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**PLANNING PANELS VICTORIA  
AT SHEPPARTON**

**AMENDMENT C199 TO THE GREATER  
SHEPPARTON PLANNING SCHEME:  
GOULBURN VALLEY HARNESS &  
GREYHOUND RACING PRECINCT**

**PART A - OUTLINE OF SUBMISSIONS ON  
BEHALF OF GREATER SHEPPARTON CITY  
COUNCIL**

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## 1 INTRODUCTION

- 1.1 This Submission is made on behalf of Greater Shepparton City Council (**Council**) in its capacity as the planning authority for Amendment C199 (**Amendment**) to the Greater Shepparton Planning Scheme (**Scheme**).
- 1.2 The Panel is appointed under the provisions of the *Planning and Environment Act 1987 (PE Act)*, and the primary purpose of the Panel is to consider the submissions referred to it and report its findings to the planning authority. For completeness, the relevant powers and obligations of the Panel are set out in Parts 3 and 8 of the PE Act.
- 1.3 In general terms, the Amendment replaces Schedule 4 to the Special Use Zone (Goulburn Valley Harness and Greyhound Racing Precinct), makes various amendments to Clause 21 and seeks to include the Goulburn Valley Harness and Greyhound Racing Precinct – Feasibility Study and Masterplan (**Masterplan**) as a reference document in the Scheme.
- 1.4 The Masterplan has, as its ‘Vision’ (p 4):
- The Goulburn Valley Harness and Greyhound Precinct will continue to grow as an equine and greyhound events hub through the development of additional equine recreation areas, equine focused residential areas, expanded training facilities and quality tourist accommodation.*
- 1.5 This written submission:
- describes the relevant land;
  - provides an overview of the content and purpose of the Amendment;
  - explains the strategic justification for the Amendment;
  - summarises the conclusions of the relevant assessments which have been undertaken in respect of overland flows and describes Council’s understanding of the nature of the risk posed to the Investigation Area associated with overland flows;
  - summarises the conclusions of the assessment undertaken by Watson Moss Growcott in respect of noise emissions;
  - discusses the issues raised by submissions and responds to individual submissions;
  - assesses the Amendment against the relevant technical requirements including Ministerial directions, guidelines and practice notes; and
  - explains Council’s suggested changes to Amendment documentation.

## 2 INVESTIGATION AREA NO 1

- 2.1 Investigation area No. 1 (**Investigation Area**) is bounded by River Road to the north, Archer Road to the east, Mitchell Road to the South, and Goulburn Valley Highway to the west this Investigation Area is one of a number which exist in the Municipality and the Scheme.
- 2.2 The Investigation Area is approximately 306 ha in area, situated approximately 6.5 km to 8.2 km south of Shepparton's central business district.
- 2.3 The Investigation Area is partly subject to the Farming Zone, partly subject to the Urban Floodway Zone and partly subject to the Special Use Zone, Schedule 4.
- 2.4 Significant parts of the Investigation Area are subject to the Land Subject to Inundation Overlay and subject to the Floodway Overlay.
- 2.5 Apart from the Precinct (described below), the majority of the Investigation Area is presently used for agricultural purposes.
- 2.6 There are clusters of existing dwellings in the Investigation Area, situated towards the northeast extent of the Investigation Area and along Archer Road. A small number of other dwellings and outbuildings are situated in various locations around the periphery of the Investigation Area.
- 2.7 Seven Creeks traverses the southwest portion of the Investigation Area, flowing generally from the southeast to the northwest.
- 2.8 A gas pipeline under the control of APA VTS (Operations) Pty Limited traverses the Investigation Area and a channel under the control of Goulburn-Murray Water traverses the Investigation Area.
- 2.9 Surrounding land is presently, predominantly used for agricultural purposes.
- 2.10 Land within the general vicinity of the Investigation Area to the north and west is identified<sup>1</sup> for future potential residential use, including:
  - potential future low density and urban growth to the north; and
  - potential future urban growth to the west.

## 3 PRECINCT

- 3.1 The Goulburn Valley Harness and Greyhound Racing Precinct (**Precinct**) is a key part of the Investigation Area.
- 3.2 The whole of the Precinct is subject to Special Use Zone, Schedule 4. Parts of the Precinct are subject to the Land Subject to Inundation Overlay (**LSIO**) and subject to the Floodway Overlay (**FO**).
- 3.3 The Precinct includes the following land:

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<sup>1</sup> refer to the Kialla and Shepparton South Framework Plan, p 21 of clause 21.04.

- Crown Allotment 2085 Parish of Kialla, which is approx. 18.49 ha of crown land administered by the Secretary to the Department of Environment, Land, Water and Planning and subject to reservation MI124110T for the purpose of public recreation and racecourse.
  - Crown Allotment 2086 Parish of Kialla, which is approx. 1.29 ha of crown land administered by the Secretary to the Department of Environment, Land, Water and Planning and subject to reservation MI124057U for the purpose of public recreation and racecourse.
  - Lot 1 on PS119599, which is approx. 0.56 ha of public land owned by the Council.
  - Lot 2 on PS119599, which is 19.85 ha of private land owned by the Shepparton Harness Racing Club Inc.
- 3.4 The Precinct is used for the purpose of the Shepparton Greyhound Racing Club, Shepparton Harness Racing Club, Pony Club, and the Shepparton Racecourse & Recreation Reserve Committee of Management.
- 3.5 Council understands that the harness racing track at the Precinct dates to the 1960s.
- 3.6 Greyhound racing commenced at the Precinct on 10 December 2005 after relocating from the Shepparton Showgrounds where they had been situated since the early 1970s.
- 3.7 Since 2004 significant investment (approximately \$11 M) has been expended to upgrade the racing complex including upgrades to the racing track, the construction of a new dining complex and development of an undercover stable complex.

#### 4 OVERVIEW OF AMENDMENT

- 4.1 At its Special Council Meeting on 14 September 2016, Council resolved to prepare and exhibit the Amendment and endorse the Masterplan.
- 4.2 The Amendment proposes to:
- retain the existing zonings in the Investigation Area;
  - amend schedule 4 to the Special Use Zone (**SUZ4**) to better facilitate and safeguard the ongoing use and development of the Precinct for the purpose of greyhound and harness racing;
  - amend cl 21.04 (settlement) to:
    - provide for the development of investigation areas only once an investigation area study has been completed;
    - record the completion of the investigation area study for the Investigation Area;

- include reference to the Masterplan;
- ensure future development in the Investigation Area is in general accordance with the Masterplan;
- support future rezoning and planning for the Investigation Area based on the Masterplan;
- amend cl 21.05 (environment) to ensure that growth appropriately provides for biodiversity protection;
- amend cl 21.08 (general implementation) to apply SUZ4 to the Precinct;
- amend cl 21.09 (reference documents) to include the Masterplan as a reference document.

## 5 EXHIBITION

- 5.1 The Amendment was exhibited from 27 April to 19 May 2017.
- 5.2 To date, 24 submissions have been received (including late and supplementary submissions).
- 5.3 A number of submissions have no objection to the Amendment and a number of submissions express concern with all or part of the Amendment.
- 5.4 There are very few submissions that comment on or seek modifications to SUZ4.
- 5.5 Council's current response to the written submissions is summarised in section 10 below.

## 6 CHRONOLOGY

- 6.1 On 29 July 1999, as at the introduction of the new format Scheme, relevantly:
- the Precinct was subject to the current SUZ4;
  - the balance of the Investigation Area was subject to the Rural Zone (RUZ); and
  - the Land Subject to Inundation Overlay (LSIO) and the Rural Floodway Overlay affected the Investigation Area.
- 6.2 The *Shepparton Mooroopna Floodplain Management Study (2002 Flood Study)* was completed in October 2002.
- 6.3 Amendment C23 was proposed by Council to introduce new flood mapping following the completion of the 2002 Flood Study.
- 6.4 On 1 April 2003, Council resolved to adopt amendment C23-Part 1. Amendment C23-Part 1 included all of the changes to the flood mapping in respect of which:

- no submission requesting changes had been received by Council; or
  - the submissions had been resolved.
- 6.5 By letter dated 10 December 2003, Council wrote the Minister for Planning requesting that amendment C23-Part 1 be approved.
- 6.6 On 10 June 2004, the consequence of the approval of amendment C23-Part 1 to the Scheme was, relevantly, to:
- apply the Urban Floodway Zone (**UFZ**) to parts of the Investigation Area; and
  - amend the LSIO, delete the RFO and apply the Floodway Overlay (FO) to parts of the Investigation Area.
- 6.7 On 8 December 2005, the consequence of the approval of amendment C55 to the Scheme was to introduce the Farming Zone (FZ) into the Scheme and rezone part of the Investigation Area that was subject to the RUZ to the FZ.
- 6.8 The *Greater Shepparton Housing Strategy* (GSHS) was undertaken from 2007 to 2009. Council adopted the GSHS in 2009 and it was updated in May 2011 following consideration of the GSHS as part of Amendment C93.
- 6.9 The GSHS and Panel to C93 contemplates a number of “investigation areas” for further strategic assessment, planning (including infrastructure planning) and consideration for future amendment as appropriate.
- 6.10 On 21 June 2012 amendment C93 was approved and, among other things, the following statement was included in cl 21.04-1 in respect of the Investigation Area:
- Investigation Area 1 – Kialla Paceway and Shepparton Greyhound Racing environs. This area surrounds and includes the greyhound and trotting facilities and is directly adjacent to the Shepparton South Growth Corridor. There is potential to extend services to this land. However, future residential development within this area will be dependent on amenity issues such as lighting, noise, odour and dust being addressed to ensure that the long term interests of the racing facilities are protected.*
- 6.11 Assisted by State Government funding, in December 2013, Urban Enterprise Pty Ltd was commissioned to assess and plan for the Investigation Area.
- 6.12 On 21 July 2015, the *Draft Goulburn Valley Equine and Greyhound Precinct – Feasibility Study and Masterplan (Draft Masterplan)* was presented to Council.
- 6.13 In late 2015, as a consequence of submissions received by Council on the Draft Masterplan, Council commissioned:

- acoustic assessment to be undertaken by Watson Moss Growcott Acoustics; and
  - model of flood behaviour to be undertaken by Water Technology.
- 6.14 On 11 February 2016, the consequence of the approval of Amendment C179 to the Scheme was to make a minor amendment to the extent of the FO that affects part of the Investigation Area.
- 6.15 On 14 September 2016, the final Masterplan was endorsed by Council and Council resolved to prepare and exhibit the Amendment.

## **7 STRATEGIC CONTEXT AND ASSESSMENT**

- 7.1 The Amendment benefits from and is supported by previous strategic planning work which has been undertaken for Shepparton.
- 7.2 The Investigation Area has been identified as an area which is suitable for some form of urban, residential use and development, subject to a detailed planning process to resolve the relevant issues and constraints.
- 7.3 The Amendment is consistent with, and gives effect to, the State Planning Policy Framework, in accordance with cl 10.03, as follows:
- the Amendment seeks to take advantage of the existing development patterns and to safeguard the existing greyhound and harness racing facility by facilitating the establishment of appropriate, compatible land uses within the vicinity (cl 11);
  - the Amendment seeks to promote the sustainable and appropriate growth and development of Shepparton which is a major regional city, building on one of Shepparton's strengths, namely, the greyhound and harness racing facility (cl 11.01-1);
  - the Amendment seeks to facilitate orderly, effective planning and development of the Investigation Area through the Masterplan, as sought by cl 11.02-2;
  - the Amendment seeks to appropriately respond to the natural flooding risk by planning to design and site new development to minimise risk to life, property and community infrastructure (cl 11.07-1 and 11.07-2);
  - the Amendment seeks to enhance a key regional economic asset of Shepparton, namely, the greyhound and harness racing facility (cl 11.12-1);
  - the Amendment seeks to appropriately manage waterways and protect environmental assets (cl 11.12-2);
  - the Amendment seeks to maximise a strength of Shepparton's existing settlement, namely, the greyhound and harness racing facility (cl 11.12-3);

- the Amendment is consistent with the Hume Regional Growth Plan which identifies Shepparton as a '*Regional City*' and a '*Major growth location*' (cl 11.12-5);
- the Amendment seeks to appropriately protect environmental and landscape values (cl 12);
- the Amendment seeks to avoid intensifying the impacts of flooding through inappropriately located uses and developments (cl 13.02-1);
- the Amendment seeks to appropriately assist the control of noise effects on sensitive land uses, including using land use separation techniques (cl 13.04-1);
- the Investigation Area is identified (cl 21.04) as having the potential to be considered for rezoning to accommodate residential use due to the proximity to services and growth areas, and the Amendment is not contrary to the objective of cl 14.01 to protect farmland which is of strategic significance;
- the Amendment seeks to contribute to housing diversity and create quality, rural living and rural residential development outcomes, as sought by cl 15 and cl 16;
- the Amendment seeks to appropriately foster and support economic growth and development of the Investigation Area by building on the strength of the greyhound and harness racing facility, consistent with cl 17;
- the Amendment makes appropriate provision for transport and infrastructure, consistent with cl 18 and cl 19.

7.4 The Amendment is consistent with, and gives effect to, the Local Planning Policy Framework, as follows:

- the *Greater Shepparton Housing Strategy 2011 (Housing Strategy)* is to guide housing delivery and growth (cl 21.04);
- the implementation of the Housing Strategy has, among other things, resulted in the development of framework plans, and the identification of settlement boundaries and investigation areas;
- the potential for investigation areas to accommodate residential development is acknowledged (cl 21.04-1):

*Residential growth outside the nominated settlement boundaries will generally not be supported. As a result the Framework Plans do not indicate any future growth outside the nominated settlement boundary. The exception to this is the land contained within Investigation Areas which upon further investigation may support additional land for residential development.*

- the objectives for urban consolidation and growth (cl 21.04-1) include:

*To coordinate the assessment, planning, development and servicing of identified investigation areas in an integrated manner.*

- the strategies for urban consolidation and growth (cl 21.04-1) include:

*Avoid incremental approvals and development in identified investigation areas until an integrated investigation has been completed to assess and resolve future land opportunities and constraints, land use, development opportunities, subdivisional layout and servicing for the area.*

- the Investigation Area is identified as 'Investigation Area 1', described (cl 21.04-1) as follows:

*Investigation Area 1 – Kialla Paceway and Shepparton Greyhound Racing environs. This area surrounds and includes the greyhound and trotting facilities and is directly adjacent to the Shepparton South Growth Corridor. There is potential to extend services to this land. However, future residential development within this area will be dependent on amenity issues such as lighting, noise, odour and dust being addressed to ensure that the long term interests of the racing facilities are protected.*

- the Amendment is consistent with the local framework for urban growth and settlement contained in cl 21.04;
- the Amendment seeks to appropriately respond to the risk of flooding and overland flows which is consistent with cl 21.05-3;
- the Amendment seeks to appropriately support economic growth consistent with cl 21.06;
- the Amendment makes appropriate provision for transport and infrastructure, consistent with cl 21.07 and cl 21.08.

7.5 The Amendment is consistent with, and seeks to implement, the Housing Strategy. The Housing Strategy identifies the Investigation Area as an area for potential future urban growth, subject to further planning and investigation to resolve issues and land use conflicts (preface, p 50, p 59).

## **8 OVERLAND FLOWS**

8.1 The existing planning controls in the Scheme identify that significant parts of the Investigation Area are subject to overland flows and flooding.

8.2 The overland flows are associated with Seven Creeks and an anabranch of Seven Creeks which traverses the Investigation Area in the northeast.

- 8.3 The existing planning controls in respect of overland flows were introduced on 1 April 2003 and are based on the 2002 Flood Study.
- 8.4 Water Technologies are retained by Council to undertake the *Shepparton-Mooroopna Flood Intelligence Project*. The purpose of this project is to better understand the nature of overland flows within the region and to provide a basis to potentially revise planning controls, as appropriate. The *Shepparton-Mooroopna Flood Intelligence Project* is underway and ongoing.
- 8.5 Water Technology Pty Ltd was engaged to undertake a model of flood behaviour. The objective of this work was to:
- 8.5.1 review relevant information on flood behaviour;
  - 8.5.2 develop an estimate of flood behaviour (levels, extents, velocities) for the 100 year ARI design flood event;
  - 8.5.3 liaise with Urban Enterprise Pty Ltd to develop a plan of possible development within the Investigation Area;
  - 8.5.4 assess change in flood behaviour (levels, extents, velocities) for the 100 year ARI design flood event due to the proposed Masterplan; and
  - 8.5.5 determine a suitable layout of major roads and residential areas together with any cut and fill requirements that will have acceptable level of change in floodplain characteristics.
- 8.6 As directed by the Goulburn Broken Catchment Management Authority (GBCMA) in September 2015, the Model of Flood Behaviour used the more comprehensive hydraulic model calibration data prepared for the Shepparton Mooroopna Intelligence Project.
- 8.7 To complete the Model of Flood Behaviour, Water Technology Pty Ltd first built a flood model utilising the hydraulic model calibration data to ensure that the flood model was accurate to recorded historic flood events. This established the current flood behaviour or the base-case (if no development of the land was to occur). All developed scenarios were compared to the current flood conditions established in the base-case scenario.
- 8.8 Developed scenario simulations were undertaken, using the flood model, to determine whether the proposed development would have an impact on lands outside of the Investigation Area; if there was a detrimental impact, then the developed scenario was altered. The final developed scenario was chosen as the preferred development layout, which informed the Masterplan. This layout meets GBCMA requirements for no increase in water levels of more than 10mm outside of Investigation Area 1 when compared with existing conditions.
- 8.9 The Model of Flood Behaviour outlines the quantum of flood mitigation infrastructure required to support any future residential development within the Investigation Area.

## 9 ACOUSTICS

- 9.1 Proposed clause 2 in the exhibited SUZ4 requires that noise emission levels when measured in Precinct B must not exceed the following levels:
- Public Address Systems 55 db(A) LEQ
  - Music or Concerts 65 db(A) LEQ measured outside any residential property.
- 9.2 This is consistent with the existing controls in current SUZ4 and the report prepared by Watson Moss Growcott, dated 16 May 2016.
- 9.3 The proposed requirements in the exhibited SUZ4 in respect of acoustics are appropriate.

## 10 SUBMISSIONS TO THE AMENDMENT

### 10.1 Submission 1 – Goulburn-Murray Water

No objection

### 10.2 Submission 2 – Goulburn Broken Catchment Management Authority

No objection

### 10.3 Submission 3 – Department of Environment Land, Water & Planning

No objection

### 10.4 Submission 4 – EPA Victoria

No objection

### 10.5 Submissions 5, 9, 11, 13, 14, 15, 16, 18, 19 – Gordon Hamilton, Tony Gagliardi, Louise Gagliardi, Rocco Lorenzini, Maria Lorenzini, Giuseppina Lorenzini, Alfredo Lorenzini, Antonina Gagliardi, Gialio Gagliardi

The submissions variously assert the Amendment to be inconsistent with *'the previous master plan'*, *'the strategy documentation, policies and procedures'*, *'other Strategies Policies and documentation'*, *'other studies strategies, policies and documents'*, *'findings, studies, strategies, etc'*.

#### Response:

- The submissions are vague and ambiguous. It is difficult for Council to meaningfully respond to the submissions.
- The strategic justification for the Amendment is set out in section 4 of this submission.
- The Amendment is consistent with strategic planning undertaken by Council to date, including all relevant strategies and policies.

- The Amendment has appropriate regard to all relevant economic, environmental and social considerations and has been formulated based on expert empirical assessment of acoustic and flooding matters.
- The submissions are not substantiated and there is no need to change the Amendment in response to the submission.

#### 10.6 **Submission 6 – Goulburn Valley Water**

No objection

#### 10.7 **Submission 7 – Kialla Investigations Area 1 Inc.**

The submission asserts, in summary, that:

- the Amendment should include the entire investigation area for rezoning, as opposed to only dealing with the Precinct;
- the Amendment is premature until a formal flood study is undertaken and approved by the Minister for Planning;
- the Amendment should not rely upon the Goulburn-Murray Water channel, which may be removed or piped in the future;
- intensive animal husbandry has been prohibited under the existing SUZ4, yet the exhibited SUZ4 seeks to allow horse stables, which amounts to 'double standards' given the content of the Masterplan;
- proposed SUZ4 allows inappropriate concessions, including housing for trainers and employees, subdivision of 0.4 ha lots, horse stables and veterinary centres;
- there appears to be an intent through the Masterplan to devalue land in the Investigation Area to assist future land acquisition.

#### Response:

- The Amendment does not seek to rezone any land.
- The Amendment seeks to include the Masterplan as a reference document to provide a basis for potential future rezoning and development within the Investigation Area.
- It will be for individual landowners within the Investigation Area to undertake detailed planning and analysis in support of future rezoning within the Investigation Area.
- The Amendment seeks to amend SUZ4 to better facilitate and safeguard the greyhound and harness racing facility. '*Intensive animal husbandry*' will remain prohibited under the proposed SUZ4.

- It is submitted that the proposed SUZ4 achieves an appropriate outcome in respect of the use and development of the Precinct. The construction of the proposed SUZ4 is appropriate subject to minor amendments.
- The consequence of the approval of the Amendment would be to provide a basis for potential rezoning and development of the remaining land within the Investigation Area. There is no evidence in support of the submission that land values will be detrimentally impacted.

10.8 **Submissions 8, 21 – M & S Toll, and Webb and Toll Surveyors Pty Ltd, S.M and A Scaffidi**

The submissions assert, in summary, that:

- the Amendment is inconsistent with the Housing Strategy, the Masterplan and the Shepparton Floodplain Management Plan;
- the Amendment should include the entire investigation area for rezoning, as opposed to only dealing with the Precinct;
- the purpose of the Amendment is to remedy illegal development of harness racing stables;
- the Amendment seeks to provide a commercial advantage to the harness racing facility and to Council by allowing development within the Precinct but not on the land which forms the balance of the Investigation Area.

Response:

- The Amendment is entirely consistent with the Housing Strategy.
- The Amendment seeks to implement the Masterplan, in part, and to include the Masterplan as a reference document. The Amendment is consistent with the Masterplan.
- The Amendment appropriately responds to the potential for overland flows in the Investigation Area.
- The Amendment does not seek to rezone any land.
- The Amendment seeks to include the Masterplan as a reference document to provide a basis for potential future rezoning and development within the Investigation Area.
- It will be for individual landowners within the Investigation Area to undertake detailed planning and analysis in support of future rezoning within the Investigation Area.
- The Amendment seeks to replace the existing SUZ4 to better facilitate and safeguard the greyhound and harness racing

facility. '*Intensive animal husbandry*' will remain prohibited under the proposed SUZ4.

- It is submitted that the proposed SUZ4 achieves an appropriate outcome in respect of the use and development of the Precinct. The structure and words of the proposed SUZ4 is appropriate subject to minor amendments.
- The consequence of the approval of the Amendment would be to provide a basis for potential rezoning and development of the remaining land within the Investigation Area.
- The submission that a commercial advantage will be afforded to the harness racing facility is misconstrued. One of the purposes of the Amendment is to safeguard and better facilitate the use and development of the greyhound and harness racing facility. However, the Masterplan also provides a basis for the potential future rezoning and development of the remaining land in the Investigation Area in an orderly and appropriate manner.

#### 10.9 **Submission 10 – V & J Page**

The submission asserts, in summary, that:

- the Amendment should be across the entire Investigation Area;
- the Amendment should provide for commercial and residential development.

#### Response:

- The Amendment seeks to include the Masterplan as a reference document to provide a basis for potential future rezoning and development within the Investigation Area.
- It will be for individual landowners within the Investigation Area to undertake detailed planning and analysis in support of future rezoning within the Investigation Area in accordance with the Masterplan.
- The Amendment appropriately provides for commercial and residential use and development within the Investigation Area.

#### 10.10 **Submission 12 (including supplementary submission) – Basic Property Holdings Pty Ltd**

The letter of Stanton Grant Legal (19 May 2017) (Original Submission 12) asserts the Masterplan relies upon the 2016 Flood Report which:

- has no “official legal status” and a purpose to investigate flood behaviour in the Investigation Area for the 1% flood event;

- the flood model adopted in the 2016 Flood Report does not match actual observed behaviours and therefore does not accurately reflect historical hydrological data;
- the effect of adopting this Amendment would be to designate most of this submitter's land as subject to flooding and unable to be developed.

Supplementary Submission 12 was lodged in response to Panel directions drafted by a Barrister adopting a legalistic tone, format and content. In summary:

- paragraphs 2 through 6 provide various background and quotes in relation to reference documents asserting finally that:

*"It is proposed that the Goulburn Valley Harness and Greyhound Racing Precinct Study and Masterplan, July 2016, in its entirety, is to be a Reference Document."*

- paragraph 7 referencing the Explanatory Report to C199, asserts that the proposed Amendment will:

*"In the context of non-precinct land, have the effect of rezoning the entirety of Investigation Area 1 but contrary to planning Practice Note No. 13, does so in a way that is not "transparent".";*

it then asserts:

- impacts on a current VCAT proceedings for a caravan park and host farm (to be heard in November 2017);
- that VCAT must "...when performing its task of carrying out a review under the P&E Act have regard to the Planning Scheme as it is at the time of the hearing and not as it was when the proceeding was commenced."
- at paragraph 7.8 it is asserted that the proposed Amendments will have the effect of rezoning the entirety of the Investigation Area, and not transparently.
- paragraph 8 references the Water Technology model (used for the 2016 Flood Report) and concerns include:
  - that the 2016 Flood Report is not prepared in accordance with a Floodplain Management Strategy April 2016 or Planning Practice Note;
  - that the Explanatory Report references the 2016 Flood Report as:

*"constrained in the location of potential future development (in the non-precinct land) and this is reflected in the Masterplan detailed in section 9 of the report."*

- errors in the Water Technology modelling are asserted;
- amendment C199 is asserted as a “backdoor” attempt to amend the Scheme as it “pertains to identification of flood affected land”.
- paragraphs 9 and 10 re-states concerns regarding an alleged flawed approach of the Council in relation to flood mapping and the impacts of that on the Masterplan, however, the submission then refers in particular to the potential for:
  - cut and fill; and
  - potential nominated activities in the Masterplan,
 on the submitter’s land.
- paragraph 11 suggests applications within the Precinct (pursuant to the proposed SUZ4) should not be exempt from notice, potential objection and review rights.
- paragraph 12 asserts flaws in the acoustic material of Watson Moss Growcott.

Response:

Original Submission 12

- The submitter’s land is already subject to various Scheme controls in respect of flooding and inundation, something confirmed through the 2016 Flood Report, however, the more recent flood work constitutes a change in degree and is in any event not incorporated within this Amendment.

Supplementary Submission

- Paragraphs 2 through 6 (inclusive) do not appear to include a criticism as such and the comments are noted.
- Paragraphs 7.1 through 7.10 are responded to as follows:
  - 7.1 to 7.6 are by way of background and noted;
  - it is incorrect on any proper reading of the Explanatory Report that the Investigation Area is not disclosed through the words of the Explanatory Report, and a reading of the proposed amendments together with the Masterplan.
- Regarding paragraph 7.8 there is no proposed rezoning of any kind in the Amendment and the comment is legally wrong and presumably designed to have some sort of pejorative impact. As to transparency, this and other, submitters are aware of the content of the Amendment.

- In response to paragraphs 7.9 and 7.10:
  - the November VCAT proceeding will determine the relevant matter on its merits having regard to the zone (which will be unchanged) and subject to the existing flood and inundation controls. If the Masterplan is a reference document at the time of any hearing then VCAT will give it the weight appropriate and associated with such a reference document.
  - paragraph 7.10 is a confusing description of what VCAT will or must consider, noting it commences by referring to an amendment to a planning scheme being in existence at the date of a VCAT hearing and concludes by referring to the provisions of the Scheme applying at the date of the hearing. The Tribunal will consider (and give appropriate weight) to a seriously entertained planning scheme amendment and must apply the provisions of the actual Scheme applying at the date of the hearing.
  
- In response to paragraphs 8.1 to 8.12:
  - the 2016 Flood Report provides background to the Masterplan and does not modify the existing flooding and inundation provisions in the Scheme;
  - the asserted quote from the Explanatory Report at paragraph 8.4 does not appear to exist in the Explanatory Report;
  - any errors that might be asserted or established in the 2016 Flood Report and modelling have no substantive impact on the Masterplan or the Amendment;
  - the comments in paragraph 8.12 are inaccurate in that if (or more likely when) the relevant flooding and inundation controls are amended then that is what constitutes an amendment to the Planning Scheme;
  - the reference to an exercise of powers under Section 62 of the P&E Act makes no sense given that Section 62 relates to the power to consider or impose conditions on a planning permit application.
  
- Council's response in relation to paragraphs 9 and 10:
  - the 2016 Flood Report has been used for background purposes in relation to the Masterplan and criticisms regarding how that might impact on the Shepparton Mooroopna Flood Mapping and Intelligence Project (2012) are irrelevant to this Amendment;
  - whilst the Masterplan provides potential "upside" for this landowner in terms of potential future low density residential zonings, both that potential and the potential

for flooding offsets (through cut and fill) to be incorporated in that owner's land can only occur through future planning scheme amendments (including rezonings), arrangements established in relation to development contributions and potential acquisition of this owner's and other land for a range of potential infrastructure purposes;

- the submitter remains entitled to continue to apply for and have determined planning applications under the current zoning overlays and other constraints (including flooding and inundation) in place at the relevant time, including (if applicable) consideration of the Masterplan as a reference document.
- Council considers the current existence of the harness racing and greyhound Precinct, the proposed clarity around the new SUZ4 and the existence of the Masterplan is justification for the relevant exemptions to be applied.
- In relation to paragraph 12 (acoustic issues) the Panel will come to a view, however the Council considers the acoustic assessment to be adequate.

#### 10.11 **Submission 17 – APA VTS (Operations) Pty Limited**

The submission explains that APA VTS (Operations) Pty Limited is the entity responsible for the operation of the high pressure gas pipeline (**Pipeline**) that traverses the Investigation Area and asserts, in summary, that:

- the measurement length of the 'buffer' either side of the Pipeline is 160 m;
- certain 'sensitive' uses are to be discouraged from establishing within the buffer either side of the Pipeline;
- a safety management study should be required to be undertaken before a change of land use within the buffer either side of the Pipeline occurs;
- works within the easement that contains the Pipeline must be approved by APA VTS (Operations) Pty Limited;
- APA VTS (Operations) Pty Limited does not support subdivision of land which would result in the easement that contains the Pipeline being divided between smaller lots and the preference is for the easement to be incorporated into open space or a linear reserve;
- the Masterplan should be changed to better respond to the constraints in respect of the Pipeline;

- the exhibited SUZ4 should be amended to delete reference to the Pipeline, given the land subject to SUZ4 is not within the buffer either side of the Pipeline.

Response:

- The Masterplan identifies the location of the Pipeline and the majority of the Pipeline is included within an area of open space or linear open space. A section of the Pipeline at its western extent is not included within an area of open space.
- In respect of the Pipeline, the Masterplan, as exhibited, states (p 51):

*APA GAS PIPELINE*

*A gas pipeline runs through the investigation area from east to west, directly south of the Harness and Greyhound racing precinct and should be noted for restrictions on future potential development.*

*APA has noted that development is not permitted along the gas pipeline and there must be a buffer of 15 metres to the north and 5 metres south of the pipeline. Development along the pipeline must comply with these requirements.*

- The Council agrees that it is appropriate to amend the text on p 51 of the Masterplan to ensure that the Masterplan appropriately records the need for future planning processes to appropriately respond to the constraints associated with the Pipeline.
- In general terms, Council agrees that the Masterplan should be amended to:
  - (a) acknowledge the need for future planning processes for the Investigation Area to appropriately respond to the heat radiation zone for the Pipeline which is understood to be 160 m either side of the Pipeline;
  - (b) acknowledge that a safety management study will be required, in consultation with the operator of the Pipeline, to be undertaken before a change of land use within the buffer either side of the Pipeline occurs;
  - (c) include the section of Pipeline at its western extent within an area of linear open space.
- Council also agrees that it is appropriate to remove from SUZ4 the reference to the Pipeline, given the land subject to SUZ4 is not within the buffer either side of the Pipeline.

10.12 **Submission 20 – Department of Economic Development, Jobs, Transport & Resources**

The submission does not object to the Amendment but suggestions that a traffic impact assessment should be required to be undertaken for the whole Investigation Area in accordance with cl 18.01-1.

Response:

- CI 18.01-1 has as a strategy:

*Requiring integrated transport plans to be prepared for all new major residential, commercial and industrial developments.*

- By email dated 31 May 2017, Council provided the following response to the Department:

*At this stage, Council will not be making changes in response to TFV's submission to Amendment C199 to the Greater Shepparton Planning Scheme.*

*Clause 18.0-1 of the State Planning Policy Framework includes a strategy that requires integrated transport plans to be prepared for all new major residential developments. This will be considered when the remaining land within the Investigation Area is rezoned for residential uses and a Traffic Impact Assessment Report for the whole area will likely be required at this point.*

*Council officers are confident that the proposed wording at Clause 21.04, which states "when assessing applications for use or development in an Investigation Area, where the Investigation Area Study has been completed, it is policy to minimise any detrimental impacts on existing and future road networks, including the comments of the relevant authorities" and the strategy at Clause 18.0-1 provide sufficient guidance at this stage.*

*We welcome TFV's continued involvement and look forward to comments on future planning scheme amendments to rezone land within the Investigation Area.*

- Transport for Victoria has now advised that it (and VicRoads):
  - agreement that the traffic impact assessment will accompany any proposed rezoning for the balance of the Investigation Area; and
  - Supports the planning scheme Amendment and Council's position; and
  - Will not be attending Panel or pursuing its request for a traffic impact assessment for this Amendment.

10.13 **Submission 22 – APT O&M Services Pty Ltd**

No objection

10.14 **Submission 23 – Shepparton Harness Racing Club Inc.**

No objection

10.15 **Submission 24 – CFA Victoria**

No objection

**11 SUZ4**

Background

11.1 The proposed SUZ4 has been informed by:

- the existing SUZ4;
- the Masterplan;
- similar, recently approved, examples of schedules to the Special Use Zone dealing with 'like' issues.

11.2 In recognizing that the Investigation Area has some potential for residential development, the existing Scheme (at cl 21.04) acknowledges that

*'... future residential development within this area will be dependent on amenity issues such as lighting, noise, odour and dust being addressed to ensure that the long term interests of the racing facilities are protected.'*

11.3 This strategic direction is reflected in the proposed controls in SUZ4, which are to apply to the Precinct.

11.4 The exhibited SUZ4 has been informed by, and responds to, the Masterplan which has, as its 'Vision':

*The Goulburn Valley Harness and Greyhound Precinct will continue to grow as an equine and greyhound events hub through the development of additional equine recreation areas, equine focused residential areas, expanded training facilities and quality tourist accommodation.*

11.5 The Masterplan distinguishes between the existing racing facilities (Precinct A) and an associated area of land which is identified as a potential equine related residential area (Precinct B). The exhibited SUZ4 adopts this distinction.

11.6 The other major input underlying the preparation of the exhibited SUZ4 is experience drawn from a number of recent amendments which have addressed very similar issues to those found at Kialla being:

- Pakenham Racecourse (Cardinia Amendment C141)
- Dowling Forest Racecourse (Ballarat Amendment C149)
- Wangaratta Racecourse (Wangaratta Amendment C86)

- Cranbourne Racecourse (Casey Amendment C166).
- 11.7 Each of these amendments have sought either to:
- protect existing facilities near a racecourse; or
  - encourage the growth of horse training facilities next to the course.
- 11.8 These amendments have included planning mechanisms of the sort now exhibited as part of SUZ4 and support the Amendment. Each of these amendments has now been approved by the Minister for Planning.

#### Appropriateness of the SUZ4

- 11.9 SUZ4 already applies to the Precinct and there is no proposal to change the zoning of the Precinct.
- 11.10 It is common for the Special Use Zone to apply to similar racing and training venues around Victoria. Examples include:
- Dowling Forest Racecourse (SUZ13, Ballarat Planning Scheme);
  - Cranbourne Racing Complex and Surrounds (SUZ6, Casey Planning Scheme);
  - Bendigo Racecourse (SUZ5, Greater Bendigo Planning Scheme);
  - Geelong Showgrounds and Racecourse (SUZ4, Greater Geelong Planning Scheme);
  - Horse Training and Equine Services Precinct (SUZ7, Macedon Ranges Planning Scheme);
  - Melton Harness Racing Centre (SUZ7, Melton Planning Scheme).
- 11.11 The Panel to amendment C149 to the Ballarat Planning Scheme commented on the suitability of applying the Special Use Zone to the Dowling Forest Racecourse and surrounds and stated (p 45):
- The principle of applying a SUZ to achieve a particular outcome is an appropriate use of the VPPs ... The Panel observes other examples of key infrastructure and sometimes surrounding land being included in a SUZ. Examples are associated with racecourses, airports and major tourist facilities.*
- 11.12 The Special Use Zone is the most appropriate zone to apply to the harness and greyhound facility and the Amendment makes proper use of the Victorian Planning Provisions.

### Extent of SUZ4

- 11.13 There is no change proposed to the extent of land affected by SUZ4 as part of the Amendment. Insofar as the Amendment affects SUZ4, it is simply a change to the content of the schedule to the zone.

### Purpose of SUZ4

- 11.14 The existing SUZ4 is named the '*Kialla Paceway*' and its purposes are:
- To provide for the use of the Kialla Paceway for horse racing and a range of entertainment, recreational, commercial and community activities.
  - To encourage the multiple use of land and buildings within the Kialla Paceway in order to facilitate its usage throughout the year.
  - To ensure that the combination of uses, their density, and the scale and character of any development do not prejudice the amenity of surrounding land.
  - To ensure that the future use and development of the Kialla Paceway occurs in a planned and orderly manner.
- 11.15 The exhibited SUZ4 has been named '*Goulburn Valley Harness and Greyhound Racing Precinct*'.
- 11.16 The exhibited SUZ4 divides the Precinct into two distinct sub-precincts:
- Precinct A includes the harness racing and greyhound racing facilities.
  - Precinct B includes the associated facilities for harness racing situated at the eastern extent of the Precinct.
- 11.17 The purposes in the exhibited SUZ4 relate to each of these sub-precincts.
- 11.18 Subject to some re-wording, the existing zone 'purposes' have been retained in the exhibited SUZ4. New purposes have also been introduced.

### Uses

- 11.19 Under the Table of Uses to the existing SUZ4, among other things:
- '*Race course*' is a Section 1 use;
  - '*Industry*'<sup>2</sup>, '*Leisure and recreation (other than Race course)*', '*Place of assembly*', and innominate uses are Section 2 uses;
  - '*Intensive animal husbandry*' is a Section 3 use.
- 11.20 The proposed Table of Uses is divided between Precinct A and Precinct B.

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<sup>2</sup> Must not be a purpose listed in the table to Clause 52.10

11.21 In Precinct A, it is proposed that:

- 'Race course' is a Section 1 use;
- 'Place of assembly', 'Exhibition centre', and 'Veterinary centre' are Section 1 uses subject to condition;
- 'Accommodation' and 'Retail premises' are Section 2 uses, subject to condition;
- innominate uses are Section 2 uses;
- 'Intensive animal husbandry' is a Section 3 use.

11.22 In Precinct B, it is proposed that:

- 'Animal training' and 'Horse stables' are Section 1 uses, subject to condition;
- 'Dwelling (other than Bed and breakfast)', 'Convenience shop', 'Place of assembly', 'Primary produce sales', and 'Rural industry' are Section 2 uses, subject to condition;
- innominate uses are Section 2 uses;
- 'Intensive animal husbandry' and 'Animal Keeping' are Section 3 uses.

11.23 An application for a use in Precinct A is proposed to be exempt from notice requirements, decision requirements and review rights.

#### Amenity requirements

11.24 The existing SUZ4 includes amenity requirements in respect of land use at cl 2.0. Clause 2.0 is retained in the exhibited SUZ4 subject to the introduction in the last bullet point to the clause of the words '*when measured in Precinct B*'.

#### Dwelling requirements

11.25 The exhibited SUZ4 includes new requirements in respect of use of land for the purpose of a dwelling. The purpose of these new requirements is to limit the circumstances in which a dwelling can be permitted, to require new dwellings to be, in general terms, in conjunction with the harness industry.

11.26 The exhibited SUZ4 includes the need for a section 173 agreement to be entered into to require that the land on which the dwelling is located must be used for the purposes of horse training or horse stables.

11.27 This is an important feature of the Amendment, which seeks to better safeguard the greyhound and harness racing facility from the establishment of incompatible dwellings. The inappropriate establishment of dwellings without nexus to harness racing within the vicinity of the racing facility would be problematic, with the potential to compromise the amenity

of the dwellings and the operation of the racing facility. The outcomes which have been allowed to eventuate at the Cranbourne and Ballarat racecourses are sought to be avoided by the Amendment.

- 11.28 There is sufficient other land available for rural lifestyle purposes (RLZ and LDRZ) in Council's municipality, including further to the east within the Investigation Area.
- 11.29 It is appropriate that the lots within the immediate environs of the greyhound and harness racing facility be restricted to be directly associated with the harness industry.
- 11.30 The required 'nexus' for a dwelling to the harness industry is, therefore, a very important aspect of the Amendment. The recent examples of amendment C141 to the Cardinia Planning Scheme (which approved the new Pakenham Racecourse and training facility) and amendment C149 to the Ballarat Planning Scheme (at and adjoining the Dowling Forest Racecourse) has provided the 'model' that is sought for this facility at Kialla.
- 11.31 Schedule 13 to the Special Use Zone to the Ballarat Planning Scheme requires that:
- certain uses be conducted by a person registered under the '*Australian Rules of Racing*'; and
  - use of land for the purpose of a dwelling must be in conjunction with horse training and horse stables and is limited to licensed horse trainers (within the meaning of the '*Australian Rules of Racing*').
- 11.32 The Amendment seeks to achieve a similar outcome, to ensure that residential opportunities in Precinct B are limited to those with a legitimate connection to the harness racing industry.
- 11.33 The Panel Report in respect of amendment C149 to the Ballarat Planning Scheme concluded (p 56), relevantly:
- The Panel accepts the Council's position with respect to the SUZ13 including the use of a Section 173 agreement for subdivision and dwellings. While it is a very restrictive control, there are valid strategic planning reasons to support this approach... The Panel has been persuaded that there is a legitimate role for a restrictive approach, in principle, to achieve the desired planning outcome and to avoid a defacto rural living area.*

#### Subdivision

- 11.34 The exhibited SUZ4 includes a requirement that subdivision should be generally in accordance with the Masterplan.
- 11.35 An application that is not generally in accordance with the Masterplan must be accompanied by an assessment of likely flooding impacts.

- 11.36 In Precinct B a permit may only be granted to create a lot that is at least 0.4 ha and a section 173 agreement must be entered into to require that the lot be used for the purpose of horse training or horse stables.
- 11.37 An application for subdivision in Precinct A is proposed to be exempt from notice requirements, decision requirements and review rights.

#### Building and works

- 11.38 Cl 4 of proposed SUZ4 is in respect of building and works.
- 11.39 It proposes to:
- Exempt from the need for permission building or works associated with crop raising, extensive animal husbandry, informal outdoor recreation or a rainwater tank with a capacity of more than 4,500 litres.
  - Require permission for building or works within various setback distances.
  - Exempt from various notice requirements, decision requirements and review rights:
  - an application in Precinct A; and
  - an application in Precinct B associated with a Section 1 use.
  - Include general application requirements for all applications for building or works.
  - Include particular additional application requirements for applications for building or works in Precinct B.

#### Proximity to pipelines

- 11.40 There is a proposed clause in respect of the gas pipeline which traverses the Investigation Area.

#### Acoustic design requirements

- 11.41 There is a proposed clause that will require a section 173 agreement to be entered into to inform future landowners in Precinct B that the site is in proximity to the racing precinct.

#### Car parking

- 11.42 There is a clause which requires that a use in Precinct A must provide car spaces to the satisfaction of the responsible authority.

#### Decision guidelines

- 11.43 There are decision guidelines which include, among other things, considerations in respect of the interface with adjoining zones, especially residential areas.

### Amendments to the exhibited SUZ4

- 11.44 A number of amendments are suggested to the version of the proposed SUZ4 which was exhibited.
- 11.45 Most of the changes are required in response to the recently amended Ministerial Direction on the Form and Content of Planning Schemes dated 9 April 2017. For this reason, whilst the number of changes looks significant, they are mainly in relation to compliance with the new format. These amendments are described below:
- The proposed eight ‘purposes’ may have to be reduced to five. It remains unclear whether this is a ‘strict’ requirement which will require modification or not.
  - The ‘decision guidelines’ which presently appear at the end of the SUZ4 will need to be redistributed under the separate headings of use, development or subdivision.
  - A provision relating to ‘Advertising signs’ needs to be inserted.
- 11.46 Other suggested changes to the exhibited version of SUZ4 arise from recent consideration of the SUZ4 in response to submissions, as follows:
- Replace various references to ‘equine’ and ‘horse’ facilities throughout SUZ4 to ‘harness racing’ facilities for consistency and to accurately reflect the intent.
  - Remove from Precinct B references to (or by implication the allowance of) the ‘greyhound industry’ or other animal related activity because Precinct B is to be exclusively for the purpose of harness racing associated use and development.
  - Remove from Section 1 of the Table of Uses to Precinct B ‘Animal keeping’ given this defined use includes racing dogs and domestic pets, only, and therefore is not appropriate in Precinct B.
  - Delete the word ‘Warehouse’ from one of the bullet points in ‘Application requirements’ in cl 4 because this use is prohibited.
  - Delete the reference to ‘Clause 6’ in cl 4.

## **12 ASSESSMENT AGAINST RELEVANT TECHNICAL REQUIREMENTS**

- 12.1 The Amendment must comply with the following Ministerial Directions:
- Strategic Assessment of Amendments, dated 18 October 2013; and
  - The Form and Content of Planning Schemes, dated 9 April 2017.
- 12.2 The following practice and advisory notes are relevant to the Amendment:

- Planning Practice Note 3: Applying the Special Use Zone, dated May 2017;
  - Planning Practice Note 13 – Incorporated and Reference Documents, June 2015;
  - Planning Practice Note 46 – Strategic Assessment Guidelines.
- 12.3 The Amendment complies with the Ministerial Direction on the Strategic Assessment of Amendments, dated 18 October 2013, and the Strategic Assessment Guidelines:
- The explanatory report appropriately details how the Amendment addresses each of the strategic considerations.
  - The Amendment is reasonably expected not to have a significant impact on the resource and administration costs of the responsible authority.
- 12.4 Subject to a number of amendments to the exhibited SUZ4, the Amendment complies with the Ministerial Direction on the Form and Content of Planning Schemes, dated 9 April 2017. The Amendment has been presented in plain English and, subject to some minor changes, the Amendment complies with the relevant style guide requirements.
- 12.5 The Amendment is consistent with Planning Practice Note 3: Applying the Special Use Zone, dated May 2017. Given the nature of the Precinct, it is appropriate to tailor SUZ4 to regulate the use and development of the Precinct.
- 12.6 The Amendment is consistent with Planning Practice Note 13 – Incorporated and Reference Documents, June 2015. The Masterplan is proposed to be included as a reference document to inform the Scheme and to guide further strategic steps for the parts of Investigation Area No. 1 outside the Precinct. Such further work may include rezonings and further overlays, all of which is consistent with the Housing Strategy as commented in Amendment C93. This is entirely appropriate.

21 June 2017

**Russell Kennedy Lawyers**

for and on behalf of Greater Shepparton City Council