

**Latrobe Planning Scheme Amendment C126latr –
Toongabbie Structure Plan
Latrobe Planning Scheme Amendment C127latr –
Bushfire and Rural Rezoning**

Interim Panel Report

Planning and Environment Act 1987

15 December 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

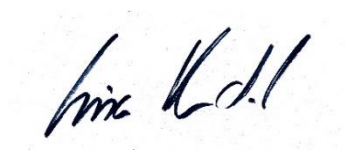
Planning and Environment Act 1987

Interim Panel Report pursuant to section 25 of the PE Act

Latrobe Planning Scheme Amendment C126latr – Toongabbie Structure Plan

Latrobe Planning Scheme Amendment C127latr – Bushfire and Rural Rezoning

15 December 2022



Lisa Kendal, Chair



Geoffrey Carruthers, Member

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Glossary and abbreviations

Amendment C105latr	Latrobe Planning Scheme Amendment C105latr - Live Work Latrobe
Amendment C126latr	Latrobe Planning Scheme Amendment C126latr – Toongabbie Structure Plan
Amendment C127latr	Latrobe Planning Scheme Amendment C127latr – Bushfire and rural rezonings
BMO	Bushfire Management Overlay
BPA	Bushfire Prone Area
Bushfire Design Guidelines	<i>Design Guidelines: Settlement Planning at the Bushfire Interface</i> (DELWP and CFA, 2020)
Bushfire Risk Map	Municipal Landscape Bushfire Risk Map
CFA	Country Fire Authority
CFA Fire Service Guideline	CFA Guideline <i>FSG LUP 008 – Strategic Land Use Planning – Bushfire</i>
Contamination Report	<i>Potentially Contaminated Land Report</i> (Latrobe City Council, 2020)
Council	Latrobe City Council
DELWP	Department of Environment, Land, Water and Planning
DDO12	Design and Development Overlay – Schedule 12
DoT	Department of Transport
DPO10	Development Plan Overlay – Schedule 10
EAO	Environmental Audit Overlay
EPA	Environment Protection Authority Victoria
Flood Study	<i>Floodplain mapping for Toongabbie township</i> report (West Gippsland Catchment Management Authority, 2016)
FO	Floodway Overlay
FZ1	Farming Zone – Schedule 1
FZ2	Farming Zone – Schedule 2
GRGP	Gippsland Regional Growth Plan
GRZ4	General Residential Zone – Schedule 4
HVP	Hancock Victoria Plantations Pty Ltd
LDRZ	Low Density Residential Zone
LSIO	Land Subject to Inundation Overlay
MBRA	Draft Latrobe City Municipal Bushfire Risk Assessment (Fire Risk Consultants, 2020)
MPS	Municipal Planning Strategy

NRZ4	Neighbourhood Residential Zone – Schedule 4
PCRZ	Public Conservation and Resource Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Latrobe Planning Scheme
PPN	Planning Practice Note
PPRZ	Public Park and Recreation Zone
PUZ2	Public Use Zone – Schedule 2
RLZ1	Rural Living Zone – Schedule 1
RLZ2	Rural Living Zone – Schedule 2
Rural Living Strategy	draft <i>Latrobe City Rural Living Strategy</i> (Latrobe City Council, 2020)
SUZ6	Special Use Zone – Schedule 6
Toongabbie Background Reports	<i>Toongabbie Structure Plan Background Reports</i> (Latrobe City Council, 2020)
Toongabbie Structure Plan Report	<i>Toongabbie Structure Plan Report</i> (Latrobe City Council, 2020)
Toongabbie TSP	Toongabbie Town Structure Plan
WGCMA	West Gippsland Catchment Management Authority

Overview

Amendment summary

The Amendment	Amendment C127latr
Common name	Bushfire and Rural Rezoning
Brief description	Implement the findings of the <i>Latrobe City Municipal Bushfire Risk Assessment 2020</i> and the <i>Latrobe City Rural Living Strategy 2020</i> , through the application of local policy and overlays and rezoning of land
Subject land	Municipal wide
Planning Authority	Latrobe City Council
Authorisation	30 April 2021
Exhibition	24 June to 6 August 2021
Submissions	46 (six in support, three in support subject to changes and 37 objecting)

Amendment summary

The Amendment	Amendment C126latr
Common name	Toongabbie Structure Plan
Brief description	Implements the recommendations of the <i>Toongabbie Structure Plan Report, 2020</i> and the <i>Floodplain mapping for Toongabbie township</i> report prepared by the West Gippsland Catchment Management Authority in 2016
Subject land	Toongabbie township and surround land (see Figure 3)
Planning Authority	Latrobe City Council
Authorisation	28 January 2021
Exhibition	24 June to 6 August 2021
Submissions	12 (six in support, five objecting and one withdrawn)

Panel process

The Panel	Original appointment 18 July 2022: Lisa Kendal (Chair), Geoffrey Carruthers and Sally Conway Reconstituted Panel 30 August 2022: Lisa Kendal (Chair) and Geoffrey Carruthers
Directions Hearing	29 August 2022
Panel Hearing	11-14 October 2022
Site inspections	10 October 2022 (unaccompanied)
Parties to the Hearing	Latrobe City Council, represented by Miriam Turner and Kristy Crawford of Council and Jess Orsman of Maddocks, called bushfire evidence from Mark Potter of Fire Risk Consultants Country Fire Authority, represented by Kevin Hazell, Consultant Town Planner Delburn Wind Farm Pty Ltd, represented by Peter Marriot of OSMI Australia Geoffrey and Suzanne Somerville, represented by David Somerville Stuart Strachan Tristan Stewart Vic Sabrinskas Hancock Victoria Plantations, represented by John Carey of MinterEllison Submitters 31-45, represented by Christopher Constantine of Millar Merrigan Nick Anderson of NBA Group
Citation	Latrobe PSA C126latr and C127latr [2022] PPV
Date of this report	15 December 2022

Executive summary

Latrobe City is a diverse municipality located in the Gippsland region between the Strzelecki Ranges and Baw Baw Plateau, approximately two hours east of Melbourne. It consists of a network of large, district and small towns, extensive areas of native and plantation forest and farmland.

Latrobe City is a high risk bushfire area. Bushfires have been a regular occurrence in the area for many years, some of which have caused major damage to property and loss of life. In the context of climate change, it is expected bushfires will occur more frequently and for longer periods.

Latrobe City Council proposes to amend the Latrobe Planning Scheme (Planning Scheme) to guide appropriate rural residential growth across the municipality, and specifically in Toongabbie, in response to bushfire risk. This is proposed through two concurrent amendments:

- Planning Scheme Amendment C127latr – Bushfire and rural rezonings (Amendment C127latr)
- Planning Scheme Amendment C126latr – Toongabbie Structure Plan (Amendment C126latr).

As Amendment C127latr sets the scene and context for Amendment C126latr, the Panel has considered the matters in that order.

Amendment C127latr

Planning Scheme Amendment C127latr seek to implement recommendations of the draft *Latrobe City Municipal Bushfire Risk Assessment 2020* (MBRA) and draft *Latrobe City Rural Living Strategy 2020* (Rural Living Strategy) by:

- introducing the Municipal Landscape Bushfire Risk Map in the Municipal Planning Strategy
- introducing new local policy
- rezoning land in accordance with the Rural Living Strategy
- applying overlays to increase bushfire protection.

Of the 46 submissions received, six supported the Amendment, three supported it subject to changes and 37 objected.

The Amendment was opposed by the Country Fire Authority (CFA) who considered the MBRA has understated risk and failed to adequately respond to the requirements of Clauses 13.02 and 71.02-3 of the Planning Scheme, including to prioritise the protection of human life above all other policy considerations. At the core of the CFA's opposition is a serious concern about the methodology.

Council engaged Terramatrix to undertake an independent peer review of the MBRA. Terramatrix also identified significant concerns with the MBRA methodology, and concluded it may be better used to support a risk assessment process required by Clause 13.02-1S rather than be considered a risk assessment in its own right. Council's expert witness Mr Potter (who was also an author of the MBRA) agreed that the MBRA should not be considered or described as a bushfire risk assessment.

The lack of agreement between Council and the CFA is problematic and presents a significant dilemma. Consistent with bushfire planning guidance, the Panel considers it is important for the CFA to support the bushfire risk assessment approach.

Clause 13.02-1S (Bushfire planning) requires the relative risk of different locations to be assessed and growth directed to lower risk locations. This has not occurred as part of the MBRA or Rural Living Strategy, and therefore they should not be relied upon as a basis for settlement planning or decisions to rezone land.

Further work should be undertaken to the satisfaction of the CFA before Amendment C127latr proceeds, including:

- preparation of a bushfire risk assessment that responds to Clause 13.02-1S (Bushfire planning)
- consequential changes to update the Rural Living Strategy, based on the findings of the bushfire risk assessment
- consequential changes to the zones, overlays and policies proposed by the Amendment based on the findings of the bushfire risk assessment and updated Rural Living Strategy.

The Panel recognises the commitment of Council to enhance guidance relating to bushfire risk in the Planning Scheme. The Panel acknowledges the intent of MBRA, and considers it contains a significant amount of valuable information that provides the foundations for further work.

Given the Panel's finding that further work is required before Amendment C127latr proceeds, it is premature for the Panel to form a view on issues relating to drafting or to determine whether the requested rezonings are appropriate. In view of the CFA's comments on drafting, the Panel strongly encourages Council to consider how the content may be simplified and streamlined to avoid unnecessary complexity.

For the reasons set out in Chapter 3, the Panel considers this to be an interim report pending the completion of the further work recommended by the Panel. A final report will be prepared after that work has been undertaken.

Recommendations

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

- 1. Undertake the following further work in consultation with, and to the satisfaction of, the Country Fire Authority prior to progressing Planning Scheme Amendment C127latr:**
 - a) prepare a bushfire risk assessment that responds to Clause 13.02-1S (Bushfire planning)
 - b) based on the findings of the bushfire risk assessment, make consequential changes to update the *Latrobe City Rural Living Strategy 2020*
 - c) based on the findings of the bushfire risk assessment and updated *Latrobe City Rural Living Strategy*, make consequential changes to Planning Scheme Amendment C127latr, including (as relevant) planning policy, proposed rezonings and overlay controls.
- 2. Delete the Rural Living Zone – Schedule 1 from 106 Tyers-Walhalla Road, Tyers.**

Amendment C126latr

Toongabbie is the northern most settlement in the municipality located 17 kilometres north of Traralgon and close to the Great Dividing Range, the Cowwarr Weir and Wellington Shire Council. Toongabbie is a small and relatively compact town providing limited services.

Amendment C126latr seeks to implement findings of the *Toongabbie Structure Plan Report* (Toongabbie Structure Plan) and *Toongabbie Structure Plan Background Reports and Floodplain mapping for Toongabbie Township* report by:

- introducing new local policy including the Toongabbie Town Structure Plan and Toongabbie Housing Framework Plan
- rezoning land for residential and public purposes
- amending the existing Land Subject to Inundation Overlay and introducing the Floodway Overlay to include areas identified as subject to flooding.

Of the 12 submissions received, six supported Amendment C126latr, five objected and one was withdrawn.

Toongabbie is located in a high bushfire risk area. The CFA raised the critical issue of whether the Toongabbie Structure Plan Report adequately considers bushfire risk and policy relating to bushfire planning. It considers the Toongabbie Structure Plan Report should not be relied on as it relates to growth areas. Other issues raised related to rezonings and contaminated land. No issues were raised regarding strategic justification of the Amendment.

The Toongabbie Structure Plan Report and *Toongabbie Bushfire Risk Assessment* (included in the *Toongabbie Structure Plan Background Reports*) rely on the MBRA. As discussed above, the Panel is not satisfied the MBRA is fit for purpose to inform planning decisions and settlement planning, including designation of land for rural living purposes. Accordingly, the Panel is concerned the *Toongabbie Bushfire Risk Assessment* is not based on an adequate assessment of bushfire risk and has not sufficiently assessed lower risk locations.

Consistent with its findings about the Rural Living Strategy, the Panel considers the bushfire risk assessment that has informed designation of growth areas in Toongabbie does not satisfy the requirements of Clause 13.02-1S and Clause 71.02-3, and has not given adequate weight to policy considerations which prioritise protection of life.

For Amendment C126latr to proceed, nominated growth areas should be designated 'potential growth areas subject to further bushfire risk assessment'. The further work recommended for Amendment C127latr should be completed before the Toongabbie growth areas are confirmed and progressed as part of a separate planning scheme amendment process.

The Panel identified inconsistencies between the Toongabbie Structure Plan Report and proposed application of the Low Density Residential Zone to land subject to inundation and flooding which should be resolved.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Planning Scheme Amendment C126latr be adopted as exhibited subject to the following:

3. Make the following changes to Amendment C126latr:

a) amend Clause 11.01-1L (Toongabbie) to:

- amend the strategies and Toongabbie Town Structure Plan map to designate 'First stage future rural living' and 'Second stage future rural living' areas as 'Potential future growth areas subject to bushfire risk assessment'
- amend the Toongabbie Town Structure Plan map to remove the Low Density Residential Zone designation from:

9-17 Hower Street, Toongabbie

19-29 Hower Street

land in King Street

b) amend Clause 16.01-1L (Housing supply) to:

- **update the Housing Framework Plan map to correct the housing change designation to land no longer proposed for rezoning to Low Density Residential Zone**

c) delete the Low Density Residential Zone from:

9-17 Hower Street, Toongabbie

19-29 Hower Street

land in King Street.

PART A INTRODUCTION AND PLANNING CONTEXT

1 Introduction and context

Latrobe City Council (Council) is seeking to amend the Latrobe Planning Scheme (Planning Scheme) to introduce enhanced bushfire provisions, update policy and rezone land to guide appropriate rural residential growth across the municipality.

Planning Scheme Amendment C127latr (Amendment C127latr) is a municipal wide amendment which seeks to implement the recommendations of the draft *Latrobe City Municipal Bushfire Risk Assessment 2020* (MBRA) and draft *Latrobe City Rural Living Strategy 2020* (Rural Living Strategy) into the Planning Scheme.

Planning Scheme Amendment C126latr (Amendment C126latr) relates to the small rural township of Toongabbie and seeks to implement the findings of the *Toongabbie Structure Plan Report* (Council, 2020) (Toongabbie Structure Plan Report) and *Toongabbie Structure Plan Background Reports* (Council, 2020) (Toongabbie Background Reports). It also implements recommendations of the *Floodplain mapping for Toongabbie Township* report (Flood Study) prepared in 2016 by the West Gippsland Catchment Management Authority (WGCMA).

Council is running the Amendments concurrently. As Amendment C127latr provides the bushfire risk and settlement planning context for Amendment C126latr, the Panel has considered the Amendments in this order.

Figure 1 shows the location of Latrobe City and Toongabbie.

Figure 1 Location of Latrobe City (outlined in white) and the small town of Toongabbie (marked in orange)



Source: Toongabbie Township Plan, page 11

1.1 Amendment C127latr description

Amendment C127latr is a municipal wide amendment which seeks to implement the introduce new local policy, rezone land to allow for rural living and apply overlays to increase bushfire protection.

Specifically, Amendment C127latr proposes to change the Municipal Planning Strategy (MPS) and local policy to:

- amend Clause 02.03 (Strategic directions) to include strategies relevant to bushfire risk
- amend Clause 02.04 (Strategic framework plans) to introduce the Municipal Landscape Bushfire Risk Map (Bushfire Risk Map) (see Figure 2)
- insert a new Clause 13.02-1L (Municipal landscape bushfire risk areas)
- amend Clause 11.01-1L (Tyers) to update the Tyers Town Structure Plan to remove an area from 'Future rural living'
- amend the following local policy provisions to include strategies relevant to bushfire risk:
 - Clause 12.03-1L (Rivers and Waterways)
 - Clause 14.01-1L (Subdivision in Farming Zone Schedule 1)
 - Clause 14.01-3L (Forestry and Timber Production)
 - Clause 15.01-3L (Subdivision Design)
 - Clause 17.04-1L (Major Attractions and Commercial Tourism in Latrobe)
 - Clause 17.04-1L (Facilitating Rural Tourism)
- amend Clause 16.01-3L (Rural Residential Development) to support further analysis of areas identified for future rural living in the Rural Framework Plan at Clause 02.04-5.

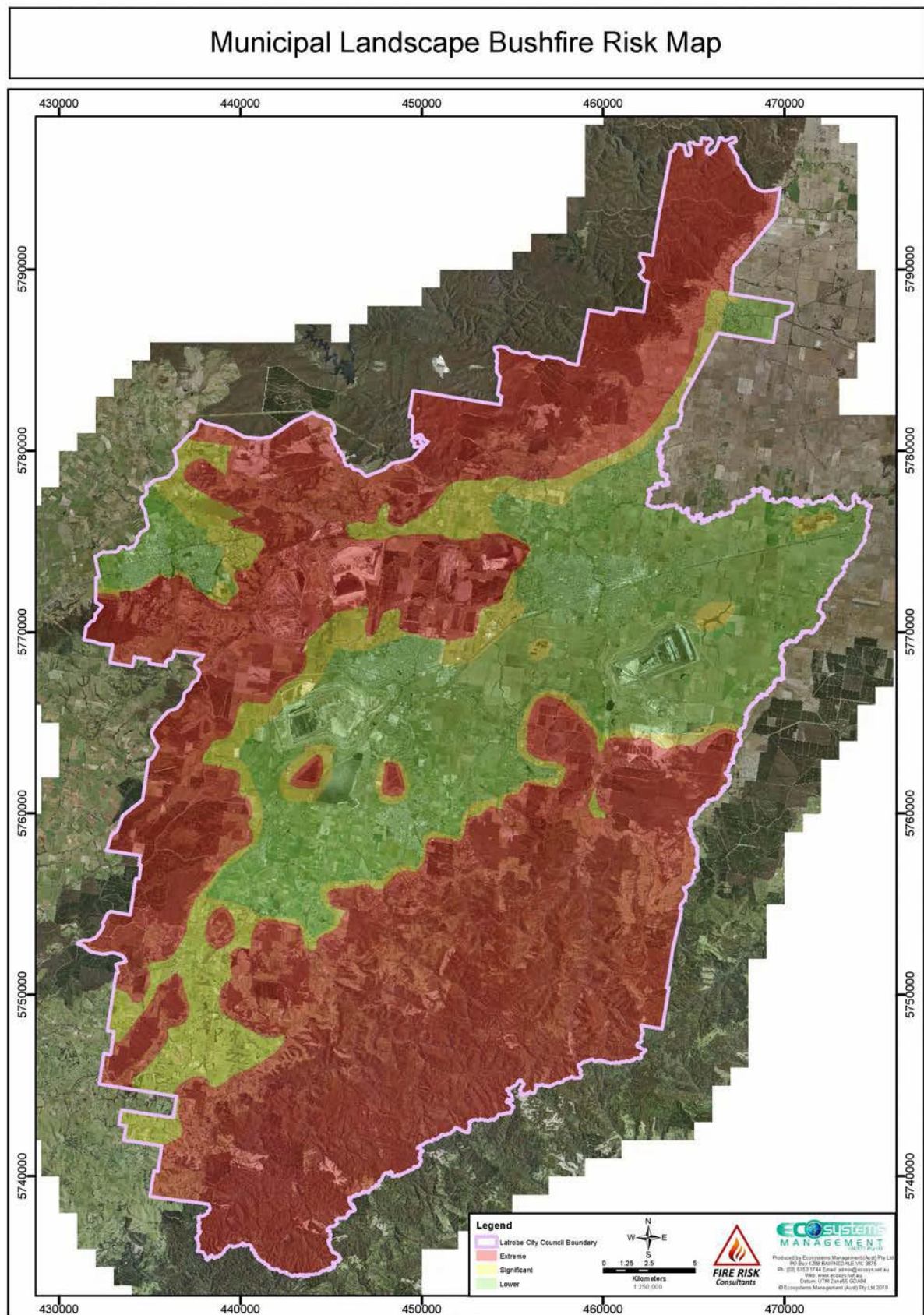
Amendment C127latr proposes to rezone:

- land in Boolarra Precinct C, Boolarra Precinct E, Moe South Precinct A, Traralgon South Precinct E, Traralgon South Precinct F, Tyers Precinct D, Yinnar Precinct B and privately owned land in Koornalla Precinct A from Farming Zone 1 (FZ1) to Farming Zone – Schedule 2 (FZ2)
- publicly owned land in Koornalla Precinct A that does not abut Traralgon Creek from FZ1 to Public Park and Recreation Zone (PPRZ)
- publicly owned land is Koornalla Precinct A that abuts Traralgon Creek from FZ1 to Public Conservation and Resource Zone (PCRZ)
- Hazelwood North Precinct F, Toongabbie Precinct C, Toongabbie Precinct D, a portion of Toongabbie Precinct H and privately owned land in Flynn Precinct A from FZ1 to Rural Living Zone – Schedule 1 (RLZ1)
- 106 Tyers-Walhalla Road, Tyers from Special Use Zone Schedule 6 (SUZ6) to RLZ1
- a portion of Toongabbie Precinct H from FZ1 to Rural Living Zone – Schedule 2 (RLZ2)
- publicly owned land in Flynn Precinct A from FZ1 to PPRZ
- various parcels of land to fix anomalies.

It proposes to introduce and apply the following overlay controls:

- Design and Development Overlay – Schedule 12 (DDO12) relating to development of residential land at significant bushfire risk and apply it to Boolarra Precinct F, Boolarra Precinct G and Toongabbie Precinct H
- Development Plan Overlay – Schedule 10 (DPO10) relating to future planning of precincts with consideration to the bushfire risk and apply it to new greenfield rural living precincts C and D in Toongabbie.

Figure 2 Bushfire Risk Map



Source: MBRA

Amendment C127latr seeks to make a range of changes to the operational provisions of the Planning Scheme, including to:

- update the Schedule to Clause 72.03 (What does this planning scheme consist of?)
- amend the Schedule to Clause 72.08 (Background documents) to include the MBRA, the Rural Living Strategy and the *Design Guidelines: Settlement Planning at the Bushfire Interface* 2020 (Bushfire Design Guidelines) prepared by Department of Environment, Land, Water and Planning (DELWP) and Country Fire Authority (CFA)
- amend the Schedule to Clause 74.01 (Application of Zones, Overlays and Provisions)
- amend the Schedule to Clause 74.02 (Further Strategic Work).

1.2 Amendment C126latr description

Amendment C126latr applies to land in and around Toongabbie (see Figure 3) and seeks to amend local policy and introduce background documents. Specifically, it proposes to:

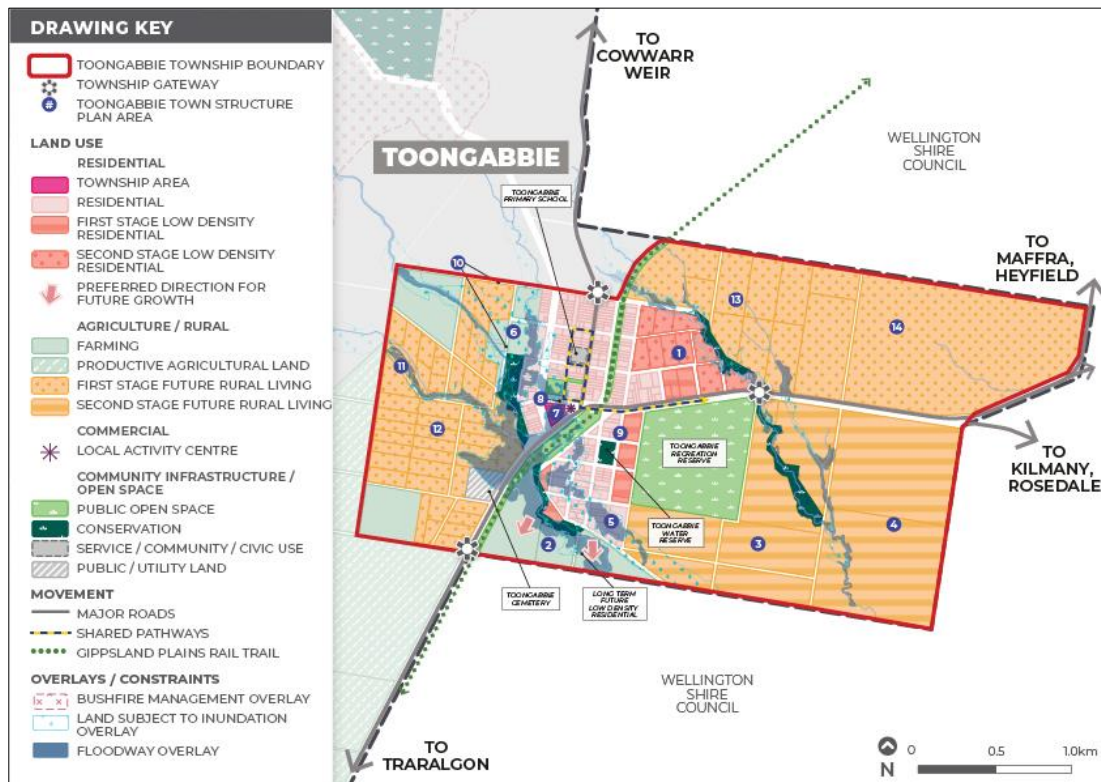
- insert a new Clause 11.01-1L (Toongabbie), including key strategies, policy documents and the Toongabbie Town Structure Plan (Toongabbie TSP) (see Figure 4)
- amend Clause 12.01-1L (Protection of biodiversity) to include key strategies and policy guidelines
- amend Clause 16.01-1L (Housing supply) to include the amended Toongabbie Housing Framework Plan
- amend Clause 72.08 (Operational provisions) to include the Toongabbie Structure Plan Report and Toongabbie Background Reports as background documents.

Figure 3 Toongabbie township boundary shown in blue



Source: Exhibited C126latr Explanatory Report

Figure 4 Toongabbie Town Structure Plan



Source: Exhibited Clause 11.01-1L (Toongabbie)

Amendment C126latr proposes to rezone land in and around Toongabbie, including:

- extensive areas of existing residential land from Neighbourhood Residential Zone – Schedule 4 (NRZ4) to a new Neighbourhood Residential Zone – Schedule 5 (Toongabbie Residential Area) (NRZ5)
- land at 52 Ries Street, 49-57 Heywood Street, 21-33 Heywood Street, 77-81 Main Street from NRZ4 to Low Density Residential Zone (LDRZ)
- land in King Street from split zoned FZ1 and NRZ4 to LDRZ
- 9-17 Hower Street and 19-29 Hower Street from FZ1 to LDRZ
- 15-25 Victoria Street from split zoned Public Use Zone – Schedule 2 (PUZ2) and NRZ4 to PUZ2
- 15-17 Cowen Street, 2-8 Victoria Street, 11 Victoria Street, 12 Victoria Street and 1-5 Goodwin Street from NRZ4 to General Residential Zone – Schedule 4 (GRZ4)
- parts of Main Street, Traralgon-Maffra Road, Russells Road, Humphrey Road and Hower Street from FZ1 to PCRZ.

Amendment C126latr also amends the Land Subject to Inundation Overlay (LSIO) and introduces the Floodway Overlay (FO) to include areas identified within the Flood Study.

1.3 Strategic studies and background documents

(i) Municipal Bushfire Risk Assessment

The MBRA was prepared as a multi-purpose document to assess bushfire risk and assist with long term strategic land use planning across the municipality. The MBRA underpins the proposed Planning Scheme changes relating to bushfire through both Amendments.

The MBRA seeks to inform land use outcomes in combination with fuel management prioritisation. It has three key objectives:

- prepare a Municipal Bushfire Risk Profile Report to inform future land use planning and decision making
- undertake detailed assessments of bushfire risk for selected precincts
- translate necessary bushfire risk considerations into recommendations.

Council explained it had developed the MBRA following extensive stakeholder engagement with government agencies, including the CFA, and key landowners and community associations across the small town and rural communities in high risk landscapes.

The MBRA contains:

- a detailed assessment of 13 small towns and rural localities surrounding existing settlements that may have the ability to be rezoned for rural living purposes
- a municipal wide bushfire risk assessment to identify locations with higher and lower bushfire risk to inform settlement planning.

Bushfire risk is assessed with consideration of 13 risk indicators:

- overall fuel hazard
- proximity to dwellings
- ignition history
- Phoenix impact risk
- political/social
- access/egress
- demographics/vulnerability
- bushfire attack potential
- topographical influence
- landscape risk assessment
- Victorian Fire Risk Register
- Bushfire Management Overlay mapping
- Bushfire Prone Area mapping.

The risk level of each small town/locality was assessed by scoring each of the risk indicators, and determining an aggregate score to assess the overall risk level of each precinct. The findings are extrapolated into the municipal wide Bushfire Risk Map, proposed for inclusion in the Planning Scheme (see Figure 2). The map shows the municipality is divided into three risk levels; extreme (red), significant (yellow) and lower (green) (see Figure 5).

The MBRA contains 24 recommendations to Council to support community safety, preparedness and resilience, eleven of which relate to land use planning. It recommends the Bushfire Management Overlay (BMO) be applied to all locations identified as extreme (red) risk level, and fire management and planning treatments for the 13 localities. The report explains when the municipal wide fire management and planning treatments are applied together, it is expected communities will be safer.

Figure 5 Fire risk levels

Risk level	Description
Extreme	<ul style="list-style-type: none"> Pose an extreme risk to lifesafety Limited access and egress options available. Vegetation close to the site. Significant ember attack would impact the area.
Significant	<ul style="list-style-type: none"> Pose a significant risk to lifesafety Mitigation options are available. Development will likely reduce the risk to adjoining land and on the site. Access and egress options
Lower	<ul style="list-style-type: none"> Pose a lower risk to life safety Little Vegetation is present. Excellent access and egress is available.

Source: MBRA, page 40

(ii) Rural Living Strategy

The Rural Living Strategy provides a preliminary assessment of locations considered suitable for rezoning rural land to RLZ and FZ2, including corrections rezoning opportunities.

It includes 13 detailed precinct assessments and specific rezoning recommendations informed by:

- the *Latrobe City Rural Land Use Strategy* 2019
- Latrobe Planning Scheme Amendment C105latr - Live Work Latrobe (Amendment C105latr) submissions and panel process
- policy and directions in the Planning Scheme, particularly the small town structure plans
- relevant planning practice notes
- bushfire risk assessment in the MBRA
- rural living land supply and demand.

The land supply and demand forecasts (based on 2019 data) indicate under a high growth scenario, 7,322 additional dwellings will be needed in Latrobe by 2036 of which 10 per cent is estimated to be demand for rural living. Accounting for land constraints that may prevent some existing RLZ lots from being developed, it is estimated there is a shortfall of 102 lots to meet the forecast 15 year demand. Council noted it was likely the COVID-19 pandemic had further increased demand for rural living lots.

In summary, the Rural Living Strategy recommends the following Planning Scheme changes:

- application of the BMO, consistent with the MBRA
- rezoning of rural land to FZ2 and RLZ, including rezoning to 'fix anomalies'
- applying a DDO to some precincts zoned RLZ
- applying a DPO to new greenfield rural living precincts
- corrections rezoning of public land to PPRZ and PCRZ
- introducing a new local bushfire policy at Clause 13.02-1L that incorporates the Bushfire Risk Map
- introducing the MBRA and Rural Living Strategy as background documents.

(iii) Toongabbie Structure Plan Report and Toongabbie Background Reports

The Toongabbie Structure Plan Report seeks to inform strategic planning decision making to accommodate growth and development in Toongabbie for the next 15 to 20 years. It builds on the strategic work undertaken by Council for *Live Work Latrobe* implemented through Amendment

C105latr. It was developed through preparation of various studies which collectively form the Toongabbie Background Reports, including:

- Consultation Report
- Context Report
- Infrastructure and Servicing Assessment
- Flora and Fauna Assessment
- Toongabbie Bushfire Risk Assessment.

The Toongabbie Structure Plan Report includes the Toongabbie TSP (see Figure 4) and strategic directions to:

- maintain the historic, cultural and historic values of the town
- retain the quiet, rural atmosphere
- improve infrastructure
- maintain key views and vistas
- provide for open space and community infrastructure
- enhance the town centre core.

It includes a range of actions for implementation, including Planning Scheme recommendations to introduce new local policy including the Toongabbie TSP, and to rezone residential land to LDRZ, NRZ5 and GRZ4 and rural residential land to RLZ.

(iv) Toongabbie Flood Study

The Flood Study is intended to be used for statutory and strategic planning processes and emergency management and determines the nature and extent of flooding in Toongabbie through modelling of design flood flows, levels and velocities.

Amendment C126latr proposes to update the extent of the LSIO and introduce the FO. The Toongabbie TSP has relied on this information in identifying areas for growth and development. Urban development on flood-prone land is discouraged except when agreed with the WGCMA.

(v) Potentially Contaminated Land Report

The *Potentially Contaminated Land Report* (Contamination Report) prepared by Council in 2020 includes the overall objective to identify potentially contaminated land in Toongabbie. It informed Amendment C126latr but is not included Toongabbie Background Reports. The Contamination Report was prepared in accordance with Planning Practice Note 30 (PPN30) and Ministerial Directions 1 and 19 and in consultation with the Environment Protection Authority Victoria (EPA).

Amendment C126latr proposes to rezone two properties from FZ to a zone allowing sensitive use, both of which were assessed as low contamination potential. The only site identified as potentially contaminated is the Toongabbie General Store at 43 High Street, Toongabbie. This site is zoned Township Zone, which does allow for sensitive uses, however the land is not proposed for rezoning through the Amendment.

1.4 Background and chronology

(i) Chronology

Council provided a detailed chronology of Amendment C127latr and C126latr in its Part A submissions, which the Panel has summarised in Tables 1 and 2 respectively.

Table 1 C127latr chronology of events

Date	Event
September 2018	Rural rezonings proposed through Amendment C105latr placed on hold due to Amendment VC140
April 2019	Council commissioned the MBRA
6 May 2019	Council resolved to submit Amendment C105latr to Minister for Planning for approval, with the component relating to rural land rezoning removed while Council prepared the MBRA
10 September 2019	Preliminary engagement on the MBRA methodology and preliminary recommendations to 12 stakeholders, including the CFA
April 2020	Draft MBRA and Rural Living Strategy completed
May – July 2020	Engagement with external stakeholders, other Council teams and DELWP on the draft MBRA and Rural Living Strategy
7 September 2020	Council resolved to seek authorisation to prepare Amendment C127latr
October 2020 – March 2021	Ongoing engagement with CFA and lodgement of request for authorisation of Amendment C127latr
30 April 2021	Council received authorised to prepare the Amendment, with conditions
24 June to 6 August 2021	Amendment C127latr was exhibited alongside Amendment C126latr
August 2021 – July 2022	Consideration of submissions, and continued post exhibition engagement with submitters to resolve issues including CFA and EPA
4 July 2022	Council resolved to request a Panel to consider submissions
11 July 2022	Panel requested
11-14 October 2022	Public Hearing

Table 2 C126latr chronology of events

Date	Event
2019-2020	Stakeholder engagement was undertaken, including a survey from 25 March – 5 April 2019 and workshops from 12 September – 8 October 2019. Toongabbie Background Reports were completed
6 July 2020	Council resolved to endorse draft Toongabbie Structure Plan Report and Background Report for public exhibition and to seek authorisation to prepare an amendment. Exhibition was delayed pending gazettal of Amendment C122latr (Planning Policy Framework Translation) and authorisation of Amendment C127latr
28 January 2021	Council received authorisation to prepare an amendment, with conditions
28 May 2021	Amendment C122latr was gazetted
24 June to 6 August 2021	Amendment C127latr was exhibited alongside Amendment C126latr
August 2021 – July 2022	Consideration of submissions, including those received for C127latr
4 July 2022	Council resolved to request a Panel to consider submissions
11 July 2022	Panel requested

Date	Event
11-14 October 2022	Public Hearing

(ii) Authorisation of Amendment C127latr

The authorisation of Amendment C127latr included conditions relating to:

- removing the proposed application of the BMO and the BMO – Schedule 2
- amending the suite of local policy ordinance consistent with DELWP feedback
- reviewing the DDO12 and DPO10, including removal of the reference to referral of all applications to the relevant fire authority in the DDO12, and allowing DELWP officers further review before exhibition
- removing changes to Clause 66.04
- the CFA being notified during exhibition of the Amendment.

Regarding removal of the BMO and Schedule 2, the letter stated:

Regarding Conditions 1 and 2, I note that officers of the Department of Environment, Land, Water and Planning advised council officers via email on 13 October 2020 that DELWP would not support the proposal to introduce additional Bushfire Management Overlay areas. This advice was given on the basis that the risk-based methodology used to inform the proposal is inconsistent with DELWP's methodology, which is based on an assessment of existing hazards.

1.5 Procedural issues

(i) CFA representation

Before the Directions Hearing, the Panel received correspondence from the CFA advising it intended to engage bushfire and planning consultant Mr Hazell to represent it as an advocate at the Hearing. The CFA noted Mr Hazell had previously worked for Council in preparing background work for the Toongabbie Structure Plan Report. CFA advised it did not believe this created a conflict of interest as Council had not relied on this work, and due to the amount of time that had passed since the work had been completed. The Panel provided parties an opportunity to comment on this matter, and no concerns were raised.

(ii) Joint Statement

The Panel issued a direction for Council and the CFA to meet and prepare a Joint Statement before the Hearing that sets out the issues in agreement and issues in dispute (as relevant to both Amendments), relating to:

- accuracy and recommendations of the MBRA
- the Amendments, including proposed policy, rezonings and overlay provisions.

The Panel issued a direction for Council to include in its Part B submission:

... a detailed response to submissions and evidence, including any unresolved issues raised in submissions by the Country Fire Authority/identified in the Joint Statement between Council and the Country Fire Authority.

At the Hearing, the Panel asked the CFA to provide a detailed position on each unresolved issue during its submission to the Panel.

(iii) Millar Merrigan submissions

Millar Merrigan, representing submitters 31 – 45, advised it would table documents relating to a separate 96A combined permit and planning scheme amendment application for development of land at Clarkes Road, Hazelwood North, by way of background.

To ensure the Panel and parties would have sufficient understanding of the issues to be raised by Millar Merrigan, the Panel directed Council to provide a summary of the 96A application, a chronology of events and summary of key issues as relevant to C127latr. This information was provided through Council's Part A Submission for Amendment C127latr.

(iv) Without prejudice drafting session and further material

A without prejudice drafting session was held on the final day of the Hearing. The Panel agreed to accept further written material from Dr Strachan (Submitter 15) documenting his suggested changes to Amendment C127latr, as discussed during the drafting session. In closing, the Panel issued directions for distribution of this material and providing time for Council to respond.

Council considered some of this material to be new content, and sought clarification from the Panel on whether it would accept the material circulated by Dr Strachan. The Panel determined to accept the further material on the basis that it provided written documentation of Dr Strachan's comments on the Amendment documents, and would explain and provide context to his suggested changes. The Panel invited Council to comment on what it considered to be new material in its reply submissions. Council provided final comments on the material on 18 October 2022.

1.6 Summary of issues raised in submissions

(i) Amendment C127latr

Council advised that of the 46 submissions received, six supported Amendment C127latr, three supported it subject to changes and 37 objected.

DELWP (Gippsland Region) and WGCMA did not object to the Amendment. The Department of Transport (DoT) did not object to the Amendment but made requests for particular items relating to transport to be included in the requirements for a development plan under DPO10.

Threshold issues raised by the CFA and a number of submitters are whether:

- the underlying strategic work, specifically the MBRA, was 'fit for purpose' to inform changes to the Planning Scheme
- the Rural Living Strategy is appropriate to guide rural rezonings, given its reliance on the MBRA.

Other key issues are whether:

- the MBRA, Bushfire Risk Map and Rural Living Strategy should be included as background documents in the Planning Scheme
- bushfire should be the primary consideration for rezonings, and whether the nominated level of bushfire risk in the MBRA is accurate and appropriate
- specific requests for rezoning rural land are appropriate
- fragmentation of farmland has been adequately considered
- 'corrections' rezonings are strategically justified

- proposed local policy relating to managing bushfire risk in timber coups is appropriate.

The Panel has not addressed issues relating to approval of Delburn Wind Farm as this is subject to a separate approvals process.

(ii) Amendment C126latr

Council advised that of the 12 submissions received, six supported Amendment C126latr, five objected and one was withdrawn.

DELWP and DoT made supportive submissions with clarification sought on the protection of waterways and green corridors and high value habitats in roadside verges respectively.

A critical issue raised by the CFA was whether bushfire hazard and risk has been adequately assessed in accordance with planning policy, and designated growth areas are appropriate with regard to bushfire risk.

Other key issues are whether:

- the Toongabbie Structure Plan Report and Toongabbie Background Reports are appropriate to inform changes to the Planning Scheme, and should be included as background documents
- the land rezoning adequately considers flooding
- specific requests for rezoning rural land are appropriate.

EPA submitted the Environmental Audit Overlay (EAO) should be applied to 43 High Street, Toongabbie (the Toongabbie General Store).

1.7 The Panel's approach

The Panel has assessed the Amendments against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendments, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in this Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in this Report.

As the MBRA and Rural Living Strategy proposed for introduction through Amendment C127latr provide the bushfire risk and settlement planning context for Amendment C126latr, the Panel has considered the Amendments in this order in this Report.

The Report is structured under the following headings:

- Part A: Introduction and planning context
- Part B: Amendment C127latr
 - Threshold issues and strategic justification
 - Hancock Victoria Plantations
 - Rural rezonings
- Part C: Amendment C126latr
 - Toongabbie growth areas and bushfire risk

- Other issues.

2 Planning context

Table 3 below identifies planning context relevant to the Amendments. Appendix A provides further details regarding relevant provisions and policies.

Table 3 Planning context

	Relevant references
Victorian planning objectives	<p>Section 4 of the <i>Planning and Environment Act 1987</i> (PE Act) including:</p> <ul style="list-style-type: none"> - providing for the fair, orderly, economic and sustainable use, and development of land - protecting resources and maintain ecological processes - securing a pleasant, efficient and safe working, living and recreational environment - facilitating development in accordance with the objectives of planning - balancing the present and future interests of all Victorians
Municipal planning strategy	<p>Clause 02.03-1 (Settlement)</p> <p>Clause 02.03-2 (Environmental and landscape values)</p> <p>Clause 02.03-3 (Environmental risks and amenity)</p> <p>Clause 02.03-4 (Natural resource management)</p> <p>Clause 02.03-5 (Built environment and heritage)</p> <p>Clause 02.03-6 (Housing)</p> <p>Clause 02.03-7 (Economic development)</p> <p>Clause 02.03-9 (Infrastructure)</p>
Planning policies	<p>Clause 11 (Settlement)</p> <p>Clause 12 (Environmental and landscape values)</p> <p>Clause 13 (Environmental risks and amenity), in particular Clause 13.02-1S (Bushfire planning) and Clause 13.02-1L (Bushfire prone areas)</p> <p>Clause 14 (Natural resource management)</p> <p>Clause 15 (Built environment and heritage)</p> <p>Clause 16 (Housing)</p> <p>Clause 17 (Economic development)</p> <p>Clause 18 (Transport)</p> <p>Clause 19 (Infrastructure)</p>
Other planning strategies and policies	<p>Gippsland Regional Growth Plan</p>
Planning scheme provisions	<p>Clause 32.09 (Neighbourhood Residential Zone)</p> <p>Clause 32.05 (Township Zone)</p> <p>Clause 35.03 (Rural Living Zone)</p> <p>Clause 35.07 (Farming Zone)</p> <p>Clause 43.02 (Design and Development Overlay)</p> <p>Clause 43.04 (Development Plan Overlay)</p>

	<p>Clause 44.03 (Floodway Overlay)</p> <p>Clause 44.30 (Land Subject to Inundation Overlay)</p> <p>Clause 53.02 (Bushfire Planning)</p> <p>Clause 71.02-3 (Integrated decision making)</p>
Planning scheme amendments	<p>Amendment VC140: Bushfire State Planning Policy</p> <p>Amendment VC203: Update to Victoria Planning Provisions to align with the <i>Environment Protection Act 2017</i></p> <p>Amendment C105latr: Live Work Latrobe</p> <p>Amendment C122latr: Planning Policy Framework Translation and Planning Scheme Review</p> <p>Amendment C131latr: Flood Mapping Update (in progress)</p>
Ministerial directions	<p>Ministerial Direction 1: Potentially Contaminated Land</p> <p>Ministerial Direction 11: Strategic Assessment of Amendments</p> <p>Ministerial Direction 19: Preparation and content of amendments that may significantly impact the environment, amenity and human health</p>
Planning practice notes and other guides	<p>The following Planning Practice Notes (PPN) apply:</p> <ul style="list-style-type: none"> - PPN02: Public Land Zones - PPN07: Vegetation Protection in Urban Areas - PPN10: Writing Schedules - PPN12: Applying Flood Provisions in Planning Schemes - PPN28: Using the Neighbourhood Character Provisions in Planning - PPN30: Potentially contaminated land - PPN37: Rural Residential Development - PPN42: Applying the Rural Zones - PPN43: Understanding Neighbourhood Character - PPN46: Strategic assessment guidelines, 2018 - PPN64: Local Planning for Bushfire Protection - PPN90: Planning for Housing - PPN91: Using the Residential Zones <p>Other relevant guidance includes:</p> <ul style="list-style-type: none"> - Planning Advisory Note 68: Bushfire State Planning Policy - Design Guidelines: Settlement Planning at the Bushfire Interface, 2019 - Planning Permit Applications in the Bushfire Management Overlay: Technical Guide (DELWP, 2017) (BMO Technical Guide)

PART B AMENDMENT C127LATR

3 Threshold issues and strategic justification

3.1 Background

Council explained the MBRA and Rural Living Strategy were prepared to inform Amendment C127latr. The *Latrobe Planning Scheme Review 2014* identified the need for strategic planning to better reflect the new requirements of the Victorian Bushfires Royal Commission 2009 and to identify where development is not appropriate. Amendment C127latr proposes new rural living in locations with a lower bushfire risk profile as informed by the Bushfire Risk Map.

Two key Planning Scheme provisions guide bushfire planning:

- Clause 13.02-15 (Bushfire Planning) includes an objective to strengthen the resilience of communities to bushfire through risk-based planning that prioritises the protection of human life. Strategies relate to:
 - protection of human life
 - bushfire hazard identification and assessment
 - settlement planning
 - areas of biodiversity conservation value
 - use and development control in a Bushfire Prone Area (BPA).
- Clause 71.02-3 (Integrated decision making) requires integrated decision making to address aspects of economic, environmental and social wellbeing affected by land use and development. Within this context, the clause requires planning authorities to balance conflicting objectives in favour of net community benefit and sustainable development, however in bushfire affected areas the clause requires the protection of human life over all other policy considerations.

Council considered Amendment C127latr was consistent with and directly responded to Clause 13.02-15 (Bushfire planning), as it seeks to:

- provide an adequate supply of land for rural living housing to meet the forecast needs of the community for the next 15 years and with consideration of PPN37
- consider environmental values and avoid negative environmental impacts as a result of land rezoning
- rezone land with appropriate consideration of environmental risk, specifically bushfire and priority for protection of human life
- protect agricultural land, and facilitation of rural tourism in appropriate locations
- protect cultural heritage
- ensure appropriate provision and sequencing of infrastructure and services.

3.2 Municipal Bushfire Risk Assessment and Bushfire Risk Map

(i) The issues

The issues are whether the:

- MBRA is fit for purpose for Planning Scheme decision making
- MBRA should be included in the Planning Scheme as a background document
- Bushfire Risk Map should be included in the Planning Scheme.

(ii) Evidence and submissions

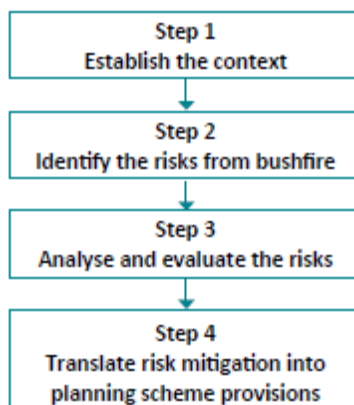
Council

Council submitted the MBRA provided a sound assessment of bushfire risk at a municipal wide and township scale, and represented the most comprehensive view of bushfire risk and hazard across the municipality. The MBRA was prepared as a multi-purpose, multi-disciplinary document to be used for bushfire planning and management across all the functions of Council. It was intended to inform long term strategic land use planning in combination with fuel management prioritisation and decision making. Council considered it appropriate for the MBRA to be introduced to the Planning Scheme as a background document.

Council submitted the MBRA responded to Clause 13.02-1S, with its purpose to provide a picture of the municipality's landscape bushfire risk that would assist land use planning decisions. The MBRA has been prepared with PPN64 and the associated four step approach as a central guide for the project's methodology and objectives (see Figure 6). Consistent with PPN64, the MBRA sought to provide a spatial representation of municipal-wide bushfire risk and to apply relevant local bushfire policy.

Figure 6 PPN64 Four step approach to considering bushfire

Four-step approach to considering bushfire



Council explained the MBRA was prepared in consultation with a wide range of key stakeholders, including community, agency, and government stakeholders, including the CFA and the Municipal Fire Management Planning Committee. Council also consulted with communities in identified high risk locations. Council provided extensive details of its engagement process.

Council provided an overview of the purpose and methodology used to compile the Bushfire Risk Map. It was prepared with consideration of CFA Guideline *FSG LUP 008 – Strategic Land Use Planning – Bushfire* (CFA Fire Service Guideline), and amongst other things, it intends to identify areas of the municipality “where development should be avoided, where development can proceed following in-depth analysis of bushfire risk and areas where development can proceed with no or little restrictions”.

The three risk levels on the Bushfire Risk Map are specified in the policies included in Amendment C127latr, generally directing growth towards the green areas, and only allowing for growth in higher risk areas if a site specific assessment demonstrates the risk is acceptable or can be managed to an acceptable level.

Council noted the Bushfire Risk Map showed an increase in the bushfire risk profile when compared to previous information available on bushfire risk in the municipality.

Council was of the view that the MBRA, Bushfire Risk Map, and the precinct scale bushfire risk assessments in combination respond to the requirements of Clause 13.02, Planning Practice Notes and relevant guidelines.

Council emphasised there were no existing precedents for landscape-scale bushfire risk assessments elsewhere, and *“in the absence of an established method to follow, Council made extensive efforts to collaborate and consult with the CFA and other government agencies to draw on their bushfire expertise in preparing the MBRA”*.

Council considered the CFA had confused the role of the MBRA and misunderstood that planning decisions need to be made in the context of residential growth and other policy considerations.

Council emphasised that while the CFA was not comfortable with the MBRA, it had generally agreed that the Bushfire Risk Map is generally reflective of areas of risk at a wider scale. The Bushfire Risk Map was not intended to replace the need for site based assessments where these are triggered by the BMO. Council considered the CFA had incorrectly concluded implementation of the MBRA into local policy would negate the need for a full assessment of bushfire risk for each development.

Council stressed it was *“extremely keen and eager to work with the CFA to refine amendment documentation prior to having these documents adopted by Council and progressing the Amendment”*, however *“repeated efforts to engage with the CFA and obtain meaningful, detailed feedback in an effort to develop a document that they were comfortable with”* had failed.

Council engaged Terramatrix to undertake a peer review of the MBRA, in response to submissions from the CFA on Amendment C127latr. Council provided a copy of the Terramatrix peer report *Review of the Municipal Bushfire Risk Assessment* (November, 2021) with its Part B submission. The Terramatrix report found:

The methodology for creating the whole of-municipality risk map and its relationship to the precinct-scale assessments is not clear, and it is noted that the two scales of assessment give different risk ratings for some precincts. The traffic light assessments and map are easily communicable risk information products.

The development of an effective risk assessment process or tool is a difficult undertaking, that needs to bring together complex concepts of bushfire hazard, the risk management process and statistical and spatial analysis. There are significant methodological limitations with the [MBRA], that detract from the underlying usefulness of the component risk and hazard information it incorporates. The attempt to quantify the diverse ‘risk indicators’ and aggregate them into numerical risk scores is particularly problematic.

While Terramatrix agreed with the CFA that the Bushfire Risk Map was *“generally reflective of areas of risk at a wider scale”* it noted that establishing the context of the assessment is inherently subjective and can be difficult to draw boundaries on a map that satisfies all stakeholders. A map in the Planning Scheme can become out of date over time.

The peer review concluded:

- the MBRA is best described as an aggregate of bushfire hazard and risk information products
- the development of an effective risk assessment process or tool is a difficult undertaking that needs to bring together complex concepts of bushfire hazard, risk management process and statistical and spatial analysis

- the MBRA exhibits significant methodological limitations – in particular, the attempt to quantify the diverse risk indicators and aggregate them into a numerical risk score is problematic
- the discrepancy between locality assessments and the municipal wide Bushfire Risk Map is confusing
- the traffic light system is an easily communicable approach that could be adjusted to better align with the CFA's approach
- it agreed with the CFA that the MBRA is better as a supporting tool for a risk assessment required by Clause 13.02-1S, rather than being considered a risk assessment in its own right, which can justify development, development controls or specific bushfire protection measures.

In that context, Terramatrix proposed to identify how the Amendments “*can incorporate at least some elements*” of the MBRA analysis and findings in a way that addresses the CFA's concerns. Council relied on the Terramatrix suggested changes to the Amendment and decided to proceed to the Panel process for Amendment C127latr without resolving the remaining outstanding matters directly with the CFA.

In its verbal submissions at the Hearing, Council explained the Terramatrix report:

- is in a draft form and was never finalised
- it should be read in the context of qualifications in the report and the context that it was a critique of another consultant's report and “*came from a negative position*”
- focusses on acceptable levels of risk, stating:

Planning Practice Note 64 states that ‘central to local planning for bushfire is determining the level of risk and whether the risk has been reduced to an acceptable level’ but also states that ‘directing development to the lowest risk locations is the most effective way to prioritise the protection of human life’ (DELWP, 2015)
- assessment of lowest risk areas would require a different approach depending on the geographic assessment
- Clause 13.02-1S requires the broader landscape to be considered but provides no equivalent metrics for this – there is inherent ambiguity in applying the policy.

Council suggested extensive post-exhibition changes to Amendment C127latr as a result of submissions and the Terramatrix advice.

Mr Potter

Mr Potter, one of the authors of the MBRA, gave evidence for Council. Mr Potter provided an overview of bushfire history in the municipality, and the scope and method used for preparing the MBRA, including the stakeholder engagement process. He noted the municipality was one of only a handful in Victoria that has the real possibility of being impacted by a campaign (long duration) fire event, due its proximity to the Great Dividing Range to the north and the Strzelecki Ranges in the south.

Mr Potter emphasised the importance of the planning system for managing bushfire risk. He referred to the Commonwealth of Australian Governments report prepared in 2002, *Natural disasters in Australia – Reforming mitigation, relief and recovery arrangements*, which stated:

Land use planning which takes into account natural hazard risks has been identified as the single most important mitigation measure in preventing future disaster losses in areas of new development.

He explained this view is supported by the 2009 Victorian Bushfires Royal Commission.

Mr Potter was of the view the MBRA appropriately identifies the level of bushfire risk across the municipality, with a strong focus on the 13 localities selected by Council. He considered the MBRA:

- defines the importance of considering the integration between fire prevention treatments and the strategic management of bushfire risk through the Planning Scheme
- includes recommendations across both fire prevention treatments and planning provisions, which would assist with managing bushfire risk, directing population growth to safer areas, and ensuring the fire prevention treatments are addressing bushfire risk now and into the future.

Mr Potter considered the thirteen bushfire risk indicators combined formed a full picture of bushfire risk across the municipality. Quoting from the MBRA, he stated:

The background to each of the indicators is varied with some being developed through detailed scientific research while others utilise expert judgement. When these indicators are aligned, a determination of bushfire risk can be made to inform treatment planning.

Mr Potter gave evidence that the three risk levels on the Bushfire Risk Map are guided by the CFA Fire Service Guideline. It was intended to assist decision makers in their consideration and consistent application of Clause 13.02-1S.

Mr Potter explained, when the MBRA was developed, introduction and implementation of Clause 13.02-1S was still considered new (introduced in late 2017 through Amendment VC140) and there was uncertainty as to how to apply the policy. While the MBRA does not provide a specific response to all the policy requirements, the report does contain information relevant to the objectives of Clause 13.02-1S. He was satisfied Council had adequately assessed each precinct against the objectives of Clause 13.02-1S in its preparation of the Rural Living Strategy.

Mr Potter rejected the majority of issues raised in the CFA submission (discussed below). He was of the view the MBRA had adequately considered safer locations and that safer locations could be identified for each locality. He explained the MBRA used the following hierarchy to consider safer locations:

- Within the locality, are there areas considered as 'safer' when compared with other areas within the locality? If so, direct development towards these locations.
- If there are no areas considered safer, direct development away from the locality or identify landscape altering solutions that will enable the landscape risk to be reduced to then create safer areas.
- This process is developed in line with the concept that safer areas can be within an existing locality and through carefully planned developments, may reduce the risk of bushfire to the existing community.

Under cross examination by the CFA, Mr Potter:

- explained he was inclined to assess relative risk of locations, starting at the local level to see what management techniques can be used to achieve acceptable risk or to provide safe areas, rather than taking a regional approach
- agreed the scoring for several of the risk assessment indicators was subjective
- agreed there were some discrepancies between the interactive Bushfire Risk Map and the precinct assessments in the MBRA, and some variability in application of the buffers around bushfire hazards.

In response to questions from the Panel, Mr Potter:

- stated an agreed State government methodology for a municipal wide bushfire assessment would have been useful

- explained if the project started now it would be “*done completely differently*”, specifically by directly addressing the elements of Clause 13.02-1S, and the layout of the report would be different
- suggested the map may be better renamed as a ‘spatial map of bushfire considerations’ rather than a ‘risk map’.

CFA

The CFA submitted the most directive Planning Scheme provision relating to bushfire was Clause 71.02-3 (Integrated decision making) which states “*in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations*”. Further, there are three key policies in Clause 13.02-1S (Bushfire planning) central to the decision making framework:

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
- Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.

It submitted Clause 13.02-1S strategies required:

- hazard identification and assessment by applying the best available science to identify conditions (vegetation, topography and climate) that create bushfire hazard
- consideration of hazard at a range of scales and locational factors to assess “*alternative low risk locations for settlement growth on a regional, municipal, settlement, local and neighbourhood basis*”
- “*achieving no net increase in risk to existing and future residents, property and community infrastructure, through the implementation of bushfire protection measures and where possible reducing bushfire risk overall*”.

The CFA acknowledged municipal scale bushfire risk assessment is complex and presents a number of challenges; it is a dynamic hazard where modelling has significant limitations. It stated this was:

... why there are currently no land use planning based landscape bushfire mapping available and why there is such a strong emphasis on undertaking assessments of bushfire in the landscape over such significant distances within existing bushfire planning policy. It is an area of research that continues.

The CFA attached to its submission correspondence between the CFA and Council relating to the draft MBRA and the Amendments. It explained the CFA had consistently communicated its concerns regarding the MBRA and the associated settings for direction of growth within certain localities. The CFA sought substantial changes to both the draft MBRA and Rural Living Strategy before it would be comfortable supporting their adoption for Planning Scheme purposes.

During the preparation of Amendment C127latr, the CFA advised Council the:

- purpose of the document is unclear, specifically:
 - whether it was a risk document, fire prevention aid, planning report or combination and associated concerns with how it would be used
 - how Clauses 13.02-1S (Bushfire planning) and 71.02-3 (Integrated decision making) had been addressed
- risk framework and language is confusing

- approach to risk assessment may result in an inappropriate risk profile not suited to planning.

Other concerns related to:

- reliance on detailed bushfire risk assessment at the planning permit application stage rather than at the planning scheme amendment stage
- suitability of the Bushfire Risk Map
- consideration of practical implementation of fire prevention activities
- reliance on data outside of the planning system
- the lack of demographic profile assessment
- planning for vulnerable populations
- consideration of fire history and all relevant data in framing future settlement growth
- objection to the reliance on the CFA Fire Service Guideline which has since been withdrawn.

CFA strongly recommended *“reframing the report to clearly address each relevant policy”* in Clause 13.02-1S.

The CFA was concerned that while the MBRA is intended to be a municipal wide assessment and produces a Bushfire Risk Map for the entire municipality, it only considers 13 locations in detail. It excludes large parts of the municipality, including the larger townships of Moe, Morwell, and Traralgon, and extensive parts of the rural hinterland, while reaching conclusions on their level of bushfire risk. This may result in unintended consequences with the MBRA and Bushfire Risk Map guiding and directing development into areas that have had minimal assessment.

The CFA was concerned the MBRA relied too heavily on fire prevention works, and considered the MBRA had taken a fire management planning approach. Many of the ‘bushfire risk indicators’ are more commonly found in fire prevention planning activities. These ‘bushfire risk indicators’ do not give effect to the considerations in Clause 13.02-1S (Bushfire planning), and there was no certainty these can be delivered. The CFA stated it could not commit to the level of works anticipated in the MBRA at this stage. The consequences are that the assessment *“underplays potential fire behaviour and relies heavily on assumptions that fire authority interventions are likely”*.

Further, the CFA was concerned about the scoring of the proposed ‘bushfire risk indicators’ with many attributes. It considered the thresholds between the different risk levels had no described logic or evidentiary basis and the use of a score is of limited utility to planning decision making.

While the CFA acknowledged that fire prevention and planning outcomes must have greater integration, ultimately there are three determinative factors used in land use planning decisions:

- landscape bushfire considerations
- alternative locations for growth
- a greater emphasis on existing low fuel areas for shelter.

The CFA expressed concerns with the legacy that would be created if the MBRA is referenced in the Planning Scheme. It considered that it was unclear how the Planning Scheme would operate in the context of the MBRA, and was concerned there may be unintended consequences.

While the CFA agreed the Bushfire Risk Map was generally reflective of areas of risk as a wider scale, it did not support its inclusion in the Planning Scheme on the basis:

- it was unclear if assessments informing the Bushfire Risk Map were undertaken of the whole municipality

- the use of the three tiered traffic light system invites Planning Scheme users to conclude that:
 - green areas equate to low risk, when the entirety of the green area is not low risk, and in fact includes high risk areas
 - yellow areas equate to an undefined risk, when the yellow is a high risk area
 - red areas generally equate to non-grassland hazards
- Amendment C127latr proposed the green areas for growth, whilst concurrently directing development to the yellow and red areas
- there were inconsistencies between the MBRA and Bushfire Risk Map (for example see Figure 7).

Figure 7 Traralgon South - example of inconsistencies between precinct assessment (left) and municipal Bushfire Risk Map (right)

Traralgon South



Source: CFA submissions

The CFA did not consider Clause 02.04-9 an appropriate location for the Bushfire Risk Map as this part of the Planning Scheme is for strategic directions and not for contextual information.

Further, the CFA was concerned the post exhibition changes proposed by Council (which the CFA understood resulted from the Terramatrix peer review of the MBRA) introduced another spatial framework which contradicts the Bushfire Risk Map.

The CFA provided without prejudice advice on what the Panel may recommend if it supported proceeding with implementing the MBRA and Bushfire Risk Map through Amendment C127latr:

- changing the name of the map so no reference is made to 'risk'
- removing the traffic light colour system, and consideration of a 'non-emotive' approach, for examples Areas A, B and C with associated hazard descriptions
- relocating the map from the MPS to Clause 13.02-1L
- removing all language from policy that purports to direct or minimise future assessments, or that does not prejudice Clause 13.02-1S assessments or suggest a meaningful reliance on the MBRA

The CFA also put forward without prejudice changes to elements of the DDO and DPO.

Joint Statement

The Joint Statement prepared by Council and the CFA in response to Panel directions identified 24 issues, of which 14 remained unresolved prior to the Hearing. The Joint Statement identified areas

of agreement and disagreement in relation to the specific policy, rezoning and overlay provisions of both Amendments.

Regarding the accuracy and recommendations in the MBRA, Council and the CFA only agreed on one issue:

- the three spatial areas identified from the MBRA and shown on the Bushfire Risk Map can be generally used in the Planning Scheme, subject to proposed changes. CFA expanded on these changes in its submission, and fundamentally it did not support directing development based on the findings of the MBRA.

Areas of disagreement relate to:

- whether the methodology of the MBRA was appropriate, including:
 - consistency with the assessment required under Clause 13.02-1S (Bushfire planning)
 - whether it is fit for purpose for Planning Scheme decision making
- the approach to consideration of fire management treatments was appropriate, and if they need to be relied on for the conclusions of the assessment
- how the MBRA should be used in the Planning Scheme, including specificity of recommendations and use as a background document
- whether the three spatial areas required adjustments from what was exhibited, including changing their names and clarification of their purpose for land use decision making
- whether the Amendment precludes the need for further planning assessment, including consideration of Clause 13.02-1S (Bushfire planning)
- whether grassland areas in proximity to landscape scale forest hazards are high risk and not appropriate to be designated as lower risk.

Other submitters

Several submitters raised issues with the MBRA, in particular:

- whether it appropriately considers and responds to the findings of the 2009 Bushfires Royal Commission
- it is flawed because it should consider proposed conditions resulting from a development proposal, not only current conditions
- the scoring which put land in a different risk category by only one point was not an appropriate measure of risk
- the approach to safer areas in each locality, as explained by Mr Potter, was unacceptable and not consistent with Clause 13.02-1S
- the Terramatrix report provides many opinions on the MBRA that should be tested, discussed and alternatives proposed
- there should be greater community representation and consultation.

Council closing submission

The Panel sought to understand Council's views if it were to recommend references to the Bushfire Risk Map be removed from the Amendment, as suggested by the CFA. Council responded that inclusion of the Bushfire Risk Map sought to achieve the directions of PPN64, and Council considered *"it is appropriate to provide a spatial representation of bushfire considerations in the Planning Scheme with associated local policy"*.

Council explained it had originally intended to implement the findings of the MBRA through expansion of the BMO, however this was not supported by DELWP as the mapping methodology was not consistent with guidance.¹ It explained:

Given the removal of the BMO as an option, pursuant to PPN64, local policy drafting was seen as a solution.

Three Clause 13.02-1L policies were originally drafted. One for each level of risk. The CFA were not supportive of this approach and extensive amendments were then made to drafted 13.02-1L policies, including the combination of the three policies into one Clause 13.02-1L.

The Panel sought further information about the Joint Statement process, including why further explanation of each party's position, and a history of these positions was not included. Council explained the meetings with the CFA to prepare the Joint Statement, and that two versions of the Joint Statement were prepared – the first version with commentary on the issues. It stated:

At this point, the CFA made the decision to remove all commentary, and the next version sent to Council for review was a bare list of issue statements with little-to-no context. This version was difficult to understand and was inconsistently worded. Council reviewed this, making extensive changes to grammar to make the issues clearer to the panel – but where Council could not understand the CFA's points, they sent back their reviewed version with comment boxes seeking clarification.

CFA accepted all changes but deleted comment boxes and did not reply to Council's questions for clarification.

Given the statement was directed to be a joint statement signed by Council and the CFA, the version provided to Panel under Directions 21, 22 and 23 was limited in detail as this was the version to which the CFA would agree to be a signatory.

Council disagreed with the CFA that the State planning policy was clear with regard to landscape scale bushfire risk assessment requirements, stating:

As the author of that policy, perhaps the policy is clear to Mr Hazel and that is why in his own words, he has no difficulty applying it. Respectfully Council disagrees, and we concur with the ambiguities in Clause 13.02-1S as outlined by Terramatrix in their report. Nonetheless, we are not here to criticise the drafting of Clause 13.02-1S as that is not productive.

Council referenced Planning Advisory Note 68 which explains the requirements of new bushfire settlement planning strategies, which states *"The settlement planning strategy requires authorities to address bushfire risk at the settlement scale rather than delaying bushfire protection until the subdivision and/or construction phase"*. It considered this guidance and PPN64 clearly support the need and purpose of the MBRA and Bushfire Risk Map by addressing bushfire risk through a strategic and spatial tool.

Regarding whether the MBRA is fit for purpose, Council submitted:

- the MBRA and Bushfire Risk Map satisfies its primary purpose of providing strategic guidance for settlement growth and development
- the MBRA satisfactorily guides appropriate and safe rezoning and development
- the Rural Living Strategy satisfies the locality level assessment with respect to areas proposed for rezoning at this stage.

While the traffic light colour system on the Bushfire Risk Map (red, yellow and green) is consistent with a universal representation of bushfire danger, and was proposed in response to early feedback from the CFA, it would be content to use alternative descriptors as suggested by the CFA. It noted:

¹ Planning Advisory Note 46: Bushfire Management Overlay Mapping Methodology and Criteria

However, it is worth noting the use of “traffic light” colouring systems in the context of bushfire risk. Bushfire danger is almost universally represented using these colouring systems. Therefore, [Council] says that the colouring used on the map would be read with this context in mind.

In response to the CFA’s submission that it will not commit to fire prevention requirements outlined in the MBRA, Council submitted there is no basis to doubt that fire prevention activities/management interventions will continue to be required and carried out in Latrobe into the future, and are relevant as part of site context when considering bushfire risk.

Council emphasised that no other party had brought expert evidence to the Panel Hearing to contest the MBRA.

(iii) Panel discussion

Background and CFA concerns

There is little doubt that the City of Latrobe presents a comparatively unique high bushfire risk scenario within a State-wide context. The MBRA describes the history of experience of bushfire and that bushfires have destroyed or threatened land and property in the municipality for many years. Major bushfires including those in 1939, 1944, 1983, 2006-07, 2009, 2014 and 2019 have resulted in the loss of life and property. Since 2011 there has been a major bushfire every 3 to 4 years.

The landscape is conducive to the ongoing threat of major bushfires every fire season due to the large tracts of forest and plantations intermingled with residential developments and townships. Large areas of farmland also contribute to the risk of bushfires and may allow for rapid spread of bushfires towards community assets. The ‘precautionary principle’ should be applied to bushfire planning in Latrobe, given its history of campaign bushfires and ongoing risk.

The 2009 Victorian Bushfire Royal Commission clearly directed that protection of human life is paramount. The MBRA acknowledges “*the primacy of life is a key Planning Scheme focus*”.

As identified by Mr Potter, the planning system is an extremely important tool for managing bushfire risk. Consequently, this is an important Amendment which seeks to update the Planning Scheme to better manage bushfire risk in Latrobe City. In this context, submitters including the CFA were generally of the view Council’s intention to better reflect bushfire risk considerations in the Planning Scheme was commendable.

The Panel acknowledges the efforts of Council to establish an understanding of bushfire risk across the municipality and to introduce appropriate planning provisions in response.

Despite extensive engagement over several years, Council and the CFA have not reached agreement on whether the MBRA is fit for purpose to guide Planning Scheme decision making and inform appropriate settlement planning. Both parties expressed frustration they had not been able to engage productively on the matter. This culminated in a Joint Statement that included minimal information and was of little assistance to the Panel. The Panel subsequently sought further clarification from Council and the CFA to better understand the history and their position on unresolved issues. It was apparent to the Panel that further collaboration between the parties was unlikely during the Hearing process.

As the Panel sees it, Council and the CFA have essentially reached an impasse – the CFA fundamentally disagrees with the methodology of the MBRA as it relies on fire prevention and

management interventions that are subjective and not guaranteed. Regardless, Council has persisted with the MBRA and Amendment C127latr despite explicit lack of support from the CFA.

The Panel acknowledges Mr Potter's expertise in bushfire protection and emergency management. While Mr Potter was able to explain many aspects of the MBRA process and assessment indicators, he advised the Panel his expertise was not in the planning system and he was not able to speak in detail to the response to bushfire planning policy. As a co-author of the MBRA he was not able to provide an independent peer review of the report.

The Panel has given significant weight to Mr Potter's evidence that:

- had the report been prepared now with a methodology based on Clause 13.02 requirements it is likely to be considerably different report
- there are inconsistencies between the municipal wide Bushfire Risk Map and detailed locality/precinct assessments
- several indicators and the associated scoring system is subjective
- with reference to PPN64, the MBRA and associated Bushfire Risk Map should be renamed a 'spatial map of bushfire considerations' rather than 'bushfire risk assessment'.

The Panel accepts the Terramatrix report as an independent review of the MBRA tabled by Council.² Terramatrix identified significant concerns with the MBRA methodology, and concluded it may be better used to support a risk assessment process required by Clause 13.02-1S rather than be considered a risk assessment in its own right. This is consistent with Mr Potter's evidence at the Hearing that the name should change from 'bushfire risk' to 'bushfire considerations'. The Bushfire Risk Map is a 'spatial map of bushfire considerations'.

The Panel has given significant weight to the submissions of the CFA. While CFA did not call an expert witness, the Panel notes its advocate at the Hearing was acknowledged by Council as the author of the State bushfire planning policy and an expert in bushfire planning.

The lack of agreement between Council and the CFA is problematic and presents a significant dilemma. The Panel considers it is important for the CFA to support the bushfire risk assessment approach. This is consistent with:

- Clause 13.02-1S which directs early consultation with relevant fire authorities to receive their recommendations and implement appropriate bushfire protection measures
- PPN64 which states engagement with the relevant fire authority is essential when considering bushfire as part of a strategic planning exercise.

Is the MBRA fit for purpose?

The following Panel discussion of the MBRA is in the context that:

- Latrobe City has high bushfire risk and the strategic planning work relating to bushfire is important
- the CFA considers the Amendment has merit and supports "*its underlying intent and much of its justification*", but strongly objects the MBRA in its current form.

Council stressed to the Panel this is the first municipal wide bushfire risk assessment intended for implementation into a planning scheme, and is of interest to several local government authorities.

² Document 22, Attachment 6

Endorsement of the background work and Amendment is likely to set precedent for future projects.

While there is no agreed State government methodology for a municipal wide bushfire risk assessment, useful guidance exists including:

- the BMO Technical Guide which explains the approach to a bushfire hazard landscape assessment. It states a landscape assessment:
 - provides factual information on the bushfire hazard (vegetation extent and slope)
 - provides information on key features of the general locality that are relevant to better understanding the protection provided by the location
 - provides contextual information on a site.
- PPN64 which explains how to identify bushfire hazard. It states:
 - identifying bushfire hazard is a factual and evidence-based process
 - local planning for bushfire protection should consider all bushfire hazards that can be potentially harmful, including grasslands and vegetation outside of land subject to the BMO
 - bushfire hazard should be considered when undertaking strategic planning and when considering development proposals
 - considering bushfire during strategic planning ensures that strategies and direction embed bushfire considerations.

The Panel notes the CFA's advice that planning based landscape scale bushfire mapping is an evolving area of research.

The Panel accepts the CFA's advice that there are three determinative factors in land use planning decisions:

- landscape bushfire considerations – the scale of bushfire anticipated and the effect this may have on future development
- alternative locations for growth – a critical consideration for land use planning considerations but less relevant to fire prevention planning as the risk is already present
- a greater emphasis on existing low fuel areas for shelter (safe areas) when identifying acceptable locations for growth.

The Panel has address each of these factors below.

Landscape bushfire considerations

In determining landscape bushfire considerations, the MBRA is based on an integrated approach which includes a range of scientific indicators as required by policy, including bushfire hazard considerations such as vegetation, topography and climate and subjective, plus variable indicators such as community awareness and preparedness and Socio Economic Indexes for Areas (SEIFA), which measures the relative level of socio-economic disadvantage. The MBRA justifies this approach on the basis:

- there are a *“range of tools, systems and risk assessment processes”* used in Victoria, some of which are aligned and others used for very specific purposes, and relying on *“one area is a flawed approach”*
- these indicators are combined to form a full picture of bushfire risk.

This approach is confusing and does not align with strategic planning guidance which requires application of the *“best available science”* to identify bushfire hazard and undertake appropriate risk assessment.

The Panel agrees with the CFA that the combined evidenced-based and subjective indicators may have resulted in the level of risk being understated. The assessment of fire management and prevention indicators may indicate risk is reduced, however ongoing implementation cannot be guaranteed. The CFA explicitly stated it could not commit to the level of anticipated works.

According to Clause 13.02-1S a bushfire risk assessment intended to be relied on in directing future growth must be based on an assessment of hazard and risk using the best information and science available at the time. The Panel is concerned the inclusion of subjective and variable indicators, including of fire management and prevention indicators, is not consistent with planning policy requirements and should not be relied on for bushfire planning purposes.

Additionally, as acknowledged by Mr Potter, the scoring of many of the indicators is subjective. The Panel is concerned the scores and thresholds between different risk levels has no evidentiary base and are therefore unreliable. The Panel is also concerned there are discrepancies in the MBRA between allocated risk levels for the detailed locality risk assessments and the municipal wide Bushfire Risk Map, as was demonstrated during the Hearing by the CFA and agreed by Mr Potter.

The MBRA should be based on evidence based indicators, ideally agreed with the CFA, and a consistent approach to risk assessment to avoid discrepancies between local and municipal scale assessment. Before Amendment C127latr proceeds, further work should be undertaken to the satisfaction of the CFA that is consistent with Clause 13.02 bushfire hazard identification and assessment requirements.

Alternative locations for growth

Regarding the policy requirement to direct *“population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire”*:

- Council relies on the combined assessment of the MBRA and Rural Living Strategy to assess alternative locations for growth. As the MBRA may have underestimate bushfire risk, it does not, in the Panel’s view, provide a satisfactory basis to assess *“alternative low risk locations for settlement growth on a regional, municipal, settlement, local and neighbourhood basis”*. This is discussed further in Chapter 3.3.
- Mr Potter explained that safe locations could be identified for each locality, but no assessment had been undertaken to ensure that safe areas are available. As a critical policy requirement this assessment should be an integral part of the MBRA and used to inform its recommendations and any future settlement planning decisions.

The CFA strongly opposed the MBRA on the basis the methodology is not sound and does not reflect the best information and science available to understand bushfire hazard and assess risk. The Panel has similar concerns to the CFA - the implications of getting this wrong may present an unacceptable risk and lead to potentially catastrophic outcomes.

The Panel notes Council initially intended to use the MBRA as the basis for introducing extended areas of BMO. This approach was rejected by DELWP and the CFA as the methodology was not consistent with guidance. Consequently, the MBRA contains recommendations to extend the BMO which adds to confusion about the purpose of the document.

While the MBRA may be a useful document for other functions of Council and other agencies, in its current form it is not a suitable guide for settlement planning that prioritises the protection of human life.

In summary, the Panel is not satisfied the MBRA has adequately addressed the three determinative factors identified by the CFA in land use planning decisions, or adequately considered and responded to the requirements of Clause 13.02-1S (Bushfire planning). The methodology based on combined risk indicators is confusing and the purpose of the MBRA is unclear; it is not clear what is intended or how it should be implemented, particularly how it should be applied to planning decision making.

The MBRA is not strategically justified with regard to planning policy and is not suitable to include in the Planning Scheme. That said, it contains a significant amount of valuable information that would be useful in developing a bushfire risk assessment that responds to Clause 13.02-1S (Bushfire planning). This should be done before the Amendment proceeds.

Is the Bushfire Risk Map appropriate to include in the Planning Scheme?

The Bushfire Risk Map is derived from the MBRA. Based on the combination of evidence based and variable indicators, the Panel accepts the Bushfire Risk Map may represent a general picture of bushfire risk at 'a moment in time', however it should not be relied on as an enduring assessment suitable to underpin settlement planning and planning provisions. Further it may become outdated as conditions change.

The Panel has a number of other concerns relating to the Bushfire Risk Map:

- the methodology for the municipal wide map is not clear, as described above, and there are some discrepancies and inconsistencies in the mapping in the MBRA and Bushfire Risk Map
- the CFA Fire Service Guidelines relied on for methodology are no longer current
- the proposed traffic light colour system is problematic and potentially confusing with consideration of State-wide risk rating categories used for other purposes.

The Panel is not satisfied the Bushfire Risk Map in its current form is appropriate to inform a planning scheme amendment or for inclusion in the Planning Scheme.

3.3 Rural Living Strategy

(i) The issues

The issues are whether the Rural Living Strategy:

- adequately responds to bushfire planning policy by "*directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire*"
- should be included in the Planning Scheme as a background document.

(ii) Submissions

Council

Council was satisfied the policy requirements relating to bushfire planning were satisfied through the combined assessment of the MBRA and the Rural Living Strategy. Council relied on the Bushfire Risk Map to direct growth and development to low risk locations.

Council detailed the process of strategic assessment to identify suitable rural living rezonings in the Rural Living Strategy, including:

- initial identification of possible land for rezoning
- assessment against the bushfire risk in the MBRA
- directing growth to 'green' areas on the Bushfire Risk Map and undertaking due diligence for those areas
- assessment against PPNs 37, 42 and 64 (see Appendix A)
- for all precincts that meet the due diligence assessments, final assessment involved a determination of risk acceptability against Clause 13.02 (Bushfire).

The Rural Living Strategy includes recommendations to:

- rezone land from FZ to FZ2 and RLZ for rural living purposes
- apply overlay provisions to afford protection from bushfire risk, including:
 - applying the DDO12 to:
 - existing LDRZ areas in Boolarra that have been identified as being outside of the green bushfire risk area, and not BMO, that are yet to be developed to the density allowed by the zone; and
 - Precinct H in Toongabbie that is in not in the green bushfire risk area, and not the BMO, and is already fragmented in a manner that sees it operate as a defacto rural living precinct (note, this is a precinct that is proposed to be correction rezoned from Farming Zone to Rural Living Zone).
 - applying the DPO10 to:
 - Precincts C and D in Toongabbie that are proposed to be rezoned from FZ1 to RLZ1, where the BMO doesn't apply, and green bushfire risk has been identified.

Council explained the overlay provisions are intended to:

...inform safe layout and design and are limited to locations with lower bushfire risk, being locations assessed as having a radiant heat flux of less than 12.5 kilowatts/square metre under AS 3959-2009 as required by Clause 13.02.

Council considered a critical question for the Panel is *"what is the risk and is it acceptable?"*. It considered the concept of acceptable risk is important, and in line with PPN64 *"the Amendment does not need to achieve a scenario where there is 'no' risk, but rather the bar is whether the risk is acceptable"*.

It submitted:

- the 'corrections' rezonings do not introduce new bushfire risk
- the new rural living locations are accompanied by planning provisions to inform safe layout and design, and are limited to locations with lower bushfire risk
- the rural rezonings and overlay controls will ensure protection of human life, coupled with land management interventions to maintain and lower residual risk; *"together these actions have the opportunity to create a net reduction in fire risk to these locations"*
- further site by site assessment under Clause 13.02-1S will be required for development proposals where bushfire risk exists.

Council submitted when taking account of measures for fire prevention outside of the Planning Scheme in conjunction with controls in the Planning Scheme *"the risk introduced by the Amendment by allowing new development is acceptable"*.

The Terramatrix peer review explained it understood the CFA's views were that application of the Clause 13.02-1S settlement planning strategy requiring assessment of *"alternative low risk*

locations for settlement growth on a regional, municipal, settlement, local and neighbourhood basis” meant population growth should be directed to the lowest risk locations, not just low risk locations (noting there was no definition). It stated this strategy of risk avoidance is valid, however usually pursued if the activity is totally discretionary.

Terramatrix noted that PPN64 references both acceptable and lowest risk, noting acceptable risk is hard to define. It stated:

If ‘lowest’ risk, what should be the context of the assessment?

If we accept that Clause 13.02-1S requires population growth and development to be directed to the lowest risk area, then the strategic planning context and geographic context of the risk assessment are of fundamental importance.

It considered it a dilemma that the geographic context and scale (such as township scale assessment versus a municipal or Statewide assessment) will influence determination of what is considered lowest risk.

CFA

The CFA did not support including the Rural Living Strategy as a background document in the Planning Scheme. During preparation of the strategic work the CFA had advised Council it would not support the document in its current form. Its primary concern was reliance of the Rural Living Strategy on the MBRA to direct growth across the municipality. The CFA explained:

The Rural Living Strategy takes the MBRA and the MBRA map [Bushfire Risk Map] and uses it, with limited further or meaningful assessment, to confirm a level of c13.02-1S Bushfire Planning consistency. Where a c13.02-1S Bushfire Planning analysis is necessary, the Rural Living Strategy cross-references back to the MBRA, where the relevant information is not always found.

This circular but inconclusive process leaves critical considerations unanswered, including policies on directing development to low risk locations, assessing alternative locations for growth and assessing whether low fuel areas are available and there is safe access to them.

The CFA disagreed with the methodology used to prepare the Rural Living Strategy, and considered it may potentially create real risks to life and property, stating:

It appears that the 'short falls' of the [Municipal] Bushfire Risk Assessment have attempted to be fixed in the draft Rural Living Strategy. This however results in a strategic document relying on an inadequate bushfire risk assessment and therefore the recommendations are not likely to be supported by CFA, regardless of the content of the finalised strategy.

The CFA submitted the Rural Living Strategy, founded on the flawed MBRA, does not satisfactorily achieve the requirements of settlement planning guidance in Clause 13.02-1S. It was concerned alternative lower risk locations had not been adequately assessed and considered. For example:

... the policy seems to support directing development to townships such as Glengary, Boolarra and Toongabbie, where nearby landscape risks are high to extreme.

There are a number of larger and more suitable locations to encourage growth that are at a lower risk of bushfire. Rural residential areas or the implementation of older planning policies should not be developed/undertaken at the expense of community or life safety.

The CFA explained it had been advocating to planning authorities over many years that bushfire risk avoidance in settlement planning should be considered and resolved as the basis for an amendment being approved. It is difficult to retrospectively apply bushfire planning policy after land has been rezoned.

While in its original submission the CFA considered the Amendment had failed to provide any supporting bushfire information to justify rezoning the sites that had been grouped under the

‘anomalies’ banner, in its Hearing submission the CFA clarified it had no concern with rezonings of land from FZ1 to FZ2. It accepted Council’s advice that the:

- existing lot sizes are unlikely to result in new entitlements for subdivision
- change is driven by planning policy intended to facilitate rural tourism.

Other submitters

Dr Strachan was concerned Amendment C127latr was out of step with the general principles of the ensuring the protection of human life. He considered greater consideration should be given to restructuring the whole municipality to reduce the population exposed to natural disasters and bushfire risk. He submitted:

- it may be the more appropriate planning solution will allow for greater intensification of population and services but in safer locations
- if compliance with Section 13.02 means there is a cap on population growth in Latrobe City there may be a need to consider the strategic geographical structure of the municipality.

He suggested relocating entire township populations is not impossible, if the bushfire risk to human life is unacceptable. He explained several towns in Australia have been relocated to reduce the flood risk, and the townships of Traralgon South and Yallourn were previously relocated to permit coal mining.

Dr Strachan raised specific concerns regarding Koornalla, citing it as an example of quasi-rural living reinforced by rezoning to RLZ or FZ2. He considered Koornalla needed further consideration to manage environmental risks and to assess its suitability for subdivision and land use.

Dr Strachan was concerned that ‘discretionary approvals’ issued by Council over the past ten years had resulted in a large number of lots under the minimum lot size. This resulted in an increase to population in these areas, and risk to community that was not based on a considered assessment of the impacts. He submitted subdivision and dwellings on lots below 40 hectares should be prohibited throughout the Koornalla, Callignee and Traralgon South districts.

In the context of prioritising protection of life above all other policy considerations, Nick Anderson of NBA Group advocated for accelerated development of his client’s land at Moe-Newborough for rural living purposes. He submitted:

A vast majority of the existing urban areas of Moe-Newborough are not within a BPA and are capable of providing a BAL-LOW to ensure that a place where human life can be better protected from the effects of bushfire is readily available. These areas are within 100-200m of the subject land.

He considered the proposal:

- would reduce fire risk to existing communities by removing any grassland threat
- may take the pressure off demand for land in higher risk areas.

He did not consider this option had been adequately considered in the Rural Living Strategy.

Council closing submissions

In closing Council stressed that a full Clause 13.02-1S assessment would be required for each precinct identified in the MBRA has having potential for growth, as well as considering other relevant considerations such as demand and infrastructure.

Regarding rezonings in Koornalla, Callignee and Traralgon South districts, Council responded to Dr Strachan’s concerns stating:

.. it is pertinent for Council to confirm that no zoning changes are purposed in Koornalla, Traralgon South or Callignee that would increase the development potential of land beyond what already exists. The CFA have confirmed this and do not object to any rezonings proposed by Council as part of this Amendment in these locations.

Council was satisfied the Rural Living Strategy included adequate assessment of environmental and landscape constraints as required by PPN37 and PPN42.

(iii) Discussion

PPN64 states:

Central to local planning for bushfire is determining the level of risk and whether the risk has been reduced to an acceptable level.

Directing development to the lowest risk locations is the most effective way to prioritise the protection of human life. This should be the key strategy to enhance resilience to bushfire.

...

Due to the devastating impacts of bushfire there are some locations where the bushfire risk cannot be reduced to an acceptable level. Decision making for other areas should be informed by a thorough understanding of bushfire as part of local planning activities.

The Panel report for Amendment C105latr states:

- the location of any future rural living areas will require careful analysis to ensure that future development is not enabled in areas that have an unacceptable level of bushfire risk and where objective relating to the primacy of human life cannot be achieved.

The Rural Living Strategy relies on the MBRA to guide suitable locations for growth. The MBRA assesses relative risk within each locality, and relies on a combination of landscape and management treatments to understand and manage relative risk.

As discussed in Chapter 3.2, the Panel does not accept the methodology underpinning the MBRA is appropriate for settlement planning purposes. The MBRA directs growth to 'green' areas, and the CFA was not satisfied the 'green' areas represent lower risk areas. It provided examples where 'green' areas may be higher risk. The Panel agrees with the CFA the risk level assessment of the MBRA is inconsistent and not suitable to direct where growth should occur.

Bushfire history and anticipated future trends for Latrobe City necessitates a more elevated and demonstrable level of protection of human life outcomes. A settlement strategy that responds to a strategic bushfire landscape risk assessment and directs growth to the lower risk areas across the municipality may require a rethink of priority and sequencing of growth areas.

In the context of the known bushfire risk and the requirement for planning authorities to prioritise protection of life above all other planning policy considerations, it is important to take a precautionary approach and ensure that risk has been appropriately assessed prior to rezoning land, and not rely on assessment at the planning permit application stage. The Panel agrees with the CFA it can be difficult to retrospectively apply Clause 13.02-1S when land has been rezoned.

Council suggested the Panel consider whether Amendment C127latr achieves an acceptable level of risk. With the high level of uncertainty around the findings and recommendations of the MBRA and the Rural Living Strategy, the Panel is not able to confidently determine whether Amendment C127latr achieves an acceptable level of risk. In its current form, the Panel is concerned the Amendment may direct growth to areas that are not lower risk, which may result in unintended and potentially catastrophic consequences.

In order to prioritise protection of human life, a relative assessment of risk areas must be undertaken in accordance with an accepted landscape scale bushfire risk assessment. Clause 13.02-1S settlement planning strategy requires assessment of alternative lower risk locations for settlement growth at a range of scales. As discussed in Chapter 3.2, a bushfire risk assessment that responds to Clause 13.02-1S is needed to determine acceptable risk, and to inform settlement planning, development controls and specific bushfire protection measures if required.

This has not occurred as part of the MBRA or the Rural Living Strategy, which have missed the opportunity to strategically plan for settlement growth across Latrobe that directs development to the lowest risk locations based on a proper risk assessment. This is an important step in assessing acceptable risk.

The lower risk locations within the municipality need to be properly identified on the basis of a proper bushfire risk assessment that responds to the requirements of Clause 13.02. Further consideration should also be given to identifying alternative locations for growth and directing development toward lower risk locations within the municipality. As discussed in Chapter 3.2, this requires a greater emphasis on existing low fuel areas for shelter when identifying acceptable locations for growth.

The rural living zone rezonings should not proceed without further work relating to a strategic settlement plan in the context of a municipal wide bushfire risk assessment.

3.4 Conclusions and recommendations

For the reasons discussed above, and as set out in the following chapters, the Panel concludes:

- The Amendment is not adequately strategically justified in the absence of a proper bushfire risk assessment prepared to the satisfaction of the CFA.
- The MBRA:
 - does not adequately respond to the requirements of Clause 13.02-1S (Bushfire planning) and its purpose is not clear
 - is not 'fit for purpose' to inform changes to the Planning Scheme.
- It is not appropriate to rely on the MBRA for settlement planning and rural rezoning decisions.
- Consequently, the Rural Living Strategy does not adequately respond to bushfire planning policy, and it is not clear whether it directs growth to lower risk locations or ensures availability and access to safe areas.
- The MBRA, Bushfire Risk Map and Rural Living Strategy in their current forms should not be included in the Planning Scheme.
- Further work should be undertaken to the satisfaction of the CFA and Council before Amendment C127latr proceeds.

The Panel recommends:

Undertake the following further work in consultation with, and to the satisfaction of, the Country Fire Authority prior to progressing Planning Scheme Amendment C127latr:

- a) **prepare a bushfire risk assessment that responds to Clause 13.02-1S (Bushfire planning)**
- b) **based on the findings of the bushfire risk assessment, make consequential changes to update the *Latrobe City Rural Living Strategy 2020***

- c) based on the findings of the bushfire risk assessment and updated *Latrobe City Rural Living Strategy*, make consequential changes to Planning Scheme Amendment C127latr, including (as relevant) planning policy, proposed rezonings and overlay controls.

4 Hancock Victoria Plantations

(i) What is proposed?

The Amendment includes:

- Clause 02.03-4 (Natural resource management):
Timber
Encourage the establishment of new timber coup operations in locations where there is no increase in the level of bushfire risk to existing development, and where any associated risk can be acceptably mitigated.
- Clause 14.01-3L (Forestry and timber production):
Ensure the establishment of new timber production facilities does not increase the level of bushfire risk on surrounding vulnerable land uses.

(ii) Issues

The issue is whether the policy changes proposed by Hancock Victoria Plantations Pty Ltd (HVP) are appropriate.

(iii) Submissions

In its original submission, HVP submitted it was concerned with the wording of Clause 14.01-3L as it *“could be used to limit the establishment of new plantations in Gippsland, which is inconsistent with current Government policy”*.

Council submitted a post exhibition change for Clause 14.01-3L to state:

Ensure [the establishment of new](#) timber production [facilities](#) does not increase the level of bushfire risk on surrounding [vulnerable](#) land uses.

Council explained the proposed policy change:

... to read so as to apply to proposals to establish new timber production facilities, as opposed to established facilities. However, it is in the interest of the community for harvesting activities and timber coup operations to have regard to reducing bushfire risk. It is also noted that existing use rights will apply.

In its Hearing submission, HVP objected to inclusion of policy content relating to timber coups in both Clause 02.03-4 and the amended Clause 14.01-3L.

HVP provided further context in relation to its timber coups and operations. It explained it is one of Australia's largest private timber plantation companies, managing approximately 240,000 ha of land across Victoria, from Gippsland in the east through to the border with South Australia, and extending up to the northeast of the State. Approximately 165,000 hectares are pine and eucalypt plantations managed for timber production. HVP is also the custodian of 50,000 ha of native forest which, as a matter of policy and practice, is not harvested but managed for environmental and conservation values.

In Latrobe City, 38,570 hectares of land is under its management, which represents 27 per cent of the 142,600 hectares of the plantations in the municipality. HVP has just entered an agreement with the Victorian Government to expand its operations. This involves acquiring new land, preparing sites, and planting and managing the plantations.

HVP explained how bushfire management was ‘front and centre’ for planning and management of its operations.

It considered the drafting which includes the words 'no increase' and 'does not increase' is problematic as it can be read, and potentially interpreted, as absolute. There is no sense of balance in the wording, and the wording sits at odds with other Planning Scheme provisions that seek to grow and support expansion of the industry.

HVP submitted that in reality new timber plantations are likely to be developed on cleared land, and this is explicitly supported in planning policy at Clause 14.01-3S. HVP explained:

It could easily be said that simply planting one tree in a cleared location, let alone an entire plantation, will 'increase' the bushfire risk. Such an interpretation could lead to an application being refused on policy grounds irrespective of the extent of that risk or any measures which might be implemented to mitigate those risks.

HVP explained that its concerns are not theoretical in the context of its expansion plans.

It was not satisfied that the post exhibition changes proposed by Council resolved its concerns, noting the proposed change is superfluous as the ongoing use and development of existing plantations is already protected by existing use rights. HVP submitted:

- the wording creates potential impediments to any future timber plantation within the municipality, irrespective of its scale
- deleting these MPS and policy clauses will not mean the issue of bushfire risks will not be considered as part of any planning permit application for a timber plantation, as this is required through Clause 13.02-1S.

It submitted without prejudice alternative drafting for consideration of the Panel that referenced the CFA Forest Industry Guidelines.

Council did not propose further changes in response to HVP's submissions in the drafting session.

(iv) Discussion and conclusions

The Panel agrees with HVP that the wording in the proposed clauses may give rise to uncertainty in assessing permit applications for its operations. The proposed clauses do not address the balance of policy considerations or apply the nuance required to assess the impacts of timber operations and associated bushfire management strategies.

Planning permit applications for expansion of timber operations will need to be assessed with consideration to Clause 13.02-1S which requires consideration of human life over all other policy considerations. The Panel does not consider the required planning assessment of bushfire risk is diminished in the absence of the proposed clauses. Further, the proposed clauses are not necessary, as consideration of the matters referred to in the proposed clauses is already required under Clause 13.02.

The Panel concludes the following changes should be made to Amendment C127latr:

- Amend Clause 02.03-4 (Natural resource management) to remove the clause:
Encourage the establishment of new timber coup operations in locations where there is no increase in the level of bushfire risk to existing development, and where any associated risk can be acceptably mitigated.
- Amend Clause 14.01-3L (Forestry and timber production) to remove the clause:
Ensure the establishment of new timber production facilities does not increase the level of bushfire risk on surrounding vulnerable land uses.

5 Rural rezonings

5.1 Requests for rezoning

(i) The issue

The issue is whether the proposed site specific requests for rezoning are appropriate.

(ii) Submissions

Many submitters requested their land to be rezoned to RLZ.³ Council did not support these requests, and provided reasons including lack of strategic justification and inconsistency with the MBRA and Rural Living Strategy findings. A summary of submissions requesting rezoning and Council's response is provided at Appendix E.

Council indicated it would support a post exhibition change to rezone land in Pincini Court, Boolarra to RLZ if the CFA was supportive, on the basis it would not increase subdivision or development potential of the land. The CFA did not comment on the rezoning of Pincini Court, and generally did not support the rezonings in the absence of further work (see Chapter 3.3).

Submitter 15 requested Traralgon Creek/Road be retained in FZ1 rather than rezoned to FZ2 based on potential for fire, flood and landslip. Council regarded the area appropriate for FZ2 based on the area currently operating as a defacto rural living area.

Submitter 30 requested 219 Afflecks Road, Toongabbie, not be rezoned from FZ to RLZ. The submitter was concerned the rezoning would impact on gun licences and have other impacts on the rural amenity and lifestyle of the area. Further, the area is not sufficiently serviced in terms of roads, drainage and an increase in population would place greater demands on town services. Council considered the land was suitable for rezoning to RLZ based on the assessment in the Toongabbie Town Structure Plan.

(iii) Discussion and conclusion

Consistent with the findings of Chapter 3, in the absence of an acceptable bushfire risk assessment and updates to the Rural Living Strategy, it is premature for the Panel to form a view on whether the requested rezonings are appropriate.

The Panel concludes:

- The further work recommended in Chapter 3 of this Report should be completed prior to reviewing requests for rezoning.

5.2 106 Tyers - Walhalla Road, Tyers

(i) The issue

The issues is whether the property at 106 Tyers-Walhalla Road, Tyers should be rezoned from SUZ6 to RLZ1 as proposed by the Amendment.

³ Submitter 2, 5, 8, 9, 10, 11, 12, 14, 19, 20, 21, 22, 23, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

(ii) Submissions

Submitter 46 requested the property at 106 Tyers-Walhalla Road, Tyers be removed from the Amendment, due to high potential for contamination and the family's uncertainty as to how to proceed at this point in time. Council supported this request and proposed a post-exhibition change to delete the property from the Amendment.

(iii) Discussion and conclusion

Council supported the request from Submitter 46. The Panel accepts the landowner is not currently seeking to rezone the land and this is supported by Council, and it is appropriate to remove the property from the Amendment. This would allow further work to be undertaken to understand the constraints in the context of a specific proposal.

The Panel concludes:

- The property at 106 Tyers-Walhalla Road, Tyers, should be removed from Amendment C127latr.

(iv) Recommendation

The Panel recommends:

Delete the Rural Living Zone – Schedule 1 from 106 Tyers-Walhalla Road, Tyers.

PART C AMENDMENT C126LATR

6 Strategic justification

(i) Submissions

Council explained that Amendment C126latr would provide a clear land use planning and development framework for Toongabbie and would facilitate greater housing choice and diversity.

Council's Part A submission explained the strategic context and assessment of the Amendment, with consideration of planning policies, Ministerial Directions, planning guidance and background reports. It also explained the rationale for proposed planning provisions.

There were no submissions objecting to the intent or strategic justification of the Amendment.

(ii) Discussion and conclusions

The Panel agrees with Council Amendment C126latr is strategically justified. The Toongabbie Structure Plan Report provides a framework for orderly planning of the growth and development of Toongabbie. Its strategic directions are sound and identifies and implements important environmental controls, such as flooding overlays, and seeks to enhance township values and assets.

Issues raised in relation to the Amendment primarily focussed on bushfire risk, but did not raise concern with the underlying intent or strategic directions. Other chapters of this Report address issues relating to proposed rezoning of land, application of the LDRZ on land subject to flooding and potentially contaminated land.

The Toongabbie Structure Plan Report and Toongabbie Background Reports are appropriate to include as background documents, subject to the recommendations of this Report.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

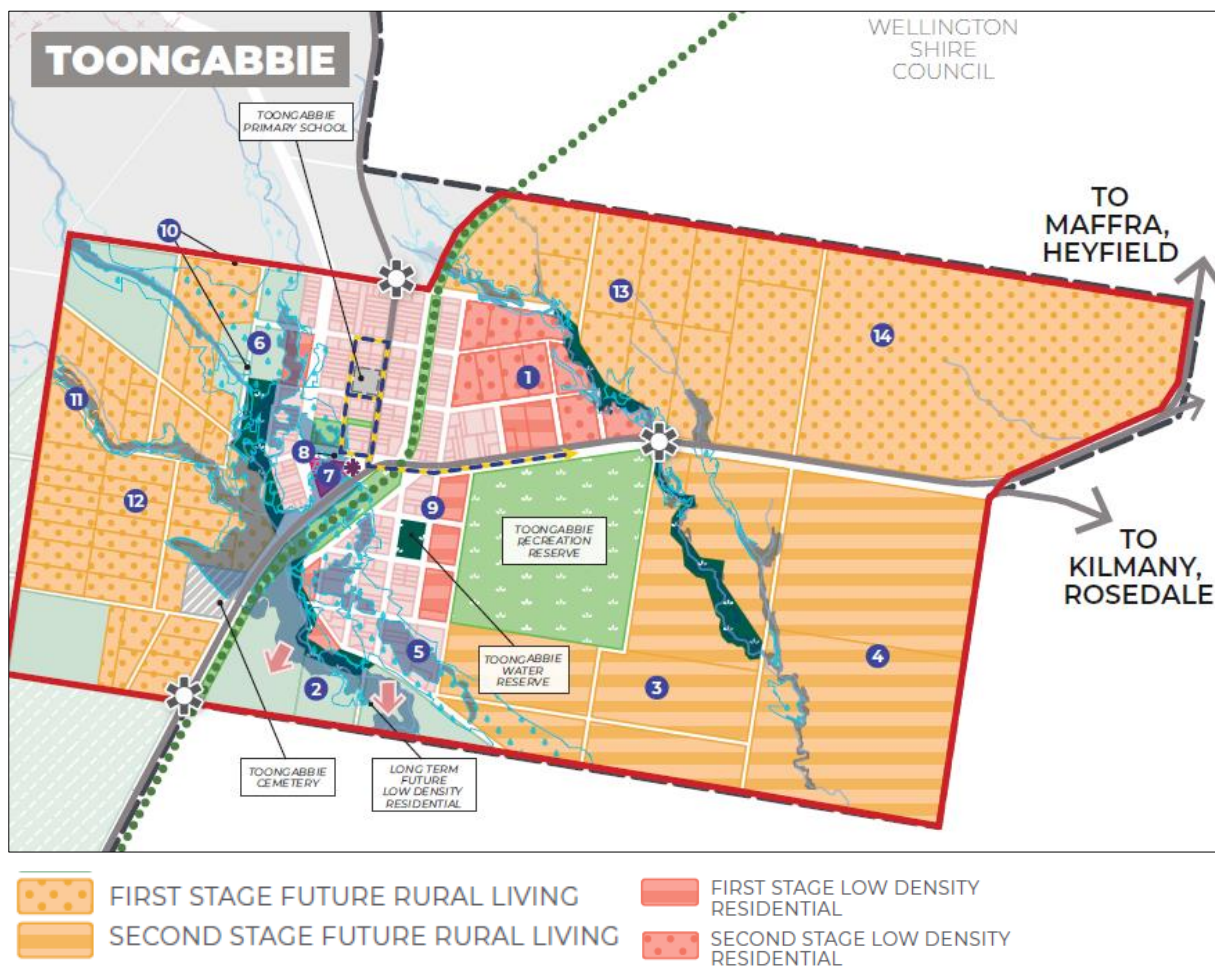
7 Toongabbie growth areas and bushfire risk

(i) Context

The Toongabbie TSP proposes future rural living growth areas (Figure 8). Areas designated as:

- First Stage Low Density Residential are proposed for rezoning to LDRZ through Amendment C126latr
- First Stage Future Rural Living Zone are proposed for rezoning to RLZ through Amendment C127latr.

Figure 8 Toongabbie future rural living growth areas



Source: Toongabbie Structure Plan Report (enlarged by the Panel)

(ii) The issues

The issues are whether:

- the Toongabbie Structure Plan Report adequately considers bushfire risk and policy relating to bushfire planning
- extent and location of growth areas is appropriate, with consideration of demand, infrastructure provision, protection of agricultural land and bushfire risk.

(iii) Submissions

The Toongabbie TSP proposed for inclusion in local policy shows areas for growth around the town (see Figure 8).

Council explained the Toongabbie Structure Plan Report was informed by both the municipal wide MBRA proposed through Amendment C127latr and the Toongabbie Bushfire Risk Assessment:

The Toongabbie Background Report was influenced by the MBRA, but also contained assessments of bushfire risk under Clause 13.02S for particular residential growth areas in Toongabbie, which determined the rezoning in this Amendment and future potential growth/rezoning identified in the Structure Plan at Clause 11.01.

Council acknowledged the CFA's concerns with the Toongabbie Structure Plan Report recommendations relating to growth areas. On matters of bushfire risk, Council deferred to its submissions on Amendment C127latr.

Council was of the view the Amendment is consistent with the DELWP Bushfire Design Guidelines, stating the Structure Plan has *"considered bushfire hazard in directing growth and distribution of uses based on outcomes of a thorough risk assessment, developed in consultation with relevant authorities including the CFA"*.

Regarding protection of agricultural land, Council submitted the Toongabbie Structure Plan Report was consistent with the municipal-wide agricultural capability assessment undertaken as part of Live Work Latrobe Rural Land Use Strategy (May 2019). Accordingly, land of high agricultural class was omitted from rural residential considerations.

Council rejected the CFA's submission to the Panel regarding the suitability of growth areas for rural living, in the context of bushfire risk. Council submitted the CFA had not provided any evidence in support of its position, nor did it test its views with Council's expert Mr Potter.

Council did not call evidence from Mr Potter in relation to bushfire risk associated with the Toongabbie Structure Plan. He only addressed the assessment of municipal wide bushfire risks.

The CFA did not support the introduction of the Toongabbie Structure Plan Report or Toongabbie Background Reports to the Planning Scheme on the basis of bushfire risk. It objected to the inclusion of local policy under Clause 11.01-1L (Toongabbie) which relates to future rural residential development in Areas 4, 12 and 14, and reference to these areas on the Toongabbie Structure Plan. It did not support the rezoning of land to RLZ in Areas 12 or 14 proposed through Amendment C127latr.

The CFA submitted that Toongabbie is a high risk settlement, which may be subject to bushfires and grassfires. The risk of bushfire is increased due to its geographic location and proximity to forested areas to the north west and south west. It noted existing and proposed settlement areas would be subject to extended periods of ember attack in a bushfire event and that grassfire will impact the edges and may penetrate settlement areas. It submitted that while the central, lower density part of the town has a low fuel area, the township has limited access to places of absolute or enhanced safety as roads are extensively affected by grasslands and may themselves be affected by fire.

The CFA considered the rural living style of growth proposed for Toongabbie presents unique bushfire risks, as set out the DELWP Bushfire Design Guidelines. It submitted the promotion of large lots is problematic from a fire risk perspective as it creates a 'soft edge' which is least helpful to risk management and creates an enlarged settlement edge that will require defending.

The CFA did not object to Toongabbie growing, however submitted that full consideration of Clause 13.02-1S is critical. The CFA submitted that while there is no evidentiary basis to justify the proposed growth in Toongabbie, regarding the proposed growth areas (the Area numbers relate to areas shown on Figure 8):

- Areas 3 and 13 (east of Toongabbie) – these may be suitable for rural living if comprehensively assessed against Clause 13.02-1S (which has not yet occurred). The area is a short distance from the centre of Toongabbie, is on the side of Toongabbie away from the forest fire hazard and interface treatments may provide protection or allow for movement to low fuel areas in proximity. Area 13 may also provide some protective benefit for development to the south which may be taken into consideration.
- Area 12 (west of Toongabbie) – intensifying development on the west is highly problematic and is not likely to be a preferred area for growth from a bushfire perspective. There are alternative and better locations for growth around Toongabbie and across the municipality.
- Areas 4 and 14 (far east of Toongabbie) – the areas are distant from low fuel areas in the centre of town and may be exposed to grassfires. Development of the areas would result in an extended settlement edge that would require ongoing management and fire mitigation. The land abuts an adjacent municipality and would rely on another planning authority for fire mitigation measures. While the risk may be able to be managed, it is important to ask why the risk needs to be created.

The CFA did not raise concerns with other parts of Amendment C126latr, including the proposed rezoning of land to NRZ5 and LDRZ in the four areas immediately adjoining the existing town.

Other submitters raised concerns relating to the Toongabbie Structure Plan Report including:

- protection of agricultural land
- whether the projected demand for LDRZ land is likely to be understated in the land supply and demand analysis, and further rezoning may be required to meet demand
- whether township infrastructure will be adequate to support projected growth.

(iv) Discussion

The Panel acknowledges the substantial work undertaken by Council to inform the Toongabbie Structure Plan Report and associated Toongabbie Background Reports. Introducing a town structure plan for Toongabbie to the Planning Scheme will help provide certainty about growth, associated provision of infrastructure and services and management of environmental risks.

The Panel accepts the CFA's advice that Toongabbie is located in a high bushfire risk area. An appropriate bushfire risk assessment is essential to meet planning policy requirements and ensure acceptable outcomes for the community.

The Toongabbie Bushfire Risk Assessment explains, following Amendment VC140 the rezoning of rural living precincts was deferred until the bushfire risk had been determined on a municipal level, to inform the best locations for new rural living precincts.

The Toongabbie Structure Plan Report and Toongabbie Bushfire Risk Assessment rely on the MBRA. As discussed in Chapter 3.2, the Panel is not satisfied the MBRA is fit for purpose to inform settlement planning decisions, including designation of land for rural living rezonings in Toongabbie. The Panel is concerned the Toongabbie Bushfire Risk Assessment is not based on an

adequate assessment of bushfire risk and has not sufficiently assessed lower risk locations, noting it states:

- directing population growth and new settlements to low risk locations... is only achievable at a neighbourhood scale for a town structure plan.

Consistent with its concerns about the Rural Living Strategy, the Panel considers the bushfire risk assessment undertaken to date does not satisfy the requirements of Clause 13.02-1S and Clause 71.02-3, and is not suitable for informing the growth areas proposed in the Toongabbie Structure Plan Report and Toongabbie TSP.

The Toongabbie Bushfire Risk Assessment states:

In the context of strategic planning decisions, these strategies need to be balanced and consider the 'net increase in risk to existing and future residents'. While it is necessary to ensure that the protection of human life is prioritised when decisions are made, the strategies are not 'mandatory requirements' in Clause 13.02-1S in the Planning Scheme and as each situation varies, each strategy needs to be considered as appropriate to ensure that decisions are consistent with the State policy objectives and that planning decisions are integrated.

While the Panel accepts that Clause 13.02 is a policy and does not impose mandatory requirements, the Panel is concerned the assessment may not have given adequate weight to policy considerations which prioritise protection of life above other policy drivers.

The Panel accepts the CFA's concerns regarding the proposed growth areas, and notes while it considers Areas 3 and 13 may be suitable for growth, this needs to be confirmed following further bushfire risk assessment.

For these reasons, the Panel does not support the designation of growth areas as currently portrayed in the Toongabbie Structure Plan and as identified in local policy at Clause 11.01-1L (Toongabbie). Instead, the potential growth areas should be identified as 'subject to further bushfire risk assessment'. As noted by the CFA, the risk assessment should include consideration of alternative lower risk growth locations within the locality and across the municipality.

Consistent with the Panel's recommendations in Chapter 3, before growth areas for Toongabbie can be confirmed, further work should be undertaken to the satisfaction of the CFA to prepare a bushfire risk assessment that responds to Clause 13.02.1S (Bushfire planning) and associated settlement planning.

Regarding other submitter concerns:

- the Panel accepts Council's submission that township planning has been undertaken in the context of its Rural Land Strategy and has adequately considered protection of agricultural land
- the Panel is satisfied the land supply and demand assessment and infrastructure needs have been taken into consideration in the Toongabbie Structure Plan Report. An update of the Rural Living Strategy as recommended will consider distribution of land supply across the municipality in response to bushfire risk.

(v) Conclusions and recommendation

The Panel concludes:

- While the Toongabbie TSP is generally strategically justified, the Structure Plan does not adequately consider bushfire risk of growth areas.

- Proposed growth areas in the Toongabbie Structure Plan Report and Toongabbie TSP should be designated as 'potential rural living subject to bushfire risk assessment'.
- Further work should be undertaken to the satisfaction of the CFA before growth areas in Toongabbie are confirmed, consistent with the Panel's recommendations in Chapter 3 of this Report.

The Panel recommends:

Make the following changes to Amendment C126latr:

a) amend Clause 11.01-1L (Toongabbie) to:

- **amend the strategies and the Toongabbie Town Structure Plan map to designate 'First stage future rural living' and 'Second stage future rural living' areas as 'Potential future growth areas subject to bushfire risk assessment'.**

8 Other issues

8.1 Flood Study and land rezoning

(i) Context

Clause 02.03 (Strategic directions) states:

Floodplain management

Flooding is a natural hazard that can severely disrupt communities and may cause extensive damage, stock loss and, in extreme cases, loss of life.

Planning for flooding seeks to:

- Reduce the damage and costs associated with flood events.

Amendment C126latr proposes to introduce the FO to Toongabbie, based on the flood layers in the Flood Study. The Toongabbie Structure Plan Report states the LDRZ should only be applied to lots “*not affected by the FO or LSIO*”.⁴

The Panel observed that land proposed for rezoning is affected, in some areas, extensively by the expanded LSIO and new FO, and sought clarification from Council on how flooding had been considered with regard to land proposed for rezoning. The Panel considered this issue in the context of understanding strategic justification of the rezonings proposed in the Amendment.

Council provided a map showing the combined proposed rezonings and the LSIO and FO (see Figure 9).

Figure 9 Toongabbie proposed rezonings and LSIO – FO overlays

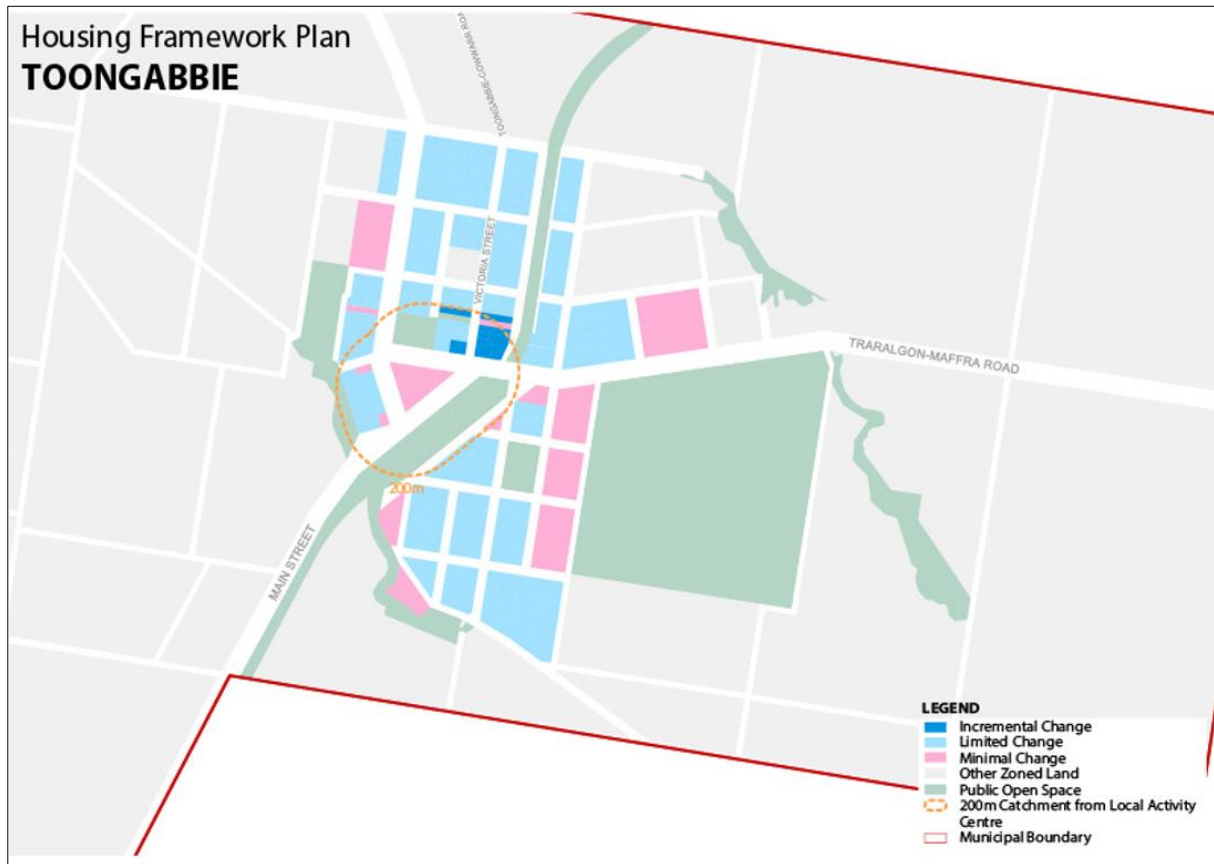


Source: Document 40

⁴ Toongabbie Structure Plan Report, page 63

The areas proposed for LDRZ are shown on the Housing Framework Plan as ‘minimal change areas’ in proposed Clause 16.01-1L (Housing supply) (see Figure 10).

Figure 10 Toongabbie Housing Framework Plan



(ii) The issue

The issue is whether the proposed rezoning to LDRZ in areas subject to inundation or flooding is appropriate.

(iii) Submissions

Council submitted implementation of the Flood Study in the Planning Scheme was supported by planning policy, specifically:

- Clause 13-03-1S (Floodplain management), by mitigating flood risk by applying planning controls to land identified as liable to inundation by a 1 in 100 year flood event
- Clause 14.02-1S (Catchment planning and management), by rezoning Toongabbie Creek frontage land to PCRZ to protect natural drainage corridors.

Council explained:

- the Amendment accounted for development potential, land capability, floodplain land and PPN12: Applying Flood Provisions in the Planning Scheme
- the LSIO, last updated in 2012, applies to the Toongabbie Creek as a designated waterway
- Toongabbie has large sections of land covered by the LSIO predominantly on FZ1 land to the east and west of the study area, descending from the north to the south in a curved, vertical direction

- applying the updated flood modelling to the study area would manage flood risk based on current information and to guide planning decisions
- Amendment C126latr discourages urban development on flood-prone land, except when agreed with the WGCMA.

Regarding lot size and waste water treatment, Council explained:

- the LDRZ directs a minimum lot size is 0.2 hectares where reticulated sewerage can service the lot, and a minimum 0.4 hectares with no reticulated sewerage
- the minimum lot size ensures the lot is large enough to treat and retain all wastewater, but small enough to be maintained without the need for agricultural techniques or equipment
- it is responsible for the approval and on-going oversight of on-site wastewater management systems, which are described as septic tanks and secondary treatment systems.

Council described the process of assessing flood constraints when identifying land for rezoning to GRZ4 and LDRZ. Lots proposed for first stage rezoning to LDRZ located to the south and west of the study area are proposed to have LSIO and FO applied over large portions of the lots, resulting in reduced development potential. Council submitted LDRZ was a suitable zone to mitigate physical infrastructure constraints. It advised:

The Amendment rezones land free of flooding constraints within 200m of the Toongabbie Township 'core' from NRZ4 to GRZ4. The rezoning will encourage infill development of aged care facilities as desired by the community.

Council advised the WGCMA was consulted during the drafting of the Amendment, and its referral response was supportive. The LSIO and FO would require a planning permit application for most buildings and works, and referral to the WGCMA.

In response to a question from the Panel, Council sought updated advice from its Coordinator Health Services and Municipal Recovery Manager in relation to sewerage treatment in land subject to inundation.⁵ In summary, the advice was:

- Stage 1 land proposed for rezoning:
 - The land at Howard Street and Main Street Toongabbie would be able to treat and contain waste on site and meet required setbacks with secondary treatment.
 - The land at Hower street would be classed as high risk and would be limited in meeting the minimum of 30 metre setbacks to waterway, and this would only be achieved if secondary treatment systems were installed. Effluent disposal areas would be constrained. A land capability assessment would need to be undertaken for rezoning and sizing for the lots.
 - The land at Semmens Road would have trouble treating and containing wastewater and meeting setbacks for new developments outside the overlay.
 - Some of the lots along Howe street will have trouble meeting the setbacks to waterways and having sufficient land available for on-site wastewater disposal.
- Stage 2 land proposed for rezoning:

⁵ Document 40, dated 12 October 2022

- There are serious concerns for lots to the north of the township closest to the waterway and flood overlay area. There is evidence of inundation nearby, and appropriate setbacks will not be able to be achieved.
- The other proposed lots in Stage 2 could treat and contain wastewater on site. All systems being installed must be secondary treatment.
- Land Capability Assessments must be provided to develop each lot and there may be restrictions on the size of development permitted for each lot to allow for wastewater envelopes to be accommodated.

Gippsland Water advised Council in its referral response that servicing areas outside of the current sewer district in Toongabbie did not meet the financial criteria for servicing land. This would mean that any new LDRZ areas must be serviced by septic tanks and secondary treatment plants.

A new wastewater treatment plant for Toongabbie would require buffers, and EPA approvals. Lagoon based treatment and discharge to farmland, golf course, recreation reserve or similar may be worth investigating if there is a future trigger to replace the rising main between Toongabbie and Glengarry and will result in a lower lifecycle cost than upgrading the current system.

Council regarded this as a long term consideration, as there is still capacity in the sewer district, and growth can be managed through low density housing options which do not have to be connected to reticulated services. Council's position was that the LDRZ is an appropriate zone to mitigate the physical infrastructure constraints within Toongabbie, for land on the fringe of the residential area, allowing for subdivision into lots which are large enough to contain all wastewater on site.

(iv) Discussion

Implementation of the Flood Study into the Planning Scheme is an important component of Amendment C126latr. Introduction of flooding overlay controls will help ensure the community is protected and environmental risks are managed.

The consequential implications for land rezoning must be considered. Flood prone land should not be rezoned for residential purposes unless there is a compelling reason to do so in the context of strategic directions and planning policy.

In reviewing the map provided by Council, the Panel observes the following Stage 1 areas proposed for rezoning to LDRZ are significantly affected by the LSIO and FO (the area numbers below relate to Stage 1 areas shown on Figure 9):

- Area 1 – 9-17 Hower Street and 19-29 Hower Street from FZ1 to LDRZ
- Area 4 – land in King Street proposed for rezoning from FZ1 and NR4 to LDRZ.

This is inconsistent with the Toongabbie Structure Plan Report which directs the LDRZ should not be applied to lots affected by the FO and LSIO.

Gippsland Water does not consider it viable to service these areas with reticulated sewer mains. Council's Coordinator Health Services identifies major development constraints and concerns about treating wastewater onsite for some of the land proposed to be rezoned LDRZ.⁶ Septic tanks and secondary treatment plants would have to be sited completely outside the LSIO and FO

⁶ Note: the Panel has retained street names as written in the email from Council's Coordinator Health Services, which differs at times from the property addresses and streets referred to in the Amendment documents.

boundaries in order to ensure no pollution risk to the waterways and neighbouring properties. Whether this approach can comply with the Septic Code of Practice on a 0.4 hectare lot to the satisfaction of Council's Engineers cannot be determined by the Panel, based upon the information submitted.⁷

The advice of Gippsland Water and Council's Coordinator Health Services in relation to the treatment of sewerage and wastewater in a floodplain has been significant in informing the Panel's opinion.

For these reasons, the Panel was not persuaded that rezoning land for residential development within designated flood prone areas is appropriate or consistent with planning policy. Council should discourage development on flood-prone land, even when WGCMA might agree, and should only advance rezonings where Clause 02.03 is satisfied. Directing development to sites where secondary treatments plants will probably be required in order to gain EPA approval will add cost and time delay to residential development.

In the context of updated advice from the Coordinator Health Services, servicing restrictions and the Toongabbie Structure Plan Report which directs not to rezone flood prone land to LDRZ, the Panel finds that properties subject to the LSIO and FO should not be rezoned to LDRZ.

Regarding the land at 9 – 17 Hower Street, Council proposed a post exhibition change to retain FZ1 in response to a submission (see Chapter 8.2). The Panel supports retaining the FZ1 on this land, which resolves the issue relating to flooding.

If the properties in Areas 1 and 4 are not rezoned LDRZ, consequential changes will need to be made to the:

- Toongabbie TSP in Clause 11.01-1L (Toongabbie)
- Housing Framework Plan in Clause 16.01-1L (Housing supply).

The Panel notes there appears to be a discrepancy with the exhibited Toongabbie TSP at Clause 11.01-1L (Toongabbie), which does not show Area 4 for Stage 1 LDRZ (see Figure 11), and the Town Structure Plan map in the Toongabbie Structure Plan Report. The exhibited Clause 11.01-1L (Toongabbie) is consistent with the Panel recommendations to remove the LDRZ from this land.

⁷ EPA Publication 891.4, July 2016

Figure 11 Area 4 – Stage 1 LDRZ not shaded



Source: Panel modified Toongabbie TSP, exhibited Clause 11.01-1L

(v) Conclusions and recommendations

The Panel concludes:

- The following properties should not be rezoned to LDRZ (area reference see Figure 9):
 - Area 1 – 9-17 Hower Street and 19-29 Hower Street proposed for rezoning from FZ1 to LDRZ
 - Area 4 – land in King Street proposed for rezoning from FZ1 and NRZ4 to LDRZ.
- Consequential changes will be required to the Toongabbie TSP at Clause 11.01-1L (Toongabbie) and Housing Framework Plan at Clause 16.01-1L (Housing supply), to remove the properties no longer to be zoned LDRZ and show appropriate housing change area designation.

The Panel recommends:

Make the following changes to Amendment C126latr:

- a) delete the Low Density Residential Zone from the following properties:
 - 9-17 Hower Street, Toongabbie
 - 19-29 Hower Street
 - land in King Street
- b) amend Clause 11.01-1L (Toongabbie) to:
 - amend the Toongabbie Town Structure Plan map to remove the Low Density Residential Zone designation from the following properties:
 - 9-17 Hower Street, Toongabbie
 - 19-29 Hower Street
 - land in King Street
- c) amend Clause 16.01-1L (Housing supply) to:
 - update the Housing Framework Plan map to correct the housing change designation to land no longer proposed for rezoning to Low Density Residential Zone.

8.2 Submissions regarding rezoning

(i) The issue

The issue is whether the proposed site specific requests for rezoning are appropriate.

(ii) Submissions

The following table provides a summary of submitter requests relating to rezoning as part of Amendment C126latr and Council's response.

Table 4 Amendment C126latr submissions regarding rezoning

Submissions	Council response
<p>Submitter 5</p> <p>Requested to retain 9 – 17 Hower Street as FZ rather than rezone to LDRZ as proposed.</p>	<p>Council submitted a post exhibition change to remove the LDRZ from the property. It agreed it was not appropriate to rezone the property to LDRZ as part of the Amendment and advised the Panel this issue had been resolved.</p>
<p>Submitter 6</p> <p>Requested 18 – 34 Sparks Lane, Toongabbie be included in the first stage rezoning of LDRZ rather than the second stage.</p>	<p>No change proposed. Council submitted this would be out of sequence and would cause servicing and infrastructure issues.</p>
<p>Submitter 9</p> <p>Objected to the Amendment on the basis its land at 215 Guyatts Rd, Toongabbie was not proposed for rezoning.</p>	<p>No change proposed. The submitter made submission in relation to Amendment C127latr and C126latr. Submission 9 does not provide adequate justification for the land in question to be reconsidered for rural rezoning, largely due to the bushfire risk identified, nor have changes to the Bushfire Risk Map been justified.</p>
<p>Submitter 12</p> <p>Requested 219 Afflecks Road, Toongabbie, not be rezoned from FZ for rural living purposes.</p>	<p>No change proposed. The submitter made submission in relation to Amendment C127latr and C126latr. The Toongabbie Town Structure Plan is being implemented as part of Amendment C126latr, and has assessed and identified the needs for Toongabbie in relation to land use and services. The site is appropriate for rural living and is designated as a growth area.</p>

(iii) Discussion

Council supported the request of Submitter 5 to retain 9 – 17 Hower Street as FZ instead of rezoning to LDRZ. The Panel supports this request and post exhibition change proposed by Council, noting the property is affected by the LSIO and FO. This is consistent with the Panel's recommendation in Chapter 8.1 to not rezone land subject to inundation and flooding.

The Panel supports Council's position in relation to 18 – 34 Sparks Lane, Toongabbie and 215 Guyatts Road. The property at 18 – 34 Sparks Lane, Toongabbie is identified for rezoning to LDRZ in the future. It is centrally located and may be suitable for rezoning when servicing and other strategic considerations have been assessed, particularly in light of the Panel's recommendations

relating to growth areas (see Chapter 6). The property at 215 Guyatts Road is well outside of the township boundary and is not appropriate to rezone for residential purposes.

The Panel has recommended in Chapter 6 that the proposed rural living growth areas for Toongabbie are designated as 'potential' growth areas, subject to an appropriate bushfire risk assessment. The property at 219 Afflecks Road, Toongabbie is included in one of the growth areas that is subject to this recommendation.

(iv) Conclusions and recommendation

The Panel concludes:

- Consistent with the submitter's request, the property at 9 – 17 Hower Street, Toongabbie which is subject to inundation should not be rezoned to LDRZ and should be retained in FZ1.
- The properties at 18 – 34 Sparks Lane and 215 Guyatts Road, Toongabbie should be retained in FZ as exhibited.
- The property at 219 Afflecks Road, Toongabbie is included in one of the growth areas proposed for rural living, and consequently further bushfire risk assessment is required to determine suitability for future rezoning. The land should be retained in the FZ in the short term, as exhibited in the Amendment.

The Panel recommends:

Make the following changes to Amendment C126latr:

- a) **delete the Low Density Residential Zone from 9 – 17 Hower Street, Toongabbie and retain this property in the Farming Zone.**

8.3 Environmental Audit Overlay

(i) The issue

The issue is whether the EAO should be applied to 43 High Street, Toongabbie.

(ii) Submissions

EPA submitted the EAO should be applied to the property at 43 High Street, Toongabbie as it was identified by Council as having a high potential for contamination. EPA understood it was not proposed for rezoning, however it is currently zoned to allow sensitive uses.

Council submitted:

The Toongabbie General Store at 43 Main Street, Toongabbie (Site) is potentially contaminated due to petrol bowsers on-site. Should the use change, the Structure Plan identifies that risk should be managed by undertaking the following measures:

- Identification on Council's potentially contaminated land register;
- Apply the EAO to the land; and
- For any planning permit for a sensitive use and development, a list of mandatory permit conditions.

Council relied on the requirements of Ministerial Direction 1, stating as the site is not proposed to be rezoned for sensitive uses it is not necessary to apply the EAO, noting sensitive uses are already permitted on the site under the existing TZ provisions.

(iii) Discussion and conclusion

The Panel considers it appropriate to apply the EAO to land known to be potentially contaminated and when its zone will allow sensitive uses. Application of the EAO is recommended by EPA, and is consistent with MD1 and PPN30 Structure Plan Report.

However, as this proposal was not exhibited with the Amendment, the Panel accepts Council's decision to not introduce the EAO as part of the Amendment. Council will need to need to engage with affected landowners and satisfy itself that notice requirements have been met before proceeding with applying the EAO.

The Panel concludes:

- It is appropriate to apply the EAO to the land through a separate planning scheme amendment process.

Appendix A Planning context

Victorian Planning Objectives

The amendments seek to implement State policy objectives set out in section 4 of the PE Act through the application of updated policy, zones and overlays to reflect the key strategic directions of the municipality. The amendments seek to facilitate provision of rural living land to meet forecast demand over 15 years while taking into account bushfire and flood risk.

The exhibited Explanatory Report for C126latr identified relevant objectives relating to:

- providing for the fair, orderly, economic and sustainable use, and development of land
- providing for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- facilitating development in accordance with the objectives of planning in Victoria.

The exhibited Explanatory Report for C127latr identified relevant objectives relating to:

- providing for the fair, orderly, economic and suitable use, and development of land
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- facilitating development in accordance with the objectives of planning in Victoria
- balance the present and future interests of all Victorians.

Bushfire and settlement planning policy and guidance

Municipal Planning Strategy

The MPS (Clause 02.01) states the municipality is set to grow by approximately 8,560 to a total of 82,460 people by 2030. It also states that the municipality is experiencing a period of economic restructuring with a change in traditional employment sectors supporting Victoria's power production. Other major economic activities include retail, services, forestry, food processing, engineering, health, education and agriculture.

Clause 02.031- (Strategic directions) explains the settlement hierarchy including:

Latrobe's smaller towns and rural living settlements provide diversity in housing and lifestyle choice that is alternative to options available in the main towns. Some are also service centres with commercial and community facilities.

Toongabbie is identified as one of a number of small towns providing:

... a limited range of educational, retail and recreational services for residents and the surrounding rural areas. Urban infill and diversification of housing choice in small towns make efficient use of existing infrastructure so residents can remain in the town whatever their housing need.

Rural living precincts are identified which:

... comprise clusters of housing on small rural lots and have limited services. These areas support farming and rural living communities, providing an attractive lifestyle choice in a rural setting.

Settlement planning seeks to:

- Support growth in district towns that reinforces their role as key retail and service centres for a moderate population base and the hinterland.

- Support growth in small towns to provide a limited range of services for residents and the surrounding rural areas.
- Facilitate the growth of towns to be commensurate with access to services, infrastructure, transport and the protection of natural resources.

The strategic directions in the MPS (Clause 02.03) in relation to environmental risks state:

Planning for climate change seeks to:

- Support use and development that can adapt to the impacts of climate change and seeks to minimise its negative impacts.
- Encourage energy-efficient building design including the incorporation of energy efficient technologies.

Planning for bushfire seeks to:

- Reduce bushfire risk through various bushfire protection measures.
- Decrease the level of risk to life, property, the environment and biodiversity from bushfire.

Planning for flooding seeks to:

- Reduce the damage and costs associated with flood events.

Clause 02.03-6 (Housing) states that Council has the aspiration to grow the population to 100,000 by 2050, with a significant shift to smaller households, with one or two bedroom households expected to represent 76 per cent of all new households over the next 15 years. It states:

Given the land use constraints and decreasing household size, urban renewal and housing intensification will play a key role to diversify housing choice, accommodate growth and maximise access to infrastructure and services

Clause 02.03-6 states rural residential development is a popular lifestyle choice accommodated in the LDRZ in urban areas and RLZ in rural areas. There are emerging amenity concerns with rural living options, relating to animal husbandry, forestry operations and intensive agriculture. It states:

Planning for rural residential development seeks to:

- Support rural living and associated land use that does not compromise agricultural productivity.
- Avoid impeding the long term urban growth of settlements.

The Rural framework plan in Clause 02.04 identifies a number of 'Future RLZ investigation areas' including in areas around Toongabbie.

Settlement planning and growth management

The Planning Policy Framework provides clear guidance for settlement planning and growth management. Relevant policy and strategies are shown in Table 5.

Table 5 Settlement planning and growth management policies and strategies

Clause	Relevant strategies
Clause 11.01-1S (Settlement)	<p>Develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities.</p> <p>Ensure regions and their settlements are planned in accordance with their relevant regional growth plan.</p> <p>Guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks.</p> <p>Create and reinforce settlement boundaries.</p> <p>Provide for growth in population and development of facilities and services across a regional or sub-regional network.</p> <p>Encourage a form and density of settlements that supports sustainable transport to reduce greenhouse gas emissions.</p> <p>Limit urban sprawl and direct growth into existing settlements.</p> <p>Promote and capitalise on opportunities for urban renewal and infill redevelopment.</p> <p>Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services.</p> <p>Ensure retail, office-based employment, community facilities and services are concentrated in central locations.</p> <p>Ensure land that may be required for future urban expansion is not compromised.</p>
Clause 11.011R (Settlement – Gippsland)	<p>Support new urban growth fronts in regional centres where natural hazards and environmental risks can be avoided or managed.</p> <p>Support the continuing role of towns and small settlements in providing services to their districts, recognising their relationships and dependencies with larger towns.</p>
Clause 11.01-1L (Latrobe settlement patterns)	<p>Discourage the fragmentation of rural land adjoining township boundaries until land is required for long term (15 or more years) urban development...</p> <p>Manage growth in rural living precincts by discouraging further rezoning of land.</p>

Clause	Relevant strategies
<p>Clause 11.02-1S (Supply of urban land)</p>	<p>Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.</p> <p>Ensure that sufficient land is available to meet forecast demand.</p> <p>Plan to accommodate projected population growth over at least a 15 year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis.</p> <p>Planning for urban growth should consider:</p> <ul style="list-style-type: none"> - Opportunities for the consolidation, redevelopment and intensification of existing urban areas. - Neighbourhood character and landscape considerations. - The limits of land capability and natural hazards and environmental quality. - Service limitations and the costs of providing infrastructure. <p>Monitor development trends and land supply and demand for housing and industry.</p> <p>Maintain access to productive natural resources and an adequate supply of well-located land for energy generation, infrastructure and industry.</p> <p>Restrict rural residential development that would compromise future development at higher densities.</p>
<p>Clause 11.02-2S (Structure planning)</p>	<p>Facilitate the preparation of a hierarchy of structure plans or precinct structure plans that:</p> <ul style="list-style-type: none"> - Address the strategic and physical context of the location, including increased physical risks associated with climate change. - Provide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate. - Provide for the development of sustainable and liveable urban areas in an integrated manner informed by the 17 United Nations Sustainable Development Goals as relevant. - Protect and enhance areas of natural and cultural significance. - Facilitate the logical and efficient provision of infrastructure. - Facilitate the use of existing infrastructure and services. - Incorporate integrated water management and urban greening.

Clause	Relevant strategies
Clause 11.02-3S (Sequencing of development)	<p>Define preferred development sequences in areas of growth to better coordinate infrastructure planning and funding.</p> <p>Ensure that new land is released in areas of growth in a timely fashion to facilitate coordinated and cost-efficient provision of local and regional infrastructure.</p> <p>Improve the coordination and timing of infrastructure and service delivery in areas of growth.</p> <p>Ensure that planning for water supply, sewerage and drainage works receives high priority in early planning for areas of growth.</p>
Clause 11.03-3S (Peri-urban areas)	Establish growth boundaries for peri-urban towns to avoid urban sprawl and protect agricultural land and environmental assets.

Environmental risk and amenity

The Planning Policy Framework provides policy guidance on environmental risks and amenity, stating that planning should:

- strengthen the resilience and safety of communities by adopting a best practice environmental management and risk management approach
- identify, prevent and minimise the risk of harm to the environment, human health, and amenity through:
 - land use and development compatibility
 - effective controls to prevent or mitigate significant impacts
- identify and manage the potential for the environment and environmental changes to impact on the economic, environmental or social wellbeing of society
- ensure development and risk mitigation does not detrimentally interfere with important natural processes
- prepare for and respond to the impacts of climate change.

Clause 13.01-1S (Natural hazards and climate change) includes the following strategies:

Respond to the risks associated with climate change in planning and management decision making processes.

Identify at risk areas using the best available data and climate change science.

Integrate strategic land use planning with emergency management decision making.

Direct population growth and development to low risk locations.

Develop adaptation response strategies for existing settlements in risk areas to accommodate change over time.

Ensure planning controls allow for risk mitigation and climate change adaptation strategies to be implemented.

Site and design development to minimise risk to life, health, property, the natural environment and community infrastructure from natural hazards.

Bushfire

Clause 13.02-1S (Bushfire planning) applies to all land within a designated BPA, subject to a BMO or proposed to be used or developed in a way that may create a bushfire hazard. The objective of the clause is to strengthen the resilience of communities to bushfire through risk-based planning that priorities the protection of human life.

Strategies relate to:

- protection of human life
- bushfire hazard identification and assessment
- settlement planning
- areas of biodiversity conservation value
- use and development control in a BPA.

Regarding protection of human life, strategies include:

Give priority to the protection of human life by:

- Prioritising the protection of human life over all other policy considerations.
- Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.
- Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision making at all stages of the planning process.

Regarding settlement planning, strategies include:

- Directing population growth and development to low risk locations, being those locations assessed as having a radiant heat flux of less than 12.5 kilowatts/square metre under *AS 3959 - 2009 Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009).
- Ensuring the availability of, and safe access to, areas assessed as a BAL-Low rating under *AS 3959 - 2009 Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009) where human life can be better protected from the effects of bushfire.
- Ensuring the bushfire risk to existing and future residents, property and community infrastructure will not increase as a result of future land use and development.
- Achieving no net increase in risk to existing and future residents, property and community infrastructure, through the implementation of bushfire protection measures and where possible reduce bushfire risk overall.
- Assessing and addressing the bushfire hazard posed to the settlement and the likely bushfire behaviour it will produce at a landscape, settlement, local, neighbourhood and site scale, including the potential for neighbourhood-scale destruction.
- Assessing alternative low risk locations for settlement growth on a regional, municipal, settlement, local and neighbourhood basis.
- Not approving any strategic planning document, local planning policy, or planning scheme amendment that will result in the introduction or intensification of development in an area that has, or will on completion have, more than a BAL-12.5 rating under *AS 3959-2009 Construction of Buildings in Bushfire-prone Areas* (Standards Australia, 2009).

Local policies also relate to planning in the BMO and BPAs.

Floodplain management

Clause 13.03-1S (Floodplain management) includes the following strategies:

Identify land affected by flooding, including land inundated by the 1 in 100 year flood event (1 per cent Annual Exceedance Probability) or as determined by the floodplain management authority in planning schemes.

Avoid intensifying the impact of flooding through inappropriately located use and development.

Plan for the cumulative impacts of use and development on flood behaviour.

Agricultural land

Clause 14.01-1S (Protection of agricultural land) includes the objective to protect the state's agricultural base by preserving productive farmland.

Rural residential development

Clause 16.01-3S (Rural residential development)

Manage development in rural areas to protect agriculture and avoid inappropriate rural residential development.

Encourage the consolidation of new housing in existing settlements where investment in physical and community infrastructure and services has already been made.

Demonstrate need and identify locations for rural residential development through a housing and settlement strategy.

Ensure planning for rural residential development avoids or significantly reduces adverse economic, social and environmental impacts by:

- Minimising or avoiding property servicing costs carried by local and state governments.

Ensure land is not zoned for rural residential development if it will encroach on high quality productive agricultural land or adversely impact on waterways or other natural resources.

Discourage development of small lots in rural zones for residential use or other incompatible uses.

Encourage consolidation of existing isolated small lots in rural zones.

Ensure land is only zoned for rural residential development where it:

- Is located close to existing towns and urban centres, but not in areas that will be required for fully serviced urban development.
- Can be supplied with electricity, water and good quality road access.

Clause 16.01-3L (Rural residential development) includes the following strategies:

Encourage rural living where there will be minimal negative environmental impact or conflict with commercial agriculture.

Support rural living where it will result in improved land management outcomes.

Encourage facilities and services required by rural residents to locate in existing townships.

Discourage rural living or low density residential use and development on the fringes of major towns where land is designated as a long-term urban growth corridor.

Support rural living in low bushfire risk locations or where bushfire risk can be reduced to an acceptable level.

Gippsland Regional Growth Plan

The Gippsland Regional Growth Plan (GRGP) provides broad direction for land use and development across the Gippsland region, as well as more detailed planning frameworks for key regional centres. The GRGP reinforces the recognition of Latrobe City as Gippsland's Regional City, consisting of Moe, Morwell, Traralgon and Churchill, highlighting its function as a collective urban system or networked city. It identifies the region's challenge of accommodating population growth and planning settlements and infrastructure in response to the impacts of climate change and increased risk of natural hazards including bushfire.

Council's submissions did not specifically address how the amendments are consistent with the GRGP, however it is noted that Amendment C127latr seeks to implement some of the strategic work undertaken for Amendment C105latr as it related to rural rezonings, which included consideration of the GRGP. The GRGP includes the following strategies:

Accommodate urban growth within Latrobe City as Gippsland's regional city, and in regional centres and sub-region networks of towns.

Land use strategies and structure plans to accommodate growth over the next 20 to 30 years.

Support new urban growth fronts in regional centres where natural risks can be avoided or managed.

Manage settlement growth to limit impact on agricultural productivity, natural and earth resources and ecological values.

Planning Scheme provisions

Implementing the MPS and the Planning Policy Framework is a purpose common to all zones and overlays.

Other purposes of the relevant zones and overlays are included in Table 6.

Table 6 Purposes of Planning Scheme provisions

Planning provision	Purposes
Farming Zone	<p>To provide for the use of land for agriculture.</p> <p>To encourage the retention of productive agricultural land.</p> <p>To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.</p> <p>To encourage the retention of employment and population to support rural communities.</p> <p>To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.</p> <p>To provide for the use and development of land for the specific purposes identified in a schedule to this zone.</p>
Neighbourhood Residential Zone	<p>To recognise areas of predominantly single and double storey residential development.</p> <p>To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.</p> <p>To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.</p>
Neighbourhood Residential Zone - Schedule 4 (Regional suburbs)	<p>Neighbourhood character objectives</p> <p>To reinforce a spacious regional suburban character of existing and new neighbourhoods by providing generous front and side building setbacks and landscaped front setbacks with canopy trees.</p> <p>To minimise the prominence of buildings within the streetscape by setting back upper levels of buildings and siting garages and carports behind the front façade.</p> <p>To encourage walls on boundaries to be setback from the building façade to provide space for landscaping, building articulation and appearance of space between dwellings.</p>
Township Zone	<p>To provide for residential development and a range of commercial, industrial and other uses in small towns.</p> <p>To encourage development that respects the neighbourhood character of the area.</p> <p>To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.</p>

Planning provision	Purposes
Rural Living Zone	<p>To provide for residential use in a rural environment.</p> <p>To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.</p> <p>To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.</p> <p>To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.</p>
Design and Development Overlay	<p>To identify areas which are affected by specific requirements relating to the design and built form of new development.</p>
Development Plan Overlay	<p>To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.</p> <p>To exempt an application from notice and review if a development plan has been prepared to the satisfaction of the responsible authority.</p>
Floodway Overlay	<p>To identify waterways, major floodpaths, drainage depressions and high hazard areas which have the greatest risk and frequency of being affected by flooding.</p> <p>To ensure that any development maintains the free passage and temporary storage of floodwater, minimises flood damage and is compatible with flood hazard, local drainage conditions and the minimisation of soil erosion, sedimentation and silting.</p> <p>To reflect any declarations under Division 4 of Part 10 of the <i>Water Act</i>, 1989 if a declaration has been made.</p> <p>To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.</p> <p>To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.</p>
Land Subject to Inundation Overlay	<p>To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.</p> <p>To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.</p> <p>To minimise the potential flood risk to life, health and safety associated with development.</p> <p>To reflect a declaration under Division 4 of Part 10 of the <i>Water Act</i>, 1989.</p> <p>To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.</p> <p>To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.</p>

Planning Scheme Amendments

Amendment VC140

Amendment VC140, gazetted on 12 December 2017, makes the Planning Policy Framework for bushfire clearer and more directive to enable a resilient response to settlement planning.

The explanatory report states it requires planning authorities to:

- Prioritise the protection of human life and the management of bushfire impact.
- Avoid any increase in the risk of bushfire to people, property and community infrastructure.
- Direct population growth and development to low risk locations and also to ensure safe access to areas where human life can be better protected.
- At a settlement level, achieve no net increase in bushfire risk, and where possible reduce bushfire risk overall.
- Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.
- Ensure that development has addressed relevant policies, satisfied performance measures or implemented bushfire protection measures.
- Consider bushfire risk in bushfire prone areas when assessing a planning permit application for specified uses and development such as accommodation, childcare and hospitals, etc.

Amendment C105latr

Amendment C105latr was gazetted on 21 November 2019. It implements land use planning strategies of Live Work Latrobe, and is based on the following strategies:

- Housing Strategy
- Rural Land Use Strategy
- Industrial and Employment Strategy.

Amendment VC140 came into effect part way through exhibition of Amendment C105latr, and Council resolved to defer implementation of the recommendations in the Rural Land Use Strategy relating to rezoning for rural living purposes to allow for greater consideration of the new requirements.

Amendment C131latr

Amendment C131latr seeks to implement the recommendations of the *West Gippsland Floodplain Management Strategy* (2018-2027) to update flood mapping that is informed by the *Latrobe River Flood Study* (2015) and the *Traralgon Flood Study* (2016). At the time of the Hearing the exhibition of Amendment C131latr had closed, and submissions were yet to be considered by Council.

Planning Practice and Advisory Notes

The following provides a summary of key planning practice and guidance notes.

PPN12: Applying the Flood Provisions in Planning Schemes

PPN12 provides guidance on applying planning provisions for flood in the planning scheme to minimise risks to life, property and community infrastructure. It discusses the process for identification of flood hazards, correct drafting of schedules, and the preparation of background work such as local floodplain development plans by councils in consultation with catchment management authorities. It discusses the types of flooding and correct application of the various flood controls depending on the level of flood risk. PPN12 identifies that:

...the LSIO is used for both urban and rural environments to identify land with a lower potential flood risk or as an interim measure, areas where accurate flood mapping to identify the floodway is yet to be carried out. The LSIO only requires a permit for buildings and works and does not prohibit either use or development.

...

The FO applies to mainstream flooding in both rural and urban areas. These areas convey active flood flows or store floodwater in a similar way to the UFZ, but with a lesser flood risk. The FO is suitable for areas where there is less need for control over land use, and the focus is more on control of development.

PPN30: Potentially Contaminated Land

PPN30 provides advice to planners and permit applicants on how to identify potentially contaminated land, levels of assessment appropriate to circumstance, and appropriate application of planning scheme planning provisions, or permit conditions at the application stage. PPN30 notes that the EAO can be used to ensure the requirements of the environmental audit system can be met at the permit application stage without preventing assessment and approval of a planning scheme amendment. PPN30 states:

A planning authority must also consider the Planning Policy Framework of the Victoria Planning Provisions, including clause 13.04-1S Contaminated and potentially contaminated land. Clause 13.04 -1S aims to ensure that contaminated and potentially contaminated land is or will be suitable for its intended future use and development, and that this land is used and developed safely.

PPN37: Rural Residential Development

PPN37 provides guidance when planning for rural residential use and development. It notes that the LDRZ is typically applied to rural residential land. PPN37 states that rural residential development requires special consideration because it can have environmental, social and economic costs that are significantly higher than those of standard residential development. It specifies that these considerations mean that the following broad questions should be answered in sequence:

- Strategy: Does rural residential development align with the overall strategic planning of the municipality?
- Housing need: How much rural residential development is required to provide appropriate housing diversity and choice to meet housing needs?
- Location: Where should new rural residential development take place?
- Subdivision and design: Is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure?

PPN37 notes that generally fine detailed subdivision and design matters can be considered as part of a permit application process.

PPN42: Applying the rural zones

PPN42 provides guidance on the strategic work required to apply rural zones. It explains the purposes and features of each zone.

The rural zones proposed as part of the Amendments include:

- FZ2, which is strongly focussed on protecting and promoting farming and agriculture.
- RLZ, which caters for residential use in a rural setting.

PPN64: Local Planning for bushfire protection

PPN64 provides guidance about local planning for bushfire protection and assists councils to tailor the Local Planning Policy Framework in response to bushfire matters where necessary. It also provides guidance on how to prepare schedules to the BMO.

PPN64 notes that planning authorities need to address any relevant bushfire risk when preparing a planning scheme amendment. PPN64 outlines when it might be appropriate to use local planning policy to assist with decision making. It emphasises that local policy must not duplicate State policy. It suggests that local policy may be used most effectively to address bushfire issues spatially, and in identifying how bushfire affects particular locations. It is important to note that detailed planning guidelines for individual sites are not recommended for inclusion in planning policy.

Planning Advisory Note 68: Bushfire State Planning Policy

Planning Advisory note 68 clarifies the operation of the updated framework and strategies introduced by Amendment VC140, which updated policy in Clauses 10 and 13.05 in the State Planning Policy Framework to provide more directive strategies to manage bushfire risk in planning and decision making.

DELWP Design Guidelines: Settlement Planning at the Bushfire Interface, February 2019

The DELWP *Design Guidelines: Settlement Planning at the Bushfire Interface, February 2019* explain that planning policy places a strong emphasis on “*proactively planning to enhance the resilience of settlements to the impacts of bushfire and grassfire*”. The Bushfire Design Guidelines provide advice on how to prioritise protection of human life when planning for settlements. The document states:

Before these Guidelines are used a landscape assessment and strategic justification for site selection with regards to bushfire risk must be completed. Therefore, the use of these Guidelines assumes that the strategic and landscape considerations in Clause 13.02 have been fully satisfied in the first instance.

...

Clause 13.02 assists in identifying areas that are suitable for development, focusing on the strategic and landscape scale bushfire considerations including:

- The likely size and intensity of a bushfire and whether it may result in neighbourhood-scale destruction.
- The availability of alternative locations for settlement growth and new development.
- Access to enable people to move away from a bushfire and options for where people can get to safe areas during a bushfire.
- Emergency management responses to bushfire and structural fires.

The process for this assessment, including landscape classification, can be done using Clause 13.02 as a framework and the Permit Applications Bushfire Management Overlay – Technical Guide (page 9 – 19).

DELWP Technical Guide: Planning Permit Applications Bushfire Management Overlay, 2017

The DELWP *Technical Guide: Planning Permit Applications Bushfire Management Overlay, 2017* includes advice on preparing and assessing an application under the BMO, including how to assess bushfire hazard.

Appendix B Submitters to Amendment C126latr

No	Submitter
1	Wellington Shire Council
2	Glynn Evans
3	Department of Environment, Land, Water and Planning
4	Telstra
5	Natasha Sleep
6	Jillian Orr
7	Department of Transport
8	West Gippsland Catchment Management Authority
9	Glenys Harding
10	Country Fire Authority
11	EPA Victoria
12	Tinielle and Daniel Armstrong

Appendix C Submitters to Amendment C127latr

No	Submitter
1	Chantelle McGennissen
2	Rod Affleck
3	Wellington Shire Council
4	Glynn Evans
5	Glenn Morrison
6	Cardinia Shire Council
7	Telstra
8	Brenden Keene, Linda Keene
9	Vic Sabrinskas
10	Grahame Somerville, Sandi Somerville
11	Andrew Inger, Pam Inger
12	Jemma Sterrick
13	Department of Environment, Land, Water and Planning
14	Yvonne Lindsay
15	Stuart Strachan
16	Department of Transport
17	Leigh Morris
18	West Gippsland Catchment Management Authority
19	Tristan Stewart
20	Carly Jones, Tracey Clancy, Chris Clancy
21	Neil Burns
22	Chris King
23	Glenys Harding
24	Delburn Wind Farm Pty Ltd
25	EPA Victoria
26	Hancock Victorian Plantations
27	Country Fire Authority
28	Jason Nardone
29	Maria Pizzi
30	Tinielle Armstrong, Daniel Armstrong
31	Michael Van Berkel

32	Holly Basher-Snow
33	Alisha Tainton
34	Tiarnah Nicola
35	Eva-Marie Burton
36	Anan Halengo
37	Andrew Tedesco
38	Amy Laming
39	Tess Hibbert
40	Jackie Stratford
41	Reginald Edward
42	Dr M.Y. Gali
43	Kym Horton
44	Michael Thomas Reid
45	Suellyn Perry-Bloink
46	Tracy Roberts

Appendix D Document list

No.	Date	Description	Presented by
1	20 Jul 2022	Directions Hearing notification letter	Planning Panels Victoria (PPV)
2	23 Aug	Draft Panel directions	PPV
3	25 Aug	Correspondence to Panel dated 24 Aug	Country Fire Authority (CFA)
4	1 Sep	Panel correspondence enclosing directions and v1 timetable	PPV
5	1 Sep	Request for extension to confirm expert witness	Hancock Victorian Plantations Pty Ltd (HVP)
6	16 Sep	Email to Millar Merrigan regarding its request to be heard	PPV
7	21 Sep	C126latr indexed library of documentation in response to direction 12 including: <ul style="list-style-type: none"> a) 1.1 Exhibited Statutory Documents b) 1.2 Maps Exhibited c) 1.3 Clauses and Schedules d) 1.4 Background Documents e) 1.5 Toongabbie Structure Plan Background Reports f) 2.1 Post Exhibition Statutory Documents g) 2.2 Post Exhibition Maps h) 2.3 Post Exhibition Clauses and Schedules i) 2.4 Post Exhibition Background Documents j) 3.0 Council Report Attachments k) 4.0 Map of Submitters l) 5.0 Letter of Authorisation m) 6.0 Land Supply and Demand Analysis n) 7.0 Correspondence with Department of Transport o) 8.0 Maps and Itinerary 	Latrobe City Council (Council)
8	21 Sep	C127latr indexed library of documentation in response to direction 12 including: <ul style="list-style-type: none"> a) 1.1 Exhibited Statutory Documents b) 1.2 Maps Exhibited c) 1.3 Clauses and Schedules d) 1.4 Background Documents e) 1.5 Draft Latrobe City Rural Living Strategy (2020) f) 2.1 Post Exhibition Statutory Documents g) 2.2 Post Exhibition Maps h) 2.3 Post Exhibition Clauses and Schedules i) 2.4 Background Documents 	Council

No.	Date	Description	Presented by
		<ul style="list-style-type: none"> j) 2.5 Rural Living Strategy 2022 – Post Exhibition k) 3.0 Council Report Attachments l) 4.0 Map of Submitters m) 5.0 Letter of Authorisation n) 6.0 Maps and Itinerary 	
9	27 Sep	Panel correspondence enclosing v2 timetable	PPV
10	27 Sep	Expert witness statement in bushfire from Mark Potter of Fire Risk Consultants	Council
11	3 Oct	Joint Statement of CFA and Council	Council
12	4 Oct	C126latr Part A Submission and attachments: <ul style="list-style-type: none"> a) Attachment 1 Copy of Authorisation Letter b) Attachment 2 C126 Explanatory Report c) Attachment 3 Current Controls – Planning Zone and Overlay Maps d) Attachment 4 Copy of Submissions received (including withdrawal of submission #5) & Summary of Submissions Table e) Attachment 5 Post Exhibition Amendment Documentation f) Attachment 6 Description of Post Exhibition changes Table 	Council
13	4 Oct	C127latr Part A Submission and attachments: <ul style="list-style-type: none"> a) Attachment 1 Explanatory Report (exhibition version) b) Attachment 2 Latrobe City Housing Strategy 2019 c) Attachment 3 Latrobe City Rural Land Use Strategy 2019 d) Attachment 4 Assessment of matters relating to Bushfire Risk, Management and Planning (Latrobe City Council – November 2018) e) Attachment 5 EPA response letter to Direction 17. c) (iii) of Panel f) Attachment 6 CFA submission to Amendment C105 - Live Work Latrobe g) Attachment 7 CFA submission to the Planning Panel for Amendment C105 h) Attachment 8 Collation of comments received during the bus tour consultation session i) Attachment 9 Information circulated during workshop and bus tour j) Attachment 10 Commentary on the project from Council's Manager Emergency Management k) Attachment 11 Final Report, Small Rural Lots Project, 	Council

No.	Date	Description	Presented by
		Rural Councils Victoria / Municipal Association of Victoria (Spiire September 2012)	
		l) Attachment 12 Delburn Wind Farm Panel Report 7 February 2022	
		m) Attachment 13 Delburn Wind Farm Planning Permit PA2001063	
		n) Attachment 14 Delburn Wind Farm Planning Permit PA2001065	
		o) Attachment 15 Explanatory Report (post exhibition version)	
		p) Attachment 16 Summary of Submissions Table	
		q) Attachment 17 Summary of Submissions Requesting Rezoning	
		r) Attachment 18 Post exhibition changes table	
		s) Attachment 19 Proposed post exhibition amendment documents showing tracked changes	
		t) Attachment 20 Summary of MBRA's response to VAGO Report recommendations October 2020	
		u) Attachment 21 Bushfire Risk Rating Assessment, Toongabbie Proposed Rural Living Precincts (Bushfire Planning 24 October 2018)	
		v) Attachment 22 Bushfire Risk Rating Assessment, Churchill Proposed Rural Living Precincts (Bushfire Planning 24 October 2018)	
		w) Attachment 23 Bushfire Risk Rating Assessment, Moe South Proposed Rural Living Precincts (Bushfire Planning 24 October 2018)	
		x) Attachment 24 My Community Bushfire Mitigation Plan – Toongabbie	
		y) Attachment 25 Proposed Plan of Subdivision – S96A Application at Clarkes Road, Hazelwood North	
		z) Attachment 26 Bushfire Management Statement submitted with S96A Application at Clarkes Road, Hazelwood North	
		aa) Attachment 27 Defendable space plan submitted with S96A Application at Clarkes Road, Hazelwood North	
		bb) Attachment 28 Preliminary advice email sent to applicant in relation to S96A application at Clarkes Road, Hazelwood North	
		cc) Attachment 29 CFA response to Section 96A application at Clarkes Road, Hazelwood North	
14	5 Oct	21 Pincini Crt Boolara in relation to RLZ1 dwellings and Delburn Wind farm	Tristan Stewart

No.	Date	Description	Presented by
15	5 Oct	21 Pincini Crt Boolarra location Latrobe Planning Scheme Map no 121	Tristan Stewart
16	5 Oct	Amendment C127 Tristan Stewart Original Submission	Tristan Stewart
17	5 Oct	Original Subdivision Plan 2003	Tristan Stewart
18	5 Oct	PK 45880 - Pincini Court, Boolarra - Notice of Recommendation (1)	Tristan Stewart
19	5 Oct	Possible rezoning scenario	Tristan Stewart
20	5 Oct	Section 32 Lot 21 Pincini Court Boolarra 2003	Tristan Stewart
21	6 Oct	C126latr Part B Submission and attachments: <ul style="list-style-type: none"> a) Attachment 1 Toongabbie Structure Plan Background Reports - Infrastructure and Servicing Assessment 2020 b) Attachment 2 Ministerial Direction 1 August 2021 (MD1) c) Attachment 3 Planning Practice Note 30 Potentially Contaminated Land July 2021 (PPN30) d) Attachment 4 Various correspondence between Environment Protection Authority and Latrobe City Council e) Attachment 5 Updated written advice from the Environment Protection Authority regarding Amendment C126latr –12 September 2022 f) Attachment 6 C126latr & C127latr Joint Statement Council and CFA g) Attachment 7 Submission Response Table 	Council
22	6 Oct	C127latr Part B Submission and attachments: <ul style="list-style-type: none"> a) Attachment 1 Ordinary Council Meeting Minutes dated 4 July 2022 b) Attachment 2 Summary of Submissions Table and Council Responses c) Attachment 3 Copy of all Submissions d) Attachment 4 Summary of Submissions in Support, Satisfied by Post Exhibition Changes and Outstanding e) Attachment 5 Post Exhibition Changes to Ordinance Table f) Attachment 6 Draft Review of Municipal Bushfire Risk Assessment (Terramatrix, November 2021) g) Attachment 7 Council's Position on Unresolved Issues in the CFA Joint Statement h) Attachment 8 Correspondence re: 106 Tyers Walhalla Rd i) Attachment 9 12 September 2022 Advice from EPA 	Council

No.	Date	Description	Presented by
		j) Attachment 10 Copies of all EPA Correspondence	
23	11 Oct	Delburn Wind Farm letter notifying not to be heard	Delburn Wind Farm Pty Ltd
24	11 Oct	CFA submission (Kevin Hazel)	CFA
25	11 Oct	C126 clauses combined	CFA
26	11 Oct	C127 clauses combined	CFA
27	12 Oct	Hancock Victorian Plantations submission	HVP
28	12 Oct	Geoffrey and Suzanne Somerville submission	Geoffrey and Suzanne Somerville
29	12 Oct	Screen shots from CFA submission during Hearing	CFA
30	12 Oct	665 & 745 Clarkes Road, Hazelwood North submission	submitters 31 - 45
31	12 Oct	Local Bushfire Considerations relating to proposed zones	submitters 31 - 45
32	12 Oct	Supporting Background Documents:	submitters 31 - 45
		a) 21585 - Planning Report - Hazelwood North	
		b) Cover letter to council - 181011	
		c) Appendix 1a - 180907 title Vol 10509 Fol 871 tk	
		d) Appendix 1b - 180907 title Vol 10509 Fol 870 tk	
		e) Appendix 2 - 21585P1 V1 Site and Context	
		f) Appendix 3 - 21585P2 V3 PPOS	
		g) Appendix 4 - Streetscape Plan	
		h) Appendix 5 - 21585 VR1 Vegetation Removal Plan	
		i) Appendix 6a - 21585 BMP-Defendable Space	
		j) Appendix 6b - 21585 Bushfire Management Statement	
		k) Appendix 7 - Stormwater Management Plan	
		l) Appendix 8 - 180906 Infrastructure Servicing Report	
		m) Appendix 9 - Biodiversity Assessment Report V1 Final	
		n) Appendix 10a - 180821 - Explanatory Report	
		o) Appendix 10b - 180821 - Instruction Sheet	
		p) Appendix 10c - latrobe100zn (Amended)	
		q) Appendix 10d - latrobe101zn (Amended)	
		r) Appendix 11 - Traffic Report – Final	
		s) Appendix 12 – 17053 Hazelwood North Economic Analysis EE Report (13 September 2018) - Final	
33	13 Oct	Vic Sabrinskas (sub 9) Hearing submission	Vic Sabrinskas
34	13 Oct	Council Points of clarification c126latr Part 1	Council
		a) Attachment 1 – WGCMA correspondence	
		b) Attachment 2 - DELWP PCRZ advice	

No.	Date	Description	Presented by
		c) Attachment 3 – DELWP emails to Council	
		d) Attachment 4 – DoT emails to Council	
35	13 Oct	Chris King (sub 22) Hearing submission by NBA Group	Chris King
36	13 Oct	RLZ Concept Plan on behalf of Chris King	Chris King
37	13 Oct	Stuart Strachan (sub 15) Hearing submission	Stuart Strachan
38	13 Oct	Council relevant documents	Council
39	13 Oct	Mark Potter submission reference C127	Council
40	14 Oct	Council Points of clarification c126latr Part 2 with attachments: e) DRZ FO Map Marked f) Council Health Dept advice regarding waste water c126latr g) GCMA LDRZ land assessment Stages 1 and 2	Council
41	14 Oct	Council ‘without prejudice’ clause 13.02 -1L changes	Council
42	14 Oct	Council ‘without prejudice’ clause 17.04 -1L changes	Council
43	14 Oct	Tristan Stewart submission	Tristan Stewart
44	16 Oct	Further material from Stuart Strachan: a) Explanatory notes on Clause 13.02-1L b) VBRC transcript mark up c) VBRC chapter 17 extract d) Clause 17.04-1L further changes e) Clause 13.02-1L further changes	Stuart Strachan
45	17 Oct	Panel correspondence regarding further Stuart Strachan material	PPV
46	18 Oct	Email from Council responding to further Stuart Strachan material, enclosing: a) Clause 17.04-1L comments to Stuart Strachan b) Clause 13.02-1L comments to Stuart Strachan c) Clause 13.02-1L comments to Stuart Strachan v2 d) Clause 13.02-1L final preferred version e) Clause 17.04-1L final preferred version	Council

Appendix E Amendment C127latr submissions requesting rezoning

Submissions	Council response
<p>Submitter 2</p> <p>Request the 9.8 hectare site at 1 Hill Street, Toongabbie be rezoned to RLZ from FZ.</p>	<p>No change proposed. Further subdivision in Toongabbie is proposed in the north east (located in the green bushfire area in the MBRA). Submission 2 does not provide adequate justification for the land in question to be reconsidered for rural rezoning, largely due to the bushfire risk identified</p>
<p>Submitter 5</p> <p>The property at 29 Hill Street, Toongabbie should be considered yellow/green fire risk in the MBRA and should be considered for rezoning.</p>	<p>No change proposed. Property has been assessed as Yellow – Red, therefore not appropriate for rezoning. Submission 5 does not provide adequate justification for the land to be reconsidered for future rural rezoning, largely due to the bushfire risk identified, nor have changes to the Bushfire Risk Map been justified.</p>
<p>Submitter 8</p> <p>Request for 145 Watsons Road, Moe to not be in the FZ due to existing lot sizes and inability to farm the land. Request for RLZ to be applied, and considers this would help reduce fire risk.</p>	<p>No change proposed. The site is only 7.59 hectares, and heavy vegetated. Submission 8 does not provide adequate justification for the land in question to be reconsidered for rural living rezoning, largely due to the bushfire risk identified, nor have changes to the Bushfire Risk Map been justified.</p>
<p>Submitter 9</p> <p>Request for the land at 45 Tambo Road, Moe South be zoned RLZ due to existing lot sizes and inability to farm the land. Considers this would help reduce fire risk.</p>	<p>No change proposed. The site is only 6.68 hectares, and heavy vegetated. Submission 9 does not provide adequate justification for the land in question to be reconsidered for rural living rezoning, largely due to the bushfire risk identified, nor have changes to the Risk Map been justified.</p>
<p>Submitter 10</p> <p>Request for the land at 320 Wirraway Street, Moe to be rezoned RLZ to be consistent with surrounding land, its proximity to Moe and large area of pasture. Concern about Deburn Windfarm and bushfire risk.</p>	<p>No change proposed. The land directly to the south is plantation, and the bushfire risk in the area is too high to introduce additional RLZ to the area. Submission 10 does not provide adequate justification for the land in question to be reconsidered for rural rezoning, largely due to the bushfire risk identified.</p>
<p>Submitters 11, 12, 14, 20, 31, 32, 33, 34, 35, 36, 37 (petition), 38, 39, 40, 41, 42, 43, 44, 45</p> <p>Hazelwood North – Precinct C should be considered for rezoning to RLZ. There is high demand for rural living lots due to proximity to regional towns. Bushfire risk should not be the only driver for rural living development. Development at Clarkes Road, Hazelwood North would like reduce bushfire risk of adjacent land.</p>	<p>No change proposed. The submissions do not provide adequate justification for the land in question to be reconsidered for rural living rezoning, largely due to the bushfire risk identified, nor have changes to the Bushfire Risk Map been justified.</p> <p>Ministerial Directions, Planning and Advisory Notes and State Planning Policy do not allow dwellings to be put in high bushfire risk areas to reduce the risks to existing dwellings. This would be counterproductive and prioritising the human life</p>

	<p>within an existing home over the human life of a household within a new development.</p>
<p>Submitter 15</p> <p>Traralgon Creek/Road should be retained in FZ1 rather than FZ2. Rural living areas around Callignee and Loy Yang should be rezoned to reflect actual size/use.</p>	<p>No change proposed. The Traralgon Creek/Road area is clearly operating as a defacto rural living area, and the slope and vegetation cover of the land are not conducive to agricultural production. Application of FZ2 is justified.</p> <p>The areas around Callignee and Loy Yang were not identified for rural rezoning, particularly when giving consideration to bushfire planning policy and other strategic considerations.</p>
<p>Submitter 19</p> <p>Request for Lot 21 Pincini Court, Boolarra to be rezoned from FZ1 to RLZ.</p>	<p>The site is located within the red bushfire risk area in the MBRA. If the CFA was supportive of a correction zoning, Council would support including in RLZ as a post exhibition change.</p> <p>Council holds this view as rezoning would not increase the subdivision or development potential of the land beyond what would already be permissible with a planning permit. Further, the BMO and Clause 13.02 policy directions would need to be addressed and met for a dwelling to be established on the land, regardless of the underlying land zoning.</p>
<p>Submitter 21</p> <p>Request for 590 Traralgon- Maffra Road to be rezoned to RLZ, because it is not suitable for agriculture.</p>	<p>No change proposed. The Rural Living Strategy has recognised the potential for this land, and concluded that it would be an unwise use for this site and its surrounds to be RLZ. The site is identified for future investigation for LDRZ.</p>
<p>Submitter 22</p> <p>Request for 271 Haunted Hills Road, Newborough to be rezoned to RLZ. The site is future residential in the Moe-Newborough Town Structure Plan. The land is within close proximity to the town centre and is serviceable. It would complement land supply offering in Moe. The MBRA shows the land can comfortably be developed and with good design will be fully compliant with bushfire requirements.</p>	<p>No change proposed. Submission 22 does not provide adequate justification for the land in question to be reconsidered for rural living rezoning. It would see an underutilisation of land contrary to the direction of the Moe-Newborough Town Structure Plan and adequate justification against bushfire planning policy has not been provided.</p>
<p>Submitter 23</p> <p>Requests 215 Guyatts Road, Toongabbie be rezoned to RLZ.</p>	<p>No change proposed. Submission 23 does not provide adequate justification for the land in question to be reconsidered for rural rezoning, largely due to the bushfire risk identified, nor have changes to the Bushfire Risk Map been justified.</p>
<p>Submitter 28</p> <p>Request that Lot 2 on PS341052, Hazelwood Estate Road, Churchill be included in the RLZ. The site is not within a BMO or near plantations.</p>	<p>No change proposed. The site is not within the BMO and sits within a Green bushfire risk rating. However, bushfire risk is not the only consideration given to the rezoning of land. The land is wholly affected by</p>

The MBRA is flawed.	the Environmental Significance Overlay, Schedule 1 – Urban Buffer which is a coal buffer ESO1, which makes the site unsuitable.
Submitter 29 Several properties in Koornalla should be considered for rezoning.	No change proposed. All three parcels are in a red bushfire risk area.
Submitter 30 Request 219 Afflecks Road, Toongabbie, not be rezoned from FZ to RLZ. This will impact on gun licences and will have other impacts on their rural lifestyle. The area is not well serviced in terms of roads, drainage and greater population will place greater demands on town services.	No change proposed. The Toongabbie Town Structure Plan is being implemented as part of Amendment C126, and has assessed and identified the needs for Toongabbie in relation to land use and services. The site is appropriate for RLZ.