

# Government Land Standing Advisory Committee

## Tranche 33 Report

13 Jenner Street, Merbein and  
456 Paschendale Avenue, Merbein West

12 January 2022

### Contents

<b>About this report.....</b>	<b>1</b>
<b>1 Summary and recommendations .....</b>	<b>2</b>
1.1 The subject sites and referral .....	2
1.2 Issues raised in submissions .....	4
1.3 Committee conclusions .....	4
1.4 Recommendations .....	5
1.5 Process summary.....	5
1.6 Process issues.....	6
<b>2 456 Paschendale Avenue .....</b>	<b>8</b>
2.1 Site context.....	8
2.2 Issues with the proposed changes.....	10
<b>3 13 Jenner Street.....</b>	<b>17</b>
3.1 Site context.....	17
3.2 Issues with the proposed changes.....	18
<b>Appendix A About the Government Land Standing Advisory Committee .....</b>	<b>23</b>
<b>Appendix B List of Submitters .....</b>	<b>24</b>
<b>Appendix C Document list.....</b>	<b>25</b>
<b>Appendix D Committee preferred version of DDO15 .....</b>	<b>26</b>

## List of Tables

Table 1	456 Paschendale Avenue existing and proposed controls .....	5
Table 2	13 Jenner Street existing and proposed controls .....	5
Table 3	Proposal summary.....	6
Table 4	Exhibited planning scheme changes .....	6
Table 5	Committee process .....	6
Table 6	Purposes of the Township Zone and Rural Living Zone.....	13
Table 7	Purposes of the General Residential Zone and Rural Living Zone.....	21

## List of Figures

Figure 1	456 Paschendale Avenue, Merbein West.....	3
Figure 2	13 Jenner Street, Merbein.....	3
Figure 3	456 Paschendale Avenue - current zoning .....	8
Figure 4	456 Paschendale Avenue - map of bushfire prone area .....	9
Figure 5	13 Jenner Street - current zoning .....	17
Figure 6	Merbein Township Structure Plan.....	19

## List of Abbreviations

---

CFA	Country Fire Authority
Committee	Government Land Standing Advisory Committee
DDO15	Design and Development Overlay 15
DTF	Department of Treasury and Finance
EAO	Environmental Audit Overlay
EPA	Environmental Protection Agency
FZ	Farming Zone
GRZ	General Residential Zone
Housing Strategy	Mildura Housing and Settlement Strategy, 2013
PRSA	Preliminary Risk Screen Assessment
PSI	Preliminary site Investigation
PUZ	Public Use Zone
RLZ	Rural Living Zone
TZ	Township Zone

---

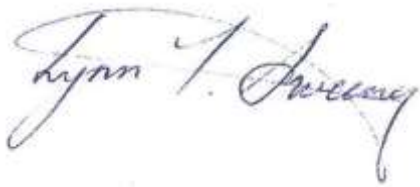
## About this report

On 15 August 2021, the Minister for Planning referred 13 Jenner Street, Merbein and 456 Paschendale Avenue, Merbein West to the Government Land Standing Advisory Committee as Tranche 33.

This is the report under section 151 of the *Planning and Environment Act 1987* of the Government Land Standing Advisory Committee for 13 Jenner Street, Merbein and 456 Paschendale Avenue, Merbein West.



Lisa Kendal, Chair



Lynn Sweeney, Member

12 January 2022

# 1 Summary and recommendations

## 1.1 The subject sites and referral

Two former primary school sites in Merbein are no longer required for Department of Education and Training purposes, and were declared surplus on 2 June 2015. The site owner for both properties is the Department of Education and Training, represented by the Department of Treasury and Finance (DTF).

The Minister for Planning referred the proposal to the Government Land Standing Advisory Committee on 15 August 2021. The Committee is required to advise the Minister for Planning on the suitability of planning provisions for the sites if they are to be sold.

The subject sites are located in the settlements of Merbein and Merbein West. Merbein has a population of 2,713 and is located approximately seven kilometres northwest of Mildura. Merbein West has a population of 19 and is approximately four kilometres west of Merbein.<sup>1</sup> The regional city of Mildura and is located approximately 542 kilometres northwest of Melbourne.

The proposal relates to:

- Amendment C113mild - 456 Paschendale Avenue, Merbein West - CA19A Section F, Parish of Merbein (Figure 1)
- Amendment C115mild - 13 Jenner Street, Merbein - CA15, 16, 17 and 18, Section 26, Parish of Merbein (Figure 2).

### 456 Paschendale Avenue

The subject site is located at the southern western end of the existing rural settlement. It is about 2.83 hectares and bound by Thomson Street to the north, Paschendale Avenue to the east, Weaver Lane to the south and it abuts private property to the west (20 Weaver Lane). A railway reserve is located to the south of Weaver Lane.

The land is relatively flat with some vegetation, in particular a plantation/stand of trees along the northern boundary. All former school buildings have been demolished, however the foundations, a concrete slab and playing courts remain.

---

<sup>1</sup> Population figures: Australian Bureau of Statistics, 2016 Census

**Figure 1** 456 Paschendale Avenue, Merbein West



### 13 Jenner Street

The subject site is located to the southwest of the Merbein town centre. It is 3.68 hectares and irregular in shape. The site is bound by a railway reserve to the north and Game Street north of the railway reserve, Jenner Street to the east, a channel reserve to the west and south and Channel Road to the south of the channel reserve.

It is relatively flat, lightly vegetated with some mature trees. All former school buildings have been demolished however the foundations, concrete slab and playing courts remain.

**Figure 2** 13 Jenner Street, Merbein



## 1.2 Issues raised in submissions

The Committee considered all written submissions as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions the Committee has been assisted by the information provided to it as well as its observations from photographs of the site and surrounding area.

Four submissions were received from:

- Lower Murray Water
- Environment Protection Authority (EPA)
- Mildura Rural City Council
- Individual submitter.

Issues raised in submissions related to:

- 456 Paschendale Avenue, Merbein West
  - strategic justification for the proposed land use zone
  - proposed alternative zoning of Rural Living Zone (RLZ)
  - protection of trees and associated habitat
  - water supply limitations.
- 13 Jenner Street, Merbein
  - strategic justification for the proposed land use zone
  - proposed alternative zoning of a combination of Farming Zone (FZ) and RLZ
  - protection of access to water infrastructure on crown land.

EPA did not object, provided updated information and requested the wording in the Explanatory Report be changed.

DTF did not seek any changes to the Amendments in response to submissions.

## 1.3 Committee conclusions

### (i) 456 Paschendale Avenue

The Committee concludes that 456 Paschendale Avenue should be rezoned to RLZ rather than the Township Zone (TZ) because:

- planning policy encourages rural living development around Merbein, and promotes rural residential development in appropriate locations
- there is no policy imperative to direct residential growth to Merbein West
- the site has constraints relating to water infrastructure, existing vegetation, bushfire and interface with the railway reserve and land zoned for farming
- the purposes of the RLZ are considered more appropriate.

It is appropriate to apply the Design and Development Overlay – Schedule 15 (DDO15) to manage bushfire risk.

The proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the *Ministerial Direction on The Form and Content of Planning Schemes*.

**Table 1** 456 Paschendale Avenue existing and proposed controls

Current planning scheme controls	Exhibited planning scheme	Advisory Committee Recommendation
Public Use Zone 2 – Education (PUZ2)	Township Zone (TZ)	Rural Living Zone (RLZ)
	Design and Development Overlay (Schedule 15 - new) (DDO15)	Design and Development Overlay (Schedule 15 - new) (DDO15)

**(i) 13 Jenner Street**

The Committee concludes it is appropriate to rezone 13 Jenner Street to General Residential Zone (GRZ) because:

- planning policy supports urban residential development that is well-located and well serviced
- Merbein is identified as a satellite urban township and the site is located within the Urban Growth Boundary
- the land is not of a scale that would unreasonably disrupt the development pattern of the town if developed for housing
- the purposes of the GRZ are considered more appropriate.

The proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the *Ministerial Direction on The Form and Content of Planning Schemes*.

**Table 2** 13 Jenner Street existing and proposed controls

Current planning scheme controls	Exhibited planning scheme	Advisory Committee Recommendation
Public Use Zone 2 – Education (PUZ2)	General Residential Zone (GRZ)	General Residential Zone (GRZ)

## 1.4 Recommendations

The Committee recommends that planning scheme amendments be prepared and approved to:

- 1. Rezone 456 Paschendale Avenue, Merbein West from Public Use Zone 2 to the Rural Living Zone.**
- 2. Apply the Design and Development Overlay Schedule 15 to 456 Paschendale Avenue, Merbein West as exhibited subject to the changes shown in the Committee preferred version in Appendix D of this Report.**
- 3. Rezone 13 Jenner Street, Merbein from Public Use Zone 2 to the General Residential Zone.**

## 1.5 Process summary

The following tables set out the details of the process for this matter.

Table 3 Proposal summary

Proposal summary	
<b>Tranche</b>	33
<b>Site address</b>	13 Jenner Street, Merbein and 456 Paschendale Avenue, Merbein West
<b>Previous use</b>	Merbein Primary School and Merbein West Primary School
<b>Site owner</b>	Department of Education and Training, represented by the Department of Treasury and Finance
<b>Council</b>	Mildura Rural City Council
<b>Exhibition</b>	20 September to 31 October 2021
<b>Submissions</b>	Four

Table 4 Exhibited planning scheme changes

Existing controls	Exhibited changes
<b>456 Paschendale Avenue, Merbein West</b>	
Public Use Zone 2 – Education (PUZ2)	Township Zone (TZ) Design and Development Overlay (Schedule 15 - new) (DDO15)
<b>13 Jenner Street, Merbein</b>	
Public Use Zone 2 – Education (PUZ2)	General Residential Zone (GRZ)

Table 5 Committee process

Committee process	
<b>Members</b>	Lisa Kendal (Chair) and Lynn Sweeney
<b>Information session</b>	12 October 2021
<b>Directions Hearing</b>	19 November 2021
<b>Hearing</b>	14 December 2021
<b>Appearances</b>	<b>Department of Treasury and Finance</b> , represented by Mr James Golsworthy of James Golsworthy Consulting <b>Mildura Rural City Council</b> , represented by Mr Daniel Gebert and Mr Peter Douglas
<b>Date of this Report</b>	12 January 2022

## 1.6 Process issues

### (i) Mediation of issues meeting

The Committee directed DTF and Council to meet before the Hearing to discuss the matters in dispute on a ‘without prejudice’ basis.



The ‘mediation of issues’ meeting was convened by DTF on 1 December 2021 and a written statement was prepared and distributed to all parties setting out the issues in dispute and those not in dispute (Document 4).

The written statement summarised:

- Issues in dispute
  - proposed GRZ for Jenner Street
  - proposed TZ for Paschendale Avenue
  - intensive irrigated agriculture being a suitable use for the land
  - application of a minimum lot size
- Issues not in dispute
  - inclusion of either land in the FZ is not suitable
  - CA 56B is not part of the Amendment and is not included in the Amendment (the land is identified as being in the ownership of the Department of Education and Training and is to remain in the Public Use Zone 1 – Service and Utility – PUZ1)
  - outer settlements such as Merbein (and Red Cliffs) are currently experiencing an increase in residential growth.

## **(ii) Site visual assessment**

At the Directions Hearing, the Committee advised it would undertake an unaccompanied site inspection after the Hearing. Direction 6 was issued for parties to provide site visit information to the Committee.

Subsequently the Committee wrote to parties advising it would reconsider the need for a site visit after the Hearing, and may if appropriate rely on visual material provided by parties (Document 2).

Direction 6 was updated to state:

The proponent must provide the Committee with visual material of the sites by 12 noon on Monday 13 December 2021, which may include updated aerial imagery, photos, videos and/or drone footage, to assist it in undertaking a visual assessment of the sites.

The Committee sought the views of DTF and Council at the Hearing as to whether a site visit was required. DTF considered the visual materials supplied were adequate, while Council preferred a site visit to allow for full appreciation of the site and surrounds. With consideration of the issues that were subject of submissions, the Committee considered it could undertake an adequate visual assessment using the materials provided. It invited both DTF and Council to provide any additional visual material to the Committee after the Hearing (Document 19). Additional visual material was provided by DTF (Documents 17 and 18).

## 2 456 Paschendale Avenue

### 2.1 Site context

This Chapter provides a high level overview of the site context, taking into consideration planning context, historic use and development of the site, physical characteristics and background information. The Committee has taken these into consideration when assessing the suitability of planning provisions for the site.

A number of background studies have been completed for the site, including:

- Paschendale Avenue Planning Report, James Golsworthy Consulting, August 2020
- Preliminary Site Investigation (PSI)
- Bushfire Assessment, Bushfire Planning, May 2020
- Vegetation Assessment, Pinion Advisory, December 2021.

#### Planning context

Figure 3 shows the current zoning of the site and surrounding area.

**Figure 3** 456 Paschendale Avenue - current zoning



#### History of the site

The site has most recently been used and developed as a primary school. Following establishment of the Merbein P-12 College in 2010, the Merbein West Primary School located at Paschendale Avenue was closed in 2012 and declared surplus on 2 June 2015.

#### Interface with surrounds and access

The land to the north and west are zoned TZ and used and developed for residential purposes. To the east and south land is zoned and used for farming purposes. Farming land to the south is separated from the site by a railway line which is zoned for public use.

There is excellent access to and from the site, with Thomson Street to the north, a frontage to Paschendale Avenue of approximately 200 metres along the eastern boundary and Weaver Lane to the south.

#### Water infrastructure

Lower Murray Water submitted that potable water supply and reticulated sewerage from Merbein is currently not available at the site. Domestic and stock water supply can be reinstated subject to

the landowner complying with all water licensing requirements. Additional or multiple split allocations will not be permitted from the single supply. No new applications will be approved due to an overcommitment of the district supply system.

In response to a Committee direction, DTF clarified with Lower Murray Water that:

The current water supply to Paschendale Avenue is one allocation of domestic and stock supply which is what the school had and this cannot be broken down to smaller allocations. It is not potable, but can be used to flush toilets and water the garden. Any new housing will need to have rainwater tanks, which is what the surrounding houses to the north and west of the site have.

### **Contamination**

The Planning Report stated a PSI had been undertaken for the site to consider the impacts on the environment, amenity and human health. The PSI had been considered by EPA who agreed there was no need to undertake an environmental audit or apply an Environmental Audit Overlay (EAO) to the site.

### **Bushfire risk**

The Bushfire Management Overlay does not apply to the site. It is within a declared bushfire prone area under the Building Regulations 2018.

**Figure 4** 456 Paschendale Avenue - map of bushfire prone area



Source: Bushfire Assessment, Bushfire Planning, May 2020

The Bushfire Assessment concluded that overall, the proposal is consistent with bushfire planning policies and it is appropriate for the amendment to proceed subject to the recommendations of the report. It considered the site favourable for development, specifically based on:

- moderate landscape scale risk, which is at the lower end of bushfire risk in Victoria.
- moderate site scale risk, with site-based mitigation measures (development setbacks and vegetation management) within the subject site as recommended.

The Country Fire Authority (CFA) was consulted on and generally agreed with the Bushfire Assessment. The assessment was adjusted in response to CFA advice.

The CFA recommended site-based mitigation as recommended in the Bushfire Assessment, and this is achieved through the proposed DDO15.

### **Vegetation and habitat**

According to the Vegetation Assessment the area was cleared before the school opening in 1913 and there is no remaining remnant vegetation on the site.

There is a dense Sugar Gum plantation along the northern boundary of the site with understorey regrowth, and scattered trees and large shrubs. Regrowth of shrubs within the plantation is considered to be likely less than 10 years old. The plantation also contains many weeds including some declared noxious weeds.

There is a planted native garden on the southern end of the western boundary.

In response to Submission 3 which provided details of the habitat and environmental values of the plantation, the Vegetation Assessment confirmed the area has moderate habitat value. During the assessment many birds were observed and a few trees with hollows, and habitat values were considered to be enhanced by the understorey vegetation. The incidence of hollows and nests was lower than expected due to the tall slender growth of Sugar Gums with minimal branching.

As the vegetation was planted it is not protected by Clause 52.17 (Native Vegetation) of the Planning Scheme, which states a permit is not required for native vegetation that was either planted or grown as a result of direct seeding (unless planted with public funding for the purposes of land protection or enhancing biodiversity).

None of the vegetation is listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* and the *Flora and Fauna Guarantee Act 1988*.

According to the Bushfire Report the proposed DDO15 does not require the plantation to be modified and bushfire requirements are likely to be able to be implemented without unacceptable biodiversity impacts.

## **2.2 Issues with the proposed changes**

### **(i) What zone is suitable?**

#### **Submissions**

DTF submitted that given the character and context of the site TZ was the most appropriate zone. Specifically, rezoning the land to TZ would bring the site into alignment with the surrounding area to the north and west. It submitted that a strategic assessment was undertaken for both RLZ and TZ, with TZ being determined as the most appropriate zone.

DTF submitted the proposal was consistent with the objectives of the *Planning and Environment Act 1987* and supported the State Planning Policy Framework on the basis that:

- it is consistent with the immediate zoning of land neighbouring the site and fits with the general pattern of the street layout
- the land has not previously been used for agriculture nor is there infrastructure to enable its use for irrigated agricultural connected to the land or a viable water licence attached to the land

- it will create residential opportunities in close proximity to jobs, services and recreational facilities
- it will provide for more efficient use and development of land which is surplus to public purpose requirements
- it will achieve positive environmental, social and economic outcomes by implementing appropriate planning controls.

DTF referred to Clause 11.01-1R (Settlement) which promotes growth in Mildura as a regional city, and through planned development incorporating nearby settlements including Merbein. It submitted that no place-based planning had been undertaken for Merbein West due to its relative remoteness to the township of Merbein.

DTF considered Clause 21.03 (Vision and strategic framework) supported the proposal, stating:

- the locality is clearly defined and includes natural borders by the TZ, roads and the railway line
- inclusion of the land will not compromise urban development
- agricultural activities on adjoining land will not be compromised as two dwellings are located on the land (subdivided from the parent lot). The remaining agricultural land contains shade houses which are contained in their operation, therefore land use conflicts will be minimised.

DTF added that the site is considered to be part of a planned estate, consistent with Clause 21.04-5 (Rural residential and low density development) which “*seeks to accommodate the demand for rural residential and low density residential development in planned estates*”. It contended that while Clause 21.04-5 encourages rural living development around and close to the Main Urban Area of Merbein in accordance with the Housing Strategy, the policy was not mandatory and the proposed rezoning was considered on balance with other policy drivers.

DTF did not support Council’s proposal to rezone the land to RLZ, considering it inconsistent with Planning Practice Note 37 which provides guidance when planning for rural residential development. DTF stated RLZ was not appropriate as:

- the land is not within the rural setting
- the land is not associated with agriculture in any way
- no agricultural activities can reasonable be undertaken on the land.

In relation to the lack of reticulated sewerage and reliance on rainwater for potable water supply DTF submitted this would limit development potential to approximately nine lots each of a minimum 0.4 hectare size. This was consistent with surrounding land within the TZ.

Council objected to rezoning the land to TZ and considered the proposal did not support the following State and Local Planning Policies:

- Clause 16.01-1S (Housing supply) seeking to facilitate well located, integrated and diverse housing that meets the community needs
- Clause 16.01-3S (Rural residential development) seeking to identify land suitable for rural residential development
- Clause 21.04-2 (Urban residential land supply and growth areas) identifying the Main Urban Area of Mildura as the growth areas for urban residential development:
  - given the amount of land currently zoned for residential development in Mildura, Irymple, Merbein and Red Cliffs, there is no need for short term rezoning of land to facilitate urban residential development
- Clause 21.04-5 (Rural residential and low density development) seeking to accommodate the planned provision of future rural residential opportunities in appropriate locations:

- encouraging rural living development around Merbein, as identified in the Mildura Housing and Settlement Strategy 2013 (Housing Strategy), to provide a greater choice of living options and rural living opportunities close to the Main Urban Area
- Clause 21.10-5 (Merbein) including local planning guidance and strategies to strengthen the identify of Merbein as a separate well serviced township, and to diversify the housing market by introducing RLZ around the town.

Council submitted that applying TZ would be an example of disorderly planning as the land would be zoned for residential use with no connections available for any new lots for reticulated sewerage or potable water supply.

Council submitted that Submission 3 added support for RLZ as it would provide less disturbance for habitat:

Under the Rural Living Zone, only one large lot is possible, allowing plenty of space for a potential dwelling away from the plantation and less likelihood of damage to the native vegetation. Under a Township Zone there are many potential smaller lots closer to the plantation with greater disturbance.

Council considered the rezoning to TZ was not strategically justified on the basis:

- it would expand urban growth possibilities in a failed residential estate isolated from services
- it represented disorderly planning to create additional residential zoning in the absence of strategic work justifying the need for additional residential growth in Merbein West
- it will facilitate sensitive uses near a railway and FZ interface
- it will encourage out-of-centre residential growth in an informal hamlet
- the Mildura Older Irrigation Area intends to avoid further subdivisions and dwellings in the irrigated area on the surrounding FZ land
- the site contains significant native vegetation including large trees that will be less prone to destruction under a rural zone rather than a residential zone.

Council considered RLZ more appropriate as it would allow private ownership and maintenance of an unused site, acting as a buffer between the existing TZ and FZ.

## Discussion

It is clear that planning policy:

- recognises Merbein as a satellite urban township and service centre
- encourages adequate supply of land for housing and residential growth in well serviced towns and settlements
- encourages provision of a diversity of housing to meet current and future community needs
- promotes the provision of future rural residential opportunities in appropriate locations
- encourages rural living development around Merbein.

In considering the most appropriate zone, the Committee turned its mind to guidance on choosing an appropriate land use zone in *A Practitioner's Guide to Victorian Planning Schemes*, which states:

The zone selected for any land is determined by the historic land use and the planning strategies set out in the Planning Scheme.

...

Before deciding which zone should be applied to land, consider:

- the land, including any particular physical characteristics, previous uses and the use and development of adjoining land, its ownership and management and the requirements of any other legislation that may apply to the land

- the intended planning outcomes for the land set out in the MPS and the PPF, as a consequence of a previous or current land use, or a particular physical characteristic of the land
- the purposes and provisions of the zone and the extent of local variation available in a schedule to the zone.

Common purposes of all zones are to implement the Municipal Planning Strategy and the Planning Policy Framework. The specific purposes of the TZ and RLZ are shown in Table 1.

**Table 6 Purposes of the Township Zone and Rural Living Zone**

Township Zone	Rural Living Zone
<ul style="list-style-type: none"> <li>- To provide for residential development and a range of commercial, industrial and other uses in small towns.</li> <li>- To encourage development that respects the neighbourhood character of the area.</li> <li>- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.</li> </ul>	<ul style="list-style-type: none"> <li>- To provide for residential use in a rural environment.</li> <li>- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.</li> <li>- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.</li> <li>- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.</li> </ul>

There is a demand for housing in and around Merbein and policy directs growth into the township to strengthen its identity and role as a service centre. Rural living development is encouraged outside of the township boundary. There is no policy imperative to direct residential growth to Merbein West.

The Committee agrees that applying the TZ to the site is unlikely to compromise urban development, primarily due to limited potential for development due to site constraints. However, it is significant that Merbein West is not identified for growth.

As identified by DTF, no place-based planning has been undertaken for Merbein West. The site is serviced by existing road infrastructure, however other infrastructure and services are limited. The Committee does not agree with DTF that Merbein West is a planned estate or that it would create residential opportunities within close proximity to jobs, services and recreational facilities.

Policy requires planning to consider protection of natural resources, landscape values and environmental qualities. The Committee acknowledges the vegetation will not be protected by the Planning Scheme or other legislation, and agrees with Council that habitat values are less likely to be disturbed with application of the RLZ.

It is clear from the purposes of the TZ that it is intended to be applied in small, serviced township settings. The Committee acknowledges the surrounding residential land to the north and west is zoned TZ, however this is not considered adequate justification to rezone the site to TZ. The site has constraints relating to water infrastructure, existing vegetation, bushfire and interface with the railway reserve and land zoned for farming.

The purposes of the RLZ are considered more appropriate as they:

- provide for residential use in a rural environment
- allow for agricultural land uses which does not adversely affect the amenity of surrounding land uses

- protect and enhance the natural resources, biodiversity and landscape and heritage values of the area
- encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

The Committee agrees with Council that RLZ is a more appropriate zone for the site.

### **Recommendation**

The Committee recommends that a planning scheme amendment be prepared and approved to:

- 1. Rezone 456 Paschendale Avenue, Merbein West from Public Use Zone 2 to the Rural Living Zone.**

### **(ii) What overlays are appropriate?**

#### **Submissions**

##### Design and Development Overlay – Schedule 15

DTF submitted:

No objecting submissions have been received to inclusion of DDO15.

DDO15 has been prepared in response to a bushfire assessment of the land being undertaken. The assessment identified 0.66ha of vegetation to the northern boundary of the land as being of potential bushfire risk. The report at recommendation 1 provides that development must be setback at least 16m from the woodland areas. The recommendation has been provided for in DDO15 specially at 5.0 Application requirements.

##### Environmental Audit Overlay

The EPA submitted its original written advice (19 May 2020) to DTF was that there was an element of unknown risk on the site resulting from:

- a pair of unidentified concrete pipes extending vertically underground (which appeared not to be related to Underground Storage Tanks)
- fragments of potential asbestos containing material were observed during the site inspection (could not be relocated during soil analysis)
- soil analysis beneath the remaining concrete slabs was not conducted.

EPA advised:

should works on site find evidence of a higher level of potential contamination for this site, DTF should be aware of the need to appropriately assess and manage any further contamination identified.

In its submission of 20 October 2021, EPA updated its advice to reflect changes as a result of the commencement of the *Environment Protection Act 2017*, introduction of Planning Practice Note 30 (Potentially Contaminated Land) and Ministerial Direction 1. Planning Practice Note 30 recommends a Preliminary Risk Screen Assessment (PRSA) and/or environmental audit where the planning authority has identified the land as potentially contaminated and the proposal would allow sensitive uses.

EPA's updated advice acknowledged a PSI was previously prepared to support the rezoning and:

While the completion of a PSI for this situation is no longer considered consistent with policy, it is acknowledged that the assessment completed concluded that no further assessment (such as an Audit) was required.

Ultimately, the decision to require further assessment rests with the planning authority. Should the planning authority seek to request a PRSA for the subject site, noting the assessment already completed, EPA expects that this would likely be a straightforward



process to provide greater assurance on the need for an environmental audit and align the assessment with current requirements of the planning system.

The Committee sought Council's view on whether a PRSA is required. Council advised it did not have a view on this matter.

EPA requested wording in the Explanatory Report be updated from:

The EPA have agreed there is no need to undertake an Environmental Audit of the site nor does an Environmental Audit Overlay need to be applied to the land.

To state:

Based on the information provided at the time, EPA advised that DTF's proposal not to apply the EAO was consistent with policy as no audit was required to precede the use of the land for sensitive uses.

## Discussion

### Design and Development Overlay – Schedule 15

The Committee notes the Bushfire Assessment identifies a schedule to the Design and Development Overlay as an appropriate Victoria Planning Provision to manage bushfire risk. The proposed DDO15 was not a subject of submissions and the Committee agrees this is an appropriate planning control to manage bushfire risk.

The Committee considered whether draft DDO15 has been prepared and presented in accordance with the *Ministerial Direction on The Form and Content of Planning Schemes*. The Committee finds there are some inconsistencies and suggests a number of changes to the Schedule to ensure compliance with drafting guidelines and clarity of requirements.

Some proposed changes relate to drafting requirements as detailed in *A Practitioner's Guide to Victorian Planning Schemes*. The Committee preferred version of DDO15 at Appendix D of this Report includes the following changes:

- Name of Schedule – insert site common street name '456 Paschendale Avenue'.
- Design objectives – remove dot points.
- Buildings and works – add the following:  
The following buildings and works requirements apply to an application to construct a building or construct or carry out works:
  - Development must be setback at least 16 metres from the 0.66 hectares of woodland areas at the northern extent of the land.
- Application requirements – remove the current wording and replace with "*None specified*".
- Decision guidelines – remove the current wording:
  - Any relevant Emergency Management Plans or technical reports relating to bushfire hazard at the site or within its vicinity.
  - Whether the application responds appropriately to the Bushfire assessment provided under this schedule.and replace with:
  - Whether the application responds appropriately to the *Bushfire Assessment – 456 Paschendale Avenue, Merbein West – Prepared for the Victorian Department of Treasury and Finance - 8 May 2020 (v1.0)*
- Background documents – remove.

The Bushfire Assessment report title incorrectly states it relates to 436 Paschendale Road. This should be corrected prior to adoption of the Amendment. This change has been made in the Committee preferred version of DDO15.

## Environmental Audit Overlay

Planning Practice Note 30 states:

Where land has been determined to be potentially contaminated, but it is difficult or inappropriate to meet environmental audit system requirements at the amendment stage, the application of the Environmental Audit Overlay (EAO) to the land allows deferment of these requirements.

...

The presence of an EAO means a determination has already been made that land is potentially contaminated, and that a process under the environmental audit system will be required before the land is used or developed for a sensitive use, a secondary school or children's playground.

The need for any further assessment of potential contamination was not raised in submissions, including Council, and the Committee accepts the EAO is not proposed to be applied.

According to Planning Practice Note 30, regardless of whether an EAO applies:

- Clause 65.01 of the Victoria Planning Provisions requires a responsible authority, before deciding on a planning permit application, to consider as appropriate any significant effects the environment, including the contamination of land, may have on the use or development
- a responsible authority must also consider Clause 13.04-1S (Contaminated and potentially contaminated land) which 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.

The Committee acknowledges that EPA legislation and guidelines have been updated, however notes that the substantive advice from the EPA has not changed. It is not necessary to change the wording of the Explanatory Report proposed by the EPA to reflect the timing of this advice, and the Committee does not support the proposed change of wording suggested by the EPA.

## **Recommendation**

The Committee recommends that a planning scheme amendment be prepared and approved to:

- 2. Apply the Design and Development Overlay Schedule 15 to 456 Paschendale Avenue, Merbein West as exhibited subject to the changes shown in the Committee preferred version in Appendix D of this Report.**

## 3 13 Jenner Street

### 3.1 Site context

This Chapter provides a high level overview of the site context, taking into consideration planning context, historic use and development of the site, physical characteristics and background information. The Committee has taken these into consideration when assessing the suitability of planning provisions for the site.

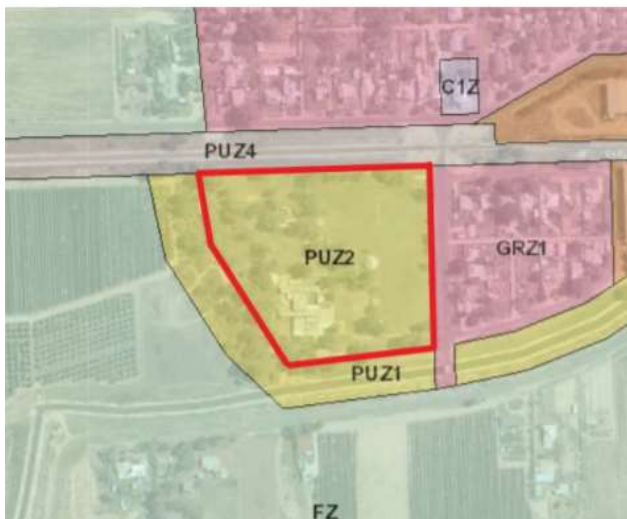
A number of background studies have been completed for the site, including:

- Jenner Street Planning Report, James Golsworthy Consulting, August 2020
- Preliminary Site Investigation (PSI)
- Vegetation Assessment, Pinion Advisory, December 2021.

#### Planning context

Figure 5 shows the current zoning of the site and surrounding area.

Figure 5 13 Jenner Street - current zoning



#### History of the site

The site was used as a primary school from its opening in 1911 until closure in 2012. Following establishment of the Merbein P-12 College in 2010 the Merbein Primary School located at Jenner Street closed in 2012 and was declared surplus on 2 June 2015.

#### Interface with surrounds and access

The site is bound by a railway reserve to the north (Public Use Zone 4 – Transport - PUZ4) and Game Street to the north of the railway reserve and a channel reserve to the south and west (PUZ1). Channel Road is located to the south of the channel reserve. The land to the west and south is zoned and used for farming purposes.

The site has an eastern boundary of approximately 180 metres to Jenner Street. The east side of Jenner Street contains residential area with approximately 15 houses. This separates the site from industrial land further to the east.

The site is serviced with a sealed road and rail crossing linking it to the rest of the town.

## Water infrastructure

Lower Murray Water submitted:

- LMW has infrastructure located within designated Crown Land Reserves and is to be protected from encroachment.
- Public access road reserves to be designated across LMW Channel Reserve CA74C Sec and Railway Reserve CA6 Sec 7.

In response to a Committee direction, DTF clarified with Lower Murray Water that it can access the Channel Reserve on CA74C at the southern end of Jenner Street and is not impeded by the subject site and Lower Murray Water does not need access to the subject site. CA6 Sec 7 is the railway reserve land and is not accessed by Lower Murray Water.

## Contamination

The Planning Report stated a PSI had been undertaken for the site to consider the impacts on the environment, amenity and human health. The PSI had been considered by EPA who considered there was no need to undertake an environmental audit or apply an EAO to the site.

## Vegetation and habitat

The Vegetation Assessment concluded that the vegetation at 13 Jenner Street Merbein consists of planted trees and shrubs, including some which are native to Victoria. The vegetation provides some habitat value to native birds and limited to no habitat values to ground dwelling native fauna. The Vegetation Assessment concluded that as the vegetation was planted it is not protected by Clause 52.17 (Native Vegetation) of the Planning Scheme, nor is it protected under any other legislation.

## 3.2 Issues with the proposed changes

### (i) What zone is suitable?

#### Submissions

DTF submitted the land should be rezoned to GRZ recognising:

- local planning policy identifies the future of the land for urban and residential use
- the land is within the Merbein Urban Growth Boundary in the Township Structure Plan at Clause 21.10-5 (Merbein) of the Planning Scheme (see Figure 6)
- land designated for rural living is outside of the Urban Growth Boundary
- it abuts GRZ land and is separated from farming land by existing channel and railway reserves
- the land is not in a rural setting or associated with agriculture in any way
- it is well serviced by road, water and other residential infrastructure
- the school was already closed when Council adopted the Housing Strategy in 2013.

DTF submitted that guidance in Planning Practice Note 37 states that “*rural residential development is inappropriate on land that is suitable and required for present or future residential use at usual urban densities*”. It considered that:

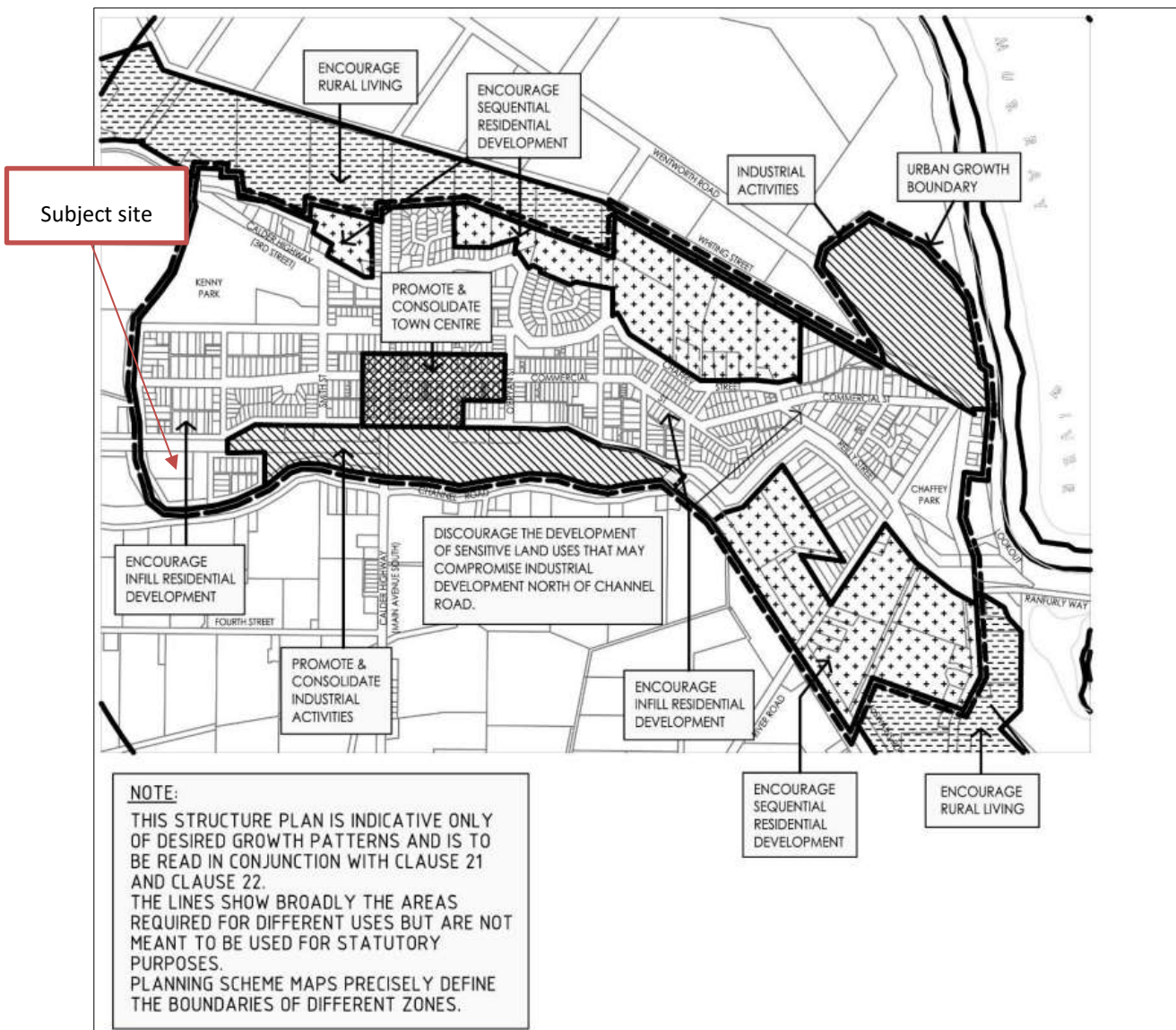
- residential development on the site at an appropriate density sympathetic to its context could realise 20 lots and would not result in significant skewing of the land supply for Merbein
- zoning the land RLZ would impede long term growth of the urban area that is well serviced with a full suite of reticulated services available.

DTF submitted that recent increases in housing demand in the region, including Merbein, due to the COVID-19 pandemic and other changes in demand for regional living could not have been envisaged when the Housing Strategy was adopted in 2013. It considered the additional housing would support the existing services in town and contribute to their ongoing viability.

With reference to Planning Practice Note 42 (Applying the Rural Zones), DTF considered the RLZ inappropriate for the site, stating:

... the RLZ zone provides for residential use in a rural environment. It is designed to cater for lots in a rural setting that are large enough to accommodate a dwelling and a farming use. The farming use is likely to be carried on for reasons other than the need to provide a significant source of household income.

**Figure 6 Merbein Township Structure Plan**



Source: Clause 21.10-5 (Merbein), Mildura Planning Scheme

Council objected to rezoning the land to GRZ and suggested RLZ was a more appropriate zone.

Council considered rezoning to GRZ did not support the following State and Local Planning Policies:

- Clause 16.01-1S (Housing supply) seeking to facilitate well located, integrated and diverse housing that meets the community needs

- Clause 16.01-3S (Rural residential development) seeking to identify land suitable for rural residential development
- Clause 21.04-2 (Urban residential land supply and growth areas) identifying the Main Urban Area of Mildura as the growth areas for urban residential development:
  - given the amount of land currently zoned for residential development in Mildura, Irymple, Merbein and Red Cliffs, there is no need for short term rezoning of land to facilitate urban residential development.
- Clause 21.04-5 (Rural residential and low density development) seeking to accommodate the planned provision of future rural residential opportunities in appropriate locations, including:
  - encouraging rural living development around Merbein, as identified in the Housing Strategy, to provide a greater choice of living options and rural living opportunities close to the Main Urban Area.
- Clause 21.10-5 (Merbein) including local planning guidance and strategies such as the Township Structure Plan (see Figure 6) and:
  - diversifying the housing market in Merbein through the introduction of the RLZ
  - in the longer term, supporting the growth of Merbein’s urban area to the south of Channel Road, when existing zoned land has been developed.

Council submitted that residential development in Merbein is modest, ranging from 5 to 11 dwellings each year over the past 10 years and disagreed with the claim that demand has increased.

Council considered rezoning the land to GRZ was not strategically justified on the basis:

- it would expand the urban residential land in an area surrounded by a railway and farming zoned land, causing a land use conflict and adding more land in close proximity an existing industrial development
- the Housing Strategy encourages rural living options for Merbein while conventional residential land is considered sufficient
- the site contains significant native vegetation including large trees that will be less prone to destruction under a rural zone
- the Township Structure Plan marks infill residential development for the north of Game Street.

Council considered RLZ more appropriate as it would allow private ownership and maintenance of an unused site, acting as a buffer between the existing GRZ and FZ.

In its original submission, Council submitted that the western portion of the site should be zoned FZ. This part of their submission was withdrawn following clarification from DTF that the PUZ1 land was not to be sold or rezoned.

### **Discussion**

DTF and Council agreed that the future of the site was residential, but had a different view on whether planning policy supported general residential urban growth at the site, or rural living style development.

The Committee has considered the proposal with regard to site conditions, policy and the purposes of the zones, in accordance with in *A Practitioner’s Guide to Victorian Planning Schemes*.

The Committee has considered the specific purposes of the GRZ and RLZ (see Table 7).

**Table 7 Purposes of the General Residential Zone and Rural Living Zone**

General Residential Zone	Rural Living Zone
<ul style="list-style-type: none"><li>- To encourage development that respects the neighbourhood character of the area.</li><li>- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.</li><li>- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.</li></ul>	<ul style="list-style-type: none"><li>- To provide for residential use in a rural environment.</li><li>- To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.</li><li>- To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.</li><li>- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.</li></ul>

As discussed in Chapter 2.2, there is a demand for housing in and around Merbein and policy directs growth into the township to strengthen its identity and role as a service centre.

The Committee agrees with DTF that rezoning the land to GRZ is supported by policy which seeks to:

- direct housing to established areas, including underutilised land
- encourages higher density housing development on sites that are well-located in relation to jobs, services and public transport
- supports opportunities for a range of income groups to choose housing in well serviced locations.

Clause 21.04-2 (Urban residential land supply and growth areas) identifies that the majority of growth for Mildura will be in the identified Main Urban Area (Mildura) and associated low density settlements, including a strategy for Merbein to:

Recognise the relationship between Merbein and the Main Urban Area and its role as both a satellite urban township and a service centre for the local community

While Clause 21.04-2 states no short term rezoning of land is required due to the amount of land currently zoned for residential development in Merbein, it is evident that housing demand has been relatively consistent and residential subdivision is actively underway in the town.

The Township Structure Plan does not specifically identify the site, however the school was already closed when Council adopted the Housing Strategy in 2013 and it is clear that an urban future was envisaged for the site.

The Committee does not consider the land suitable for rural residential development. Planning policy does not encourage rural residential development within the township of Merbein, and:

- Clause 16.01-3S (Rural residential development) only supports rural residential development in areas where it is located close to town and urban centres but not in areas required for fully serviced development
- Clause 21.04-5 (Merbein) supports rural residential development around Merbein, and in accordance with the Housing Strategy.

The site is on the fringe of the Merbein township, but is within the designated Urban Growth Boundary, within close proximity to the town centre and well serviced. The Committee acknowledges the site seems somewhat remote from the urban area of the town due to its location on the south of the train line, however there is good access to the site with an existing

railway crossing. The site has GRZ land on two sides, including an area designated for ‘encouraging infill development’. No land within the Urban Growth Boundary is zoned RLZ.

The Committee agrees with DTF that at approximately 3.68 hectares, the land is not of a scale that would unreasonably disrupt the development pattern of the town.

While there are large trees on the site, the Vegetation Assessment does not identify the vegetation as significant. Vegetation on the site would be taken into considering during a planning permit application process for subdivision in the GRZ.

With regard to the guidance on choosing an appropriate land use zone in *A Practitioner’s Guide to Victorian Planning Schemes*, the Committee concludes the site should be rezoned to GRZ.

### **Recommendation**

The Committee recommends that a planning scheme amendment be prepared and approved to:

- 3. Rezone 13 Jenner Street, Merbein from Public Use Zone 2 to the General Residential Zone.**

#### **(ii) Environmental Audit Overlay**

##### **Submissions**

EPA submitted its original written advice (19 May 2020) to DTF was that there was an element of unknown risk on the site resulting from:

- the two ‘potential water tanks’ that were observed on the site
- soil analysis beneath the remaining concrete slabs was not conducted.

EPA provided the same advice as it did for Paschendale Road and requested the same change to the Explanatory Report, as detailed in Chapter 2.2.

##### **Discussion**

Consistent with the discussion in relation to Paschendale Road:

- the need for any further assessment of potential contamination was not raised in submissions, including Council, and the Committee accepts the EAO is not proposed to be applied
- the Committee does not accept EPA’s proposed change of wording in the Explanatory Report regarding the timing of its advice.



## Appendix A About the Government Land Standing Advisory Committee

The Government Land Planning Service is a 2015 initiative to deliver changes to planning provisions or correct planning scheme anomalies for land owned by the Victorian Government. The Government Land Standing Advisory Committee (the Committee) was initially appointed under Part 7, section 151 of the *Planning and Environment Act 1987* in July 2015.

A revised Terms of Reference for the Committee was approved in April 2018.

The Committee, as of 21 December 2021 consists of:

- Lead Chair: Lester Townsend
- Chairs: Tim Hellsten and Lisa Kendal
- Deputy Chairs: Michael Ballock, Elissa Bell, Mandy Elliott, Trevor McCullough and Annabel Paul
- Members: Brodie Blades, Debra Butcher, Geoffrey Carruthers, Sally Conway, Shannon Davies, Noelene Duff, Meredith Gibbs, Jonathan Halaliku, Jonathon Halaliku, John Hartigan, Elizabeth McIntosh, Gabby McMillan, Rachael O’Neill, Cazz Redding, John Roney, Lynn Sweeney, Adam Terrill and Jessica Tulloch.

The Committee is assisted by Chris Brennan, Project Officer in Planning Panels Victoria.

The Committee’s Terms of Reference state that the purpose of the Advisory Committee is to:

- a. advise the Minister for Planning on the suitability of new changes to planning provisions for land owned, proposed to be acquired or to land required to facilitate the delivery of priority projects by the Victorian Government, and
- b. provide a timely, transparent and consultative process to facilitate proposed changes to land owned or proposed to be acquired; or to support delivery of priority projects by the Victorian Government.

The Advisory Committee must produce a written report for the Minister for Planning providing:

- a. an assessment of the appropriateness of any changes of planning provisions in the context of the relevant planning scheme and State and Local Planning Policy Frameworks,
- b. consideration of whether the proposed planning provisions make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes,
- c. an assessment of whether planning scheme amendments could be prepared and adopted for each proposal, including the recommended planning provisions,
- d. an assessment of submissions to the Advisory Committee,
- e. any other relevant matters raised during the hearing(s),
- f. a list of persons who made submissions considered by the Advisory Committee,
- g. a list of persons consulted or heard,
- h. endorsement by the Chair or the Deputy Chair.

## Appendix B List of Submitters

No.	Submitter
1	Lower Murray Water
2	Environment Protection Authority
3	Dale Bennett
4	Mildura Rural City Council

---

## Appendix C Document list

No.	Date	Description	Presented by
<b>2021</b>			
1	24 Nov	Committee Directions	Planning Panels Victoria (PPV)
2	29 Nov	Committee Directions with updated Direction 6	“
3	6 Dec	Letter in response to Committee Direction 8, enclosing: a) Mildura C104mild Explanatory Report	Mildura Rural City Council (Council)
4	10 Dec	Signed written statement of the mediation of issues between Department of Treasury and Finance and Council	Department of Treasury and Finance (DTF)
5	13 Dec	Vegetation Assessment – 13 Jenner Street, Merbein	“
6	13 Dec	Vegetation Assessment – 456 Paschendale Avenue, Merbein West	“
7	13 Dec	Response to Committee Directions	“
8	13 Dec	Hearing submission a) Appendices	“
9	13 Dec	Copy of email correspondence with Lower Murray Water	“
10	13 Dec	Email in response to Committee Direction 6	Council
11	13 Dec	Minutes – Ordinary Meeting of Council – 27 January 2021	“
12	13 Dec	Agenda – Supplementary Ordinary Council Meeting – 27 January 2021	“
13	13 Dec	Mildura Older Irrigation Area Incorporated Document May 2020	“
14	13 Dec	Hearing submission	“
15	14 Dec	Image from LASSI depicting cadastre for 13 Jenner Street	DTF
16	14 Dec	Image from VicPlan showing zoning and subdivisions of Merbein	“
17	14 Dec	Folder of photos and accompanying legend for 13 Jenner St	“
18	14 Dec	Folder of photos and accompanying legend for 456 Paschendale Avenue	“
19	15 Dec	Committee letter regarding site visual assessment	PPV

## Appendix D Committee preferred version of DDO15

DD/MM/YYYY<sup>C121</sup>

## SCHEDULE 15 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO15**.

### [456 PASCHENDALE AVENUE, MERBEIN WEST \(CA19A SECTION F PARISH OF MERBEIN\)](#)

#### 1.0 Design objectives

DD/MM/YYYY

- To identify and manage bushfire risk through the implementation of appropriate bushfire protection measures.
- To strengthen the resilience of residents from bushfire within areas of bushfire risk.

#### 2.0 Buildings and works

DD/MM/YYYY

A permit is not required for emergency works, minor works, repairs and routine maintenance to existing buildings and works.

[The following buildings and works requirements apply to an application to construct a building or construct or carry out works:](#)

- [Development must be setback at least 16 metres from the 0.66 hectares of woodland areas at the northern extent of the land.](#)

#### 3.0 Subdivision

DD/MM/YYYY

None specified.

#### 4.0 Signs

DD/MM/YYYY

None specified.

#### 5.0 Application requirements

DD/MM/YYYY

[None specified.](#)

~~The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:~~

- ~~▪ [Development must be setback at least 16 metres from the 0.66 hectares of woodland areas at the northern extent of the land as identified in the Bushfire Assessment – 456 Paschendale Avenue, Merbein West – Prepared for the Victorian Department of Treasury and Finance – 8 May 2020 \(v1.0\)](#)~~

#### 6.0 Decision guidelines

DD/MM/YYYY

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- ~~▪ [Any relevant Emergency Management Plans or technical reports relating to bushfire hazard at the site or within its vicinity.](#)~~
- Whether the application responds appropriately to the [Bushfire Assessment – 456 Paschendale Avenue, Merbein West – Prepared for the Victorian Department of Treasury and Finance - 8 May 2020 \(v1.0\)](#) ~~bushfire assessment provided under this schedule.~~

## ~~7.0~~ ~~Background documents~~

~~DD/MM/YYYY~~ ~~Bushfire Assessment—436 Paschendale Avenue, Merbein West—Prepared for the Victorian Department of Treasure and Finance—8 May 2020 (v1.0)~~