

Planning and Environment Act 1987

Residential Zones (Stage One) Standing Advisory Committee Report

Ballarat Draft Amendment C177

This report must be read with Stage One Overarching Issues Report

20 June 2014



Planning and Environment Act 1987

Advisory Committee Report pursuant to Section 151 of the Act

Residential Zones Standing Advisory Committee Report (Stage One)

Ballarat Draft Amendment C177

A handwritten signature in blue ink that reads "Rodger Eade". The signature is written in a cursive style with a large, looped 'R' and 'E'.

Rodger Eade, Chair

A handwritten signature in dark red ink that reads "Lucinda Peterson". The signature is written in a cursive style with a large, looped 'L' and 'P'.

Lucinda Peterson, Member

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List of Abbreviations

BACS	Ballarat Activity Centres Strategy
BMO	Bushfire Management Overlay
CBD	Central Business District
the Committee	The Residential Zones Standing Advisory Committee
DDO	Design and Development Overlay
Draft Amendment	draft Amendment C177 to the Ballarat Planning Scheme
DTPLI	Department of Transport, Planning and Local Infrastructure
ESO	Environmental Significance Overlay
FoCC	Friends of the Canadian Corridor
GRZ	General Residential Zone
HIA	Housing Industry Australia
HO	Heritage Overlay
NAC	Neighbourhood Activity Centre
NRZ	Neighbourhood Residential Zone
ODP	Outline Development Plan
Plan Melbourne	Plan Melbourne, Metropolitan Planning Strategy 2013
PN78	Practice Note 78, Applying the Residential Zones, December 2013
PSP	Precinct Structure Plan
PUZ	Public Use Zone
R1Z	Residential 1 Zone
RGZ	Residential Growth Zone
SPPF	State Planning Policy Framework
UGZ	Urban Growth Zone
VCAT	Victorian Civil and Administrative Tribunal
VPO	Vegetation Protection Overlay

Amendment summary

The draft Amendment	Draft Amendment C177 to the Ballarat Planning Scheme
Planning Authority	Minister for Planning
The Subject Land	All land currently zoned Residential 1 in the City of Ballarat
Purpose	To apply the three new residential zones.
Request	At its meeting of 26 February 2014, Council resolved to request the Residential Zones Standing Advisory Committee.
Notice	The Notice Period was between 20 March 2014 and 16 April 2014. Notices appeared in: <ul style="list-style-type: none">- Herald Sun on 20 March 2014- The Age on 20 March 2014- Ballarat Courier on 15, 22 and 29 March 2014
Submissions	Appendix A lists submitters and those who presented at the Committee hearing.
Hearing	14 and 15 May 2014 at Ballarat Town Hall, Sturt Street, Ballarat. Appendix B lists documents tabled to the Committee at the hearing.
Appointment	The Residential Zones Standing Advisory Committee was appointed by the Minister for Planning on 5 February 2014.
Members	Rodger Eade, Chair Lucinda Peterson, Member
Date of this Report	20 June 2014

1 Introduction

1.1 The proposal

Draft Amendment C177 to the Ballarat Planning Scheme (the draft Amendment) proposes to:

- Amend Planning Scheme Map Nos. 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 42.
- Delete Clause 32.01 Residential 1 Zone (R1Z) and Schedule 32.01s.
- Insert Clause 32.07, Residential Growth Zone (RGZ).
- Insert Schedule 1 to Clause 32.07, RGZ.
- Insert Clause 32.08, General Residential Zone (GRZ).
- Insert Schedule 1 to Clause 32.08, GRZ.
- Insert Clause 32.09, Neighbourhood Residential Zone (NRZ).
- Insert Schedule 1 to Clause 32.09, NRZ.
- Amend Schedule 1 to Clause 37.07, Urban Growth Zone (UGZ), to reference GRZ and RGZ and remove a redundant specific provision that is no longer required under the zone controls in the reformed residential zones.
- Amend Schedule 2 to Clause 37.07, UGZ, to reference GRZ and RGZ and remove a redundant specific provision that is no longer required under the zone controls in the reformed residential zones.
- Amend Schedule 3 to Clause 43.04, Development Plan Overlay (DPO), to update references to R1Z to the NRZ, GRZ and RGZ.
- Amend Clause 21.04 Land Uses to update references from R1Z to the NRZ, GRZ and RGZ.
- Amend Clause 21.05, Built Form and Amenity, to update references from R1Z to the NRZ, GRZ and RGZ.
- Amend Clause 22.01, Non Residential Uses in Residential Area, to update references from R1Z to the NRZ, GRZ and RGZ.

1.2 Other matters not considered by the Committee

Just prior to the commencement of the Hearing the Residential Zones Standing Advisory Committee (the Committee) became aware that the Council intended to rezone a limited number of parcels of land from either Commercial 1 Zone or Mixed Use Zone to one of the new residential zones. The Committee identified this from submissions made objecting to the proposed rezoning as part of the notice for draft Amendment C177. The Committee informed the City of Ballarat (Council) that the proposed rezonings were outside its Terms of Reference which restricted the Committee to applying the reformed residential zones to existing residential areas. The submitters who objected to the rezonings were subsequently contacted and informed that the Committee would not be hearing any proposal for rezoning from Commercial or Mixed Use to residential.

The Committee also notes that the draft Explanatory Report for the draft Amendment did not list the rezoning proposed although it did note that the draft Amendment did apply to some land currently zoned Commercial 1 Zone and Mixed Use Zone.

At the Hearing Council tabled details of the proposed rezoning from Commercial 1 Zone and Mixed Use Zone. There were 103 properties involved in three areas as follows:

- Buninyong, 14 properties where the existing Mixed Use Zone will continue to apply.
- Wendouree, one property where the existing Mixed Use Zone will continue to apply.
- Sebastopol, 109 properties where the existing Commercial 1 Zone will continue to apply.

1.3 Issues dealt with in this report

The submission made by the Council addressed a number of issues faced in different areas of Ballarat and this report takes the same approach commenting on the application of the new zones in these areas. In doing this the issues raised by submitters and Council's response to them are addressed.

In reaching its conclusions and recommendations, the Committee has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations as well as its brief inspections of specific area. The following chapters of this report discuss the issues raised in submission relating to the draft Amendment in further detail, with the Committee's conclusions and recommendations provided in Chapter 9.

This report deals with the issues under the following headings:

- Strategic Planning Context
- Council's approach to applying the zones
- Buninyong
- Canadian / Mount Helen / Mount Clear
- Heritage areas
- Activity Centres
- Other issues

2 Strategic Planning Context

In addition to the strategic policy context contained in the Committee's *Stage One Overarching Issues Report*, the following local planning context applies to the draft Amendment.

2.1 Planning Policy Framework

The draft Amendment is supported by the following clauses in the Local Planning Policy Framework:

Municipal Strategic Statement Clause 21.04

The current MSS outlines that:

"...A key issue for Ballarat is population growth and increasing demand for land for residential purposes. Urban expansion opportunities are limited by water supply catchments, high quality agricultural areas, and State Forest and plantation land. Long term opportunities for urban expansion are limited to the west and south-west of Ballarat. Land in this long term development area will be rezoned progressively as required by demand. The expansion of the urban area will be minimised by encouraging infill development within existing areas, while ensuring that the conservation of Ballarat's built heritage is not undermined and the use of existing infrastructure is maximised..." (Settlement - 21.04-1).

Under Clause 21.04-1 – Settlement, the following relevant Objectives and Strategies were identified:

Objective 1. *To provide for growth in an orderly and efficient manner.*

Strategy 1.2. *Ensure between 10 to 15 years supply of land is available for major land uses, including residential and industrial uses. Priority areas are identified within the relevant framework plans.*

Strategy 1.4. *Coordinate urban expansion to the west of Ballarat in accordance with the Ballarat West Growth Area Plan 2009, the Alfredton West Precinct Structure Plan 2011 and the Ballarat West Precinct Structure Plan 2012.*

Strategy 1.6. *Support limited, planned development in designated areas of the Canadian Valley which protects valued character, vegetation and landscape qualities.*

Strategy 1.7. *Identify a network and hierarchy of Activity Centres within the City of Ballarat to ensure sustainable access to services and facilities for students.*

In terms of housing, at a high level it is identified that:

"...Residential land use and development is a fundamental part of all communities...Ballarat offers a wide range of housing choice and must continue to do so in a sustainable manner to ensure that the needs of all segments of the community are met..." (Housing – 21.04-2).

Under Clause 21.04-2 – Housing, the following relevant Objectives and Strategies were identified:

Objective 1. *To provide for residential growth in an orderly and efficient manner.*

Strategy 1.3. *Ensure that new residential subdivisions proceed in accordance with Outline Development Plans and that staging of development is achieved in an orderly and proper manner and having regard to servicing networks and the supply of other vacant serviced residential land.*

Strategy 1.4. *Contain residential development in Buninyong to within the existing residential area.*

Strategy 1.5. *Facilitate residential development in the Ballarat West Growth Area that is in accordance with the Alfredton West and Ballarat West Precinct Structure Plans.*

Objective 2. *To provide a wide range of housing choice, diversity, form and affordability, including infill and multi-unit development.*

Objective 3. *To promote and facilitate urban consolidation within the older, established areas of Ballarat to maximise the use of existing resources and infrastructure.*

Strategy 3.2. *Promote residential development in areas with good access to major areas of commercial activity, other residential development and leisure and recreation activities.*

Strategy 3.3. *Protect the integrity of historic streetscapes from the intrusion of out of character (medium density) housing.*

Strategy 3.4. *Facilitate the redevelopment of vacant upper floorspace within the Ballarat CBD for residential purposes.*

There are also a range of site specific strategies included in this section of the Municipal Strategic Statement, which are highly relevant when considering the application of the new residential zones in Ballarat, particularly areas of RGZ.

Ballarat Activity Centres Strategy – Clause 21.04-4

The Ballarat Activity Centres Strategy's (BACS) vision for activity centres and commercial development is:

A strong and diverse network of Activity Centres that provide vibrant, sustainable and accessible shopping, employment, entertainment, social and community focal points throughout the City, which meet the needs of the existing and future population of the City of Ballarat, the broader region and visitors to Ballarat.

A network of centres that reinforce the primacy of the Ballarat Central Business District and which have the potential to accommodate future growth in retail, employment, entertainment, social and community services and facilities as a consequence of future population growth, changing socio-economic characteristics, and changing retail and economic trends.

Flexibility for centres to change over time to accommodate the changing needs of their communities, with the opportunity for local communities and business groups to be involved in determining the distinctive identity which evolves for each centre" (21.04-4).¹

¹ Ballarat Activity Centres Strategy, p 138

2.2 Planning scheme provisions

(i) Zones and Overlays

Of the three residential zones being translated as part of this process, only the R1Z is currently used in the Ballarat Planning Scheme. It has one schedule which does not require a permit to extend or construct a dwelling on a lot between 300-500 square metres. It proposes no changes to Clauses 54 and 55 standards.

The following overlays are relevant:

- Bushfire Management Overlay (BMO)
- Design and Development Overlay (DDO)
- Environmental Significance Overlay (ESO)
- Heritage Overlay (HO)
- Vegetation Protection Overlay (VPO)

A number of these overlays cover extensive areas of Ballarat, particularly those areas where there is some dispute about the appropriate new residential zone to apply.

2.3 Relevant strategies and plans

(i) Plan Melbourne

Plan Melbourne Metropolitan Planning Strategy 2013 (*Plan Melbourne*) proposes a networked 'state of cities' and directs a greater share of Victoria's growth to regional cities. The initiative to review regional city growth opportunities² includes the following short term actions, which reaffirm policy in the SPPF (and the Gippsland Regional Growth Plan) to consolidate urban areas:

- *Support increased business and residential densities as well as social, civic and cultural facilities in regional city CBDs to strengthen them economically and socially.*
- *Work with the Department of State Development, Business and Innovation to identify a pipeline of renewal and infill opportunities in regional cities and centres that optimise infrastructure investment and the use of surplus government land.*

(ii) Central Highlands Regional Growth Plan

The Central Highlands Regional Growth Plan includes the following future directions for the City of Ballarat:

Future directions

- *Support development and investment that is consistent with Ballarat's role as a regional city and the largest settlement in the Central Highlands*
- *Facilitate growth of the city, particularly through planned development to the west and through infill opportunities*

² Page 163 *Plan Melbourne* Initiative 6.2.2.

- *Encourage the development of Ballarat's Central Business District as a higher order activity centre with major employment, cultural, service and retail attractors*
- *Provide appropriate social, physical and transport infrastructure to support growth*
- *Encourage the provision of regionally significant services and ensure they are easily accessible to their regional catchment through integrated land use planning and transport provision³*

With respect to urban form and growth the Regional Growth Plan states:

- *The growth of Ballarat is encouraged to strengthen its role as a regional city and ensure a critical population mass to support higher order services. The Ballarat West Growth Area will provide the main location for population growth in Central Highlands over the next 30 years. Long-term opportunities for further urban expansion are mainly focused to the west and south-west of the city, given there are fewer environmental and agricultural assets and risks from natural hazards than to the east. Transport and social infrastructure need to be provided in a timely manner to ensure Ballarat West develops as a highly liveable and attractive addition to the city. The growth of urban Ballarat should have regard to its links and interface with neighbouring rural areas.⁴*

The Central Highlands Regional Growth Plan includes a framework plan for Ballarat which shows the area of population growth to the west and south west of Ballarat. The Committee understands that this is consistent with population growth as set out in the Municipal Strategic Statement.

On 30 May 2014 and subsequent to all hearings conducted by the Committee, Amendment VC106 amended the SPPF to recognise the approved regional growth plans and *Plan Melbourne*. The Regional Growth Plan is at a high level of detail and the Committee considers that the proposed translation of residential zones is consistent with the intent of that plan.

(iii) Other relevant strategies and plans

Ballarat CBD Strategy

A key objective of this strategy is to:

Increase the CBD's resident population and diversify the types of available housing⁵.

Ballarat Neighbourhood Character Study

This study forms the basis to the DDOs which apply in Ballarat central, Wendouree and Newington.

³ Central Highlands Regional Growth Plan, p 47.

⁴ Central Highlands Regional Growth Plan, p 47.

⁵ Making Ballarat Central, The CBD Strategy, p19.

Canadian Valley Outline Development Plan

This is a key strategic document for the Canadian Valley Area. Clause 21.08-4 states in part:

Council has adopted the Canadian Valley Outline Development Plan 2005 which sets out the preferred form and principles of future development in the Canadian Valley. The plan recommends limiting residential development to areas that are already zoned for residential use and recognises the constraints imposed by native vegetation, landscape character and existing non-urban areas.

Strategy 2 - Protect and enhance natural and landscape values in the Canadian Valley including ridgelines, vegetated backdrops, non-urban breaks and open rural landscape vistas.⁶

The Canadian Valley Outline Development Plan (ODP) is a reference document to the planning scheme at Clause 21.10.

Comprehensive Koala Plan of Management

The Comprehensive Koala Plan of Management has led to the application of ESO5. ESO5 seeks to achieve the following environmental objectives:

- *To maintain and enhance koala habitat.*
- *To ensure the type, density, design and layout of new development is such as to minimise any adverse impacts on koala movements that occur or are likely to occur throughout areas of koala habitat and associated areas and on koala behaviour and health generally.*
- *To coordinate the protection of koala habitat with the protection of native vegetation generally throughout Ballarat.*

Buninyong Township Outline Development Plan

This Buninyong Township ODP was prepared in 1993 and is still a reference document in the planning scheme. It is the basis of the minimum lot size of 800 square metres which is proposed in the NRZ to apply to a large part of the Buninyong Crown township.

Ballarat West and Alfredton Precinct Structure Plans

These Structure Plans relate to the growth area to the west of Ballarat and are incorporated documents in the Ballarat Planning Scheme. They each provide for medium density residential development in areas at the periphery of activity centres. These are a proposed to be translated to the RGZ.

2.4 Strategic Assessment

The Committee concludes that the draft Amendment is generally supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. Some specific issues of implementation are addressed in following chapters.

⁶ Clause 21.08-4 of the Ballarat Planning Scheme.

3 Council's approach to applying the zones

3.1 Approach used by Council

(i) The Issue

The Committee has identified the following issues:

- Whether the zones have been appropriately applied.

(ii) Evidence and submissions

Council indicated to the Committee that it used the following approach to translate the R1Z to the three new residential zones:

- *Comparison of the new zones with the existing zones;*
- *Stated purpose and objectives of each reformed residential zone;*
- *Assessment of the restrictions within each reformed residential zone and the current form, character and style of development applications being received in Ballarat;*
- *Guidance provided by the DTPLI and the Minister for Planning in the Practice Note 78 – Applying the Residential Zones, along with discussion with officers from the Grampians Regional Office;*
- *Review of current planning policies related to neighbourhood character (which are limited in Ballarat);*
- *Review of other strategic planning documents, particularly outline development plans and structure plans, along with the Central Highlands Regional Growth Plan and Plan Melbourne;*
- *Review of planning controls and local policies in the Ballarat Planning Scheme (no local policy on neighbourhood character, extensive Heritage Overlays across large areas of the City; along with use of Vegetation Protection Overlays, Heritage Overlays, Environmental Significance Overlays and Bushfire Management Overlays in fringe areas);*

The Council has adopted Practice Note 78, *Applying the Residential Zones, December 2013* (PN78) to what it regards as appropriate local circumstances as is provided for in PN78 and this is set out in Table 1.

Table 1 Adapted Principles for applying the new residential zones

Residential zone			Principles in applying zones
Zone	Purpose	Likely application	Principles deduced from the purposes of the zones (should be considered in the context of the other zones)
RGZ	Enables new housing growth and diversity in appropriate locations	In appropriate locations near activities areas, town centres, train stations and other areas suitable for increased housing activity such as smaller strategic redevelopment sites	Locations offering good access to services, transport and other infrastructure Areas identified for medium density housing outcomes in the planning scheme, particularly precinct structure plans* Areas in proximity to defined Activity Centres*
GRZ	Respects and preserves neighbourhood character while allowing moderate housing growth and diversity	In most residential areas where moderate growth and diversity of housing that is consistent with existing neighbourhood character is to be provided	Areas with a diversity of housing stock, diversity of lot sizes and a more varied neighbourhood character Areas where moderate housing growth and housing diversity is encouraged Areas with Heritage Overlays where the overlay provides sufficient protection to heritage values*
NRZ	Restricts housing growth in areas identified for urban preservation	In areas where single dwellings are an important characteristic that supports recognised neighbourhood character, environmental or landscape significance*	Areas with a neighbourhood character that is identified in planning policy, and not compatible with the development outcomes of the GRZ or RGZ* Areas where maintaining lots predominantly as detached dwellings is considered important to protect identified neighbourhood character or environmental values* Areas of identified environmental or landscape significance. Areas which may not have good supporting transport infrastructure or other infrastructure, facilities and services and are not likely to be improved in the medium to longer term.

Based on these principles Council adapted the criteria for applying the zones as set out in PN78. Criteria 1, 2, 5 and 7 were changed from those set out in PN78. These are set out in Table 2.

Table 2 Adapted Criteria for applying the new residential zones

Criteria*		Applicable to:		
		NRZ (low levels of residential change)	RGZ (moderate levels of residential change)	RGZ (high levels of residential change)
Character				
1	Retention of identified neighbourhood character (such as evidenced through HO, DDO, significant intactness)	Yes	Yes	No
2	Identified areas for growth and change (such as evidenced through references to 'medium density housing' outcomes in the Ballarat Activity Centres Strategy or Precinct Structure Plans)	No	No	Yes
3	Existing landscape or environmental character/ constraints (evidenced through SLO, ESO, local policy)	Yes	No*	No
4	Risk associated with known hazard (evidenced through BMO, LSIO or EMO for fire, flood and landslip or other constraints identified through EPA hazard buffers or similar)	High	Low	Low
5	Level of desired development activity	Low	Low / Medium / High	High
6	Brownfield/urban renewal site/ area	No	Yes	Yes
7	Maintaining lots predominantly as detached dwellings is considered important to protect identified neighbourhood character or environmental values	Yes	No*	No*
Strategic				
8	Identified in Activities Area structure plan / policy for intensified other forms of residential development*	No	Yes	Yes
9	Commercial or industrial land for redevelopment not in Activities Area (strategic justification for rezoning required)	No	Yes	Yes
10	Good access to employment options	No	Yes	Yes
Context				
11	Good access to local shopping	No	Yes*	Yes
12	Good access to local community services	No	Yes*	Yes
13	Good access to transport choices (including walkability, public transport, cycling, road access etc.)	No	Yes*	Yes

* Criteria which were amended from those in PN78 to meet local conditions.

There was no area or site specific application of these criteria made as part of the Council submission.

(iii) Discussion

The Committee accepts the approach used by Council to translate to the new zones subject to comment and recommendations on specific aspects of the translation in following Chapters of this report.

3.2 General Residential Zone

(i) The Issue

The Committee has identified the following issues:

- Whether the GRZ is appropriate for the majority of residential land currently zoned R1Z.
- Whether it is appropriate to replace reference to R1Z in Schedules 1 and 2 to the UGZ for all land where R1Z is the applied, zone other than that land proposed as 'medium density residential'.
- Whether the proposed schedule to the GRZ is appropriate.

(ii) Evidence and submissions

Council submitted that it had taken the conservative approach of accepting the GRZ as the default zone and only proposing to apply the NRZ or RGZ where they believes that existing strategic work justified other than the GRZ. Council submitted:

At a municipality wide level, the General Residential Zone (GRZ) is proposed to be rolled out across most residential areas of Ballarat (approximately 94% of properties currently zoned Residential 1 Zone). The General Residential Zone is proposed to be the new widespread and default residential zone in Ballarat, replacing the existing Residential 1 Zone. There is not currently any land in Ballarat zoned as Residential 2 Zone or Residential 3 Zone.

The GRZ is the most similar of the new residential zones to the existing Residential 1 Zone, in terms of its controls on built form, size and development intensity. It maintains relatively similar parameters to that currently in place across Ballarat and should facilitate a continuation of the vibrant housing and development market which currently operates.

Applying the General Residential Zone along with the existing range of planning overlays (including Heritage, Environmental Significance, Vegetation Protection, Design and Development and Wildfire Management) will continue to ensure these areas are valued, enhanced and protected from inappropriate development, whilst maintaining sufficient opportunity for innovative design and development opportunity.

During the Hearing, Council acknowledged that there were probably some areas in at least the eastern part of the city where the NRZ may well be justified. Council submitted however that at this stage the strategic work to support such a zoning had not been done. It therefore would consider other areas for inclusion in the other reformed residential zones as the work to justify this was undertaken over the next few years.

The same logic applies to replacing the R1Z as the applied zone in Schedules 1 and 2 to the UGZ with the GRZ, except for the areas proposed for medium density residential development.

A number of submissions broadly supported or accepted the approach taken by Council and no submissions objected to it. These included submissions by Mr Harman of the TGM Group, Public Transport Victoria, the Friends of the Canadian Corridor, and Mr Neil Haydon of Beveridge Williams.

Council proposes one schedule to the GRZ. It proposes no change to the height or density provisions or to the relevant standards in Clauses 54 and 55.

(iii) Discussion

The Committee commends the Council for its careful approach and for acknowledging that in some areas more strategic work needs to be undertaken before the NRZ or RGZ can be considered. The Council has seen this current process as the first step to translate to the new residential zones, rather than a one-off opportunity. The Committee concludes that the Council proposal to translate most of its current R1Z land to the GRZ is appropriate.

The Committee accepts the schedule to the GRZ proposed by Council is appropriate to the Ballarat context.

3.3 Neighbourhood Residential Zone

(i) The Issue

The Committee has identified the following issues:

- Whether the proposed minimum lot size of 800 square metres as a mandatory requirement in the schedule to the Zone is appropriate.
- Whether the proposed maximum number of dwellings of two on a lot is appropriate.
- Whether a height limit of eight metres in the NRZ will inappropriately limit roof forms in the second storey of dwellings.

(ii) Evidence and submissions

The application of the proposed mandatory minimum lot size in particular areas is addressed in the relevant Chapters following. Whether the mandatory minimum lot size of 800 square metres is appropriate in the Ballarat context is addressed here.

Council did not specifically address the issue of why a minimum lot size of 800 square metres is proposed in the schedule to the NRZ other than to refer to the 1993 Buninyong ODP which specifies lots 'generally 800 square metres and above'. This ODP is a reference document in the Scheme.

Further the Council submitted:

The Neighbourhood Residential Zone is designed to protect areas of mostly single dwelling housing. City of Ballarat is proposing a minimum lot size of 800m² and a maximum of two dwellings on a block so as to result in built form outcomes which are in keeping with the policy justification previously outlined, including the

strategy to promote infill development that respects existing development patterns. Specifically, the schedule seeks to manage the impacts on vegetation and landscape character, and maintain established neighbourhood character in recognised targeted areas of the Canadian Corridor, to limit development to an acceptable intensity, in alignment with the policy relating to that area.

Mr Harman submitted that:

A mandatory minimum lot size of 800 square metres is not the appropriate mechanism to achieve a reasoned outcome. A provision allowing for the excision of an existing dwelling on an allotment of less than 800 square metres should be allowable. This could be coupled with a requirement that any vacant allotment met (sic) the 800 square metres minimum.

Similarly Mr McCuskey submitted that the 800 square metres minimum lot size is restrictive. The HIA also submitted initially that the 800 square metre minimum was overly restrictive. At the Hearing, Ms Waters tempered that concern somewhat but reiterated the HIA position that the HIA does not support mandatory minimum lot sizes and would prefer some discretion. They did acknowledge that their members in Ballarat were saying that the 800 square metres was not *'causing a problem'*.

The Friends of the Canadian Corridor submission supported the 800 square metres minimum lot size.

With respect to the mandatory height limit of eight metres proposed in the zone, Mr Danny Sacco of DSP Architects submitted that the proposed mandatory height limit is not appropriate because it does not allow for appropriate roof forms in the second storey of some dwellings or extensions to those dwellings.

Council proposes only one schedule to the NRZ: NRZ1. It specifies a minimum subdivision lot size of 800 square metres, proposes no changes to the relevant standards in Clauses 54 and 55, provides for a maximum of two dwellings on a lot and does not propose any change to the maximum building height limit.

(iii) Discussion

The Committee reiterates the comment made in the Committee's *Stage One Overarching Issues Report*, that if flexibility is needed around minimum lot sizes then the first consideration should be whether the NRZ is appropriate and not necessarily trying to build flexibility into the schedule to the zone.

The Committee notes that it has received no evidence that a minimum of 800 square metres is inappropriate in the Ballarat context and indeed has some policy support albeit in a limited area. For this reason the Committee concludes that the 800 square metre lot size for subdivision specified in the schedule to the NRZ is appropriate.

The issue of the mandatory height limit for the NRZ is dealt with in the Committee's *Stage One Overarching Issues Report*. There was no specific submission on this from Council and no proposal to vary the height limit through the schedule and the Committee concludes that the proposed height limit is appropriate in Ballarat.

The Committee accepts the schedule to the NRZ proposed by Council is appropriate to the Ballarat context.

3.4 Residential Growth Zone

(i) The Issue

The Committee has identified the following issues:

- Whether the RGZ allows for development at appropriate densities in the Ballarat West area.
- The impact of taller buildings in the RGZ on abutting land uses.
- Whether the proposed schedule to the RGZ is appropriate.

The Committee deals with the first two of these issues under the heading of the relevant area in following chapters as they are specific to particular locations in Ballarat.

Council proposes only one schedule to the RGZ, that is RGZ1. It proposes no change to the relevant standards of Clauses 54 and 55 and no change to the zone provision with respect to building height.

The Committee accepts the schedule to the RGZ as proposed by Council is appropriate to the Ballarat context.

3.5 Conclusions

The Committee draws the following conclusions:

- The approach used by Council to translate the new residential zones is broadly accepted.
- The schedules to the NRZ, GRZ and RGZ proposed by Council are appropriate to the Ballarat context.

4 Buninyong

4.1 The Issue

The Committee has identified the following issues:

- Whether the proposed schedule to the NRZ will result in appropriate development outcomes in Buninyong.
- Whether the NRZ has been strategically justified.
- Whether the mandatory provisions of the NRZ in relation to minimum lots sizes are appropriate.
- Whether the GRZ is more appropriate for Buninyong than the NRZ.

4.2 Evidence and submissions

In Buninyong, the Council proposes to apply the GRZ to approximately 140 lots within nine blocks on the east and west side of Warrenheip Street (Midland Highway). The majority of the remaining parts of the Crown township comprising approximately 60 blocks, are proposed to be zoned NRZ. Other discrete areas will remain in the Mixed Use Zone, Public Park and Recreation Zone, Public Use Zone and a small area of Business 1 Zone about the intersection of Learmonth Street and Warrenheip Street (Midland Highway).

Several submitters raised a number of concerns regarding the application of the NRZ in Buninyong and in particular the 800 square minimum lot size mandatory control, as follows:

- The schedule effectively limits development on any lot less than 1,600 square metres.
- The 800 square metre lot size is based on the former 1993 Buninyong ODP that was removed from the Planning Scheme in 2005 and was replaced by the Canadian Valley ODP which supports infill development in Buninyong and is silent on a minimum subdivision size. This process seeks to revert to the old Buninyong ODP without any strategic justification.
- Reintroduction of the minimum lot size will close out the ability for the community not only to retain its older residents, it will severely limit its ability to provide alternative housing choices.
- Buninyong is ideally placed to provide for sensitive infill development to support an ageing demographic and the increasing demand for alternative house and lot sizes.

Mr McCuskey of the Macneil Group presented at the Hearing and submitted that the 800 square metre minimum lot size is not appropriate for the strategic planning of the town. Using the 400-500 metre 'walkability' test and the current grid pattern in the town, there are opportunities for further infill that would provide for aging in place as well as opportunities for first home buyers in the area to which the lot size would apply. He submitted that the town has the capacity for good medium density outcomes. Should the mandatory minimum subdivision be applied, any block under 1,600 square metres would be unable to be subdivided. Mr McCuskey submitted that the 800 square metre figure comes from the Buninyong ODP (1993) and the 2005 Canadian Valley ODP, which does not include this figure, should override the Buninyong ODP. He commented that:

The Canadian Valley ODP is now the referenced document that guides the development of the Buninyong Township, and has controlled development within the Township for almost the last 10 years. The Council and an active community, quite rightly, has controlled the nature of the infill development occurring in Buninyong which continue to see incremental and slow change over time due to an aging demographic and lifestyle changes. The re-introduction of this minimum lot size will close out the ability for this community not only retain its older residents, it will severely limit its ability to provide an alternative housing choice.

Mr Harman of TGM expressed concern at the Hearing with the blanket application of 800 square metre minimum lot size across the NRZ. In the case where there is a small dwelling sited on 1,599 square metres there would be no ability to excise the dwelling (on say a 799 square metre lot) and create a vacant balance lot of 800 square metres. This definitive control prohibits what may be a perfectly suitable outcome for the identified character of an allotment in the NRZ. The proposed provisions limit the ability to formulate site specific design responses to achieve the best outcomes and he suggested that the subdivision clause should specifically allow for these circumstances. It was his view that a mandatory minimum lot size of 800 square metres is not the appropriate mechanism to achieve a reasoned outcome.

During his presentation Mr Harman argued that currently the Buninyong Township ODP was not mandated. He submitted there is a big difference between “*generally 800 square metre lot sizes*” and applying a mandatory figure when demographics are calling for smaller lot sizes. He contended that having worked with the ODP, the 800 square metres has been an ‘urban myth’ and while applications have generally accorded with it, a significant number of lots have been approved under 800 square metres. He submitted the issue is the mandatory nature of the control will negate the opportunity to have site responsive applications.

The process of applying the NRZ was of concern to Mr Haydon of Beveridge Williams. He submitted that affected owners will not have had a procedural opportunity to test and challenge the justification for applying this new residential zone. He contended that the way in which the planning authority proposes to apply the NRZ and the process that owners have been required to follow in response has reversed the burden of justification. Mr Haydon submitted that some of the policy and studies that have informed the NRZ are quite “aged” and may not necessarily reflect the aspirations of the community or the goals sought by the Council Plan.

Given the purpose and implications of the NRZ, Mr Haydon submitted that this is a significant change in the absence of rigorous independent assessment of neighbourhood character to properly justify the application of the NRZ to the majority of the township. Unlike much of Ballarat where there have been many HOs and DDOs resulting from neighbourhood character studies, Buninyong does not have a character study. In this context he submitted it may be premature to introduce the NRZ at this stage without further work documenting the character of the area. Mr Haydon suggested, where the planning authority cannot legitimately demonstrate why the application of the NRZ is justified, the Committee should recommend that this area be placed in a GRZ.

Council submitted that the NRZ is proposed for some areas within the Buninyong Township to protect existing neighbourhood character recognised in the Canadian Valley Outline Development Plan (Clause 21.08-4), and supported by the Buninyong Township Outline Development Plan which is a reference document in the Planning Scheme at Clause 21.10.

The Buninyong Township ODP (1993) provides guidance on character, layout and significance of environmental and neighbourhood elements in Buninyong Township. In the Canadian Valley Outline ODP (2005) Framework Plan, the primary objective is to “*Consolidate development in Buninyong within [sic] defined urban growth boundary by encouraging appropriate infill development which respects heritage and neighbourhood character*”.

In Buninyong, the following strategies are included in the Canadian Valley ODP and are reiterated in Clause 21.08:

- Land Use - Strategy 5 - Encourage in-fill development within the Buninyong Crown Township through the development of existing lots which can economically be provided with services and proper access.
- Built Form and amenity - Strategy 6 - Promote infill development within Buninyong that respects existing development patterns and Strategy 7 – Encourage new subdivision within the Buninyong Township to follow a similar form to existing development, i.e. Straight/grid pattern, rectangular lots and generally no cul-de-sacs.
- Infrastructure - Strategy 2 – Maximise opportunities to increase the provision of public transport and increased walking and cycling as alternatives to the motor vehicle.

Council argued that the proposed combination of the GRZ and the NRZ in Buninyong strikes the appropriate balance between protecting its character and feel, and providing the level of infill opportunity required for the area.

Council submitted that although the Canadian Valley ODP provided significantly updated coverage of issues in the Buninyong Township, the Buninyong Township ODP remains a reference document in the Ballarat Planning Scheme and provides further clarity on residential development principles for Buninyong, specifically:

...Within the crown township and within new development areas a basic range of lot sizes is to be encouraged which reflect the current low density character of the Buninyong township: Standard residential lots – generally 800 square metres and above.

Council submitted that over the period of time the Buninyong Township ODP was utilised to control development in the areas, it set the expectation for subdivision. The Council argued that the subdivisions undertaken since that time have reinforced the low density character of the area, and reinforced the expectation that the larger lot sizes contribute to the township feel of the area. Council’s statutory planning department has continued to utilise the Buninyong ODP in its decision making. The intent of incorporating such a minimum subdivision size limit in the schedule to the zone is to provide explicit clarity to the community and the development industry.

Council provided mapping which showed the predominant subdivision pattern is rectangular north-south blocks, which many originally may have fronted two east west roads and have been subdivided in half, generally to 1,000 square metre lots.

Council, in its closing submission, submitted that most submitters accepted the development form and subdivision pattern has been reinforced through the application of the preferred minimum 800 square metre lot size. Recognising the subdivision pattern is important and should be reflected in the scheme. In addition, the zoning regime proposed for Buninyong has been applied to provide diversity.

4.3 Discussion

Both the Canadian Valley ODP and the earlier Buninyong Township ODP discuss the character of the township. Although there appears to be a longstanding practice of applying preferred minimum lot sizes of “generally 800 square metres or above”, this is now not within the Planning Scheme, either as policy or in the form of an overlay control. The previous Clause 22.10 for Buninyong, based on the 1993 ODP, stated this provision however this was removed as a consequence of Amendment C95 and C102, and was replaced by policy statements from the Canadian Valley ODP which contains no reference to lot sizes. The Council did not explain the reason for this change and advised that the statutory planners still use the reference document to apply the preferred 800 square metre subdivision size.

The Committee notes that a number of applications for subdivision have been reviewed by VCAT and decisions have gone either way on this matter. It appears in many circumstances the issue of neighbourhood character and, in particular maintaining the grid pattern, is a significant driver for the decision rather than the size of the lot. In addition encouraging infill development within the Township itself without the need to develop beyond the boundary is also a main principle.

In VCAT Ref P338/2009 Member Hadjigeorgiou found:

While two of the lots are below the existing guideline of 800 square metres that guideline is not a hard and fast rule nor is it a statutory control tool. The fact the lot area guideline is not to be included in the proposed amendment C95 indicates a preference to performance based approach to determine the appropriateness of subdivisions or lot sizes.

In VCAT Ref P1439/2006 Member O’Leary found:

However there are a number of issues identified in the policy, such as encouraging new development within the Crown township to follow similar form to existing development, that is, in a straight/grid pattern and rectangular lots with no cul de sacs. It may be necessary to limit the size of the lots to reflect this transitional situation. So that they are in the order of 800 square metres to say 1200 square metres, depending on the assessment of all vegetation. This assessment may reveal that the density is lower than the nominated minimum in the policy, but that should be determined after a proper assessment. Relying on a single density figure in this site context can be, as this case has illustrated, a poor practice to follow.

The Committee has a number of concerns about the NRZ being applied in Buninyong, without strategic justification and process.

Buninyong is physically separated from urban Ballarat and its role is as a satellite town. Opportunities for aging in place, housing affordability, proximity to services and efficient use of infrastructure are all relevant. Council has applied the zones by applying the GRZ to a relatively small percentage of land in the core of the town with the almost the remainder of the town put into the NRZ. Applying the NRZ to such a proportion of the town needs to be strategically justified and this has not been undertaken at this stage.

The Committee considers that while there has been a tradition of applying a preferred 800 square metre minimum lot size, this has not been mandatory in the past and the direct policy reference to this figure has been removed from the planning scheme. It remains only in a reference document which is 20 years old. Beyond the contribution of the grid pattern within the town, there are no statements in the Canadian Valley ODP and Clause 21.08 which justify the application of a mandatory 800 square metre minimum lot size.

Given that there is no opportunity for exemptions to the mandatory control, this would have significant implications for some parts of the town which currently have no planning overlays.

4.4 Conclusions

The Committee draws the following conclusions:

- Buninyong has a special character however no evidence, overlays or policy beyond the 1993 Buninyong ODP, which is a reference document, justifies a mandatory minimum subdivision size proposed.
- The Council has not adequately considered the impacts of the mandatory nature of the 800 square metre subdivision size.
- Further work and consultation with the Buninyong community is required to justify the location of the NRZ and the relevant minimum subdivision size or alternatively overlays. Until that work is undertaken, the GRZ should be applied as a default.

4.5 Recommendation

The Advisory Committee recommends:

- 1. Apply Schedule 1 to the General Residential Zone to the Crown township of Buninyong until further strategic work is undertaken.**

5 Canadian / Mount Helen / Mount Clear

5.1 The Issue

The Committee has identified the following issues:

- Based on landscape and environmental qualities, whether additional areas should be included in the NRZ in Canadian, Mount Helen and Mount Clear.
- Whether the application of the NRZ in some parts of Canadian is unnecessarily restricting development potential.
- Whether the schedule to the NRZ as applied in the Canadian Valley should limit each lot to one dwelling.
- Whether the minimum subdivision size of 800 square metres is appropriate.

5.2 Evidence and submissions

The draft Amendment proposes the NRZ in confined areas on the fringe of the Canadian Forest which are covered by or adjoining identified vegetation protected by the VPO, ESO and the BMO. The area also exhibits generally larger lot sizes. These areas include the suburbs of Canadian, Mount Helen and Mount Clear.

Areas proposed within the NRZ

Several submissions were received in favour of the NRZ being applied to the areas of Canadian, Mount Clear and Mount Helen. While some submitted that the NRZ should be applied to a greater area of land, other submitters objected to the extent of the NRZ.

Ms Johnson objected to the GRZ being applied in areas in the Canadian Valley, having considered that they were in Rural Residential 1, albeit there is no such zone. The submission considered that the minimum subdivision size of 800 square metres within the NRZ is not large enough and the NRZ does not go far enough to protect the area. Factors such as site coverage and building design to allow for water and energy saving should be applied in the NRZ.

Mr Bardini of Broadplan opposed the NRZ on his client's land in Canadian, arguing that the application of the NRZ is premature and is not justified in terms of existing planning policies applying to the area. In particular there are no documents which justify an 800 square metre minimum subdivision, nor has the Council justified the mandatory control through an analysis of population growth figures and market demand. He submitted that Council has not been able to identify any well researched evidence that supports the proposed mandatory control.

Presenting at the Hearing, Mr Bardini argued that the current planning strategy for this area supports residential growth without specifying any form of lot yield restrictions. The area is acknowledged in the Ballarat Strategy 1998, which underpins in the current planning scheme, as it is well connected to transport and able to be serviced. Mr Bardini argued that the existing VPO and ESO on the site provide the necessary statutory tools to ensure these environmental constraints are considered and ensure appropriate development outcomes. He submitted the application of the NRZ should be underpinned by clearly expressed

planning policies in the planning scheme, of which there are currently none. Their site does not have the attributes to justify the NRZ.

Areas beyond the proposed NRZ

Submissions from Ms Johnson, Mr O'Grady, Mr Loveband, Mr Cerini, Mr Frew, the Friends of Sparrow Ground, the Friends of the Canadian Corridor, Ms Zibell, Mr Herperger and Ms McCuskey requested additional areas to be considered for NRZ based on environmental and landscape qualities. Submissions requested the NRZ be applied to other sites as follows:

- Mount Clear – east of Haymes Road and the Canadian Creek.
- Canadian – an area bounded by Richards Street, Wilson Street, Fussell Street and Spencer Street.
- Brown Hill/Yarowee Creek/Woodmans Hill – along the Yarowee Creek between the junction with Gong Gong reservoir park and south towards Woodmans Hill.
- Yarra Gum Estate and all R1Z land adjacent to the west, south and east.

These submissions contended land between Sailors Gully, Greenhaven and Emmaus Primary School should be developed for native parklands and the end of Haymes Road to Lavery Avenue/Sailor's Gully should be rezoned to Rural Residential, given the intact nature of the indigenous tree cover.

Some submissions considered that in some areas the Rural Conservation Zone would be a more appropriate zone given the characteristics of the land.

A number of submissions including Ms Chester representing Friends of Sparrow Ground requested the land bounded by Richards Street, Wilson Street, Fussell Street and Spencer Street be zoned NRZ as it will protect the opportunity to have the creeks used as active transport links and as a wildlife corridor. She contended that only the NRZ will enable the consideration of the many vegetation overlays. *"The friends are very concerned that any lessening of environmental protection of the south end of the block could destroy the wildlife corridor to Sparrow Ground"*.

Mr Cerini submitted that *"years of investment in developing environmentally friendly planning in the east side of Ballarat could be undermined if rezoning fails to recognise the Koala Overlay and the need for low density development which will conserve and enhance koala trees in the urban areas there"*.

The Friends of the Canadian Corridor (FoCC) suggested three additional areas to be included in the NRZ, all of which are affected by several overlays, including ESO5. The FoCC contended that land covered by the ESO5 overlay is of such significance to the success of the Koala Plan of Management that the land should reside within either NRZ or the Rural Conservation Zone. They submitted that the Council would not be following its own Koala Management Plan of Management guidelines, introduced through Amendment C95, if it was to continue with GRZ zoning for these three areas.

Ms Zibell appeared at the Hearing and submitted that a areas of the Canadian Valley which have the Koala ESO should be included in the NRZ and at least the large Haymes Road properties east of the Canadian Creek between the end of Haymes Road and Sailor's Gully should be rezoned to Rural Residential.

The Ballarat East Network, represented by Ms McCuskey, requested that, in addition to the Fussell/Spencer Street NRZ area, a large protective buffer should be provided along all the boundaries of Canadian State Forest. The Network requested the bio-link of Brown Hill – Yarowee Creek – Woodmans Hill and the land in the vicinity of Haymes Street east of Canadian Creek in Mount Clear between Sailors Gully and Emmaus school be at least NRZ.

Council submitted that it is limited, in this process, to applying the NRZ only to areas where existing planning policy explicitly supports it. In applying the NRZ at this point, Council used a combination of the ODP for Canadian Valley and environmental overlays. At the Hearing Mr Guy for the Council explained that, at this stage, the NRZ has been proposed where there are multiple overlays that apply to an area and they have an interface with the forest.

In its closing submission, having regard to Ms Zibell's submission regarding the Haymes Road large lots, the Council advised that while lots have been proposed GRZ it would not be opposed to them being zoned NRZ.

The Council further stressed that the future of the areas nominated above will be further considered as part of the development of a contemporary Ballarat Strategy which has commenced.

5.3 Discussion

On first principles the Committee considers that the application of the NRZ as a result of environmental significance or constraints is a justifiable approach, while having regard to other relevant strategic outcomes. However the application of NRZ is not necessarily the planning tool that will protect and enhance environmental assets. Overlays, which control development and removal of vegetation, are integral to the success of strategies which aim to protect environmental features.

The Committee has reviewed the existing planning scheme maps applying to the Canadian Valley area and notes that there are many areas where land is covered by the VPO, ESO5 and the BMO where the GRZ is proposed to be applied and the NRZ has not been applied.

The Committee notes the draft Ballarat Strategy document (provided in the FoCC submission) which states "*Council currently has overlays for Koalas and Koala Habitat ESO5, native vegetation VPO1, land protection in Invermay ESO1, and Streamside protection ESO2 as well as Rural Conservation Zone. Council has recently commissioned a review of these and found that there are significant gaps and inconsistencies.*" During the Hearing the Council made it clear to the Committee that it is scheduled to undertake further strategic work and assessments which may lead to rezonings.

Having reviewed the planning scheme maps and extent of overlays, the lot sizes, the vegetation cover, the submissions and Council's closing submission, the Committee considers that the properties cited in Ms Zibell's submission, namely the "large Haymes Road properties east of the Canadian Creek between the end of Haymes Road and Sailor's Gully" and lots proposed to be zoned GRZ in the Brown Hill – Yarowee Creek – Woodmans Hill area, specifically east of Springs Road and north of Yarowee Creek, should be placed in the NRZ and that further work should be undertaken. It considers that the NRZ is essentially conventional residential in nature. Although other zones such as the Low Density Residential, Rural Living or Rural Conservation Zone may be appropriate, this is outside the

terms of reference for the Committee and should be considered as part of future strategic work.

The Committee accepts that more detailed work is to be undertaken in this area.

With regard to minimum subdivision size, given the environmental characteristics identified in the overlays and in particular vegetation cover, the 800 square metre size is appropriate. The Committee acknowledges that as Council undertakes further strategic work the minimum subdivision size may be further refined.

5.4 Conclusions

The Committee draws the following conclusions:

- In principle, the environmental overlays VPO1 and ESO5 in the Canadian Valley area and Ballarat East justify use of the NRZ.
- The Council has committed to undertake further strategic work in this area to further investigate the suite of zones and minimum subdivisions sizes which should apply to the Canadian Valley and the Committee supports this approach.
- Based on existing overlays, the planning scheme maps, the lot sizes, vegetation cover and the Council's position in its closing submission, the Committee supports the application of the NRZ on the large lots between Haymes Road east of Canadian Creek between the northern end of Haymes Road and the southern end of Sailor's Gully Boulevard and lots placed on notice as GRZ in the Brown Hill – Yarowee Creek – Woodmans Hill area, specifically the area bordered by Spring Road, Longhill Road, Sevenoaks Road, Farming Zone land (to the east), a small section of PUZ1 land to the east and Yarowee Creek.

5.5 Recommendations

The Advisory Committee recommends:

- 2. Apply Schedule 1 to the Neighbourhood Residential Zone to:**
 - a) Large lots between Haymes Road east of Canadian Creek between the northern end of Haymes Road and the southern end of Sailor's Gully Boulevard.**
 - b) Lots in the Brown Hill – Yarowee Creek – Woodmans Hill area, specifically the area bordered by Spring Road, Longhill Road, Sevenoaks Road, Farming Zone land (to the east), a small section of Public Use Zone 1 land to the east and Yarowee Creek.**

6 Heritage Areas

6.1 The Issue

The Committee has identified the following issues:

- Whether further areas should be included in the NRZ in areas covered by a HO and in particular the Eureka Historical Precinct.
- Whether the GRZ can provide adequate protection for areas within the Heritage Overlay.

6.2 Evidence and submissions

A submission on behalf of Ballarat Central considered that not enough thought has gone into the application of the zones, considering the extent of Heritage Overlays (HO) and DDO within the City. The submission is critical of Council's approach and opined that not enough time and effort has been used to end up with the best possible outcome for Ballarat. The submission considers that sites with Aboriginal cultural heritage sensitivity layers, flooding layers and heritage overlays should be included within the NRZ.

Mr Marshall presented at the Hearing that the Eureka Street/Ballarat East Heritage Precinct, the Eureka Heritage Rebellion Precinct and the Specimen Vale Creek (part of the Creeks and River Channels Heritage Precinct) should be included in the NRZ as opposed to the GRZ. Mr Marshall outlined the characteristics of the precincts, the individual streets and the national heritage contribution of the Eureka Heritage Rebellion Precinct. Mr Marshall cited the VCAT case Ref P280/2012 which refused a proposal for 19 single storey dwellings on a 5,450 square metre site within the area. The decision noted the *"spatial and visual characteristics of the heritage place"* and the *"sense of openness"* of the area.

Council submitted that the regional context of Ballarat is quite different to metropolitan Melbourne. It submitted that Ballarat has *"huge areas of Heritage Overlay, the Heritage Overlay is working and we note they continue to apply. We consider the types of development that will be approved under the GRZ will be the same as the R1Z"*. The Council considered that applying the NRZ to all properties covered by the HO is an inappropriate outcome for Ballarat and it was confident that the HO will not be undermined by the new GRZ. In addition, it submitted that this approach will help to ensure that on large sites or in areas with irregular subdivision layouts development can be designed in such a way that is respectful to the heritage character of an area, while at the same time this development potential will not be unduly restricted.

6.3 Discussion

With regard to criticism that Council had not given enough thought on the application of the NRZ having regard to heritage and other matters, the Committee notes that this is the first step in the process of applying the new residential zones and the draft Amendment is effectively a translation of the existing zone into zones which are either supported by policy, incorporated documents or overlays. Council acknowledges that further work will be required to refine the zones, however given the time constraints of introducing the

reformed residential zones, the Committee understands that Council has not had time to undertake this fine grained work.

The Committee notes that one of the purposes of the NRZ is to *manage and ensure that development respects the identified character, heritage, environmental or landscape characteristics* while the purpose of the GRZ is to *encourage development that respects the neighbourhood character of an area*. The HO and Council's associated policies and statements of significance for the areas will still apply. Council has sought to have an approach, which balances competing strategies of incremental infill having regard to proximity to services and protecting features of heritage significance as defined in the statements of significance and in the context of demand or otherwise of different housing types.

The physical extent of the HO is considerably broad, and in this context the widespread application of the NRZ may have significant implications for housing supply and diversity. The Committee agrees with Council that the HO should provide the necessary protection of heritage features and the application of the GRZ will not undermine the attributes of the heritage precincts within Ballarat. In this context, the Committee is supportive of the Council's approach.

6.4 Conclusion

The Committee concludes that it supports the approach of Council to rely on the HO and associated policies to protect and manage heritage features and the application of the GRZ as proposed.

7 Activity Centres

7.1 The Issue

The Committee has identified the following issues:

- Whether the application of the RGZ around the periphery of a number of activity centres as proposed, is appropriate.
- Whether the extent of the application of the RGZ in the vicinity of the Sebastopol activity centre is strategically justified.
- Whether the schedules to the UGZ should be amended to replace reference to the R1Z by references to the RGZ for those areas identified in the relevant Precinct Structure Plans (PSP) for ‘medium density residential’ development.

7.2 Evidence and submissions

Based on the BACS prepared for Council by Hill PDA, the Alfredton West PSP, and the Ballarat West PSP, it is proposed to include some properties at the periphery of a number of activity centres as follows in the RGZ:

Ballarat CBD

Expert evidence by Ms Sarah Hill for the Council states:

...the Ballarat Central Business District (CBD) is situated in the heart of the City of Ballarat and performs a regionally significant role in the provision of goods and services to its catchment population. The CBD also performs a strong administrative and civic role providing a range of employment opportunities. With the highest level of accessibility by public transport in the municipality and the region, the CBD also represents the greatest concentration of investment in public infrastructure in the City.

The BACS recommended that the primacy of Ballarat CBD for retail, commerce, entertainment and development in the City of Ballarat and the Western Region of Victoria be reinforced and promoted. To this effect, the BACS defined the CBD as a Principal Activity Centre. Such centres were in part defined as those that “generate a high number of trips and therefore should form part of a network of centres linked by public transport. They should also be the primary location for government and private investment and development providing a sympathetic mix of employment and housing options.”⁷

The CBD strategy which is a reference document in the scheme has as a key objective to “increase the CBD’s resident population and diversity the types of available housing”.

The BACS has identified areas in the periphery of the Ballarat CBD which are currently in the R1Z. A small number of properties north, south and west of the CBD are proposed to be placed in RGZ. There were no submissions opposing the application of the RGZ in these locations.

⁷ Ballarat Activity Centres Strategy, p7.

Wendouree

The Council's expert evidence from Ms Sarah Hill states with respect to Wendouree:

The BACS recommended a reassessment of the role and extent of the Wendouree centre to better reflect existing functions and preferred future roles. On this basis it was recommended that the boundaries of the Wendouree and Howitt Centres be reconfigured so that is essentially focused around two retail anchors (the existing Stockland Shopping Centre) and the existing retail strip in Howitt Street. This would allow for land to the east of the centre to be retained for low intensity industrial and business uses along with a broader mix of uses to the west. To this effect it was recognised that "Amalgamating the centres also allows for additional development of retail floorspace, and importantly offers clear opportunities for the development of higher density housing within the residentially zoned areas of the new Activity Centre boundary."⁸

The BACS identifies extensive tracts to the east and south east of the existing retail core as an area to "encourage high quality medium density housing". It is part of this area that Council proposes be included in the RGZ.

The Old Colonists Association questioned the impact on the amenity on a retirement village at Charles Anderson Grove from application of the RGZ proposed at a property on the south west corner of Gillies Street and Gregory Street West.

There were no other submissions opposing the application of the RGZ.

Alfredton West and Ballarat West PSP Areas

The Alfredton West PSP, gazetted in 2011, is an incorporated document in the Ballarat Planning Scheme. It is proposed that 10 areas recognised in Schedule 1 to the UGZ as areas for "medium density residential" be translated to the RGZ. The PSP defines medium density housing as housing with an average density of 16 to 30 dwellings per hectare.

Similarly the Ballarat West PSP gazetted in 2012 proposes seven areas identified in Schedule 2 to the UGZ for "medium density residential" to be included in the RGZ.

In each case where medium density housing is identified in the relevant PSP it is proposed to replace the reference to the R1Z in the relevant schedule to the UGZ, with reference to the RGZ. The Council also propose a change to Schedule 1 to the UGZ to remove special requirements related to a 'convenience shop' as the new residential zones now make this provision redundant.

Mr Kaufmann on behalf of the owner of land in Carngham Road, Delacombe objected to the proposed translation on the basis of the density being 16-30 dwellings per hectare. Mr Kaufmann had no concern as such with the application of the RGZ but wished to have the flexibility to develop at a density lower than 16-30 dwellings per hectare. The Council responded pointing out that the density provisions which Mr Kaufmann referred to were in fact those which apply in the PSP, not the RGZ or its schedule.

⁸ Sarah Hill, Expert evidence p8.

Sebastopol

Sebastopol is another of the Activity Centres, the future planning for which is addressed in the BACS. Council proposes to apply the RGZ to an extensive area both east and west of the retail centre which generally has a frontage to the Midland Highway. As indicated in Chapter 1.4, there are 109 properties to the east of the retail centre which are currently in the Commercial 1 Zone or Mixed Use Zone and these are not being considered by the Committee as part of draft Amendment C177. Two of the sub-precincts to the east of the retail centre are identified in the BACS as areas for medium density residential consolidation. However these are areas which require rezoning and as indicated in Chapter 1.4 are not considered by the Committee.

West of the retail centre the Council proposes to apply the RGZ to extend to Clarkson Street in the precinct north on Hertford Street (Glenelg Highway) and west to Spencer Street south of Hertford Street. Apart from one sub-precinct south of Woolworths which is identified in BACS as “reinforce with quality built form and landscape”, the other areas proposed for RGZ are outside the defined activity centre boundary.

The BACS has one of its listed private realm improvements for this centre to:

*Encourage medium density consolidation around the periphery of the commercial land*⁹

The Committee undertook a brief site visit to this area and observed that it is an area in transition with a number of multi-unit developments having been undertaken in recent years.

7.3 Discussion

Ballarat CBD

It was not a major purpose of the BACS to plan for future residential use on the periphery of activity centres but the strategy does recognise the role such a use plays in supporting the centre. Whilst there is no specific strategic justification for the particular properties proposed to be included in the RGZ nor a methodical application of the principles or criteria of PN78, the Committee is satisfied that the properties proposed do meet the criteria proposed for the RGZ in PN78 and in particular their proximity to employment, transport, retail and community services.

Wendouree

The application of RGZ to land proposed to the east and south east of the Wendouree retail core is strategically justified by the BACS and whilst the criteria of PN78 have not been specifically applied to the site, the Committee is of the view that the sites meet the majority of the criteria proposed.

The property of concern to the Old Colonists Association is currently in the Mixed Use Zone and, as set out in Chapter 1.4, is not being considered as part of this process. However the Committee notes that were RGZ to be applied to that property, the standards in ResCode

⁹ Ballarat Activity Centres Strategy, p162.

would apply to any development proposed and that these would be considered at the planning permit stage.

Alfredton West and Ballarat West PSP Areas

The Committee sees it as appropriate to amend the Schedule to the UGZ for the Applied Zone for areas identified for 'medium density residential' to refer to the RGZ. The proposed change to the Schedule 1 to the UGZ to remove requirements with respect to 'convenience shop' is also regarded appropriate.

With respect to the submission by Mr Kaufmann about the desirability of the flexibility to develop at densities lower than 16-30 dwellings per hectare, the Committee agrees the Council that this is an issue that is not directly relevant to the RGZ or the proposed schedule to it, but rather a density provision in the incorporated PSP. It is not within the Committee's remit to examine any aspects of the incorporated PSP. This is an issue to be resolved between the Council and the landowner at the permit stage. The Committee finds that, given the density provision on the PSP, a translation to the RGZ is appropriate.

Sebastopol

The threshold question for the Committee in Sebastopol is whether the work undertaken as part of the BACS is adequate to provide the strategic justification required to underpin a translation to RGZ for those areas proposed outside the study area boundary, but adjacent to it, north and west of the activity centre study area (Figure 1). The Committee has some sympathy for the position in which the Council finds itself. That is, using a strategic study for purposes which could not have been realistically foreseen at the time it was undertaken.

The Committee notes that one of the principles of the BACS was to '*increase residential densities in and around Activity Centres*'.

The Committee further notes that the implementation plan in the BACS has as one of its recommendations, the preparation of a structure plan for the Sebastopol Activity Centre, including identifying medium density residential opportunities. As far as the Committee is aware this work has not been undertaken.

Ms Hill from Hill PDA, who prepared the BACS for Council, informed the Committee that there were attempts to engage the local community but she acknowledged that they had limited success in this. The study methodology gives no comfort that the broader area around the activity centre was actively canvassed or proposed for higher density housing as part of the BACS process. The reason that the Committee has focussed on this centre rather than some others is that this is described as a large NAC but the areas of RGZ proposed are relatively extensive.

The Committee is also concerned that there are two sub-precincts to the north-west and south west of the activity centre which are proposed for RGZ but which are designated in the BACS as areas to '*reinforce with quality built form and landscape.*' It is unclear to the Committee how RGZ might be consistent with this.

It is apparent to the Committee that there has been some medium density development, at least to the west of the centre in recent years, however, there is no apparent urgency to

resolve the future zoning of the areas around the centre. It is an area, where some increased residential density can be justified.

On balance the Committee is of the view that areas for higher density residential use should be resolved in the context of a Structure Plan for the Centre which could consider all areas including those where rezoning was proposed by Council but subsequently notable to be considered by this Committee. The Committee is of the view that the GRZ should be applied in the meantime and that such a zone is not likely to be unnecessarily restrictive in the short term if there are proposals for some residential redevelopment at higher densities. The Committee believes that such a process will allow for a more considered examination of the extent of RGZ land that may be appropriate on the periphery of this centre.

Figure 1 Ballarat Activity Centres – Sebastopol Action Plan



7.4 Conclusions

The Committee draws the following conclusions:

- The application of the RGZ to properties around the periphery of the Ballarat CBD as proposed by Council, is appropriate.
- The application of the RGZ to properties proposed by Council east and south of the core of the Wendouree activity centre as proposed by Council, is appropriate.
- Amending Schedules 1 and 2 to the UGZ to replace reference to the R1Z by RGZ for areas designated in the respective schedules for 'medium density residential', is appropriate.
- Properties at periphery of the Sebastopol Activity Centre proposed by Council for RGZ should be placed in the GRZ pending further strategic work.

7.5 Recommendations

The Advisory Committee recommends:

- 3. Apply Schedule 1 to the General Residential Zone to properties at the periphery of the Sebastopol Activity Centre, until further strategic work is undertaken.**

8 Other Issues

8.1 The Issue

The Committee has identified the following issues not addressed in earlier Chapters of this report:

- Whether the implementation process for the new zones has been too rushed and that the default GRZ should be applied until strategic work has been completed.
- Whether the application of the new zones will provide for appropriate housing diversity.
- Whether the proposed zones negatively impact on housing affordability.

8.2 Evidence and submissions

Translation process

A generic submission from a group of planning and associated professionals made to all of the proposals being considered by this Committee states:

It is considered that the manner in which the proposed implementation of the new zones has been approached has severely limited the opportunity for adequate preparation in order to respond to the new zones.

Specifically the release of the maps of the proposed new zones has resulted in a constrained timeframe in which a Council has to consider its position, seek professional advice, prepare and lodge submissions to the Advisory Committee and then be represented at Hearings.

This sentiment was supported by Mr Haydon who submitted:

...that the timelines surrounding the proposed implementation of the new zones more generally has been severely limited by the opportunity for adequate preparation in order to respond to the application of the new zones.

In my view this has been the case in Ballarat

In response Council submitted:

....it is considered that implementation of the reforms in Ballarat are in alignment with the process and timeframes determined by the State Government and that the proposed translation itself is a prudent implementation of existing policy, which seeks to achieve the best outcomes for the community, over the long term.

Under questioning from the Committee, the Council indicated that it was likely that there are others areas which in the longer term would be included in the NRZ, but that they were not proposed at this stage as the strategic work had not been undertaken to underpin such a proposal.

Housing diversity and affordability

The generic submission made by the group led by Ms Peterson submits that there is a documented need to provide for more affordable and diverse housing in well serviced and accessible areas. They submit that:

...there is a real danger that opportunities for providing affordable housing, special purpose housing and older person's units will be severely curtailed. Housing diversity creates an ability for communities to stay together.

Housing Choices Australia made a generic submission on this issue. It submitted that the use of the NRZ is likely to mean a reduction in the pool of sites available for the redevelopment of single dwellings into three or more medium density units and will reduce the opportunity to provide a range of affordable housing across Victorian communities.

Council submitted that it understood these concerns but responded that only a very small part of the overall R1 zoned land in Ballarat is proposed for the NRZ.

8.3 Discussion

Translation process

The Committee commends the Council for the approach it has taken. While it understands the submissions made by both Mr Haydon and the group of planning and associated professionals, it is of the view that with minor exceptions identified by the Committee in other Chapters of this report, the translation to the new zones proposed by Council are underpinned by policy.

Housing diversity and affordability

The Committee believes that the widespread application of the GRZ in Ballarat is consistent with maintaining a diverse and affordable housing stock. The Committee was presented with no evidence that the implementation of the new zones will lead to a significant deterioration in affordability and diversity in this municipality.

8.4 Conclusions

The Committee draws the following conclusions:

- That the process followed by Council to translate to the reformed zones in Ballarat is broadly appropriate.
- There is no evidence that the translation to the new residential zones in Ballarat will lead to any significant deterioration in housing affordability or diversity.

9 Conclusions and Recommendations

9.1 Conclusions

The Committee draws the following conclusions:

- The draft Amendment is generally supported by, and implements, the relevant sections of the State and Local Planning Policy Framework. Some specific issues of implementation are addressed in this report.
- The approach used by Council in the translation to the new residential zones is broadly accepted by the Committee.
- The schedules to the NRZ, GRZ and RGZ as proposed by Council are appropriate to the Ballarat context.
- Buninyong has a special character however no evidence, overlays or policy beyond the 1993 Buninyong ODP, which is a reference document, justifies a mandatory minimum subdivision size proposed.
- The Council has not adequately considered the impacts of the mandatory nature of the 800 square metre subdivision size.
- Further work and consultation with the Buninyong community is required to justify the location of the NRZ and the relevant minimum subdivision size or alternatively overlays. Until that work is undertaken, the GRZ should be applied.
- In principle, the environmental overlays VPO1 and ESO5 in the Canadian Valley area and Ballarat East justify use of the NRZ.
- The Council has committed to undertake further strategic work in this area to further investigate the suite of zones and minimum subdivisions sizes which should apply to the Canadian Valley and the Committee supports this approach.
- Based on existing overlays, the planning scheme maps, the lot sizes, vegetation cover and the Council's position in its closing submission, the Committee supports the application of the NRZ on the large lots between Haymes Road east of Canadian Creek between the northern end of Haymes Road and the southern end of Sailor's Gully Boulevard and lots placed on notice as GRZ in the Brown Hill – Yarowee Creek – Woodmans Hill area, specifically the area bordered by Spring Road, Longhill Road, Sevenoaks Road, Farming Zone land (to the east), a small section of PUZ1 land to the east and Yarowee Creek.
- The Council's approach to rely on the Heritage Overlay and associated policies to protect and manage heritage features and the application of the GRZ as proposed is supported.
- Applying the RGZ to properties around the periphery of the Ballarat CBD as proposed by Council, is appropriate.
- The application of the RGZ to properties proposed by Council east and south of the core of the Wendouree activity centre as proposed by Council, is appropriate.
- Amending Schedules 1 and 2 to the UGZ to replace reference to the R1Z by RGZ for areas designated in the respective schedules for 'medium density residential', is appropriate.

- Properties at periphery of the Sebastopol Activity Centre proposed by Council for RGZ should be placed in the GRZ pending further strategic work.
- That the process followed by Council to translate to the reformed zones in Ballarat is broadly appropriate.
- There is no evidence that the translation to the new residential zones in Ballarat will lead to any significant deterioration in housing affordability or diversity.

9.2 Recommendations

Based on the reasons set out in this Report, the Residential Zones Standing Advisory Committee recommends:

Draft Amendment C177 to the Ballarat Planning Scheme be prepared, adopted and approved pursuant to section 20(4) of the Planning Environment Act, 1987 subject to the following:

- 1. Apply Schedule 1 to the General Residential Zone to the Crown township of Buninyong until further strategic work is undertaken.**
- 2. Apply Schedule 1 to the Neighbourhood Residential Zone to:**
 - a) Large lots between Haymes Road east of Canadian Creek between the northern end of Haymes Road and the southern end of Sailor's Gully Boulevard.**
 - b) Lots in the Brown Hill – Yarowee Creek – Woodmans Hill area, specifically the area bordered by Spring Road, Longhill Road, Sevenoaks Road, Farming Zone land (to the east), a small section of Public Use Zone 1 land to the east and Yarowee Creek.**
- 3. Apply Schedule 1 to the General Residential Zone to properties at the periphery of the Sebastopol Activity Centre, until further strategic work is undertaken.**

Appendix A List of Submitters

Submitter	Organisation	Presented at the hearing
Judith Johnson		
Luke O'Grady	Stockland	
James Guy	Ballarat City Council	Yes
Lot 5 Ballarat – Carngham Road, Delacombe	c/- Kaufmann Property Consultants	
Graeme Jeffery	Glenelg Hopkins CMA	
John Bardini	Broadplan on behalf of Natural Blonde Pty Ltd	Yes
Margaret Rich	Old Colonists Association	
Paul McCuskey	Macneil Group	Yes
Colleen Peterson	On behalf of planning and associated professionals	
JG King Pty Ltd	c/- Kaufmann Property Consultants	
JS, ND, WA and M Vagg	c/- Jewell Partnership	
Robert Loveband		
Gavan Cerini		
Mark Frew		
Paul Clark	Central Highlands Water	
Sue and Michael Poulton		
Andrew Harman	TGM Group Pty Ltd	Yes
Ballarat Central		Yes
Diane Chester	Friends of Sparrow Ground	Yes
James Parsons	Public Transport Victoria	
Jeff Rootes	Friends of the Canadian Corridor	
Linda Zibell		Yes
Neil Haydon	Beveridge Williams	Yes
Ronald Marshall		Yes
Somma Sourivong	DTPLI	
Dean Sacco	DSP Architects	
Michael Boatman	Country Fire Authority	
Emily Waters	Housing Industry Association	Yes
Jean Nankin	Housing Choices Australia	
Dan Herperger		
Erin McCuskey	Ballarat East Network	

Appendix B List of Documents

No.	Date	Description	Presented by
1	14/05/2014	Ballarat City Council submission	Council
2	"	Ballarat Activity Centres Strategy	Council
3	"	Making Ballarat Central – CBD Strategy	Council
4	"	Canadian Valley Outline Development Plan 2005	Council
5	"	Buninyong Township Outline Development Plan	Council
6	"	Ballarat Housing Needs Assessment	Council
7	"	Ballarat Residential Land Supply Review	Council
8	"	Map of areas which are not currently in Residential 1 Zone and proposed for rezoning as part of draft Amendment C177	Council
9	15/05/2014	Written submission – Broadplan	Mr Bardini
10	"	Written submission on behalf of Friends of Sparrow Ground	Ms Chester
11	"	Map of Township of Buninyong	Mr McCuskey
12	"	A3 Pamphlet of Macneil 'Panorama' subdivision	Mr McCuskey
13	"	Development Plans for Lot 6 and Lot 10 of 'Panorama' subdivision	Mr McCuskey
14	"	Sample of lot sizes in Ballarat East	Council
15	"	Speaking points	Ms Zibell
16	"	Set of planning scheme maps for Buninyong Township	Mr Hayden
17	"	Panel Report for Moorabool C53	Mr Hayden
18	"	PowerPoint presentation	Mr Marshall
19	"	Written submission	Mr Marshall
20	"	Copy of VCAT P280/2012 decision	Mr Marshall
21	"	Written submission on behalf of Ballarat East Network	Ms McCuskey