

Planning and Environment Act 1987

Panel Report

Moira Planning Scheme Amendment C88

Permit Application 5/2017/204

2 – 6 Colgan Street, Cobram

3 June 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Moirra Planning Scheme Amendment C88

Permit application 5/2017/204

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Tim Hellsten, Chair



Con Tsotsoros, Member

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Glossary and abbreviations

ACM	Asbestos containing material
Act	<i>Planning and Environment Act 1987</i>
C1Z	Commercial 1 Zone
C2Z	Commercial 2 Zone
Cobram Strategy Plan	Cobram 2025: Cobram Strategy Plan
Council	Moirā Shire Council
DDS	Discount Department Store
DELWP	Department of Environment, Land, Water and Planning
EPA	Environment Protection Authority
LPPF	Local Planning Policy Framework
MTA	Main Trade Area
permit	Planning Permit 5/2017/204
Planning Scheme	Moirā Planning Scheme
PPF	Planning Policy Framework
Proponent	Tipalea Partners Pty Ltd
RDZ1	Road Zone Category 1
Retail Policy Framework	Retail Policy Framework for Cobram and Yarrawonga: Options Report, July 2017
Strategy Review	Major Towns' Strategy Plan Review (Yarrawonga, Cobram, Numurka and Nathalia), June 2018
TTA	Total Trade Area
Urban Design Framework	<i>Cobram Urban Design Framework</i> , David Lock Associates, July 2005
VCAT	Victorian and Civil Administrative Tribunal

Overview

Amendment/permit summary	
The Amendment	Moirā Planning Scheme Amendment C88
Permit	Permit Application 5/2017/204
Common name	2 – 6 Colgan Street, Cobram
Brief description	Rezoning of land from Commercial 2 Zone to Commercial 1 Zone Planning Permit No 5/2017/204 for development of buildings and works for the construction of two supermarkets, a medical centre and retail premises, variation of an easement, removal of native vegetation and creation of accesses to a Road Zone Category 1
Subject land	2 – 6 Colgan Street, Cobram
The Proponent	Tipalea Pty Ltd
Planning Authority	Moirā Shire Council
Authorisation	27 September 2018
Exhibition	25 October to 6 December 2018
Submissions	Number of Submissions: 92, of which four were opposed
Panel process	
The Panel	Tim Hellsten (Chair) and Con Tsotsoros
Directions Hearing	Cobram Civic Centre, 30 January 2018
Panel Hearing	1 Spring Street, Melbourne, 19, 21, 22 and 26 March 2019
Site inspections	Unaccompanied, 29 January and 30 January 2019 (Chair only) and 8 April 2019 (both members)
Appearances	<p>Moirā Shire Council represented by Ian Pridgeon of Russell Kennedy, calling evidence from:</p> <ul style="list-style-type: none"> - Warwick Horsfall of Habitat Planning on planning - Tony Irish of SED Regional Advisory on economics <p>Tipalea Pty Ltd represented by Susan Brennan SC instructed by Jane Sharp of Rigby Cooke, who called expert evidence from:</p> <ul style="list-style-type: none"> - Rob Milner of 10CG on planning - Gavin Duane of Location IQ on economics - Stuart McGurn of Urbis on planning <p>Now Make Pty Ltd represented by Mark Bartley of HWL Ebsworth with Mr Watson of Burgess Rawson</p>
Citation	Moirā Planning Scheme PSA C88 [2019] PPV
Date of this Report	3 June 2019

Executive summary

Cobram, located on the Murray River and approximately 70 kilometres north of Shepparton, is, with Yarrawonga, one of the two major towns supporting Moira Shire's population of approximately 29,000. Cobram is an important economic hub for the Goulburn Valley agricultural region and a service and retail hub to a rural community that extends into New South Wales to include the towns of Barooga, Finley, Tocumwal and Berrigan.

With the Shire's population expected to grow to 32,000 by 2031, Council has identified opportunities to meet anticipated growth in retail floor space needs in Cobram and Yarrawonga through the development and adoption of a Retail Policy Framework and the Major Towns' Strategy Plan Review in 2017 and 2018.

Tipalea Pty Ltd (the Proponent) applied for a combined amendment and permit application through section 96A of the *Planning and Environment Act 1987*. Amendment C88 to the Moira Planning Scheme (the Amendment) proposes to rezone 31,500 square metres of land at 2 – 6 Colgan Street, Cobram from the Commercial 2 Zone to the Commercial 1 Zone. Planning permit application 5/2017/204 seeks approval to construct a freestanding centre comprising 8,615 square metres of retail and commercial floor space including two supermarkets, medical centre and retail premises.

The Amendment and permit were exhibited from 25 October to 6 December 2018 and received 90 submissions. Most submissions supported the proposal because they sought, among other things, greater retail choice and convenience, tourism, employment opportunities and better competition within and beyond Cobram.

Key issues identified in the four opposing submissions were:

- lack of policy support
- impact on the Cobram activity centre
- inadequacy of recent retail strategy work
- lack of identified tenants
- traffic volumes and speed on the Murray Valley Highway
- impact on Park Court including loss of views to business signage from the highway and other roads and the need for road construction.

Council, the Proponent and their economic witnesses agreed that Cobram's primary, secondary and tertiary trade areas may have demand by 2031 to support the proposed centre. The key issues were whether there was sufficient strategic support for the proposal, whether the subject land was in or out of the Cobram activity centre and its retail core, the economic impact of the proposed centre, and how the centre would integrate with the existing Cobram retail core.

After reviewing all written submissions, observations from site visits, evidence and other material presented during the Hearing, the Panel considers that the Amendment and permit are premature. More targeted planning policy and strategic direction is needed in the Moira Planning Scheme for a centre of this scale and nature. Moira's population growth by 2031 presents an opportunity for Council to revisit Cobram's existing out-of-date policies and strategies and to review how the town centre can operate cohesively for the benefit of its broader community.

Approving the Amendment and permit at this stage would result in community disbenefit for several reasons.

Local planning policy encourages specialty retail to be consolidated within Cobram's existing retail core. The Panel acknowledges that it may be impractical to locate the larger proposed supermarket in the existing retail core and a more flexible approach to this policy may need to be sought. However, there is little reason to depart from existing policy to support retail floor space beyond a full line supermarket because all other parts of the proposal can be accommodated on the considerable underused and vacant land in Cobram's existing retail core.

The Panel finds that there is insufficient strategic justification in the Moira Planning Scheme to support rezoning 31,500 square metres to the Commercial 1 Zone to accommodate a major freestanding retail development of this scale outside the existing retail core.

Of particular concern is that the proposed centre represents the majority of Cobram's Total Trade Area retail floor space needs for about a decade. The 17 per cent impact on the Cobram activity centre will unreasonably impact the existing retail core's long-term functionality and sustainability.

The subject land is located approximately 285 metres from the western edge of the town centre retail core and the existing urban structure in the area west of the former railway corridor was intended for an industrial area. The existing retail core has buildings hard-edged to footpaths to activate public spaces. The permit proposes a freestanding building, mostly with internal access to shops, set back by an expansive car park. The proposed centre presents an approximately 82-metre long and 8-metre tall blank concrete wall at its eastern elevation along Park Court.

More current and detailed strategic direction on Cobram's future town centre structure in the Moira Planning Scheme would have provided an assessment framework to determine the appropriateness of the proposal's response. While Council has commenced strategic work to understand how the town centre should accommodate further supermarkets, it is yet to be implemented through the Moira Planning Scheme. When assessed against its own merits, the Panel finds that the proposal's design response will detrimentally affect the ability to connect the proposed centre with the existing retail core.

Council should continue its strategic work and determine the future urban structure of the Cobram activity centre so that it can understand how the centre can function cohesively. Without this understanding, Cobram will have two independent operating retail cores with longer-term structural issues. This work would inform future Planning Scheme retail policies which in turn would establish an appropriate framework for assessing a planning permit application for a major retail proposal.

While the proposal may generate net economic benefits, these may be outweighed by the negative economic, social and community impacts resulting from a new disjointed major retail core (west) and a considerably less vibrant retail core (east) for a significant time.

The Panel concludes that the Amendment should be abandoned, and the planning permit should not be granted.

Should the planning authority not support the Panel's recommendations and determine to support the Amendment, and issue of a permit, a suggested final form of the permit is included in Appendix C.

Recommendations

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

- 1. That Moira Planning Scheme Amendment C88 be abandoned.**
- 2. That planning permit 5/2017/204 for the development of buildings and works for the construction of two supermarkets, a medical centre and retail premises, variation of an easement, removal of native vegetation and creation of accesses to a Road Zone Category 1 not be issued.**

1 Introduction

1.1 The Amendment

Amendment C88 to the Moira Planning Scheme (the Amendment) proposes to rezone 2 – 6 Colgan Street, Cobram (subject land) from Commercial Zone 2 (CZ2) to Commercial Zone 1 (CZ1) to facilitate the commercial development of the site for two supermarkets and retail premises through the approval of a planning permit.

The existing CZ2 prohibits a supermarket larger than 1,800 square metres outside metropolitan Melbourne.

1.2 Planning permit application

Planning permit application 5/2017/204 was lodged under section 96A of the *Planning and Environment Act 1987* and exhibited with the Amendment. It seeks approval for buildings and works to construct a freestanding retail centre, vary an easement, remove native vegetation and to access Road Zone Category 1.

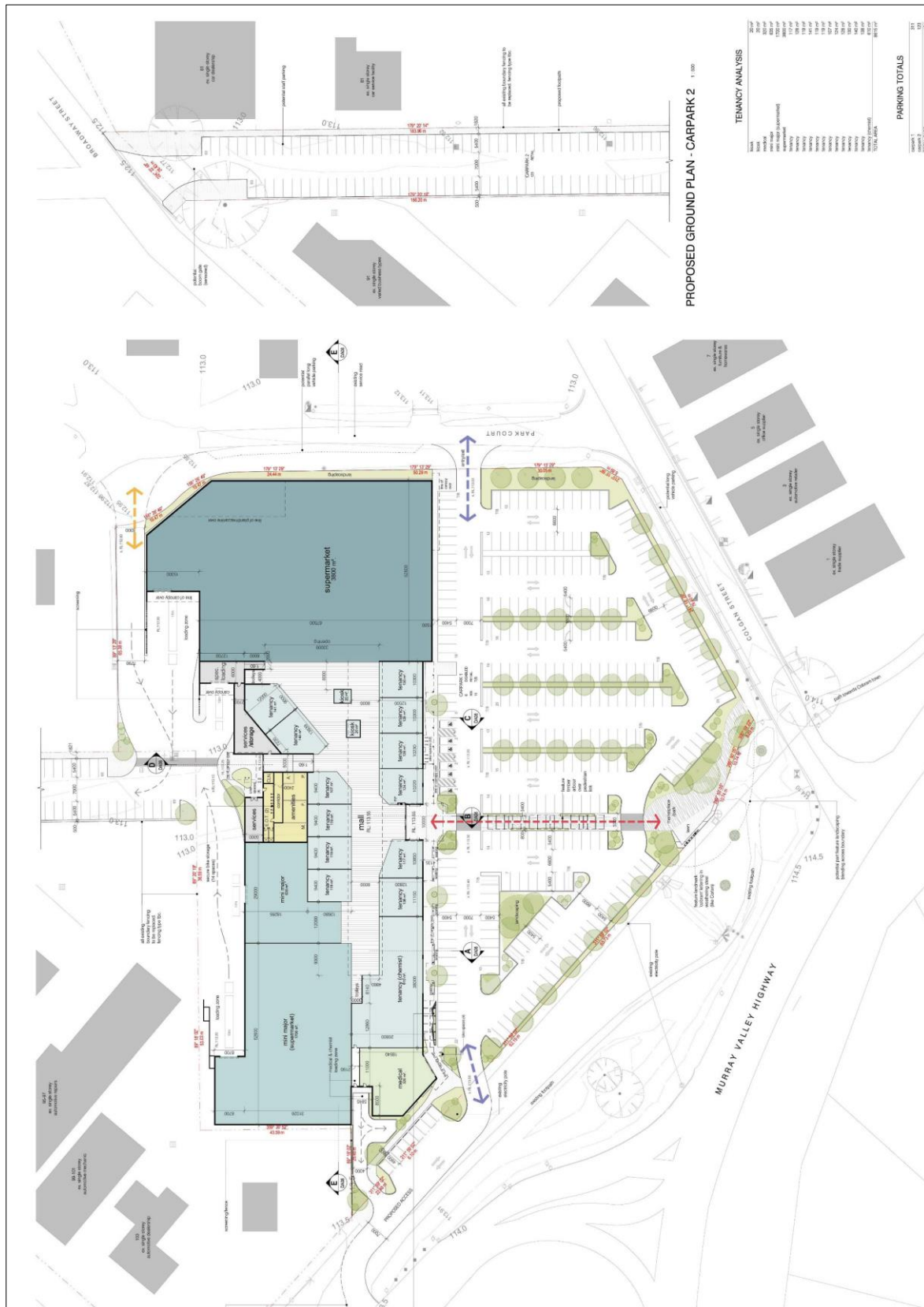
The proposed centre, as shown in Figure 2, comprises 8,615 square metres of floor space including:

- a full line supermarket of 3,800 square metres
- a second supermarket of 1,700 square metres
- a 'mini major' area of 635 square metres (referred to as a discount department store or DDS in this report)
- a medical centre of 320 square metres
- 12 retail tenancies totalling 2,160 square metres, ranging from 107 to 141 square metres
- two 20 square metre kiosks
- mall area, service and amenities areas
- three loading areas to the northern side of the building and smaller loading area for the medical rooms and chemist off the Cobram – Koonoomoo Road.

The proposal seeks to:

- provide 434 car parking spaces distributed across two parking areas to the south and north of the proposed building
- construct two vehicular access points (one for limited loading access only) off the Cobram - Koonoomoo Road and Murray Valley Highway road reserve (these two access points require a planning permit), two vehicular access points off Park Court to the southern and northern carparks, and an access off Broadway Street (also requiring a planning permit)
- remove seven River Red Gums (permit required)
- remove and realign a portion of the stormwater drain and easement running under the proposed site buildings (permit required) and provide stormwater retention and treatment areas in the southern carpark.

Figure 1 The proposal



- provide landscaping comprising approximately 73 native trees of various species along the site's major road frontages and within the southern carpark and retention of an existing tree, construction of an arbour pedestrian structure linking the southern entry to a 'marketplace/park' grassed area which will also potentially include a Cobram welcome landmark feature.

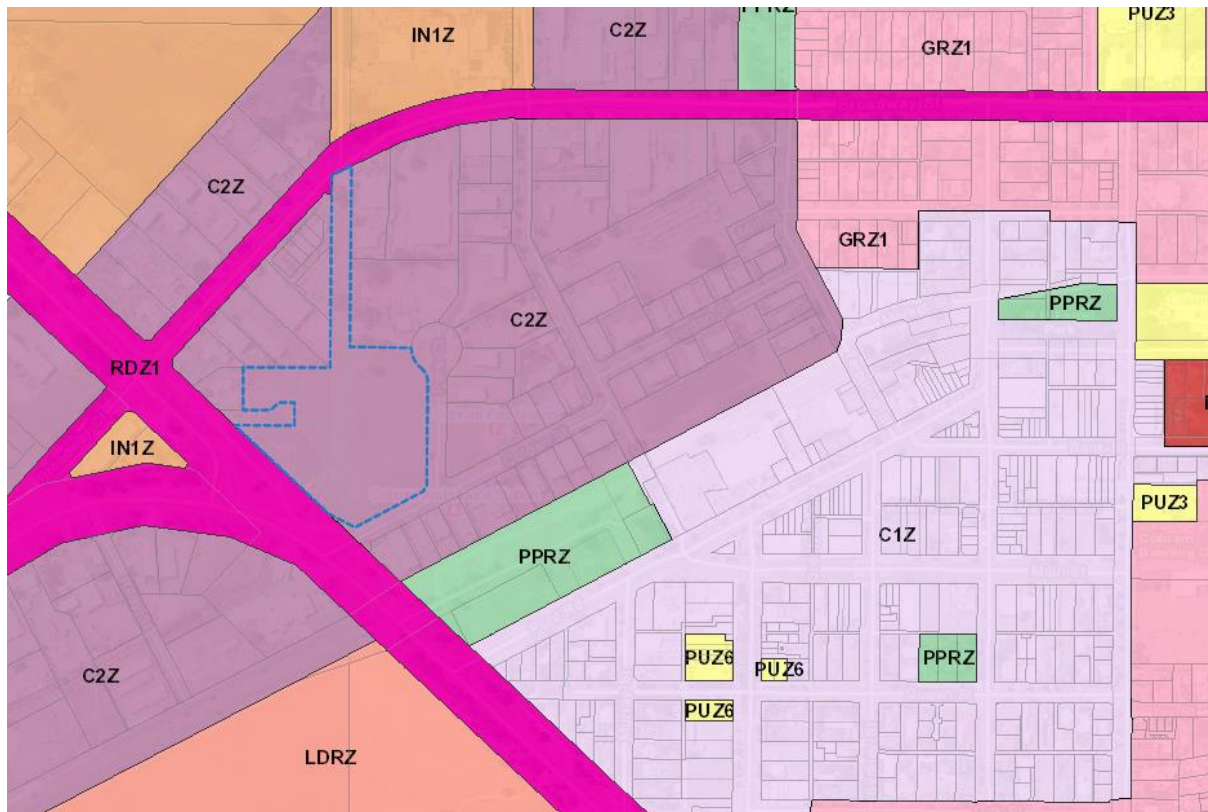
The permit application was supported by:

- application plans (drawing numbers DA01 to DA09, 28 September 2017) prepared by i2C
- landscape plan (drawing NoTP01, September 2017) prepared by John Patrick Landscape architects
- planning report (August 2018) prepared by Debra Butcher Consulting (which also addresses the rezoning proposal)
- planning and aboriginal heritage advice letter (10 September 2018) from Clarkeology
- Retail Market Potential Assessment (September 2017) prepared by Location IQ
- Ecological Features and Constraints report (22 September 2017) prepared by Paul Kelly and Associates Ecological Services
- Stormwater Drainage Strategy (October 2017) prepared by Chris Smith and Associates
- Traffic Engineering Assessment (October 2017) prepared by Traffix Group
- Preliminary Environmental Site Assessment (March 2016) prepared by Greencap.

The building is proposed to have a typical height of approximately 8 metres and runs on an east-west alignment across the subject land. It is substantially set back from the Colgan Street frontage behind the primary car park. The building is proposed to be clad in precast concrete panels (including panels with painted and textured finishes), feature sections of standing seam metal cladding, grey blockwork and red brickwork and a limited use of timber battens and louvres details around entry areas. The roof structure has a slope of between 3 and 5 per cent and is proposed to be clad in corrugated metal sheeting. The proposed building has extensive lengths of solid walls across the eastern and western elevations. The northern elevation features openings only at the pedestrian entry point. The southern elevation includes more extensive areas of glazing associated with retail tenancies and the main pedestrian entry.

1.3 Subject land

The subject land (Figure 2) is located within an established industrial-commercial precinct west of the C1Z extent of Cobram activity centre's retail core. It is approximately 3.15 hectares in area and comprises eleven land parcels (Lots 1 – 3 LP22274, Lots 2 – 5 LP58039, Lot 1 TP434807S, CA 40D TP312239L, CA40E TP313040F and CA40G TP61859Y).

Figure 2 Subject land

Source: Amendment C88 Explanatory Report

The land has frontages to:

- Cobram – Koonoomoo Road and Murray Valley Highway, of approximately 165 metres. A wide grassed reserve extends between the site boundary and sealed road edge and contains a gravel pedestrian path (Figure 3).
- Colgan Street, of approximately 80 metres. Colgan Street (Figure 4) is constructed with parallel parking and kerb and channel. There is no footpath on either side of Colgan Street.
- Park Court, of approximately 144 metres. Park Court (Figure 5) is constructed with a gravel surface with no kerb and channel, drainage or footpath and provides access to five other businesses.
- Broadway Street, of approximately 28 metres. Broadway Street is constructed with kerb and channel.

The site is generally flat (other than a drainage culvert) comprises areas of exotic grass and weeds, a gravel hard stand area and seven mature, remnant River Red Gums in the northern portion of the site.

The site contains no structures. Agricultural machinery is currently on display towards the Murray Valley Highway frontage, reflecting the site's previous use.

A 900 millimetre diameter stormwater pipe traverses the site from north to south and is contained within an easement in favour of Council.

Figure 3 Murray Valley Highway frontage



Figure 4 Colgan Street frontage



Figure 5 Park Court frontage



The site is adjoined or adjacent to a range of industrial and commercial activities including automotive parts and accessories, farm supply sales, welding, locksmiths, garage and shed sales and manufacture, electrician, sand and gravel supplier, kitchen and cabinet manufacture and car dealerships.

The subject land is zoned Commercial 2 as is the adjoining industrial-commercial precinct as shown in Figure 1. The retail core of the Cobram activity centre (C1Z) is located approximately

285 metres walking distance of the site¹ (measured). The Parking Overlay (Schedule 2 - Commercial and Mixed Use Zones Cobram) applies to the subject land.

1.4 Background

(i) Cobram and its town centre

Cobram, located on the Murray River and approximately 70 kilometres north of Shepparton, is within the Moira Shire, of which Cobram and Yarrawonga are the two major towns supporting a municipal population of approximately 29,000. The Shire's population is expected to grow to 32,000 by 2031.² Cobram has a population of 6,014.³ Both Cobram and Yarrawonga serve a wider rural community that extends into New South Wales, including the towns of Barooga, Finley, Tocumwal and Berrigan. Cobram is the administrative centre of the Shire with the municipal offices, VicRoads regional office and a range of banking services present. Agriculture plays a significant part in the Shire's economy as the largest employment sector followed by manufacturing. Cobram's largest employer, Murray Goulburn Co-operative, has its processing plant located in Broadway Street, north of the subject land.

For the purposes of this Report, the Panel has used the following terms to distinguish the Cobram activity centre from its retail core:

- Town centre – defined by the extent of the C1Z and the portion of C2Z west of the Murray Valley Highway/Koonoomoo Cobram Road and south of Broadway Street
- Retail core – C1Z land generally within an area defined by Punt Road, Williams Street, Queen Street and Murray Street.

These components of the town centre are further discussed in Chapter 3.

In terms of retail and commercial land use activity, the Cobram activity centre comprises a traditional retail core area adjoined by a C2Z precinct to the north which contains a range of commercial-industrial uses. It functionally forms part of the broader town centre by way of its land uses (in its southern portion), and the roads linking the core area with the arterial road network. This is a land use and town centre structure characteristic to many regional centres.

The retail core is focused along Punt Road and generally extends east to High Street, Queen Street to the south and Station Street to the west, Bank and Main Streets to the east although the C1Z extends well beyond this area, transitioning from Queen Street to residential land use activity to the south-east.

The town centre retail core is visually coherent. It has, in the main, strong edges and built form elements. It comprises mostly modern commercial buildings which are built to the street frontage and of single storey scale. The main commercial streets feature footpaths, street furniture, parallel or centre of the road parking and street tree planting. Federation Park performs a key landmark entry element at the western end of Punt Road. There are many underutilised and vacant lots on the periphery of the town centre (Bank Street, the eastern

¹ As measured from the south - eastern corner of the site at the intersection of Park Court and Colgan Street, westwards along Colgan Street to Dillon Street and south to the north – western corner of the Woolworths supermarket carpark, using VicPlan.

² Victoria in Future 2016 population and household projections to 2051

³ ABS 2016 census

end of Punt Road and Main Street) and pockets of vacant shops (High Street, Station Street and William Street). The Cobram Police Station, Bowling Club, HHL Farrel Park and the Cobram Civic centre and library are located to the eastern edge of C1Z.

The C2Z precinct north of the retail core on the other hand, comprises large, freestanding, concrete panel or steel clad shed style buildings, typically setback from the street behind off street carparking or landscaped areas (refer Figure 9 as an example).

The town centre contains an estimated 62,744 square metres of retail and commercial floor space of which 36,940 square metres is estimated as retail floor space.⁴ The retail core features a good mix of retail, professional and other services including:

- two supermarkets with large at grade carparks - Woolworths at 4,224 square metres located at the western edge of the retail core on Punt Road and a Ritchies Supa IGA of 1,500 square metres on the corner of Punt and Sydney Street
- a Target Country store of 1,257 square metres, located on the intersection of Punt Road and High Street
- a range of other brand retailers and food services, banking, financial and other professional offices including the Shire offices and VicRoads office.

1.5 Summary of issues raised in submissions and Panel's approach

The exhibition of the Amendment generated 90 submissions including two late submissions. Most of these submissions (all but four) supported the Amendment and more particularly the establishment of a supermarket on the basis that it would provide additional retail floor space to support population growth and tourism demands, encourage and retain spending in the town, reduce travelling to other centres, increase the diversity of retail offer and create competition and generate employment.

The four opposing submissions from Now Make Pty Ltd, Ritchies Supa IGA, Cobram Kitchens and Cabinets and Ms Edwards raised concerns about:

- lack of policy support
- impact of an out-of-centre retail development
- impact on the Cobram activity centre
- inadequacy of recent retail policy work
- lack of identified tenants
- traffic volumes and speed on the Murray Valley Highway
- impacts on Park Court including loss of views to business signage from the highway and other roads and the need for road construction
- other issues including lack of toilets and tourist information centre and inability to vote on the proposal.

Notice of the Amendment and permit was provided to the Environment Protection Authority (EPA), Country Fire Authority, Transport for Victoria, VicRoads, Powercor and Goulburn Valley Water following informal discussions with these authorities in the preparation of the Amendment and permit. These agencies did not object to the Amendment or permit and VicRoads, Powercor and Goulburn Valley Water identified permit conditions which have been

⁴ Retail Policy Framework for Cobram and Yarrawonga: Background Analysis, SED, February 2017.

directly transcribed into the draft permit. The EPA supported the Amendment but *recommended “that site remediation is undertaken to satisfy Council that the land is suitable for the intended purpose”*. This is discussed further at Chapter 5.

The Panel has assessed the Amendment 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 Amendment, 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 the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic issues
- Other issues
- The planning permit.

1.6 Terminology

There were various terms to describe the Cobram activity centre and its retail core in background reports, submissions, evidence and at the Hearing. The Moira Planning Scheme does not clearly define the extent of the Cobram activity centre and it applies different terminology interchangeably.

For simplicity, the Panel has used the following terms throughout the report, particularly to explore issues in Chapter 3:

- Cobram activity centre: The generic term applied in Victoria to describe similar centres
- Retail core: The retail and commercial area within the Cobram activity centre.

2 Planning context

2.1 Planning policy framework

Victorian planning objectives

Council submitted that the Amendment will assist in implementing State policy objectives set out in section 4 of the Act by assisting in the fair, orderly, economic and sustainable use of land and contribute to a continued pleasant, efficient and safe working, living and recreational environment for residents and for visitors to Cobram through:

- the development of a shopping centre including a full line supermarket, a second smaller supermarket, associated specialty stores and a medical centre which will ensure the retail needs of existing and future residents in Cobram can be met
- meeting the current shortfall in retail floor space that services the town as identified in the *Retail Policy Framework*
- the development of an underutilised prominent corner site, with frontage to the Murray Valley Highway and Colgan Street, and within the existing commercial area of Cobram as a 'gateway' to the town centre creating a significantly improved urban design outcome for the town entrance and bringing economic benefits.

Clause 11 (Settlement)

Council submitted that the Amendment supports Clause 11 by:

- anticipating and responding *"to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure"*
- *"providing for appropriately located supplies of residential, commercial, and industrial land across a region, sufficient to meet community needs in accordance with the relevant growth plan"* including consistency with the *Hume Regional Growth Plan* - Clause 11.01-1S (Settlement)
- facilitating growth and development in the regional cities of Shepparton, Wangaratta, Wodonga and in Benalla, consistent with the *Hume Regional Growth Plan* with Cobram is identified as a cross-border settlement with Barooga and a key urban settlement where growth in urban locations and lifestyle opportunities should be supported - Clause 11.01-1R (Settlement – Hume)
- ensuring a sufficient supply of land is available for commercial and retail development and to ensure such development is appropriately planned and that development occurs in an orderly manner - Clauses 11.02 (Managing Growth) and Clause 11.02-1S (Supply of urban land)
- encouraging *"the concentration of major retail, residential, commercial, administrative, entertainment and cultural development into activity centres that are highly accessible to the community"* and building up activity centres *"as a focus for high-quality development, activity and living by developing a network of activity centres that:*
 - *Comprises a range of centres that differ in size and function.*
 - *Is a focus for business, shopping, working, leisure and community facilities.*
 - *Is connected by transport.*

- *Maximises choices in serves, employment, and social interaction’ - Clause 11.03-1S (Activity Centres).*

Clause 12 (Native Vegetation Management)

Council submitted that the Amendment supports Clause 12 by:

- ensuring that the removal of native vegetation will not result in a net loss in biodiversity through offset arrangements - Clause 12.01 (Biodiversity) and Clause 12.01-2S (Native vegetation management).

Clause 15 (Urban Environment and Heritage)

Council submitted that the Amendment supports Clause 15 by:

- ensuring that the development is designed to a high standard in a manner which reflects its setting and surrounding landscape, creates a safe and easy to use environment, enhances the public realm and contributes to a sense of place - Clause 15.01-1S (Urban design) and Clause 15.01-2S (Building design)
- ensuring the siting, scale and appearance of development responds appropriately to the local character – Clause 15.01-5S (Neighbourhood character) and Clause 15.01-6S (Design for Rural Areas).

Clause 17 (Economic Development)

Council submitted that the Amendment supports Clause 17 by:

- encouraging development that meets the communities’ needs for retail, entertainment, office and other commercial services
- planning for adequate supply of commercial land in appropriate locations
- locating commercial facilities in existing or planned activity centres
- providing new convenience shopping facilities to meet the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres
- providing small scale shopping opportunities that meet the needs of local residents and workers in convenient locations - Clause 17.02-1S (Business)
- managing out-of-centre development by discouraging proposals for expansion of single use retail, commercial and recreational facilities outside activity centres, giving preference to locations in or on the border of an activity centre for expansion of single use retail and commercial facilities - Clause 17.02-2S (Out-of-centre development)
- ensuring that out-of-centre proposals are only considered where the proposed use or development is of net benefit to the community in the region served by the proposal or provides small scale shopping opportunities that meet the needs of local residents and works in convenient locations - Clause 17.02-2S (Out-of-centre development)
- Encouraging tourism by developing a range of well-designed and sited retail opportunities – Clause 17.04-1S (Facilitating tourism).

Clause 18 (Transport)

Council submitted that the Amendment supports Clause 18 by:

- integrating land use and transport to create a safe and sustainable transport system through the provision of a proposed pedestrian connection between the site and the

existing Woolworths supermarket along the northern side of Colgan Street and the eastern side of Dillon Street - Clause 18.01-1S (Land use and transport planning)

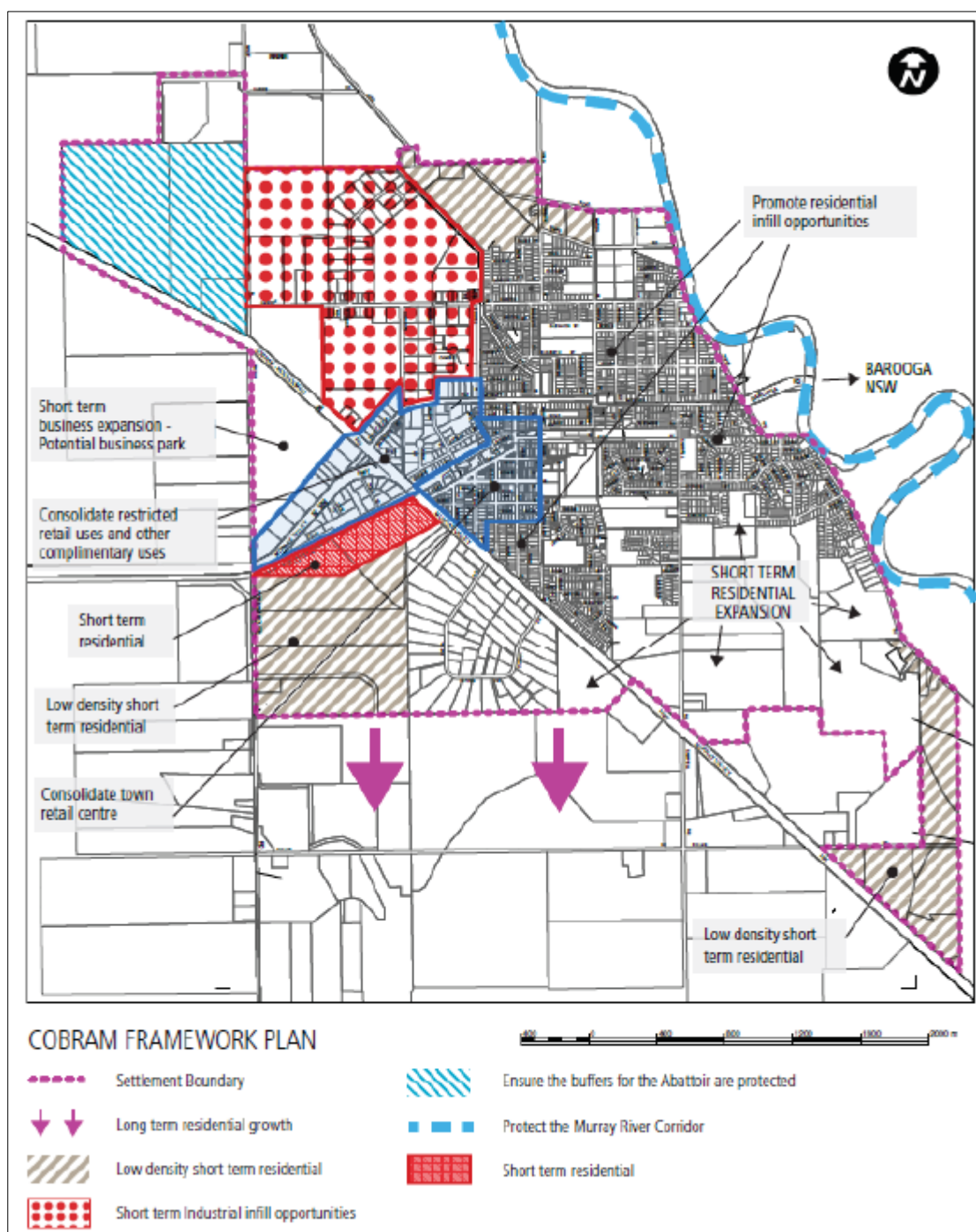
- encouraging the use of walking and cycling by creating environments that are safe and attractive through the development of high-quality pedestrian environments - Clause 18.02-1S (Sustainable personal transport).

Clause 21 (Municipal Strategic Statement)

Council submitted that the Amendment supports the Municipal Strategic Statement by:

- Clause 21.03 (Settlement), which supports the development of Cobram, identified as one of the Shire's four principal townships.
- Clause 21.03-2 (Orderly development of towns and settlements), which seeks to ensure that development in Cobram is consistent with adopted strategy plans and town framework plans including the Cobram 2025 Cobram Strategy Plan and Addendum 2008
- Clause 21.03-9 (Further Strategic Work), which identifies the need to review existing strategy plans for the four major towns – Cobram, Yarrawonga, Nathalia and Numurkah, and which has recently taken place but not yet introduced into the Moira Planning Scheme (refer Chapter 1.2(ii))
- Clause 21.04 (Environment and Heritage), through the application of permit conditions which aim to protect native vegetation and biodiversity and improve water management
- Clause 21.06 (Economic Development), by supporting tourism growth and facilitating retail and industrial growth in the urban areas
- Clause 21.07-1 (Cobram), ensuring development is generally consistent with the Cobram Framework Plan 2007 (refer Figure 6) which shows the site located within a broader area designated "*consolidate restricted retail uses and other complimentary uses*" and the area to the east of the site, around Punt Road, identified as "*consolidate town retail centre*", and includes strategies which seek to:
 - maintain the clear division between land use activities
 - relocate inappropriate, non-core uses in the town centre to more suitable and appropriately zoned sites
 - encourage the redevelopment of vacant and underutilised sites in the commercial precincts, including the town centre
 - protect the town centre by supporting new retail developments that provide active frontages on the ground floor with offices above the ground floor in the streets surrounding the town centre
 - encourage the establishment of a Cobram Business Park
 - facilitate the redevelopment of surplus railway land for open space or commercial uses.

Figure 6 Cobram Framework Plan



Source: Clause 21.07 of the Moira Planning Scheme

2.2 Other relevant planning strategies and policies

(i) Hume Regional Growth Plan

The Hume Regional Growth Plan provides broad direction for land use and development across the Hume region, as well as more detailed planning frameworks for the key regional centres of Shepparton and Wangaratta. Tourism is identified in the plan as an important

industry and employer for the Hume Region. The plan recognises that key regional attractions, such as the Murray River, have provided the region with a niche in tourism markets. The plan recognises the interdependent relationship between the cross-border twin towns of Cobram-Barooga and Yarrawonga-Mulwala in terms of services and that these relationships comprise larger and more diverse economies. Council submitted that the Amendment supports the Hume Regional Growth Plan because Cobram is identified as one of three cross border towns where growth is supported.

(ii) Cobram 2025: Cobram Strategy Plan

The Cobram Strategy Plan, produced in 2007, provides guidance for the development of the land. It is identified as a reference document (background document) in Clause 21.03 and informed the Cobram Framework Plan included in Clause 27.01-1.

The Cobram Strategy Plan was informed by the:

- *Cobram Urban Design Framework*, David Lock Associates, July 2005 (Urban Design Framework) and which is relied upon in the Strategy⁵
- *Industrial Land Review*, SGS Economics and Planning, January 2007 which forms the Industrial Land Use and Development chapter of the Strategy Plan.

Chapter 6 of the Strategy Plan deals with Commercial and Retail activity and identifies that the town centre:

- is described as being *“generally defined by the Murray Valley Highway to the south, Broadway Street to the north and west and Williams Road to the east”*
- contains a mix of retail outlets and other services such as commercial, professional, entertainment and health
- is relatively consolidated and should be able to accommodate growth and its relative compactness has been a major contributor to its success as a commercial centre.

The Strategy Plan notes some of the context and perceptions analysis from the Urban Design Framework including:

- potential growth constraints of the town centre because of leasing arrangements of railway land and resultant impacts on centre spread with the anchor Woolworths supermarket separated from much of the centre by the Ford dealership
- lack of visibility of the retail area from Broadway Street and Murray Valley Highway
- shortage of larger sites (in excess of 6,000 square metres) to provide opportunities for major operators
- many empty retail shops (10) and seven vacant sites
- Yarrawonga’s growth may impact on the centre.

Other Urban Design Framework observations and associated recommendations included:

- ‘ordinary’ quality and appeal of public spaces and streetscapes, relatively illegible street layout, with footpath upgrading, pedestrian crossing improvements and street tree planting recommended
- lack of a defined ‘centre’ of town for non-shopping activity with a town square proposed in Bank Street

⁵ p47

- the corner of Punt Road and Murray Valley Highway is the town's entry feature with a square and gateway treatment recommended for Federation Park.

The Strategy Plan identifies one of the recommendations of the Urban Design Framework to create a vibrant and effective core by ensuring the Business 1 Zone area (now C1Z) *"maintains its consolidated scale and full business occupancy rates in shops"* is encouraged, and the Business 3 Zone (now C2Z) and *"adjacent Industrial 1 Zone are protected to some extent to provide for manufacturing and industrial land in the future"*.

In response to increasing competition from nearby towns the Strategy Plan identifies that there is a need to emphasise Cobram's opportunities as a location for entertainment, tourism and speciality retailing. It also promotes the town centre as the location for higher order professional and community services and to meet the retail/commercial needs of expanding residential areas. The Strategy identifies that a retail floor space analysis is required *"to determine how much floor space is likely to be required over the next 15 to 20 years, and to identify the preferred future mix and roles of different commercial locations"*. The Strategy Plan identifies the need to provide a variety of commercial and business land to cater for different retailing activities, with the majority of such land provided in a consolidated town centre and bulky goods/highway retailers on periphery sites, and convenience shopping within emerging residential neighbourhoods.

Both the Strategy Plan and Urban Design Framework explore options for future commercial activity and the role of different sites (refer Figure 7):

- Vacant sites – support recommendations of Urban Design Framework for improvements to the town centre to encourage full occupancy
- Saleyards site – possible relocation of saleyards to provide for commercial redevelopment although cautioning application of a Business 1 Zone until a retail floorspace analysis has been completed to avoid the risk of further dispersing and fragmenting the commercial centre
- Railway land – potential to better utilise former vacant or underutilised railway land to provide better centre connectivity
- Punt/Terminus Streets (Ford dealership site) – opportunity for redevelopment into smaller tenancies to provide an active shop front
- The Triangle – high exposure site bound by Murray Valley Highway, Cobram Koonoomoo Road and Ritchie Road
- Village green – development of a town centre/village green along Bank Street between Punt Road and High Street.

Figure 7 Land supply options for future commercial development (Cobram Strategy Plan Figure 10)

Specific recommendations relating to the Cobram activity centre include:

- Maintain the compact nature of the Cobram town centre and to intensify retail and commercial uses within the existing town centre, including the existing Business 1 zoned land;
- Encourage the urban design initiatives for the town centre as set out in the Cobram Urban Design Framework David Lock & Associates, July 2005);
- Encourage the relocation of businesses such as car dealerships to less centralised areas in Cobram, such as adjacent to existing car dealerships on the Murray Valley Highway. It is further noted that the sites with frontage to Punt Road are more appropriate for higher order retail and commercial uses. Such uses would facilitate continuity of the “active shop front retail experience” along the northern side of Punt Road, east of the Safeway supermarket;
- Continue discussions with VicTrack in regard to undertaking a land swap to relocate the railway station and associated land from the town centre. This would free up the railway reservation for commercial development and enhance connectivity between commercial areas north and south of the railway line;
- Encourage higher density residential development on the periphery of the town centre to provide support and contribute to its vibrancy.

Specific recommendations relating to the bulky goods and peripheral sales include:

- Initiate a new Business 4 Zone (peripheral sales) precinct as per the recommendations of the Industrial Land Review (Maunsell Australia, 2004)⁶
- Establish a ‘Business Park’ to be zoned Business 4 in the triangle defined by The Murray Valley Highway, Cobram Koonoomoo Road and Ritchie Road (subject to further floorspace needs analysis). ...
- Encourage the relocation of businesses such as car dealerships to less centralised areas in Cobram, such as to the abovementioned Business 4 Zone precincts. It is further noted that the sites with frontage to Punt Road are more appropriate for

⁶ This included the subject land within the then Industrial 1 Zone precinct bound by Murray Valley Highway, Cobram Koonoomoo Road, Broadway Road and Colgan Street and Industrial 1 zoned land along Murray Valley Highway south-east of the Triangle site.

higher order retail and commercial uses. Such uses would facilitate continuity of the “active shop front retail experience” along the northern side of Punt Road, east of the Safeway supermarket

The recommendations are generally reflected in the Cobram Framework Plan (Figure 18).

Council indicated that the strategy identifying the site and surrounding Industrial 1 zoned land to be rezoned to Business 4 reflects the age of the recommendation and that the Business 4 zoning was implemented some years ago.

Council submitted that the Amendment was consistent with the Cobram Strategy Plan.

2.3 Planning scheme provision

A common zone and overlay purpose is to implement the Municipal Planning Strategy or Municipal Strategic Statement and the Planning Policy Framework.

(i) Zones

The C2Z applies to the subject land and its surrounding area. The purposes of the Zone are:

- To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services.
- To ensure that uses do not affect the safety and amenity of adjacent, more sensitive uses.

The C2Z requires a permit for certain retail premises, including a supermarket of no more than 1,800 square metres. It does not require a permit for:

- a shop if it is associated with a supermarket, the combined floor area for all shops does not exceed 500 square metres and the site adjoins a Road Zone
- a restricted retail premises.

The Amendment proposes to apply the C1Z to the subject land. Its purposes include:

- To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

The C1Z does not require a permit for a shop, including a supermarket and office (which includes medical centre). There is no maximum leasable floor area for an office or shop. The zone requires a permit to develop the subject land.

The subject land abuts two Category 1 roads (Murray Valley Highway and Broadway Street) located within a Road Zone (RDZ1). The RDZ1 requires a planning permit to construct a building or construct or carry out works (an access in this case) for a use which requires a permit.

(ii) Overlays

Parking Overlay Schedule 2 applies to the subject land and specifies varied parking rates from those nominated at Clause 52.06 (Car parking).

The subject land is not located in a Bushfire Management Overlay or in a designated bushfire prone area.

(iii) Other provisions

Relevant particular provisions include:

- Clause 52.02 (Easements, Restrictions and Reserves), which provides for the creation, removal and variation of an easement (as proposed) through a planning permit.
- Clause 52.06 (Car Parking), which requires a planning permit to reduce the provision of on-site car parking below the nominated rates for specified uses or in a parking Overlay. A Traffic Engineering Assessment was provided in support of the Amendment which identifies that the required number of spaces has been provided within the proposed development.
- Clause 52.17 (Native Vegetation), which requires a permit to remove, destroy or lop native vegetation, including dead native vegetation on land greater than 0.4 hectares in area and which is not otherwise exempt. The vegetation to be removed by the proposed planning permit is not exempt. Clause 52.17 provides a tree stepped approach to ensure no net loss of biodiversity and requires the provision of offsets for vegetation removed. An Ecological Features and Constraints report was provided in support of the Amendment which identifies offset requirements. Conditions 5 and 6 of the exhibited planning permit provide for offsets.
- Clause 52.19 (Land Adjacent to a RDZ1 or a Public Acquisition Overlay for a Category 1 Road), which requires a planning permit to create or alter access to a road in a RDZ1.
- Clause 52.34 (Bicycle Facilities), which requires a planning permit to reduce the provision of on-site bicycle parking facilities below the nominated rates for specified uses. A Traffic Engineering Assessment was provided in support of the Amendment which identifies that the required number of bicycle spaces has been provided within the proposed development.

2.4 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46: Strategic Assessment Guidelines, August 2018 (PPN46). That discussion is not repeated here.

The combined Amendment and permit application are consistent with the Ministerial Direction on the Form and Content of Planning Schemes pursuant to Section 7(5) of the Planning and Environment Act. It is consistent with the Ministerial Direction 1 – Potentially Contaminated Land, Ministerial Direction 11 - Strategic Assessment of Amendments as discussed in Chapter 6. The Amendment has been prepared consistent with Ministerial Direction No. 15 – Planning Scheme amendment process.

Chapter 3 of this Report considers the key strategic issues and discusses whether the proposal (the Amendment and permit) has a sufficient level of strategic justification to support it.

2.5 Recent strategies

Council submitted that there were two recent strategic reviews which support the Amendment and planning permit application.

(i) Retail Policy Framework for Cobram and Yarrawonga: Options Report

The *Retail Policy Framework for Cobram and Yarrawonga: Options Report* (Retail Policy Framework) was prepared by SED Planning in July 2017 to inform a review of the Moira Planning Scheme in relation to retail provision in the two centres. It is supported by a Background Analysis (February 2017). While Council has adopted the Retail Policy Framework, Council indicated that it was not likely to form part of the Moira Planning Scheme in the future.

The Retail Policy Framework provides a policy statement or vision:

Retail use and development in Cobram and Yarrawonga will provide choice and diversity for local residents, support local employment and tourism, and reduce escape expenditure to other centres.

It provides guiding principles for retail development and identifies:

- the need for approximately 7,150 square metres of additional retail floor space (or 1.75 to 2 hectares of commercial land) in Cobram by 2031 (based on the 2.2 square metres per capita retail floor space ratio allowing for projected tourism demand and applying a 10 per cent allocation for leakage) noting that 6,500 square metres of this projected demand is a projected current shortfall
- that this floor area could accommodate a full line supermarket, a small discount department store and additional retail and restricted retail floor space
- impacts of an expanded retail sector on traders is considered minimal, but development should support the overall functioning of the centre, create economies of scale, be of a scale consistent with demand and provide increased choice and diversity to the retail offer
- while integrated development within the C1Z is preferred to support a centralised town centre, the lack of large vacant sites requires redevelopment and consolidation of properties to accommodate larger floor plate development which could be cost inhibitive, supports the use of vacant C2Z parcels near the core retail area
- a range of C1Z and C2Z site options (Figure 8) to accommodate future retail floor space
- analysis of three large vacant C2Z sites (Figure 9) investigated for their suitability to accommodate large plate conventional retail development such as a full line supermarket of 3,200 to 3,500 square metres and/or a discount department store and based on proximity to the C1Z and retail core, road access, frontage and exposure criteria:
 - Site 1 – a 1 hectare site fronting Dillon and Terminus Streets (VicTrack site)
 - Site 2 – a 1.4 hectare site (former saleyards) fronting Dillon and Mill
 - Site 3 – a 2.8 hectare site (the subject land and Amendment site).

The Options Report concludes that the three sites are generally suitable for a supermarket or discount department store depending upon the development outcome sought, but identified that building size and design is less limited on Sites 2 and 3 given site dimensions. Based on the location criteria and the large amount of retail floor space required to meet current and future demand, Site 3 was identified as the only viable option.

The Retail Policy Framework recommends implementing a decision-making framework to guide decisions for large scale developments or developments outside zoned and planned

retail nodes, with significant developments providing an Economic Impact Statement to Council outlining:

- trade area and catchment details
- economic impacts on existing retail within the town centre
- net community benefit
- response to the guiding principles for retail development included in the Retail Framework Plan.

Figure 8 Potential retail expansion areas

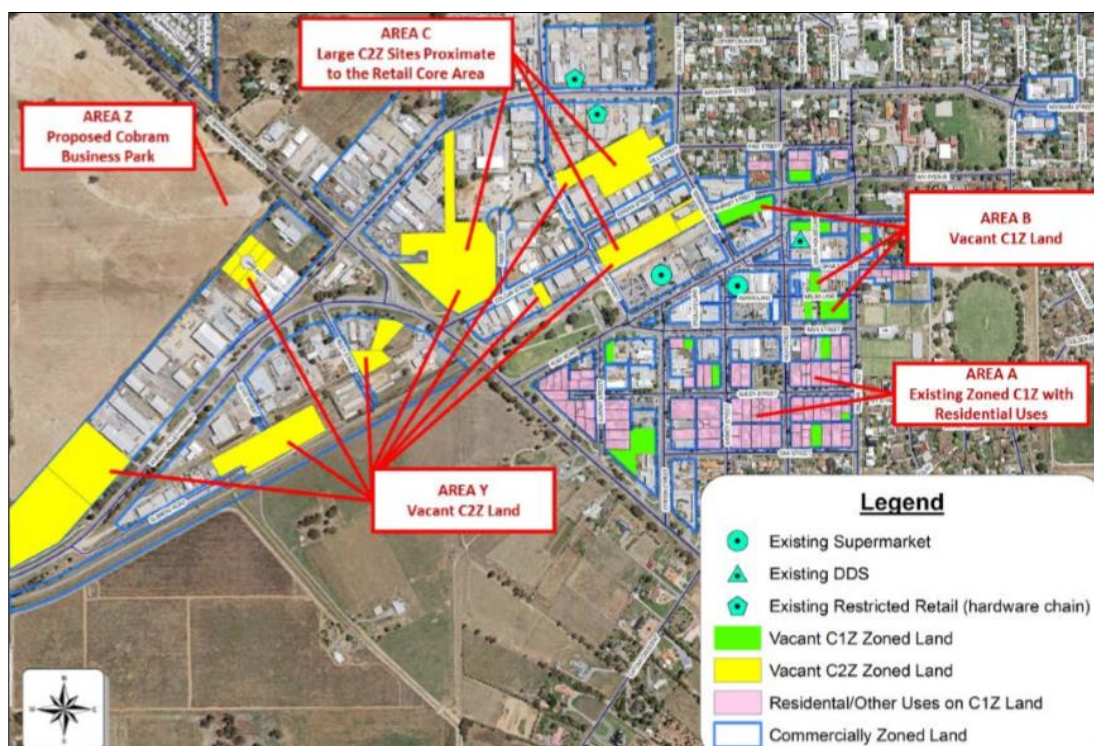


Figure 9 Large retail floor plate Investigation sites



Other recommendations include amending Clauses 21.06 (Economic Development) and 21.07 (Local Areas) in the Moira Planning Scheme to:

- introduce a vision and guiding principles for retail development
- discourage retail development outside the C1Z and C2Z
- encourage the use of vacant sites and redevelopment of sites in the C1Z to support a compact town centre structure
- seek inappropriate, non-core uses in the town centre to relocate to suitably zoned sites
- consider rezoning a suitable strategically located C2Z site to C1Z to accommodate a large floor plate conventional retail development.

(ii) Background Analysis

The Background Analysis identifies:

- an estimated primary retail catchment area for Cobram and Yarrawonga which reflects important cross-border links with Barooga and Mulwala and extends into southern New South Wales
- an estimated resident population in the primary retail catchment area for Cobram of 20,150 which is expected to grow by 126 to 1,360 persons (dependant on whether a conservative or higher growth rates is applied) by 2031
- an existing retail floor space assessment with:
 - an estimated conventional retail floor space in Cobram (comprising the town centre and developed commercial land) of 34,457 square metres and a total retail floor area space for the Cobram catchment (including tourism retail floor space) of 40,392 square metres
 - a per capita retail floor space allocation (without the tourism component) for Cobram of 1.84 square metres (compared to 2.39 square metres in Yarrawonga) which indicates potential under supply and leakage to other centres for higher order goods
- a projected retail floor space demand to 2031 with:
 - a per person retail floor space demand (excluding tourism) of 2.2 square metres (theoretical equilibrium for supply and demand) and 2.4 square metres (a higher allocation recognising existing trade leakage to other centres and the strategic benefits of additional supply in terms of choice and range)
 - need for between 7,512 and 11,567 square metres of additional retail floor space in Cobram to 2031
- zoned land supply comprising:
 - over 8 hectares (44 per cent) of C1Z land in Cobram (which has a total of 19.8 hectares of C1Z) is vacant or used for residential or other purposes, potentially requiring consolidation of lots for larger floor plate developments such as supermarkets
 - over 11 hectares (23 per cent) of C2Z land in Cobram (which has a total of 47.2 hectares of C2Z) that is vacant, which is considered adequate to meet the future supply needs of restricted retail and bulky goods developments
- the C1Z can accommodate significant growth, while the C2Z has three vacant sites capable of accommodating medium to large retail developments near the retail core.

(iii) Major Towns' Strategy Plan Review (Yarrawonga, Cobram, Numurka and Nathalia)

The Major Towns' Strategy Review (Strategy Review) was prepared by SED Planning in June 2018 and adopted by Council on 25 July 2018. It reviewed the Cobram Strategy Plan 2025 (2007) and adopted the findings of the Retail Policy Framework.

The Strategy Review:

- identified that the Cobram Strategy Plan is well founded and remains relevant but recommends it be updated to reflect policy changes identified in the Retail Policy Framework and include a new structure plan map
- identified that despite significant commercial zoned land in Cobram, *"the commercial real estate market is relatively underutilised"* due primarily to the dominant role of agriculture and manufacturing in the local economy
- suggested that demand for commercial and office floor space is unlikely to grow above recent trends, with growth in the health, education and professional services sectors likely to define future requirements
- identified that the fragmentation of existing sites in C1Z and use of C2Z constrain the Cobram activity centre from being able to offer an appropriate site for a new discount department store or large size supermarket 'type' development, requiring additional C1Z
- recommended the inclusion of site 3 (the subject land) within the revised structure plan map to meet immediate term retail needs
- recommended that the Ritchies Road site be identified for future investigation for rezoning to Mixed Use Zone or C1Z to facilitate future growth.

The Strategy Review has not been implemented into the Moira Planning Scheme and Council anticipates that this process will commence later in 2019.

2.6 Discussion and conclusions

Council submitted that the Amendment was consistent with the Planning Policy Framework and Municipal Strategic Statement and recent strategic planning work. The Panel considers that the proposal presents a number of strategic policy and planning issues which are examined in greater detail in Chapter 3.

3 Strategic issues

3.1 Planning policy support

(i) The issue

The issue is whether there is planning policy support for the proposal.

(ii) Submissions and evidence

The Panel requested Council to identify retail policies and strategies that support the subject land being used for commercial purposes.

Council submitted that there were no policies or strategies that are part of the Planning Scheme that specifically support the proposed use of the land for the level of development. Council considered the proposal to be consistent with the strategies in Clauses 21.06-1 and 21.07-1.

Mr Horsfall considered that the Amendment would benefit from strengthening Clause 21.07-1, consistent with the Retail Policy Framework and Strategy Review. Specifically, the Review recommended replacing the annotation for the area surrounding the subject land from 'Consolidate restricted retail uses and other complimentary uses' to a site specific 'Commercial 1 Zone'. Mr Horsfall explained:

In the absence of such an inclusion and change, there is little in this clause to guide the future commercial development within the central core of Cobram other than to encourage the development of vacant sites and for such development to have active street frontages. This is potentially problematic for the amendment as there is a general lack of strategic support in the MSS and clause 23.02 of the planning scheme requires Council's to take into account the MSS when formulating amendments and considering planning permit applications. However, post-dating the current MSS there is convincing recent evidence provided in the CRMPA and RPF to support the rezoning.

Council did not support this change. In response to a question from the Panel, Mr McGurn indicated that, while it would be preferable to reflect the rezoning in Clause 21.07-1, it wasn't necessary.

Mr Milner and Mr McGurn considered that the proposal was consistent with policy objectives and strategies in Clauses 11, 11.03-1S and 17.02-1S. Ms Brennan submitted that the proposal was supported by policies in the Municipal Strategic Statement that support growth and development in Cobram generally consistent with the Cobram Framework Plan and by extension, the Cobram Strategy Plan. Ms Brennan added that the retail Policy Framework and Strategy Review reflected Council's most recent strategic thinking and established clear and express policy support for the proposal.

Mr Bartley presented an alternative view that the subject land was outside the Cobram activity centre, as identified in Clause 21.07-1, and was an out-of-centre development. He submitted that, while the Retail Policy Framework and Strategy Review documents may have some relevance, they have not undergone a level scrutiny that a planning scheme amendment would provide and should not take precedence over documents in the Moira Planning Scheme.

(iii) Discussion and conclusions

In reviewing the submissions, evidence and the content of Clause 21.07-1, the Panel considers that for a retail development of this size, the policy is unclear and contradictory. Clause 21.07-1 provides policy support for an expanded centre to accommodate retail uses requiring larger sites. The policy at the same time is aiming for a consolidated retail core and vibrant centre. This would seem to suggest that there is a level of policy support for uses such as supermarkets and offices in the C2Z and consolidating specialty retail activities within the retail core. Similarly, while there is no specific existing policy support for the proposal or for applying the C1Z to the subject land. Neither is there policy discouraging the C1Z to achieve a particular development outcome that, cannot at face value, be accommodated within the core or immediately adjacent to it.

As identified by Mr Horsfall, Clause 21.07-1 is ambiguous in its intentions and contains “... *little ... to guide the future commercial development within the central core of Cobram ...*” and “... *a general lack of strategic support in the MSS ... when formulating amendments and considering permit applications*”.

The Panel acknowledges the work of Council in developing the Retail Policy Framework and Strategy Review to address this policy gap as a step in the right direction. The work adds a greater level of direction to where future supermarket or discount department store retail floor space demand may be met. This work will inform future structure planning in the town centre but does not support the proposal now.

Clause 21.07-1 seeks to consolidate the retail town centre (C1Z). The proposal does not align with this policy objective. The proposal, given its extensive retail floorspace and retail mix and its physical separation from the existing retail core, represents a second retail core.

The Panel accepts Ms Brennan’s arguments that the adopted strategic work can be a relevant consideration consistent with PPN46 in response to a broad range of factors including the age of the Cobram Strategy Plan, changes in policy context, the level of community engagement and the independent evidence provided. The Panel notes that the Cobram Strategy Plan is over 12 years old, (although the Amendment to introduce it is not) and the timing of recent strategic work did not enable changes to Clause 21.07 as part of Amendment C77 in December 2017. The Panel considers that the recent strategic work reinforces some of the key observations of the Cobram Strategy Plan relating to the role of key sites, the centre’s limited highway visibility and the need for larger commercial development sites. The Retail Policy Framework responds to the identified need to undertake a retail floor space analysis and demand for retail floor space in and around the town centre. It assisted the Panel to understand the current level of commercial floor space needs for Cobram and the wider trade area, which have been reflected in the economic evidence provided. The Panel notes that the proposal is inconsistent with the proposed Retail Policy Framework which encourages “*the use of vacant sites and redevelopment of existing sites in the C1Z area for retail uses to support the compact town centre structure*”.

However, given that the Strategy Review (and the Retail Policy Framework directions it incorporates) have not been through an Amendment process, the Panel has given the document less weight as a policy document.

Mr Horsfall's evidence sought changes seek to address policy confusion and deficiencies to provide more strategic support for the rezoning of the site to C1Z. However, the Panel does not support including changes to Clause 21.07-1 that effectively 'cherry pick' elements out of the Strategy Review to support the rezoning. It notes that neither Council nor the Proponent sought such a change.

The Panel considers it inappropriate, in the context of considering submissions to this Amendment, to comment on the Retail Policy Framework or Strategy Review beyond a broader observation about the limitations of existing policy, which the Panel considers needs strengthening to provide a more robust policy framework for considering proposals of this scale.

The Panel concludes:

- There is no specific policy support for a retail centre of the scale and nature proposed in the exhibited permit application
- Establishing a second retail core on the subject land does not align with planning policy which seeks to consolidate 'town retail centre' on C1Z (existing retail core).
- In the absence of relevant policy, the proposal should be considered on its merits taking into account its economic impact and impact on the functionality of the town centre and retail core.

3.2 Is the subject land in the Cobram activity centre and its retail core?

(i) The issue

The issue is whether the subject land is located in the Cobram activity centre and its retail core.

(ii) Evidence and submissions

The Panel heard submissions from Council, the Proponent (Tipalea Pty Ltd) which owns the subject land and Now Make Pty Ltd (Now Make) which owns 54-58 Punt Road Cobram which is tenanted by Woolworths. Council called planning evidence from Mr Horsfall and economic evidence from Mr Irish. The Proponent called planning evidence from Mr Milner and Mr McGurn and economic evidence from Mr Duane.

Submissions and evidence used a range of terms to describe the nature and extent of Cobram's town centre and whether the subject land was in or outside the town centre. Terms used included town centre, activity centre, retail core, commercial core and CBD. In part, these terms and the positions on them were informed by:

- Clause 21.07-1 Cobram Framework Plan notations: '*Consolidate town retail centre*' and '*Consolidate restricted retail uses and other complimentary uses*' – the latter area including the subject land
- the extent of the C1Z and C2Z and the similarities of those two zones in terms of permissible retail uses
- the extent of Heritage Overlay HO251 (Cobram Town Centre precinct) and Parking Overlay

- the Cobram Strategy Plan including context discussions in Part 6.1 which describes the Cobram Town Centre as generally defined by the Murray Valley Highway, Broadway Street and Williams Road (Document 8) noting this area also includes a large area of General Residential 1 zoned land
- the Urban Design Framework which informed the Cobram Strategy Plan and identified the retail town centre as Punt and Main Roads
- various VCAT decisions and Panel reports including the panel's report on Moira Planning Scheme Amendment C77⁷
- the broader use of those terms from an urban planning perspective based on building form and land use mix and the likely experience of users of the centre.

Parties and their expert witnesses were asked before the Hearing to provide a definitive position on whether the subject land was in or out of the town centre, or whether this could not be determined based on available information. Table 1 summarises their responses and highlights the various terms used to describe the town centre.

Table 1 Cobram activity centre extent

Party/expert	Position
Council	The subject land is in the Town centre as identified in the Cobram Strategy Plan
Mr Horsfall	The subject land is in the Cobram CBD and part of the commercial core
Proponent	The subject land is not in the defined town retail centre (as identified in Clause 21.07-1 Framework Plan map) but is within the commercial area of the township and close to or adjacent to the town retail centre
Mr Milner	The subject land is not in the town retail centre (as identified in Clause 21.07-1 Framework Plan map) but is adjacent to it and within the Cobram Activity Centre (as defined by the extent of commercial zones)
Mr McGurn	The subject land is set slightly apart from the town retail centre (the C1Z zoned land) and traditional town centre and is an 'out of centre' development for the purposes of clause 17.02-2S but satisfies those provisions
Now Make	The subject land is out of the retail town centre (and is an out-of-centre development for the purposes of Clause 17.02-2S) based on extent of C1Z, the Framework Plan map in Clause 21.07-1, the Urban Design Framework description and HO251 extent. Greater weight should be attributed to Clause 21.07-1 than the reference document (Cobram Strategy Plan)

Ms Brennan considered the terms used by the parties and various documents to describe the Cobram activity centre and the relative location of the subject land in the absence of definitive direction to be interchangeable 'nomenclature'.

⁷ Amendment C77 sought to amend the Moira Planning Scheme to revise the Local Planning Policy Framework to reflect a new structure and revised content and implement the Moira Small Towns and Settlement Strategy Plan, 2013 and Moira Small Towns and Settlement Strategy Plan Addendum Report, 2017 and correct various zone anomalies.

(iii) Discussion

The parties did not reach a common position as to the extent of the Cobram activity centre and whether the subject land was in or out of the centre. The Panel has given Clause 21.07-1 greater weight than a 12-year-old reference document (Cobram Strategy Plan).

While Clause 21.07-1 refers to a town centre, it does not clearly identify the town centre in the clause's Framework Plan. The Framework Plan seeks to "*consolidate town retail centre*" on C1Z land which differs from the town centre term referred to in the clause's local area implementation strategies. It also seeks to consolidate restricted retail uses and other complimentary uses on C2Z.

The two-pronged policies to consolidate two different types of retail premises in two different identified areas may infer that they form part of a modern defined activity centre. However, the Panel considers that the policy does not clearly define the extent of the Cobram activity centre.

The Cobram Strategy Plan, while it is 12 years old and does not form part of the Planning Scheme, defines the town centre as all C1Z land and C2Z land bounded by Broadway Street and the Murray Valley Highway. Clause 11.03-1S (Activity centres) identifies that activity centres comprise a range of different sizes and functions and are focused on business, shopping, working, leisure and community facilities.

The Panel considers the relationship between the application of the C1Z and C2Z are useful pointers as to the mix of uses sought for a centre and the location of the retail core, but they do not necessarily define the extent of it. Town centres typically support a range of community facilities and services with non-commercial zones. It is not unusual for a retail core to be supported by a peripheral sales precinct supporting bulky goods and larger format retailing which cannot be easily accommodated within the more fine-grained, active frontage characteristics of the traditional town centre or retail core. In some centres, the retail core will have a clearly defined core and hard edge with residential areas (the Panel observed this form of town centre in Yarrawonga).

In Cobram, a distinct hard edge exists with a retail core along Punt Road and the streets to the immediate south. This core area immediately adjoins the C2Z to the north which comprises a mix of light industrial, and industrial sales, machinery and vehicle sales, and restricted retail-commercial uses particularly in the southern portion along Colgan Street (such as Repco). While the built form in these two areas is markedly different, the former rail line no longer acts as a barrier to a land use and movement interaction between the two zones. This functional relationship is aided by the improved road connections along Dillon Street and the more recent introduction of the C2Z to replace the previous Business 3, Business 4 and Industrial 1 zones which possibly has had the effect of diminishing the strategic land use clarity that the previous zone typologies provided.

The Panel therefore broadly accepts Mr Milner's definition of the Cobram activity centre. The Panel considers the area referred to as 'town retail centre' to be the activity centre's retail core. The activity centre has a restricted retail and complementary uses area, as identified in the Clause 21.07-1 Framework Plan. In line with the Cobram Strategy Plan, the Panel considers

that the restricted retail and complementary uses area is generally bounded by Murray Valley Highway/Koonoomoo Cobram Road and south of Broadway Street.

(iv) Conclusion

The Panel concludes:

- The subject land is:
 - in the Cobram activity centre
 - outside the retail core of the activity centre
- Clause 17.02-2S (Out-of-centre development) is not relevant.

3.3 Is the Commercial 1 Zone appropriate in this location?

(i) The issues

The issues are:

- Whether rezoning 31,500 square metres of land to C1Z to enable 8,615 square metres of retail floorspace on the subject land is appropriate and justified.
- Whether applying the C1Z will negatively impact the structure of the Cobram activity centre or retail core.

(ii) Evidence and submissions

The submissions of Council and the Proponent along with the planning evidence of Mr Milner and Mr McGurn supported the C1Z being applied to the subject land to accommodate the proposed development.

Council, the Proponent and planning experts considered that the rezoning was necessary to accommodate a large retail proposal on a site with highway exposure as anticipated in the Cobram Strategy Plan and to activate an underutilised C2Z zoned site identified in the Retail Policy Framework. The submissions and evidence acknowledged existing strategic work that identified the constraints of accommodating such a proposal within the existing retail core or other strategic sites identified which were considered less favourable.

Mr Bartley submitted that the Amendment and permit would fragment retail shopping and disconnect the commercial centre. He added that there was no clear strategy for the C2Z land and overall structure of the town centre. He considered that the proposal would do nothing to redevelop vacant and underutilised sites and would exacerbate vacancies and declining retail activity, particularly towards the eastern end of town. As a result, he submitted that there would be a blurring of the division between the C1Z and C2Z, little strategic justification to stop other sites being rezoned to C1Z or ability to manage the interface C2Z land between the site and the retail core C1Z. He indicated that any support for the site rezoning and development should be on the basis of a proper review of the area.

Referring to Mitchell C79 (PSA) [2012] PPV82, Mr Bartley submitted it was not *“acceptable to seek outcomes that set aside adopted strategic directions or retrospectively altered to suit”*. In this regard, he considered that Council *“has put the cart before the horse”* and likened the s96A approach to that adopted by the Panel in Greater Geelong C321 (PSA) [2016] PPV 88, where the panel identified that Council should have embarked on incorporating an adopted

structure plan that it was relying on from a policy perspective before it sought to support an amendment and permit.

Mr Bartley questioned whether sufficient strategic analysis had been undertaken of the existing C1Z area to establish if there was capacity to accommodate a supermarket or the shops in the retail core given the objectives of Clause 21.07-2. He explored this in his questioning of the planning experts. In response to Mr Bartley's submission that the owner of the subject land also owns the large HS West Motors in Punt Road within the retail core, a site identified for relocation, Ms Brennan indicated that the owner had no intention of relocating that operation from the site.

Mr Milner considered it likely that over time, in response to the rezoning and development the C2Z land in Colgan Street could transition to restricted retail uses, but there was no need to undertake a structure plan process to drive this change as the fundamental structure (road network, pedestrian connections and commercial businesses) was in place. This was distinct from other situations he identified in Shepparton⁸ and Churchill⁹ where this structure was absent. Mr McGurn considered that the proposal would be a catalyst for further investment and refurbishment and questioned what a structure plan for the area would show other than a footpath along Colgan Street to Dillon Street. He considered the strategic work had already been done.

Council agreed with the positions of the planning experts that the proposed development and rezoning would result in a change in land use in the intermediate area to the retail core, from the more traditional C2Z uses to retail and commercial orientated uses in an expanded retail core. Mr Pridgeon indicated that the existing C2Z provided the basis to consider such uses. In doing so, Council identified that there is nothing in the Planning Scheme or any seriously entertained strategy plan that provides guidance on how this intermediate land would be used and developed in the future but considered the C2Z provided the flexibility to support retail uses.

Council submitted that while having a structure plan in place may be preferable, its absence should not be fatal to a favourable consideration of the proposal. Mr Pridgeon referred the Panel to VCAT decisions¹⁰ which reinforced the exercise of informed judgement based on existing scheme provisions and site context considerations and the limits of structure planning directions in requiring development opportunities to be taken up. The Proponent's submission reinforced this approach.

Ms Brennan submitted that the *“(p)roposal offers a different product to the Cobram community and will not create a new town centre but rather be an addition to, and extension to the Town Centre”* with the heart continuing to be Punt Road.

Council referred to the findings of the Strategy Review analysis which concluded that *“(t)he cost and related complications of having to consolidate land will very likely discourage the development of a full-line supermarket or DDS in this area, and smaller retail and commercial*

⁸ Amendments C192 and C193 to Greater Shepparton Planning Scheme

⁹ *Fabcot Pty Ltd v Latrobe CC* [2007] VCAT

¹⁰ *Golker v Hume CC* [2018] VCAT 336, *Carinish Holdings Unit Trust v Monash CC* [2017] VCAT 2005 and *Golden Ridge v Whitehorse CC* [2004] VCAT 1706

developments are most likely to develop in this area over time". It submitted that the Retail Policy Framework states that there are no suitable sites currently available for a full-line supermarket or discount department store. Council added that trying to acquire land could displace existing commercial uses or create conflict with residential uses or result in development outcomes restricted by the Heritage Overlay.

In cross examination, Mr Milner acknowledged that the broader benefits of the proposal were derived from the site development, although rezoning was required to deliver the latent benefit. Mr McGurn in response to questions from the Panel, indicated that it was preferable to have a planning permit in place to make the rezoning more compelling but that the rezoning alone could be justified. Mr McGurn indicated that the C1Z delivers the opportunity for the benefits of the proposal to be delivered.

(iii) Discussion and conclusions

The C1Z is needed to support the permit application for a major retail centre with multiple land uses in the Cobram activity centre, but outside the existing retail core. Applying the C1Z would remove existing relevant land use permit requirements and floorspace prohibitions beyond a maximum area. This is reflected in the permit application which seeks to develop the land – it does not seek to use the land.

The C1Z is a suitable zone to accommodate such a large retail centre. The question for the Panel is whether rezoning 31,500 square metres of land to C1Z, approximately 285 metres away from existing C1Z land, is appropriate?

Council and the Proponent each submitted that the subject land should be rezoned because there was effectively no site in the retail core or close to the core (such as site option 1) that could accommodate the proposed major retail centre. However, the Retail Policy Framework (including its background report) directs larger plate retail such as a full-line supermarket or discount department store to potential land identified in its Figure 17. The Framework never envisaged the need to accommodate the proposed major retail centre or its non-supermarket land uses being located outside Cobram's existing retail core. To the contrary, existing policy, strategies and the more recent Retail Policy Framework encourage such land uses to locate on the many vacant or underused sites in the existing retail core.

There is therefore insufficient policy or strategic support for anything other than a supermarket to locate outside the existing retail core.

The Panel considers that, in the absence of relevant strategic guidance or structure planning, rezoning the subject land will result in Cobram having two poorly connected retail cores.

Rezoning an isolated site in the C2Z area will create a 285-metre distance between the subject land and the existing retail core. While some retail uses are permitted in the C2Z subject to conditions, a permit is not required for a range of manufacturing, industry and offices. The C2Z area appears to be attracting new industrial development and facilities such as the Country Fire Authority's base. It is less likely that these industrial sites will opt to move after recently developing their land. The existing road structure does not directly connect the subject land to the existing retail core because the streets align parallel to the former railway line which effectively dissected the industrial area (now the C2Z part of the Cobram activity centre) with the retail core.

The Panel accepts the Proponent's submission that, because this is a section 96A proposal, the two elements must be considered together. However, the Planning Scheme should have strategic direction about the future of the subject land and its connectivity to the existing retail core in the event that the Proponent does not act on its permit in the near future. In such a circumstance, Council would be faced with 31,500 square metres of additional C1Z land in the Cobram activity centre without guidance on how to assess a permit application for a very different proposal.

The Panel has reviewed the panel reports and VCAT determinations provided to it during the Hearing. The Panel agrees with the Proponent to the extent that it may be appropriate to locate a supermarket at the edge of an activity centre in some circumstances. However, it is more common to locate them as retail 'anchors' at the edge of the centre's retail/commercial core. The existing Cobram Woolworths is an example of such as use on the edge of the retail/commercial core. It abuts existing retail uses to its east, is located close to the street and has its car park on the core's edge. The Woolworths store in Yarrawonga has a similar arrangement on the edge of the commercial core. Medical centres are often found on the periphery of activity centre given floor space, parking and access needs of patients and also have a place in such locations.

Mr Bartley considered Council's recent strategic work to be insufficient and he identified existing sites within the retail core. The Panel explored this through questions of Council, Mr Milner and McGurn. At first blush, there appears to be a significant amount of land in the retail core to accommodate additional floor space particularly for specialty retail. There are many vacant buildings and underused land, particularly at its eastern and southern edges, including several sites for sale. The retail core has underutilised land to the rear of buildings that can support additional retail floor space, consolidation and redevelopment. This is consistent with the policy objectives of the Cobram Strategy Plan to consolidate retail uses in the core. The planning approvals (Documents 16 and 17) had been issued for sites identified in options 1 and 2 which respectively provide for a large shed/warehouse structure and a multi lot subdivision with a street court which remove the opportunity for these sites to be used for more conventional retail uses (including supermarkets or discount department stores). These are examples of decisions being made in the absence of a clear strategic direction for a cohesive town centre.

It is not the Panel's role to identify other site options or deconstruct the proposal to achieve an ideal or preferred outcome of the development being integrated into the centre. However, it is relevant in the context of Clause 21.07-1 to establish whether the proposal could have a negative impact on the existing retail core.

The Panel is concerned that this proposal (on a low growth scenario) is enabling all of the TTA short-medium term retail floor space needs to be accommodated on a single property which will effectively limit any opportunity for future growth in the existing retail core. Without the necessary structure plan to understand how to integrate the subject land with the rest of the town centre, potential structural issues are likely to be long term and profound.

The Panel may have taken a different view if the Amendment was to rezone land solely for a single supermarket. The Panel notes that the Cobram's existing retail core has many sites that

could accommodate the proposal's smaller mini major supermarket of 1,700 square metres and mini major area of 635 square metres.

The Panel concludes that:

- There is insufficient strategic justification in the Moira Planning Scheme to support applying the C1Z to 31,500 square metres on the subject land to support the proposed major retail development.
- Without the necessary structure plan and key policy direction, the proposal is likely to have a negative impact on the structure and sustainability of the town centre, particularly the retail core.

3.4 Economic impact

(i) What are the issues

The issues are:

- Is there sufficient demand to support additional floorspace?
- What economic impact would the proposal have on the Cobram activity centre and its retail core?

(ii) Background

In addition to recent strategy work undertaken by Council, the Amendment and permit application was supported by a Retail Market Potential Assessment (Market Assessment) prepared by Location IQ.

The Market Assessment identifies the development's Main Trade Area (MTA) which has a total population of 26,300 including a 'primary' catchment (encompassing the towns of Cobram, Barooga, Tocumwal, Strathmerton and Yarroweyah) and two 'secondary' catchments, extending 80 kilometres north of Cobram to include the towns of Berrigan, Jerilderie and Finley, and 30 kilometres south of Cobram to include the towns of Numurkah, Katunga, Katamatite and Burramine (Figure 10). A Total Trade Area (TTA) population of 38,320 is identified which includes a 'tertiary' catchment to the east including the town of Yarrawonga and surrounds. The MTA and TTA are expected to grow 2,025 and 4,375 persons respectively by 2036.

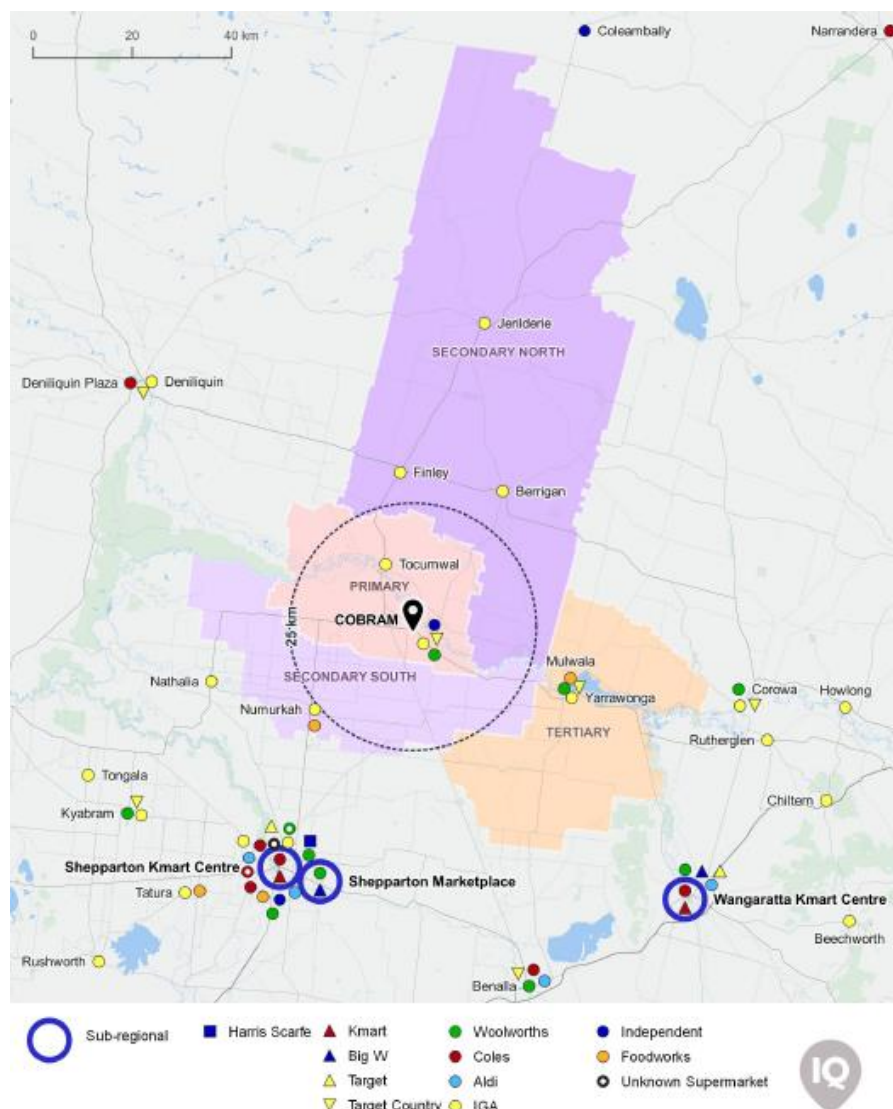
The Market Assessment identifies:

- per capita retail expenditure of residents in the MTA
- retail expenditure generated by the MTA (\$350.1M) and the TTA (\$515.2M) increasing to \$471.9M and \$719.4M respectively by 2036 based on an estimated average annual retail spending growth rate of 1.8 per cent
- retail spending by commodity, with the largest spending market being food and liquor (48.9 per cent of spending)
- the competitive retail floor space and supermarket environment within and beyond the MTA (including Shepparton, Yarrawonga and Deniliquin). All centres identified have at least one supermarket although they are of various sizes. Cobram has a Woolworths and IGA both located in the town centre. The closest identified supermarket outside Cobram is in Tocumwal (IGA) some 19 kilometres away and the

closest full line supermarket in Yarrawonga. The Cobram Target store is the only discount department store in the MTA

- some supermarket spending in the TTA would escape to Shepparton

Figure 10 Trade area catchments



- Aldi and Coles are not represented in the TTA, and if they were in Cobram, they would provide convenience, choice and competition
- a discount department store is typically supported by a population of 35,000 – 40,000 persons. This would support a small discount department store of 5,000 to 5,500 square metres in a TTA catchment of 38,320 which should be in the town with the largest catchment (Cobram)
- a modern full-line supermarket which serves the local needs of residents is at least 2,500 square metres (of which there is one in the MTA) with full-line supermarkets 3,200 square metres or larger and supported by populations of 8,000 to 10,000 suggesting the MTA could support three or more (accounting for tourist activity)
- that any additional retail facilities will result in positive economic benefits including:
 - additional choice, convenience and competition

- meet retail demand and reinforce Cobram as a regional retail destination
- provide employment
- retain resident and tourist escape expenditure
- save travel time and associated costs to access like facilities in Shepparton
- The proposed development is in line with the retail floorspace demands identified in the Retail Policy Framework.

(iii) Submissions and evidence

Evidence on the economic impacts of the proposal on the TTA and MTA was provided by Mr Irish (who was an author of the Retail Policy Framework) and Mr Duane (author of the Market Assessment).

Mr Irish's retail demand and supply evidence identified a current shortfall of 3,137 square metres of retail floor space within the MTA. His evidence identified a current MTA shortfall of 1,470 square metres for the supermarket sector increasing to 5,804 square metres by 2036.

Mr Irish estimated the impact of the development (assuming commencement in 2022 and full operation by 2025) would result in a decrease of 11 and 10 per cent for the 2022 - 2026 and 2027 -2031 periods respectively within the primary trade area. He added that the decrease would reduce to 1 per cent by 2032 and these impacts would be short term. The secondary trade areas were forecasted to be affected by -5 per cent for these three time periods (and likely to be permanent) given current retail offerings, low population growth and retail leakage reduction benefits primarily benefiting the primary trade area. Mr Irish forecasted short to medium term impacts on the tertiary trade area which includes Yarrawonga, but these were offset over time as a result of tourism industry growth.

In conclusion, Mr Irish opined that *"The development will have a positive overall impact on retail sector, increasing MTA catchment in relation to the FG&L category (supermarkets) by 22% by 2036"* and a 7 per cent positive catchment impact on the TTA to 2036. He considered that existing supermarkets would be most negatively impacted by the new development.

Mr Duane's evidence included a detailed analysis of the current competitive retail environment (supermarket and discount department store) within the TTA and outside the TTA including Shepparton, and a shop front (retail) analysis for Cobram and Yarrawonga. The shop front analysis stated that, in addition to the five major tenants (supermarkets, discount department stores and mini-majors), Cobram has 58 retail specialty stores (compared to Yarrawonga's 83) with a further 37 non-retail or vacant buildings. The only full-line supermarkets within the TTA are in Cobram and Yarrawonga with Shepparton, the focus higher order retail facilities as the sub regional centre, 66 kilometres south of Cobram.

Mr Duane adopted a similar retail floorspace per person as Mr Irish to establish future retail floor space demand for the TTA. He identified high and low growth scenarios and concluded that *"(t)his analysis is consistent with the findings of the Retail Policy Framework, which indicated an under-supply of around 7,150 sq.m of retail floorspace"*.

Mr Duane's analysis identified that, allowing for existing TTA supermarket floor space, the TTA would be undersupplied by 5,015 square metres by 2021 (Mr Duane's estimate for the development to be operational), with the proposal effectively achieving equilibrium (or

slightly oversupplied). Through questioning, it was established that this oversupply would continue to 2031.

Mr Duane's evidence identified the impacts on centres within the TTA as follows:

- Cobram activity centre: a decline of \$18.9 million or 17.5 per cent – predominantly on supermarkets, given only eight specialty retail stores in the town centre were in the food and liquor category. Some competition would occur between specialty stores and the development depending on the final tenant mix, but these impacts would be offset by reducing escape expenditure.
- Yarrawonga town centre: a decline of \$10.4 million or 8 per cent.
- Other: a decline of 7.5 per cent or less on other TTA towns given travel distance, existing shopping patterns and within the normal competitive range. Estimated impacts on Shepparton and Wangaratta were less than 2.3 per cent. These impacts were considered one-off impacts that would be, in part, ameliorated by increases in sales activity the opening of the development in 2021.

Mr Duane indicated that economic impacts of up to 10 per cent were within the normal range of expectations and were sustainable, 11 to 15 per cent impacts were sustainable and impact over 17 per cent were very high. In this instance, he identified that the impacts would be greater on the existing supermarket competitors but would still be sustainable in line with benchmark levels. He pointed to the contribution of demand from tourist activity.

In response to cross examination, Mr Duane indicated that, while different methodologies and assumptions were used in his and Mr Irish's expert witness statements, the same conclusions were reached. He indicated that vacancy rates of 5 to 7 per cent were about average.

Ms Brennan submitted that it was not the role of planning to protect the private interests of traders that might lose out to competition and that it was telling that there was a lack of evidence from Now Make to substantiate an objection based on economic impact on the town centre.

(iv) Discussion and conclusions

The Panel notes that while different methodologies were used in the witness statements of Mr Irish and Mr Duane, the conclusions were similar in the context of latent and future demand for retail floor space in the MTA (particularly for supermarkets) and the range of impacts of the development on those areas. The opinions were consistent with the application support materials and the Retail Policy Framework. Commonly supported factors in the offset of impacts included:

- growth in tourism trade (particularly given the highway location of the subject land)
- reduced escape expenditure
- modest population growth
- broader Cobram retail offer
- a decline in expenditure in the Cobram and Yarrawonga activity centres – the existing supermarkets would experience most of the decline and existing businesses could adjust
- net community benefit.

The economic evidence from Mr Irish and Mr Duane is sufficiently sound, however the Panel found Mr Duane's evidence more extensive and robust in relation to the analysis of the TTA and impacts on the Cobram activity centre. The Panel adopts Mr Duane's evidence for the purposes of assessing the impacts of the Amendment.

There was no economic evidence provided by any other submitters. Mr Watson of Burgess Rawson, who supported Mr Bartley with the Now Make submission, provided information on trading figures for Woolworths. Ms Brennan sought written evidence to substantiate this advice. While this material was subsequently provided, the Panel has attributed little weight to it and has not relied on it to reach its conclusions.

The Panel accepts that the Retail Policy Framework and evidence point to a shortage of, and demand for, further retail floor space within the MTA and TTA, particularly for supermarkets. This was not disputed. The Panel accepts that it is likely that most of this demand would be satisfied within Cobram as the largest centre in the MTA, although it considers that Shepparton could draw on the southern secondary catchment with its subregional offer. The Panel agrees that this demand should be provided in the Cobram activity centre given that at this point of time, population growth in Cobram is unlikely to support a larger secondary centre elsewhere in Cobram (for example to serve a new growth area).

Mr Duane's evidence is useful to understand the more localised impacts on the Cobram activity centre as opposed to the MTA or TTA. Given that the TTA is extensive and largely theoretical (it wasn't based on surveys for example) and other centres within the TTA are much smaller than Cobram with limited retail offers that focus on daily convenience needs, the Panel considers an impact of 5 per cent to be within normal competitive tolerances.

The Panel considers that the tertiary catchment plays a minimal role to the TTA. The Panel notes the travel distance between Yarrawonga and Cobram makes it unlikely that the proposal would draw significant trade from Yarrawonga, particularly as that centre appears to be vibrant, trading well and has a similar or greater retail offer than Cobram.

The Panel considers that a potential decline of 17.5 per cent in the Cobram activity centre is beyond a tolerable impact, particularly for a centre the size of Cobram and its low to modest growth rate. Both economic expert reports consider the impacts would be predominantly on the existing Woolworths and IGA supermarkets in Cobram. However, as the proposal includes a retail offer beyond a supermarket, the Panel expects there will be considerable impact on the existing retail core which will affect its overall vibrancy.

The proposal effectively takes up all of the TTA's current latent and future retail floor space demand (at the low growth scenario) to 2031 in a single isolated location and potentially 10 years ahead of achieving sufficient demand to meet that total floor area. This is significant given the size of the TTA and number of town centres within it. This impact has the potential to diminish investment in these other centres for many years. Of greater concern is the potential impact on the Cobram activity centre, given an initial decline of 17.5 per cent and a medium-term decline of at least 10 per cent anticipated to last for a decade or more. This level of economic impact may be able to be absorbed by national brand supermarket retailers (given that a new supermarket entrant could have been expected). However there remains a very real prospect of longer-term impacts on the sustainability of smaller retailers and other commercial uses that rely on a spatial relationship with these core activities if the focus of

centre trading is substantially shifted in an unplanned manner. This impact is manifested when the retail core shows signs of under development and under performance (focus of shop vacancies) at its southern and eastern edges. It is not the role of planning to consider the impact of individual traders. However, the cumulative impact on specialty retailing in the retail core will further exacerbate these existing issues.

It is readily apparent that an additional full-line supermarket would meet latent demand for that retail offering. It would be likely that a new full-line supermarket would have minimal negative economic impact beyond a tolerable level with competitors. However, there is no substantive strategic arguments put forward that the majority of existing and future supermarket floor space needs of the MTA to 2031 should be accommodated at the one 'super' site at the same time (no staging has been proposed) along with additional discount department store and retail specialty floor space.

The Panel is concerned that it is largely unclear what the impacts on the existing specialty shops in Cobram will be, given that the tenancies of the proposed development are unknown. The floor area of the proposed 12 specialty shops are equivalent to 20 per cent of Cobram activity centre's existing retail specialties. The Panel does not consider it particularly critical that neither the supermarket, discount department store or specialty retail tenancies are known at this stage. However, the location of large format or larger scale retail centre provision needs to be critically considered particularly where the potential economic impacts are identified at the higher end. The Panel agrees with Mr McGurn that *"the question of retail expansion in Cobram appears to be not so much as to whether the Town Centre should be expanded, but where and how that expansion might occur"*.

The Panel concludes that:

- There is sufficient demand in the MTA for a full-line supermarket in the Cobram activity centre.
- The proposed development would result in an unreasonable economic impact on primary trade area (focused on the Cobram activity centre), specifically:
 - an initial decrease of up to 17.5 per cent
 - more than 10 per cent over a 10 year period.
- There is insufficient information to understand the economic impact on the existing retail core.

3.5 Net community benefit

(i) Key issues

Both the planning objectives for Victoria contained in the Act and Clause 71.02-3 seek decision makers to address aspects of economic, environmental and social wellbeing affected by land use and development. Clause 71.02-3 seeks to:

... integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

The key issue is:

- Does the proposal have a net community benefit?

(ii) Evidence and submissions

Mr Bartley submitted that neither Council or the Proponent had articulated a position that the community will be better served under the new arrangements than previously. In this instance, he suggested that the proposal will duplicate existing uses in the town centre and that the level of sales impacts predicted by Mr Duane on existing retailers was not known nor had modelling of job losses been undertaken. Mr Bartley said that, regardless of whether there was an economic benefit, this should not trump other relevant matters in the Planning Scheme. He considered the level of sales impacts identified would result in retailers closing down or the creation of an unappealing retail area that shoppers will avoid.

Ms Brennan submitted that inherent to planning was the concept of balancing benefits and dis-benefits of a proposal to achieve a positive or acceptable outcome. It was not, she said, *“directed to ideal, utopian or even optimum principles, but to balanced, satisfactory, practical and functional outcomes”*.

Mr Milner indicated that the proposal would create community benefit by supporting investment, jobs, more services and choices, and a strengthened activity centre. He suggested the proposal achieved Council’s strategic objectives of using an underutilised site and improving the sense of arrival to the entrance of the town and did not displace any significant uses. Mr McGurn identified similar economic benefits from the proposal.

Both Mr Irish and Mr Duane identified that there would be net community benefit resulting from additional jobs (estimated by Mr McGurn to be in the order of 150 to 180 jobs allowing for some transferring of jobs), increased competition and choice (including opportunity to attract national traders not present such as Coles and Aldi), meeting undersupply of floorspace and less local residents spending their money outside the trade catchment. Both considered that these benefits outweighed the short to medium term trading level impacts on the primary trade area and MTA.

(iii) Discussion and conclusions

Clause 71.02-3 seeks to balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

The Panel acknowledges that most submissions supported the proposal because it provided more choice, reduced travel times by not having to travel to other centres and employment opportunities. Existing planning policy supports the outcomes sought by the community. However, the proposed retail centre is expected to absorb about \$18.9 million or 17.5 per cent of trade from the existing Cobram activity centre. The Panel considers that this disbenefit outweighs the proposed centre’s economic benefit. The impact on the existing C1Z land would affect the ability to achieve a purpose of the zone which is to *“create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses”*.

The proposal conflicts with Clause 21.07, which seeks to consolidate proposed land uses such as those proposed in the permit application into the town retail centre, as defined in the Cobram Framework Plan. There does not appear to be the practical ability to assemble land for the proposal major supermarket. In this instance, there may be a community benefit in enabling a major supermarket in C2Z land near the existing retail core if there is a clear vision of how to connect the two areas.

It is not in the community's benefit to allow a major retail centre to proceed on the subject land without understanding:

- how the town centre's two independently operating retail cores will work together
- the relationship between the two retail cores and how the proposed retail centre will be appropriately integrated with the town centre
- what land uses and structure is needed for the land between the two
- whether the full extent of the C1Z land, particularly the south-eastern part, will continue to be needed to meet long-term needs.

The Panel considers it is for these reasons why Clause 11.02-2S of the Planning Scheme calls for structure plans to be prepared to, among other reasons, consider the strategic and physical context of the location and to assist with walkable neighbourhoods.

The Panel concludes:

- That on balance, the proposal will not create an acceptable planning outcome or a net community benefit.

3.6 Is the Amendment strategically justified and should the permit be supported?

There is no evidence to suggest that the existing Cobram activity centre is not performing adequately without the provision of an additional supermarket. While the economic evidence points to there being capacity to accommodate an additional full-line supermarket within the MTA.

As discussed in this Chapter, the Panel considers that the extent of retail floor space proposed by the permit application and the area of C1Z being applied by the Amendment cannot be supported. While the rezoning of a portion of land to accommodate a single full line supermarket might be acceptable if evidence suggests that one cannot be accommodated within the retail core or adjacent to it, there is limited policy support or imperative for the establishment of a large stand-alone retail centre in this location. There is alternatively policy that points to the location of the proposed specialty shops in the retail core rather than the periphery of the town centre.

While the Panel accepts that economic competition is positive, the potential impacts of such a shift in the town centre could have long term consequences on its sustainability and its ability to achieve Council's identified policy outcomes. Overall, the Panel considers that the proposal does not deliver a positive community benefit. In the absence of more certain policy direction for the town centre, the Panel cautions Council's support for the proposal without an understanding of the consequences or planning in place to manage them.

However, the Panel acknowledges the work undertaken by Council over recent years to provide guidance for the expansion of the town centre to provide additional capacity to accommodate a supermarket, a DSS or both.

As discussed in more detail in Chapter 4, the development response reinforces the role of the site as stand-alone centre, though within the Cobram activity centre, which cannot easily be integrated into the retail core.

The Panel concludes:

- The Amendment should be abandoned
- The Planning Permit should not be granted.

(i) Recommendations

For the reasons set out in this Chapter, the Panel recommends:

- 1. That Moira Planning Scheme Amendment C88 be abandoned.**
- 2. That planning permit 5/2017/204 for the development of buildings and works for the construction of two supermarkets, a medical centre and retail premises, variation of an easement, removal of native vegetation and creation of accesses to a Road Zone Category 1 not be issued.**

4 Other issues

4.1 Site layout and built form

(i) The issue

The issue is whether the proposal's site layout and built form appropriately respond to the subject land's context.

(ii) Evidence and submissions

Mr Milner and Mr McGurn considered that the proposed built form appropriately responds to the subject land's highway location and shed style vernacular apparent in the immediate commercial area, though with minor design alterations.

Mr Milner stated that the design response helped to achieve "... *a strong sense and statement of 'arrival' ...*" – the gateway outcome sought in the Urban Design Framework and Cobram Strategy Plan. He added that the building's orientation achieved visual integration. He said that, while Federation Park complimented the town centre, it did not have the complexity or vitality needed to perform a gateway function.

Mr McGurn and Mr Milner stated that were not particularly concerned with the proposed solid wall treatment along the Park Court frontage. They suggested that Park Court was not a primary access and that internal floor space arrangements creates a design outcome which landscaping would soften.

Mr McGurn described the proposal as a freestanding shopping centre, while Mr Horsfall considered the proposal was proximate enough not to operate as a secondary centre. Mr Milner considered that the proposal was not a stand-alone centre because it could easily be integrated by pedestrian connections and infill commercial development between the subject land and existing retail core over time.

Mr Milner referred to an existing gravel pathway that passes the subject land's Murray Valley Highway frontage leading to the retail core through Federation Park but called for more to be "*required to improve the choice and quality of pedestrian connections*". He identified a lack of footpaths in Colgan Street. He recommended a continuous link be constructed from the front entrance of the proposed complex, along Park Court and Colgan Street (north side) to Dillon Street (west side) and intersecting with footpaths adjacent to the Woolworths supermarket. Mr Milner indicated that the pedestrian path along the southern supermarket wall should be widened with a continuation of the pergola treatment. He acknowledged this would have an impact on the carpark arrangement. Mr McGurn's evidence suggested improved pedestrian connections to the subject land from Colgan Street to provide a better sense of connection within the Cobram activity centre.

Mr McGurn stated that the southern elevation of the supermarket should preferably "*include window openings and articulation as a more 'active' response to the adjoining public areas*".

The Proponent provided revised drawings (Document 22) in response to the evidence from Mr Milner and Mr McGurn with details of this pathway route (through the site with a widened walkway and canopy over, and within the adjoining road reserves) along with a revised Park

Court crossover (shifted further south) and carpark layout (reduced to 406 spaces which was still above the scheme requirement). The revised drawings identified a notation to the southern supermarket façade identifying “*Place based ‘local’ historic artwork ...*”.

These plan changes were reflected in conditions 1(h) and 19i) and conditions 3 and 4 in revised version (Version 4) of the Permit provided by the Proponent (Document 34) and included in Appendix C. The version history of the proposed permit is discussed in Chapter 5.

(iii) Discussion

The Panel considers that there is insufficient strategic direction to assess whether the proposed built form appropriately responds to the subject land’s context although it notes that Clause 21.07-1 seeks new retail development within and surrounding the town centre to provide active frontages. It is important to consider whether the proposed centre has been appropriately designed to effectively integrated it with the town centre and connect it the existing retail core. The existing urban structure offers little direction because it was designed for an industrial area west of the former railway corridor. Council is yet to identify the preferred future character of the Cobram activity centre.

In the absence of a structure plan or similar, and when considering the proposal on its own merits, the Panel finds that proposed centre has serious site layout and built form issues. There is no clear understanding how a proposed centre of this scale and form, which has a largely internalised building set back by an expansive car park, will function with the existing town centre which has a different urban design typology.

The proposed centre presents itself, and is likely to operate, as an internalised freestanding centre with little relationship to its surrounds. It does not sufficiently integrate its built form and layout with the rest of the Cobram activity centre. The Panel acknowledges that, the building has been designed to address its considerable mass. Its use of different building materials, colours and features will better articulate what would ultimately be the activity centre’s largest commercial building. The proposed landscaping somewhat softens the extensive car park in the building’s foreground when viewed from most street frontages.

The exhibited proposed centre would result in:

- approximately 311 metres of car park along the street frontage with minimal pedestrian access
- an 82-metre long and 8-metre tall blank concrete wall at its eastern elevation along Park Court with no public access.

The proposal does not attempt to encourage street activation or pedestrian activity along any of its street frontages. The 82-metre blank wall provides no connectivity along one of the eastern interfaces to the C2Z which leads to the Cobram’s existing retail core. The proposed covered walkway to Colgan Street will do little to activate such activity on Colgan Street.

The proposed centre’s main entrance to the internal mall is oriented to serve the main car park. The entrance is approximately 93 metres from Park Court and similar distances to its other street frontages which requires a pedestrian to walk along a path through the car park. The Panel considers that this does not support a sufficiently direct pedestrian access to the main entrance. Suggested paths and connection points by Mr Milner and Mr McGurn go part way to address this issue. However, the Panel considers these to be ‘band aid’ responses

rather than long term solutions informed from a more strategic review of the subject land, the existing retail core and the intervening C2Z land.

The Panel considers that it is premature to progress the Amendment and permit application before Council progresses its strategic work to better understand how these site layout and built form issues can be addressed within the context of the rest of the Cobram activity centre. This includes the C2Z land between the subject land the existing retail core, with its existing industrial land uses, will be transformed to connect the two separate retail cores together. Enabling the proposed centre to proceed before future strategic work is introduced into the Moira Planning Scheme is likely to result in long term, and potentially irreversible, urban structure issues.

(iv) Conclusions

The Panel concludes:

- The proposal has serious site layout and built form issues which do not appropriately respond to the subject land's context.
- It is premature to progress the Amendment and permit application before Council progresses its strategic work to better understand how these serious issues can be addressed within the context of the rest of the activity centre.
- Enabling the proposed centre to proceed before being informed by new planning scheme provisions which implement the future strategic work is likely to result in long term, and potentially irreversible, urban structure issues.

4.2 Traffic and parking

(i) The issue

The issues are whether the proposal:

- will result in unreasonable traffic impact on the surrounding road network, including Murray Valley Highway.
- appropriately responds to its parking needs.

(ii) Background

The Traffic Engineering Assessment states:

- the traffic speeds and volumes on the surrounding arterial roads and Colgan Street, as summarised in Table 2
- car parking requirements are met through the 434 car parking spaces which include:
 - 275 spaces for the supermarket
 - 111 spaces for other shops
 - 20 spaces for the medical centres
- bicycle parking requirements are met through 34 spaces
- the centre is estimated to generate 492 vehicle trips each hour during evening peak
- peak hour traffic generation for entering and exiting traffic, with the majority occurring at the Park Court to Colgan Street entry/exit
- estimated traffic impact which identify low degrees of saturation to adjacent roads and short average delays, with the conclusion that the *“traffic generated from the*

proposal will have no adverse impact on the surrounding road network or intersections” and without the need for mitigating works.

Table 2 Traffic volumes and speeds

Road	Volume (vehicles per day)	Speed limit km/h
Murray Valley Highway	3,600 two-way	70 ¹¹
Broadway Street	7,600 two-way	60
Cobram-Koonoomoo Road	2,600 two-way	70
Colgan Street	878 two-way	50
Park Court	Not applicable	50

(iii) Submissions

Ms Edwards submitted that traffic along the Murray Valley Highway is heavy and that truck traffic pushes “*road users to go over the speed limit*” and questions whether this will improve. Neither Council or the Proponent specifically responded to this issue in its submissions or evidence.

Version 4 of the draft permit (Appendix C) reduced the number of car parking spaces from 406 to 400 to allow more room to widen onsite pedestrian paths. Council did not support the reduced number of spaces and the Proponent later accepted retaining the original 406 car parking spaces nominated on the exhibited permit.

(iv) Discussion

It is appropriate that site access from adjoining roads, particularly arterial roads and the traffic movements generated by a major use do not significantly impact on the operations of the road network. To establish this impact and any remediation response, the Panel has relied on the Traffic Engineering Assessment and the views of VicRoads and Council (as expressed in the Council report considering submissions). In this regard, the Panel notes that:

- the Traffic Engineering Assessment concluded “*traffic generated from the proposal will have no adverse impact on the surrounding road network or intersections*”
- VicRoads offered no objections to the development and identified specific conditions (which included requirements to address identified deficiencies in the Traffic Engineering Assessment relating to access) that have been included on the planning permit relating to access (including restricted egress) to Cobram-Koonoomoo Road and Broadway Street
- Council’s support for the development with conditions on the planning permit managing site access from non-arterial roads.

(v) Conclusions

The Panel concludes:

¹¹ VicRoads submission identifies that the speed limit is 80km/h

- The adjoining road network has adequate capacity to manage the volumes of traffic to be generated by the sites' proposed development.
- The planning permit conditions proposed by VicRoads relating to access to Cobram-Koonoomoo Road and Broadway Street adequately manage access to and from the site to the arterial road network.
- The planning permit conditions proposed by Council to manage access to and from the site from Park Court and proposed line marking works in Colgan Street, provides for an appropriate management of traffic impacts on the non-arterial road network.

4.3 Park Court

(i) The issues

The issues are:

- Whether Park Court should be constructed as a result of the development.
- Whether the development will inappropriately impact on business signage in Park Court.

(ii) Permit conditions

The exhibited planning permit included a condition (Condition 19, updated to Condition 22 in the Appendix C version) requiring upgrades to adjacent roads, including Park Court. For Park Court, the condition includes requirements for:

- an upgrade to the carriageway including kerb and channel and a sealed wearing course
- a footpath
- underground drainage
- intersection and traffic control measures
- streetlighting and signage
- street trees.

(iii) Submissions

Cobram Kitchens and Cabinets which operates from Park Court, identified the need for Park Court to be upgraded with gutters and kerbs due to additional truck traffic using the court.

The submission further raised concerns about the blocking of the business' signage from the Murray Valley Highway and Colgan Road by the new development. It identified that the remedy sought involved the developer erecting appropriate business identification signage on the corner of Colgan Street and Park Court. The submission did not identify whether this signage was to be constructed on the subject land or another location.

In relation to the construction of Park Court, Council submitted that it *"need only be upgraded to the extent that is reasonably required by the proposed development"*. The proponent did not raise concerns with the Park Court construction condition proposed by Council.

Council submitted that the obscuring of existing business signage by the proposal was *"not a matter that could be directly addressed by way of relevant planning considerations"*.

(iv) Discussion

The Traffic Engineering Assessment states that the development will generate significant additional traffic volumes (including further truck movements associated with delivery activity) into Park Court and that an upgrade of the Court is appropriate. The Panel considers that the condition proposed to require the construction of Park Court is required.

The Panel agrees with Council that it is not appropriate for the Panel to require the proponent to erect additional business identification signage for a third party. The existing site signage for the business is not overly visible from the Murray Valley Highway and the setback of the proposed buildings will still maintain view lines to the business from Colgan Street. It is a reasonable expectation given the C2Z zoning of the land and highway location of the site, that the subject land would be developed in the future and that this may obscure the distant views to signage on nearby premises. In any event, it is likely that a major development on this site may attract more patronage and activity to this locality, with benefit to nearby businesses of greater passing traffic and business awareness.

(v) Conclusions

The Panel concludes:

- The planning permit Condition proposed by Council, and shown as Condition 22 in Appendix C, provides an appropriate level of construction of Park Court.
- It is not appropriate or reasonable for the proposal to provide signage for a nearby business.

4.4 On site facilities**(i) The issue**

The issue is:

- Whether the development should include additional facilities for tourists including toilets and visitor information.

(ii) Submissions

In her submission, Ms Edwards made a general comment that there was lack of a tourist information centre and limited toilet facilities. She did not clarify how this related to the subject land. Council responded that these matters are general in nature and not directly related to the proposal.

(iii) Discussion

The Panel notes that a tourist information centre is located a few hundred metres southeast of the subject land in Punt Road. While the Proponent indicated that gateway entry signage was being considered, subject to a future planning permit application, there is no basis to require the development to include a tourist information centre.

The Cobram Strategy Plan notes, in referencing the findings of the Urban Design Framework, that an enhanced visitor information centre is needed for Cobram, preferably in a high-profile site and potentially as part of the proposed redevelopment of Federation Park¹².

The Panel agrees with Council that providing public toilets on the subject land is a building approval matter. However, it notes that the development plans include toilet facilities in a central location off the northern pedestrian entry.

(iv) Conclusion

The Panel concludes:

- It is not appropriate or reasonable for the proposal to provide for additional facilities and services for tourists.

4.5 Potential land contamination

(i) Background

Ministerial Direction No 1 provides that:

In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) potentially contaminated land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself that the environmental conditions of that land are or will be suitable for that use.

(ii) The issue

The issue is whether the proposed planning permit appropriately responds to potential site contamination.

(iii) Evidence and submissions

Council referred to a Preliminary Environmental Site Assessment which was prepared following site inspection, historical research and soil sampling based on potential contaminants of concern relating to the previous use of the site. While the analysis identifies that the levels of target contaminants were within acceptable levels for a non-sensitive use, the presence of Asbestos Containing Materials (ACM) were identified on site. The Assessment makes particular recommendations about the management and removal of ACM from the site including the preparation of a soil management plan. Condition 36 of the exhibited planning permit references the Assessment and requires a soil management plan to be prepared before site material is removed.

EPA submitted that it did not object to the rezoning or to the proposed permit subject to any land contamination being remediated. EPA recommended *“that site remediation is undertaken to satisfy Council that the land is suitable for the intended purpose”* consistent with Ministerial Direction No 1 Potentially Contaminated Land based on the identification of remnant asbestos on the site.

Mr McGurn stated that, while the proposed commercial development was not a sensitive use as defined in the Ministerial Direction, the C1Z permits a wide range of uses ‘as of right’

¹² p49

including residential use and education centres. In this instance, he said the Ministerial Direction supported the use of an Environmental Audit Overlay. However, Mr McGurn considered residential use unlikely and indicated other options including an additional environmental assessment (and or remediation) or a s173 Agreement restricting land uses.

Council's Part A submission identified that Ministerial Direction No 1 only applies to rezoning to allow residential use, public open space, agriculture, a child care, preschool centre or a primary school. Version 3 of the Permit provided by Council (Document 14) included a modified condition 10 relating to a waste management plan which referenced the Preliminary Environmental Site Assessment and the requirement for a s173 Agreement to prohibit sensitive uses without a statement or certificate of environmental audit.

The Proponent supported this approach and the amended condition was been retained in Version 4 of the permit (renumbered to Condition 13).

(iv) Discussion and conclusion

The Panel is satisfied that exhibited and revised permit conditions align with EPA's submission to ensure that site remediation is undertaken to satisfy Council that the land is suitable for the intended purpose.

The Panel concludes that the proposed planning permit, with the renumbered Condition 13, appropriately responds to potential site contamination.

While the Panel agrees that the development does not propose a sensitive use, it supports the precautionary approach adopted by Council and the Proponent in the drafting of Condition 13 of the Permit (Version 4). The application of the Environmental Audit Overlay is not warranted given the highway location of the site and relationship with industrial and commercial land uses.

5 Planning permit drafting matters

The Panel considers the Amendment is not strategically justified and the permit should not be granted. However, the Panel provides further comment on the draft planning permit should that recommendation not be adopted.

5.1 Exhibited draft planning permit

The exhibited permit contains 55 conditions addressing:

- amended and endorsed plans (conditions 1 and 2)
- landscaping and native vegetation offsets (conditions 1 to 7)
- services plant and equipment (condition 8)
- waste storage and collection (conditions 9, 10 and 31)
- glazing (condition 11)
- lighting (conditions 12 and 13)
- car and bicycle parking (conditions 14 to 17 and 21)
- drainage (conditions 18, 23, 24 and 29)
- road upgrades and access (conditions 19, 20, 28 and 32)
- site construction management (condition 22, 33 to 36)
- infrastructure construction plans and maintenance (conditions 25 to 27 and 30)
- permit expiry (condition 37)
- Powercor (conditions 38 to 46)
- Goulburn Valley Water (conditions 47 to 53)
- VicRoads (conditions 54 and 55).

The draft permit has five notes relating to general planning matters and from VicRoads.

5.2 Post-exhibition draft planning permit versions

At the Hearing, Council provided two further versions of the planning permit with revised conditions:

- Version 2 (Document 10) which responded to the Panel's observations at the Directions Hearing that a number of conditions which related to 'use' or 'commencement of use' (conditions 1, 2, 4, 7, 17, 19-21, 23, 26-29). This version sought to remove conditions 10, 31 and 32
- Version 3 (Document 14) which retained the Version 2 changes and introduced further Condition 1 amended plans changes to include the suggested building articulation and pedestrian linkages identified in the evidence of Mr McGurn and Mr Milner, and a new condition requiring the provision of a waste management plan as recommended in the evidence of Mr Horsfall.

The Proponent provided Version 4 of the draft planning permit (Document 34) during its closing submission. Version 4 was broadly consistent with Version 3 and:

- requires a wider pedestrian path along the southern elevation of the supermarket and related changes to the carpark and Park Court entry - condition 1(h)
- simplifies the evidence of Mr McGurn's building articulation changes - condition 1(i)

- provides for a monetary contribution to public art – condition 1(j)
- includes and further specifies the key elements of the evidence of Mr Milner relating to pedestrian connections as a new condition – condition 3
- provides for a monetary contribution towards the construction of footpath connections identified in the new condition 3 through a section 173 Agreement – condition 4
- reduces the number of car parking spaces from 406 to 400 spaces
- extends the permit expiry from two to three years for development commencement and six years for development completion.

Council supported these changes, other than the reduced car parking numbers.

The tracked changes accepted version was supported by Council (with the proviso to maintain 406 car spaces) and is included in Appendix C.

5.3 Discussion

As discussed elsewhere in this report the Panel considers the proposal has serious site layout and built form issues and is premature before Council's progresses its strategic work for the Cobram activity centre. However, Version 4 of the draft planning permit go part way to address some of these issues. Should Council decide not to support the Panel's recommendations to abandon the Amendment and issue a planning permit, then it should adopt changes in Version 4 of the draft planning permit. It should do so noting that they will not resolve all outstanding issues. The Panel provides reasons why it supports some of the post-exhibition changes to the draft planning permit earlier in this report.

Replacing "*occupation*" with "*development*" in conditions 3 and 4 will recognise that these conditions relate to development elements that should be resolved in the detailed plans development phase rather than before occupation of the supermarket buildings. The permit should still provide for the provision of 406 spaces.

5.4 Conclusion

Should the planning authority not support the Panel's recommendations to abandon the Amendment and not issue a planning permit, the planning permit should be revised, as shown in Appendix C, subject to:

- replace the word "*occupation*" with "*development*" in Conditions 3 and 4.
- revise Condition 17 to provide for a minimum of 406 car spaces.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Pam Gallagher	32	Doug Miller
2	Barry Maher	33	Janice Dodson
3	Renee Carpinelli	34	Jenny Trounce
4	W & B Skinner	35	Jillene Spackman
5	Karen and Robert Beckett	36	Kristina Dare
6	Bill and Helen Brady	37	Kerrie Cosoleto
7	Brianna Tedesco	38	Carole Childs
8	Isobel Brierly	39	Leanna Loy
9	Lynette Cain	40	Linda Milovitch
10	Marie Morris	41	Shelley Lissington
11	Christina Grant	42	Lois Newnham
12	Yvonne Millsum	43	Michelle Watt
13	Danielle Large	44	Marie Parr
14	William and Julie Darvell	45	Mary Swoffer
15	Denise Bateman	46	Maureen Nye
16	Diane Naismith	47	Michael Davies
17	Dianne Rigby	48	Megan Barnard
18	Greg Dinsdale	49	Michael and Sherrell Taylor
19	Diane Hansen	50	Mirandah Cosoleto
20	Barbara and Don Sutton	51	Marina Buchmann
21	Dennis and Avelyn Sutton	52	Nicole Baker
22	Dean Knight	53	Patricia Slatterie
23	Ellen Booth	54	Paula Nolan
24	Tracey Strawhorn and Matt Perrin	55	Peter Campbell
25	Eve Hartshorne	56	Phil Strawhorn
26	Frank and Margaret Bland	57	Michelle Johnston
27	Deb Fry	58	Rebecca Clemson
28	Simone Bath	59	Catherine Broome
29	Glen Swoffer	60	Rebecca Parker
30	Michelle Harris	61	Rodney Kruz
31	Hayley Muller	62	Sallie Robinson

No.	Submitter	No.	Submitter
63	Sharon Berning	79	Imre Mogyorossy
64	Russell Sullivan	80	Trish Mogyorossy
65	Cheryl Sproules	81	S Woodhall
66	Stephanie Thompson	82	Iris and Peter Eldridge
67	Susan LaRose	83	Gwen Price
68	Peter Carpinelli	84	Marjorie Baldwin
69	Tanika Murray	85	Josephine Lindfield
70	Julie Rae	86	Brenda Clarke
71	Thomas Dellanno	87	Terry and June Peddler
72	Krystin Mynard	88	J & A Mackell
73	Tammy Munson	89	Grace Edwards
74	Tracey Mueller	90	Now Make P/L
75	Tracy Ryan	91	Michael Hayler
76	Terry and June Peddler	92	Ritchies Supermarkets and Liquor Stores
77	J and A Mackell		
78	Lesley Chandler		

Appendix B Document list

No.	Date	Description	Presented by
Prehearing documents			
1	12/3/2019	Council Part A submission	Council
2	12/3/2019	Anthony Irish, SED Regional Advisory, expert witness statement	Council
3	12/3/2019	Warwick Horsfall, Habitat Planning, expert witness statement	Council
4	12/3/2019	Gavin Duane, LocationIQ, expert witness statement	Rhodie Anderson of Rigby Cooke Lawyers
5	12/3/2019	Robert Milner, 10CG, expert witness statement	Ms Anderson
6	12/3/2019	Stuart McGurn, Urbis, expert witness statement	Ms Anderson
Hearing documents			
7	19/3/2019	Council Part B Submission	Council
8	19/3/2019	Map – Cobram activity centre boundary	Council
9	19/3/2019	Submission – Response to 15 March Panel direction	Mr Bartley
10	19/3/2019	Draft Planning Permit – Council tracked changes version 2	Council
11	21/3/2019	Council Part B Supplementary Submission	Council
12	21/3/2019	Referral authority responses, November 2017	Council
13	21/3/2019	Referral authority responses to formal notice, 2018	Council
14	21/3/2019	Draft Planning Permit – Council tracked changes version 3	Council
15	21/3/2019	Aerial map – larger sites	Council
16	21/3/2019	Subdivision concept plan – former saleyards site	Council
17	21/3/2019	Elevations – Railway land site	Council
18	21/3/2019	Zone map – Town retail centre and restricted retail uses	Ms Brennan
19	21/3/2019	Annotated development plan	Ms Brennan
20	21/3/2019	Aerial maps – Shepparton and Churchill	Mr Milner
21	21/3/2019	Greater Shepparton C192 and C193 / Permit Application 2106-269 Panel report	Ms Brennan
22	21/3/2019	Option plans with measurements	Ms Brennan
23	22/3/2019	Aerial map	Ms Brennan
24	22/3/2019	Submission – Tipalea Partners Pty Ltd	Ms Brennan
25	22/3/2019	Extract - Vicinity Centres Pty Ltd v Mornington Peninsula SC [2017] VCAT 1802	Ms Brennan

No.	Date	Description	Presented by
26	22/3/2019	Extract – Greater Geelong PSA C65 and C100 Panel Report [2005] PPV	Ms Brennan
27	22/3/2019	Extract – Save Bright Action Group v Alpine SC [2008] VCAT 1425	Ms Brennan
28	22/3/2019	Extract – Hammond Royce Corporation Pty Ltd v Mornington Peninsula Shire Council [2006] VCAT 1706	Ms Brennan
29	26/3/2019	Submission – Now Make Pty Ltd	Mr Bartley
30	26/3/2019	Aerial map – Sorrento activity	Mr Bartley
31	26/3/2019	Aerial map – Bright activity centre	Mr Bartley
32	26/3/2019	Various emails from Coles to Mr Watson	Mr Bartley
33	26/3/2019	Letter – Coles to Tipalea Partners	Ms Brennan
34	26/3/2019	Draft Planning Permit – Proponent tracked changes version 4	Ms Brennan
35	26/3/2019	Proposed Stage 2 Expansion of Epping Plaza Shopping Centre	Mr Bartley
36	26/3/2019	Greater Geelong PSA C321 Panel Report [2014] PPV	Mr Bartley
37	26/3/2019	Extract – Mitchell PSA C79 Panel Report [2012] PPV	Mr Bartley
38	26/3/2019	Fabcot Pty Ltd v Latrobe CC [2017] VCAT 354	Mr Bartley
39	26/3/2019	Maverston Property Pty Ltd v Greater Bendigo CC [2013] VCAT 1244	Mr Bartley
40	26/3/2019	Council closing submission	Council
41	26/3/2019	Carinish Holdings Unit Trust v Monash CC [2017] VCAT 2005	Council
42	26/3/2019	Gokler v Hume CC [2018] VCAT 336	Council
43	26/3/2019	Golden Ridge Investments v Whitehorse CC [2004] VCAT 1706	Council
44	1/4/2019	Cobram Woolworths turnover figures	Mr Bartley

Appendix C Version 4 of the Planning Permit

PLANNING PERMIT

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

Permit No.: 5/2017/204

Planning scheme: Moirra Planning Scheme

Responsible authority: Moirra Shire Council

ADDRESS OF THE LAND: 2-6 COLGAN STREET, COBRAM

THE PERMIT ALLOWS: Buildings and works for the construction of two supermarkets, medical centre and retail premises, the variation of an easement, the removal of native vegetation and the creation of accesses to a Road Zone Category 1.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

- (1) Prior to the commencement of the development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - (a) Shade structures located over at least 15% of the customer car parking spaces located to the south of the shopping centre;
 - (b) A minimum of nine (9) disabled car parking bays with at least two (2) bays located adjacent to the medical centre;
 - (c) Additional passive surveillance of the eastern portion of the car park through the provision of additional glazing from the smaller retail tenancies;
 - (d) The access and egress from Car Park 2 to be restricted to employees and delivery vehicles only via a secured boom gate or other restrictive measure located at least six (6) metres inside the property boundary;
 - (e) Delineation of the Park Court bowl as detailed in Condition 22;
 - (f) Any requirements from VicRoads as detailed within Condition 54;
 - (g) A landscape plan in accordance with Condition 5;
 - (h) Modification of the pedestrian path along the southern elevation of the supermarket to be at least 4m in width and generally aligned with the path along the retail frontage of the tenancies and consequential changes to the carpark layout and carpark entry;
 - (i) Modification of the southern elevation of the supermarket to include suitable features to improve the activation and articulation of the façade; and
 - (j) Location of public art work (to a minimum value of \$50,000) to be erected on the site to the satisfaction of the Responsible Authority.
- (2) The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

- (3) Prior to the commencement of the occupation of the supermarkets, a plan showing a continuous and integrated footpath along the road reserve of the following streets must be submitted and approved by the responsible authority:

- (a) Western side of Park Court to Colgan Street;
- (b) Northern side of Colgan Street to Dillon Street; and
- (c) Western side of Dillon Street to Punt Road.

When approved, the plan will be endorsed and form part of the permit.

- (4) Prior to the commencement of the occupation of the supermarkets, the owner of the land must enter into an agreement under section 173 of the Planning and Environment Act 1987 in which the owner agrees to pay the following monetary contribution to the responsible authority:

- (a) \$50,000 as a contribution to the footpath as shown on the plan endorsed under Condition 3 of this permit.

The agreement must provide for the timing of the payment of the contributions to the responsible authority to be prior to the occupation of the supermarkets, unless otherwise agreed between the parties.

The agreement may provide for the payment of the contributions in instalments.

The agreement must provide for the owner to pay the costs of the responsible authority for the preparation and registering of the agreement on title and then upon its ending, deregistering the agreement.

- (5) Prior to the endorsement of plans under Condition 1, a landscape plan must be submitted to the Responsible Authority for approval. When approved, the plan will be endorsed and will then form part of the permit.

The landscape plan must be drawn to scale with dimensions and two (2) copies must be provided. The landscape plan must be prepared by a suitably qualified person, generally in accordance with the landscape plan prepared by John Patrick Landscape Architects dated Sept 2017 to include:

- (a) The site at a scale of 1:100/200, including site boundaries, proposed buildings, neighbouring buildings, car parking, access and egress points, indicative topography and spot levels at the site corners, existing and proposed vegetation, nature strip trees, easements, and landscape setbacks;
- (b) The plan must be generally in accordance with the '*Landscape Guide for Developments in Campaspe Shire Council, City of Greater Shepparton and Moira Shire Council*';
- (c) Details of the proposed layout, type and height of fencing;
- (d) Legend of all plant types, surfaces, materials and landscape items to be used including the total areas of garden and lawn;
- (e) A plant schedule giving a description of botanical name, common name, mature height and spread, pot size, purchase height (if a tree) and individual plan quantities;
- (f) The provision of canopy tree plantings dispersed throughout the car parking spaces; and
- (g) Additional landscaping within the garden bed to the east of the major supermarket tenancy to soften the build form of the development.

- (6) Prior to the commencement of the use of the development authorised by this permit, or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

Date issued:

Date permit comes into operation:

(or if no date is specified, the permit comes into operation on the same day as the amendment to which the permit applies comes into operation)

Signature for the responsible authority:

Once completed, the landscaping must be maintained to the satisfaction of the Responsible Authority, including any dead, diseased or damaged plants being replaced.

- (7) Native vegetation offsets are required to offset the removal of seven scattered trees approved as part of this permit.

The applicant must provide native vegetation offset that meet the following requirement, and is in accordance with the 'Permitted clearing of native vegetation – Biodiversity assessment guidelines' and the 'Native vegetation gain score manual' (Department of Environment, Land, Water and Planning). The offset must:

- (a) Contribute gain of at least 0.015 general biodiversity equivalence units;
 - (b) Be located within the Goulburn Broken Catchment Management Authority boundary or Moira Shire Council Municipal district; and
 - (c) Have a strategic biodiversity score of at least 0.100.
- (8) Before any native vegetation is removed, evidence that an offset has been secured must be provided to the satisfaction of and approved by the Responsible Authority. This offset must meet the offset requirements set out in this permit and be in accordance with the requirements of the permitted clearing of native vegetation – biodiversity assessment guidelines and the native vegetation gain scoring manual (Department of Environment, Land, Water and Planning). Offset evidence can be either:

- (a) An allocated native vegetation credit register extract from the Native Vegetation Credit Register; or
- (b) A security agreement to the required standard for the offset site or sites, including a 10-year Offset Management Plan to the satisfaction and approval of the Responsible Authority. The requirements noted in an approved and endorsed Offset Management Plan must not be altered except with the written consent of the Responsible Authority;

Every year, for ten years from the date of approval of the Offset Management Plan, the applicant must provide to the Responsible Authority, notification of actions undertaken towards implementation of the Offset Management Plan, an offset site condition statement and site monitoring photographs.

- (9) The development must be managed so that the amenity of the area or locality, in the opinion of the Responsible Authority, is not detrimentally affected, through the:
- (c) transport of materials, goods or commodities to or from the land;
 - (d) appearance of any building, works or materials;
 - (e) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; and
 - (f) presence of vermin.
- (10) All pipes, fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
- (11) No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building(s) without the written consent of the Responsible Authority.
- (12) Provision must be made on the land for the storage and collection of garbage and other solid waste. This area must be covered, graded and drained and screened from public view to the satisfaction of the Responsible Authority.
- (13) Prior to the endorsement of plans under Condition 1, a waste management plan for the collection and disposal of garbage and recyclables for all uses must be submitted to the

Date issued:

Date permit comes into operation:

(or if no date is specified, the permit comes into operation on the same day as the amendment to which the permit applies comes into operation)

Signature for the responsible authority:

Responsible Authority for approval. The waste management plan must provide for; the method of collection of garbage and recyclables, designation of methods of collection, appropriate areas for bin storage on site and areas for bin storage on collection days and litter management. When approved, the plan will be endorsed and will then form part of the permit. The waste management plan must include the recommendations of the *Preliminary Environmental Site Assessment 2-6 Colgan Street, Cobram, March 2016*, prepared by Greencap – NAA Pty Ltd in relation to the potential contamination of the site by way of asbestos, including a requirement that an agreement under section 173 of the *Planning and Environment Act 1987* be entered into with the Responsible Authority to the effect that the land cannot be used for a sensitive use unless there is a statement or certificate of environment audit under the *Environment Protection Act 1970* (or any subsequent relevant Act) to the effect that the land may be used for that sensitive use.

- (14) In the order of eighty percent (80%) of the glazed areas of the southern building façade must remain transparent at all times, to the satisfaction of the Responsible Authority.
- (15) External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.
- (16) Flashing or intermittent light must not be displayed on the subject land except with the prior written consent of the Responsible Authority.
- (17) No fewer than 400 car spaces must be provided on the land for the use and development, including 9 spaces clearly marked for use by disabled persons. The disabled car spaces must be provided as close as practicable to suitable entrances of the building including the medical centre and must be clearly marked with a sign to indicate that the spaces must only be utilised by disabled persons. The dimensions of the car spaces must accord with Australian Standard 2890 series.
- (18) The car parking area must be lit if in use during hours of darkness, and all lights must be designed, fitted with suitable baffles and located to prevent any adverse effect on adjoining land, to the satisfaction of the Responsible Authority.
- (19) A concrete kerb or other barrier/wheel stop must be provided within car parking spaces as protective measures to the landscaping treatment, to the satisfaction of the Responsible Authority.
- (20) Prior to the commencement of the use of the development authorised by this permit, provision must be made for the parking of 34 bicycles on the subject land to the satisfaction of the Responsible Authority.
- (21) Prior to the commencement of construction on the site, the Stormwater Drainage Strategy report prepared by Chris Smith & Associates (Reference: 17113, October 2017) must be amended to the satisfaction of the Responsible Authority to address the following:
 - (a) unless proven otherwise, in discharging to Council's drainage system, computations must be based on the 63% AEP rainfall event and the existing site conditions and not post development site condition coefficients as the strategy sets out;
 - (b) demonstrate a safe depth of water will be maintained in the carpark storage areas;
 - (c) demonstrate self-cleanings velocities, pit losses and pipe top cover minimum standards will achieve in diverting the Council owned stormwater pipe asset;
 - (d) demonstrate overland flow path/s through the fully developed site are maintained when storm retention areas are full/in operation; and
 - (e) demonstrate any upstream catchment/s that may need to be considered having potential impact on the site.

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- (22) Prior to the commencement of use of the development authorised by this permit, upgrades of Park Court, Colgan Street, Cobram-Koonoomoo and Murray Valley Highway adjacent to and extending the full frontage of the subject land must be undertaken in accordance with the Endorsed Plans.

The works must be designed and constructed to best match into the surrounding infrastructure in-keeping with the current street appearance. All the works must conform to plans and specifications prepared at the expense of the developer by a suitably qualified engineer, and endorsed by the Responsible Authority prior to commencement of construction.

Unless otherwise agreed in writing, the Authority will only approve plans and specifications complying with Council's Infrastructure Design Manual (IDM). In particular the works must include:

Park Court

- (a) upgrade the road carriageway to an Access Standard width, providing kerb and channel to each side of the road with a sealed wearing course and court bowl. As agreed and once works are completed, Council will make a cash contribution for the construction works associated with the remaining section of the court bowl to be brought up to the same standard, as delineated on the Endorsed Plans;
- (b) footpath;
- (c) underground drainage;
- (d) appropriate intersection and traffic control/mitigation measures;
- (e) appropriate street lighting and signage, including 'No Standing' street signs where appropriate;
- (f) high stability permanent survey marks;
- (g) all disused or redundant vehicle crossings must be removed and reinstated to the satisfaction of the Responsible Authority; and
- (h) Street trees where appropriate.

Colgan Street

- (i) Blacking out and linemarking of 'long vehicle parking bays' and appropriate signage; and
- (j) Street trees where appropriate.

Cobram-Koonoomoo Road

- (k) proposed access road constructed, sealed, and drained to the satisfaction of the Responsible Authority, including provision of street lighting and signage as required; and
- (l) Street trees where appropriate.

Murray Valley Highway

- (m) provide sealed path connection for pedestrians connecting the site to the existing path network; and
 - (n) Street trees where appropriate.
- (22) Prior to the commencement of the use of the development authorised by this permit, all new and existing vehicle crossings as shown on the endorsed plan must be constructed and sealed to the standards of Council's Infrastructure Design Manual, and to the satisfaction of the Responsible Authority. In particular, any redundant vehicular crossing/s serving the subject land must be removed and replaced with kerb and channel, to the satisfaction of the Responsible Authority.

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The final location of the crossing is to be approved by the Responsible Authority via a “Consent to Work within the Road Reserve”, prior to the undertaking of works.

- (23) Prior to the commencement of the use of the development authorised by this permit, any internal customer parking, manoeuvring areas and loading and unloading areas created by the proposed development and as shown on the endorsed plan are to be in accordance with Council’s Infrastructure Design Manual, and any specifications approved by the Responsible Authority, and be:
- (a) constructed;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) drained;
 - (d) surfaced with an all-weather (sealed) surface;
 - (e) include shade structures over at least 20% of the car parking areas;
 - (f) line marked to indicate each car space and all access lanes, including pedestrian pathways;
 - (g) clearly marked to show the direction of traffic along access lanes and driveway;
 - (h) restrict vehicle access to only the site’s entry/exit points; and
 - (i) signed and illuminated.

Car spaces, access lanes and driveways must be kept available for these purposes at all times.

- (24) Prior to commencement of works, a Construction Site Management Plan in accordance with Council’s Infrastructure Design Manual must be prepared, approved and implemented to the satisfaction of the Responsible Authority. The plan must show:
- (a) measures to control erosion and sediment and sediment laden water runoff, including the design details of structures;
 - (b) measures to retain dust, silt and debris onsite, both during and after the construction phase;
 - (c) locations of any construction wastes, equipment, machinery and/or earth storage/stockpiling during construction;
 - (d) where access to the site for construction vehicle traffic will occur;
 - (e) tree protection zones;
 - (f) the location and details of a sign to be erected at the entrance(s) of the site advising contractors that they are entering a ‘sensitive site’ with prescribed tree protection zones and fences;
 - (g) the location of trenching works, boring, and pits associated with the provision of services; and
 - (h) the location of any temporary buildings or yards.
- (25) Prior to the commencement of the use of the development authorised by this permit, all drainage infrastructure required by the approved drainage plan must be constructed in accordance with plans and specifications approved by the Responsible Authority.
- (26) Prior to the commencement of construction on the site, a properly prepared drainage plan with certified computations must be submitted to and approved by the Responsible Authority. The plan must accord with the provisions of Council’s Infrastructure Design Manual and be prepared

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by a suitably qualified person to the satisfaction of the Responsible Authority. In particular the plan must demonstrate:

- (a) all storm-water deposited upon, and transferred through, the developed site during a 5% AEP event is collected and conveyed by underground pipes to a legal point of discharge nominated by the Responsible Authority;
 - (b) all storm-water runoff originating from, or currently flowing through, the developed site in a 1% AEP rainfall event is collected and conveyed by secure overland and/or underground flood pathways to a legal point of discharge identified by the Responsible Authority;
 - (c) a maximum discharge rate from the site be determined by computations to the satisfaction of the Responsible Authority;
 - (d) storm-water drainage plans for the development incorporate measures to enhance the quality of water discharged from the site and to protect downstream infrastructure and waterways;
 - (e) relocation of any Council existing drainage infrastructure must be carried out in accordance with plans and specifications, approved by the Responsible Authority; and
 - (f) unless agreed otherwise, the drainage design must be generally in accordance with the accepted Stormwater Drainage report prepared by Chris Smith & Associates (Reference: 17113).
- (27) All infrastructure created by this development, and passing into the ownership and control of Council, must be maintained by the developer for a period of 3 months following practical completion, and the developer must thereafter accept liability for correcting defects that become evident during the following 9 months in accordance with Council's Infrastructure Design Manual and to the satisfaction of the Responsible Authority.
- (28) Prior to the commencement of use of the development authorised by this permit, the developer must provide the Responsible Authority with a maintenance bond(s) for the total costs of roads, drainage and landscaping works passing into the ownership and control of the Council. Bonds are to be calculated on excluding GST amounts and based on the priced Bill of Quantities, and lodged with Council for the term of the Defect Liability Period, being a minimum twelve (12) month period.

The Authority will hold the bond(s) until any and all defects notified to the developer before or during the liability period have been made good to the satisfaction of the authority. A request must be made to Council for their release and maintenance bond(s) shall be to the following values:

- (a) equal to 5% of roads, drainage and hard landscaping related infrastructure; and
 - (b) a percentage of the replacement costs for all soft landscaping
- (29) Prior to the commencement of the use of the development authorised by this permit the developer must provide as-constructed information for all infrastructure created by this development, and passing into the ownership and control of Council in accordance with Council's Infrastructure Design Manual, and be submitted to and approved by the Responsible Authority. The following must be submitted:
- (a) an assets statement for each street;
 - (b) 'as constructed' information for the entire work in each development stage detailing information as listed in the council's Infrastructure Design Manual; and
 - (c) information to be presented in pdf., dwg. and D, O and R SPEC formats as appropriate, unless otherwise agreed in writing by the Authority.

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- (30) Prior to the commencement of the use of the development authorised by this permit the nature-strip and all disturbed areas are to be topsoiled and seeded to establish grass cover, unless other treatments/finishes are approved by the Responsible Authority.
- (31) Prior to the commencement of the use of the development authorised by this permit, appropriate drainage easements must be created in favour of the Moira Shire Council covering any relocation of Council's drainage assets, to the satisfaction of the Responsible Authority.
- (32) All construction plan approvals will lapse at the time of a request to extend this Planning Permit.
- (33) No excavated or construction materials may be placed or stored outside the site area or on the adjoining road reserves, except where the materials are required in connection with any road or footpath construction works in such reserves that are required as part of this permit.
- (34) Care must be taken to preserve the condition of existing infrastructure adjacent to the site. If any damage to existing infrastructure occurs as a result of this development, the affected infrastructure must be replaced, and the full cost met, by the developer, to the specification and satisfaction of the Responsible Authority.
- (35) No such contaminants will be permitted to enter the storm-water drainage system under any reasonably foreseeable circumstances.
- (36) Prior to the commencement of the development on the site, a Soil Management Plan must be prepared and approved to the satisfaction of the Responsible Authority. The Soil Management Plan must address the proposed excavation works on the site as well as the ongoing development of the site, and identify measures to minimise risks to site workers, future site workers, future site users and the environment associated with potentially contaminated soil that may be encountered during development works at the site, in accordance with the recommendations of the Greencap – NAA Pty Ltd report dated March 2016.
- (37) This permit will expire if one of the following circumstances applies:
- The development is not started within three years of the date of this permit.
 - The development is not completed within six years of the date of this permit.
- The Responsible Authority may extend the periods referred to if a request is made in writing before or within 6 months after the expiry of the permit where the development has not yet started, or within 12 months where the development has commenced.

Powercor Conditions

- (38) Provide an electricity supply to all lots in the subdivision in accordance with Powercor requirements and standards, including the extension, augmentation or re-arrangement of any existing electricity supply system, as required by Powercor (A payment to cover the cost of such work will be required). In the event that a supply is not provided the applicant shall provide a written undertaking to Powercor Australia Ltd that prospective purchasers will be so informed.
- (39) Where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, they shall be brought into compliance with the Service and Installation Rules issued by the Victorian Electricity Supply Industry. You shall arrange compliance through a Registered Electrical Contractor.
- (40) Any buildings must comply with the clearances required by the Electricity Safety (Installations) Regulations.
- (41) Any construction work must comply with Energy Safe Victoria's "No Go Zone" rules.
- (42) Set aside on the plan of subdivision for the use of Powercor Australia Ltd reserves and/or easements satisfactory to Powercor Australia Ltd where any electric substation (other than a pole mounted type) is required to service the subdivision.

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Alternatively, at the discretion of Powercor Australia Ltd a lease(s) of the site(s) and for easements for associated powerlines, cables and access ways shall be provided. Such a lease shall be for a period of 30 years at a nominal rental with a right to extend the lease for a further 30 years. Powercor Australia Ltd will register such leases on the title by way of a caveat prior to the registration of the plan of subdivision.

- (43) Provide easements satisfactory to Powercor Australia Ltd, where easements have not been otherwise provided, for all existing Powercor Australia Ltd electric lines on the land and for any new powerlines required to service the lots and adjoining land, save for lines located, or to be located, on public roads set out on the plan. These easements shall show on the plan an easement(s) in favour of "Powercor Australia Ltd" for "Power Line" pursuant to Section 88 of the Electricity Industry Act 2000.
- (44) Obtain for the use of Powercor Australia Ltd any other easement external to the subdivision required to service the lots.
- (45) Obtain Powercor Australia Ltd's approval for lot boundaries within any area affected by an easement for a powerline and for the construction of any works in such an area.
- (46) Provide to Powercor Australia Ltd, a copy of the version of the plan of subdivision submitted for certification, which shows any amendments which have been required.

Goulburn Valley Water Conditions

- (47) Payment of new customer contribution charges for water supply to the development, such amount being determined by the Corporation at the time of payment.
- (48) Provision of a reticulated water supply and associated construction works to replace the existing water main that currently lies within the development, at the developer's expense, in accordance with standards of construction adopted by and to the satisfaction of the Goulburn Valley Region Water Corporation.
- (49) Provision of individual water supply meters to each tenement within the development.
- (50) Payment of new customer contributions charges for sewerage services to the development, such amount being determined by the Corporation at the time of payment.
- (51) Connection of all sanitary fixtures within the development to reticulated sewerage, at the developer's expense, in accordance with standards of construction adopted by and to the satisfaction of the Goulburn Valley Region Water Corporation.

All works required are to be carried out in accordance with AS 3500.2 - 'Sanitary plumbing and drainage', and to the satisfaction of the Corporation's Property Services Section;

- (52) Discharge of trade waste from the development shall be subject to a Trade Waste Consent Agreement.

The Owner and or occupier is required to submit a completed Trade Water Application, and install the required pre-treatment facility to the satisfaction of Goulburn Valley Water's Trade Waste Section, before approval to discharge trade waste from the development into the Corporation's sewer is granted.

- (53) The operator under this permit shall be obliged to enter into an Agreement with Goulburn Valley Water Corporation relating to the design and construction of any sewerage or water works required. The form of such Agreement shall be to the satisfaction of Goulburn Valley Water. A copy of the format of the Agreement will be provided on request.

VicRoads Conditions

- (54) Before the development starts amended functional layout plans must be submitted to and approved by the Roads Corporation. When approved by the Roads Corporation, the plans may be endorsed by the Responsible Authority and will then form part of the permit. The functional

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layout plans must be drawn to scale generally in accordance with the plan (DA04, issue A prepared by i2C) date stamped 11/09/17 and annotated as but modified to show:

- (a) One-way entry only access from Cobram-Koonoomoo Road to the subject land with a median and signs on the arterial road preventing right turns into the access including swept path analysis for the appropriate design vehicle for all movements associated with the proposed access point, including the largest design vehicle for all movements associated with reasonable anticipated to use this access.
 - (b) One-way egress only access from the subject land to Broadway Street including swept path analysis for the appropriate design vehicle for all movements associated with the proposed access point, including the largest design vehicle that could be reasonable anticipated to use this access.
- (55) Prior to the development coming into use the applicant shall construct the mitigating works to the satisfaction of and at no cost to the Roads Corporation as follows:
- (a) Access to the subject land in accordance with the endorsed plans.
 - (b) A median on the Cobram-Koonoomoo Road preventing right turns into the proposed access.

Planning Notes

- (1) Prior to works commencing on public land or roads, the applicant must obtain a permit from the relevant authority giving Consent to Work Within a Road Reserve.
- (2) This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.
- (3) Unless no permit is required under the planning scheme, no sign must be constructed, erected or displayed without a further permit.

VicRoads Notes

- (4) Separate consent for works within the road reserve and the specifications of these works may be required under the Road Management Act.
- (5) It should be noted that the consent application will be treated as a developer funded application which requires fees and detailed plans and specifications.

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