

Planning and Environment Act 1987

Panel Report

**Yarra Ranges Planning Scheme Amendment C186 and
planning permit application YR-2019/131**

16 July 2020

How will this report be used?

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

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

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

The planning authority may also recommend to the Minister that a permit that applies to the adopted Amendment be granted. The Minister may grant or refuse the permit subject to certain restrictions. [sections 96G and 96I of the Act]

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

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

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Yarra Ranges Planning Scheme Amendment C186 and planning permit application YR-2019/131

16 July 2020



Lester Townsend, Chair



Gabby McMillan, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment and planning permit	1
1.2 Site history.....	3
1.3 Consistency with Regional Strategy Plan	4
1.4 Procedural issues.....	4
1.5 Summary of issues raised in submissions	5
1.6 The Panel's approach	5
2 What use and development is appropriate?	7
2.1 The issue	7
2.2 Evidence and submissions.....	7
2.3 Discussion	11
2.4 Conclusions.....	12
3 What planning scheme controls should be used to achieve the intended outcomes?	13
3.1 Issues	13
3.2 Evidence and submissions.....	13
3.3 Discussion	15
3.4 Conclusions and recommendations	17
4 The planning permit.....	18
4.1 Approach of the Panel.....	18
4.2 The existing permit.....	18
4.3 Submissions	18
4.4 Discussion	19
4.5 Recommendation	20

Appendix A Submitters to the Amendment

Appendix B Document list

Appendix C Panel preferred version of the Special Controls Overlay Incorporated Document

Appendix D Council version of the Proposed Permit

List of Figures

	Page
Figure 1: Location of site	2
Figure 2: Aerial photograph of the site	3

Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BAL	Bushfire Attack Level
BMO	Bushfire Management Overlay
C1Z	Commercial 1 Zone
CFA	Country Fire Authority
Council	Yarra Ranges Shire Council
DDO	Design and Development Overlay
GWAZ	Green Wedge A Zone
MPS	Municipal Planning Strategy
Permit	Planning permit YR- 2019/131
Planning Scheme	Yarra Ranges Planning Scheme
Regional Strategy Plan	Upper Yarra and Dandenong Ranges Regional Strategy Plan
SCO	Specific Control Overlay

Overview

Amendment summary

The Amendment	Yarra Ranges Planning Scheme Amendment C186 and planning permit application YR-2019/131
Brief description	<p>Rezone the land from Green Wedge A Zone – Schedule 1 (GWAZ1) to Commercial 1 Zone and apply a new Design and Development Overlay – Schedule 21 (DDO21). At the Hearing, Council indicated that it preferred to apply a Specific Controls Overlay.</p> <p>Grant a planning permit to authorise the existing buildings (including shipping containers) and ongoing use of the land as a tourist information/booking office, artist studio/shop, nursery and storage.</p>
Subject site	361-365 Mount Dandenong Road, Sassafras
The Proponent	Carringbush Pty Ltd
Planning Authority	Yarra Ranges Shire Council
Authorisation	13 June 2019
Exhibition	1 August– 2 September 2019
Submissions	Number of Submissions: 93 Opposed: 90

Panel process	
The Panel	Lester Townsend (Chair) and Gabby McMillan (Member)
Directions Hearing	On the papers, with response required by 8 April 2020
Site inspections	Unaccompanied, 10 May 2020
Panel Hearing	Video conference, 11 May 2020
Material provided after the Hearing	3 June 2020 (as per Appendix B)
Appearances	Matthew Budahazy for Yarra Ranges Shire Council Simon Merrigan for Carringbush Pty Ltd (proponent) calling Mandy Edwards of Millar Merrigan as a bushfire expert witness Anne Coxon for Country Fire Authority Carolyn Ebdon and Betty Marsden OAM for Save the Dandenongs League Inc Jo Horswill for herself and Warren Horswill Louis Delacretaz Brendan Byatt Mark Fergus
Citation	Yarra Ranges PSA C186yrn [2020] PPV and planning permit application YR-2019/131
Date of this Report	16 July 2020

Executive summary

The Panel considered a combined planning scheme amendment and planning permit application affecting land at 361-365 Mount Dandenong Road, Sassafras.

The site is currently operating as a nursery, cafe, bakery, tourist booking office and art gallery. Some of the existing uses and one of the shipping containers do not conform with the Planning Scheme. Other aspects of the existing operations appear to be lawful.

Council's stated intention was to regularise the existing operations at the site. There was general community support for the continued operation of the site. The Country Fire Authority (CFA) had concerns with intensification of operations due to the inherent bushfire risk and poor access to Sassafras.

As exhibited Yarra Ranges Planning Scheme Amendment C186 (the Amendment) seeks to rezone the site from Green Wedge A Zone Schedule 1 (GWAZ1) to Commercial 1 Zone (C1Z) and apply Design and Development Overlay Schedule 21 (DDO21). The DDO21 is proposed primarily to ensure consistency with the Upper Yarra and Dandenong Ranges Regional Strategy Plan (Regional Strategy Plan), particularly the limitations on subdivision.

Planning permit application YR-2019/131 (permit application) seeks to authorise the existing buildings (including shipping containers) and use of the site as a tourist information/booking office, artist studio/shop, nursery and storage.

Key matters raised in submissions included:

- impact of future development on neighbourhood character
- open character of the site should be maintained
- green wedge land should be preserved
- bushfire risk
- parking and traffic impacts
- economic impacts
- non-compliance with the Planning Scheme should not be rewarded
- inconsistency with Planning Scheme policy
- environmental impacts of more intense development, including run off, loss of wildlife and vegetation
- negative impact on property value.

In response to submissions, at its meeting on 25 February 2020 Council resolved to submit that the Amendment should apply a Specific Controls Overlay (SCO) instead of the DDO. The SCO schedule was drafted with the intention of ensuring consistency with the Regional Strategy Plan and implementing specific bushfire mitigation measures.

While there was general support for the existing mix of uses, the community had concerns with the rezoning proposal. The community was concerned about potential intensification of the site, mainly from a neighbourhood character and strategic planning perspective. The community noted the lack of strategic justification for rezoning from an economic or green wedge policy perspective. There was no economic analysis prepared to support the rezoning of the site.

The CFA raised issues regarding bushfire risk as they related to the potential intensification of uses at the site.

Council submitted that the site should be rezoned for commercial purposes with a site specific control to override the new zone to limit the development potential. The Panel believes that rezoning of the site, even with the site specific control to 'dampen' the scope of the commercial zoning, would introduce the potential for a more intense built form and increases in the number of people visiting, working or residing on the site.

The Panel agrees with the majority of submissions that the existing operations on the site seem to be acceptable, subject to some minor adjustments to deal with off-site amenity impacts.

The Panel concludes that, rather than rezoning the site, it would be more appropriate to apply a site specific control to override the current zoning to regularise any existing unlawful aspects of the operations. This approach would meet the stated objectives of Council, the proponent and address CFA and community concerns – it would also be more consistent with State and local policy relating to bushfire risk and the preservation of the green wedge. Until such time that there is a comprehensive retail strategy or economic analysis, there appears to be no justification to rezone the site from GWAZ to C1Z.

The proposed controls and permit YR-2019/131 need to be carefully drafted to ensure the retrospective requirement to upgrade authorised buildings has a nexus to the new uses being proposed. It is a role of the proposed Specific Controls Overlay to set these conditions.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Yarra Ranges Planning Scheme Amendment C186 and planning permit application YR-2019/131 be adopted as exhibited subject to the following:

- 1. Abandon the proposed:**
 - rezoning of the site
 - application of the site specific Design and Development Overlay.
- 2. Apply a Specific Control Overlay generally in the form of Appendix C to allow certain uses currently prohibited under the zone provided certain conditions are met.**
- 3. Issue planning permit YR-2019/131, subject to a further consideration of the preamble and permit conditions having regard to the Panel's discussion at section 4.3.2 of this report.**

1 Introduction

1.1 The Amendment and planning permit

This is a combined planning scheme amendment and planning permit application made under section 96A of the *Planning and Environment Act 1987* (the Act). Council indicated that the main purpose of the proposal was to ratify the current mix of uses operating from the site.

(i) Amendment and permit description

As exhibited the Amendment proposed to:

- rezone the site from Green Wedge A Zone Schedule 1 (GWAZ1) to the Commercial 1 Zone (C1Z)
- apply Design and Development Overlay Schedule 21 (DDO21) to ensure consistency with the subdivision restrictions in the Regional Strategy Plan.

In response to submissions, Council resolved to submit to the Panel that the proposed planning mechanisms be revised, opting to apply the Specific Controls Overlay Schedule 14 (SCO14) instead of the DDO.

The planning permit application YR-2019/131 comprised:

- 'Reissuing' planning permission for buildings and works as required in the C1Z. This relates to six shipping containers housing a tourist information and booking office (office), artist's studio and shop (retail premises), nursery (retail premises) and storage. The same works were permitted under planning permit YR-2014/961.
- Planning permission for new buildings and works, including an additional shipping container to be used for storage and sales, bringing the total number of shipping containers to seven.

The preamble on the exhibited planning permit indicates that the permit would allow:

- Buildings and works relating to the use of the land for a food and drink premises, two (2) plant nurseries, a retail premises and an office.

(ii) The site

The site is located in the centre of Sassafras, adjacent to the town square public open space in the town centre. There are several single and double storey cafes and shops on Mt Dandenong Tourist Road and Mountain Highway which attract tourists to the town. To the northwest of the site are a several dwellings.

The site is on the corner of Mt Dandenong Tourist Road and Prince Street. The site is flat and there is no significant vegetation on the site. Vehicle access for the site is taken from Prince Street, while the main pedestrian access is from Mt Dandenong Tourist Road.

Figure 1 shows the location.

Figure 1: Location of site



The site contains several buildings, structures and shipping containers accommodating a mix of uses, including:

- a single storey bluestone building and one shipping container used as a cafe and bakery
- two shipping containers and covered structures and display areas used as a bonsai plant nursery
- one shipping container and open area used for plant and homeware sales
- one shipping container used as an accommodation booking office
- one shipping container selling artwork, textiles and stationery.

Figure 2: Aerial photograph of the site



1.2 Site history

The site has been used as a plant nursery for more than 50 years.

Operations on the site have gradually intensified in recent times, with the addition of a cafe, bakery, tourist booking office, art gallery and retail premises. However, the form of development on the site has remained relatively low scale comprising a single storey building, shipping containers and structures used to display plants.

In 2015 the owners applied for a planning permit to add a cafe to the site. Council refused the permit application, on the basis that a cafe was not consistent with the purpose of the GWAZ1.

On review, the Victorian Civil and Administrative Tribunal set aside Council's decision on the basis that the cafe was ancillary to the established plant nursery:

Taking into consideration the existing activities associated with the existing plant nursery, the size and location of the business and the specifications for the proposed extension and car parking area, I find the proposed food and drink premises is an acceptable ancillary component of the existing plant nursery.

Planning permit YR-2014/961 was granted on 13 May 2016 subject to conditions.

The owner of the site pursued several applications to amend planning permit YR-2014/961 between 2017 and 2019. A chronology of these application was presented at the Hearing.

In 2018 Council identified possible compliance issues on the site. Council found that the plant nursery, due to its operating capacity, was no longer the primary use on the site. Council observed other non-permitted uses on the site, including businesses operating from shipping containers on the site and the cafe operating as a bakery.

It is evident that the owner of the site has been working to resolve these non-compliances through various permit application processes, culminating in the current proposal.

Council stated that the primary purpose of the Amendment and permit was to regularise the existing operations on the site. Council has not undertaken any strategic studies which would typically be expected to support the rezoning of green wedge land to a commercial zone. For example, no economic analysis or built form study were prepared. The Panel therefore

assumes that there is no overriding strategic driver for additional commercial land in Sassafras.

1.3 Consistency with Regional Strategy Plan

Section 46F of the Act requires the Planning Scheme to be consistent with the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan (Regional Strategy Plan).

The Regional Strategy Plan was approved in 1982 and is referenced at clause 11.01-1R2 (Green Wedges – Metropolitan Melbourne), clause 21.01-1 (Municipal Strategic Statement) and clause 51.03 of the Planning Scheme.

The Regional Strategy Plan identified the site in the Landscape Living 1 Policy Area.

The primary purpose of the Landscape Living 1 Policy Area is to maintain and where possible enhance indigenous and significant exotic vegetation and fauna, special landscape characteristics and existing low density residential character, roads and other infrastructure.

There are subdivision requirements in the Landscape Living 1 Policy Area that include a minimum lot size of 1 hectare, with an average lot yield not exceeding 1 lot to each 2 hectares of site area and a maximum lot size of 3 hectares.

Council has translated these minimum requirements into the exhibited DDO21 and proposed SCO14 so that there could be no additional subdivision of green wedge land. Accordingly, Council submitted that the Amendment can be consistent with the Regional Strategy Plan.

1.4 Procedural issues

The Panel notes a few procedural issues.

(i) Form of the Amendment

Council proposed to change the form of the Amendment after exhibition, but before the Hearing. In response to submissions, Council resolved to submit that it was more appropriate to apply SCO14 to the site rather than DDO21.

The SCO14 was published in the report to Council's meeting of 25 February 2020. It was made available to the public and it appeared that all parties to the proceeding were aware of the SCO14. Many of the submitters made specific reference to the SCO, including the Country Fire Authority (CFA).

(ii) Online Hearing format

One of the submitters, Save the Dandenongs League, indicated it could not attend the Hearing in an online format, due to internet issues. The Panel provided the submitter with the opportunity to make submissions on the telephone, dialled into the videoconference so that all parties could hear the submissions.

Another submitter, Ms Keil, who was unable to attend the online hearing. That submitter was provided the opportunity to make a written submission, and Council and the proponent were given an opportunity to comment.

(iii) Transformation of the Amendment and permit

The Panel has recommended a different statutory mechanism to implement the outcome sought by Council and proponent. The Panel considers that the changes recommended to the Amendment and permit do not transform the proposal because they relate to the mechanics rather than a change to the substance of the proposal exhibited by Council.

1.5 Summary of issues raised in submissions

(i) Planning Authority

The key issues for Council were:

- regularising the existing operations on the site
- built form
- car parking and traffic
- consistency with Regional Strategy Plan.

(ii) The Proponent

The key issues for the Proponent were:

- regularising the existing use
- flexibility to apply for permits in future for the site.

(iii) Relevant agencies

The key issues for the CFA were:

- bushfire risk associated with the intensification of the use
- implementation of bushfire mitigation measures, including emergency management arrangements.

The CFA's submissions were unresolved at the start of the Hearing.

(iv) Individual submitters or groups of submitters

The key issues by submitters were:

- impact of future development on existing neighbourhood character
- preservation of green wedge land
- economic impacts
- parking and traffic issues and pressure on infrastructure
- maintenance of the open character of the site
- environmental impacts
- amenity
- support the existing operations in principle
- impacts on property value
- concern that rezoning the site rewarded non-compliance with the Planning Scheme.

1.6 The Panel's approach

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:

- What use and development is appropriate?
- What planning controls should be used to achieve the intended outcomes?
- The planning permit.

2 What use and development is appropriate?

2.1 The issue

The issue is what mix of uses and what form of development is appropriate for the site.

The site is currently developed and contains the following uses and development:

- single storey bluestone building currently used as a cafe/bakery (food and drink premises)
- shipping container used for storage for cafe/bakery
- covered structure and display area used in association with a bonsai plant nursery (retail premises)
- shipping container serving as display area for bonsai plant nursery
- shipping container serving as storage for bonsai plant nursery
- shipping container and general area used for plant sales and home wares (retail premises)
- shipping container serving as an accommodation bookings office (office)
- shipping container selling artwork, textiles and stationery (retail premises).

2.2 Evidence and submissions

(i) The current mix of uses

Council indicated that the primary purpose of the Amendment was to regularise the existing mix of uses currently operating on the site. Council's submitted that the Amendment would enable the current business to continue operating and not risk closure.

Council did not refer to any economic analysis or other strategic studies that suggest an alternative mix of uses was preferred. There was no analysis of the potential economic impacts of increasing the supply of commercially zoned land in Sassafras.

Council submitted that:

In 2018 investigation of compliance issues on the subject site found that the plant nursery was not operating at a capacity to justify it as the primary land use. Further, unpermitted uses were observed on the land, including the businesses operating from the shipping containers on the site and cafe operating as a bakery.

In light of these compliance issues and the GWAZ1 prohibiting the mix of retail uses currently operating from the site, the proposal seeks to 'ratify' the current uses on the site by rezoning the site from GWAZ1 to C1Z and reissuing a planning permit under the C1Z.

Council submitted that it envisaged only limited changes to the mix of uses on the site following the rezoning. The statutory mechanisms were designed to retain the existing mix of uses. Council indicated that a key aspect of the Amendment was the introduction of a 'strict' SCO14 on the site:

... which prohibits many uses typically found in a C1Z, it is anticipated little or no change will occur as a result of the amendment. Rather, it is anticipated the current mix of uses or a similar mix of uses will operate from the site. As such, an [economic analysis] assessment is not required. Further, at the time of authorisation, the Department of Environment Land Water and Planning did not request any further economic analysis as a condition of authorisation to prepare the amendment.

Council submitted that the SCO14 would limit the intensification of land uses on the site and manage the bushfire risk (for example, by retrofitting the buildings and emergency management arrangements). Council submitted that the Amendment was structured to achieve *“a balance between managing bushfire risk and maintaining the site’s existing retail and tourism focus.”*

CFA recognised that the purpose of the Amendment was to regularise the existing uses at the site. CFA did not support intensification of the land uses on the site, given the prevailing bushfire risk. CFA submitted that:

... fixing existing zoning and site anomalies should not be done at the expense of safety, increasing risk at a site or to the number of people exposed to risk ...

CFA encourages an outcome that fixes zoning and site anomalies, minimised allowed uses on the site and improves outcomes for the existing and future users of the land through the adoption of bushfire protection measures and sound policy ...

CFA referred to State policy at clause 13.02 of the Planning Scheme which seeks to:

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

CFA explained the site was situated in a high-risk location where landscape scale bushfires could lead to neighbourhood scale destructions. CFA identified a number of factors which affected the risk including the topography, extent of vegetation, limited access and significant fire history. In conclusion CFA submitted that:

This site has significant bushfire risk, and any development on the site needs to effectively consider all aspects to the risk, including the provision of future planning restrictions and opportunities to improve current activities and mitigation actions.

CFA firmly believe that if active measures are not implemented for the current site use and arrangements, as well as the prohibiting of future use; then there will be increased risk to the occupants, visitors and local community from this site. However, updating policy to the above suggestions will help reduce risk at the site.

The proponent submitted that the purpose of the Amendment and permit was to enable the existing business to operate from the site. However, it is noted that the proponent did not fully agree with the statutory mechanisms proposed by Council. The proponent wanted the subdivision requirements in the SCO14 to be drafted in a more flexible manner, allowing for the possibility of one single dwelling per title. The proponent also submitted that the car parking requirements in the C1Z would have the effect of limiting alternative commercial uses on the site. Overall, the proponent supported a slightly more intense mix of uses, compared with the view of Council and CFA.

Ms Mandy Edwards who provide bushfire expert evidence on behalf of the proponent, acknowledged the rezoning would provide an increased opportunity for intensification. Ms Edwards said that:

Given the extreme bushfire risk present, controls to limit future development need to be appropriately considered and enhanced bushfire protection measures should be applied.

In her conclusions, Ms Edwards said:

The scenario presented in this case simply seeks to bring planning controls in line with existing site conditions and implementation of a Specific Control Overlay (SCO) will present additional land uses/development that cannot be considered under the current

zone provisions. It is considered that this prevents any intensification of activities occurring on the site and therefore Clause 13.02 does not prohibit the proposal.

Submitters generally supported the existing mix of uses on the site. Submitters recognised that there was a long history on the site and that if the existing uses were to continue, some level of statutory authorisation was required. Several submitters raised concerns about some amenity impacts, such as parking and traffic. However, there was overwhelming support for the continuation of the existing operations on the site. Submitters recognised the contribution the nursery and other uses made to Sassafras.

The Save the Dandenongs League submitted that it was:

... not opposed to the small environmentally friendly uses occupying the site, and suggest that the Planning Scheme could make some provision or allowance for site specific uses such as this.

The League submitted that the nursery and existing uses on the site contributed to the charm of Sassafras. The League submitted that they were concerned that the rezoning would permit a variety of uses that would not be compatible with the site.

Mr Fergus submitted that he had no concern with the existing mix of uses on the site. He submitted that the nursery and ancillary cafe and bakery provide an open character for Sassafras. He submitted that:

Both of the currently permitted businesses on the Green Wedge site under review, Chojo nurseries and Proserpina Bakehouse, are strong contributors to the economic and social heart of the township. The small-scale, well set back buildings they occupy contribute to the open and light-filled heart of the village and invite and encourage public use of their open spaces.

(ii) Built form outcome

Council has not prepared a study which identified an alternative preferred built form for the site or the Sassafras town centre. Council instead relied on the existing built form controls, particularly DDO14.

Council acknowledged that rezoning the site would allow additional uses, including retail premises, shops and offices which could have a more intense built form. However, it submitted that the suite of controls proposed would appropriately manage the scale of future development.

Council submitted that the design objectives in DDO14 would protect the distinctive building form of the town and reinforce the main street's role as the focus of pedestrian and business activity. A discretionary height limit of two storeys (7.5 metres) applies to the site under the DDO14.

Council submitted that the SCO14 would limit the site's development potential through subdivision limitations and restrictions on certain uses (for example, child care centre or accommodation).

Council appeared to support other consequential changes flowing from the rezoning. It submitted that:

Council agrees with the submission that rezoning the site will provide an opportunity for this site to have a better relationship with the Sassafras Village Green, should it ever be redeveloped. In particular, rezoning the site would enable any future development to incorporate an active interface with the Village Green. Such a development outcome is

unlikely to be achievable under the current zoning due to the more limited range of uses permissible under the Green Wedge A Zone – Schedule 1.

Council submitted orally that it would be beneficial to regularise the zoning pattern in the township. It submitted that the rezoning would create a more consistent strip of commercially zoned land, rather than having a section of GWAZ1 in the town centre.

Council submitted that it supported upgrades to the existing buildings on site to address bushfire risk and on-site wastewater management. It submitted that existing buildings should be retrofitted to an appropriate Bushfire Attack Level (BAL) and more stringent wastewater management requirements.

CFA's submissions regarding built form focussed on the resilience of the structures to bushfire, which are primarily a result of building materials and defensible space. CFA submitted that increasing the construction standard to BAL-29 would ensure consistency the objectives of the Bushfire Management Overlay (BMO).

The proponent submitted that in terms of built form, there would be minimal change to the existing overall layout. The proponent submitted that the permit would not allow any extra shipping containers, over what is already approved under planning permit YR-2014/961. It submitted that any future alternative buildings on the site would need to comply with existing controls, presumably a reference to requirements of DDO14.

The majority of submitters supported the low scale-built form that currently exists on the site. However, some submitters raised concerns regarding the existing conditions on site. Some submitters thought that the shipping containers represented an eye sore and that improvements could be made. Concerns were raised regarding the capacity of the site to manage wastewater, with consequential effects on the environment.

The Save the Dandenongs League submitted that the nursery and open space within the town centres contributed to the charm of Sassafras.

Submitters raised concerns about the future form of development that may be permitted if the site was rezoned, even if DDO14 applied. Mr Fergus submitted that:

When tested, the well intentioned Design and Development Overlay 14 that applies across the ridgeline townships has not proven to be sufficient to shape positive growth within the townships.

Ms Horswill, Mr Byatt and Mr Fergus submitted that the sense of openness had been intentionally retained historically.

Mr Byatt submitted that a low scale single storey development should continue and:

Any possible changes to the green wedge must have placed on it strict provisions and overlays that keep development to single story buildings, limited similar in size and designed and built that reflect with sympathy how the village will appear in decades to come. The current use of the land for a bonsai nursery and bakery are sympathetic to that 'feel'.

Mr Delacretaz submitted that the open area separating the commercially zoned land in Sassafras was an important part of the village feel. He submitted that even with the strict controls, two storey development would be allowed and would result in a corridor of two storey buildings on both sides of the Tourist Road. He submitted that he was concerned with this 'sudden change' of direction for Sassafras, particularly given the lack of strategic work to support such a transformation.

2.3 Discussion

The site has a long planning history and has operated as a plant nursery for many years. The operations on the site have gradually intensified in recent times, with the addition of a cafe, bakery, tourist booking office, gallery and retail premises uses. However, the form of development on the site has remained relatively low scale comprising a single storey building, shipping containers and structures used to display plants.

Council stated that the primary purpose of the Amendment and permit was to regularise the existing operations on the site. Neither Council nor the proponent have undertaken any strategic studies which would typically be expected to support the rezoning of green wedge land to a commercial zone.

All parties seemed to agree in principle that the existing operations on the site should continue. However, there is disagreement between Council, the proponent, CFA and submitters about the future form of development and mix of uses that should be allowed on the site.

Mix of uses

Policy in the Planning Scheme support Sassafras as a village offering a mix of commercial and retail services to support locals and tourists visiting the centre, mainly for day trips. The existing mix of uses on the site, while inconsistent with the existing planning permit and zoning controls on the site, appears to be consistent with local planning policy.

The Panel notes that both Council and submitters supported the existing mix of uses on the site. The CFA had some concerns about the existing mix of uses, from a life safety perspective. However, the CFA submitted that with the implementation of some fairly simple bushfire mitigation measures, the risk could be managed to an acceptable level. The bushfire expert, Ms Edwards agreed that additional bushfire mitigation measures should be implemented, albeit in a slightly different form.

Preferred built form

The purpose of the Commercial 1 Zone is to:

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 Panel considers that even with the application of DDO14 and DDO21 (or SCO14), a more intense built form would be expected if the site were rezoned to C1Z. As an example, DDO14 would call for a stronger presentation to the Tourist Road, stating that:

New buildings should be constructed with zero setbacks from the main street frontage.

Council submitted that a redevelopment of the site could have a better interface with the town square. However, it is not clear how that would necessarily occur. The Panel considers that the more likely scenario, given the commercial value of commercial site, would be double storey building fronting the Tourist Road.

The Panel is confused by submissions from the proponent that the SCO should be drafted to enable the possible provision of a single dwelling per title. If the proponent's intention is to

redevelop the site for residential purposes in the future, a desire for dwellings would appear to be contrary to the policy objectives of the C1Z and for the town centre of Sassafras.

Many submitters preferred an open low scale form of development, as currently exists. Some submitters indicated that historically it was the intention to have an open area creating a physical break in the shops in the commercial centre. In the absence of any strategic planning work to the contrary, the Panel takes the existing zoning of the site at face value. It assumes that the intention of the GWAZ1 in the town centre is to create an area of openness within the town centre.

The Panel agrees with submissions from the CFA and the evidence of Ms Edwards which suggest an improved construction standard would increase resilience to bushfire, compared with the current arrangements.

2.4 Conclusions

The Panel concludes:

- Subject to minor improvements, the existing mix of uses and development on the site is acceptable and should be regularised.
- The existing built form is at an acceptable scale. There is no strategic imperative to increase the scale of development on the site, in fact there appears to be some support for retaining the buildings at their current scale.
- Buildings should achieve an appropriate BAL construction standard and emergency management arrangements should be formalised.

3 What planning scheme controls should be used to achieve the intended outcomes?

3.1 Issues

The Panel has concluded that the existing operations on the site are acceptable and should be regularised. There are aspects of the existing use and development that are lawful and other aspects that are not. The Panel needs to consider which mechanisms should be used to implement the preferred outcome.

3.2 Evidence and submissions

Council proposed to rezone the site, apply overlay controls and to 're-issue' the existing permit under the C1Z. The permit is discussed in Chapter 4.

In relation to the rezoning, Council submitted that:

... rezoning the site to Commercial 1 Zone (C1Z) will ensure each business can operate independently from the site, as these are 'as of right uses' and do not require planning permission. As such, should the bonsai nursery no longer operate from the site, the cafe can continue to operate. In this way, rezoning the site to the C1Z would allow the existing mix of uses to continue operating from the site, which based on submissions, appear to be supported by the community.

Council's preferred approach is to rezone the site to enable more intense development, and then apply the SCO14 (or DDO21) to limit the operation of the new zone.

Council submitted that the purpose of the draft permit exhibited with the Amendment was to 'reissue' planning permission for buildings and works as required in the C1Z. It submitted that the permit related to the six shipping containers on the site (housing existing uses), plus one additional shipping container for storage and sales.

Several resident submitters said that the current mix of uses should be permitted under the GWAZ1. Submitters raised concerns about the unintended consequences of rezoning the site to enable the existing operation to continue.

Other resident submitters suggested that it was not necessary to rezone the site to achieve the desired outcome. They submitted that the GWAZ1 could be retained with a SCO applied to enable the existing non-conforming uses to continue.

Submitters raised concerns that the rezoning would facilitate an intensification of the uses on the site, creating potential economic impacts on other businesses and amenity. Others said that the owner of the site should not be 'rewarded' for non-compliance with the Planning Scheme, by getting the site rezoned to a higher value zone.

Mr Delacretaz submitted that the rezoning of the site would open up the potential for more intensive uses on the site, which were inconsistent with the policy for green wedge land. Mr Delacretaz raised concerns about the lack of economic analysis to support the rezoning for commercial purposes, particularly given the rezoning represented a 25 per cent increase in commercially zoned land in Sassafras. He submitted that:

I believe an economic impact analysis should have been presented as even with the proposed restrictions on commercial uses the proposal will allow for many intensive commercial uses such as a bar/hotel, fast food store, convenience store, retail shops

and offices. An economic impact analysis is the bare minimum strategic analysis that should have been conducted.

...

No evidence has been provided that Sassafras is lacking a sufficient supply of commercial land. Given 388 Mt Dandenong Rd, Sassafras which is 1,520 square metres of land zoned Commercial One has been vacant for 17 years would suggest there is no requirement for additional commercial land.

Mr Delacretaz referred to policy to support his submissions:

The 'Yarra Ranges Activity Centre Network Strategy 2012' does not suggest any expansion of the Sassafras commercial zones instead stating that new retail / office space can be provided within "the existing activity centres in Yarra Ranges, as the existing activity centre hierarchy is sufficient to meet the future needs of Yarra Ranges' residents and businesses".

In conclusion, Mr Delacretaz submitted that rezoning was not required to ensure the existing cafe and nursery would continue. He submitted that it would be more appropriate to apply a SCO to the site. The statutory mechanisms will be discussed in more detail in Chapter 3.

Mr Fergus raised concerns that the rezoning would increase the value of the site, which would create a flow on pressure to develop the site for increased return.

Ms Keil did not support the proposal to expand the commercial activity any further in Sassafras. This was due to a number of reasons including, environmental values, cultural heritage and bushfire risk.

The CFA concerns regarding the rezoning were linked to the potential for intensification of the use. It submitted that any mechanism needed to enable retrospective implementation of improved construction standards and emergency management plans. In response to questions from the Panel, the CFA did not have any other examples of sites where measures had been retrospectively implemented through a planning scheme amendment or permit.

Ms Edwards provided an alternative version of the SCO in her evidence. Some of the key differences between Ms Edwards views and the Council position were:

- Ms Edwards supported accommodation uses, in the form of one dwelling per lot. Council version prohibited any form of accommodation.
- Ms Edwards' version did not prohibit the use of the land as a medical centre or place of assembly. The Council version prohibited these uses.
- Ms Edwards' version did not require a particular construction standard, retrospective building upgrades or the preparation of an emergency management plan. However, in oral evidence Ms Edwards did support the requirement for an emergency management plan and some level of building upgrade.

CFA also provided an alternative version of the SCO in its submission. The SCO presented by the CFA was more detailed than the Council and expert's versions. The CFA's version required existing buildings to be retrofitted and for the upgrade of the existing site to provide a 'shelter in place option'.

In her evidence Ms Edwards clarified the scope of development works permitted under planning permit YR-2014/961, compared with existing conditions. Ms Edwards explained that the permit allowed seven containers to be installed on the site to be used as part of the nursery. She indicated that six of the containers were already constructed, albeit one container is in a different location than what was shown on the endorsed plans. Ms Edwards

explained that the seventh container, as previously permitted, had not been constructed and that the current application sought approval to relocate this container.

3.3 Discussion

There has been no economic or retail analysis to support an increase the offering of commercially zoned land in Sassafras. Council's most recent *Yarra Ranges Activity Centre Network Strategy 2012* indicated that no new retail or office space is required within the existing activity centres. Council relied on general policy support for commercial activity centres, rather than any specific policy that suggests the commercial offering in Sassafras needs to be expanded. Accordingly, the Panel has no basis to conclude that there is any strategic demand for commercially zoned land in Sassafras.

The Panel does not agree with Council's submission that an economic strategy was not warranted because it was not a condition of the Minister's authorisation.

The Panel agrees with the bulk of submissions, concluding that the existing mix of uses on the site is acceptable. While the existing mix of uses does not technically conform with the GWAZ1 or the existing permit, the nursery, cafe, bakery, tourist booking office and uses that support tourism are consistent with Planning Scheme policy. The Panel concludes that subject to minor improvements, including the implementation of bushfire mitigation measures, the existing mix of uses should continue.

In the absence of any strategic work supporting increased commercial uses in Sassafras, the Panel concludes that future intensification of uses on the site is not appropriate at this time. In fact, it seems that the intensification of any uses on the site would need to be carefully considered given the level of bushfire risk and policy objectives at clause 13.02 of the Planning Scheme.

The Panel considers that an inevitable result of rezoning the site will be a more intense form of development. The Panel agrees with submissions that indicated that the rezoning would increase the value of the site and in turn may drive redevelopment of the site in the short to medium term. While the overlay controls offer some form of protection, it is possible that a two storey terrace could be supported given the overriding purpose of the commercial zone and DDO14 objectives. There is no policy support for such a transformation.

While the DDO14, DDO21 or SCO14 could dampen the scale of development which could occur in the commercial zone, it is still expected that a two storey building could be constructed.

The Panel applied the following principles to determine the preferred planning scheme mechanism:

- In the absence of strategic justification for the rezoning, only the minimum necessary change should occur to enable the existing operations to continue.
- The planning scheme cannot regulate any aspect of the existing use or development that is lawful.
- The mechanism needs to give effect to certain conditions, such as bushfire mitigation measures and wastewater treatment. The mechanism should be carefully drafted so it does not inadvertently allow inappropriate intensification of the site, or unreasonable limit the ability of the site to operate in a viable manner.

Principle 1 – minimum change

The minimum change necessary to affect the preferred outcome is to apply the SCO to the existing GWAZ1. The purpose of the SCO is to:

To apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.

There is general support for the current operation on the site by the community and planning policy. The SCO is a mechanism that can be applied to a State standard provisions to *“allow the land to be used or developed in a manner that would otherwise be prohibited or restricted”*. The Panel considers the use of the SCO as the ‘lightest touch’ option when it comes to amending the Planning Scheme.

The Panel is concerned that the rezoning of the site to C1Z would inadvertently allow the intensification of the site. Retaining the GWAZ1 and the application of a carefully drafted SCO would enable the existing operations to continue without unreasonable intensification.

Principle 2 – cannot regulate lawful use and development

It is not the Panel’s role to enforce compliance with the Act. However, it is relevant for the Panel to consider what aspects of the current operations are lawful or unlawful.

Section 6(3) of the Act states that the planning scheme cannot regulate an existing lawful use or development:

... nothing in any planning scheme or amendment shall—

- (a) prevent the continuance of the use of any land upon which no buildings or works are erected for the purposes for which it was being lawfully used before the coming into operation of the scheme or amendment (as the case may be); or
- (b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation; or
- (c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or
- (d) prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or
- (e) require the removal or alteration of any lawfully constructed building or works.

[Emphasis added]

The Panel was not presented with a detailed analysis of the unlawful aspects of the existing operations at the site by Council. The Panel understands from submissions that:

- The cafe, bakery, art gallery and booking office uses currently operate unlawfully. The cafe and bakery are unlawful because they operate outside the scope of planning permit YR-2014/961.
- The nursery use has been operating for more than 50 years and may be operating under existing use rights.
- Most of the buildings on site are lawfully constructed. The exception being two shipping containers, one container is yet to be constructed and the other constructed in a location inconsistent with the endorsed plans.

Any planning scheme amendment can only regulate aspects of the development which are unlawful. As an example, the planning scheme amendment could not require the upgrade of

lawfully constructed buildings need to an increased Bushfire Attack Level without a nexus with the regulation of a currently unlawful use.

Principle 3 – capturing site specific requirements

The SCO can be drafted to give effect to specific conditions that apply to the use or development of the site. For example, the SCO could be drafted to require a Bushfire Emergency Management Plan was prepared that incorporated appropriate bushfire mitigation measures.

The planning control would need to be drafted in tandem with the planning permit. The permit is discussed in more detail in Chapter 4.

Principle 4 – dealing with the exiting permit

The existing permit cannot be ‘replaced’ by the issue of a new similar permit. The original permit would need to be cancelled, otherwise the holder of the permit could continue to act on that permit. Section 72 of the Act limits the powers of responsible authorities to amend a permit.

However, the Amendment could require any new permit which regularises the non-conforming uses to be conditional on an upgrade of the buildings. This would be on the basis that the improved buildings were appropriate in the overall development context if new uses are to be introduced.

3.4 Conclusions and recommendations

The Panel concludes:

- The site does not need to be rezoned to deliver the preferred outcome.
- The existing GWAZ1 can be used in conjunction with a carefully drafted SCO to enable the existing operations on the site.
- This approach would meet the stated objectives of Council, the proponent, address CFA and community concerns and be more consistent with State and local policy relating bushfire risk and the preservation of the green wedge.

The Panel recommends:

- 1. Abandon the proposed:**
 - rezoning of the site
 - application of the site specific Design and Development Overlay.
- 2. Apply a Specific Control Overlay generally in the form of Appendix C to allow certain uses currently prohibited under the zone subject to conditions.**

4 The planning permit

4.1 Approach of the Panel

The Panel has not reviewed the permit in fine detail. It has considered the role of the permit as part of the overall framework to deliver the preferred outcome. Accordingly, the Panel has identified broad aspects of the permit that will need to be revisited by Council to ensure it is enforceable.

4.2 The existing permit

Planning permit YR-2014/961 was issued at the direction of the Tribunal and permitted:

The construction of buildings and works for a food and drink premises ancillary for the existing plant nursery in the Green Wedge A Zone in accordance with the endorsed plans.

The permit allowed new development on the site, including seven new shipping containers and other works including a more formal car parking area. A key issue during the Tribunal hearing was whether the proposed food and drink premises was ancillary to the plant nursery. The Tribunal ultimately determined that the food and drink premise would operate at a scale that was ancillary to the plant nursery.

The permit included conditions relating to landscape treatment, the intensity of the use permitted to operate within the building, drainage, car parking, wastewater treatment and bushfire mitigation measures. The building was required to be constructed to a BAL-19 construction standard. The permit did not require the preparation of a Bushfire Emergency Management Plan.

As outlined in section 3, the Panel understands that the majority of works permitted under the existing permit have already been constructed. The exception being two of the shipping containers.

4.3 Submissions

Council's final position on the permit is shown in Appendix D. Council's changes to the exhibited version include:

- Reference to 'retroactive' development plans. The Panel accepts Council's submission that this will improve clarity but is not in a position to judge this change on its merits.
- Amended plans to show that shipping containers are to be retrofitted with cladding or other treatment to the satisfaction of the Responsible Authority – the power to require this should be explicitly included in the SCO. The Panel understands that not all shipping container may readily be retrofitted.
- A requirement for a Wastewater Management Plan in accordance with the conditions of the permit. The Panel supports this and the power to require this should be explicitly included in the SCO.
- A requirement for an agreement under section 173 of the Act requiring the landowners and operators of the onsite wastewater treatment system to provide the Wastewater Management Plan to future landowners and operators of the onsite

wastewater treatment system. It is not clear to the Panel why an agreement is required to achieve this.

- A requirement that existing buildings, which will contain new uses, are retrofitted to a minimum Bushfire Attack Level of BAL-29, and any new buildings are constructed to a minimum Bushfire Attack Level of BAL-29 or as otherwise agreed by the CFA. The Panel supports this. The power to require this should be explicitly included in the SCO.

The CFA requested that the following conditions be included in the permit to address the bushfire risk:

- A requirement for Bushfire Emergency Management Plan that addresses all uses operating from the land. The Plan should address emergency procedures, triggers for evacuation, roles and responsibility, additional bushfire mitigation measures and a review mechanism. The CFA submitted the plan must be implemented within 3 months of the date of the permit.
- A requirement for a Bushfire Management Plan that shows defensible space, all buildings constructed to BAL-29 and 40,000 litres of water for firefighting purposes.

Ms Edwards in her evidence suggested that retrofitting some of the shipping containers to a BAL-29 construction standard may be problematic.

4.4 Discussion

Scope of the permit

The conditions on the permit need to reasonably relate to the matters that need permission. Given the complexity about exactly what is lawful on the site and changes to structure of the Amendment, the Panel has reviewed the permit at a high level. The Panel has identified matters that the permit will need to address and practical issues that may need to be considered. The permit, including the preamble and conditions will need to be revisited by Council.

Based on submissions, site inspections and review of background materials, the Panel expects that the permit will need to regulate the cafe, bakery, art gallery, office and retail components of the use and the buildings and works associated with some of the shipping containers. Council will need to ensure that the preamble to the permit only covers matters that have not already been authorised or have established existing use rights.

Matters to address in conditions

The Panel considers that the permit conditions will need to broadly address the following matters:

- On-site amenity requirements, such as landscaping treatments, fencing, control of adverse impacts of transport, deliveries and any air or noise emissions
- Finishes and design of structures, having regard to bushfire construction standards
- Car parking design and allocation
- Wastewater treatment
- Stormwater and drainage design
- Bushfire mitigation measures, including emergency management arrangements.

Some matters that need to be resolved when Council reviews the permit include:

- The need to ensure bushfire mitigation measures have an ongoing effect. A condition requiring a section 173 agreement to implement these measures is likely to be required. If there are multiple matters that need to be captured in the section 173 agreement, these should be included in one condition.
- The permit will need to include mandatory conditions specified under the BMO.
- There are some aspects of the conditions that need to be more carefully resolved to ensure obligations are integrated and can be practically implemented, such as:
 - The standard defendable space prescriptions suggested by the CFA (for example, no flammable objects within 10 metres of a building) may be difficult to achieve given the proximity of the nursery plants to existing buildings. Some discretion for review of the site layout, in consultation with the CFA may need to be built into the permit.
 - Upgrading of buildings to BAL-29 may not be practical for some structures, the conditions should be drafted to allow Council, in consultation with CFA some discretion.
 - The finishes and materials of the buildings, from an urban design perspective, may be limited by the BAL construction standards. The two aspects will need to be integrated.
 - Given some of the uses are currently operating, conditions that require action will need to be appropriately time bound. For example, the conditions could require the submission of an emergency management plan within 3 months of the date of the permit and implementation of any measures within 6 months of the date of the permit.
- It is unclear why the owner of the land needs to enter into a section 173 agreement to provide a copy of the Wastewater Management Plan to future landowners. This appears to duplicate regulatory framework that exists under the *Environment Protection Act 1970* and the *Environment Protection Act 2017*.
- Ideally the structure of the permit should be revisited to group related conditions together and ensure important conditions are prioritised.

4.5 Recommendation

The Panel concludes that a permit should be issued. The exact preamble and permit conditions will need to be revisited based on a clearer understanding of the lawfulness of existing operations. The conditions should be tightened up to reflect the use and development permitted under the permit and the requirements of the recommended SCO.

The Panel recommends:

- 3. Issue planning permit YR-2019/131, generally as shown in Appendix D subject to a further consideration of the preamble and permit conditions having regard to the Panel's discussion at Chapter 4.4 of this report.**

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Laura Galea	47	Robert Martin
2	Trevor Maguire	48	Mark and Alison Tonkin
3	Peter Jones	49	Paul O'Halloran
4	Alan Hanley	50	Ernie Gruijthuijsen
5	William and Jane Holland	51	Dimitrios Triantafyllopoulos and Jo Carpenter
6	Corinne Mackenzie and Peter Karras	52	Glenys and Robert Preston
7	Adam Buckingham	53	Roberta and Michael Hilt
8	Mark Fergus	54	Tom Mahoney
9	Save The Dandenongs League Inc	55	Max Newnham
10	Neelkamal Plahe	56	Nicole Hahn
11	Tejpal Thatti	57	Zoe Magill
12	Ann-Maree Baker	58	Elizabeth Newnham
13	Graeme Smith	59	Barry Mayer
14	Amanda Splatt	60	Andrew Barclay
15	Warren and Jo Horswill	61	Wendy Reece
16	Jane Jones & Peter Jones	62	Stefan van Boxel
17	John Petersen	63	Brendan and Nicola Byatt
18	Paula Ewington	64	Christine and Alan Dashper
19	Louis Delacretaz	65	Miranda Long
20	Claire Mahony	66	Lynne Stephenson
21	Frederic Pomeranz	67	John and Gerta James
22	Karen Pomeranz	68	Chris Caldwell
23	Daniel Jackson	69	Jonathan Magill
24	Lisa Hass	70	Beata Clark
25	Melanie Scerri	71	Cassandra Magill
26	Mim Grundy	72	Joshua Licht
27	Maree Cross	73	Zoe and Hazel Hunter
28	Fran Sarell	74	Andrew MacPherson
29	June Brandon	75	Chris and Gayle Rhodes
30	Marjorie Hamilton	76	Alisha Cruse
31	Robert Thompson	77	Prudence Licht
32	David Gerrand	78	Kirstin Mackay
33	Peter Lehane	79	Amanda Harvey
34	Tyler Delacretaz	80	Anonymous
35	Sue Gerrand	81	Dianne Harbour
36	Alan Scott	82	Catherine Keil
37	VicRoads	83	Nola Mayer
38	Nicholas Kemsey	84	Jim Hadjigeorgiou
39	Madeleine G	85	CFA
40	Michael Murphy	86	Sally and Pat Williams
41	Carol Tregonning	87	Corinna Gifford
42	Rachel Henderson	88	Shakti McLaren
43	Patricia Martin	89	Benjamin Racz
44	Sharon Reeve	90	Andrew Bevan
45	Kirsty Crockford	91	Jacqui Stanley
46	Judy Matthews	92	Sharnn Watts

Appendix B Document list

No.	Date	Description	Circulated by
1	26 March 2020	Letter outlining the Panel's proposed directions	N Clark, Planning Panels Victoria
2	25 April 2020	Council's Part A Submission	M Budahazy, Yarra Ranges Council
3	30 April 2020	Letter outlining Panel's final directions, distribution list and hearing timetable	N Clark
4	30 April 2020	Updated Distribution List and Hearing Timetable (v2)	N Clark
5	1 May 2020	Expert witness statement of Ms Mandy Edwards	M Morton, Miller Merrigan
6	8 May 2020	Updated Distribution List and Hearing Timetable (v3)	N Clark
7	11 May 2020	Submission of M Fergus	M Fergus
8	11 May 2020	Submission of Proponent (Carringbush Pty Ltd)	M Morton
9	11 May 2020	Proponent's response to objections	M Morton
10	11 May 2020	Council's Part B Submission	M Budahazy
11	11 May 2020	Submission of Country Fire Authority	A Coxon, Country Fire Authority
12	11 May 2020	Submission of L Delacretaz	L Delacretaz
13	11 May 2020	Submission of B Byatt	B Byatt
14	12 May 2020	Submission of Save the Dandenongs League Inc	C Ebdon
15	28 May 2020	Submission of C Keil's	C Keil
16	3 June 2020	Council's closing submission	M Budahazy

Appendix C Panel preferred version of the Special Controls Overlay Incorporated Document

Yarra Ranges Shire Council 361-365 Mt Dandenong Tourist Road, Sassafras Incorporated Document Specific Control Overlay July 2020

1.0 Introduction

This document is an incorporated document in the schedule to clause 45.12 and clause 72.04 of the Yarra Ranges Planning Scheme ('Planning Scheme') pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

This incorporated document has the effect of allowing for matters as identified in this incorporated document to be undertaken on the identified land in a manner that would otherwise be prohibited by Clauses 35.05 and 51.02.

2.0 Purpose

- To allow a low scale mix of uses and development to operate on the site to support the local and tourist offering in Sassafras.
- To ensure the use and development of this land is consistent with the requirements of the *Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan* and the policies of the *Yarra Ranges Localised Planning Statement*.
- To ensure subdivision requirements applying to 361-365 Mt Dandenong Tourist Road, Sassafras are consistent with the *Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan*.
- To ensure that use and development on the land is restricted so that the risk to life and property from bushfire can be reduced to an acceptable level.

3.0 Land

The control in this document applies to the land defined as 361-365 Mt Dandenong Tourist Road, Sassafras, which comprises the following lots:

- Lot 1 on TP598211K (Vol. 8916, Fol. 108)
- Lot 1 on TP438760V (Vol. 8967, Fol. 119)
- Lot 2 on LP99548 (Vol. 9002, Fol. 670).

The land is marked as SCO12 on Yarra Ranges Planning Scheme Map 66SCO.

4.0 Use of land

In addition to the table of uses in Clause 35.05 – Green Wedge A Zone the uses below may be granted a permit provided the conditions are met.

5.0 Permitted uses

- Retail premises (other than Manufacturing sales, Market, Primary produce sales and Restaurant)
- Food and drink premises not used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.
- Art Gallery
- Take away food premises not used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.
- Convenience restaurant not used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.
- Restaurant not used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.
- Office used for tourism purposes.

6.0 Conditions to be met

Any planning permit granted for any of the uses listed in this clause, must include conditions to effect to the following requirements:

1. Any existing buildings or shipping containers are to be clad to the satisfaction of the responsible authority.
2. Any existing buildings or shipping containers must be retrofitted to a minimum Bushfire Attack Level of BAL-29 or as otherwise agreed by the Responsible Authority in consultation with the CFA.
3. New buildings are to be designed and constructed to a minimum Bushfire Attack Level of BAL-29 or as otherwise agreed by the Responsible Authority in consultation with the CFA.
4. A Bushfire Emergency Management Plan must be prepared to the satisfaction of the Responsible Authority and endorsed by the Country Fire Authority. Once endorsed, the Bushfire Emergency Management Plan must be implemented while the use exists.
4. The uses operating on the site must close on days of Severe, Extreme and Code Red fire danger ratings as declared by the relevant fire authority.
5. A Wastewater Management Plan must be prepared for all uses on the site.

7.0 Decision guidelines

The following decision guidelines apply to an application for a permit under this Clause which must be considered, as appropriate, by the responsible authority:

- Whether the proposal is consistent with the purpose of this Incorporated Document.

Appendix D Council version of the Proposed Permit

Council proposed post exhibition changes: [shown like this](#)

ADDRESS OF THE LAND: 361-365 Mt Dandenong Tourist Road (Lot 1 TP598211K, Lot 1 TP438760V & lot 2LP99548) Sassafras

THE PERMIT ALLOWS: Buildings and works relating to the use of the land for a food and drink premises, two (2) plant nurseries, a retail premises and an office.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. [Retroactive](#) development [plans in accordance with this permit](#), including the removal of any trees or other vegetation, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and form part of the permit. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans submitted with the application or subsequent plans but modified to show:
 - a. Provision of appropriate screen landscaping along the north-western boundary where the carpark abuts the adjoining residential property.
 - b. Provision of landscaping on either side of the car park entrance on Prince Street.
 - c. The replacement of the existing fence along the north-western boundary with a new timber fence 2 metres high for the extent of the common boundary with 2 Prince Street.
 - d. Define a maximum of 40 square metres for the indoor food and drink serving area and 36 square metres for the alfresco dining area.
 - e. A notation indicating the proposed car parking area is to be formed and constructed with crushed rock or other suitable permeable surface.
 - f. A notation indicating the proposed car parking spaces are to be delineated and details of how delineation will be provided.
 - g. The provision of one (1) accessible car space to AS/NZS 2890.6:2009.
 - h. All car parking bays re-numbered and dimensioned with dimensions of the car spaces and access driveway in accordance with Clause 52.06 of the planning scheme (as amended).
 - i. A notation indicating the existing crushed rock vehicle crossing in Prince Street is to be removed and replaced with a 6.0 metres wide gravel vehicle crossing.
 - j. The end of the proposed access way provided with a 1.0 metre extension in accordance with AS/NZS 2890.1:2004.
 - k. All existing easements labelled on relevant plans.
 - l. A 250m2 wastewater envelope to be designated on the endorsed plan, including all applicable setback distances as described in EPA Publication 891.4 Code of Practice – Onsite Wastewater Management Table 5.
 - m. Amended plans [to show](#) that shipping containers are to be [retrofitted with cladding or other treatment](#) to the satisfaction of the Responsible Authority.

- n. Provision of screening along the south-western boundary from the edge of the eastern garden bed to the front elevation of the shipping container marked 'nursery retail.'
 - o. A schedule of construction materials, external finishes and colours to the satisfaction of the Responsible Authority.
 - p. Prepare and implement a Wastewater Management Plan in accordance with the conditions of this permit.
- 2. The layout of the site and the size of any proposed buildings and works shown on the endorsed plans shall not be altered or modified without the written consent of the Responsible Authority.
 - 3. The development must be managed so that the amenity of the area is not detrimentally affected, through the:
 - a. transport of materials, goods or commodities to or from the land
 - b. appearance of any building, works or materials
 - c. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil
 - d. presence of vermin
 - e. others as appropriate.
 - 4. All external lighting provided on the site must be baffled so that no direct light is emitted beyond the boundaries of the site and no nuisance is caused to adjoining properties to the satisfaction of the Responsible Authority.
 - 5. No external sound amplification equipment, loud speaker, siren or other audible signalling device will be installed on the land.
 - 6. Prior to the occupation of the permitted development the car parking spaces and vehicular access ways shown on the endorsed plan must be fully constructed, delineated and/or signed and drained incorporating Water Sensitive Urban Design elements to the satisfaction of the Responsible Authority.
 - 7. Within 12 months of the permitted development the existing crushed rock vehicle crossing in Prince Street must be removed and replaced with a new nominal 6.0 metre trafficable width gravel vehicle crossing and all Council assets, including the nature-strip, reinstated to the satisfaction of the Responsible Authority.
 - 8. Prior to the commencement of any buildings and works as required by this permit, a Drainage Strategy must be submitted to, and approved by, the Responsible Authority. The Drainage Strategy must show all drainage runoff being controlled and treated by Gross Pollutant Trap(s), and/or other Water Sensitive Urban Design elements.
 - 9. Prior to the occupation of the permitted development the construction of all civil works within the site, including drainage/detention and internal/external signs must be fully completed and subsequently inspected and approved by a suitably experienced Civil Engineer or qualified person at the arrangement and expense of the owner/developer. This person must supply written certification that the works have been constructed in accordance with this permit and to relevant standards to the satisfaction of the Responsible Authority.

10. The loading and unloading of vehicles and the delivery and pick up of goods must be carried out at all times within the site boundaries.
11. All vehicles must enter and exit the site in a forward direction.
12. A Wastewater Management Plan must be submitted to and endorsed by the Responsible Authority for the existing buildings. The Wastewater Management Plan must specify the following information unless otherwise agreed in writing by the Responsible Authority:
 - How the design and installation of the tank will protect against hydrostatic uplift during or after pump-out occurs;
 - Evidence of a contract between the operator of the onsite wastewater treatment system with a suitable sewage/sludge pump-out operator, contact details of the sewage pump-out operator and confirmation that the sewage pump-out operator is available on-call 24 hours a day;
 - Confirmation that any wastewater discharged to the environment during pump-out is cleaned up immediately and reported to the Yarra Ranges Council Health Department within 24 hours;
 - A requirement that all wastewater from the pump-out tank is pumped into a sewage-sludge truck for transportation to an approved sewer main access hatch or centralised sewerage treatment plant for correct disposal;
 - Details of how daily effluent flow rates and hydraulic flow rates will be monitored;
 - A requirement to install an audio visual or telemetric alarm system that alerts the occupier of the onsite wastewater treatment system when the tank is three-quarters full and requires pumping out and provide the specifications of this system; and
 - A requirement to provide the plan to future landowners and operators of the onsite wastewater treatment system.

Once endorsed the Wastewater Management Plan must be implemented to the satisfaction of the Responsible Authority.

Approval to alter the Wastewater Management Plan must be obtained from the Yarra Ranges Council Health Department.

13. All sewage and sullage waste water from the proposed development must be discharged into a new EPA approved on-site wastewater treatment system which retains all wastes within the boundaries of the land and is located within any wastewater envelope indicated on the endorsed plan. Approval to install or alter an onsite wastewater treatment system must be obtained from the Yarra Ranges Council Health Department.
14. An agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into between the owner of the site and the Responsible Authority requiring the landowners and operators of the onsite wastewater treatment system to provide the Wastewater Management Plan to future landowners and operators of the onsite wastewater treatment system. The landowner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.
15. No advertising sign other than those allowed in accordance with the Planning Scheme can be erected on the site without a planning permit from the Responsible Authority.

Bushfire Management Plan

16. A bushfire management plan must be submitted to and endorsed by the Responsible Authority. The plan must show the following bushfire mitigation measures, unless otherwise agreed in writing by the CFA and the Responsible Authority:

Defendable space

- a. Show an area of defendable space to the property boundary where vegetation (and other flammable materials) will be modified and managed in accordance with the following requirements:
- Grass must be short cropped and maintained during the declared fire danger period.
 - All leaves and vegetation debris must be removed at regular intervals during the declared fire danger period.
 - In relation to any new plantings into the ground:
 - Plants greater than 10 centimetres in height must not be placed within 3_m of a window or glass feature of the building.
 - Shrubs must not be located under the canopy of trees.
 - Individual and clumps of shrubs must not exceed 5 square metres in area and must be separated by at least 5 metres.
 - Trees must not overhang or touch any elements of the building.
 - The canopy of trees must be separated by at least 5 metres.
 - There must be a clearance of at least 2 metres between the lowest tree branches and ground level.

Construction standards

- b. Existing buildings are to be retrofitted to a minimum Bushfire Attack Level of BAL-29.
- c. New buildings are to be designed and constructed to a minimum Bushfire Attack Level of BAL-29.

Water supply

- d. Show 10,000 litres of effective water supply for firefighting purposes which meets the following requirements:
- Is stored in an above ground water tank constructed of concrete or metal.
 - All fixed above-ground water pipes and fittings required for firefighting purposes must be made of corrosive resistant metal.
 - The water supply must also:
 - Incorporate a ball or gate valve (British Standard Pipe (BSP) 65 millimetres) and coupling (64 millimetres CFA 3 thread per inch male fitting).
 - The outlet/s of the water tank must be within 4 metres of the accessway and be unobstructed.
 - Be readily identifiable from the building or appropriate identification signage to the satisfaction of CFA must be provided.

- Any pipework and fittings must be a minimum of 65 mm (excluding the CFA coupling).

Access

- e. Show the access for firefighting purposes which meets the following requirements:
 - Curves must have a minimum inner radius of 10 metres.
 - The average grade must be no more than 1 in 7 (14.4 per cent) (8.1 degrees) with a maximum of no more than 1 in 5 (20 per cent) (11.3 degrees) for no more than 50 metres.
 - Have a minimum trafficable width of 3.5 metres of all-weather construction.
 - Be clear of encroachments for at least 0.5 metres on each side and 4 metres above the accessway.
 - Dips must have no more than a 1 in 8 (12.5 per cent) (7.1 degrees) entry and exit angle.

17. Bushfire Management Plan – Maintenance

The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those related to construction standards, defendable space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis.

This permit will expire if one of the following circumstances applies:

- a. The development is not started within two years of the issued date of this permit.
- b. The development is not completed within four years of the issued date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.