat-Maryborough Road.⁵¹

Council noted that the Traffix Group had recommended improvement works at the intersection of Learmonth-Sulky Road (a local road) and Ballarat-Maryborough Road (an arterial road) and that while the Council would await the outcomes of VicRoads review, its engineer had advised that some works would be necessary at this location.

Council did not anticipate that saleyards traffic from the west would use Dowling Road as it was an unmade road and its roughness is undesirable for trucks carrying stock, also noting the use of Dowling Road would require right hand turns into Pound Hill Road and then into the Sunraysia Highway. Council did not consider that the sealing of Dowling Road had a nexus to the proposal and it did not consider it appropriate to seal the road in the circumstances.

Council reiterated its view that:

The development of the saleyards on the subject land is unlikely to alter current traffic movements from the north, and therefore will have minimal impacts on saleyards traffic moving through Miners Rest. The implementation of a Truck Management Plan through the development plan conditions and requirements could serve to improve existing conditions.⁵²

(i) Mitigation Works

VicRoads had previously advised the Council that it was not opposed to the proposed amendment but requested that several changes be made to the Schedule to the Special Use Zone.⁵³

⁵¹ *ibid*, paras 290 and 291, pages 67 and 68.

⁵² Closing submissions on behalf of Ballarat City Council, para 46, page 11.

⁵³ VicRoads letter to Ballarat City Council dated 18 March 2015.

Some of VicRoads' issues had been addressed with the outstanding issues being VicRoads' recommendations that:

- Vehicle activated electronic signage be installed along the westbound on ramp at the Western Freeway/Sunraysia Highway interchange.
- Improvement works be undertaken at the intersection of Sunraysia Highway and Learmonth-Sulky Road and the intersection of Ballarat-Maryborough Road and Learmonth-Sulky Road as there is potential for B-double truck movements to damage the edges of the road pavement at these.

Mr Walsh did not consider that vehicle activated advisory speed signing, for westbound traffic on the Western Highway access ramp is necessary as a result of the saleyard proposal. He noted that the access route for traffic travelling south-eastbound to westbound from Sunraysia Highway to Western Highway is an approved access route under VicRoads' B-Double Network. From his observations, a B-double can comfortably negotiate the access ramp in wet conditions and there are no concerns with the existing width, radii or super elevation of the road.

In relation to vehicle activated advisory speed signing, the Proponent submitted that:

... it is Mr Walsh's view that this is not something that has a nexus to the level of traffic that would be generated in that direction. On peak days Mr Walsh estimated that this might amount to four B-double vehicles entering the Western Highway and travelling west, and when put to him in re-examination whether his view would change if he was out by a factor of 150% (that is, that there were 10 vehicles travelling on the west) it was his view that his opinion would not change.⁵⁴

In relation to the improvement works, the Proponent argued that it was not appropriate for VicRoads to rely on the Proponent to undertake the additional works given that it was estimated that only one B-double truck might use that route and on the evidence of Mr Walsh, turning circles show that B-doubles can already negotiate the Learmonth-Sulky Road/Sunraysia Highway intersection.

The Western Highway interchange and the Learmonth-Sulky Road are both designated B-double routes and will both operate well under capacity should the development proceed. The Proponent suggested that while both are arguably matters of detailed design and relate to the preparation of the development plan, the Panel should be in a position to proffer a view on whether a nexus exists between the proposal and the works requested by VicRoads and therefore whether the Proponent should bear the cost of the works.

The Proponent concluded:

Notwithstanding this narrow dispute upon the issue of ameliorative works, it is clear from the position of VicRoads and the evidence of Mr Walsh that there is no traffic reason why this proposal should not proceed.⁵⁵

⁵⁴ *ibid*, para 47, page 12.

⁵⁵ *ibid*, para 54, page 13.

(ii) B-Triples

The Proponent disagreed with the contention that site may have difficulty in accommodating B-triple vehicles. There is no lawful route by which B-triples can access the site but it is large and relatively unconstrained and if required in the future it could accommodate B-triples without difficulty in terms of operations or a substantial change in layout that would not be generally in accordance with the concept plan.

Mr Walsh acknowledged that the use of higher productivity vehicles such as B-triples has been discussed in recent years and there was a process to investigate suitable routes. He affirmed that there are few designated B-triple routes in Victoria and none approved in the area of the proposed saleyards site. He added that there might be some trend towards the use of B-doubles to replace semi-trailer trucks but this is a general trend and not in response to the new saleyards. These larger vehicles would more likely take animals from the saleyard to abattoirs than be used to pick up animals from farms.

In response to questions at the Hearing, VicRoads stated that it was not concerned about B-triples as these trucks are restricted to use a limited number of roads within Victoria which prevents B triples accessing the site.

6.3.2 Discussion

The proposed saleyards is a substantial facility and it is inevitable that it will generate traffic, a significant proportion of which will be heavy vehicles. It is understandable that residents hold concerns over the impacts that the additional traffic may have on the amenity of the Miners Rest township. We read in submissions and heard at the Hearing some strong views from some local residents and we accept that these views are genuinely held.

The evidence presented to us shows, however, that the volume of traffic likely to be generated by the proposed saleyards can be accommodated on the surrounding road network. The subject site is well located in terms of access being at the conjunction of the Western Highway and the Sunraysia Highway and access from the northeast is provided by the Midlands Highway. The level of access provided by the surrounding arterial road network was cited by the Proponent and others as one of the key advantages of the site.

In respect of the prospect of traffic from the northeast using the Ballarat-Maryborough Road and filtering through Miners Rest to the Sunraysia Highway to gain access to the saleyards, we agree with Mr Walsh that the volume of traffic from the northeast would be relatively low and there would be no more trucks using the Ballarat-Maryborough Road than currently uses this route to the existing Ballarat Saleyards.

We note that the truck diversion route is advisory only, and there are no plans to prohibit trucks including B-doubles from using other arterial roads in the area including those through the township. We accept that some trucks will continue to use roads through Miners Rest including to access local services. That is the case now. While the diversion route along Learmonth-Sulky Road to the Sunraysia Highway is slightly longer and perhaps less direct than using Ballarat-Maryborough Road and Albert Street, we think that with appropriate management, the diversion route will be effective in further minimising the number of trucks using roads through Miners Rest. The proposed intersection works, route

signage and promotion of the route to truck drivers will be important in attracting trucks onto the diversion route.

The use of Dowling Road by trucks travelling to the saleyards seems unlikely in our view. Dowling Road is unsealed and as noted above it would require drivers to make three right rather than two left turns (from the Western Highway onto the Sunraysia Highway and then into the site). We see no merit in the case for the sealing of Dowling Road due to the proposed saleyards.

The Proponent and VicRoads remain in dispute over the nexus between the proposed saleyards and the need for two additional treatments:

- on the west bound on ramp from the Sunraysia Highway onto the Western Highway
- widening of the pavement at the intersection of Learmonth-Sulky Road and the Sunraysia Highway to prevent damage to the pavement edges by turning B-double trucks.

As to the vehicle actuated advisory speed signs, Mr Walsh made the point that this was already a B-double designated route, there would be at most four additional B-doubles using this ramp from the saleyards and there was therefore no justification for VicRoads to request the Proponent to fund vehicle actuated signage, the cost of which Mr Walsh estimated at around \$20,000. We drove this route and found that it was a tight turn even for a car travelling at the 50 km/hr advisory speed. It goes without saying that vehicle safety is paramount. While there may be some merit on safety grounds to install vehicle activated signage at this location, the ramp is part of a designated B-double route under the control of VicRoads and in our view it is for the road authority to fund the additional signage should it consider them necessary.

A similar argument can be made in relation to the pavement widening at the intersection of Learmonth-Sulky Road and the Sunraysia Highway. Again the intersection is on a designated B-double route and although disputed by VicRoads, it would appear from the turning circles presented by Mr Walsh that B-doubles could successfully make turns at this intersection. The Proponent argued that there was no nexus between its development and the works requested by VicRoads to prevent damage to the road pavement edges. We think that the case put by the Proponent is at one level a reasonable one. We suggest, however, that there is a further consideration. This intersection is to be part of the truck diversion route which the Proponent has presented with some enthusiasm as a corner stone of the Truck Management Plan. All reasonable steps should be taken to facilitate truck movements on the route to make it as attractive as possible to heavy vehicle drivers. It would seem to us that the relatively low cost of the pavement works is a small price to pay for the Proponent in demonstrating to the community its commitment to promoting the truck diversion route.

We heard from the Primary School Council representatives and others about their concerns over road safety in the area around the school and kindergarten and we were provided with a safety audit done in 2014. The work of the School and the community to improve the safety of children and others is commended. While we appreciate that the possibility of additional traffic on roads near the school would add to the concerns held, the evidence presented to us indicates that the prospect of more traffic in the area due to the saleyards

would be unlikely. We note that the potential risks identified in the safety audit exist now. Works such as the construction of footpaths to mitigate these risks is a matter for the Council irrespective of whether the Amendment is approved and the saleyards are built or not.

6.4 Site access

6.4.1 Evidence and submissions

Some submitters expressed doubts over the safety of the access point and suggested that this was the only safe passing area on the Sunraysia Highway for vehicles and other road users in the vicinity of the proposed site. They considered that given the large increase in truck traffic, local traffic will be restricted and potentially be placed in danger. Concerns were also expressed over the limited line of sight (suggested to be approximately 100 metres) from the crest of the ramp over the Western Highway to vehicles turning left from the Western Highway on to the Sunraysia Highway.

VicRoads was satisfied with the design of the entry/exit arrangements for the site from the Sunraysia Highway noting that the design was based on the relevant guidelines.

VicRoads advised that in its assessment:

Amendment C185 will significantly increase heavy vehicle movements along the Sunraysia Highway, Western Freeway and surrounding road network. It will require mitigation works at the proposed access arrangements on Sunraysia Highway, on the existing westbound on ramp at the Western Freeway/Sunraysia Highway interchange, and intersections along (the) alternative route.⁵⁶

VicRoads recommended that:

- *The Development Plan must be submitted to VicRoads for review and approval.*
- *The proposed access arrangements on Sunraysia Highway must be constructed in accordance with the functional layout plan (Drawing No: G15152-01) and to the satisfaction of VicRoads.*
- *No gate is permitted to the access of the development site and all vehicles should be permitted to enter the parking spaces at any time.⁵⁷*

Mr Walsh also assessed the proposed access point design and local mitigation works. In summary,⁵⁸ in his written statement to the Panel, Mr Walsh indicated that:

- the Concept Layout Plan for the proposed site access point from the Sunraysia Highway was appropriate and can cater to B-double and other vehicles accessing the site

⁵⁶ VicRoads submission, page 2

⁵⁷ *ibid*, page 4

⁵⁸ Summary prepared by the Panel based on Mr Walsh's statement to Planning Panels Victoria, dated 12 June 2015

- the proposed access intersection would operate under satisfactory conditions given the level of traffic expected to be generated to and from the site during the peak period and that existing volumes on the Sunraysia Highway are relatively low
- the proposed site access location was selected to maximize the available sight distance for traffic entering and leaving the site and the sight distance available in both directions meets the Safe Intersection Sight Distance requirement (of 332 metres) as set out in the relevant AustRoads Guide to Road Design.

At the Hearing, Mr Walsh reiterated his view that the design of the access point from the Sunraysia Highway meets design standards, the volumes on the Highway were relatively low and there would be sufficient gaps in the traffic to allow safe entry/exit for the site. In response to questioning, Mr Walsh indicated that bigger sale days could be accommodated (albeit with longer queues of existing vehicles on the site) and even then the volume of traffic generated by the saleyards was still not significant. He noted that his analysis of data on the location of vendors and buyers at the Ballarat Saleyards indicated that the primary routes to/from the proposed saleyards would be via the Western Freeway and the Midland Highway.

Council noted that the Traffix Group assessment required that safe access to the site would require localised widening of the Sunraysia Highway to accommodate a channelised short right turn lane and a short auxiliary left turn lane but otherwise these access arrangements would not materially impact the operation of the Sunraysia Highway. Council added that its engineers had reviewed the arrangements and confirmed that sight distances meet AustRoads design requirements.

6.4.2 Discussion

Access to the site would be provided from the Sunraysia Highway. We heard evidence from Mr Walsh and submissions from VicRoads that the location and design of the entry/exit point met the required standards with respect to sight distances and inclusion of right hand turn and left hand turn entry lanes.

Like some of the local residents, we initially held some concerns over the location and design of the entry/exit point, noting that exits lanes onto the Sunraysia Highway were not included. At the Hearing, Mr Walsh responding to a question about exit slots by explaining that on the contrary, adding exit slots onto the Sunraysia Highway would add to the risk of accidents because the evidence is that drivers are encouraged by exit slots to attempt to take smaller gaps in traffic. From a safety perspective, it was better to encourage drivers to wait for larger gaps even if that meant delays and longer queues of vehicles waiting to leave the site. Mr Walsh also confirmed that the sight distances for traffic entering and leaving the site at the proposed access point met the AustRoads guidelines.

On a subsequent visit to the site, we looked again at the sight distances and vehicle travel times particularly from the east being in mind the advice provided by Mr Walsh. We also noted the point made by Mr Walsh that traffic volumes on the Sunraysia Highway are relatively low even during peak saleyards entry/exit times and therefore sufficient gaps occur in the traffic for the safe operation of the access point. We are now satisfied that the proposed location and design of the access point is appropriate and are comforted by the

fact that the access arrangements will be subject to further examination as part of the requirement in SUZ15 for a Car Parking and Traffic Management Plan.

6.5 On-site parking

6.5.1 Evidence and submissions

Mr Walsh indicated that the Concept Plan made suitable provision for car and truck parking on site and therefore a partial waiver of the statutory car parking requirements was justified.

Council considered that the 249 car spaces of the main car park area with the additional 100 spaces in the grassed overflow area (equating to approximately 8720 square metres of land set aside for car parking) together with the allowance for 40 trucks (over 4400 square metres) plus a manoeuvring area were adequate to meet requirements. Council was satisfied with the proposed parking despite the area set aside for parking being substantially less than the 10 per cent of site area required under Clause 52.06 of the Planning Scheme.

Council noted that SUZ15 calls for the details of all parking, circulation spaces and loading areas and that these details will be examined by Council's engineers when considering the development plan to ensure compliance with all relevant design standards.

Council submitted that the Amendment can be supported on grounds related to parking.

6.5.2 Discussion

We heard no arguments against granting the waiver on the reduced amount of car and truck parking on site compared to the requirements of the planning scheme. We concur with the requirement requested by VicRoads that there be 24/7 access to the site to discourage on-road parking near the site entrance.

We note that SUZ15 has a requirement for a development plan to include a Car Parking and Traffic Management Plan which addresses matters such as:

- likely traffic generation and impacts on the surrounding road network
- access arrangements
- vehicle parking areas and loading and unloading areas
- a truck management plan that identifies heavy vehicle truck routes which minimise impacts on townships and peripheral housing to the extent practicable, including driver induction protocols
- traffic management, including external intersection and internal road design; and
- a Traffic Impact Assessment Report to the satisfaction of VicRoads.

We endorse this requirement in SUZ15 to allow for further detailed scrutiny of parking and traffic impacts at the development plan stage.

6.6 Conclusion and recommendation

We conclude that:

- the traffic and parking analysis is sound and demonstrates that the surrounding road network has the capacity to absorb the additional traffic generated by the proposed use of the site for saleyards
- the impact of the generated traffic on Miners Rest is likely to be minimal and the measures proposed for inclusion in the Truck Management Plan will ameliorate any impact that may occur
- a nexus between the proposed saleyards and the vehicle actuated speed advisory sign on the west bound ramp to the Western Highway, as requested by VicRoads has not been established
- there is some merit in the pavement widening at the intersection of Sunraysia Highway and Learmonth-Sulky Road so as to enhance the attractiveness of the truck advisory route by facilitating turning movements at the intersection. This measure and who meets the cost should be considered further during the preparation and approval of the development plan
- the waiver to grant a reduction in car parking is appropriate
- there is no basis on traffic and parking grounds to warrant abandonment of the Amendment.

We recommend:

In Special Use Zone Schedule 15 include a requirement that the access point from the Sunraysia Highway must not be gated.

7 Visual and vegetation impact

7.1 The issue

The issue is whether the visual and vegetation impact of the proposal will be acceptable.

7.2 What technical assessment was carried out

It is proposed to plant perimeter landscaping around the proposal.

Mr Gibson of the firm Biosis undertook a review of native vegetation on the subject land. Mr Gibson identified that there are no native vegetation constraints to the proposal proceeding. Mr Gibson's evidence in respect of native vegetation was unchallenged.

In respect of landscape and visual amenity issues, we were presented with the evidence of Mr Schutt.

It is necessary to assess Mr Schutt's evidence in light of the conceptual stage of the proposal. The proposal is at the stage of a Planning Scheme Amendment and appropriately, detailed design is yet to occur.

Mr Schutt's task was threefold:

- Firstly Mr Schutt undertook a contour assessment of the land and surrounds to identify the potential (but not necessarily likely) public vantage points from which a person might view the proposal having regard to the identified heights of the various components of the facility.
- Adopting these vantage points he has then considered the appropriate locations for preparing montages to depict the likely visual impact of the proposal.
- Mr Schutt then completed the montages to enable him to assess the appropriate mechanisms for landscaping on the land.

Mr Schutt's evidence was useful in understanding the scale and visual impact of the proposal.

What the montages establish is that when viewed from the land to the east, the facility will largely be invisible due to the topography of the site itself. This equally applies to much of the land within Miners Rest itself.⁵⁹

The proposal will be more easily seen from the west and the Western Highway.

7.3 Visual impact assessment criteria

State and local policy calls for consideration of the natural, cultural and strategic context of new developments. Local policy in particular encourages the use and development of land in a manner that enhances and protects identified landscape values.

⁵⁹ See in particular 'View Location 1'.

7.4 Submissions and evidence

7.4.1 The submitters' concerns

Residents expressed concerns regarding the visual impact of the development. Some submitters were concerned about the direct views from their own properties, others were concerned about views from the public realm and the effect this would have on people enjoying walking around Miners Rest.

In terms of ameliorative treatments the montages establish that, because of the higher topography of the Western Highway relative to the site, landscaping at the boundary is not the preferred mechanism for treatment for views to and from the Western Highway. This is because the site rises towards the Western Highway and therefore perimeter planting will provide limited filtering of the structures, as viewed by a seated individual in a vehicle looking north towards the site.

For this reason perimeter planting on the southern boundary will need to establish to a height of around 3 to 5 metres before it provides a substantial visual filter. Accordingly, landscape treatments closer to the structure will achieve a better filtering of views.

The landscape plans submitted with the planning report exhibited for public comment adopted perimeter plantings to the north, south, east and west boundaries. The Proponent submitted:

- A facility such as that proposed can be accommodated into the robust farming land that surrounds the site and would not meaningfully alter views from the township itself.
- As to the treatment at the south of the facility, Mr Schutt's proposal for landscaping closer to the facility is a more appropriate methodology of landscaping than perimeter landscaping.
- The views from the vast majority of houses in the Miners Rest area will not change.

The proposed zone schedule will require that there be lighting control and assessment at the time of the development plan.

There is no visual or landscape rationale for refusal of the Amendment.

Council considered that the landscaping scheme would retain and reinforce the traditional landscape character of the area, noting that the site is located at the junction of two major roads and benefits from a significant rise in the eastern paddock. Further, under the proposal the existing landscaping on the subject land would be improved with perimeter plantings of indigenous trees, shrubs and grasses. This would extend and reinforce habitat values, soften the visual impact of the buildings to the surrounding areas and help integrate them into the landscape.⁶⁰

⁶⁰ Council submission p15

Mr Dixon submitted:

If the outcome of this process sees the site approved for rezoning, and planning approvals are supported, and the facility is established, we seek to have certain issues considered with strict conditions imposed on the construction of the facility, the conditions being along the lines of:

- *To assist in mitigating the radiation of noise, the movement of smell dust and light from the facility provide extensive landscaping along the Western boundary of the site In the area where it is indicated, 'no treatment or specific landscaping', a significant number of large and medium sizes trees (mature) should be planted in a manner to create a natural barrier.*
- *Dowling Road should be sealed as it is inevitable that vehicle movements will increase, therefore a sealed road provides a dust free and safer surface to support any vehicle movements.*

The Proponent submitted that it was reasonable that the site be visible, but visibility does not amount to an unacceptable impact. Mr Schutt's evidence, particularly in relation to intervening topography, is also relevant in relation to the impact of lighting – that it is the eastern direction in which the majority of the population reside and it is also the direction which is best shielded by the hillock at the east.

7.5 Discussion

In relation to this type of evidence VCAT has indicated previously that montages are an aid to interpretation of a proposal but are not determinative. The Tribunal's commentary is made in a point in time on the planning continuum (from the generation of an idea to the approval of a finalised design) at the concluding end of the process.

In this case, the purpose and effect of the montages is not to assess a specific proposal or to seek to identify the specific urban design attributes of a proposal but rather to assist in answering the question of whether a large roofed structure such as that proposed in this case be accommodated in this landscape.⁶¹

There is no doubt that the facilities on the site will be visible from some locations, though they will not be as prominent as many submitters fear and not out of keeping with farm sheds.

The Miners Rest area is typical of many rural areas around Ballarat and indeed Victoria. Though not unattractive, it is not an area recognised for its natural beauty. The use does present large expanses of blank walls that are found with industrial and warehouse buildings and though the roofed yards are large they do not read as an urban use. Policy supports the establishment of saleyards in rural areas, so unless there were some local special visual impacts the use must be considered visually acceptable.

⁶¹ In noting this question, the site as modelled is the buildings only. It does not have the outbuildings or dams that would sit comfortably within the rural context.

The subject site will be landscaped and properly constructed and managed. There is no risk of a general degradation of the site or surrounding area. Clearly the purpose built facility at Barnawartha North, for example, presents a much better aspect than the current Ballarat saleyards in terms of general appearance.

The site is already cleared and there will be no vegetation impact from removing vegetation.

The facility, where visible, will not block important public views.

In the matter of *D&N Haw v Shire of Campaspe* (1998/11871), the Tribunal found that a Saleyard is a use which supports the surrounding agricultural use of the land and more broadly the surrounding region. After considering several amenity-based concerns expressed by the residents who had objected to the proposal in that matter, the Tribunal concluded:

In broader terms, the Haws simply feel that their whole lifestyle is threatened by what is proposed here, both with respect to the enjoyment of their home and to its future value. The Haws have a very attractive property⁶² with a pleasant garden which they have established themselves and there is no doubt that there will be a significant impact on them. The question is whether this impact is unreasonable in the context of the rural zoning of the land and the need for a facility of the type proposed within a reasonable distance of the Echuca township. The Tribunal considers it would be very difficult for the Responsible Authority to find a property where there would not be an impact on one or more rural dwellings.

The Tribunal concluded that a permit should issue for the proposed development, subject to additional measures being included in the permit to protect, as far as possible, the amenity which was enjoyed by the residents.

We accept that the outlook from certain properties will change and the saleyards will be visible from a number of dwellings. These types of changes are part and parcel of the changes that will occur in Ballarat as it grows and changes, as they occur in all areas undergoing growth. The use will be landscaped and over time this will soften the development and allow it to sit better in the landscape.

We accept that the planting is best carried out as tube stock. While this will mean a greater impact in the shorter term, this approach has the best chance of establishing healthy and vigorous landscape in the medium to long term.

7.6 Conclusion and recommendations

We conclude:

- The visual and vegetation impact will be acceptable in a rural context.

⁶² The objectors' property in this case lay some 600 metres to the south-east of the proposed saleyards.

8 Noise impacts

8.1 The issue

The issue is whether noise from the proposed saleyard will comply with the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No N-1 1989 (SEPP N-1) and EPA's guideline *Noise from Industry in Regional Victoria (NIRV)*, as applicable to the relevant zoning.

This applies to the ten houses closest to the Saleyards as the houses in Miners Rest township will not be materially affected by noise from the facility.

8.2 What technical assessment was carried out

(i) Noise testing

Noise assessments were undertaken by Marshall Day Acoustics (MDA)⁶³ and SLR Consulting Australia Pty Ltd⁶⁴ (SLR). Mr Antonopoulos of SLR presented his assessment in an expert witness statement. EPA engaged Watson Moss Growcott Acoustics (WMG)⁶⁵ to review both MDA and SLR assessments.

Mr Antonopoulos identified the main sources of noise as being:

- truck operations including ingress and exit from the site, reversing and manoeuvring into the loading bays
- metal gates opening and closing
- cattle lowing which continued throughout the night and the only source of noise that extended into the night time period
- the truck wash
- noise from barking dogs during the sheep sales.

MDA identified the main sources of noise as being noise from livestock and truck movements.

SLR undertook noise testing at the existing Ballarat saleyard. Mr Antonopoulos and his colleague took noise measurements at the existing Ballarat saleyard and the Barnawartha saleyards. In its assessment SLR utilised MDA's background measurements made at six residential locations closest to the proposed site while MDA used data from its noise database for its assessment. SLR also used data from the Traffix Group report *Existing BLSC Sales & Truck Breakdown Data by Day* to inform its assessment of truck noise.

⁶³ Marshall Day Acoustics Proposed Relocated CVLX Saleyards – Ballarat, Noise impact assessment, 28 August 2014.

⁶⁴ SLR Consulting Australia Pty Ltd, Central Victorian Livestock Exchange, Miners Rest, Expert Witness Statement – Noise Impact Assessment, 12 June 2015.

⁶⁵ EPA submission, Appendix B: Watson Moss Growcott Acoustics, Proposed Central Victorian Livestock Exchange, Miners Rest, review of Marshall Day Acoustics Noise Impact Assessment and SLR Consulting Australia Pty Ltd Expert Witness Statement – Noise Impact Assessment, 22 June 2015.

Mr Antonopoulos's assessment was undertaken more recently than the MDA assessment. As such some of the material Mr Antonopoulos relied upon was produced after the MDA assessment. It included for example a revised conceptual site layout (Geolyse 3/6/2015), the building layout drawings (MKM Constructions 3/2015), cattle and sheep sales from 2010-2015 which was provided by the Proponent, details about truck movements also provided by the Proponent and the Traffix Group data.

The two consultants also used different calculation methods in their models but both used the SoundPLAN noise modelling software.

Concerns about the testing

Ms Bennett asked Mr Antonopoulos if, in his calculations, he had included the very loud noise of a deck being dropped in a sheep transport truck that was in the process of being washed. Ms Bennett likened this noise to a gun going off. Mr Antonopoulos said that he had collected all sorts of loading and unloading noise data but he had not considered changing decks.

In relation to banning reversing beepers, and in response to questioning by Mr Tillett, Mr Antonopoulos said that he included these in his measurements and applied a noise adjustment to account for them. However he said the noise from reversing beepers did not stand out at Barnawartha and that it would be difficult to implement a ban on reversing beepers due to the range of trucks delivering and picking up livestock.

A number of submitters were concerned about the noise from weaners bellowing for their mothers. Noise testing undertaken by Mr Antonopoulos and his colleague at Barnawartha and the current saleyard included weaners with weaners representing more than 80 percent of the cattle for sale on that day when measurements were taken. Therefore the bellowing noise of weaners separated from their mothers had been taken into account in Mr Antonopoulos's assessment.

(ii) Assessment of modelled noise

The modelling assessed noise during different periods of the day and night and used noise from different inputs depending on the time of day. MDA did this by modelling twelve different scenarios. For example the night time period was modelled with or without cattle present and with or without a generator operating. It included noise from truck movements and the truck wash operating in all scenarios. Mr Antonopoulos took a different approach. He modelled four scenarios using the noise monitoring data collected during visits to Barnawartha and the current saleyards and assessed these under two different meteorological conditions.

Both MDA and Mr Antonopoulos present their modelling results for the closest residences although they did this in different ways. MDA provides predicted noise levels for each residence and for each of its twelve scenarios while Mr Antonopoulos provided predicted levels for each of his four scenarios under neutral conditions meteorological conditions when there is little or no wind between the source and the receiving residence (termed category 4), and under what it termed worst case enhanced conditions meteorological conditions (category 6) when there is for example wind favouring sound propagation

between the source and the residence. Mr Antonopoulos only considered one scenario which involved noise from sheep as he observed sheep to be much quieter than cattle. Both assessments included noise from on-site truck movements.

Both MDA and SLR apply penalty adjustments to take account of impulsive and tonal characteristics of some types of noise for example the tonal sound of reversing beepers.

(iii) Road Traffic Noise

Both MDA and SLR considered the noise impact from increased truck traffic in the area that would occur as a consequence of the saleyard. Mr Antonopoulos provided a qualitative noise assessment of increased truck movements. He stated that on the Sunraysia Highway:

The addition of trucks on this road due to the saleyard operations will not represent a significant change in amenity to nearby residents who are already exposed to truck and traffic noise from the highway.

The only road Mr Antonopoulos expressed concern about in relation to traffic noise and its potential to disturb sleep was Learmonth-Sulky Road. In his assessment Mr Antonopoulos considered that there was one property which is within 50 metres of the road and would if the windows were open and if the bedroom faced the road then, based on the *NSW Road Noise Policy*, sleep could be disturbed. However during the Hearing Mr Antonopoulos said that having the windows closed can reduce noise coming from outside by as much as 20 dBA.

MDA took a different approach and made some suggestions on how traffic noise could be reduced including limiting the times when trucks could use the site, managing the routes the trucks used to access the site and limiting speeds on local roads. It also identified residences on Learmonth-Sulky Road that potentially would be affected by traffic noise but said that these residences already experienced similar noise levels from existing traffic.

8.3 Noise assessment criteria

As a result of the zoning pattern of land around the site assessment is required against both the State Environment Protection Policy SEPP (Control of Noise from Commerce, Industry and Trade) No N-1 1989 (SEPP N-1) and EPA's guideline *Noise from Industry in Regional Victoria (NIRV)*⁶⁶. Both these are referred to under Clause 13.04-1 *Noise Abatement* in the SPPF.

Both MDA and Mr Antonopoulos assessed noise against the more stringent Farming Zone criteria rather than the noise criteria for the proposed Special Use Zone. Mr Antonopoulos commented on this at the Hearing saying that if assessment were made against the SUZ then the limit would increase by 1 dB. He had used the Farming Zone criteria because 'he didn't want to alter the amenity expectations'.

⁶⁶ EPA Publication 1411, 28 October 2011.

MDA also considered EPA's Noise Control Guidelines⁶⁷ in its assessment. These guidelines provide advice on a range of common noise issues some of which are relevant to the saleyards: construction and demolition work, waste collections and public address systems.

In the absence of any Victorian criteria for traffic noise, particularly in relation to its potential to disturb sleep both MDA and Mr Antonopoulos made assessments against criteria included in the *NSW Road Noise Policy*⁶⁸, with Mr Antonopoulos also referencing other international guidelines on sleep disturbance caused by noise.

While livestock is excluded from the NIRV, Mr Antonopoulos included it in his noise assessment. We note that livestock was also included in the noise assessment for the Barnawartha Saleyard.⁶⁹

Determining the recommended maximum noise levels

Watson Moss Growcott noted a number of errors in both reports in determining the noise assessment criteria derived from SEPP N-1 and NIRV. These errors are found in the determination of the appropriate background levels. Watson Moss Growcott provided corrected criteria however EPA submitted that it will be necessary during the works approval process to confirm the appropriate criteria. The issue appears to largely stem from the determining the correct adjustments to be made to the zone levels although Watson Moss Growcott raised some additional concerns about the initial background levels measured at several of the sites.

8.4 Submissions and evidence

8.4.1 The submitters' concerns

Many submitters are concerned about the noise impacts the saleyard will have on their quality of life as it will alter the peacefulness and quiet of the area. Concerns were specifically raised about the noise from:

- the large number of animals on the site
- the bellowing of recently weaned calves calling for their mother
- the higher noise levels from animals in the unroofed section of the saleyard
- trucks accelerating and using air brakes when decelerating
- trucks being washed in particular the clunking sound when decks are lowered
- gates being slammed
- the public address system.

At the Hearing concerns were expressed that the noise will cause sleep disturbance and will affect the mental health of the people of Miners Rest.

In addition some submitters queried various aspects of the noise modelling and the uncertainty expressed about meeting the noise criteria in the SEPP and Guidelines.

⁶⁷ EPA Publication 1254, October 2008.

⁶⁸ Department of Environment, Climate Change and Water NSW, Publication 2011/236, March 2011.

⁶⁹ See *Margery & Anor v Wodonga CC* [2012] VCAT 787.

8.4.2 Results from the noise modelling

MDA results show that there is compliance with the applicable SEPP N-1 or the NRIV criteria at all residences. Mr Antonopoulos's results show that there is compliance at all but two residences where it is predicted that there will be an exceedance of 1 dBA Leq, both under worst case enhanced meteorological conditions. One predicted exceedance occurred at one residence under the scenario when cattle were being unloaded, the other during the night when there were 4300 head of cattle in the yard. For the other scenarios Mr Antonopoulos's predicted noise levels are several dBAs below the relevant criteria.

Mr Antonopoulos said that he considered the exceedances as insignificant due in part to the conservativeness in the approach he used.

Noise control measures

While noting that the modelling showed compliance, both Mr Antonopoulos and MDA provided some suggestions on additional noise control measures.

During his evidence Mr Antonopoulos said that he had perhaps been too conservative in his assessment and confirmed that he does not consider additional controls are necessary. However he added that if there are any changes in the design such as changes to buildings then noise will need to be reassessed because it is right on the limit. He also said that if you adopted all noise amelioration measures then you will get some impact. However he also emphasised that the additional noise reduction measures in his witness expert statement are not recommendations, just suggestions.

Mr Antonopoulos suggested:

- *Provision of rubber or similar impact isolating pads on gates and fences within the facility. The characteristic clunking and banging of these sources was notable and a penalty was applied in my assessment to account for these.*
- *Provision of a screen along the west side of the truck wash bay to cut line of sight to the nearest western receptor.*
- *Provision of a bund or screen along the east side of the cattle shed to shield the nearest eastern receptor from the cattle holding area.*

MDA's suggestions are:

- good practice with regard to animal treatment
- broadband reversing alarms
- selecting low noise equipment where possible
- use of excess fill to create bund walls for acoustic and visual screening
- regular maintenance of equipment.

In relation to a suggestion that the roof of the cattle pavilion be lined with sound absorbing material Mr Antonopoulos responded that cattle are very sound absorbent and the soft floor also absorbs noise so he did not consider that there would be a lot of benefit in lining the roof.

8.4.3 The EPA assessment

EPA engaged Watson Moss Growcott Acoustic to review the assessments made by MDA and Mr Antonopoulos and that assessment was appended to EPA's submission.

Modelling and assessment

EPA noted the differences in the calculation methods used for modelling noise although it did not indicate a preference and does not have a regulatory model to be used for noise assessment. Both methods are recognised and acceptable approaches. Regardless of the calculation method used EPA noted that all three consultants:⁷⁰

... concluded that the proposed development would comply with the NIRV/SEPP N-1 guideline noise levels for daytime, evening and night time, although at some locations, it shows only marginal compliance.

Impact on the local community

EPA also noted that:

The net increase in the worst affected receivers could be more than 10 dB above the existing levels.

After giving his evidence Mr Antonopoulos provided further written advice⁷¹ in response to EPA's submission that for worst affected receivers there could be an increase in noise levels of more than 10 dB above the existing levels. In his response Mr Antonopoulos said he interpreted EPA's comment as saying that the facility's operational noise could be more than 10 dB above the background noise level. Mr Antonopoulos reviewed MDA's report and data. He concluded that he still supported his original evidence and conclusions and assumes that when making this assessment the EPA had incorrectly made comparisons using different acoustical parameters rather than comparing like for like.

In light of its concerns EPA submitted based on its interpretations:

... the proponent will need to undertake an investigation into best practice reasonable and feasible noise control measures to reduce overall noise impacts. This is supported by the NIRV which provides that:

- if the approval body has decided that the recommended levels are not adequate to preserve existing values, more stringent levels may be applied.*
- the approval process should explore the possibilities of applying commonly available technology to attain the lowest achievable noise outcome.*

In addition to the suggested additional noise control measures made by Mr Antonopoulos and MDA some further mitigation measures were made by Watson Moss Growcott:

- locate fixed plant to maximise attenuation due to structures on the site.
- provide signage on the designated truck route advising truck drivers to minimise noise generation.

⁷⁰ EPA Submission, 23 June 2015 p11.

⁷¹ CVLX - Miners Rest: Noise Monitoring additional information, Memorandum to Mr Tobin, 25 June 2015.

- apply EPA Guidelines if a Public Address system is required at the facility and investigate communications technology to minimise PA system use.
- the use of sound absorbent material under the cattle area roof.

EPA requirements

The EPA submitted that it will require the Proponent:

- *To confirm the recommended maximum noise levels for day, evening and night periods. It is the position of the EPA that the +3dB adjustment of the NIRV zone level adopted by MDA is not applicable. An explanation for the relatively high evening background level at 41 Albert St (also applied to 12 Victoria St) is also required as part of confirming the recommended maximum noise levels.*
- *To adopt the recommended additional noise control measures recommended by MDA, SLR and WMG, where practicable, and to ensure that noise emissions will fully comply with the SEPP N-1 and NIRV, including under weather conditions that enhance sound propagation from the subject site to residential premises.*

8.4.4 Council submissions

Council advised that it would require the Proponent to include in its Operations and Environmental Management Plan all ongoing noise management, monitoring, reporting and mitigation measures including those related to the public address system.⁷²

Council made a general reference to VCAT decisions where the Tribunal has commented that farming can involve noisy activities and specifically referred to *Cashman v Wellington SC* [2008] VCAT 2439 in which VCAT observed that in the Farming Zone:

... some residents may incorrectly assume that they are entitled to a peaceful existence in a sedate rural enclave, such expectations are not present in any of the policies or visions applicable to a Farming Zone.

As compliance with NIRV and SEPP N-1 has been demonstrated and considering the evidence provided by Mr Antonopoulos Council said that on acoustic amenity grounds the Amendment can be supported. In relation to traffic noise. Council considers the impacts will be minimal.

8.4.5 The Proponent's submissions

The Proponent relied on the evidence of Mr Antonopoulos as it is based on:

- on actual data taken from noise contributing sources at the current facility at Ballarat and at the Barnawartha facility
- noise sampling which includes a large store cattle sale of 4,300 cattle which included a high proportion of weaner cattle
- assumes no ameliorative acoustic treatments

⁷² Para 298

- assumes levels for the determination of acoustic limits based on Farming Zone 'source' to Farming Zone 'receptor' rather than taking the benefit of the proposed rezoning to a Special Use Zone. That latter approach would have been legitimate, albeit less conservative
- rather than premising propagation attributed with wind on actual meteorological data, the assessment assumes worst case conditions occurring at all times in the direction of each of the sensitive receptors at the same time.

The Proponent raised some issues on the interpretation of the policy and guidelines and the results, however the Proponent accepts that a further noise assessment will be required once the detail design has been undertaken and this assessment will be a condition on the development plan and an EPA licence condition requiring compliance with NIRV.

The Proponent said that if the noise assessment showed compliance with SEPP N-1 and NIRV, whichever is applicable, the Proponent objects to being required to build an acoustic barrier on the eastern side of the truck wash as it represents a disproportionate response when compliance is likely to be demonstrated, and furthermore there is nothing in the Ballarat Planning Scheme that would support more stringent criteria. It was also contended⁷³ that this disproportion and unnecessary cost to the project is not supported by NIRV:

*In most situations, regulators should adopt the recommended levels as the criteria for their approvals (e.g. permit requirements) and compliance tools (e.g. notices). The levels should not generally be deviated from.*⁷⁴

8.5 Discussion

(i) Will noise comply?

The guidelines for noise compliance are well established and it is likely that noise emissions will comply with the relevant guidelines. However, there are a number of issues related to the assessments that need to be resolved to be sure compliance can be achieved.

Firstly it is apparent that differing figures have been used in the noise assessments. The differing figures from the various documents submitted to us relate to the size of the proposed facility and the areas proposed to be undercover and those areas not covered. A summary of these figures is given in Table 3.

Some variation in the size of the facility and the areas to be covered and uncovered could be expected in the MDA assessment as was it undertaken in 2014.

⁷³ Merits Submissions on behalf of the Proponent, p9.

⁷⁴ EPA, Noise from Industry in Rural Victoria, 2011, p2.

Table 3 Details about the size of the proposed saleyard extracted from various reports

Source	Cattle facilities (sqm)			Sheep facilities (sqm)		
	Covered	Uncovered	Total	Covered	Uncovered	Total
Spiire ⁷⁵	4,200	6,800	11,000	12,800	19,800	32,600
SLR ⁷⁶			11,000			34,000
MDA ⁷⁷	4,000	7,000	11,000	13,000	21,000	34,000
EPA ⁷⁸			13,128			40,206
Council ⁷⁹	9,046	4,082	13,128	27,125	13,081	40,206
Development & Operations overview ⁸⁰	9,000	7,100	16,100	27,000	6,900	33,900

As cattle are one of the main sources of noise, it is important to note the significant increase in size of the cattle areas given in the Development and Operational Overview.

The question arises as to the number of cattle that could be in the saleyards given the increased size provided in the Development and Operational Overview. This report provides sales figures from 3 May 2010 to May 2015 for prime and store cattle. It was these historical numbers upon which Mr Antonopoulos relied on to make his assessment. However the 85 per cent utilisation rate provided in the Development and Operations Overview, which is stated as the capacity for a sale without using overflow selling areas, seems to suggest that a greater numbers of cattle for sale could be contemplated.

The variation in the size of the facility, the areas under cover and not covered and possible increased numbers of cattle presented for sale are likely to impact on the outcomes of the noise assessment. As highlighted by Mr Antonopoulos noise from the saleyard can be affected by the number of cattle and also the areas under cover.

Similarly if there is anticipated to be an increase in the number of cattle being sold this will impact on the number of trucks delivering and picking up livestock and hence noise from trucks on site and possibly the truck wash use could also increase. Though we accept that for practical purposes there is a size limit for individual sales and if throughput of the saleyards were to increase this could be accommodated with additional sale days rather than larger sales.

⁷⁵ Spiire Works Approval Application, August 2014, p3.

⁷⁶ SLR Consulting Australia Pty Ltd, Central Victorian Livestock Exchange, Miners Rest, Expert Witness Statement – Noise Impact Assessment, 12 June 2015, p6.

⁷⁷ Marshall Day Acoustics Proposed Relocated CVLX Saleyards – Ballarat, Noise impact assessment, 28 August 2014, p7.

⁷⁸ EPA Submission, 23 June 2015, p8.

⁷⁹ Council's submission, 22 June 2015, p23.

⁸⁰ CVLX Development & Operation Review 12 June 2015, p6 and p11.

Secondly the differing interpretations of policy and guidelines in determining the applicable assessment criteria between the three noise assessment criteria needs to be resolved.

Thirdly there are several differences in the data used for the MDA and Mr Antonopoulos's assessment. For example a receiver height of 1.5 metres above ground was used by MDA assessment compared to 1.7 metres used in Mr Antonopoulos's assessment. Also as noted above Mr Antonopoulos's assessment used a range of data and information that was not available to MDA. These different data and the ultimate final design data could impact on the reliability of the noise assessment.

We agree with the EPA that it should require confirmation of the recommended maximum noise levels for day, evening and night periods. It would be prudent to agree a set of input data and the modelling repeated to EPA's satisfaction to ensure that there is compliance with SEPP N-1 and NIRV. The modelling should include the noise from trucks at the truck wash dropping their decks.

We also support Council's requirement that the Proponent include in its Operations and Environmental Management Plan noise management, monitoring, reporting and mitigation measures including those related to the public address system.⁸¹

(ii) Additional controls

EPA submitted that it will require the adoption of additional noise control measures where practicable. A range of measures were suggested by the three consultants.

In response to questions by the Proponent, Mr Antonopoulos said additional noise controls are not necessary, based on his assessment accepting that his assessment showed there is marginal compliance. He also said that if, in the detailed design, there were changes to the structures and other features of the site then noise would need to be reassessed to ensure compliance.

In relation to the suggested noise mitigation measures we make the following comments:

- We support selecting low noise equipment where possible, maintaining equipment and providing signage to advise truck drivers to minimise noise generation as they enter and exit the saleyard. We view these measures as simple and practical ways to reduce noise.
- Based on advice from Mr Antonopoulos we do not consider that insulating the roof of the cattle pavilion will have any substantial noise reduction benefit.
- Requiring broadband reversing beepers would be difficult, although the saleyard could promote their use to trucking firms that regularly visit the saleyard.
- The location of fixed plant to maximise noise attenuation should be a consideration in the detail design phase.
- Using rubber or similar impact material isolating pads on gates may have merit, but the cost may be disproportionate to the benefit. We also question whether this is a design that has been tested in other facilities, and would be concerned about

⁸¹ Submissions on behalf of Ballarat City Council, Para 298.

finding a material that would be sufficiently durable. If changes to gate design were to be pursued as a noise amelioration method we would think that a design would need to be developed and tested for cost, effectiveness and durability.

We agree with the Proponent that if the saleyard was shown to be in compliance then that should be sufficient and that bunding should not be a requirement.⁸² We note that EPA did not say acoustic screening would be a requirement just that additional measures should be considered. We do not have information to be able to assess the acoustic benefit of these acoustic screenings. It would therefore be useful to include scenarios with acoustic screening in the reassessment once the final detailed design has been completed. It may well be that, as suggested, excess fill from the site could be used as a cost effective best practice noise reduction measure.

One of the suggested noise mitigation measures is to apply the EPA Guidelines on Public Address Systems. These Guidelines which are covered in EPA's Noise Control Guidelines require that the noise from a public address system should be *not more than 5 dBA above background at any affected residences or other noise sensitive locations*.⁸³ We note that this is a condition on the permit for the Barnawartha Saleyard⁸⁴ and consider it should be a condition for this saleyard also. Restricting the time that any public address system can be used should also be part of the conditions.

8.6 Conclusion and recommendations

We conclude that:

- on the assessments and evidence presented to us, there are no noise management issues of such a fundamental nature as to warrant abandonment of the Amendment
- there are some additional simple and low cost acoustic measures that should be implemented to reduce noise
- as the assessments show marginal compliance further assessment of the noise impacts is required once detailed design has been completed and the livestock capacity of the saleyard has been confirmed. This assessment should consider the best practice benefits of including acoustic screening as indicated above.

⁸² Merits submission p8-9.

⁸³ EPA Noise Control Guidelines Publication 1254, October 2008, p7.

⁸⁴ See *Margery & Anor v Wodonga CC* [2012] VCAT 78, p23, condition 21.

We recommend:

In Special Use Zone Schedule 15 include a requirement that ‘any public address system should not be more than 5 dB(A) above background at any nearby residences or other noise sensitive use and the public address system not be used between 10 pm and 7 am, except in an emergency’.

In Special Use Zone Schedule 15 include a requirement that noise be assessed on the basis of Farming Zone ‘source’ to Farming Zone ‘receptor’.

The Works Approval should not seek to impose noise amelioration works unless required to achieve compliance and then only after an assessment as to their cost effectiveness.

9 Solid waste management and odour

9.1 The issue

The saleyard will produce a large quantity of solid waste which, if not managed, has the potential to produce odour and other harm to humans and the environment.

The waste relevant to this discussion is that generated by the movement of sheep and cattle through the saleyard that has the potential to cause environment harm.

The general waste does not raise any substantiative environmental or other issues and has been excluded from our consideration.

9.2 What technical assessment was carried out

(i) Management of the waste stream

The waste streams, the generation rates, where provided, and handling methods from the saleyards, as provided, are summarised in Table 4.⁸⁵ The information in Table 4 was based on experience from other sites.

The waste directed to the stockpile, as indicted in Table 4, comes on a weekly basis from the sheep yard and the truck wash settling pit and less regularly from the rotated spent soft floor material from cattle yards and periodically from the facultative ponds.

The Proponent does not intend to use the solid wastes on-site. An uncovered solid waste storage area within a controlled drainage area is proposed to be located next to the facultative ponds with the storage area's runoff draining into the facultative ponds. All waste, with the exception of the general waste and stock mortalities, is to be stockpiled in this area which is in the south-west part of the site and close to the Western Highway.⁸⁶

It is proposed to store waste on-site for up to four weeks. We understand this is to reduce the volume of waste to go off site and therefore transport and disposal costs.

It is proposed that the waste diverted to the stockpile will be turned regularly to promote drying and to reduce odour. Through a rotation system waste is likely to remain in the stockpile for 3 to 4 weeks with some material removed off site to a licensed waste facility or composting facility on a weekly basis. The removal rate we were told will be dependent on the quantities generated and moisture content of the material.

⁸⁵ Sources: Geolyse Water Cycle Management Report CLX December 2014 p 27 – 28 and Development & Operational Overview, 12 June 2015.

⁸⁶ Doc 36: Concept layout: CVLX Spiire, Geolyse.

Table 4: Saleyard waste: generation and handling

Waste Source	Generation rate (where supplied)	Waste Handling
Truck wash solids	20 – 30 wet tonnes of material per week	Removed weekly from the effluent treatment system (settling pit). Directed to stockpile.
Sheep yard solids	Not provided	Weekly removal. Directed to stockpile.
Soft floor material	Could be 1600m ³ per year	Removal on rotation over a 12 month period with material remaining in the stockpile area for up to 3 to 4 weeks, although Geolyse indicated removal as an annual event (not rotational). Directed to stockpile.
Facultative Pond Solids	Not provided	Removed every 3-5 five years. Intense activity taking approximately 3 days. Directed to stockpile. Removed off site when dry enough to do so.
Stock Mortalities	One beast per sale event or less (based on other sites in Central West NSW).	Short holding time (1-2 days). Carcasses removed off – site to a licensed landfill, or if decomposing, on-site burial.
General waste	One small skip per week	Collected at various bins. Removed weekly

Sources: Geolyse Water Cycle Management Report CLX December 2014 p 27 – 28 and Development & Operational Overview 12 June 2015.

(ii) Odour assessment

Two technical assessments of odour were undertaken, one by The Odour Unit and the other by Dr Cowan from Environmental Resources Management.

The Odour Unit based its assessment on quantitative odour samples taken at the Carcoar saleyard in NSW as it was considered to provide a suitable comparison with similar source emissions to the proposal. The Carcoar saleyard was built in 2008, has a similar design to the proposal and is operated by the Proponent.

Odour samples were taken by The Odour Unit from the cattle yards and wastewater system in March 2011 and the sheep yards and waste stock piles in April 2014. An odour flux hood was used to take samples directly from the source of interest and then specific odour emissions rates were derived for each source tested. This sampling and sample analysis used the Australian Standard methodology (AS/NZ 4323.3:2001) to determine a specific odour emission rate per unit area.

The Odour Unit used these results to undertake dispersion modelling using AERMOD, EPA Victoria's regulatory air dispersion model and a meteorological dataset based on data from the Ballarat and Melbourne Airports. The aim of the dispersion modelling was to determine the odour impact at nearby sensitive uses.

Dr Cowan of Environmental Resources Management also assessed the potential odour impact of the saleyard. Dr Cowan's brief from Harwood Andrews on 18 May 2015⁸⁷ was to model odour emissions based on a facility which could accommodate 70,000 cattle and 1.6 million sheep with roofed and unroofed area as exhibited (shown in Table 1).

Dr Cowan relied on the results of sampling undertaken by The Odour Unit at Carcoar NSW. He then used the CALPUFF air dispersion model together with a CALMET meteorological data file based on five years of meteorological data from the nearby Ballarat Aerodrome and the facility's detail provided to him to model odour from the site.

Dr Cowan used CALPUFF instead of the EPA regulatory model AERMOD as he said he considered it the only commonly used model that can handle odour dispersion under low wind speeds because, unlike Gaussian Plume models like AERMOD, CALPUFF 'remembers' the previous hour's emissions and factors those into its predictions.

Dr Cowan's expert witness statement indicates that he used the maximum odour emission rates for all the saleyard odour sources except for emissions from the facultative ponds where the average was used. Dr Cowan then used a conservative approach to the modelling, assuming that: the emission rates will be at their maximum all the time; the wet areas will be wet all the time; and the first flush pond will be full all the time where in reality it was only likely to be full for approximately one day per year.

Dr Cowan modelling used the areas shown in Table 5.

We note that these areas differ to the brief Dr Cowan was given by Harwood Andrews on 18 May 2015 and this was not explained. We also note that the design of the saleyard as shown in the final conceptual layout plan,⁸⁸ submitted by the Proponent at the Hearing, differs to the layout used by Dr Cowan to model odour emissions.

Dr Cowan was asked by Mr Oellering if he had included odour from trucks carrying livestock in his modelling assessment. He said that he hadn't included them as they are difficult to measure however he considers that the conservatism in his modelling compensated for not including them.

⁸⁷ CVLX *Odour Impact Assessment* expert witness June 2015, Appendix B.

⁸⁸ Concept Layout Plan: CVLE – revised version 7/7/2015.

Table 5: Modelled size of saleyard odour sources

Source	Area (m ³) (rounded)
Cattle covered	6,198
Cattle uncovered	6,754
Total cattle area	12,952
Sheep covered	18,094
Sheep uncovered	13, 521
Total sheep area	31,616
Facultative Ponds	840
Aerobic ponds	5,221
First flush pond	363
Solid waste	423
Truck wash (drain & solids)	1667

9.3 Assessment criteria

(i) Solid waste assessment criteria

The *Environment Protection Act 1970*⁸⁹ establishes a number of policy principles that are used to minimise waste, pollution, and environmental risks within Victoria. These principles are:

- 1) Integration of Economic, Social and Environmental Considerations
- 2) Precautionary Principle
- 3) Intergenerational Equity
- 4) Conservation of Biological Diversity and Ecological Integrity
- 5) Improved Valuation, Pricing and Incentive Mechanisms
- 6) Shared Responsibility
- 7) Product Stewardship
- 8) Wastes Hierarchy
- 9) Integrated Environmental Management
- 10) Enforcement
- 11) Accountability.

The Waste Hierarchy Principle is also of particular relevance in considering solid waste. This principle requires that:

Wastes should be managed in accordance with the following order of preference—
 (a) *avoidance;*

⁸⁹ Environment Protection Act 1070, Section 1A.

- (b) *re-use;*
- (c) *re-cycling;*
- (d) *recovery of energy;*
- (e) *treatment;*
- (f) *containment;*
- (g) *disposal.*⁹⁰

EPA considers that the following State Environment Protection Policies (SEPPs) are relevant to the consideration of solid waste issues at the proposed saleyard:

- SEPP (Groundwaters of Victoria), in particular Clause 12, which states *all practical measures must be undertaken to prevent pollution of groundwater.*⁹¹
- SEPP (Prevention and Management of Contaminated Land) in particular Clause 17(1), which states that ‘the occupier of any site must ensure that the land is managed to prevent contamination.’⁹²
- SEPP Air Quality Management (SEPP (AQM))⁹³, which includes the following requirements:
 - protecting human health and local amenity (clause 9).
 - applying best practice for a new emission source (clauses 19).

EPA is particularly concerned about odour generation from the solid wastes.

(ii) Air emissions assessment criteria

The objective of SPPF Clause 13.04-2 Air Quality is to:

assist the protection and improvement of air quality and one of the strategies to achieve this is to ensure wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses.

It is a SPPF requirement that planning considers the State Environment Protection Policy (Air Quality Management) (SEPP (AQM))⁹⁴ and, when assessing amenity impacts on sensitive uses, EPA’s Recommended Separation Distances for Industrial Residual Air Emissions⁹⁵ must be considered.

SEPP (AQM) includes human health and local amenity among the beneficial uses that the policy aims to protect. It also stipulates that air quality protection should not compromise the beneficial uses in other State Environment Protection Policies.

The SEPP (AQM) requires generators of air emissions to manage their emissions in accordance with the policy and through the application of best practice management. The

⁹⁰ Environment Protection Act 1970, Section 11.

⁹¹ Victorian Government Gazette, 17 December 1997.

⁹² Victorian Government Gazette, 4 June 2002.

⁹³ Victorian Government Gazette, 21 December 2001.

⁹⁴ State environment protection policy (Air Quality Management), Victorian Government Gazette, S 240, 21 December 2001.

⁹⁵ EPA, *Recommended Separation Distances for Industrial Residual Air Emissions*, publication 1518, March 2013. This replaces the publication referred to in clause 13.04-2.

SEPP (AQM) also specifies that a generator of odorous emissions may need to demonstrate that local amenity will not be adversely affected by offensive odours through a risk assessment.

For non-toxic odorous emissions that have the potential for adverse amenity there is a SEPP (AQM) design criteria of 1 odour unit per three minute average (see SEPP (AQM) Schedule A) at the site boundary. There is an exception. The SEPP (AQM) also says that for new industries involving intensive animal husbandry, based on a risk assessment of modelled emissions, a design criteria of 5 odour units (3-minute averaging time, 99.9 percentile) is allowed in rural areas with a low density of sensitive land uses and where there is an approved environmental management plan.⁹⁶

Furthermore as stated in EPA's submission:

If after applying best practice as required by Clause 19 of the SEPP (AQM) the design criteria cannot be met by any practicable means, EPA can take into account in deciding to issue a works approval a risk assessment showing that emissions will not adversely impact on beneficial uses prescribed by the SEPP (AQM).⁹⁷

In addition to the SEPP (AQM) requirements it is recognised that there can be upset conditions that may cause odour emissions above those generated under normal operation conditions. EPA has a guideline, *Recommended Separation Distances for Industrial Residual Air Emissions*, which lists the minimum separation distances between a range of industries and separation distances reduce the impact of these abnormal emissions. For a saleyard where there are more than 500 head of pigs, cattle or other stock housed for sale, the recommended separation distance is 500 metres.

⁹⁶ State Environment Protection Policy (Air Quality Management), Victorian Government Gazette, S 240, 21 December 2001 Schedule A, note 9.

⁹⁷ EPA submission, Central Victoria Livestock Exchange, Ballarat Planning Scheme Amendment C185, EPA Works Approval Application Service Order Reference 1001580, 23 June 2015, P7.

9.4 Submission and evidence

9.4.1 What are submitters' concerns

The only substantive comments made on solid waste were from Ms McGhee.

In her submission to the Hearing Ms McGhee, using figures from the *Effluent and Manure Management Database for the Australian Diary Industry* estimated that the annual amount of manure and urine that could be produced by the cattle passing through the saleyard would be 2,450 tonnes and 1.4 mega litres respectively. She saw this, when coupled with the waste generated by the sheep and the 1600 cubic metres of soft floor material that will require disposal, *as one huge issue for the saleyards operator to manage without the surrounding residential area being continually subjected to intensely unpleasant odours.*

The majority of submitters were concerned that odorous emissions from the saleyard will pervade the whole area of Miners Rest and it will affect the liveability of their homes and impact on the local school and kindergarten.

Several submitters indicated a lack of confidence in the odour assessment as:

- The policy basis for the assessment was unclear. For example should the facility be considered as a feedlot and should the boundary condition be one odour unit or should five odour units be used?
- Differing figures related to size of the roofed area and the size of the facility were included in various documents and therefore there wasn't a clear basis for making a proper assessment. Mr and Mrs Oellering presented the variation in their submission (see Table 6).
- Truck emissions seem to have been excluded from the assessment.

Table 6: Comparison of Cattle and Sheep Areas: Submission by Mr and Mrs Oellering

	Spiire (Sq m)	EPA (Sq m)	Difference
Sheep Roof	12,800	27,125	+14,325
Sheep Ex	19,800	13,081	-6,719
Cattle Roof	4,200	9,046	+4,846
Cattle Ex	6,800	4,028	-2,772
Rain Store	5MI	7MI	+2MI

9.4.2 Results from odour assessment

The Odour Unit's modelling, which relied on the Spiire details about the site and operations, found that the odour impact at all sensitive uses as below 1 odour unit. However, the design of the saleyard had changed since then.

At the Hearing Dr Cowan said the modelling, using figures in Table 5, showed that about 55 percent of the odour from the site would come from the uncovered sheep yards, 29 per cent from the covered sheep yards and 12 per cent from the uncovered cattle yards. Dr Cowan

suggested that if odour needs to be reduced further then best practice would be to extend roof areas.

Based on a 5 odour unit, 3 minute assessment criteria and inbuilt conservatism, Dr Cowan's modelling indicated that once in every five years four of the sensitive uses will experience an odour of 5 odour units, a level that he described as an odour concentration 'which the population will begin to recognise and detect odour in the ambient environment'.⁹⁸ Furthermore Dr Cowan assessed that the maximum concentration from the saleyard maybe faintly detectable on approximately one occasion a year at three dwellings.

However Dr Cowan's Figure 6-1 Maximum 99.9th Percentile Contour plot for the five modelled years⁹⁹ shows that odours in the order of 40 odour units will occur on the Western Highway south of the saleyard.

As the odour is above the 5 odour unit at the site boundary and as required by SEPP (AQM) Schedule C section 2 (d) Dr Cowan then assessed the risk of the odour impacts of the saleyard on sensitive uses. He evaluated the risk factors, that is the frequency of the odour, its intensity, its duration, its offensiveness and the location of the odour impact using three approaches. One approach he used was a risk matrix derived from a matrix in a VCAT decision, another approach based on an EPA discussion paper on odour environmental risk and a third approach using the matrix developed by the United Kingdom Institute of Air Quality Management Guidance on the assessment of odour for planning.

He found that the risk ranking using the VCAT matrix to be negligible to low at the twenty receptors he assessed. Applying the EPA draft approach he found that for receptor 2 (being the house at 116 Western Highway) the risk ranking was moderate and low for all other receptors but further investigation found that at receptor 2, as the odour had been assessed to be 1.3 odour units at the 98th percentile, which Dr Cowan then reassessed the impact to be low.

Using Dr Cowan's preferred risk assessment approach, the UK IAQM matrix, at receptor 2 the impact was assessed as slight while at all other nineteen receptors impact was determined to be negligible. When he plotted odour contours Dr Cowan found that there is a moderate risk of off-site impacts on the farming land south of the Western Freeway however he considered that the beneficial uses such as amenity in those locations will not be adversely impacted.

Dr Cowan then considered the separation distances required in the case of upset conditions such as unusually meteorological conditions or a process upset including accidents and power or equipment failures. The relevant separation distance between the activity of the saleyard and the activity boundary of a sensitive use is given as 500 metres in EPA's *Recommended separation distances for industrial residual air emissions*. He concluded that as the closest sensitive use is beyond 500 metres:

⁹⁸ CVLX *Odour Impact Assessment* expert witness June 2015, p2.

⁹⁹ Ibid p25.

... under an upset condition, there would be no harm to the beneficial uses of the atmosphere as there is sufficient separation between the planned use and the surrounding sensitive use.¹⁰⁰

9.4.3 EPA assessment

EPA's key concern in relation to solid waste is odour. However, it said that anecdotal data from other sites indicates if the waste is managed as described by the Proponent it is unlikely to generate significant odour.

In its submission EPA provided a table summarising information from its databases about other saleyards in Victoria including identifying those where it had received odour complaints. It said that when the stock yards were not cleaned regularly and waste was not managed properly they can cause odours and based on experience EPA recommends that there be rigorous site management procedures implemented and adhered to for the handling of solid waste.

Specifically in relation to assessing odour potential EPA is concerned that:

- It has not been provided with an estimate of the total volume of waste that will be generated at the site. Based on the limited data supplied EPA estimates the quantity could be more than 10 tonnes per month which if it was received at a composting facility, rather than generated on-site, the site would be a scheduled activity, required to be licensed for this activity and have operating conditions placed on the licence.
- It has not been provided with details on the design and size of the stockpile area and therefore cannot assess whether the stockpile area will be sufficiently large enough to contain the generated waste.
- The stockpile area is proposed to be uncovered.
- There are no details about how the material will be sufficiently dried out prior to transporting off site.

EPA also indicated that:

- it has not been provided with details about how stockpiled waste will be prevented from flushing into the facultative pond when there is a heavy rainfall event
- it does not have details about measures to prevent wastes overflow from the storage area to the land or leachate infiltrating to the land and groundwater.

EPA emphasised that, particularly given the site's proximity to the Western Highway and the Miners Rest township, it will require the Proponent to:

- *Provide details of solid waste generation calculations and stockpile dimensions.*
- *Install a best practice solid waste handling facility, consisting of a fully enclosed building to house solid wastes, a biofilter to treat the ventilation air and press to dewater solid waste with high water content.*

¹⁰⁰ Ibid p 35

EPA assessed the proposal against the relevant regulatory requirements as outlined in section 1.3 above and submitted in summary that:

- As the closest sensitive land use is 670 metres from the proposed saleyard, where *more than 500 head of pigs, cattle or other stock are temporarily confined for sale, transport or processing*, the proposal complies with the 500 metres separation distance for a saleyard as given in *Recommended Separation Distances for Industrial Residual Air Emissions*. EPA further noted that separation distances are designed to protect the amenity of sensitive users under upset conditions and that the industry is assumed routinely to comply with relevant statutory rules and policies.
- There has been an increase in the area of the saleyard and this will increase the predicted odour compared to the odour predicted by the modelling saying:

The area used for cattle will increase from 11,130 m² to 13,128 m² (18%) and the area used for sheep will increase from 32,640 m² to 40,206 (23%). Overall there will be a 22% increase in area.¹⁰¹

- There is insufficient information, in particular the level of waste generation to adequately assess the odour generation from the solid waste stockpiles and this brings into question the accuracy of the modelling of this source.
- EPA said it will require the proponent to:
 1. *Verify odour emission modelling input data, as well as remodel and reassess the emission impact.*
 2. *Demonstrate best practice for minimising odour emission from [waste water treatment plant] ... and solid waste and sludge handling activities, which are related to issues in 4.4 and 4.5.¹⁰²*

EPA further commented that it relied on the modelling undertaken by Dr Cowan and, although it had not given formal approval to use CALPUFF, rather than its regulatory model AERMOD, it said that it had in the past approved the use of CALPUFF to assess compliance with SEPP (AQM). Mr Cooke also said that EPA is happy with the risk assessment undertaken by Dr Cowan.

EPA said that it had tried to reproduce some of the modelling using one of Dr Cowan's input files to generate the emission parameters given in Table 5-4 of Dr Cowan's expert witness statement but found that the areas generated were smaller than those in Dr Cowan's statement. EPA therefore considers that Dr Cowan's model may *underestimate the intensity and frequency of odour produced by the proposed development at any point.*¹⁰³

Given EPA's concerns about the modelling and the high odour potential Mr Cooke said that some additional best practice odour controls may need to be considered for the Waste Water Treatment and the solid waste. Suggestions made by Mr Cooke to further reduce odour included sewer disposal of the wastewater and enclosing the solid waste in a shed

¹⁰¹ EPA submission p8.

¹⁰² Ibid p9.

¹⁰³ Ibid p8

equipped with a biofilter. (Disposal of wastewater to sewer versus treatment onsite, as proposed, is discussed in Chapter 10.) Mr Cooke also said that good site management was instrumental to reducing odour from the solid waste. Mr Cooke did not consider the other odour sources were a concern nor was he particularly concerned about the potential for odours in the order of 40 odour units impacting the Western Highway. This is because the odour would be transitory and people using the Highway are not considered a sensitive use.

Council considered that the proposed impacts from odour will be within reasonable limits however it submitted that as EPA is the state authority on environmental matters, EPA's evaluation should be given considerable weight.

9.5 Discussion

(i) Policy assessment criteria

The modelling undertaken by Dr Cowan used an assessment criteria of 5 odour units as he and the proponent considered that a saleyard is intensive animal husbandry, a position not supported by EPA. EPA submitted that the correct assessment criteria should be 1 odour unit.

Clause 74 of the VPP defines intensive animal husbandry as:

Intensive animal husbandry

Land used to keep or breed farm animals, including birds, by importing most food from outside the enclosures. It does not include:

- a) an abattoir or sale yard;*
- b) emergency and supplementary feeding if incidental to the use of land for extensive animal husbandry; or*
- c) the penning and housing of animals, including birds, for brooding, weaning, dipping or other husbandry purposes if incidental to the use of land for extensive animal husbandry.*

The definition of intensive animal husbandry specifically excludes saleyards and requires that most of the food for the animals be imported.

We were told by Mr Edwards that the livestock held at the saleyard receive water but are only fed if:

- the animals exceed the industry 'time off feed' standards, for example when they come from interstate¹⁰⁴
- post sale, if the livestock is not trucked out on the same day as the sale or if the buyers or agents request it.

We were told by Mr Edwards that the livestock need to receive a 'nutritionally balanced feed ration', and so the feed would be imported and not obtained from grazing.¹⁰⁵

¹⁰⁴ CVLX Development and Operations Overview, p27.

¹⁰⁵ Ibid, p6 and p11.

Clearly the definition of intensive animal husbandry in the VPP specifically excludes saleyards and more broadly it is the exception and not the norm for the livestock at the saleyard to be fed from imported feed.

The issue is whether the VPP definitions are the appropriate definitions to use in interpreting the SEPP. We note that the SEPP uses the slightly different terminology, in SEPP (AQM), in note 8 following Schedule A, where it sets the 1 odour unit level:

Emissions of mixed odorous substances, such as those from sewage treatment farms, rendering plants and intensive animal industries may be offensive and therefore need to be minimised and controlled to ensure that the beneficial uses of the environment are protected. General odour is defined in SEPP (AQM) as an unclassified air quality indicator of local amenity and aesthetic enjoyment of the air environment. The design criteria for new sources of general odour is the odour detection threshold (1 odour unit) and should be applied at and beyond the boundary of a premises.¹⁰⁶ (our emphasis)

We support EPA's contention that the SEPP (AQM) Schedule A design criteria of one odour unit per three minute average is the correct assessment criteria given the broad sweep of Note 8 which would seem to include uses such as saleyards.

(ii) Further details required

Animal manure and mixtures of animal manure and animal bedding organics, which typifies the likely waste, has a medium to high potential risk rating for harm to human health and the environment.¹⁰⁷ The technology recommended for medium to high risk waste is an enclosed or covered environment or an enclosed environment with secondary odour control. Covering can include material covers or covering with mature compost. The secondary controls, commonly biofilters, in the enclosed facilities are to minimise odour impacts.

Prior to the granting of Works Approval EPA needs to be confident that the solid waste will be managed effectively to prevent human and environmental harm. We concur that to make a proper assessment, and design adjustments if required, EPA should be provided with the following additional information:

- amounts to be stockpiled
- the size of the stockpile and whether it will be large enough to contain the waste generated
- how stockpiled waste will be prevented from flushing into the facultative pond when there are heavy rainfall events
- the identification of the location and the design of the area for storing stock mortalities and if on site burial is to occur where the burial site is to be located.

¹⁰⁶ SEPP (AQM), Schedule A Class 1, 2, 3 and Unclassified Indicators and Design Criteria, Note 8.

¹⁰⁷ Designing, constructing and operating composting facilities, publication no 1588, March 2015.

As the majority of the waste (excluding general waste and stock mortalities) will have a high organic and nutrient content, based on the waste hierarchy, it would be better for the waste to be sent to a composting facility rather than being disposed of at a licenced waste facility. Whether this occurs will depend on securing arrangements with a licenced composter.

The draft Environment Improvement Plan (EIP) does not consider solid waste. The EIP comments that as the solid waste production is low, it is not necessary to consider it in the draft. In contrast it is implicit in EPA's submission that the treatment and management of solid waste is an important issue especially because of its potential to produce odours. We agree with EPA that solid waste requires strict management and this needs to be comprehensively and thoroughly detailed in the Operations and Environmental Management Plan for the proposal.

(iii) Facultative Ponds

It is proposed that the sediment in this pond be cleaned out every 3-5 years and that the sediment be directed to the stockpile. Cleaning the facultative ponds could take up to three days of intense activity. In the expert witness statement of Mr Haege¹⁰⁸ we were told that the facultative ponds will have an upper oxygenated upper layer and below, a deep anaerobic layer. The sediment to be removed during cleaning is in this lower layer and as it is anaerobic it will be highly odorous. Based on the potential to cause widespread odour issues this waste requires special handling and it is inappropriate for this waste to be stockpiled on-site. Its removal should be highly controlled and managed and it should be taken off site immediately either to a fully enclosed composting facility with biofilters or to a sewage treatment works.

(iv) Enclosing the waste piles

Apart from the sediment from the facultative ponds waste from the sheep yards, the truck wash and the soft flooring will be directed to the stockpile where it will be monitored and turned regularly. It is proposed that material sent to the stockpile will have a residence time, uncovered, of up to four weeks. EPA has indicated that it will require the Proponent to, based on best practice, install an enclosed building with a biofilter.

In the EPA guidelines, *Demonstrating Best Practice* it says:

*EPA does not expect best practice to be pursued 'at any cost'. It is important that the proposed approach be cost effective in the context of the relevant industry sector within which the site operates or is planned to operate, as well as within the context of the total project cost. Most important is that the preferred option is proportional to the environmental risk.*¹⁰⁹

In relation to EPA's requirement for an enclosed waste storage area with biofilters we have considered the opinions of Dr Cowan and details in the Development and Operational

¹⁰⁸ Mr Haege, Expert witness statement, 12 June 2015, p35.

¹⁰⁹ *Demonstrating Best Practice*, publication 1517, February 2013, p3.

Overview report¹¹⁰. The Development and Overview says, that based on experience at other sites, if the stockpile is properly managed it is not a source of significant odours¹¹¹.

In Dr Cowan's expert witness statement¹¹² he presented the proportion of odour from each source. The odour generation rate for the stockpile was comparatively low compared to other odour sources. We do not think that the stockpile warrants the level of treatment that EPA says it will require, considering:

- the advice odour generation rate for the stockpile will be comparatively low
- the distance between the stockpile and sensitive uses
- EPA's guideline on best practice that specifies that best practice should not be at any cost and should be proportional to the environmental risk.

We were also told that the material from the stockpiles will be removed off site when dry enough to do so.¹¹³ The uncovered stockpile will therefore be open to the elements, will become wet when it rains and presumably will stay on site longer. To better manage moisture levels in the stockpiles and thus the overall management of the stockpiles and support regular off-site waste removal, we consider that the stockpile should be covered to improve stockpile management and its efficient removal off site. Also if the waste cannot be properly managed to prevent environmental harm then increased frequency of waste collection should be an option.

(v) Odour assessment

While we support the modelling and risk assessment approach taken by Dr Cowan we are concerned that the basis for the design of the saleyard has changed and evolved over time since the site was purchased and this has affected the odour (and other environmental impact assessments). On that basis, until there is an agreed design and an odour assessment undertaken based on that agreed design, we are not able to come to any definitive conclusions in relation to odour impacts.

If the covered and uncovered livestock areas remain similar in size to those modelled by Dr Cowan, the one odour unit boundary condition may not be able to be met. We therefore support EPA's recommendation that data inputs need to be verified and the modelling redone and reassessed. We also suggest that the modelling be undertaken based on various scenarios including extending the roof coverage of the sheep yards. EPA should be closely involved in ensuring that it is satisfied with the remodelling.

9.6 Conclusion and recommendations

Further details regarding the management of waste is required however we consider that with proper management the waste from the site will not cause any off-site impacts.

¹¹⁰ Development and Operational Overview, 12 June 2015, p33.

¹¹¹ *ibid* p30.

¹¹² Dr Cowan, Expert witness statement, June 2015, p20.

¹¹³ For example Central Victorian Livestock Exchange, Development and Operational Overview, 12 June 2015, p33.

We conclude that:

- One Odour Unit is the correct criteria on which to base the odour assessment, but this should not apply on the Western Highway boundary as this is not a sensitive use.
- The Proponent should be required to demonstrate to EPA's satisfaction that the saleyard can meet the one odour unit boundary condition and this be undertaken by redoing the modelling based on agreed design details of the facility.

We recommend:

Before issuing of a Works Approval the EPA be supplied with further details in relation to solid waste including:

- amounts to be stockpiled
- the size of the stockpile and whether it will large enough to contain the waste generated
- how stockpiled waste will be prevented from flushing into the facultative pond when there are heavy rainfall events
- any covering of the waste storage area to control moisture
- the identification of the location and the design of the area for storing stock mortalities and, if on site burial is to occur, where the burial site is to be located.

Before issuing of a Works Approval, the odour modelling be redone in consultation with EPA.

The EPA adopt a criterion of one odour unit at the site boundary facing sensitive uses to assess the proposal, but relax the one unit boundary condition at the interface between the site and the Western Highway as this is not a sensitive use.

That the management of solid waste be comprehensively and thoroughly detailed in the Operation and Environmental Management Plan.

In Special Use Zone Schedule 15 include a requirement that the Operation and Environmental Management Plan:

- Arrange for the waste to be sent for composting in preference to a licensed waste facility.
- Specify that the sediment from the facultative pond be removed off site immediately and not be stored in the waste stockpile area.
- Specify that if the waste cannot be properly managed to prevent environmental harm then increased frequency of waste collection should be an option, or failing that enclosure of the storage area with biofilters.

10 Wastewater management

10.1 The issue

The threshold issue is whether wastewater from the saleyards should be managed on-site and, if so, whether the proposed wastewater management system and associated irrigation system can be designed and managed to meet the required standards.

10.2 What technical assessment was carried out

The Proponent proposes a water management system based on separate catchments and treating runoff according to the level of potential contamination present as follows:

- clean water from the roof catchments will be collected in a rainwater pond and used as a non-potable water supply for the facility
- contaminated water from the external yards surrounding the roofed pavilions will be directed to a first flush basin and then treated in the effluent management system before being used to irrigate pastures on the site
- water with minor contaminants from sealed trafficable areas, irrigation areas and open space areas will be collected in a system of grass swales and treated in a wetlands system before discharging off site.

The components of the water management system are shown on the Concept Plan included in the SUZ15 Schedule.

Human effluent is to be treated in a separate onsite treatment plant.

The Proponent submitted two technical reports when it made the request to the Council for the Planning Scheme Amendment:

- *On-Site Effluent Disposal Assessment* (21 August 2015) prepared by Douglas Partners
- *Water Cycle Management Report* (December 2014) prepared by Geolyse.

Two expert witness statements were submitted to the Panel by consultants engaged by the Proponent:

- *Desktop Soil and Wastewater Irrigation Assessment* (June 2015) by Mr Glenn Marriott (Ag Challenge Consulting)
- *Revised Water Cycle Management Report* (12 June 2015) by Mr Martin Haege (Geolyse).

The Proponent also submitted a report on *Contingency Effluent Disposal* (June 2015) prepared by Spiire. This report assessed alternative waste disposal options including no on-site treatment, that is, a full connection to the sewerage system.

Central Highlands Water had the following two expert witness peer review the relevant technical documents and provide expert witness statements:

- Dr Dean Lanyon (MWH Australia) (dated 10 June 2015) covering soil and landscape assessments for irrigation of treated wastewater
- Charles Mellish (MWH Australia) (dated 10 June 2015) covering the wastewater treatment system.

Conclave of water experts

After the Directions Hearing, the Proponent through its lawyers (Harwood Andrews) proposed that a conclave of the water experts be held following the exchange of expert reports. We agreed that a conclave would assist us in our understanding of the water management issues. Five of the water experts subsequently met via teleconference.

We were informed that at the teleconference, Mr Mellish and Dr Lanyon summarised their concerns and issues from their statements. Mr Mellish and Dr Lanyon then indicated that the exchange of statements had added considerable clarity to the detail of the proposed operation. They were satisfied that all of their concerns and matters requiring more detail had been addressed or resolved by the recent exchange of expert statements and that nothing of substance remained outstanding. The experts all agreed that there were no matters of disagreement.

In a statement of the meeting submitted at the Hearing, the water experts advised the Panel that:

The experts concur that the information provided is suitable for the application. The experts concur that there are no outstanding concerns as to the feasibility of, or impacts from, the proposed operation as described.

The experts also agree that there are matters of operational detail that are not yet completely specified. It was agreed that the level of specification provided and as elaborated on in the expert statements is appropriate for this stage of the proposed works. The experts also agree that the matters of further detail should be included at the development application stage (after the current planning stage). The experts agreed that the areas of further detail are: operational protocols; monitoring; and commissioning activities.¹¹⁴

In summary, their further advice was that:

- the operation of the site to minimise odour release will be an important management task. Regular sampling and specialist support are desirable during the commissioning phase and this should be defined in the Operations Management Plan
- the design of the system is expected to be able to meet the required water quality discharge standards
- a suitable short term contingency would be trucking of non-conforming effluent off site and connection to the CHW sewerage system was a viable contingency option
- based on recently collected data, there were no concerns on the viability of the intended effluent application volumes to the landscape
- there remained no concerns about the viability of the irrigation (and a description of the intended incidental stock grazing was attached to the statement)
- use of the land below the 1 in 100 year flood level did not present any particular operation or performance difficulties

¹¹⁴ Statement from meeting of the water experts, 23 June 2015, page 1.

- it would be desirable at the detailed design stage to include estimates of the deep drainage rate and likely EC and nutrient concentrations of drainage below the root zone.¹¹⁵

10.3 Wastewater assessment criteria

In its submission, the EPA outlined the regulatory requirements with respect to wastewater as follows:

It is important that the re-use and recycling of wastewater is sustainable and does not pose an environmental risk to the beneficial uses of land, surface waters and groundwaters. To enable this, wastewater re-use and recycling needs to be consistent with guidance from the Environment Protection Authority, including that provided in the Guidelines for Environmental Management - Use of Reclaimed Water (Publication 464) and Guidelines for Wastewater Irrigation (Publication 168), as amended.

*Publications 464 and 168 provide the specifications acceptable to EPA for exemption of reuse schemes from EPA Victoria works approvals and licensing requirements.*¹¹⁶

10.4 Submissions and evidence

10.4.1 The submitters' and agencies' concerns

A number of submitters raised issues about the wastewater and effluent management on the saleyards site. They expressed concerns over the risk of effluent discharge from the site into the Burrumbeet Creek during flood events and the potential for contamination of creek waters. Other concerns related to the proposed stocking rates on the irrigated pastures and the irrigation system such as the impact of flooding, leaching into the groundwater table and the carriage of airborne pathogens from the irrigation spraying onto nearby properties.

Central Highlands Water (CHW), the water supply and wastewater treatment authority for the area, was concerned that the proposed CVLX would not:

- adversely impact the quality of the groundwater supply within the Cardigan Groundwater Management Area (where a bore is located to supply back up water for Ballarat's portable water)
- place an unplanned demand on the Ballarat North Reclamation Plant at a time when a new industrial precinct is being developed which could have significant trade waste demands.

CHW expressed a very strong preference for wastewater from the CVLX to be treated on site instead of there being a connection to its sewerage system.

¹¹⁵ Panel's summary of the statement of the water experts.

¹¹⁶ EPA submission (document 8), para 4.4.1, page 13.

10.4.2 The EPA assessment

The EPA expressed a preference for the CVLX to be connected to the sewer. It stated that:

Even though there is no regulatory requirement to connect to sewer, discharging of wastewater into sewer has some advantages over the onsite wastewater treatment system, as:

- *Water corporations have better technological and operational knowledge and dedicated staff to manage wastewater treatment systems*
- *Treated wastewater is either discharged into a waterway under an EPA licence or reused for beneficial use under an EPA approved Environment Management Plan*
- *Community acceptance of water corporations as the better managers of wastewater.*
- *There was no assessment of connection to sewer vs. on site wastewater treatment and no justification has been provided to support the onsite treatment system.*

Contingency Effluent Disposal Report of June 2015 concluded that “Given the level of investment required to deliver the CVLX is in the order of \$25M, all methods of disposal form a small percentage (approximately 6% at worst for Option D, or 3% for Option A) of the overall costs and as such the management of surplus and/or contingency flows should not be deemed to be a constraint to the viability of the development of the site”.

Therefore, in the EPA’s view, Option D “Connection to sewer for all wastewater with no onsite disposal” is a more environmentally sound option than onsite treatment and disposal.¹¹⁷

At the Hearing, Mr Cooke reiterated the EPA’s preference for connection to sewer over on-site wastewater treatment. He accepted that the cost to the Proponent would be higher but would only be a small percentage of the total build cost.

The EPA raised a number of issues with the proposed wastewater management, reuse and recycling. It stated that it would require the Proponent to:

- *Modify the ...[waste water treatment plant] to:*
 - *redesign the capacity based on weekly peak flow*
 - *possibly add maturation pond subject to the water balance budget calculations*
 - *provide design details of aerator.*
- *Provide water balance budget calculations and define irrigation area requirement.*
- *Provide a minimum of 0.6 m thick compacted clay lining for the holding pond.*

¹¹⁷ *ibid*, para 4.4.2, page 13.

- Provide an updated monitoring program.
- Conduct risk assessment.¹¹⁸

10.4.3 Council's submission

In opening, Council informed the Panel that it had requested the Proponent to provide expert advice on the CVLX water needs, waste water output and impacts on groundwater. Council noted that the Proponent's request for the Amendment was accompanied by technical reports and assessments and that this material:

*... demonstrated to Council that with the implementation of water sensitive urban design techniques (e.g. collection of rainwater from roofed areas, on-site collection and treatment of all wastewater, re-use of treated wastewater for on-site pasture irrigation), the facility would not impact on the quality or quantity of water discharged from the site, and would not impact on the Burrumbeet Creek.*¹¹⁹

Council noted further that additional material had been presented through evidence with many of the reports peer reviewed by independent experts and that material had been provided in response to the EPA's request for further information under section 22 of the *Environment Protection Act 1970*. Council stated that it:

*... considers that the approval framework is sufficiently robust to ensure that the final design detail is approved to the satisfaction of the relevant authorities before any use or development can proceed.*¹²⁰

In closing, Council submitted that the issues raised by the EPA can be resolved through the detailed design phase and as part of any Works Approval and noted that the EPA indicated in its submission that it is generally supportive of the design. At the Hearing in response to a question from the Panel, Mr Cooke agreed that the proposal would be 'best practice' if certain design measures were implemented.

Council summarised its position as follows:

*Council notes the outcomes of the expert conclave and the agreement reached between them in relation to water matters. On this basis, Council is satisfied that there are no grounds relating to water management or surface and groundwater impacts which suggest that the Amendment cannot be supported. Further, it is reiterated that any waste water and reuse system will need to be approved and implemented to the satisfaction of the EPA and the various water authorities who will be referred the development plan in accordance with the SUZ15.*¹²¹

¹¹⁸ *ibid*, page 16.

¹¹⁹ Submissions on behalf of Ballarat City Council, para 265, page 63.

¹²⁰ *ibid*, para 267, page 63.

¹²¹ Closing submissions on behalf of Ballarat City Council, para 38, page 9.

10.4.4 The Proponent

The Proponent submitted it was proposing:

*... an environmentally sustainable closed water system with a cut and carry cropping operation on the land using reclaimed and treated water.*¹²²

The Proponent noted that no water authority objected to the proposal; CHW had expressed a strong preference for on-site water treatment and use of reclaimed water; and, that all the water experts had agreed that this represented best practice.

The Proponent relied on the evidence of the experts, noting that the proposed water treatment system designed by Mr Haege was supported by Mr Mellish for CHW and that Mr Haege, Mr Mellish and Dr Lanyon concluded that the land had the capability to accept the reclaimed water from the treatment process.

On the question of on-site treatment versus connection to sewer, the Proponent submitted that:

*Off-site treatment is not the basis upon which the amendment or works authority has been put, and it is not necessary on the basis that the relevant water authorities and the proponent all agree that on-site treatment is feasible and acceptable. It is the strongly held preference of CHW that on-site treatment occur in lieu of discharge to sewer and Mr Walker clarifies that it holds this view as a consequence of the strategic capacity of its northern reclamation plant and also having regard to its expert's views concerning best practice environmental outcomes.*¹²³

It was noted that the EPA did not submit any evidence to challenge the views of the six water experts (having only chosen to peer review the acoustic evidence) and that an EPA representative was not present at the Hearing to test the evidence of the water experts.

The Proponent submitted that the Panel should prefer the CVLX proposal because it was more consistent with the principles of environment protection set out in the *Environment Protection Act 1970* and the applicable SEPPs than EPA's suggestion to discharge the CVLX wastewater to sewer.

The Proponent pointed out that:

Section 11 of the EP Act provides:

Principle of wastes hierarchy

Wastes should be managed in accordance with the following order of preference—

- (a) avoidance;*
- (b) re-use;*

¹²² Merits submission on behalf of the Proponent, para 67, page 15

¹²³ *ibid*, para 77, page 16

- (c) *re-cycling;*
- (d) *recovery of energy;*
- (e) *treatment;*
- (f) *containment;*
- (g) *disposal.*

The principle of wastes hierarchy is also replicated in State Environment Protection Policy (Waters of Victoria) ('SEPP (WoV)'). On its face, CVLX's proposal is more consistent with this principle because it proposes the 're-use' of wastewater.¹²⁴

The Proponent argued that the EPA's proposal is inconsistent with provisions of the SEPP (WoV), specifically Clauses 28 and 40, while acknowledging that Clause 34 does stipulate that premises must be connected to sewerage systems where a system is provided but does not apply where wastewater is re-used in accordance with EPA guidelines and retained on site. It is noted that no sewerage system is provided now to the site and the CVLX would have to meet the cost of one being constructed. There was no evidence before the Panel that the proposal cannot comply with Clause 31 of the SEPP (WoV) which provides that any re-use of water should comply with the *Guidelines for Environmental Management – Use of Reclaimed Water*.

The Proponent concluded that:

In those circumstances, RLX respectfully submits, and the SEPP (WoV) concurs, that what it proposed is an acceptable form of re-use and it should be preferred to simply discharging wastewater into the sewerage system.¹²⁵

10.5 Discussion

(i) On-site versus off-site disposal

The threshold issue is whether the CVLX should be connected to sewer in preference to wastewater being treated and re-used on site. Obviously, if the CVLX wastewater was discharged to the sewerage system, the concerns of the local residents regarding the potential off-site effects of the proposed onsite wastewater treatment system would be no longer relevant.

The EPA has expressed a strong preference for discharge to sewer arguing in essence that water corporations have a better track record in managing treatment plants and are accepted by the community as better managers of wastewater. Mr Cooke also suggested that the cost of connecting the CVLX to sewer was a relatively small amount in comparison to the total build cost of the facility. A relatively small cost is still, nonetheless, an additional cost and in our view one that the Proponent should not have to bear provided that there is a satisfactory alternative to connecting to the sewerage system.

¹²⁴ *ibid*, paras 82 and 83, pages 17 and 18.

¹²⁵ *ibid*, para 85, page 19.

We agree with the contrary view to that of the EPA put by the relevant water authority, Central Highlands Water (CHW). CHW expressed a strong preference for on-site treatment and water re-use. The CHW considered that connecting the CVLX to its sewerage system would place an unplanned load on the Ballarat North Reclamation Plant although it did express some concern over the potential for adverse impacts on the quality of the groundwater supply within the Cardigan Groundwater Management Area. Mr Walker suggested that a cautionary approach be adopted in the design and management of the treatment system and irrigation of the pastures to minimise any impacts on the Cardigan aquifer.

We support the arguments in favour of the proposed onsite treatment system and reuse of reclaimed water, stating that that the CVLX proposal was more consistent with the State's environmental protection policies and principles which placed re-use and re-cycling above disposal to off-site treatment facilities. In response to a request from us, the proponent provided a table summarising the benefits and disbenefits of on-site versus off-site water disposal. That table is reproduced below (Table 7).

We are rather perplexed by the preference expressed by the EPA for off-site treatment. To our mind, the principle of wastes hierarchy makes it pretty clear that on-site treatment and water re-use is the better solution, provided that the treatment system is designed and managed appropriately to safeguard the environment. We heard from six experts that on-site treatment of wastewater was considered to be best practice.

Having considered the views put to us, weighed up the pros and cons and reflected on the State environment principles, we conclude that on site treatment is the preferred approach to managing wastewater from a saleyards on the proposed site.

Table 7: Benefits and disbenefits of on-site or off-site water disposal

Benefits	Disbenefits
<p>Use of reclaimed water in an environmentally sustainable manner for productive purposes i.e. cut and carry cropping operation.</p> <p>Consistency with the EP Act.</p> <p>Consistency with the relevant SEPP and Guidelines.</p> <p>Position expressed by all experts as best practice.</p> <p>The relevant Water (sewerage) Authority has a strong preference that the site will not be connected to its system.</p> <p>Overall reduction in cost of development and management of site.</p>	<p>Relies on careful management of the site under protocols.</p> <p>Concerns of community concerning potential odours and spills.</p> <p>Comment:</p> <ul style="list-style-type: none"> - According to Dr Cowan, odours from the first flush, facultative and aerobic ponds and truck wash drain contribute approximately 2.4% of the total odour generated. - As Mr Haege suggests, all treatment ponds are constructed with turkey nest designs. Having regard to his extensive experience, he is not aware of any 'failure' in the nature of a 'spill'. <p>Remote potential for bacteria in ponds to be killed by chemical event.</p> <p>Comment:</p> <ul style="list-style-type: none"> - As Mr Haege stated, in such an event, unlikely that odour from the treatment ponds will be perceptible beyond the boundaries of the site. - Waste water will still be contained on-site. Ponds will need 're-seeding'. <p>Potential for human error in irrigation regime.</p> <p>Comment:</p> <ul style="list-style-type: none"> - Operator has protocols in place to manage irrigation regime.

(ii) Treatment systems

We need to be satisfied that the proposed treatment system will be able to meet the standards as set out in the relevant guidelines and its design and operation can safeguard against adverse impacts on the environment.

The water experts were consistent in their evidence that they had no outstanding concerns as to the feasibility of, or impacts from, the proposed system and that any outstanding issues were matters of detailed design on operational protocols, monitoring and commissioning activities.

The submissions made by local residents and their questions of experts at the Hearing did highlight a number of concerns they held with the wastewater treatment system and the use of re-claimed water to irrigate pasture. We are satisfied, however, that the assessments

made by the water experts and their responses at the Hearing have addressed these concerns.

Mr Haege explained that the risk of an overflow of effluent into the Burrumbeet Creek or the groundwater is very low. The location of the effluent pond (above the 1 in 100 year flood event) and its design mitigated against any discharge of effluent and in the event of flooding so severe that the treatment ponds were inundated, the volume of flood water involved would make the wastewater in the treatment ponds insignificant.

He also explained that a failure of the system was highly unlikely and usually occurred in systems with uncontrolled input. This would not be the case at the CVLX. Should a system failure occur, for example, through a chemical event that killed off bacteria in the facultative pond, mechanical aerobic treatment would continue and it would be unlikely that odours from the ponds would be perceptible beyond the boundaries of the site.

On the question of the possibility of discharge into the groundwater table, Mr Haege said that this could only occur if the pastures were overloaded through irrigation. Overload should not happen if land saturation levels were monitored and protocols followed. The irrigation system should be designed to prevent pollution of the groundwater on the site and therefore would not be a problem off the site.

The possibility of contamination of pastures on land adjoining the site due to drifting of sprayed water from the irrigation system was dismissed. It was explained that the system would operate at low pressure and the water droplets would be large and not atomised. Wind direction and speed would also be taken into account in operating the irrigation system.

Dr Lanyon also noted that use of the land below the 1 in 100 year flood level for irrigation was not a concern as the site operations plan would describe in detail the management of this area. Conditions would need to be monitored and stocking rates controlled during wet conditions. It was important that the majority of the irrigated area is managed as a cut and carry operation to ensure that nutrients are removed from the site to prevent leaching into the subsoil but incidental grazing of the paddocks for short periods of time was not an issue.

The above comments are not an exhaustive coverage of all the issues raised by submitters but we think they suffice in illustrating that their concerns have been considered and a substantive response provided during the Hearing.

We consider that the modifications to the systems design and points of clarification required by the EPA can be dealt with during the detailed design phase and are not insuperable problems that would warrant abandonment of the Amendment at this stage. Indeed, at the Hearing Mr Cooke agreed that the issues raised by the EPA were not 'show stoppers'. We note too that there are significant checks and balances built into the approval system as set out in SUZ15 and in any event, the EPA can impose conditions on the Works Approval and on the Operations Permit should it deem further safeguards are necessary.

10.6 Conclusion and recommendations

We conclude:

- on site treatment and re-use is the preferred approach to managing wastewater from the proposed CVLX
- the modifications to the wastewater system design and points of clarification required by the EPA can be dealt with during the detailed design phase
- the approval process set out in SUZ15 and the EPA Works Approval and subsequent Licence will provide further scrutiny to ensure that the design and operation of the wastewater management system meets the required standards
- there are no wastewater management issues of such a fundamental nature as to warrant abandonment of the Amendment.

We recommend:

In Special Use Zone Schedule 15 include a requirement in the Operation and Environmental Management Plan to specify anticipated stocking rate of cattle and sheep, including the use, management and monitoring of resting paddocks.

11 Stormwater management and flooding

11.1 The issue

The issue is whether the proposed stormwater management system will ensure that the volume of surface water discharged from the site does not exceed pre-development levels, will not exacerbate flooding in the area and that the quality of the discharged water meets environmental standards.

11.2 What technical assessment was carried out

The proposal is for water run-off to be collected and separated into three systems:

- 'clean' water from roofs into a rainwater pond for re-use
- contaminated water from the stock yards first flush and other areas into a wastewater treatment system for irrigation
- 'minor contaminants' water into the wetland for treatment within the wetland before discharge off site.

Two technical reports were submitted with the Planning Scheme Amendment request:

- *Stormwater Investigation Report* (August 2014) prepared by Spiire
- *Water Cycle Management Report* (December 2014) prepared by Geolyse.

Three expert witness statements covering stormwater management were submitted to the Panel by consultants engaged by the Proponent:

- Mr Neil Craigie undertook a peer review of the material on surface water management including flooding and stormwater quality management
- Mr Martin Haege (Geolyse) prepared a revised Water Cycle Management Report
- Mr Greg Hoxley (Jacobs) assessed the on-site geology and hydrogeology and the potential effects of the development on groundwater.

In his Revised Water Cycle Management Report, Mr Haege stated that:

Some surface water will continue to be discharged from the site. This discharge will occur in the same location as it currently does. The volume, peak flow and velocity of the discharge will be less than existing conditions and the water will be better quality.

.....

The western drainage line discharges to Burrumbeet Creek well downstream of Miners Rest. It is not possible for discharge from the CVLX site to change flooding patterns in Miners Rest.¹²⁶

Mr Craigie stated that his results confirm that the proposed water management strategy limits the peak discharges from the development to less than existing conditions for all

¹²⁶ Revised Water Cycle Management Report (Geolyse), 12 June 2015, page 6.

Annual Recurrence Intervals (ARI) up to and including the 100 year ARI event. He concluded that:

From the work completed in this review it is my opinion that if designed, constructed and operated as set out in the documents given to me, it is not possible for the CVLX to detrimentally impact on flooding around or downstream or upstream of the site, nor on quality of surface water in Burrumbeet Creek.¹²⁷

Mr Craigie also reviewed the location of the wetland between the 10 year ARI and the 100 year ARI flood lines. He had some concerns with this location and proposed two options which he considered were feasible and resolved the issue to his satisfaction.

11.3 Stormwater assessment criteria

The design of the proposed stormwater management system and the potential effects of stormwater discharge from the site post development need to be assessed against the relevant provisions in the Victorian Planning Scheme and the State Environmental Protection Policy (SEPP) pertaining to stormwater quality. These are:

- VPP clause 56.07-4 (Integrated Water Management) that requires that post development runoff rates and volumes must be retarded to pre-development levels
- SEPP (Waters of Victoria) that water quality runoff to receiving waters should not exceed the water quality objectives, or not exceed the background quality if the background already exceeds the water quality objectives.

11.4 Submissions and evidence

11.4.1 The submitters' and agencies' concerns

A number of submitters raised concerns about the risk of increased flooding in the area, the quality of the water run-off and the potential for contamination of the Burrumbeet Creek and ground water aquifers. Residents of Miners Rest submitted that the site was flood prone and the proposed saleyards could exacerbate flooding in and around Miners Rest.

Some submitters referred to recent flood events and suggested that one such event was alleged to have occurred due to VicRoads works on Western Highway where the Highway crosses the Burrumbeet Creek. They submitted that the site of the proposed saleyards was flooded in the 2010 and 2011 floods and referred to a 'screen shot' tabled by Mr Braszell that was purported to be an aerial photograph showing the subject site underwater.

The Glenelg Hopkins Catchment Management Authority (GHCMA) stated that its objective was:

... to ensure that flooding is not exacerbated off site as a consequence of the development.¹²⁸

¹²⁷ Mr Neil Craigie, Statement of Evidence, 5 June 2015, page 22.

¹²⁸ Glenelg Hopkins Catchment Management Authority letter, 22 June 2015 (Doc 9).

It raised two specific issues based on the development layout plan:

- the design of the access roadway
- the location of rainwater pond (detention basin).

The GHCMA advised subsequently that it was comfortable in principle with the revised concept site layout plan (Revision M) contingent on its continued engagement in finalising the detailed design of the above elements. It did however also support Mr Craigie's other redesigned wetlands options that Mr Craigie advanced as being capable of resolving some concerns.

11.4.2 The EPA assessment

The EPA was concerned with several aspects of the design of the proposed stormwater system. The EPA stated in evidence that it would require the Proponent to clarify:

- the design of the wetland and hence its ability to treat stormwater prior to any discharge, as it is unclear.
- location of the wetland as it is currently located within the 1% Annual Exceedance Probability (AEP) floodplain. The implication of leaving the wetland within the flood plain remains unclear.¹²⁹

The EPA stated that:

*The proposal to segregate the contaminated and uncontaminated stormwater is sensible and is crucial to maintaining the quality of any potential discharge. The system designed to do this (based on the both the original and updated designs) seems adequate to achieve this end. The review conducted by Neil Craigie provides re-assurance that the design features in the proposal are adequate to achieve the desired outcomes. EPA notes that he queried some of the assumptions and revised the model although ended up drawing essentially the same conclusions regarding water quality and quantity pre and post development.*¹³⁰

Assessment of wetland design

The EPA assessed the design and efficacy of the wetland as follows:

- *An aspect that should be corrected is the location of the wetland which currently sits below the 1% annual exceedance probability (AEP) (=100 year ARI). The suggestions from both the independent modelling reviewer and the Glenelg Hopkins CMA were to locate this above the flood level, thus reducing flood risks.*
- *The proposed performance of the wetland in removing nutrients and sediment as described in the proposal, greatly exceeds the standards usually achieved in stormwater management. EPA notes that the independent reviewer used some different assumptions in the MUSIC*

¹²⁹ EPA submission, 23 June 2015, page 12.

¹³⁰ *ibid*, page 13.

modelling which resulted in reduced performance of the wetland, but nonetheless, the nutrient and sediment reduction was still at or greater than the usual performance of other stormwater management systems.

- *The depth of the wetland needs to be clarified ...*
- *If this is done effectively, the nutrients and sediment discharged from the wetland are likely to be less than in the pre-development condition, based on the modelling that has been provided, due to the significant re-use in the development.*¹³¹

Compliance with SEPP (WoV) and criteria

In essence, the EPA concluded that the proposal would meet discharge water quality objectives as set out in the SEPP (WoV). It stated that:

*There has been no data presented as to the current water quality in Burrumbeet Creek, which would receive any discharge. The proposal relies on the inference that based on the MUSIC modelling, water quality in Burrumbeet Creek will not be adversely affected due to there being reductions in nutrients and sediment leaving the area compared to the pre-development condition. It is likely that the current water quality of Burrumbeet Creek is poor and does not meet the SEPP objectives. Any discharge is thus required to not make conditions worse and at least meet the background conditions. While actual monitoring data on creek water quality would provide greater assurance, the modelled information, particularly that provided by the independent reviewer, provides sufficient confidence that Burrumbeet Creek would not be adversely impacted by any discharge.*¹³²

11.4.3 Council's submission

Water Management

Council submitted that the reports and assessments provided to the Council covering a range of environmental issues demonstrated to its satisfaction:

*...that with the implementation of water sensitive urban design techniques (eg. collection of rainwater from roofed areas, on-site collection and treatment of all wastewater, re-use of treated wastewater for on-site pasture irrigation), the facility would not impact on the quality or quantity of water discharged from the site, and would not impact on the Burrumbeet Creek.*¹³³

Council noted that additional material (including peer reviews of many of the issues) had been presented through evidence as well as material provided in response to the EPA's request for further information under section 22 of the *Environment Protection Act 1970*.

¹³¹ *ibid*, page 12.

¹³² *ibid*, page 13.

¹³³ Submissions on behalf of Ballarat City Council, para 265, page 63.

In closing Council submitted that while the EPA had raised matters of concern, these could be resolved at the detailed design stage and as part of any Works Approval issued by the EPA. In its submission, the EPA indicated that it was generally supportive of the proposed design and that in response to questions from the Panel, the EPA indicated that the issues it had raised were not 'show stoppers' and could be resolved through negotiations or failing that, by the imposition of conditions in the Works Approval. Council added that the EPA had agreed that the proposal would be 'best practice' if certain design measures were implemented.

Flooding

Council acknowledged that flooding was a legitimate concern within the broader community. Council considered, however, that as illustrated by the Burrumbeet Flood Investigation, the flooding conditions do not prevent the use and development of the subject site as proposed:

The reasons for this are as follows:

Firstly, the extent of the flooding conditions in this area have been examined in the Burrumbeet Flood Investigation on behalf of the GHCMA and Council. This work indicates that two sections at the north-west and east corners of the subject land are recommended for inclusion within the Floodway Overlay, the majority of the land is not proposed for any flood overlay.

Secondly, the views of the relevant authority have been sought. Namely, the GHCMA letter of 5 May 2014 (Attachment B to the Stormwater Investigation Report) indicated that the GHCMA would not object to the development of the site for a saleyards subject to being satisfied that there would be no impacts on floodwater storage and conveyance across the site. Council understands that these conditions and the issues in GHCMA's submission of 18 March 2015 have been addressed. For example, no buildings, structures or effluent ponds are to be constructed within the floodplain and the stock yards would be located away from the floodplain to avoid nutrient laden sediment moving into Burrumbeet Creek. In response to the GHCMA submission, the Proponent's evidence also indicates that the wetland can be appropriately designed to ensure that floodwaters are not impeded.¹³⁴

11.4.4 The Proponent's submission

The Proponent stated that:

... it is pertinent that no water authority objects to the proposal.¹³⁵

The Proponent relied on the evidence of:

- Mr Hoxley, the only groundwater expert before us who concludes that there would be no on-site or off-site detrimental impacts upon groundwater.

¹³⁴ *ibid*, paras 271-273, page 64.

¹³⁵ Merits submission on behalf of the Proponent (Document 28), para 72, page 15.

- Mr Craigie and Mr Haege in respect of surface water. Both experts concluded that there will be a net reduction in run-off from the site, no negative impact on flooding and the maintenance of integrity in the surface water system for floods exceeding the 1% AEP flows.¹³⁶

11.5 Discussion

Stormwater management system

We were provided with three statements from experts in the field of water management and an assessment of the proposed stormwater management system by the EPA.

Overall, the proposed system was supported by all the experts including Mr Cooke from the EPA. On the evidence presented to us, we are satisfied that the proposal will effectively manage stormwater on the site with the volume, rate of flow and speed of the water discharged from the site below existing conditions. The VPP requirement at clause 56.07-4 that post development runoff rate and volume must be retarded to pre-development levels will be met.

Issues were raised with two aspects of the stormwater system design. The EPA, the GHCMA and Mr Craigie questioned the location of the wetland as shown on the original site layout concept plan. Mr Craigie suggested two options to resolve this issue, both of which have been accepted in principle by the GHCMA and the Proponent. We expect that the EPA will also accept the options suggested by Mr Craigie.

The EPA also sought clarification on the depth of the proposed wetland. It had estimated the depth to be 2 metres which was considered too deep to support plants and therefore would not provide an effective form of water treatment. We were informed by Mr Haege at the Panel hearing that the wetland was designed to have several zones. The settlement pond had a depth of about 2 metres but the treatment zone at 200-3000 millimetres was shallow enough to support plant life. We also note that the siting and design of the wetlands is subject to detailed design to the satisfaction of the relevant water authorities.

We also heard from the water experts that the run-off water would be of better quality than the existing flows in Burrumbeet Creek. The EPA agreed that the water run-off quality would meet SEPP (WoV) objectives.

Flooding

There is no doubt that some land in the Miners Rest area is subject to flooding during high intensity rainstorm events. Several submitters referred to the floods of 2010 and 2011 and we were shown photographs of flooding in and around the Miners Rest township. With these very recent flood experiences, it is understandable that some residents hold concerns that the proposed development could worsen the impact of future floods on their homes and land.

¹³⁶ *ibid*, para 73, page 15

The potential impact of the proposed saleyards on flooding in the area was subject to detailed analysis and at the Hearing the water experts were questioned at some length by residents. We find the expert evidence to be compelling. The evidence is very clear and consistent: the proposed development will have no negative impact on flooding in the area. In fact, Mr Haege went so far as to say that it was simply not possible for water discharged from the site to change flooding patterns in Miners Rest. Mr Craigie concurred with that assessment.

Some residents suggested that there was almost no fall in land height along Burrumbeet Creek between Miners Rest and Lake Burrumbeet – 15 cm over 15 km was suggested at the Hearing – and that backflow of waters from Lake Burrumbeet had worsened flooding in Miners Creek. This suggestion was refuted by Mr Craigie at the Hearing. He explained that there was a fall of 3 metres from Miners Rest to the proposed saleyards outfall culvert under the Sunraysia Highway into the Burrumbeet Creek and, based on contour mapping, Lake Burrumbeet was some 30 metres below the 1:100 flood event level in Miners Rest.

Mr Braszell tabled what he described as an aerial photograph showing flooding in the Miners Rest area and the proposed site substantially flooded. He was not able to verify the source of this document other than to say it was a 'screen shot' he took from the GHCMA website. The Council and the Proponent both suggested that the document was not an aerial photograph of actual flooding but a draft 'Land Subject to Flooding Overlay' map produced as part of the Burrumbeet flood investigation work completed in 2003.

We were advised by Council that as a result of the Burrumbeet Flood Investigation two sections of the subject site at the north west and east corners are recommended for inclusion within the Floodway Overlay but the majority of the land will not be covered by any flood overlay. We were told that the proposed flood overlay would be the subject of a forthcoming planning scheme amendment and copy of the draft overlay was tabled.

The prospect of a Flood Overlay covering part of the subject site prompted consideration at the Hearing as to whether the Incorporated Document should include a reference to this prospective Flood Overlay, specifically to exempt the subject site from the provisions of that overlay. The Proponent submitted that the Incorporated Document should be so amended noting that the substance of the Flood Overlay will be given effect by the referral of the proposal to the relevant water authorities. Council indicated that it was comfortable with this approach and that it had confirmed with the GHCMA that it was also comfortable.

As pointed out by the Proponent and Council, all relevant technical reports and investigations will be referred to the GHCMA (as the relevant authority with respect to flooding) as part of the development plan approval process. We accept that the development plan approval process will provide the necessary further scrutiny noting that SUZ15 has a requirement that the development plan include a Flood Investigation report which must be completed to the satisfaction of the GHCMA. We think it reasonable therefore that the subject site be exempt from the provisions of any future Flood Overlay. We concur that the appropriate mechanism is by referencing the exemption in the Incorporated Document.

We note also that as well as requiring a Flood Investigation Report, SUZ15 stipulates that the Development Plan include a Stormwater Management Plan completed to the satisfaction of all relevant water authorities.

11.6 Conclusion and recommendations

We conclude that:

- on the assessments and evidence presented to us, at this stage in the approval process the proposal meets the stormwater management assessment criteria
- there is no basis with respect to stormwater management to reject the Amendment.

We recommend:

In the Incorporated Document include an exemption for the subject site from the provisions of any future Flood Overlay.

In Special Use Zone Schedule 15:

- **include a requirement that the Drainage Report (or alternative report on drainage and flood issues) is completed to the satisfaction of Central Highlands Water, Goulburn Murray Water and Southern Rural Water.**
- **include a requirement that the Stormwater Management Plan is completed to the satisfaction of the Glenelg Hopkins Catchment Management Authority, Central Highlands Water, Goulburn Murray Water and Southern Rural Water.**

12 Other issues

12.1 Birdstrike

Birdstrike was raised by the Department of Economic Development, Jobs, Transport and Resources with the Department requesting an assessment against the National Airports Safeguarding Framework Guideline C: Managing the Risk of Wildlife Strikes in the Vicinity of Airports.

Mr Gibson undertook an analysis of the risk of birdstrike.

The Proponent accepted the importance of Ballarat airport and acknowledged that the issue was appropriate for consideration by the Department.

While it is true that birdstrike in relation to the airport is a risk matter, it is noted that:

- *the proposal would result in only a very small increase in the open bodies of water proximate to the airport (approximately 4%)*
- *the flight paths would intersect with a very small number of the relevant birds (0.5% of waterfowl fly above 304 metres)¹³⁷*
- *none of the runways identified or proposed within the Ballarat Airport Masterplan would interact in a direct course with the site*
- *there are substantial water bodies considerably closer to the airport*
- *there are other treatment facilities such as that operated by Central Highlands Water substantially closer to the airport and/or in the path of runways.¹³⁸*

Mr Gibson concluded and the Department agreed that the risk of birdstrike has been appropriately investigated and that no further action is required.

We conclude the increased risk of birdstrike as a result of the proposal is negligible.

12.2 Biosecurity

A number of submitters expressed concern that animals in the saleyard could be infected and the infection could spread off site causing a human and equine health risk.

The Department of Health and Human Services provided written comment to EPA questioning whether there is a contingency plan for major risks such as Q fever and, through consultation with Council, the Department of Environment, Land, Water and Planning specified measures needed contain the spread of disease.

¹³⁷ Minimum heights are governed by Regulation 157 of the Civil Aviation Regulations 1988.

¹³⁸ Merits submissions p22.

(i) Risk of infection transmitting to humans

Several submitters raised this as a concern in particular the potential for Q fever transmission. Mr Merlin provided us with information about the carriers of Q Fever, its toxicity, its transmission and its human health effects.

Professor Wilks, a well credentialed expert in veterinary virology and immunology and currently a Professorial Fellow at the School of Veterinary Science at the University of Melbourne provided an expert witness statement. He was not available for the hearing and there was no other expert advice provided on potential biohazards related to saleyards.

Professor Wilks identified that animals may appear healthy but could be infected with, for example, Q Fever. We were informed that the most prolific shedding of the Q fever infection occurs when an animal is birthing and for the week or so after birth which according to the Proponent are not the type of animal ordinarily at the saleyard¹³⁹. According to Professor Wilks for animals carrying Q Fever but not birthing there is little chance that they will pass on the infection.

Professor Wilks also explained that different pathogens have different transmission routes and gave leptospirosis as an example. This bacterium, which has a long survival time in moist conditions and can be found in cattle and sheep, is spread through the urine in infected animals.

The good management of solid and liquid animal waste along with dust and insect control at saleyards plays an important role in reducing the risk of pathogen transmission to surrounding areas. In assessing the potential risk Professor Wilks considered that if the site is constructed and managed as proposed, the risk is significantly less than at the current site.¹⁴⁰ He went further to say that while he could not put a precise figure on the risk he considers the risk of infection to farmer workers during lambing and calving or milking unvaccinated cows to be much greater. At the proposed site the risk was less when compared to the current Ballarat Saleyards due to factors such as the buffer provided by the irrigated land, the location between two major roads, the greater distance from dwellings and proposed management plan for handling liquid and solid waste easier cleaning and the design and structure of the yards including the truck washes. He went on to identify that design of the facility which allowed for easy animal movement and reduced contact with humans reduced the infection risk for workers and in summary he considered that:

*The proposed site appears to be eminently suitable for saleyards in terms of infectious risk to the surrounding area and the management plans and structures proposed deal adequately with potential risks.*¹⁴¹

His overall assessment of transmission of infection from animals to humans is low.

¹³⁹ Merits submission, p23.

¹⁴⁰ *ibid*, p6.

¹⁴¹ *Report on biohazard issues (specifically zoonotic infection risks) related to the proposed Ballarat Saleyards* Professor Colin R Wilks, Page 7.

Professor Wilks identified those at greatest risk of infection will be those working directly with saleyard animals. The Proponent informed us that there has no evidence of Q Fever at the current saleyards¹⁴² however as a preventive measure Mr Edwards said that all workers at the saleyards are offered Q Fever vaccinations.¹⁴³

As additional measures to minimise the risk of human infection Professor Wilks suggested that attention be paid to clothing worn on site by those in direct contact with the cattle and sheep through hand and boot cleaning or having on site work clothes and that special attention be paid to the removal and disposal of products of abortion.

Furthermore we consider the preparation of a risk management plan which includes infection outbreaks, as suggested by the Department of Health and Human Services and supported by EPA¹⁴⁴, to be a sensible approach. Such a plan should be prepared or thoroughly reviewed by suitably qualified experts and should include the processes be put in place should an outbreak of infections such as Q Fever and other pathogen which could potentially be harmful to humans, horse and other cattle and sheep at the saleyard be detected.

(ii) Risk of infection to horses

Mr Dixon represented the Dixon Family Trust and Dowling View Equine Centre which operates a specialist equine rehabilitation centre at 89 Dowling Road. This property which borders the western boundary of the saleyard site has a separation distance, boundary to boundary, of 487 metres. He is concerned about the transmission of both water and airborne biohazards to already weak horses.

Professor Wilks addressed the potential risk to horses in his expert witness statement. The only infectious agents that he considered could potentially be transmitted from cattle and sheep to horses would be enteric agents such as Salmonella and cryptosporidia. Professor Wilks explained that for a horse to become infected with these agents it needs to be in contact with raw faeces from infected animals. He considered that *is in the vanishingly small category*¹⁴⁵ based on the design and management measures proposed at the saleyard.

(iii) Management of disease

The Department of Health and Human Services provided written comment to EPA in which it questioned whether there is a contingency plan for major risks such as Q fever.¹⁴⁶

Council submitted that the Department of Environment, Land, Water and Planning was consulted and in relation to disease it specified that the development must ensure:

¹⁴² Merits submission, p23.

¹⁴³ Mr Garry Edwards, 23/6/2105.

¹⁴⁴ EPA submission 23 July 2015 p21 and Appendix C.

¹⁴⁵ Professor Colin Wilks, *Report on biohazard issues (specifically zoonotic infection risks) related to the proposed Ballarat Saleyards* ('Biohazard Report'), p6.

¹⁴⁶ EPA submission, 23 June 2015, Attachment C.

- *that the facility has the capacity and capability of imposing a livestock standstill potentially for an extended period of time in the event of an emergency disease;*
- *the provision of pre-sale scanning*¹⁴⁷.

In his evidence Mr Edwards outlined various animal welfare measures which are proposed for the saleyard. These included measures that directly impact on containing and managing disease. He confirmed that in the event of a disease outbreak emergency the stock standstill plan will be activated and that CVLX uses the *Ausvetplan for Saleyard and Transport Enterprise Manual* as its protocol in case of a bio-security alert.¹⁴⁸

He also outlined measures in relation to the handling of sick animals, dead animals and animals that need to be euthanised including the provision of isolation pens and short holding time of animal carcasses before off-site removal to a licensed landfill or if decomposition has occurred on-site burial.

(iv) Conclusion and recommendations

Relying on the expert advice from Professor Wilks we consider that with proper site management of the off-site risk the transmission of infection from saleyard animals to humans and horse to be low and less than the current saleyard.

Based on the evidence of Mr Edwards we are reassured that the facility will have the processes in place to contain a disease outbreak and that the concerns raised by the Department of Health and Human Services and the Department of Environment, Land, Water and Planning have been addressed.

However, we consider that to minimise any risk the measures suggested by Professor Wilks in relation to handling of products of abortion and workers' clothing should be included in the Operations and Management Plan.

We recommend:

In the Special use Zone include a requirement that the Operations and Environmental Management Plan to include measures for infection control including protocol for dealing with the products of abortion and deceased animals.

¹⁴⁷ Council submissions 22/6/2015, page 76 para 330

¹⁴⁸ Mr G Edwards *Development and Operations Overview*, p 36

13 Planning controls

13.1 The Concept Plan detail

(i) The issue

The issue is whether the concept plan in Special Use Zone Schedule 15 has enough detail.

(ii) Submissions and evidence

The Special Use Zone requires a Development Plan that must be generally in accordance with the Concept Plan contained within the schedule. Mr Milner stated:

That plan is truly conceptual and provides only for a rudimentary spatial layout of components, including pondage and wetlands; car parking; administration buildings and amenities; machinery storage; location of sheep and cattle; truck washes and parking; location of stockyards; roofs and paved areas.

The concept plan provides no details regarding the height and form of buildings; places no limit on livestock throughput; sale days; hours of operation; afterhours access; the role of the grazing area; or how and where any growth or diversification of uses might be accommodated.

Given that the concept plan is the core statutory planning tool to guide the use and development of the CVLX, it is essential that it address these issues.¹⁴⁹

Council considered that there is the ability to build more certainty into the Concept Plan to be incorporated into SUZ15. Council noted that the Proponent has expressed a reluctance to revise the SUZ15 Concept Plan in line with the revised plan circulated with the expert evidence. While it is acknowledged that plans of this nature (included in Development Plan Overlays and the like) are often conceptual in nature, in Council's opinion SUZ15 would benefit from some of the greater certainty included in the revised plan, noting that any development plan must be 'generally in accordance with' the concept plan.

(iii) Discussion and conclusion

We do not agree with Mr Milner that the 'concept plan is the core statutory planning tool to guide the use and development of the CVLX'. The key statutory tool will be the development plan. What is critical is that SUZ15 sets out appropriate parameters so that the Development Plan can be drafted and approved with sufficient detail to control future use and development, bearing in mind that the premises will be licensed by the EPA and a number of issues are best addressed in the licence.

¹⁴⁹ Paragraphs 138-140

We do think that the concept plan should be updated to show the most recent concept, accepting that this may change. We accept that the concept plan is broad in nature and that a revised plan, produced with the Special Use Zone in mind might need to be prepared.

We recommend:

In Special Use Zone Schedule 15 update the concept plan.

In Special Use Zone Schedule 15 specify that:

- **A permit is not required to construct or carry out buildings or works associated with a use in Section 1 of Clause 1.0 of this Schedule.**

13.2 Inappropriate to require a Development Plan to be in accordance with a Works Approval

The Special Use Zone requires that the Development Plan must be in accordance with any Works Approval or other approval / licence required under the *Environmental Protection Act 1970*.

Mr Milner stated:

While the Works Approval is an important and concurrent mechanism designed to ensure appropriate environmental outcomes, it should not dictate the planning outcome.

In particular, it is important that where planning issues would limit the scope of an activity requiring a Works Approval, these issues should be identified and defined prior to a Works Approval application being assessed.

Accordingly, it follows that a Works Approval should either be assessed concurrently or after a planning permit has issued, or, in this case, the Development Plan is endorsed.

While it is acknowledged that Amendment C185 has been advanced as a combined Planning Scheme Amendment and Works Approval Application, it is not appropriate that the proposed SUZ15 requires that the Development Plan must be in accordance with any Works Approval, except insofar as the latter does not materially override requirements approved through the planning assessment.

In particular, this provides for ongoing amendments to the Development Plan to meet any future Works Approval for the CVLX, without the Development Plan imposing any ultimate constraints on the CVLX.¹⁵⁰

We do not see the point being made in this submission. The Works Approval and subsequent EPA licence will be the primary mechanism to control adverse impacts from the site. The issues that planning might be concerned with such as landscaping and internal

¹⁵⁰ Paragraphs 144 to 148.

traffic movement will need to be designed having regard to the layout and design features needed to limit adverse amenity and environmental impacts.

13.3 Third party notice and review

Concern was expressed about the removal of third party appeal rights.

Council submitted:

A high level of detail has been produced through this amendment process in order to satisfy Council, the relevant authorities and now this Panel that the proposal should proceed. To that end, the development parameters have been prepared with State Government, Council and land owner input. These parameters include environmental conditions, development context and operational conditions.¹⁵¹

We agree that at a certain point in time, the planning system needs to rely on the expertise of the planning authority to resolve final matters of detail, with other technical matters (such as those relating to the WAA) being determined by the EPA.

The exemption from notice and review provisions is only 'switched on' (because no permit will be required) for applications that are in accordance with an approved development plan. This is a high threshold, higher than the commonly used drafting of 'generally in accordance with' and it is appropriate, as any development which alters the technical reports and assessments approved by the various authorities through the development plan approval process should be subject to further scrutiny. Furthermore, it ensures compliance with the schedule of development and operating conditions and requirements that will be incorporated into the development plan.

We appreciate the concerns that some local submitters may have in respect of the removal of notice and review rights, particularly in the areas most proximate to existing dwellings. However, we agree with Council that the rigorous controls and planning undertaken for SUZ15 as part of this Amendment, including the community consultation undertaken, justifies the exemption applying.

We recommend:

In Special Use Zone Schedule 15 specify that:

- **A permit is not required to construct or carry out buildings or works associated with a use in Section 1 of Clause 1.0 of this Schedule.**

13.4 Incorporated Document

Some issues were raised in respect of the proposed incorporated document.

We note Mr McGurn's support for the Incorporated Document. There is reduced practical advantage in proceeding with the Special Use Zone without the Incorporated Document. It is important that site layout and environmental management issues be considered in an

¹⁵¹ Council's submission p15.

holistic manner. If permits are required for isolated aspects of the proposal, such as a car parking waiver, this will only create an unnecessary administrative burden.

In response to Mr McGurn's proposed amendments to the document, Council advised it:

- Does not support any cutting back of the explanatory notes included in the introduction of the document. It is considered that they provide helpful context for the way in which the controls are intended to operate.
- Agrees that the expiry provision should be amended.¹⁵²

As discussed in Chapter 11 a planning scheme amendment to implement the outcomes of the Burrumbeet Flood Investigation may proceed and the Incorporated Document should be adjusted to exclude any flood overlay applied.

In the incorporated document amend the expiry provisions to read:

- **The Responsible Authority may extend the periods referred to if a request is made in writing at least 3 months before the expiry date.**

13.5 Drafting changes

SUZ15 requires a schedule of conditions and requirements to be prepared as part of a development plan that must be observed by the use and development of the subject land for the purpose of a saleyard. Mr Rodda suggested a rewording of this requirement which Council accepted.

In respect of this issue, it is also noted that Mr McGurn suggested¹⁵³ that any additional notice provided to the authorities should be expressly exempt where the development plan is 'generally in accordance with' the Concept Plan at clause 8.0 of SUZ15. Whether or not this is appropriate will depend on the Concept Plan which is incorporated into the schedule. Council would not consider this to be an appropriate outcome based on the Concept Plan in the exhibited SUZ15.

Mr McGurn has also suggested that the authorities be included in the schedule to clause 66.06, which relates to 'notice of permit applications under local provisions'. The use of this provision here would not appear to be a good fit. Rather (and consistent with Council's resolution of 22 April 2015), Council has revised SUZ15 to ensure that referrals to the appropriate statutory authorities are made. Recommendations to this effect were made in Chapter 11.

We recommend:

In Special Use Zone Schedule 15, amend the development and operating conditions schedule in accordance with Appendix C

¹⁵² Council's submission p61.

¹⁵³ Page 21 of evidence.

13.6 Aboriginal Cultural Heritage Management Plan

An Aboriginal Cultural Heritage Management Plan was prepared by Ecology and Heritage Partners (12 September 2014). We reviewed this plan prior to the hearing and we were satisfied that cultural heritage issues had been addressed.

Appendix A List of Submitters

No	Submitter	No	Submitter
1	Bernie Sanford	33	Thomas Ford
2	Neil Braszell	34	Sharon Paulson
3	Geoff Gore	35	VicRoads
4	Ross Johns	36	Anne Bouts
5	Mr and Mrs Cauchi and Family	37	Miners Rest Primary School
6	Goulburn-Murray Water	38	Heather and Ken Kincade
7	Eileen McGhee	39	Peter Loader
8	Judi Guest	40	Urban Design and Management Pty Ltd
9	Samantha Armstrong	41	Jason McGuinness
10	Peter Dalman	42	Melissa McGuinness
11	Raywyn Foster	43	Pauline Fay
12	Raymond Foster	44	Clark Development Pty Ltd
13	Brian Beattie	45	Marion and Kevin Bennett
14	Claire Dalman	46	Sharon Clark
15	Melinda Dalman	47	Vic and Robyn Muller
16	Emily Eames	47A	Vic and Robyn Muller
17	Heather Dalman	48	Karen, John, Matthew, Kelly and Chloe Moran
18	Kevin Howard	49	Marie Bajada
19	Sandra Fox	50	Animals Australia Inc.
20	Werner and Marilyn Oellering	51	Central Highlands Water
21	Matt and Maree Hines	52	Greg, Chris, Taidgh, Montana King
22	Robert Leslie Johnson and Irene Edna Burgess	53	Damien and Ann Ferguson
23	Country Fire Authority	54	Sarah and Nathan Wright
24	Adrian and Stacey Madden	55	Grant Tillett
25	Graham and Allison O'Neill	56	James Irving and Pauline Green
26	Allan Ford	57	Lana Cormie
27	Glenelg Hopkins	58	Denis Davey
28	Dixon Family Trust trading as Dowling View	59	Rosemary Donovan
29	Gary Guest	60	Brenda Beck
30	Boon Bouts	61	Marilyn Cormie
31	Louisa Jacks	62	Department of Economic Development, Jobs, Transport & Resources
32	Jeanette Evans	63	Mike Madden

No	Submitter	No	Submitter
64	Jenny and Greg Maney	99	Jeremy Bond
65	Heidi Mihail	100	Alicia Bond
66	Margy Allen	101	Bob Hind
67	Mark and Kylie Fawcett	102	Graeme Barnett
68	Elisabeth Souter	103	Public Transport Victoria
69	Beverley Jewell	104	Martin Hale
70	Paul Lythgo	105	Jacky Mebalds
71	Ben Hines	106	Peter Bond
72	Cindy and David Burrige	107	Barbara Bond
73	Brad de Munck	108	Lois Barnett
74A	Alma Clark	109	Sandra Caddies
74B	Alma Clark	110	John and Faye Slorach
75	Kevin Clark	111	Claire Cosgriff
76	Paul Richard Johnston	112	Greg Cosgriff
77	Trevor Taylor	113	Liz Millgate
78	Garry Smith	114	Jarod Bykersma
79	David Henderson	115	Justin Black
80	Lisa Hughes	116	R Armstrong
81	Coree Smith	117	Fiona Hughes
82	Kristin Green	118	Darren Earles
83	Nathan Harman	119	Muriel Merlin
84	Christine Cartledge	120	Peter Coad
85	Tony Brogden	121	Margaret Brennan
86	Patricia Lee	122	Richard Huggett
87	James Upson	123	John Kennedy
88	Annette Madigan	124	Hayden Earles
89	Peter Henderson	125	Wendy Birer
90	Daniel Allen	126	Rebecca Millgate
91	Julianne Henderson	127	Eugene Boadle
92	Siobhan Smith	128	Tim and Renee Hughes
93	Peter David Whitcher	129	Paul Cubitt
94	Stevie Sansbury	130	Amber Cubitt
95	Southern Rural Water	131	Jane Armstrong
96	Louise Hind	132	Syd Merlin
97	Lee Hind	133	Nuri Birer
98	Lorraine Howgate	134	Craig Millgate

No	Submitter	No	Submitter
135	Julie Tongs	160	Cecil Charles Grobbelaar
136	Andrew Tongs	161	Bianca Jade Grobbelaar
137	Judy Evans	162	Daryl Edwards
138	Lynette Wright	163	Alma Clark
139	Garry Wright	164	Olavs Mebalds
140	Neil Petrass	165	Ebony Tansall
141	Annemarie Petrass	166	Emma Allen
142	James Anderson	167	Brad Mason
143	Allan Robertson	168	Joyce Robinson
144	Rosemary Anderson	169	Nathan Hall
145	Ross Vanderbom	170	Robyn Crommelin
146	Shirley and Graham Symes	171	David Crommelin
147	Elaine Forster	172	Brett Smith
148	Chris and Donna Lavery	173	Stacha Salo
149	Gail Farrington	174	Laraine Salo
150	Jessica Glisson	175	Earle and Grace Greaves
151	Tarlea Bykersma	176	Christina Milne-Wilson
152	Edward 'Bruce' Barry	177	Ballarat Stock and Station Agents Association
153	Julie Pascoe	178	Karen, John, Matthew, Kelly and Chloe Moran
154	Steven Johnson	179	Ballarat Residents and Rate Payers Association Inc
155	Justin Irving	180	Jeffrey Lowe
156	Stewart and Karen Riddel	181	Pyrenees Shire
157	Andrew and Sue Hemingway	182	John Gilbert
158	Makaela Clark	183	Melinda Burnham
159	Ryan Haggett	184	Department of Economic Development Jobs Transport and Resources

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Ballarat City Council	Briana Eastaugh of Maddocks Lawyers with Jessie Keating and Amy Boyd of Ballarat Council who called the following expert witnesses: <ul style="list-style-type: none"> - Andrew Rodda in planning Terry Demio presented on strategic issues related to the redevelopment of the existing facility
RLX Investment Company Pty Ltd	Paul Connor of Counsel and Greg Tobin of Harwood Andrews with Rupert Watters and John Hannagan of Harwood Andrews who called the following expert witnesses: <ul style="list-style-type: none"> - Garry Edwards in operational matters - Dr Iain Cowan in odour - Stuart McGurn in planning - Matthew Lee in economics - Matthew Gibson in native vegetation - Jason Walsh in traffic - Jim Antonopoulos in acoustics - Steve Schutt in visual impact - Greg Hoxley in groundwater - Martin Haege in groundwater and water cycle management - Neil Craigie in surface water - Glenn Marriot in agronomy A statement was tendered on Biosecurity by Professor Colin Wilks who was not called.
Central Highlands Water Corporation	Andrew Walker of Counsel who called the following expert witnesses: <ul style="list-style-type: none"> - Dean Lanyon in agronomy - Charles Mellish in waste water management
EPA Victoria	Wendy Tao and Quentin Cooke
VicRoads	Sat Sakunam
Clark Developments and Sharon Clark	David King of Kings Lawyers who called the following expert witnesses: <ul style="list-style-type: none"> - Rob Milner in planning - Dianne Colbert in social impact assessment
Ballarat Stock and Station Agents Association	Tom Madden
Miners Rest Primary School	Dale Power and David Harris

Submitter	Represented by
Karen and John Moran	
Grant Tillett	
Pauline Fay	
Chris and Donna Lavery	
Dr M H Brennan	
Syd Merlin	
James Irving	
Alicia Bond	
Sandra Caddies	
Margy Allen	
Makaela Clark	
Brenda Beck	
Damien and Ann Ferguson	
Alan Duffy	
Marilyn and Werner Oellering	
Marion and Kevin Bennett	
Dixon Family Trust	Philip Dixon
Neil Braszell	
Eileen McGhee	
Judi Evans	
Jared Bykersma	
Boon Bouts	
Anne Bouts	
Ballarat Residents and Ratepayers Association	Jonathan Halls

Appendix C Panel version of Special Use Zone

This Appendix shows the Panel version of Special Use Zone with changes from the exhibited version marked. A number of punctuation and style changes have also been made to accord with VPP drafting conventions.

--/--/20-- **SCHEDULE 15 TO THE SPECIAL USE ZONE**

C185 Shown on the planning scheme map as **SUZ15**.

CENTRAL VICTORIA LIVESTOCK EXCHANGE

Purpose

To provide for the use and development of the land as a livestock exchange (saleyard) facility and ancillary facilities as part of the Central Victoria Livestock Exchange project.

To provide for the use and development of the land in accordance with the Incorporated Document entitled 'Central Victoria Livestock Exchange, Ballarat August 2014'.

1.0 Table of uses

--/--/20-- **Section 1 - Permit not required**

C185

Use	Condition
Agriculture (other than Animal keeping, Animal training, Apiculture, Intensive animal husbandry, Rice growing and Timber production)	
Minor utility installation	
Office	Must be in accordance with an approved Development Plan.
Primary produce sales	Must not be within 100 metres of a dwelling in separate ownership. The area used for the display and sale of primary produce must not exceed 50 square metres.
Saleyard	Must be in accordance with an approved Development Plan
Any use listed in Clause 62.01	Must meet requirements of Clause 62.01

Section 2 - Permit required

Use	Condition
Carpark	
Caretaker's house	Must be in conjunction with a saleyard..
Convenience restaurant	Must be in conjunction with a saleyard.
Convenience shop	Must be in conjunction with a saleyard.
Education centre (other than Primary school and Secondary school)	Must be associated with agriculture.
Function centre	

Hall	
Intensive animal husbandry (other than Broiler farm)	
Market	
Research and development centre	Must be associated with agriculture.
Restricted place of assembly	
Rural industry (other than Abattoir and Sawmill)	
Rural store	Must be used in conjunction with Agriculture. Must be in a building, not a dwelling and have a gross floor area of less than 100 square metres. Must be the only Rural store on the lot.
Renewable energy facility (other than Wind energy facility)	Must meet the requirements of Clause 52.42.
Take away food premises	Must be in conjunction with a saleyard.
Utility installation	
Any other use not in Section 1 or 3	

Section 3 - Prohibited

Use

Abattoir
Animal training (other than Racing dog training)
Art and craft centre
Accommodation (other than Caretaker's house)
Animal keeping
Apiculture
Broiler farm
Brothel
Cemetery
Child care centre
Cinema based entertainment facility
Crematorium
Display Home
Industry (other than Research and development centre and Rural industry)
Freeway service centre
Funeral parlour
Helicopter landing site
Home occupation
Hospital
Leisure and recreation
Nightclub
Place of assembly (other than Function centre, Hall and Restricted place of assembly)
Pleasure boat facility
Primary school
Wind energy facility
Racing dog training

Retail premises (other than Convenience restaurant, Take away food premises, Market, Primary produce sales and Convenience shop)

Rice growing

Secondary school

Service centre

Timber production

Tramway

Transport terminal

Warehouse (other than Rural store)

Winery

2.0 Use and development of land for a saleyard

--/20--
C185

The use of the land for the Central Victoria Livestock Exchange may include a saleyard and associated access ways, car parking, drainage infrastructure, and ancillary amenities and services for staff and patrons including, but not limited to, offices and food and drink premises.

The use of the land must be in accordance with a Development Plan approved under this Schedule.

Requirement for Development Plan

A Development Plan for the use of the land for the Central Victoria Livestock Exchange must be prepared, submitted and endorsed to the satisfaction of the responsible authority.

Only one Development Plan may be approved for the land covered by this Schedule.

The Development Plan must be consistent with any Works Approval or other approval / licence required under the *Environment Protection Act 1970*.

The Development Plan may be amended to the satisfaction of the responsible authority.

The Development Plan may consist of plans or other documents.

The Development Plan must be consistent with any approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*.

The Development Plan must be generally in accordance with the Concept Plan in Section 7.0 of this Schedule.

The Development Plan must include the following to the satisfaction of the responsible authority:

An **Existing Conditions Plan** that includes:

- The boundaries and dimensions of the land.
- Adjoining roads.
- The location, height and purpose of buildings and works on adjoining land.
- Relevant ground levels.
- The location and quality of any existing vegetation.

A **Site Layout Plan** drawn to scale showing:

- The layout of proposed buildings and works including building setbacks from boundaries, finished floor levels, and an indicative internal layout for each building.
- Elevations, showing the dimensions, colours and materials of all buildings and works.
- Driveways, vehicle parking areas, car parking spaces, and loading and unloading areas.
- Finished site levels and the location of any proposed cut and fill.
- Removal or protection of any existing vegetation.
- Any proposed advertising signage.

- External storage and waste treatment areas.

A **Landscaping Master Plan** which shows:

- The proposed landscaping requirements of the land.
- Details and locations of the vegetation species to be planted.
- The number of trees and surface treatments.
- A written description of the timing and management requirements of all landscaped areas.
- A detailed description of any areas to be used as native vegetation removal offset areas.

A **Vegetation Management Plan** which includes:

- Details of the nature and extent of native vegetation on the land.
- A schedule or plan identifying which native vegetation is to be removed and which native vegetation is to be retained.
- The requirements necessary to protect and conserve native vegetation, to reduce the impact of land and water degradation and provide habitat for plants and animals-

The Vegetation Management Plan must specify any requirements that must be observed as part of the removal of any native vegetation and must address the following objectives:

- To avoid the removal of native vegetation where practicable:
- If the removal of native vegetation is not practicable, to minimise the removal of native vegetation through appropriate planning and design.
- To consider whether any offset is appropriate and the form of such offset.

A **Car Parking and Traffic Management Plan** that explains and details:

- The likely traffic generation and impacts of the proposed use and development on the surrounding road network.
- How access to a road in a Road Zone Category 1 is to be addressed.
- Vehicle access points, [including illustrating that the access point from Sunraysia Highway will not be gated.](#)
- The location and treatment of circulation areas, driveways and other accessways within the land.
- The location, layout, treatment and maintenance of all vehicle parking areas and loading and unloading areas.
- The minimum number of car parking spaces to be provided on the land.
- A truck management plan that identifies heavy vehicle truck routes which minimise impacts on townships and peripheral housing to the extent practicable, including driver induction protocols.
- Carparking provision and maintenance.
- Loading and unloading arrangements.
- Traffic management including external intersection and internal road design.
- A Traffic Impact Assessment Report to the satisfaction of VicRoads.

A **Flood Investigation** that includes:

- A *Flood Study/Hydraulic Analysis* which is to be prepared by a suitably qualified and experienced engineer. The plans are to include the extent of flooding in a 1% AEP (1:100 year) flood event for pre-development and post-development conditions.

- An investigation of the post-development conditions must be undertaken by a suitably qualified engineer and must employ best practice methods (to the satisfaction of the Glenelg Hopkins Catchment Management Authority) for flood estimation. This review may be subject to an independent peer review at the cost of the applicant.

A **Flood Risk Report** that must consider the following:

- The State Planning Policy Framework and the Local Planning Policy Framework.
- The existing use and proposed development of the land.
- Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside the identified flood extent.
- The susceptibility of the development to flooding and flood damage.
- The potential flood risk to life, health and safety associated with the development.
- Flood risk factors to consider include:
 - The frequency, duration, extent, depth and velocity of flooding of the land and access way.
 - The flood warning time available.
 - The danger to the occupants of the development, other floodplain residents and emergency personnel if the land or access way is flooded.
- The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities. No loss of floodplain storage will be permitted as part of any development.
- The effects of the development on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance.
- This report must be completed to the satisfaction of the Glenelg Hopkins Catchment Management Authority.

A **Drainage Report** that:

- Identifies waterways, major flood paths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by stormwater and overland flooding.
- Provides for the collection, treatment and disposal of stormwater runoff that reflects best practice such as the provision of water detention basins and water quality treatment wetlands within the open space and bio-retention systems within the local street network.
- Ensures a design philosophy of 'zero adverse impacts' to surrounding areas for up to and including the 1% AEP flood event.
- Details any short and long term maintenance requirements and responsibilities for the wetlands, detention basins and aesthetic lakes.
- Identifies any other elements or issues to assist long-term management of these systems.
- Provides for the design of overflow paths for a 1 in 100 year flood event.
- Identifies measures to improve stormwater quality before it is discharged downstream, including details of design to ensure that floating debris is removed, such as the installation of litter and gross pollutant traps to the satisfaction of the responsible authority.
- Details of the construction procedures and practices to ensure there is no unreasonable off-site impact to stormwater quality during the construction phase.
- The measures to be undertaken for the management and control of erosion and silt discharged beyond the land during the construction phase of the development.
- [This report must be completed to the satisfaction of Central Highlands Water, Goulburn Murray Water and Southern Rural Water.](#)

The responsible authority may accept an alternative report dealing with the drainage and flood issues if the report is to the satisfaction of the responsible authority, [Central Highlands Water, Goulburn Murray Water and Southern Rural Water](#).

A **Stormwater Management Plan** including design detail to ensure that flooding is not increased and that there is no deterioration in water quality in the area surrounding the site as a result of the development, including retarding basins, floodways, and wetlands as mitigation measures. It should identify any sites where levels are required to be raised, and the location of retarding basins required at different stages of development.

The Stormwater Management Plan must take into account any relevant report prepared by the Glenelg Hopkins Catchment Management Authority ~~in 2013~~.

[This Stormwater Management Plan must be completed to the satisfaction of the Glenelg Hopkins Catchment Management Authority, Central Highlands Water, Goulburn Murray Water and Southern Rural Water.](#)

An **Operations and Environmental Management Plan** which includes:

- A Construction Management Plan.
- How any land not required for immediate use is to be maintained.
- Hours of operation of the facility.
- Implementation of best practice Environmentally Sustainable Design principles in the use and development of the land.
- Anticipated stocking rate of cattle and sheep, [including the use, management and monitoring of resting paddocks](#).
- All ongoing management, monitoring, reporting and mitigation measures required to satisfy all relevant environmental legislation requirements, including but not limited to the following:
 - Noise attenuation including public address, [which must assume levels for the determination of acoustic limits based on Farming Zone 'source' to Farming Zone 'receptor'](#).
 - [Any public address system should not be more than 5 dBA above background at any nearby residences or other noise sensitive use and the public address system not be used between 10 pm and 7 am, except in an emergency.](#)
 - Storage and disposal of waste.
 - Onsite water management.
 - Odour attenuation.
 - Dust attenuation.
 - Lighting of the land and measures to minimise light spill and glare from the land.
- [Arrangements for the waste to be sent for composting in preference to a licensed waste facility.](#)
- [Requirements that the sediment from the facultative pond be removed off site immediately and not be stored in the waste stockpile area.](#)
- [Requirements that if the waste cannot be properly managed to prevent environmental harm then increased frequency of waste collection should be an option, or failing that enclosure of the storage area with biofilters.](#)
- [Measures for infection control including protocol for dealing with the products of abortion and deceased animals.](#)
- Having regard to the above, any requirements that must be observed as part of the use of the land for the purposes for a Saleyard.
- Any other matters as required by the responsible authority.

~~Consolidated conditions and requirements~~

~~A consolidated schedule of conditions and requirements that must be observed by the use and development of the land for the purpose of Saleyards as informed by the various plans referred to in this clause 2.0.~~

Development and operating conditions schedule and requirements.

A development and operating conditions schedule must be prepared and approved by and to the satisfaction of the Responsible Authority.

The use and development of the saleyard must be in accordance with the conditions in the development and operating conditions schedule.

The conditions included in the schedule must be worded to achieve the following:

- require all development to be constructed in accordance with the approved Site Layout Plan, Landscaping Masterplan and Car Parking and Traffic Management Plan.
- require all development to be constructed in accordance with the findings of a Flood Investigation, Drainage Report, Stormwater Management Plan and the Operations and Environmental Management Plan.
- conditions required by the Glenelg Hopkins Catchment Management Authority, City of Ballarat, VicRoads, Goulburn Murray Water, Central Highlands Water and Southern Rural Water as required through referral of relevant components of this Development Plan.

3.0 Subdivision

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C185 A permit is required to subdivide land.

4.0 Buildings and works

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C185 A permit is not required to construct or carry out buildings or works associated with a use in Section 1 of Clause 1.0 of this Schedule.

A permit is required to construct or carry out buildings or works associated with a use outlined in Section 2 of Clause 1.0 of this Schedule.

5.0 Application requirements

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C185 An application for a use of land in Section 2 of Clause 1.0 of this Schedule or an application to construct a building or construct or carry out works associated with a use outlined in Section 2 of Clause 1.0 of this Schedule must not prejudice the implementation of the use and development described in any approved development and be accompanied by the following information, as appropriate:

A plan drawn to scale which shows:

- The boundaries and dimensions of the land.
- The location, height and purpose of buildings and works on adjoining land.
- Relevant ground levels.
- The layout of existing and proposed buildings and works.
- All existing and proposed driveway, car parking and loading areas.
- Proposed and existing landscape areas.
- All external storage and waste treatment areas.
- Areas not required for immediate use.
- Elevation drawings to scale showing the colour and materials of all buildings and works.
- Construction details of all drainage works, driveways, vehicle parking and loading areas.
- Any other matters as required by the responsible authority

6.0 Decision guidelines

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C185

Before deciding on an application for a use outlined in Section 2 of Clause 1.0 of the Schedule or to develop or subdivide the land, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The approved Development Plan for the land and whether the application would prejudice the implementation of that plan.
- The cumulative impact on amenity of the proposed use or development having regard to the use and development approved under the Development Plan.
- The interface with adjoining land.
- The interim use of those parts of the land not required for the proposed use.
- The drainage of the land.
- The availability of and connection to services.
- The location and type of access to the land.
- The effect of traffic to be generated on roads.
- Provision for car parking.
- Provision for loading and unloading of vehicles.
- The storage of rubbish and materials for recycling.
- Provision made for vegetation protection and landscaping.

7.0 Concept Plan

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C185

[Final concept plan to be inserted]