

*Planning and Environment Act 1987*

**Panel Report**

**Murrindindi Planning Scheme Amendment C57 and  
Planning Permit 2016/2**

**1274 Whittlesea-Yea Road, Kinglake West**

**27 March 2017**

*Planning and Environment Act 1987*

Panel Report pursuant to Sections 25 and 96E of the Act

Murrindindi Planning Scheme Amendment C57 and Planning Permit 2016/2

1274 Whittlesea-Yea Road, Kinglake West

27 March 2017

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David Merrett, Chair

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## List of Abbreviations

BAL	Bushfire Attack Level
BMO	Bushfire Management Overlay
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
KFT Plan	Kinglake, Flowerdale and Toolangi Plan and Design Framework 2014
LCA	Land Capability Assessment
LPG	Liquefied Petroleum Gas
LPPF	Local Planning Policy Framework
Murrindindi C57	the Amendment
the planning permit	Planning Permit 2016/2 (proponent version 28 February 2017)
RLZ	Rural Living Zone
s173	Section 173 Agreement
sqm	square metres
TIAR	Traffic Impact Assessment Report
TZ	Township Zone

## Executive Summary

### (i) Summary

Amendment C57 seeks to rezone 1274 Whittlesea-Yea Road, Kinglake West from the Rural Living Zone to the Township Zone.

As exhibited, Planning Permit 2016/2 seeks to use and develop the land for a service station, convenience shop, postal agency, food and drink premises under Clause 32.05, and display of an internally illuminated identification pole sign under Clause 52.12.

The land (2 hectares) was created by a recent rural living subdivision and is located adjacent to the Township Zone that defines the urban form of Kinglake West. The proposal seeks to reinstate some of the uses that were lost in the Black Saturday bushfires in 2009, such as the general store and postal agency. These will be at a larger scale and more in number and be consolidated on a single site. There are to be three food and drink premises.

The key issue for the Amendment was whether the rezoning had strategic justification. Council placed significant reliance on the *Kinglake, Flowerdale and Toolangi Plan and Design Framework 2014* in establishing the strategic basis for the rezoning. This document was completed after the bushfires to assist the community in rebuilding and setting a long-term vision for each of the communities and is a reference document in the planning scheme. Oddly the Panel found, apart from in Clause 21.02 where the Kinglake West-Pheasant Creek Framework Plan was contained, there was very little representation of the reference document in the planning scheme. This framework plan does not contain the same level of detail as its counterpart in the 2014 document. For example, it does not designate Kinglake West as an activity node which the Panel considered as a reasonably significant policy direction.

The resident submitters relied heavily upon the statement in the reference document to confine commercial and residential development to existing zones; yet there were no objectives or strategies in the planning scheme to support this. The Panel found there was strong policy within the planning scheme for the re-establishment of uses and community infrastructure lost in the bushfires in and around townships. As the land was also within the settlement boundary and adjacent to the existing Township Zone, the Panel was satisfied the rezoning had appropriate strategic justification and there was a lack of suitably sized vacant land in the Township Zone to accommodate the proposal. The Panel suggests that in the future if Council is to rely on a reference document to justify an Amendment then this should be supported directly by statements in the planning scheme.

An amended planning permit and plans (Revision E) were circulated prior to the Hearing. At the Hearing the proponent provided a further iteration of the planning permit that became the base document (proponent version 28 February 2017) for the recommendations of the Panel.

The Panel concluded the following in response to the key issues for the planning permit:

- Clause 52.12 (Service station) – the proposal complies fully with the service station provisions of the planning scheme.

- Bushfire risk and access to water – the land is not within the Bushfire Management Overlay and the CFA has provided conditional support to the proposal. A static and dedicated water supply of 40,000 litres was required. The land does not have a reticulated water supply or access to one; thus, there would be reliance on tank water storage for the range of uses. The Panel was concerned whether the supply provided would meet the requirements of the uses and has imposed a condition on the planning permit to require a Water Balance Report.
- Neighbourhood character – the Panel found that the utilitarian buildings associated with a service station would change the character of the land. However, the land is not within a Neighbourhood Character Overlay and Council advised the neighbourhood character of Kinglake West had not been assessed. The benefit of a large site is that the proposal can be relatively self-contained and well landscaped with significant setbacks. The pitched roof form on the buildings have a residential character to them.
- Traffic – The Traffic Impact Assessment Report found the need to provide turn lanes at the northern access point and there would be no requirement for additional works at the Whittlesea-Yea/Whittlesea-Kinglake Roads intersection. Car parking, access and circulation provisions have been satisfied.
- Internal and external amenity – Mr Milner proposed the deletion of the internal rear service road and associated infrastructure; elements of which could be satisfied elsewhere. This had the benefit of increasing setbacks to the adjacent residential properties and provided the opportunity for additional landscaping.
- Signage – all signs are internally illuminated. The main identification sign was exhibited at 9 metres high and located in the front landscape setback. Its height was justified by the proponent to enable it to be seen above the roadside vegetation from the Whittlesea-Yea Road and provide individual panels for each use. The Panel considered the height was excessive and directed that further discussion take place between Council, the proponent, VicRoads and the Department of Environment, Land, Water and Planning to consider a 6 metres high sign in the road reserve, unhindered by vegetation. VicRoads objected to this and the Panel supports its relocation adjacent to the northern egress point on private land to separate it further from the residential properties.
- Impact on flora and fauna – Mr Brett Lane confirmed there was no threatened flora and fauna species on the land. However, he acknowledged the presence of an active wombat burrow and suggested some words that could form a permit condition to ensure the burrow was vacant at the time of construction.
- Impact on waterways – the resident submitters were concerned the land formed part of the headwaters of the King Parrot Creek and referred to the section 173 agreement from the rural living subdivision that does not allow construction within 30 metres of it. The Panel confirmed the waterway was on other land within the rural living subdivision and there was no waterway on the land. The Panel was satisfied that the conditions proposed by the Environment Protection Authority would address any potential on site contamination. The size of the land allows for a primary and secondary effluent disposal field.

- Impact on cultural heritage – as there was no waterway on the land or within 200 metres of the proposal that defines an area of cultural heritage sensitivity, a Cultural Heritage Management Plan was not required. The resident submitters referred to the discovery of items of significance on other land. The Panel notes that under the Aboriginal Heritage Act 2006 if an item of significance is found there is self-reporting requirement to the authorities.

The Panel has considered all the information presented to it and concludes that the rezoning of the land to the Township Zone and Planning Permit 2016/2 as contained in Appendix C are appropriate.

**(ii) Recommendations**

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

**Murrindindi Planning Scheme Amendment C57 be adopted as exhibited subject to the following:**

1. **Amend Clause 21.02, Kinglake West-Pheasant Creek Framework Plan, to show 1274 Whittlesea-Yea Road, Kinglake West within the Township Zone.**

**Planning Permit 2016/2**

2. **That Planning Permit 2016/2 (Proponent version 28 February 2017) be issued in the amended form contained in Appendix C.**



# 1 Introduction

## 1.1 The Amendment

Murrindindi Planning Scheme Amendment C57 (the Amendment) was prepared by the Murrindindi Shire Council as Planning Authority. As exhibited, the Amendment proposes to rezone 1274 Whittlesea-Yea Road, Kinglake West from Rural Living Zone (RLZ) to Township Zone (TZ).

Planning Permit 2016/2 (the planning permit) was exhibited concurrently under Section 96A of the *Planning and Environment Act 1987*.

## 1.2 Planning Permit 2016/2

The permit, as exhibited, seeks the approval for use and development of 1274 Whittlesea-Yea Road, Kinglake West for a service station, convenience shop, postal agency, food and drink premises under Clause 32.05 and display of an internally illuminated identification pole sign under Clause 52.12. Figure 1 contains the exhibited site plan. Figure 2 contains the details of the proposed pole sign.

Some of the key aspects of the exhibited proposal are:

- two new access points off Whittlesea-Yea Road. The northern access point is ingress only and the southern access point is egress only
- a semi-circular landscaped area on the front boundary that has a maximum width of 20 metres
- a canopy that covers 12 petrol pumps that is setback between 46 and 51 metres from the Whittlesea-Yea Road
- a convenience store with a floor area of 537 square metres (sqm)
- three convenience restaurants with individual floor areas of 130sqm
- a postal agency with a floor area of 133sqm
- a courtyard of 252sqm next to one of the convenience restaurants
- signage that includes a 9 metre high internally illuminated sign and other internally illuminated business identification signs
- 36 car parking spaces
- a circular one way driveway that provides access to the rear of the premises for deliveries
- a Liquefied Petroleum Gas (LPG) storage tank<sup>1</sup> located in the front landscaped area.

The exhibited planning permit contains 39 conditions; some of which are:

Condition 3	Requires details of the proposed retaining wall
Conditions 6-11	VicRoads conditions for the upgrade of access to the land
Condition 12	Country Fire Authority requirement for on-site storage of water for fire-fighting purposes

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<sup>1</sup> The exhibited plans did not indicate the location of the LPG tank however its location was confirmed by the proponent at the Hearing.

- Condition 17 Native vegetation offset requirement for the removal of 0.035 habitat hectares of native vegetation
- Condition 21 Hours of operation 6.00am to 11.00pm on all days including public holidays
- Condition 22 Delivery times 7.00am to 5.00pm Monday to Friday and 8.30am to 4.00pm Saturday, Sunday and public holidays
- Condition 30 Construction management plan
- Conditions 31-35 Advertising signs conditions.



Figure 1 Exhibited site plan

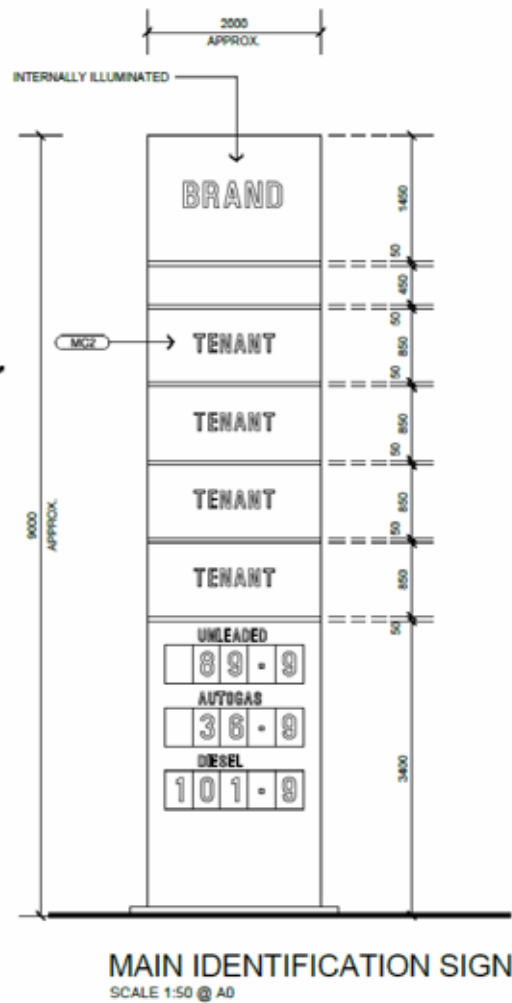


Figure 2 Proposed pole sign

### 1.3 Panel process

The Amendment was prepared at the request of PLANIT on behalf of Angelo and Giuseppe Bonaddio (the proponent) and was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 7 April 2016.

The Amendment was placed on public exhibition between 4 August and 5 September 2016, with five opposing submissions received. One submission contained a petition with 42 signatures opposing the Amendment.

At its meeting of 21 December 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 6 January 2017 and comprised David Merrett.

A Directions Hearing was held in relation to the Amendment on 2 February 2017. Prior to the Directions Hearing, the Panel undertook an unaccompanied inspection of the land and its surrounds. An accompanied inspection was held on 28 February 2017.

The Panel then met at the Kinglake West Hall on 27 and 28 February 2017 to hear submissions about the Amendment and planning permit. Those in attendance at the Panel Hearing are listed in Table 1.

Appendix A contains the list of submitters to the Amendment and permit.

Appendix B contains the list of documents tabled at the Hearing.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Murrindindi Shire Council	Mr Grant Scale, planning consultant and Ms Jane Archer, planning officer
Angelo and Giuseppi Bonaddio (proponent)	Mr David Vorchheimer of the firm HWL Ebsworth Lawyers who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr Rob Milner, planning, 10 Consulting Group</li> <li>- Mr Brett Lane, flora and fauna, Brett Lane and Associates</li> </ul>
Ms Bev Johns	
Mr David Johns	
Ms Mavis Bateman	
Mr Charles Clancy	

## 1.4 The proposal

### 1.4.1 The subject area

Kinglake West is located 43 kilometres north east of central Melbourne.

Kinglake West is a settlement in the Kinglake Ranges that, along with surrounding areas, was devastated in the 2009 Black Saturday bushfires that swept between Kilmore East and Marysville. Figure 3 shows the layout of these settlements in the Kinglake Ranges. The Kinglake National Park and farming land envelopes these settlements.

Kinglake West and Pheasant Creek bookend an area that contains township, rural living and low density residential land and is known more broadly as a single settlement. There is no reticulated town water or sewerage.

The Whittlesea-Yea Road and the Whittlesea-Kinglake Road intersect at Kinglake West. VicRoads manages both roads. The land is located 165 metres north of this intersection.

### 1.4.2 The Amendment and permit land

The Amendment applies to land shown in Figure 4. The land has an area of 2.04 hectares and has an undulating fall of approximately 6 metres from south to north across the land. The land accesses the Whittlesea-Yea Road at its south-western point and is elevated approximately one metre above the road level.

Dense roadside vegetation screens the land from the Whittlesea-Yea Road and seems to be regrowth after the 2009 bushfires. The land has a frontage to the Whittlesea-Yea Road of approximately 100 metres.

The land is irregularly shaped and wraps around the rear of two rural residential lots to the south. Both lots contain a dwelling.

#### **1.4.3 Changes to the permit**

Council, in response to a Panel Direction, circulated a revised permit that inserted new conditions from the Environment Protection Authority (EPA) and DELWP and amended conditions from VicRoads.

The proponent circulated a new set of plans (Revision E) that contained the following changes:

- Correct the property address.
- Clarify location of underground tanks.
- Clarify location of directional signs within the service station.
- Clarify location of air/water facilities for bikes.
- Clearly designate the location of the loading bay for convenience store and convenience restaurants.
- Clearly designate the location of mail delivery zone for postal agency.
- Clearly designate the location of bike spaces.
- Update the locality plan to show the location of adjoining dwellings.
- Include further dimensions and detail regarding the proposed signage.
- Clarify the signage detail to the convenience store, convenience restaurants and postal agency.
- Prepare a further section detail to demonstrate the level of cut and fill.

During the Hearing, the proponent provided an updated version of the permit to capture changes discussed during Day 1 that was intended to be used as the basis for a 'without prejudice' discussion on permit conditions on Day 2. This version is known as the proponent version (28 February 2017) and forms the permit base document for further discussion in this report.

The Panel notes that combined amendment/planning permit proposals require a higher degree of rigour than an amendment as the Panel will also consider the detail of the proposed permit. The Panel was surprised that the proponent did not provide and Council did not require a planning report to justify the proposal or DELWP and Council did not require an update to technical supporting reports to address the deletion of the carwash that occurred to the proposal prior to exhibition. These would seem to be important issues that should have been addressed at the time.

#### **1.4.4 Supporting reports**

The Amendment and permit were supported by the following documents and technical assessments:

- Site plan, section plans and elevations.
- Indicative landscape plan.

- Biodiversity assessment report.
- Traffic Impact Assessment Report (TIAR).
- Land Capability Study (LCA).
- Bushfire assessment.
- Feature survey.

The proponent circulated addendums to the LCA and the TIAR to account for the changes contained in the Revision E plans and the Panel’s directions.

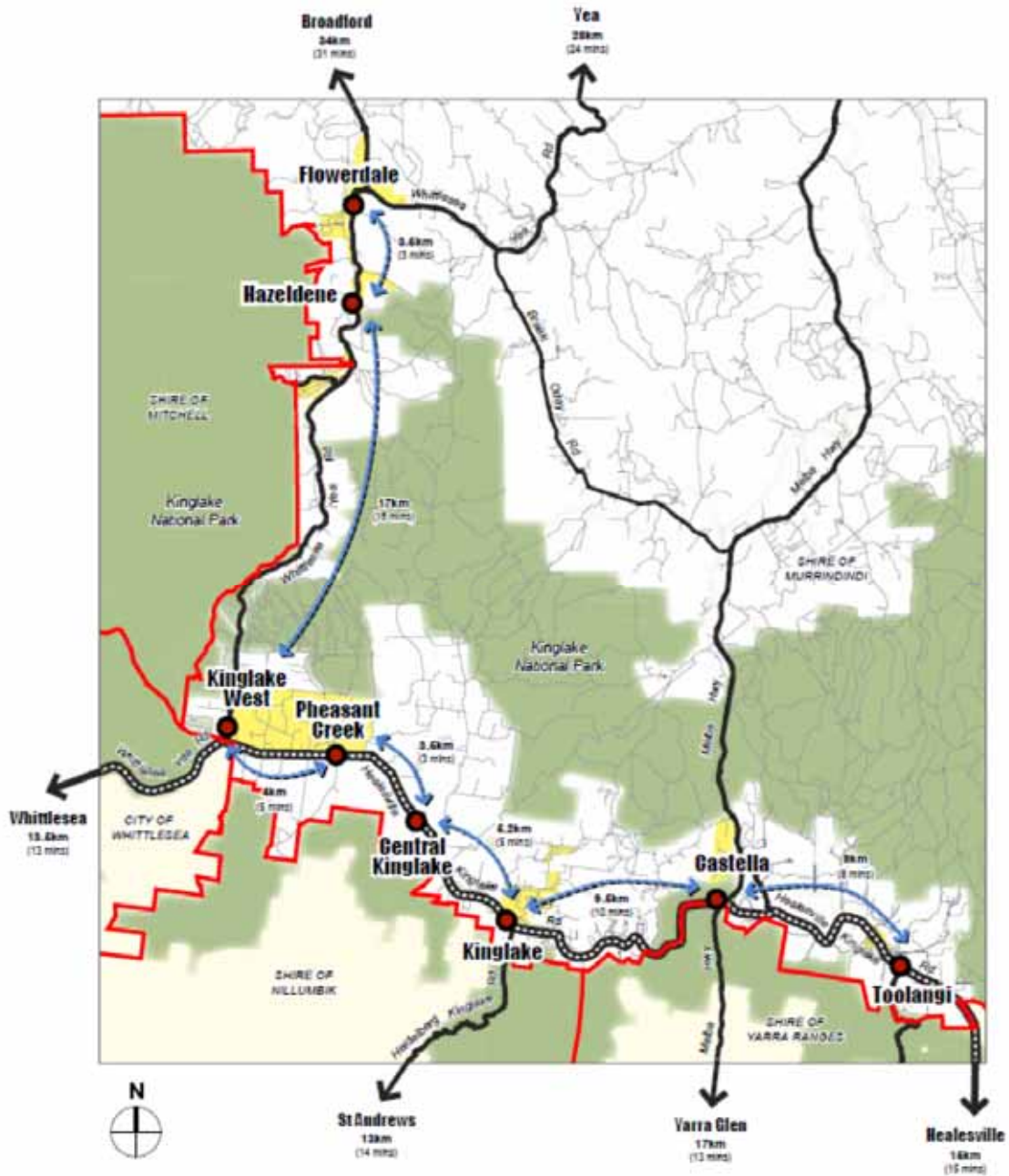


Figure 3 Amendment land in Kinglake Ranges



Figure 4 Amendment land in Kinglake West

## 1.5 Planning history of the land

In 2007 Amendment C12 implemented the *Kinglake Flowerdale Integrated Strategy Plan 2003* in the planning scheme that included the rezoning of the land and its surrounds from Farming Zone to Rural Living Zone.

A development plan was approved in 2008 to indicate how the land and its surrounds could be developed for rural living purposes. The land was contained in a 10 hectare 'superlot'.

Planning Permit 2009/130 was approved in 2010 to subdivide the 'superlot' into 9 lots; one of which was the land (Lot 7 on Plan of Subdivision 630072). A section 173 Agreement (s173) was entered into that imposed the following restrictions:

- No buildings or works may be constructed within 30 metres of the waterway or within the vegetation protection area.
- No effluent disposal may occur within 60 metres of the waterway measured from the centre of the waterway or within the vegetation protection area.
- No buildings may be constructed within 25 metres of the revegetation zone, 20 metres of the Whittlesea-Yea and Whittlesea-Kinglake Roads, 10 metres of the internal road and 5 metres from another property boundary.
- Effluent disposal must be by package treatment plant.
- All boundary fencing must be less than 1.2 metres in height and must be at least 60% transparent.
- No fencing within the 30 metre waterway setback unless using 'fauna friendly' methods approved in writing the Responsible Authority.
- Implementation of the endorsed land management plan.
- No unpainted zincalume cladding on any building or structure.

The planning permit did not propose to delete the s173 from the land, so it remains a relevant consideration.

Amendment C46 initially proposed to apply the Development Plan Overlay. However, as the subdivision approved under Planning Permit 2009/130 was substantially complete, the approved version of Amendment C46 deleted the Development Plan Overlay from the land.

## 1.6 Kinglake Ranges, Flowerdale and Toolangi Plan and Design Framework

The *Kinglake, Flowerdale and Toolangi Plan and Design Framework 2014* (KFT Plan) was completed after the 2009 bushfires and:

*... 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.<sup>2</sup>*

The KFT Plan was introduced as a reference document by Ministerial amendment in the planning scheme by Amendment C53 (approved February 2016). The KFT Plan was one of the State Government initiatives in response to the 2009 bushfires to assist the Kinglake Ranges to recover and plan for a sustainable future. No changes were made to the Local Planning Policy Framework (LPPF).

The KFT Plan, at pages 40-41, contains the Kinglake West-Pheasant Creek Design Framework (Figure 5) that identifies Kinglake West as an activity node. On page 40 it notes:

*Kinglake West/Pheasant Creek has been nominated as a suitable location for limited further commercial and retail development. This will help to reduce the need to go off the mountain for daily needs and support tourism within the region. Key sites have been identified as opportunities for new and rebuilt businesses, for example food and beverage outlets, cottage industries and retail outlets.*

The land is included within the settlement boundary which *reflects the extent of existing urban zoned land<sup>3</sup>*.

Amendment C54, in its approved version (February 2016), implemented a broader planning scheme review that included:

- the Kinglake West–Pheasant Creek Framework Plan (Figure 6) in Clause 21.02 (Planning vision)
- discussion of economic issues at Clause 21.03 (Economic development) at Kinglake West–Pheasant Creek.

The Panel notes that the framework plan contained in the planning scheme does not refer to Kinglake West as an activity node.

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<sup>2</sup> Kinglake, Flowerdale and Toolangi Plan and Design Framework 2014, page 4

<sup>3</sup> Kinglake, Flowerdale and Toolangi Plan and Design Framework 2014, page 38



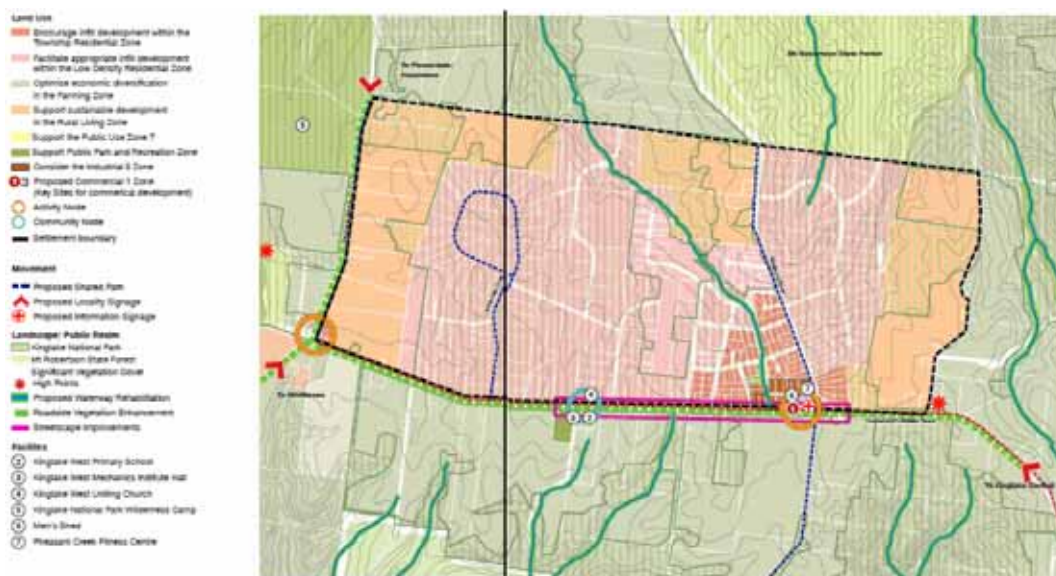


Figure 5 Kinglake West-Pheasant Creek Design Framework

## 1.7 Panel Direction

During the Hearing, there was discussion on the proposed 9 metre high internally illuminated sign. The proponent partly justified the need for a 9 metre high sign so it could be viewed above the roadside vegetation. The Panel expressed concern over the location of the sign which would be viewed clearly from adjoining dwellings, its height and the likelihood of the roadside vegetation as it continues to grow eventually screening the sign from view from the road and rendering the sign ineffective. The proponent accepted that a reduced height was appropriate (at 6 metres) and its relocation to the roadside reserve should be investigated further. To consider this, VicRoads as the road manager, DELWP in relation to possible removal of additional vegetation and Council engineers, were to be consulted.

At the conclusion of the Hearing, the Panel issued the following Direction:

*Council and the proponent are to finalise Planning Permit 2016/2 (proponent version 28 February 2017) and, in doing so, provide;*

- *For discussion between the Proponent and Council and identify conditions where there is disagreement*
- *For comment from VicRoads, DELWP and Council engineers on the proposed relocation of the internally illuminated pole sign at a height of 6 metres to the road reserve immediately south of ingress point and its impact on sight lines and roadside vegetation. Copies of the advice VicRoads and DELWP are to be provided*
- *For the placement of the latest version of the permit with tracked changes on Council's website so it can be accessed by all parties*
- *Advice to Planning Panels Victoria by Friday 17 March 2017.*

*The Panel will not accept any other submissions on this matter.*

### 1.7.1 Response to Direction

In its response, Council attached emails from DELWP and VicRoads. DELWP did not object to the relocation of the sign to the road reserve. However, VicRoads objected to its location in the road reserve. Council supported the sign in the road reserve provided it did not become a traffic hazard.

This matter is discussed further in Chapter 4.



**KINGLAKE WEST – PHEASANT CREEK FRAMEWORK PLAN**

-  Proposed Commercial 1 Zone
-  Potential Industrial 3 Zone
-  Encourage infill development in the Township Zone
-  Support sustainable development in Rural Living Zone
-  Facilitate appropriate infill development in Low Density Residential Zone
-  Public open space & recreation
-  Settlement boundary
-  Waterway rehabilitation

Figure 6 Kinglake West – Pheasant Creek Framework Plan from Clause 21.02

## 1.8 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 the land and its surrounds.

The Panel is required to consider the merits of the proposed rezoning first and, if a suitable strategic threshold has been met, then the Panel will then consider the merits of the planning permit.

This report deals with the issues under the following headings:

- Planning context
- Amendment C57
  - Strategic justification
- Planning Permit 2016/2
  - Clause 52.12 assessment
  - Bushfire risk and water supply
  - Neighbourhood character
  - Traffic
  - Internal and external amenity
  - Signage
  - Impact on flora and fauna
  - Impact on waterways
  - Cultural heritage
  - Section 173 agreement
  - Other planning permit changes.

The following is provided in response to some issues raised by Ms Johns:

- Loss of property value - this issue has been addressed in many Planning Panels and Victorian Civil and Administrative Tribunal cases which concluded that the loss of property value is not a valid planning issue that can be considered.
- The notification of the Amendment – submitters considered that notification should have been wider. Council advised it had conducted notification in accordance with the *Planning and Environment Act 1987* directly to residents and through the newspaper (Mountain Monthly) circulating locally in the community. The Panel accepts this is the case and does not consider this issue further.
- The viability of the service station - while an economic analysis was not provided by the proponent or required by Council, it would be unusual for the specific land use of this size to require its own economic analysis. This is a business risk borne by the proponent. The Panel does not comment further on this issue.
- Incorrect information - the Panel agrees that some of the supporting reports referred to the incorrect address or other factual errors which is unfortunate. However, this in itself is not a substantive issue.

Council sought to apply a restriction on the possibility of the land being used for housing, and referred to the potential of a s173 to achieve this. The exhibited planning permit did not

contain a condition for an agreement to be entered into. As such the Panel advised Council that it is a matter that should be resolved between it and the proponent and the Panel would have some difficulty in applying an agreement that seeks to prohibit a use that would not require a planning permit in the TZ. The Panel does not consider this matter further.

## 2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

### 2.1 Policy framework

#### 2.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework:

- Clause 11.02 (Urban growth).
- Clause 11.02-1 (Supply of urban land).
- Clause 12.01-1 (Protection of biodiversity).
- Clause 12.01-2 (Native vegetation management).
- Clause 13.05 (Bushfire).
- Clause 14 (Natural resource management).
- Clause 17.01 (Business).
- Clause 18.01-1 (Land use and transport planning).
- Clause 19.01-2 (Water supply, sewerage and drainage).

The Panel notes the Hume Regional Growth Plan (Clause 11.10) is relevant to the proposal. The land is located in the Lower Hume sub-region.

#### 2.1.2 Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

- Clause 21.03-1 (Business and Industry) includes the objective *to facilitate active and vibrant commercial area in townships*.
- Clause 21.05-2 (Environmental risks) includes the objective to consider bushfire risk, including risk associated with settlement nearby forested land.
- Clause 21.06 (Transport) includes the objective to facilitate quality main road, local road and public transport networks.

The Panel considers Clause 21.02 (Planning vision) and Clause 21.04-3 (Other townships and settlements) are also relevant to the proposal. Clause 21.02 contains the Kinglake West-Pheasant Creek Framework Plan (refer to Section 1.6) that is derived from the KFT Plan. Clause 21.04-3 identifies managing growth pressures in a bushfire prone area and the lack of reticulated town water and sewer as key issues that need to be addressed. It does not refer to the Kinglake West-Pheasant Creek Framework Plan.

### 2.2 Planning scheme provisions

#### 2.2.1 Zones

The land is currently in the RLZ. The Amendment proposes to rezone the land to the TZ.

Land to the south is zoned Township and land to the east and north is zoned RLZ. Land to the west is in the Farming Zone.

### **2.2.2 Overlays**

There are no planning overlays that affect the land.

### **2.2.3 Particular provisions**

The following particular provisions are relevant:

- Clause 52.05 (Advertising signs)
- Clause 52.06 (Car parking)
- Clause 52.12 (Service station) contains requirements in relation to site area and dimensions, number of vehicle crossovers, setbacks from Whittlesea-Yea Road and landscape buffers to adjoining land in the TZ
- Clause 52.17 (Native vegetation) is relevant in setting an offset requirement for proposed native vegetation removal.

While the Bushfire Management Overlay (BMO) does not apply, the land is within an area that is bushfire prone under the building regulations. The Panel also heard that the BMO is proposed to be applied to Kinglake West via a separate amendment. The consideration of Clause 52.47 (Planning for bushfire) is not reliant on the application of the BMO to trigger its consideration. The Panel therefore considers these provisions are relevant.

## **2.3 Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

### **Direction No 9 - Metropolitan Strategy**

Kinglake West is located in 'The Ranges' peri-urban area of Melbourne which provides 80 per cent of Melbourne's drinking water and is important for timber production, recreation and tourism.

### **Direction No 11 - Strategic Assessment of Amendments**

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments).

### **The Form and Content of Planning Schemes (s7(5))**

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

## **2.4 Discussion**

The Panel considers the strategic justification of the proposed rezoning requires further consideration. The KFT Plan requires further growth to occur within existing zoned land; an issue raised by submitters. As the Amendment proposes to rezone land for the proposed service station, this matter is considered further in Chapter 3.

## 3 Amendment C57

### 3.1 The issue

The key issue for the Panel is whether the proposed rezoning is strategically consistent with the Local Planning Policy Framework.

### 3.2 Strategic justification

#### 3.2.1 Evidence and submissions

Council referred to the KFT Plan which proposes an activity node at the intersection of Whittlesea-Yea Road and Whittlesea-Kinglake Road, more specifically at the north-east and north-west corners. Land within the broadly applied activity node includes land that is not within the TZ and part of the land. Council considered the rezoning was strategically appropriate as:

- The land adjoins the TZ where urban uses are appropriate. The rezoning is an orderly extension of the existing TZ and is generally consistent with the activity node designation on the KFT Plan.
- The land is not located in a BMO however a preliminary bushfire assessment has been undertaken with regard to the bushfire threat in the surrounding area. The preliminary bushfire assessment report demonstrated that the proposed use and development is capable of incorporating appropriate protection measures to reduce the risk to life and property from bushfire to an acceptable level on a continuing basis.
- The TIAR concludes that safe access to and from the Whittlesea-Yea Road can be provided.
- The planning application is supported with a LCA with a recommended wastewater management system to ensure that the discharge of wastewater as a result of the development of the land is contained on-site and will not affect the volume or quality of discharge to a watercourse via roadside drainage.

Mr Vorchheimer, on behalf of the proponent, submitted that:

*... the loss of local businesses and services in Kinglake West (and indeed the broader municipality) in 2009 as a result of the bushfires had had a broad local and regional implications and it follows that a proposal to re-establish and broaden the range of convenience services to this community has sound rationale.*

*Economic recovery of the townships, and the re-building of businesses and services for the community, has been a central theme of policy and action for all levels of Government as a response to the devastation of the bushfires. The rezoning is given particular strategic justification by adopted local policy that explicitly seeks to re-establish business activity as part of an established settlement.<sup>4</sup>*

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<sup>4</sup> HWL Ebsworth submission, paragraph 3.5 and 3.6

Mr Vorchheimer considered the policy intent of restricting development to existing zones was more directed at residential growth, not commercial growth. He referred to the oversupply of vacant residential land in Kinglake West-Pheasant Creek where the KFT Plan identified there was a supply of 90 lots in the RLZ and Low Density Residential Zone and considered the matter of oversupply is a planning matter that should be controlled by policy.

Mr Vorchheimer stated:

*This position is supported by the evidence of Mr Milner who notes it would be flawed and inappropriate strategic outcome to apply a literal and rigid approach to such guidelines and deny any consideration of the proposal, particularly if the consequence was that much sought after economic development, commercial facilities, convenience services and jobs were denied a place in the community, which was formerly serviced by these attributes.<sup>5</sup>*

Mr Milner provided planning evidence on behalf of the proponent. He considered the Amendment was strategically appropriate as:

- the Kinglake Ranges lost a range of services and facilities in the 2009 bushfires and there is policy to support the restoration of lost services, such as convenience retailing and postal facilities at the local level. Mr Milner noted the proposed uses would be larger and more diverse and be of direct benefit to the local community
- Kinglake West is at a strategic location where one would expect local services at the junction of local arterial roads. It provides a natural decision point about how one moves through the region
- the KFT Plan has reconfirmed the policy framework which expects a range of local services to be provided in Kinglake West
- there is a lack of appropriately sized TZ land in Kinglake West for this proposal
- Kinglake West is an appropriate location for a service station
- the north-east quadrant of Kinglake West is the most appropriate location for a minor extension to the TZ as it adjoins the TZ and relatively undeveloped rural living land.

Ms Johns considered the KFT Plan supported development within existing zoned land only and that a rezoning to support new development was inconsistent with the KFT Plan. Ms Johns considered Council should have required a s173 Agreement at the time of subdivision to prohibit further rezoning for a nominated period of time.

### **3.2.2 Discussion**

The KFT Plan is listed as a reference document in the planning scheme and used as a basis for the Kinglake West-Pheasant Creek Framework Plan at Clause 21.02. The designation of an activity node at Kinglake West is not reflected on the framework plan; neither is any other direction from the KFT Plan reflected in the LPPF. Therefore, there is significant reliance on a reference document that is not part of the planning scheme to justify this Amendment. A reference document is usually a background document to the planning scheme and if it is to be relied upon to make decisions then this information should be reflected in the Local Planning Policy Framework. Council should consider whether more

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<sup>5</sup> HWL Ebsworth submission, paragraph 3.8



information from the KFT Plan should be introduced into the planning scheme to ensure its vision is achieved.

Notwithstanding this, the KFT Plan is an important document that has been used as a mechanism by Council and the community to provide a vision for the Kinglake Ranges and assist in the repair of the community after the 2009 fires.

The Panel considers Ms Johns is correct in stating that the KFT Plan contains a direction that commercial development was to occur within existing zoned land. At Kinglake West, this is the TZ, not the RLZ. At page 28, the KFT Plan outlines its development framework where it states:

*Promote limited commercial and residential growth within existing zoned land at Kinglake West/Pheasant Creek.*

At page 38 the KFT Plan states:

### *3.8 Future commercial and retail development*

*Kinglake West/Pheasant Creek has been nominated as a suitable location for limited further commercial and retail development. This will help to reduce the need to go off the mountain for daily needs and support tourism within the region. Key sites have been identified as opportunities for new and rebuilt businesses, for example food and beverage outlets, cottage industries and retail outlets. The development of these sites in an appropriate style (see 3.5) will improve the quality and enhance the character of Kinglake West/Pheasant Creek. 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.*

The Panel asked Council to identify which land was identified as key sites. Council advised that it did not have information to identify these sites, apart from a reference in the KFT Plan on the Kinglake West/Pheasant Creek Design Framework that identifies Kinglake as containing land proposed to be rezoned to the Commercial 1 Zone. This did not particularly assist the Panel, aside from confirming that Kinglake West does not contain any key sites.

However, the Panel notes the following in relation to this issue.

The reliance by Council on the activity node notation on the Kinglake West-Pheasant Creek Design Framework that partly affects the land to justify the rezoning of the land is overstated. This is, at best, indicative and reference should be made to the land zoning that underlies this notation to understand where uses could occur. Accordingly, the TZ would indicate the extent of the activity node.

The land is within the settlement boundary on the Kinglake West-Pheasant Creek Framework Plan. Based on this, greater flexibility should be allowed to consider alternative uses than on land outside of the settlement boundary, that may include rezoning to facilitate them.

There does seem to be greater reliance on restricting housing growth to existing zoned land. The restriction of use and development to existing zones is not contained in the planning

scheme. However, Clause 21.02-1 (Vision) outlines the following key element in achieving the vision:

*Facilitation of new and expanded economic development and employment opportunities.*

Clause 21.03-1 (Business and Industry) also states:

*Economic impacts of planning for and recovery from natural disasters, including the need to revitalise the economies of towns and communities affected by the 2009 bushfires.*

This clause emphasises the need to grow the local economy.

Objective 2 is relevant to Kinglake West. It seeks to *facilitate active and vibrant commercial areas in townships*. Relevant strategies are:

*Strengthen the role and identity of townships, including establishing new and/or reinstating businesses within the commercial centres of Kinglake, Kinglake West – Pheasant Creek.*

*Identify and promote further business development in and around main townships with existing communities and services.*

*Support and facilitate existing and expanded commercial activities in smaller townships.*

If the need to restrict commercial uses to existing zoned land was so important then the Panel would expect this to be enunciated in the planning scheme; which is not the case. Conversely, the objectives and strategies for the smaller townships, including Kinglake West, seeks to re-establish prior uses and *in and around main townships*. The Panel interprets this as providing for some degree of flexibility within the settlement boundary to rezone land for appropriate uses.

The loss of 2 hectares of housing land from the RLZ in the Kinglake West land supply is minor and will not create an undersupply of RLZ land.

The land adjoins the TZ and can be considered as a logical extension of it. From an amenity perspective, the land is large and has the ability through the design of the development to minimise its impact on neighbouring land (this issue is discussed further in Chapter 4).

The need to respond to the 2009 bushfires adds a new element to local planning that is unique to those communities affected by the bushfires. The loss of the general store and postal agency are services that the community must now travel further afield to access. While it would be ideal for these to be re-established on their former site, this opportunity has not been taken up by the market. Planning Permit 2009/425 was issued in 2010 for their re-establishment. This permit allowed for a 200sqm convenience store, postal agency and 47sqm liquor sales.

The proposed use and development is at a larger scale and variety to what existed prior to the bushfires. The convenience store is over double the size of that approved under Planning Permit 2009/425 and will provide a wider range of goods to the local community.

New uses include the service station and convenience restaurants. The Panel considers the provision of these uses on a consolidated single site is a good outcome.

A larger footprint is required and it does not seem as though there is sufficient land in the TZ that would be appropriate. Township zoned land west of the Whittlesea-Yea Road is not within the settlement boundary which seems to be an anomaly created by the KFT Plan. Council agreed with this, however it does present another consideration that is not present on the land as it lies within the settlement boundary.

The Panel highlighted an anomaly that may be created by the rezoning. The Kinglake West-Pheasant Creek Framework Plan in Clause 21.02 classifies land according to the relevant zone. Accordingly, if the land is to be rezoned it would be prudent to amend the framework plan to show it in the TZ.

In response to Ms Johns, the Panel notes that a Council cannot prohibit prospective changes to the planning scheme through the rezoning of land.

### **3.2.3 Conclusion**

The Panel concludes the rezoning of the land to the TZ is appropriate to facilitate the consideration of use and development envisaged under the planning permit.

The Panel concludes it would be appropriate to amend Clause 21.02 (Kinglake West-Pheasant Creek Framework Plan) to show the land in the TZ.

### **3.3 Recommendation**

The Panel recommends:

**Amend Clause 21.02, Kinglake West-Pheasant Creek Framework Plan, to show 1274 Whittlesea-Yea Road, Kinglake West within the Township Zone.**

## 4 Planning Permit 2016/2

### 4.1 The issue(s)

The key issues are:

- Clause 52.12 assessment
- bushfire risk and access to water
- neighbourhood character
- traffic
- internal and external amenity
- signage
- impact on flora and fauna
- impact on waterways
- impact on cultural heritage
- section 173 agreement
- other planning permit changes.

Appendix C contains the planning permit supported by the Panel.

### 4.2 Clause 52.12 assessment

#### 4.2.1 Evidence

Mr Milner provided an assessment of the proposal against the provisions of Clause 52.12 (Service station) of the Murrindindi Planning Scheme. In particular, the following requirements are met:

- *The site is at least 1,080 square metres.*
- *The frontage is at least 36 metres (96.5 metres) and the depth is at least 30 metres (112.35-117.93 metres).*
- *The site will be serviced by a maximum of 2 crossovers from a road, and each crossover is no wider than 7.7 metres.*
- *The crossovers are at least 4.5 metres from another crossover on site and at least 4.5 metres from another road.*
- *The crossovers are at least 1.8 metres from another crossover on another property.*
- *A kerb or barrier can be built along the road alignment (except at crossovers) to prevent the passage of vehicles.*
- *The wall of a building would be setback at least 9 metres from a road.*
- *The canopy will be at least 2.5 metres from a road.*
- *Petrol pumps, pump islands, water and air supply points and storage tank filling points are at least 3.6 metres from a road.*
- *Petrol tankers can be wholly contained on the site when storage tanks are being filled.*
- *The driveway space can sufficiently accommodate a vehicle 13.8 metres by 2.5 metres to enter and leave the site in a forward direction.*

#### 4.2.2 Discussion and conclusion

The Panel accepts that due to its large site area the proposal does meet the requirements of Clause 52.12.

### 4.3 Bushfire risk and water supply

#### 4.3.1 Submissions

PLANIT provided a preliminary bushfire assessment which highlighted that the land:

- could be impacted by fire from the public state parks and the Kinglake National Park to the north and north west under extreme fire weather conditions and from the south, south-east and south-west following a wind change that typically follows a cold front
- would have access to the Neighbourhood Safer Place at the Kinglake West Reserve located 2 kilometres to the east
- has access to town water<sup>6</sup> and a dedicated fire-fighting water supply storage of 10,000 litres would be provided on site
- could accommodate a Bushfire Attack Level (BAL) 19 defensible space mostly on site with the eastern 5 metres of the defensible space located on the adjoining rural living land. This land cannot be developed as it is within a 20 metre 'no build' setback.

Refer to Figure 7 that indicates the defensible space required.

Mr Vorchheimer submitted the proposal is able to meet bushfire management objectives as follows:

- The subject site will provide safe access and egress.
- There is ample space within the subject site for the movement of emergency vehicles.
- The site is able to provide static water supply for bushfire fighting purposes.
- The subject site is able to provide defensible space mostly within the site.

Council advised the preliminary bushfire assessment had been reviewed by the Country Fire Authority (CFA), which advised by email *that the bushfire risk will be appropriately mitigated for access and vegetation management*. It imposed a condition on the planning permit for a static fire-fighting water supply of 40,000 litres with CFA couplings. The CFA noted the error in the assessment where it stated town water was available and, accordingly, increased the volume of water to be provided.

Ms Johns considered that the BMO had been removed from the land and that a service station would increase the bushfire risk due to the presence of flammable liquids.

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<sup>6</sup> This is incorrect. The land does not have access to town water



Figure 7 BAL 19 assessment of defensible space

#### 4.3.2 Discussion and conclusion

While the Kinglake Ranges has a recent history of bushfire, the land is not currently affected by the BMO. A BAL 19 defensible space is able to be provided and the land is not within the flame zone and has substantial separation from forested areas. The land itself is substantially cleared of vegetation and is contiguous with other cleared land.

Clause 52.47 seeks to ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level. In response to Ms Johns, the Panel notes that the EPA has imposed conditions that require a vapour recovery system and the LPG storage is to be designed to an Australian Standard and all petrol tanks are to be underground. This should mitigate any fire risk.

The CFA has provided its conditional consent to the proposal. The Panel is satisfied that the permit conditions, the context of the land and the lack of any accommodation on site has reduced the bushfire risk to an acceptable level.

The land is not serviced with a reticulated water supply. The Panel raised the issue of the adequacy of water supply not only for fire-fighting purposes but also the commercial uses proposed. Each commercial use is proposed to have a water tank, however no details were provided in respect of their capacity or the adequacy of this. To address this, the Panel proposed that a Water Balance Report be prepared to confirm the on-site static water supplies proposed were adequate.

### **4.3.3 Recommendation**

The Panel recommends Planning Permit 2016/2 (proponent version 28 February 2017) be amended, as follows:

**Insert a new Condition 3 (Reports to be provided) that requires a Water Balance Report prepared by a suitably qualified person which details the location and capacities of water tanks for commercial and firefighting purposes on site.**

## **4.4 Neighbourhood character**

### **4.4.1 Evidence and submissions**

Ms Johns considered the neighbourhood character of the area was semi-rural and the proposed development would not be consistent with this character.

Mr Milner submitted that the buildings have been designed with a pitched roof that responds to the residential building forms in the area.

### **4.4.2 Discussion and conclusion**

The Panel accepts that buildings associated with service stations are generally utilitarian and that a development of this scale is a new form that is not present in Kinglake West. Council did not advise the Panel that Kinglake West's character had been reviewed and the Neighbourhood Character Overlay did not apply to the land or within Kinglake Ranges.

The Panel notes from its inspections that one of the defining character traits of Kinglake West is the large setbacks to built form. One of the benefits of the land is that it is large and has the capacity to have larger setbacks than what otherwise might be the case in an urban context. The canopy is 78 metres from the front boundary, 42 metres from the northern boundary, 24 metres from the eastern boundary and 70 metres from the southern boundary. This, along with other amendments to the proposal discussed in Section 4.5, will ensure the development, as best as can be achieved, be a self-contained element in Kinglake West. Setbacks are similar to, if not greater than, setbacks to residential built form on adjacent and nearby TZ land.

The Panel accepts the evidence of Mr Milner that the design of the buildings adopt a roof form that is typically residential in its expression.

The Panel concludes that the proposal, with the benefit of large setbacks and significant landscaping, would not be inconsistent with the semi-rural character of Kinglake West.

## **4.5 Traffic**

### **4.5.1 Submissions**

Council referred to the TIAR and its addendum (that addressed the post exhibited version of the concept without the car wash), discussions with VicRoads and its conditions that have been applied to the permit in support of the proposal.

Mr Vorchheimer referred to the TIAR addendum that established:

- the volumes of traffic generated by the proposal will be low and have little perceived impact on the operation of the surrounding network

- the proposal provides car parks and bicycle spaces in excess of the requirements of Clause 52.06 of the planning scheme
- the on-site carparking spaces accord with the minimum requirements of Clause 52.06-8 of the planning scheme
- fuel loading can comfortably occur for B-double vehicles, whilst still allowing customer movements
- the single lane operation of the rear accessway<sup>7</sup> for loading/waste collection is acceptable given the low number of loading movements expected on any given day
- both vehicle access points (where connecting to the wider network) will operate very well under post-development conditions and into the future.

Ms Bateman considered it would be very difficult to gain access to her property with the proposed access points being so close.

#### **4.5.2 Discussion and conclusion**

The TIAR required a Basic Left Turn Lane for south bound traffic and a Shortened Channelised Right Turn Lane for north bound traffic at the northern entry point to be provided. With this infrastructure in place, the TIAR found that both access points to the land and the Whittlesea-Kinglake Road/Whittlesea-Yea Road intersection will operate very well under post-development conditions and into the future.

The Panel accepts that the proposed development will not have a significant impact on the surrounding road network.

In relation to the concern expressed by Ms Bateman, the Panel notes the driveway to her property is approximately 23 metres from the boundary and a further 7 metres from the proposed access. The relevant provision from Clause 52.12 requires a minimum separation of 1.8 metres and the southern access will only be used for egress. The current driveway location is located closer to the common boundary but there will be greater levels of traffic associated with the proposal. The key issue for the Panel is whether this will form a dangerous outcome for Ms Bateman. While Mr Hodge, who provided written traffic evidence, was not called to give oral evidence, the Panel is satisfied that there is sufficient separation between the access points; an issue Mr Hodge did not identify any concern with.

### **4.6 Internal and external amenity**

#### **4.6.1 Evidence and submissions**

Mr Milner recommended the following changes be made to the design of the proposal to improve internal and external amenity:

- Remove the rear service road.
- Provide for a shared loading bay centrally on the frontage of the buildings alongside the car parking.
- Provide a dedicated loading area to the immediate north of the larger shop.
- A suitable re-siting of bin storage so that it can be serviced from the front of the site.

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<sup>7</sup> Refer to Section 4.6 for further consideration of the rear accessway.



This would have the effect of decreasing the amount of hard stand area and increasing the setbacks to car parking, particularly in the southern areas adjacent to the residential properties, without losing any site functionality. Council and the proponent supported these changes.

Mr Milner recommended that a revised landscaping plan is warranted to more effectively screen the proposal and accommodate the new opportunities for landscaping.

Ms Johns requested that the new boundary fencing be constructed of colourbond material and at a height of 1.8 metres and considered the hours of operation were excessive for the locality.

Mr Clancy was concerned the proposal could be seen from his property to the north of the land.

#### **4.6.2 Discussion and conclusions**

The exhibited plans show a boundary fence height of 1.65 metres and constructed of wood palings. The Panel supports the need for a higher fence and constructed of more durable material.

In regard to the hours of operation, the Panel considers the proposed hours of operation (6.00am to 11.00pm on all days including public holidays with restricted delivery times) to be appropriate. They are reasonably standard for the industry and do not allow for 24/7 operation.

The Panel noted that the exhibited plan did contain the location of the LPG tank however the Revision E plans do not. The tank should be shown on the plans.

The Panel noted there was an error on the Revision E plans that showed the egress driveway increase its level of cut into the land on a decline in the topography, not on an incline. The levels on the site plan indicate that from the Whittlesea-Yea Road, the driveway rises and then falls down to the building envelope pad. This driveway is located 7.5 metres from the boundary to the residence further south. The Panel suggested at the hearing that, firstly there seemed to be an error in the plans (as above) and, secondly that it would be more appropriate to cut the driveway into the land so that it sits lower in the landscape than the residential property to the south and assist in providing a visual and acoustic screen to the residential property to the south. The Panel notes that the proponent and Council were supportive of this and has recommended a condition that this accessway not be lower than RL 510.35 metres.

The length, height and construction of the proposed retaining wall will be a significant element at the proposals northern facade. The wall will commence at the entrance to the land and run along its entire northern alignment, at a height of 2.5 metres. The Panel accepts the retaining wall and the development would be seen from the neighbouring land and is concerned that in a semi-rural setting the effective overall height of the proposal would be around 9 metres when the height of the wall is considered. The land is large and significant fill will be generated from its levelling which could be used in softening the proposals exposure to the north. The use of a battered earthen ramped wall as a replacement of the crib concrete retaining wall will also provide improved landscaping

opportunities and reduce the impression of an imposing 9 metre high structure. These changes will assist in softening this part of the proposal. The Panel supports this outcome.

#### **4.6.3 Recommendations**

The Panel recommends Planning Permit 2016/2 (proponent version 28 February 2017) be amended, as follows:

**Amend Condition 1 to insert the following new requirements:**

- **deletion of the rear service road (including the entry and exit return) and hard stand areas to the immediate south of the proposed built form**
- **construction of southern egress driveway so that it does not exceed RL510.35 metres**
- **location of the LPG tank within the front landscape setback**
- **location of water storage, including location of the 40,000 litre tank for fire-fighting purposes and accessible for fire-fighting appliances**
- **fencing along the southern and eastern boundaries of the site and its return to the site frontage at a height of 1.8 metres and of colourbond construction**
- **provision of a landscaping plan that incorporates the land formally occupied by the rear accessway and the battered earthen wall. Species to be used will provide an effective screen of the development to the north, east and south**
- **provision of a shared loading bay centrally on the frontage of the site alongside the car parking**
- **provision of a dedicated loading area to the immediate north of the larger shop**
- **provision of a bin location area that can be accessed from the front of the site.**

**Renumber Condition 3 to Condition 5 and provide as follows:**

#### ***EARTHEN RETAINING WALL***

***Before the use commences, plans are to be submitted and approved by the Responsible Authority showing the construction details of the battered northern earthen retaining wall and drainage. This is to be designed and constructed to accommodate landscaping to screen the proposal. When approved, the plans will be endorsed and will then form part of the permit.***

## **4.7 Signage**

### **4.7.1 Submissions and discussion**

The exhibited planning permit and the proponent version refers to the approval of an 'internally illuminated identification pole sign'. The definition of a pole sign (refer to clause 73) is:

*A sign:*

- a) on a pole or pylon that is not part of a building or another structure*
- b) that is no more than 7 metres above the ground*
- c) with an advertisement area not exceeding 6 square metres*
- d) that has a clearance under it of at least 2.7 metres.*

The proposed pole sign (either at 9 metres or 6 metres) does not comply with this definition as parts c) and d) are not met. This sign and others should then be described as internally illuminated signs.

As discussed in Section 1.7, the Panel sought comment on the relocation of the internally illuminated pole sign (at 6 metres) to the road reserve that would have assisted in providing greater long term exposure to passing traffic and removing it from view from neighbouring properties. Council, the proponent and DELWP supported this outcome however VicRoads did not.

The Panel considers the response from VicRoads effectively removes this as an option. The TZ addresses signage as Category 3 (High amenity areas). An internally illuminated sign and business identification sign require a planning permit in Category 3. There is an argument that the main sign could be defined as an electronic sign as it is assumed the pricing sign components will be updated electronically and not manually. If this was the case, a referral to the Roads Corporation under Clause 52.05 would be triggered where VicRoads would be a determining authority and have the power of veto.

As the proposed relocation of the sign was not part of the exhibited proposal, VicRoads did not attend the Hearing and arguably the VicRoads response could be considered as an objection under Section 55 of the *Planning and Environment Act 1987*, the Panel concludes the sign should be located within private property.

The Panel supports the reduction in the sign height from 9 metres to 6 metres and its relocation adjacent to the northern ingress point. The clearing of vegetation by the new access point will provide greater exposure to south-bound traffic and increase its setback from the neighbouring residential properties.

Other signage is internally illuminated and includes fascia signs on the canopy and the retail tenancies. No signs are proposed on the southern façade adjacent to the residential properties.

The architects (RPC Architects) of the proposal addressed the signage and identified the need to have it designed by a suitably qualified expert and in accordance with Australian Standards. Mr Vorchheimer added the following permit condition (16) to address this:

*Prior to the commencement of the use, a Lighting Impact Report prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority. The Lighting Impact Report must provide for:*

- *The form of illumination on the site.*
- *Confirm that any light spillage does not unreasonably impact upon the amenity of surrounding existing residential properties and is generally in accordance with the relevant Australian Standards.*

#### **4.7.2 Recommendations**

The Panel recommends Planning Permit 2016/2 (proponent version 28 February 2017) be amended, as follows:

**Amend the reference to signage in what the permit allows to internally illuminated signage.**

**Amend Condition 1 to insert the following new requirements:**

- reduction in the height of the main internally illuminated sign from 9 metres to 6 metres
- relocation of the main internally illuminated sign to south of and adjacent to the northern access driveway on private land.

**Relocate Condition 16 to Condition 3 (Reports to be provided).**

## **4.8 Impact on flora and fauna**

### **4.8.1 Evidence and submissions**

The exhibited permit allowed for the removal of 0.037 habitat hectares of native vegetation on the roadside at the proposed access points. This was based on the proponents Biodiversity Assessment Report.

Mr Lane provided flora and fauna evidence on behalf of the proponent. His review found that 0.057 habitat hectares of native vegetation would be removed. Mr Lane concluded:

- the vegetation removal will not present a significant loss or impact Victoria's biodiversity
- there is a low risk of impact on threatened species and the area to be removed is less than 0.5 hectares
- existing trees along the northern boundary will be retained and tree protection zones not impacted by the proposal.

In relation to fauna, Ms Johns and Ms Bateman noted there was an active Wombat burrow in the middle of the land. Mr Lane acknowledged that it would be impacted by the proposal and that its removal would not be detrimental to the general wombat population. The wombat is not a listed protected species in Victoria.

### **4.8.2 Discussion and conclusions**

The Panels accepts Mr Lanes' evidence that the proposal would remove 0.057 habitat hectares of vegetation. This is reflected in the planning permit.

In response to a question from the Panel, Mr Lane did support the need for a permit condition to be drafted to ensure the wombat burrow was vacated at the time of development. Mr Lane noted that wombats usually have a number of active burrows and would not rely solely on one burrow. The Panel supports this and has drafted a suitable permit condition.

### **4.8.3 Recommendation**

The Panel recommends Planning Permit 2016/2 (proponent version 28 February 2017) be amended, as follows:

**Insert a new condition that states:**

***Prior to the commencement of works on site, a suitably qualified person is to visually inspect the wombat burrow to ensure it is vacant and place a barrier at its entrance to ensure the wombat cannot re-enter the burrow.***

## **4.9 Impact on waterways**

### **4.9.1 Submissions**

Ms Johns was concerned the land was located at the head of the King Parrot Creek and the depression across the land that 'ponds' at its bottom was part of its source. The section 173 agreement applied at the time of the rural living subdivision prohibits any construction within 30 metres of the waterway.

Mr Vorchheimer submitted that the pond does not fall within the meaning of a waterway for the purposes of the section 173 agreement which refers to the waterway on the plan annexed to the agreement. The waterway does not exist on or near the land. Mr Vorchheimer referred to the Goulburn Murray Water unconditional support for the proposal.

### **4.9.2 Discussion and conclusion**

The Panel has reviewed the rural living permit, the section 173 agreement and the annexed plan. It agrees with Mr Vorchheimer that the waterway referred to in the agreement is not located on the land. The Goulburn Murray Water response also confirms to the satisfaction of the Panel that there is no waterway on the land.

## **4.10 Cultural heritage**

### **4.10.1 Submissions**

Ms Johns was concerned that Aboriginal cultural heritage could be impacted by the proposal and referred the discovery of items of significance in the vicinity of the land.

Mr Vorchheimer confirmed the land is not within an area of Aboriginal Cultural Heritage Sensitivity and that a Cultural Heritage Management Plan is not required.

### **4.10.2 Discussion and conclusion**

The Panel notes the topography of the land is in its original form. However, one of the triggers for a Cultural Heritage Management Plan that must be met is whether the land is within an area of Aboriginal Cultural Heritage Sensitivity. On the basis this trigger is not met, the Panel is satisfied that a Cultural Heritage Management Plan is not required. The Panel does note that there will be significant ground disturbance and if items of significance are found the *Aboriginal Heritage Act 2006* does require self-reporting to the relevant authorities.

## **4.11 Section 173 agreement**

### **4.11.1 Submissions and discussion**

The planning permit that approved the rural living subdivision that created the land required a s173 agreement to control the eventual development of the land. Council did not seek to remove the agreement from the land as part of Planning Permit 2016/2, so it remains a relevant consideration.

Mr Vorchheimer provided an assessment<sup>8</sup> against the nine elements of the agreement. In this assessment, all but one element is either satisfied or not applicable. The outstanding element requires:

*All boundary fencing must be less than 1.2 metres in height and must be at least 60% transparent.*

Effectively, it promotes rural style fencing.

Mr Vorchheimer considered the 1.8 metre high colourbond fencing was a superior outcome and responded to the commercial development of the land, not its residential development that was foreseen by the subdivision permit.

The Panel agrees with this assessment. However, it does present the Panel with a difficulty in supporting an alternative outcome that was not envisaged at the time of the approval of the subdivision. The Panel considers Council should consider whether it is appropriate to seek the removal of the agreement from the land prior to the approval of the Amendment.

#### **4.12 Other planning permit changes**

A number of other changes to the planning permit were identified. The Panel supports the following changes:

##### General

- All conditions from agencies and referral authorities are provided as contiguous conditions.
- General edits and corrections.
- Consistent formatting.

##### What the permit allows

- Correcting the relevant clause for signage to Clause 52.05.

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<sup>8</sup> HWL Ebsworth submission, paragraph 4.53

## Appendix A Submitters to the Amendment

No.	Submitter
1	Bev Johns
2	Mavis Bateman
3	John De Maria and Julie Bateman
4	Anthony and Glenda Annal
5	Charles Clancy
6	Merryn Miller
7	W and J McDonald-Price and M and L Gaskett
8	Goulburn Murray Water
9	Environment Protection Authority Victoria
10	Department of Environment, Land, Water and Planning
11	VicRoads
12	Kinglake Ranges Wilderness Camp

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## Appendix B Document list

No.	Date	Description	Presented by
1	27/2/17	Appendix A to HWL Ebsworth covering letter to Planning Panels Victoria	David Vorchheimer
2	27/2/17	Plans Revision B	David Vorchheimer
3	27/2/17	Plans Revision E	David Vorchheimer
4	27/2/17	Council submission	Grant Scale
5	27/2/17	Planning Permit 2009/130 - Subdivision	David Vorchheimer
6	27/2/17	Proponent submission	David Vorchheimer
7	27/2/17	Proponent version of Permit 2016/2	David Vorchheimer
8	27/2/17	Copy of Land Title	David Vorchheimer
9	28/2/17	Kinglake West Parish Plan	Bev Johns
10	28/2/17	Kinglake West general store re-establishment planning permit	Jane Archer
11	28/2/17	Kinglake service station planning permit	Jane Archer
12	28/2/17	VicRoads email response to Council	Grant Scale



## **Appendix C Planning Permit 2016/2 supported by Panel**

# PLANNING PERMIT

Permit No.

Form 9  
2016/2

Planning Scheme

Murrindindi Planning  
Scheme

GRANTED UNDER SECTION 96I OF THE  
PLANNING AND ENVIRONMENT ACT 1987

Responsible Authority

Murrindindi Shire Council

## ADDRESS OF THE LAND:

1274 Whittlesea-Yea Road, KINGLAKE WEST; Lot 7 Plan of Subdivision 630072K

## THE PERMIT ALLOWS:

Use and development of the land for a service station, shop, postal agency and food and drink premises under Clause 32.05; display of internally illuminated signs under Clause 52.05; and removal of native vegetation under Clause 52.17

## THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

### NO ALTERATION TO LAYOUT

1. Before the development starts, amended plans must be submitted and approved to the Responsible Authority. When approved, the plans will be endorsed and will then form part of permit. The plans must be generally in accordance with the plans prepared by RCP Architects (TP-01, TP-02 and TP-03, Revision E) dated 20 June 2016 but modified to show the:
  - a) turn lane arrangements along Whittlesea-Yea Road amended to reflect the CHR(s) and BAL arrangements shown in Traffix Design drawing G17986-01 dated 24th June 2015;
  - b) designated area for location of the effluent treatment plant, balance tank and primary effluent irrigation area, generally in accordance with the addendum report prepared by Paul Williams & Associates Pty Ltd dated 18 February 2017;
  - c) reduction in the height of the main internally illuminated sign from 9 metres to 6 metres;
  - d) relocation of the main internally illuminated sign to south of and adjacent to the northern access driveway on private land;
  - e) deletion of the eastern service road (including the entry and exit return) and hard stand areas to the immediate south of the proposed built form;
  - f) construction of southern egress driveway so that it does not exceed RL510.35 metres;
  - g) location of LPG tanks within the front landscape setback;
  - h) location of water storage, including location of the 40,000 litre tank for fire fighting purposes and accessible for fire fighting appliances;

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- i) fencing along the southern and eastern boundaries of the site and its return to the site frontage at a height of 1.8 metres and of colourbond construction;
  - j) provision of a battered earthen retaining wall as a replacement for the concrete crib retaining wall to the north of the ingress driveway;
  - k) provision of a landscaping plan that incorporates the land formally occupied by the rear accessway, its entry and exit returns and the battered earthen retaining wall. Species to be used will provide an effective screen of the development to the north, east and south;
  - l) provision of a shared loading bay centrally on the frontage of the site alongside the car parking;
  - m) provision of a dedicated loading area to the immediate north of the larger shop; and
  - n) provision of a bin location area that can be accessed from the front of the site.
2. The development and use permitted by this permit as shown on the endorsed plans and described in the endorsed documents must not be altered or modified except with the prior written consent of the Responsible Authority.

#### REPORTS TO BE PROVIDED

3. Before the commencement of the use, the following reports must be submitted and approved to the Responsible Authority. When approved, the reports will be endorsed and will then form part of permit:
- a) a Lighting Impact Report prepared by a suitably qualified person which provides for:
    - i. the form of illumination on the site; and
    - ii. confirms that any light spillage does not unreasonably impact upon the amenity of surrounding existing residential properties and is generally in accordance with the relevant Australian Standards.
  - b) a Water Balance Report prepared by a suitably qualified person which details the location and capacities of water tanks for commercial and firefighting purposes on site.

#### SCHEDULE OF MATERIALS AND COLOURS

4. Before the development starts, a schedule of colours must be submitted to and approved by the Responsible Authority. When approved, the schedule will be endorsed and will then form part of the permit.

#### EARTHEN RETAINING WALL

5. Before the use commences, plans are to be submitted and approved by the Responsible Authority showing the construction details of the battered northern earthen retaining wall and drainage. This is to be designed and constructed to accommodate landscaping to screen the proposal. When approved, the plans will be endorsed and will then form part of the permit.

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ON-SITE FAUNA

6. Prior to the commencement of works on site, a suitably qualified person is to visually inspect the wombat burrow to ensure it is vacant and place a barrier at its entrance to ensure the wombat cannot re-enter the burrow.

WASTEWATER MANAGEMENT

7. All sewage and sullage waters shall be treated in accordance with the requirements of the Environment Protection Authority and the Responsible Authority. All effluent shall be disposed of and contained within the curtilage of the land and shall not discharge directly or indirectly to an adjoining property, street or any watercourse, water storage or dam. Sufficient land shall be set aside and kept available for the purpose of effluent disposal.
8. Prior to the commencement of any works, including site works, the applicant shall obtain a Permit to Install a Septic Tank permit from Council. Sewerage treatment must achieve at least the 20/30 standard to the satisfaction of the Responsible Authority.

VEGETATION REMOVAL

9. Before the vegetation removal starts, the boundaries of all vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing to the satisfaction of the Responsible Authority.

LANDSCAPING MAINTENANCE

10. The landscaping shown on the endorsed landscaping plan must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

WASTE MANAGEMENT PLAN

11. Prior to the commencement of the use, a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site must be submitted to and approved by the Responsible Authority. The Waste Management Plan must provide for:
  - a) the method of collection of garbage and recyclables;
  - b) designation of methods of collection;
  - c) appropriate areas of bin storage on site and areas for bin storage on collection days; and
  - d) litter management.

GENERAL AMENITY PROVISION

12. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
  - a) transport of materials, goods or commodities to or from the land;
  - b) appearance of any building, works or materials;
  - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or

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- d) presence of vermin.

#### HOURS OF OPERATION

- 13. The hours of operation for all uses are 6.00am to 11.00pm on all days including public holidays.

#### REGULATION OF DELIVERY TIMES

- 14. Deliveries to and from the site (including waste collection) must only take place between: 7.00am and 5.00pm Monday to Friday and 8.30am and 4.00pm Saturday, Sunday and public holidays.

#### VEHICLE ACCESS LANES AND CAR PARK CONSTRUCTION

- 15. Before the use starts, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
  - a) constructed and properly formed to such levels that they can be used in accordance with the plans;
  - b) surfaced with an all-weather-seal coat;
  - c) drained;
  - d) line marked to indicate each car space and all access lanes clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the Responsible Authority;
  - e) designed to be compliant with the design standards of Clause 52.06 of the Murrindindi Planning Scheme;
  - f) compliant with disabled parking bays - Australian Standard AS/NZ 2890.6:2009;
  - g) provided with public lighting in accordance with AS/NZ 1158.0-2005/Amdt 2-2010 minimum light category P11/P12 and the fitting are to minimize spill lighting on to neighbouring property (including road reserves) in accordance with AS/NZ 4282-1997; and
  - h) car spaces, access lanes and driveways must be kept available for these purposes at all times.

#### CAR PARKING FOR DISABLED PERSONS

- 16. A minimum of 2 car spaces must be provided for the exclusive use of disabled persons. The car spaces must be provided as close as practicable to suitable entrances of buildings and must be clearly marked with a sign to indicate that the spaces must only be utilised by disabled persons. The minimum dimensions of the car spaces must be in accordance with AS2890.06-2009.

#### PARKING SIGNS

- 17. Signs to the satisfaction of the Responsible Authority must be provided directing drivers to the areas set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority.

#### VEHICLE CROSSING REQUIREMENTS

- 18. Before the use commences and/or buildings are occupied, vehicular crossings must be constructed in accordance with an approved roadworks plan to the satisfaction of the Responsible Authority, and must have satisfactory clearance to any side-entry pit, power or telecommunications pole, manhole cover or

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marker, or street tree. Any relocation, alteration or replacement required shall be in accordance with the requirements of the relevant authority and must be at the applicant's expense.

#### DRIVEWAY AND DRAINAGE CONSTRUCTION REQUIREMENTS

19. Before the commencement of any works associated with the provision of vehicle access, drainage and car parking, detailed construction plans demonstrating appropriate drainage and levels compliant with AS 2890 Part 1 Off Street Car Parking and AS 3500 Part 3 – Stormwater Drainage, be prepared in accordance with endorsed plans and to the satisfaction of the Responsible Authority.

#### STORMWATER MANAGEMENT

20. Before the use commences, drainage plans, including computations and longitudinal sections, must be provided to and approved by the Responsible Authority to the Responsible Authorities nominated point of discharge. Once approved, the plans will be endorsed as part of the planning permit and must not be further altered without the prior written consent of the Responsible Authority.

#### CONSTRUCTION PHASE

21. All activities associated with the construction of the development permitted by this permit must be carried out to the satisfaction of the Responsible Authority and all care must be taken to minimise the effect of such activities on the amenity of the locality.

#### CONSTRUCTION MANAGEMENT PLAN

22. Prior to commencement of works the owner or applicant must submit a "Construction Management Plan" (CMP) for approval by the Responsible Authority. This plan shall include, but not be limited to:
  - a) a site-specific plan showing proposed erosion & sedimentation control works;
  - b) techniques and intervention levels to prevent a dust nuisance;
  - c) techniques to prevent mud and dirt being transported from the site to adjacent streets;
  - d) the protection measures taken to preserve any vegetation identified for retention;
  - e) details of a contact person/site manager must also be provided so that this person can be easily contacted should any issues arise; and
  - f) techniques to ensure that all vehicles, earth-moving equipment and other machinery must be cleaned of soil and plant material before entering and leaving the site to prevent the spread of weeds and pathogens.

#### ADVERTISING SIGNS

23. Before the development starts, detailed plans showing the location and details of signs, and any supporting structure, must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit.
24. The signs must not contain any flashing light.

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25. Lighting of signs, including internal illumination, must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
26. Signs may only be illuminated between the hours of between 6.00am and 11.00pm.
27. Signs must be constructed and maintained to the satisfaction of the Responsible Authority.

#### BAFFLED LIGHTING

28. Outdoor lighting, where provided, must be designed, baffled and located to the satisfaction of the Responsible Authority such that no direct light is emitted outside the boundaries of the subject land.

#### SECURITY ALARMS

29. All security alarms or similar devices installed on the land must be of a silent type in accordance with any current standard published by Standards Australia International Limited and be connected to a security service.

#### VICROADS - TRAFFIC AND ACCESS

30. Only two access points to the property will be permitted with the northern access being entry only and the southern access being exit only.
31. Prior to commencement of the use, the following roadworks must be completed at no cost and to the satisfaction of the Roads Corporation:
  - a) Construction of a CHR(S) right turn lane for the northern entry access generally in accordance with Traffix Design Drawing G17986-01 dated 24<sup>th</sup> June 2015; and
  - b) Construction of a BAL left turn lane for the northern entry access generally in accordance with Traffix Design Drawing G17986-01 dated 24<sup>th</sup> June 2015.
32. Before commencement of any works required by VicRoads under this permit a detailed engineering design must be prepared generally in accordance with the accepted functional layout plan and to the satisfaction of VicRoads.
33. The permit applicant is to submit a detailed design Road Safety Audit (RSA) of the proposed works to VicRoads for approval. The RSA must be undertaken by an independent VicRoads pre-qualified audit team and be conducted in accordance with AustRoads – Road Safety Audit.
34. The preparation of the detailed engineering design and the construction and completion of all work must be undertaken in a manner consistent with current VicRoads policy, procedures, and standard and at no cost to VicRoads.
35. Works must not be commenced in, on, under or over the road reserve without first obtaining all necessary approval under the Road Management Act 2004, the

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Road Safety Act 1986, and any other relevant acts or regulations created under those acts.

WORKSAFE

36. The proposed development must comply with the relevant requirements of the Dangerous Goods Act and its subordinate legislation, particularly the Dangerous Goods (Storage and Handling) Regulations 2000. These standards include, but are not limited to:
- a) AS 4897 Design, installation and operation of underground petroleum storage systems; and
  - b) AS 1596 Storage systems for LPG.

DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING

37. Before works start, the permit holder must advise all persons undertaking the vegetation removal and works of all relevant permit conditions and associated statutory requirements or approvals.
38. Before works start, a plan to the satisfaction of the Responsible Authority identifying all native vegetation to be retained and describing measures to be used to protect the identified vegetation during construction, must be prepared, submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and form part of this permit. All works constructed or carried out must be in accordance with the endorsed plan.
39. To offset the removal of **0.057** hectares of native vegetation, the permit holder must secure a native vegetation offset, in accordance with the *Permitted clearing of native vegetation \_ Biodiversity assessment guidelines* and the Native vegetation gain scoring manual (DEPI 2013) as specified below:
- a) a general offset of **0.003** general biodiversity equivalence units with the following attributes;
    - i. be located within the Goulburn Broken Catchment Management Authority area or with Murrindindi Shire; and
    - ii. have a strategic biodiversity score of at least **0.080**.
40. Before any vegetation is removed, evidence that the required offset has been secured must be provided to the satisfaction of the Responsible Authority. Offset evidence can be:
- a) a security agreement, to the required standard, for the offset site or sites, including a 10 year offset management plan; and/or
  - b) a credit register extract from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the Responsible Authority and form part of this permit. Within 30 days of the endorsement of the offset evidence by the Responsible Authority, a copy of the endorsed offset evidence must be provided to the Department of Environment, Land, Water and Planning.

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41. In the event that a security agreement is entered into as per condition 40, the applicant must provide the annual offset site condition report to the Responsible Authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.

Note: This condition does not apply to offsets on the native vegetation credit register as these include monitoring requirements.

#### ENVIRONMENT PROTECTION AUTHORITY

42. Displaced petrol fumes must be collected with a vapour recovery system.
43. A secondary containment system must be provided for liquids which if spilt are likely to cause pollution or pose an environmental hazard, in accordance with the EPA Publication 347 Bunding Guidelines 1992 or as amended.
44. Construction and post-construction activities must be in accordance with EPA Publication 275 Construction Techniques for Sediment Pollution Control 1991 or as amended.
45. Offensive odours must not be discharged beyond the boundaries of the premises.
46. All infrastructure for the storage and handling of Liquefied Petroleum (LP) gas should be designed, constructed and operated in accordance with AS/NZS 1596:2008 The Storage and Handling of LP Gas (Standards Association of Australia).
47. Effluent and waste solvent generated from the washing or cleaning of engines or parts shall not be discharged on or from the premises.
48. Nuisance dust must not be discharged beyond the boundaries of the premises.
49. Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.

#### COUNTRY FIRE AUTHORITY

50. A static tank of 40,000 litres with CFA fittings is to be provided for bushfire fighting purposes only, to the satisfaction of the Country Fire Authority.

#### PERMIT EXPIRY DATE

51. This permit shall expire if the following circumstances apply:
- a) The development is not commenced within two years of the date of this permit.

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- b) The development is not completed and use is not commenced within 4 years of the date of this permit.

A request for an extension of time may be made before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet commenced, or within 12 months after the permit expiry date, where the development allowed by the permit lawfully commenced before the permit expired.

**NOTATIONS:**

- 1. Separate consent for works within the road reserve and the specifications of these works will be required under the Road Management Act.
- 2. The consent application under the Road Management Act will be treated as a developer funded application which requires payment of fees and charges to VicRoads and submission of detailed design plans and specifications for approval including a detailed design Road Safety Audit.

**THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:**

<i>Date of amendment</i>	<i>Brief description of amendment</i>	<i>Name of responsible authority that approved the amendment</i>
	[full proposal]	Murrindindi Shire Council

Date issued:

Signature for the Responsible Authority \_\_\_\_\_

## IMPORTANT INFORMATION ABOUT THIS PERMIT

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### WHAT HAS BEEN DECIDED?

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The Responsible Authority has issued a permit. The permit was granted by the Minister under section 96I of the **Planning and Environment Act 1987** on approval of Amendment No. C57 to the Murrindindi Planning Scheme.

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### WHEN DOES THE PERMIT BEGIN?

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The permit operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

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### WHEN DOES A PERMIT EXPIRE?

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1. A permit for the development of land expires if—
    - the development or any stage of it does not start within the time specified in the permit; or
    - the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of a permit, unless the permit contains a different provision; or
    - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
  2. A permit for the use of land expires if—
    - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
    - the use is discontinued for a period of two years.
  3. A permit for the development and use of land expires if—
    - the development or any stage of it does not start within the time specified in the permit; or
    - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
    - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
    - the use is discontinued for a period of two years.
  4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
    - the use or development of any stage is to be taken to have started when the plan is certified; and
    - the permit expires if the plan is not certified within two years of the issue of the permit.
  5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.
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### WHAT ABOUT REVIEWS?

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- In accordance with section 96M of the **Planning and Environment Act 1987**, the applicant may not apply to the Victorian Civil and Administrative Tribunal for a review of any condition in this permit.