

*Planning and Environment Act 1987*

**Panel Report**

# Murrindindi Planning Scheme Amendment C54

**23 June 2015**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

23 June 2015

A handwritten signature in black ink that reads "Lester Townsend". The signature is written in a cursive style with a large initial "L" and "T".

Lester Townsend

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## List of Abbreviations

CFA	Country Fire Authority
EPA	Environment Protection Authority
KFT Plan	<i>Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework</i>
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
SPPF	State Planning Policy Framework
VBRC	Victorian Bushfires Royal Commission

## Overview

### Amendment Summary

<b>The Amendment</b>	Murrindindi Planning Scheme Amendment C54
<b>Planning Authority</b>	Murrindindi Shire Council
<b>Exhibition</b>	4 December 2014 to 30 January 2015
<b>Submissions</b>	<p>Twelve submissions were received.</p> <ul style="list-style-type: none"> <li>• Country Fire Authority</li> <li>• Department of Environment, Land, Water &amp; Planning</li> <li>• VicRoads</li> <li>• Goulburn Valley Water</li> <li>• EPA</li> <li>• Goulburn Murray Water</li> <li>• Jack Russell</li> <li>• Graham McErlain</li> <li>• Samantha Strong</li> <li>• John and Ming Griffiths</li> <li>• Bev Johns</li> <li>• Lyn Gunter</li> </ul>

### Panel Process

<b>The Panel</b>	Lester Townsend
<b>Directions Hearing</b>	Yea, 9 April 2015
<b>Panel Hearing</b>	Planning Panels Victoria, 12 May 2015
<b>Site Inspections</b>	Unaccompanied, 9 April 2015
<b>Appearances</b>	<ul style="list-style-type: none"> <li>• Murrindindi Shire Council represented by Grant Scale and Matt Parsons</li> <li>• Lyn Gunter represented by Graham McErlain</li> <li>• Samantha Strong</li> <li>• Graham McErlain</li> </ul>
<b>Date of this Report</b>	23 June 2015

## Executive Summary

The Amendment proposes to revise the Murrindindi Planning Scheme Local Planning Policy Framework (LPPF) to reflect current strategic directions for land use and implement a more usable and relevant planning scheme format.

The Amendment is relatively straightforward. A number of issues were raised in submissions and Council has adjusted the Amendment to respond to most of these. I generally support these changes.

A critical issue is how Kinglake West–Pheasant Creek should be treated in the Amendment.

I agree with the broad point of submissions that the policy framework does not adequately recognise Kinglake West–Pheasant Creek. This is not to say that it should be identified for significant growth, but its large geographic size and relatively high population means that it should receive more strategic attention than it does. However, this issue will be addressed by a different amendment that implements the *Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework*. That future amendment needs to include appropriate zoning and overlay changes.

Based on the reasons set out in this Report, I recommend:

**Murrindindi Planning Scheme Amendment C54 should be adopted as modified in response to submissions subject to the following additional changes:**

1. **Update all reference to ‘Kinglake West/Pheasant Creek’ to read ‘Kinglake West-Pheasant Creek’**
2. **Update Clause 21.01-2 to read:**
  - **The estimated residential population (ABS) for Murrindindi Shire was 13,494 as at 30 June 2013. Four towns are serviced: Alexandra, Yea, Eildon and Marysville. Other larger towns are Kinglake and Kinglake West-Pheasant Creek. Smaller towns and settlements include Buxton, Flowerdale, Glenburn, Molesworth, Narbethong, Strath Creek, Taggerty, Taylor Bay, Thornton, Toolangi and Yarck with other smaller settlements existing throughout the municipality.**
  - **A number of towns and areas have a strong tourism functions including Eildon, Marysville and the Kinglake Ranges.**
3. **Update Clause 21.02-2 to depict Kinglake West-Pheasant Creek by a single dot on the framework plan in located at the town centre.**

I further recommend:

4. **The amendment that implements the Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework include the Kinglake West-Pheasant Creek structure plan.**
5. **The amendment that implements the *Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework* include more than just policy changes and exhibit zoning and other control changes identified in the plan.**

# 1 Introduction

## 1.1 The Amendment

A 2013 review of the Murrindindi Planning Scheme under Section 12B of the *Planning and Environment Act 1987* identified the need for a revised Local Planning Policy Framework (LPPF). A draft revised LPPF was prepared in 2014 that:

- Outlined the current, relevant strategic directions, replacing current directions (most dating back to May 1999).
- Incorporated land use directions in the Council Plan and other Council corporate documents.
- Outlined a positive, growth oriented approach for future land use planning.
- Followed current proposals for the state-wide review of the planning policy framework in planning schemes, using ten proposed land use themes.
- Included Council's identified future land use strategic actions and priorities.
- Structured the LPPF in a more streamlined, plain English and simpler format, improving usability and relevance.

The Amendment replaces the current LPPF with a new LPPF by:

- Deleting Clauses 21.01 to 21.12 from the Municipal Strategic Statement
- Introducing the following new Clauses:
  - Clause 21.01, Context
  - Clause 21.02, The Planning Vision
  - Clause 21.03, Economic Development
  - Clause 21.04, Housing
  - Clause 21.05, Environment
  - Clause 21.06, Transport and Infrastructure
- Deleting existing local planning policies (Clauses 22.01 to 22.05, inclusive).

The Amendment does not include any changes to any planning zoning, overlays or other controls.

## 1.2 Submissions

Four submissions relate to the implementation of the *Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework*, AECOM, 2014 (the KFT Plan), questioning why the Amendment does not implement the plan in detail. The Amendment proposes to include the Kinglake Framework Plan as a framework plan in the vision and list the plan as a reference document to the planning scheme. It does not propose to implement the adopted plan in any detail.

Another submission raised the lack of reference to the Hume Regional Growth Plan. Council considered that no additional discussion of the plan is required under the Amendment as the plan has already been implemented in the State Planning Policy Framework section of the Murrindindi Planning Scheme.

Submissions were concerned that the revised MSS did not adequately communicate the character of the Shire and did not communicate any real detail about the attributes, critical values and character of the region. I do not find this to be the case.

A further submission raises a number of issues in relation to the right to farm and protection of land for agriculture.

One submission requested that a policy for outdoor events which are considered under the definition of Place of Assembly. I have some sympathy for the issues raised in relation to concerts in farming areas, but ultimately this not an issue that can be meaningfully addressed in this Amendment. Council may wish to carry out further work on this issue, but this is a matter for it to decide.

I have considered all written submissions, as well as submissions presented to me during the Hearing. In addressing the issues raised in those submissions, I have been assisted by the information provided to me as well as my observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Post exhibition changes
- Implementation of the KFT Plan
- Kinglake West–Pheasant Creek
  - The identify and status of Kinglake West–Pheasant Creek
  - Kinglake West-Pheasant Creek town centre



## 2 Consideration of issues

### 2.1 Post exhibition changes

Council proposes to change the Amendment in response to a number of submissions.

The CFA supports the intent of the Amendment and requests that the following comments be considered:

- The bushfire policy is located in the environment clause, mixing bushfire policy with other environmental risks, making it more difficult to find. Consider placing issues, implementation and further strategic work with the relevant risk.
- Policy in the existing LPPF directing development to areas of lower risk has been removed. CFA strongly recommends that this is reinstated. This policy statement was:
  - *The future urban growth within the Shire is directed to lower risk locations having regard to strategic and settlement planning in a regional, sub-regional, municipal and local context.*
- An additional point be included in issues in Clause 21.04-3 that 'further growth and development may not be possible in all settlements due to environmental (bushfire) constraints'.
- Under Clause 21.05-2, Environmental risks, replace 'Municipal Fire Prevention Committee' with 'Municipal Fire Management Planning Committee' and replace the word 'accept' with 'acceptable'.

The bushfire strategies and policy that apply in the current LPPF have been carried across as part of the Amendment. Bushfire falls within Clause 21.05-2, Environmental risks, as bushfire is an environmental risk and this is the most logical clause to include this material. This mirrors the approach in the State Planning Policy Framework (SPPF). The SPPF has explicit policy on Bushfire risk.

I agree with Council that general statements of the direction of growth under Bushfire policy are not useful and that the areas selected for future growth need to be shown on framework plans.

Council proposes changes to Clause 21.05-2, Environmental risks, Policy guidelines, Bushfire, in relation to seeking the views of the Municipal Fire Management Planning Committee and I support these changes.

Other changes the Council proposes in response to submissions address the following issues:

- the right to farm
- Yea wetlands
- clarification of policy on agriculture
- updating water supply for dwellings policy to reflect current practice
- carrying forward policy on town entrances and streetscapes
- clarifying industrial policy in Alexandra.

I have reviewed Council's post exhibition changes and I support these changes.

## 2.2 Implementation of the KFT Plan

### 2.2.1 Background

The KFT Plan was formally adopted by Murrindindi Shire Council in February 2014.

The need for a long term strategic plan was identified as important before the 2009 bushfires and was re-emphasised as a community priority in the community recovery planning process after the fires. The development of the KFT Plan received funding in the *Rebuilding Together: A State-wide Plan for Reconstruction and Recovery*, October 2009.

The KFT Plan is a vision for a sustainable future for the local communities of Kinglake, Kinglake Central, Kinglake West–Pheasant Creek, Flowerdale (including Hazeldene), Castella and Toolangi. All the communities are in the municipality of Murrindindi Shire. The KFT Plan is founded on the values that these local communities identified as important to their future.

The delivery of the final KFT Plan was delayed as various elements of the Victorian Bushfires Royal Commission (VBRC) final report into the causes and circumstances of the fires that devastated Victoria in 2008 and 2009 were reconciled. Many of the 67 recommendations made by VBRC continue to be implemented by all levels of government.

The KFT Plan will guide future population growth, land use and development, infrastructure and service provision, community safety and the character and identity of local communities.

The KFT Plan presents a development framework to strengthen the sustainability of existing towns and preserve the environmental values of the region in a way that promotes economic development and enhances community resilience and safety for the future. The KFT Plan identifies potential locations for limited population growth contained within existing zoning boundaries within Kinglake and Kinglake West–Pheasant Creek to create opportunities for safer living (and possible resettlement from less safe areas).

The KFT Plan states:

*The identification of these locations [for limited population growth] also seeks to underpin the future viability of existing and planned services and infrastructure. Future development should be undertaken in a way that improves the overall sustainability of the towns.*

### 2.2.2 The issue

The Exhibited Clause 21.02-2 – Strategic Framework Plans, included the following five ‘major’ township framework plans:

- Alexandra
- Kinglake
- Yea
- Eildon
- Marysville.

The KFT Plan was not proposed for detailed implementation under the Amendment. The Amendment only proposes to:

- Include the Kinglake Framework Plan from the KFT Plan as one of the five main township framework plans to form part of the municipal vision under Clause 21.02-2, Strategic Framework Plans, under Clause 21.02, Vision.
- List the KFT Plan as a reference document to the planning scheme under various clauses.

### **2.2.3 Submissions**

Mr McErlain seeks the inclusion of the Kinglake West–Pheasant Creek Design Framework Plan of the KFT Plan be included into Clause 21.02-2 Strategic Framework Plans.

Council submitted:

*Council did not propose the inclusion of the Kinglake West / Pheasant Creek framework plan as it considered that the Kinglake West / Pheasant Creek settlement does not comprise one of the five proposed major townships in the municipality and is not of equal importance as a settlement compared to Kinglake. Council proposed the inclusion of the Kinglake framework plan in Amendment C54 as it is considered that Kinglake is the primary township within the KFT Plan area given the provision of existing services and facilities and the potential for future consolidated growth.*

While Council pointed out the better services available at Kinglake no strategic justification for a settlement hierarchy was put forward to support Kinglake as the ‘primary township’ was made. Indeed, Council submitted:

*The KFT Plan does not include a hierarchy of various settlements across the study area, choosing instead to recognise the roles each settlement played in the region and to develop strategy appropriate to each township.*

### **2.2.4 Discussion**

I cannot see why the Kinglake West–Pheasant Creek Structure Plan would be treated differently to the other structure plans produced as part of the KFT Plan process.

Even if there were a hierarchy of settlements, this of itself would not be a reason to exclude the Kinglake West–Pheasant Creek structure plan from the scheme. Why carry out detailed strategic planning work in consultation with the community and then effectively throw out the results by not including the structure plan in the planning scheme?

Council submitted that the role of Clause 21.02 is to recognise key, primary townships and while there is no ‘*formal hierarchy*’ Kinglake is considered to be the ‘*most complete township in the Kinglake Ranges*’. Council is trying to implement some form of informal hierarchy by the decisions it makes on what structure plans to take forward rather than including all relevant structure plans, and if appropriate, spelling out an explicit settlement hierarchy. To spell out an explicit hierarchy, Council would need an explicit strategic justification for the hierarchy; something the KFT Plan does not do.

Council submitted that given that the Amendment only partially addressed and implemented the KFT Plan, it is considered that any reference to the KFT Plan should be

deleted from the Amendment and fully considered and implemented through a separate amendment intended to implement the KFT Plan (Amendment C53).

Councils' changes in response to submissions remove the KFT Plan as a reference document and the Kinglake Framework Plan. I agree with Council's approach.

I recommend:

**The amendment that implements the KFT Plan includes the Kinglake West-Pheasant Creek structure plan.**

## **2.3 Kinglake West–Pheasant Creek**

The underlying issue is how to characterise the townships in the Kinglake Ranges in the MSS, in particular Kinglake West-Pheasant Creek.

### **2.3.1 The identity and status of the Kinglake West-Pheasant Creek**

#### **(i) Submissions**

Mr McErlain made a detailed complex submission, much of which did not address planning issues or revisited what were seen as past injustices. The submission often attributed unkind motives to Council decisions without any evidence or justification. Within this submission Mr McErlain makes a number of well-founded points.

Mr McErlain submitted:

*For more than a decade, the Murrindindi Shire Council has misrepresented the identity and status of the Kinglake West-Pheasant Creek Local Community by incorrectly describing the existing local settlement pattern of the Kinglake District ... . Instead of correctly identifying Kinglake West-Pheasant Creek as a distinct township, the Council consistently and incorrectly identified this local community as smaller settlements located within the Township of Kinglake ... .*

*As a result of misrepresenting the status of the Kinglake West-Pheasant Creek Local Community, the sound and equitable planning policy expected for a town of this size has been ignored in the Revised LPPF. Hence, the Council's misrepresentation of the Kinglake District's local settlement pattern has again produced inappropriate and inequitable planning policy.*

It was submitted that Council's flawed 'Single Township Strategic Approach' has led to a suboptimal planning outcome including concentrating the entire Kinglake District current and potential future commercial land supply in Kinglake.

Mr McErlain submitted that the key issues for the Kinglake West-Pheasant Creek Township caused by Council's flawed strategic approach include:

- adverse impact on the local community's sense of identity
- inequitable and inappropriate zoning of the town centre as Industrial 1 Zone and lack of support for the rezoning of the existing town centre's retail businesses to a Commercial Zone
- lack of proper recognition of the existing town centre which is referred to the 'Pheasant Creek Industrial Estate'.

As exhibited the MSS proposed<sup>1</sup>:

*The estimated residential population (ABS) for Murrindindi Shire was 13,494 as at 30 June 2013. The towns of Alexandra and Yea are larger fully serviced towns. The fully serviced towns of Eildon and Marysville are towns with active residential and tourism functions.*

*The Kinglake Ranges area is composed of Kinglake West, Pheasant Creek, Kinglake Central, Kinglake, Kinglake East and Toolangi areas.*

*Smaller towns include Buxton, Flowerdale, Glenburn, Koriella, Molesworth, Narbethong, Strath Creek, Taggerty, Thornton and Yarck with other smaller settlements spread throughout the municipality.*

It was submitted that these statements were flawed because they:

- do not acknowledge the status of Kinglake West-Pheasant Creek and Kinglake as towns
- incorrectly described the Kinglake West-Pheasant Creek Township as two separate settlements
- incorrectly described the Kinglake township as two separate settlements (Kinglake and Kinglake East).

Mr McErlain submitted:

*A summary of my requested changes (January, 2015) to Exhibited Clause 21.01-2 included:*

- *Correctly describe the status of each settlement existing within the Kinglake Ranges as follows:*
  - *Kinglake West (including Pheasant Creek) identified as a ‘town’*
  - *Kinglake (including Kinglake East) identified as a ‘town’; and*
  - *Kinglake Central identified as a ‘rural settlement’.*
- *Along with Eildon and Marysville, describe the Kinglake Ranges as having active tourism functions.*

Council proposes to change this description to:

*The estimated residential population (ABS) for Murrindindi Shire was 13,494 as at 30 June 2013. The towns of Alexandra and Yea are larger fully serviced towns. The fully serviced towns of Eildon and Marysville are towns with active residential and tourism functions.*

*The Kinglake Ranges area ~~is composed~~ comprises the Kinglake, Kinglake West, / Pheasant Creek, ~~Kinglake, Kinglake East and Toolangi areas~~ Kinglake Central and Castella settlements.*

*Smaller towns and settlements include Buxton, Flowerdale, Glenburn, ~~Koriella~~, Molesworth, Narbethong, Strath Creek, Taggerty, Taylor Bay, Thornton, Toolangi and Yarck with other smaller settlements existing throughout the municipality.*

<sup>1</sup> This was exhibited as one paragraph. It is shown as three paragraphs here to aid comprehension.

Mr McErlain expressed concern that the Revised Clause 21.01-2:

- did not clearly describe the status of the existing settlements, as it simply describes all areas as 'settlements', instead of correctly describing the status of each settlement in terms of its 'town' or 'rural settlement' status
- did not identify the Kinglake Ranges settlements as providing active tourism functions.

It was submitted that the revised Clause 21.01-2 was unclear in regard to which settlements are included within the Kinglake Ranges noting that:

- the exhibited provision identified Toolangi and not Castella, but
- the Revised provision identifies Castella but excludes Toolangi.

Mr McErlain also submitted:

*It is my view that the Kinglake Ranges settlements should be identified as providing active tourism functions as the settlements are surrounded by the Kinglake National Park. The Kinglake National Park has significance at the State and regional level. The Kinglake National Park is identified in the Hume Regional Growth Plan Background Report (2014) as having environmental significance and offering multiple nature-based recreation activities.*

## **(ii) Discussion and recommendation**

I do not think these issues are complex.

Figure 1 shows the zoning map of the area which gives a good indication of the physical size of the settlements. Table 1 shows the population in 2011. While the population numbers will have change the general picture is clear.

Town size can be judged by population or geographic extent. By either of these criteria Kinglake West–Pheasant Creek is a large town in Murrindindi.

The key need in the MSS is to distinguish between serviced and serviced town as this has direct impact on the policy that applies to further growth. There is no explicit settlement framework that articulates the roles of various settlements. This is a deficiency of the Amendment and drives a number of the concerns in submissions.

Kinglake West-Pheasant Creek is clearly one 'settlement' from a planning perspective and ought to treated as one settlement in the MSS. Settlements that comprise of two distinct localities are combined with a hyphen (-) or en rule (–); a slash (/) is used where there are two alternate names. This is consistent with Guidelines for Geographic Names 2010, and typical use of English punctuation. Given it is one settlement it is appropriate that it is depicted by a single dot on the framework plan in Clause 21.02-2. The dot should be located at the town centre.

Figure 1: Kinglake District existing local settlements – Zoning Map

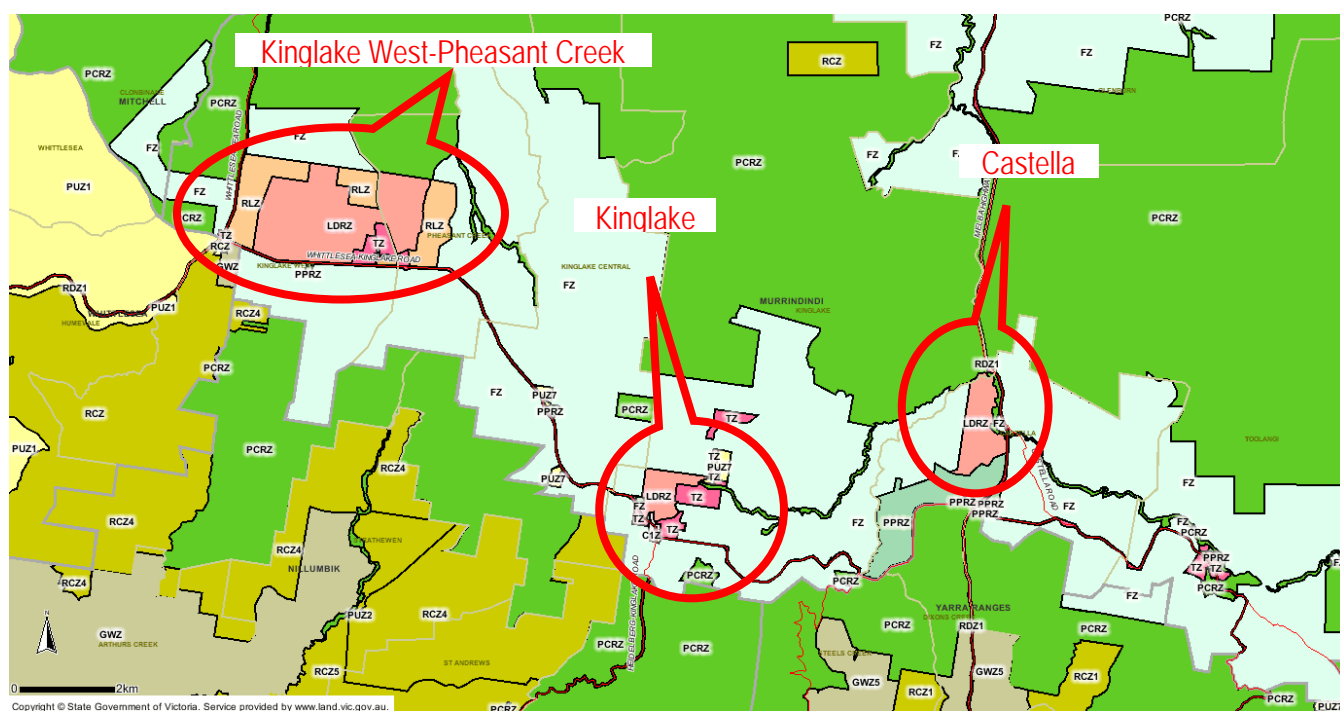


Table 1: Population of towns

Town Name		Area Sq km (2011)	Total population 2011	Total dwellings 2011	Persons in Labour Force 2011
Alexandra	Serviced	6.051	2,245	1,148	1,052
Yea	Serviced	3.473	1,087	603	449
Kinglake		6.257	1,031	401	495
Kinglake West-Pheasant Creek		6.129	818	287	410
Eildon	Serviced	4.002	678	554	252
Hazeldene <sup>2</sup>		1.979	250	128	91
Marysville	Serviced	2.087	246	191	115
Buxton		1.293	234	157	98
Thornton		0.560	136	80	n/a
Rural Balance - Murrindindi (S)		N/A	6,127	3,741	3,111

Source: Towns in Time database 2001-2011, Murrindindi MSS for which towns are serviced.

<sup>2</sup> The localities of Flowerdale and Hazeldene were amalgamated in 2014 and are now known as Flowerdale.

It is not critical to define the geographic area of the Kinglake Ranges in the Clause 21.01-2 and identify which towns are located within this geographic area and which are not. I note that Clause 21.04-3 identifies which settlements are within the Kinglake Ranges.

I agree that the reference to tourism is incomplete and that the Kinglake Ranges has an important tourism function.

I recommend:

**Update all references to 'Kinglake West/Pheasant Creek' to read 'Kinglake West-Pheasant Creek'**

**Update Clause 21.01-2 to read:**

- **The estimated residential population (ABS) for Murrindindi Shire was 13,494 as at 30 June 2013. Four towns are serviced: Alexandra, Yea, Eildon and Marysville. Other larger towns are Kinglake and Kinglake West-Pheasant Creek. Smaller towns and settlements include Buxton, Flowerdale, Glenburn, Molesworth, Narbethong, Strath Creek, Taggerty, Taylor Bay, Thornton, Toolangi and Yarck with other smaller settlements existing throughout the municipality.**
- **A number of towns and areas have a strong tourism functions, including Eildon, Marysville and the Kinglake Ranges.**

**Update Clause 21.02-2 to depict Kinglake West-Pheasant Creek by a single dot on the framework plan in located at the town centre.**

### **2.3.2 Kinglake West-Pheasant Creek town centre**

It was submitted that during the community consultation phase of the *Kinglake Flowerdale Integrated Strategy Plan, 2003*, a key issue raised in the submissions by the Kinglake West-Pheasant Creek residents was to improve the appearance and traffic management of the town centre, located at the corner of Watsons Road and Whittlesea-Kinglake Road, Kinglake West.

It was further submitted that, during the consultation phase of the KFT Plan the local residents raised the issue in regard to improving the appearance and traffic management of the town centre.

To address this issue, it was submitted that the following text be included under *Strategies* section to Clause 21.04-3:

*Develop and implement urban design proposals and streetscape works for the Kinglake West Town Centre, located at the intersection of Watson Road and Whittlesea-Kinglake Road, to improve the appearance and traffic management of the area*

A major concern of submitters is the fair and orderly planning of the town centre of Kinglake West-Pheasant Creek. Part of the town centre area is zoned industrial and according to the submitter routinely referred to as the *Pheasant Creek Industrial Estate*.

I agree with submitters that the current zoning in the vicinity of the Kinglake West-Pheasant Creek does not make a lot of intuitive sense, but ultimately any change would need to be



subject of a separate amendment. This is potentially an issue that could be addressed in the implementation of the KFT Plan. I note that the KFT Plan says:

*The rezoning of land from an industrial zoning to a business zoning will provide for commercial uses and re-establish the former town centre at the intersection of Watsons Road and Kinglake-Whittlesea Road*

It would a waste of effort if the amendment that implements the KFT Plan did not pursue the zoning and other control changes identified in the plan.

I recommend:

**The amendment that implements the KFT Plan include more than just policy changes and exhibit zoning and other control changes identified in the plan.**