

*Planning and Environment Act 1987*

**Panel Report**

# Wangaratta Planning Scheme Amendment C68 Part 1

Front page

**29 August 2017**

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Wangaratta Planning Scheme Amendment C68 Part 1

29 August 2017

A handwritten signature in black ink, appearing to read 'Michael Kirsch', with a long, sweeping underline.

Michael Kirsch, Chair

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## List of Abbreviations

DELWP	Department of Environment, Land, Water and Planning
FZ	Farming Zone
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
MTDP	Milawa Township Development Plan 2015
M-GW	Murray-Goulburn Water
NEW	North East Water
RLZ	Rural Living Zone
SPPF	State Planning Policy Framework
TDP	Township Development Plan
TZ	Township Zone

## Executive Summary

### (i) Summary

Wangaratta Planning Scheme Amendment C68 seeks to implement the Milawa Township Development Plan, 2015 (MTDP). The exhibited Amendment proposes to introduce new material into the Local Planning Policy Framework (LPPF) and rezone land from Farming Zone (FZ) to Township Zone (TZ) and Rural Living Zone (RLZ).

Following its consideration of submissions, Council resolved to split the Amendment into two parts and to refer Part 1 to a Panel. Part 2 includes the proposed RLZ rezoning and Part 1 includes the rest of the exhibited Amendment.

The proposed RLZ rezoning was the subject of objecting submissions and the Panel notes that Council intends to review whether the Low Density Residential Zone (LDRZ) should be applied instead of the RLZ. The Panel has not formed a view about the merits of either zone, but supports Council's intention to review this issue.

Submissions in relation to Part 1 of the amendment raised a broad range of issues about the future development of Milawa, including zoning, water supply, drainage and land supply. Some submitters also raised site specific issues.

The Panel is satisfied that the Amendment provides a sound strategic framework for managing the future development of Milawa and recommends that the Amendment be adopted, subject to a limited number of changes that were discussed during the Hearing.

### (ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Wangaratta Planning Scheme Amendment C68 Part 1 be adopted as exhibited subject to the following:

- 1. Replace the "Rural Living Zone (RLZ)" designation with "Farming Zone (FZ)" on Figure 1: Milawa Township in Clause 21.07 Townships and Rural Townships.**
- 2. Delete Policy 5.2 under Objective 5 in Clause 22.11 Milawa Township and renumber Policy 5.3.**
- 3. Modify Figure 1: Milawa Township in Clause 21.07 Townships and Rural Townships to describe the potential road link at the end of Woodwarrah Avenue as a "pedestrian, cycle and emergency vehicle access".**
- 4. Modify Figure 3 – Milawa Access, Movement and Open Space Plan in Clause 22.09 Public Open Space Contributions to describe the potential road link at the end of Woodwarrah Avenue as a "pedestrian, cycle and emergency vehicle access".**
- 5. Include the following 'policy' in Clause 22.11 under Objective 7:**

*Policy 7.2 All development (including subdivision) within this precinct must be designed to consider established business and land uses located along the Snow Road.*
- 6. Seek the views of adjoining landowners and VicRoads on the rezoning of 1637 Snow Road, Milawa (Lots 1 and 2) from Farming Zone to Low Density Residential**

**Zone and include the rezoning in the Amendment (together with any appropriate consequential changes) if there are no objections.**

- 7. Review the formatting of the Low Density Residential Zone schedule in association with the Department of Environment, Land, Water and Planning.**

# 1 Introduction

## 1.1 The Amendment

Wangaratta Planning Scheme Amendment C68 proposes to implement the MTDP by:

- including new Milawa material in Clause 21.07 Townships and Rural Townships
- including the MTDP in Clause 21.12 Reference Documents
- updating material in Clause 21.14 Public Open Space
- updating material in Clause 22.09 Public Open Space Contributions
- introducing a new Clause 22.11 Milawa Township
- reformatting and updating the LDRZ schedule
- rezoning land in Milawa from FZ to TZ and RLZ.

Amendment C68 was prepared by the Rural City of Wangaratta (the Council) as Planning Authority and was conditionally authorised by the Department of Environment, Land, Water and Planning (DELWP) in a letter dated 22 September 2016. Council provided a discussion of the conditional authorisation in its submission at the Hearing.

The Amendment was placed on public exhibition between 16 March and 21 April 2017, and attracted 13 submissions.

At its meeting of 20 June 2017, Council resolved to split the Amendment into two parts:

- *Amendment C68 Part 1 – Inclusive of all exhibited changes to the Wangaratta Planning Scheme except: the exhibited Rural Living Zone Change illustrated on “Zone Map 37 and 38”;*
- *Amendment C68 Part 2 – Only the following exhibited change to the Wangaratta Planning Scheme: the zone change to land identified on “Zone Maps 37 and 38” (the RLZ component).*

Council also resolved to:

- request the appointment of a Panel to consider unresolved submissions relating to Part 1
- exhibit a revised Part 2 in which the previously exhibited RLZ is replaced by the LDRZ.

Council advised that Part 2 is currently ‘on hold’, pending the resolution of Part 1.

## 1.2 Panel process

The Panel to consider Amendment C68 Part 1 (the Amendment) was appointed under delegation from the Minister for Planning on 5 July 2017 and comprised Michael Kirsch (Chair).

A Directions Hearing was held in relation to the Amendment on 21 July 2017. The Panel then met in Wangaratta on 8 August 2017 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

The Panel undertook an unaccompanied inspection of Milawa, the surrounding area and sites referred to in submissions before the Panel Hearing.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Rural City of Wangaratta	Justin Britt (Senior Planner)
Robert Morton	

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Linda Kemp attended the Hearing in support of Mr Morton’s submission (refer to section 4.2 of this report). Frank Darke (NE Planning Plus) lodged a further written submission on behalf of Russell and Wendy Ferguson following the Hearing (refer to section 4.5 of this report).

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions and other material presented to it during the Hearing, and observations from inspections.

The Panel 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.



## 2 Background

### 2.1 Milawa

Milawa is small rural community with a population of approximately 210 people<sup>1</sup>. It is located approximately 18 km south-east of Wangaratta and 4.5 km east of Oxley, and is within a broader farming area (refer to Figure 1).

Milawa is at the centre of the Milawa Gourmet Region and is home to high profile agricultural and tourism businesses including the Brown Brothers winery and the Milawa Cheese Company.

The town has been identified as a location for future growth and as a satellite settlement for Wangaratta. It has a range of community and commercial facilities, and was recently provided with reticulated sewerage.



Figure 1 Milawa location map

The town is centred on Snow Road (Myrtleford-Glenrowan Road), but extends north along Factory Lane (Milawa-Bobinawarra Road) to Oxley Flats Lane.

The Snow Road area is zoned a mixture of TZ and LDRZ, and provides the town's commercial core (refer to Figure 2).

<sup>1</sup> Council submission.

The area that extends north along Factory Lane is a mix of LDRZ and FZ, and has a low density residential/rural character. While there has been recent residential development to the west of Factory Lane and in the Chardonnay Drive area, there is still a noticeable amount of undeveloped land zoned LDRZ.

The northern area of the town, contains a small area of TZ that is intended to be augmented by the Amendment. It also includes the FZ area that is now subject to Amendment C68 Part 2 and proposed to be zoned LDRZ.

The Heritage Overlay applies to a few properties within the town, but no other overlays have been applied.

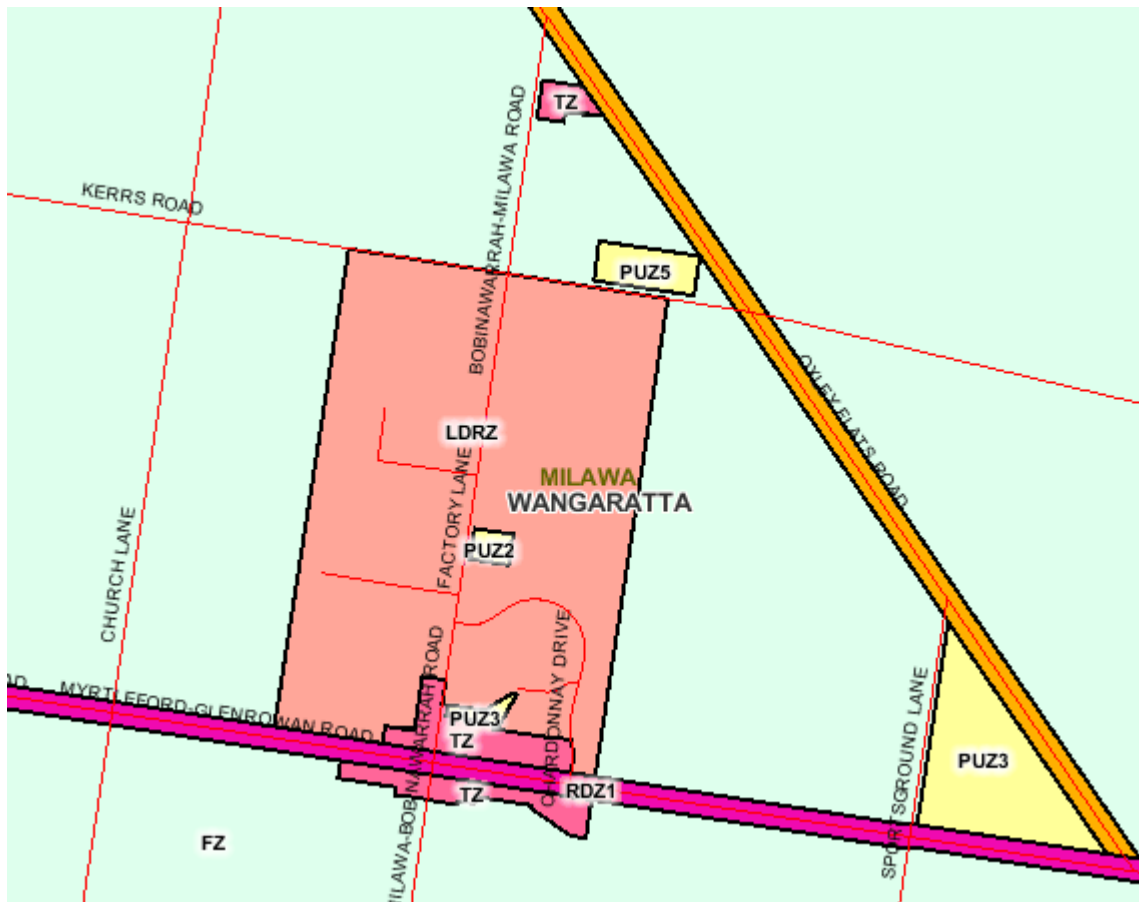


Figure 2 Milawa zoning plan

## 2.2 Milawa Township Development Plan, September 2015

The MTDP was prepared for Council by Mesh Pty Ltd and was part a suite of three Township Development Plans that were also prepared for Oxley and Glenrowan. The Milawa study area is shown in Figure 3.

The MTDP was informed by a consultation process that commenced in July/August 2014 and included the exhibition of a draft MTDP in Feb/March 2015. The MTDP was also informed by a background report.

The MTDP includes sections that provide:

- Context (including a snapshot of key features)

- Site Analysis (including descriptions of land use patterns, the movement network and natural features)
- Precinct Analysis (that identifies the seven precincts shown on Figure 4)
- Milawa Design Response (that provides the vision, key objectives and a design response plan)
- Milawa Township Development Plan (that represents various recommended zoning, land use and development outcomes, and includes a table of precinct specific recommendations)
- Implementation (including a table that identifies various implementation actions).



Figure 3 MTDP study area  
(MTDP Background Report)

The MTDP includes the 'vision':

*Maintain and enhance the rural character of Milawa through providing sensitive development that supports the values of the existing community. Milawa's role within the Gourmet Region is strengthened by continuing to improve wayfinding, pedestrian and cycle links to the key tourist attractions.*

The Milawa Precinct plan has been included in the exhibited Clause 22.11 Milawa Township (refer to Figure 4), together with 'Precinct Objectives' and 'Policies' that are a synthesis of various material in the MTDP.

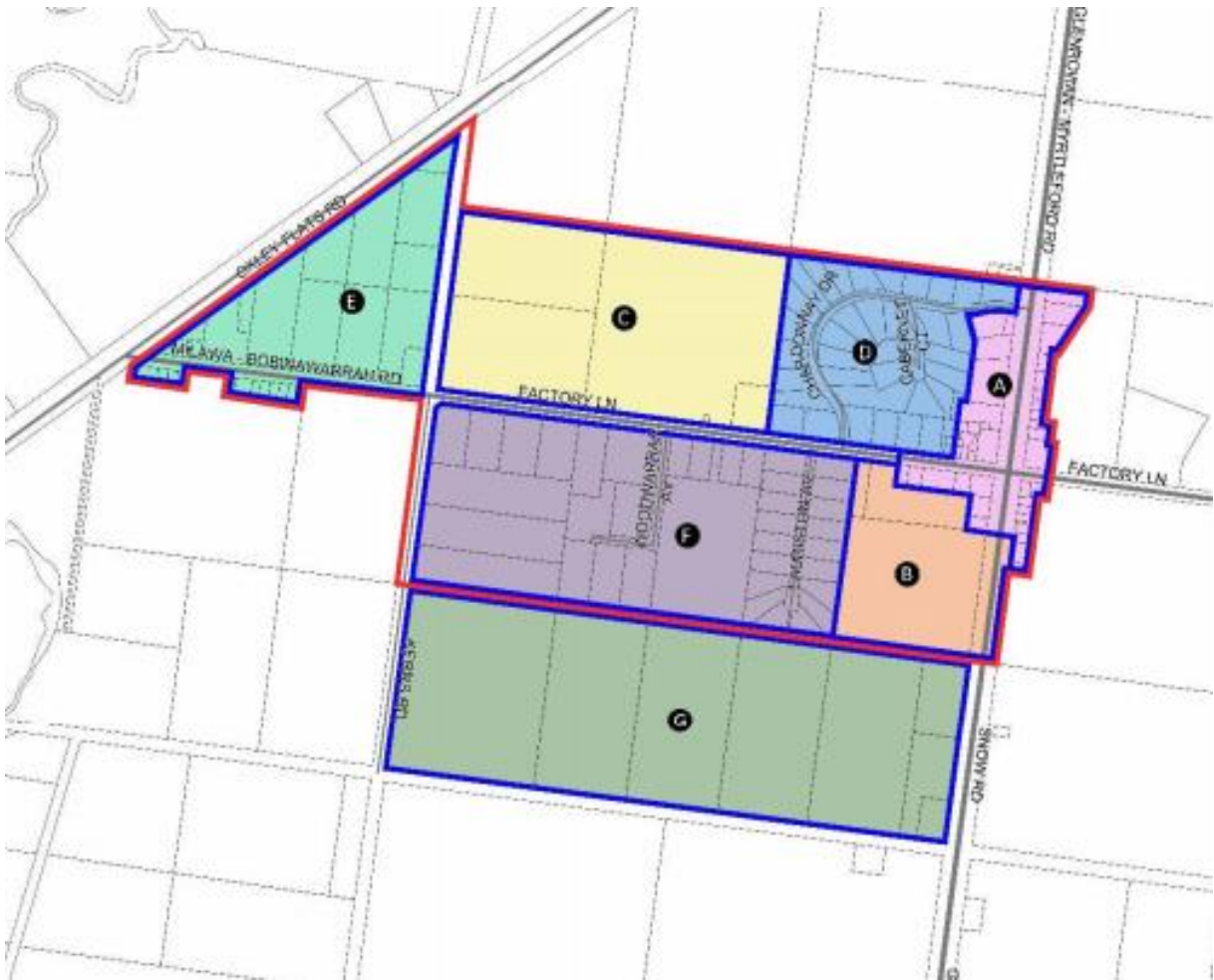


Figure 4 Milawa Township (Precincts)  
(extract of Figure 1 in exhibited Clause 22.11)

The Milawa Township Development Plan<sup>2</sup> has been included in the exhibited Clause 21.07 (refer to Figure 5), together with objectives and strategies relating to Milawa and Snow Road, between Milawa and Oxley. This material augments an existing 'Objective' and 'Strategies' under the theme 'All Townships and Rural Townships'.

<sup>2</sup> The one page plan on page 15 of the MTDP.

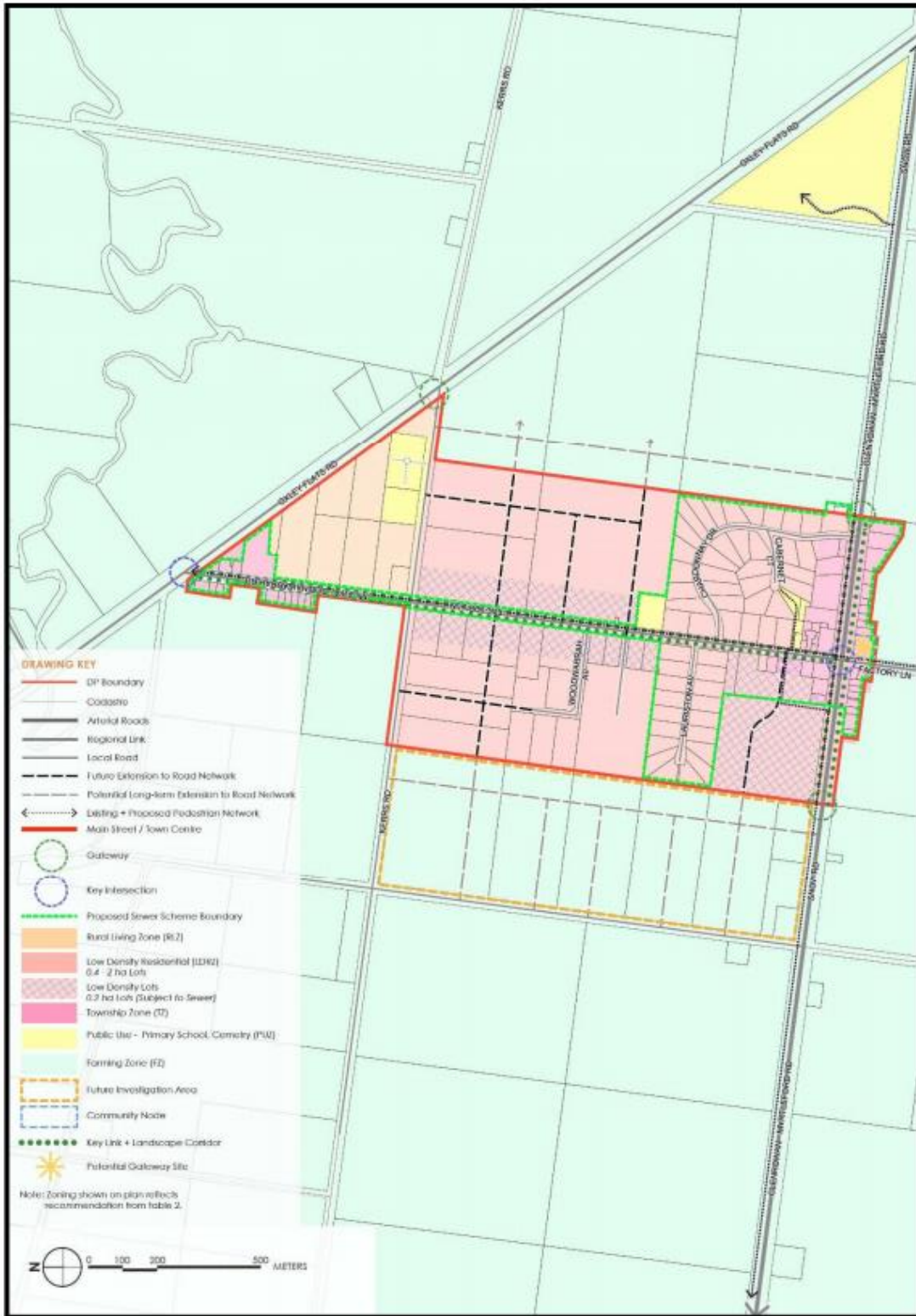


Figure 5 Milwa Township  
(Figure 1 in exhibited Clause 21.07).

### **3 Planning context**

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant controls and planning strategies.

#### **3.1 Policy framework**

##### **(i) State Planning Policy Framework (SPPF)**

Council submitted that the Amendment and the MTDP are supported by the following clauses in the SPPF:

- Clause 11 (Settlement) that supports the sustainable development of regional settlements
- Clause 11.2 (Hume) that provides for future growth and change
- Clause 14 (Natural Resource Management) that supports the protection of productive farming land and water quality
- Clause 15 (Built Environment and Heritage) that supports sustainable development
- Clause 16 (Housing) that seeks to manage and limit any negative impacts of rural residential development
- Clause 17 (Economic Development) that supports tourism development and facilities
- Clause 18 (Transport) that supports pedestrian and cycle networks
- Clause 19 (Infrastructure) seeks to protect water quality in catchments and supports the provision of sewerage.

The Panel is satisfied that the development of the MTDP had regard to the SPPF and that the Amendment is consistent with the SPPF.

##### **(ii) Local Planning Policy Framework (LPPF)**

Council submitted that the Amendment supports the following elements of the LPPF:

- Clauses 21.03 (Vision) and 21.04 (Strategic Directions), including the community vision and the municipality's broad strategic directions
- Clause 21.07 (Townships and Rural Townships), including the objectives and strategies that guide the future role and development of Milawa and other towns
- Clauses 21.08 (Economic Development and Tourism) and 22.04 (Economic Development and Tourism) that promote tourism opportunities within the municipality, including the Milawa/Oxley area
- Clauses 21.14 (Public Open Space) and 22.09 (Public Open Space Contributions) that promote the provision of public open space.

The Panel is satisfied that the MTDP and Amendment are generally consistent with and build on the policy directions in the LPPF. The Panel also notes that the LPPF is in a state of flux because of various 'strategic' amendments currently being processed by Council. These

Amendments will provide Council with a more contemporary planning framework for managing its small towns, including Milawa.

**(iii) Other planning strategies or policies used in formulating the Amendment**

Council submitted that the Amendment is consistent with the adopted Population and Housing Strategy, 2013.

The strategy noted that Milawa is a 'hub' within the region and has a potential role as a satellite town to Wangaratta. It included an assessment of projected population growth and land availability in Milawa and concluded that there was adequate zoned land to provide for anticipated residential growth. This assessment was largely based on an anticipated low rate of population growth.

Some submitters questioned the accuracy of this assessment, submitting that the supply of zoned and subdivided residential land was very limited. This issue will be a factor in assessing Amendment C68 Part 2, but is not directly relevant to Part 1.

### **3.2 Planning scheme provisions**

**(i) Township Zone**

The Amendment proposes to apply the TZ that includes the 'purposes':

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for residential development and a range of commercial, industrial and other uses in small towns.*

*To encourage development that respects the neighbourhood character of the area.*

*To allow educational, recreational, religious, community and a limited range of other non residential uses to serve local community needs in appropriate locations.*

The Panel is satisfied that the proposed application of the TZ is appropriate.

### **3.3 Ministerial Directions and Practice Notes**

**(i) Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

**Ministerial Direction No 11 - Strategic Assessment of Amendments**

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46 (Strategic Assessment Guidelines).

### **The Form and Content of Planning Schemes (s7(5))**

The Amendment is generally consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act, although there are issues with the drafting of the LDRZ schedule that are discussed in section 4.8 of this report.

#### **3.3.2 Other Amendments**

Council advised that a number of Amendments are currently being processed:

- Amendment C61 (Waldara Low Density Residential Precinct)
- Amendment C66 Part 2 (Glenrowan site specific)
- Amendment C67 (Oxley Township Development Plan)
- Amendment C75 (Planning Scheme Review).

Although these Amendments are not directly relevant to Amendment C68 Part 1, there will be a need to review the Amendment to ensure that any consequential formatting or other changes are identified.

### **3.4 Conclusion**

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, and is generally consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapter.



## 4 Issues

### 4.1 Future development of Milawa

#### (i) The issue

The issue is whether Milawa should accommodate additional development and growth.

#### (ii) Submissions

Stewart and Margaret Montgomery strongly opposed the further subdivision of land in the Milawa area. They submitted that people choose to live in and visit Milawa because of the open space and that further development will increase rates and crime.

Council submitted that the Amendment would not facilitate further subdivision in Milawa, and noted that the changes to the LDRZ schedule would potentially reduce the scope for subdivision.

Council also submitted that:

- rating impacts are not a relevant planning consideration
- crime and anti-social behaviour are generally a law enforcement matter, outside the planning system.

#### (iii) Discussion and conclusions

The Panel agrees with Council's observation that the Amendment is principally concerned with facilitating and managing growth within the existing zoning regime rather than providing for additional growth as suggested in the Montgomery submission. As Council submitted, it is likely that the proposed changes to the LDRZ schedule (discussed in section 4.8) will reduce subdivision opportunities in the town.

The Panel also notes that the current LPPF identifies Milawa as one of the 'towns' that has "*identified potential for growth*". This is reinforced in the MTDP that anticipates, but seeks to manage, future growth and development.

The Panel agrees with Council that rating and crime issues are not relevant planning considerations in relation to the Amendment.

### 4.2 Precinct E

#### (i) The issue

The issue is whether land in Precinct E (refer to Figure 4) should be rezoned from FZ to RLZ or LDRZ.

As discussed in chapter 1 of this report, the exhibited Amendment proposed to rezone this area RLZ, but Council has resolved to split the Amendment and apply the LDRZ as part of Part 2 of the Amendment.

#### (ii) Submissions

Lorraine Smith submitted that LDRZ should be applied instead of the RLZ.

Various landowners lodged a joint written submission (8) also in support of applying the LDRZ instead of RLZ. They submitted that:

- applying the LDRZ would not affect or compromise any other planning objectives or policies
- the LDRZ would be consistent with the prevailing lot sizes and character of the precinct
- there is a shortage of land available for subdivision
- the MTDP fails to adequately assess residential land demand and supply, and various other issues including servicing and access.

Belinda Kemp, one of the landowners in the area, lodged a written submission at the Hearing in support of applying the LDRZ instead of the RLZ.

Robert Morton, one of the joint submitters, spoke in support of applying the LDRZ and submitted that:

- 5 of the 6 affected landowners support the rezoning
- the MTDP is outdated and doesn't adequately address residential land supply and demand
- Precinct E was more suitable for the LDRZ than Precinct C (refer to Figure 4)
- the owner of Precinct C did not intend to develop the property
- applying the RLZ would be inconsistent with the recommendation of the Panel report for Amendment C69.

Mr Morton also tabled correspondence from Garry Nash (Garry Nash and Co) relating to land supply in Oxley and Milawa.

Council provided the background to splitting the Amendment and applying the LDRZ through Amendment C68 Part 2. Council advised that:

*Following resolution of C68 Part 1, Council will undertake a Strategic planning study to investigate the rezoning of the land in question to LDRZ. As a guide this Study will investigate the following areas:*

- *Demand and supply of LDRZ land in Milawa.*
- *Land capability and service availability.*
- *Existing and preferred Neighbourhood character including a possible future vision and structure.*

*This study would form an amendment to the currently adopted Milawa Township Development Plan, which may require re-adoption by Council.*

*Should the above steps support the rezoning of the land to LDRZ, the amendment will be submitted to DELWP for Authorisation and then follow the normal amendment process.*

Council also advised that the decision to split the amendment will require some consequential changes to Part 1:

- *Removal of proposed Rural Living Zone (RLZ) on Maps 37 & 38.*
- *Amendment of Figure 1 – remove RLZ zoning and reinstate Farm Zone.*

- Amend the explanatory report to remove reference to RLZ rezoning.
- Amend Clause 22.11 (Milawa Township) Figure 1 and also remove Policy 5.2.

### **(iii) Discussion and conclusions**

As discussed at the Directions Hearing and Hearing, the Panel was appointed to consider submissions in relation to Amendment C68 Part 1. The proposed RLZ rezoning falls within Part 2 and consequently is not before the Panel.

Council advised that it proposed to deal with zoning of this area in the future, either as part of Amendment C68 Part 2 (presumably if the RLZ is to proceed) or possibly through a new amendment (presumably if the LDRZ is to be applied). How this might happen is not entirely clear and the Panel encourages Council to continue its discussions with DELWP about the procedural options in order to avoid any future process issues.

Although Mr Morton and Ms Kemp spoke in support of the LDRZ, the Panel has not formed any views about how this area should be zoned. This is a matter that needs to be resolved by the further strategic work that Council intends to undertake.

Council submitted that Amendment C68 Part 1 requires consequential changes to fully reflect its resolution to deal with the proposed RLZ separately. Essentially, these changes involve deleting references to the RLZ in various elements of Part 1.

In light of Council's decision to deal with the zoning of this area separately, retaining references to the RLZ as within the 'strategic' elements of Part 1 would be a contradictory and potentially confusing outcome. For these reasons, the Panel supports Council's consequential changes, although the deletion of the RLZ rezoning on maps 37 and 38 is achieved by Council's resolution to split the Amendment and does not need a separate recommendation from the Panel. In addition:

- it is not clear what changes Council believes should be made to Figure 1 Milawa Township (Precincts) in Clause 22.11
- the proposed changes to the explanatory report do not need a recommendation from the Panel.

### **(iv) Recommendations**

The Panel recommends:

1. **Replace the "Rural Living Zone (RLZ)" designation with "Farming Zone (FZ)" on Figure 1: Milawa Township in Clause 21.07 Townships and Rural Townships.**
2. **Delete Policy 5.2 under Objective 5 in Clause 22.11 Milawa Township and renumber Policy 5.3.**

## **4.3 Precinct G**

### **(i) The issues**

The issues relate to:

- the zoning of the precinct

- the extension of Woodwarrah Avenue
- the impacts of future development on existing businesses in the precinct.

## (ii) Submissions

Michelle Van Der Byl and Adam Crole supported Precinct G retaining the FZ or being rezoned RL22 (8 ha minimum lot size). They outlined various benefits of applying the RL22 to the precinct but noted that any rezoning would require a “full re-exhibition”.

They also raised issues related to the proposed movement pattern/road network and submitted that the Amendment “*Should prioritise walking and cycling over motor vehicles in particular the extension of Woodwarrah Court (Avenue)*”. The extension of Woodwarrah Avenue (refer to Figure 6) is shown on Figure 1 in Clause 21.07 and Figure 3 in Clause 22.09.

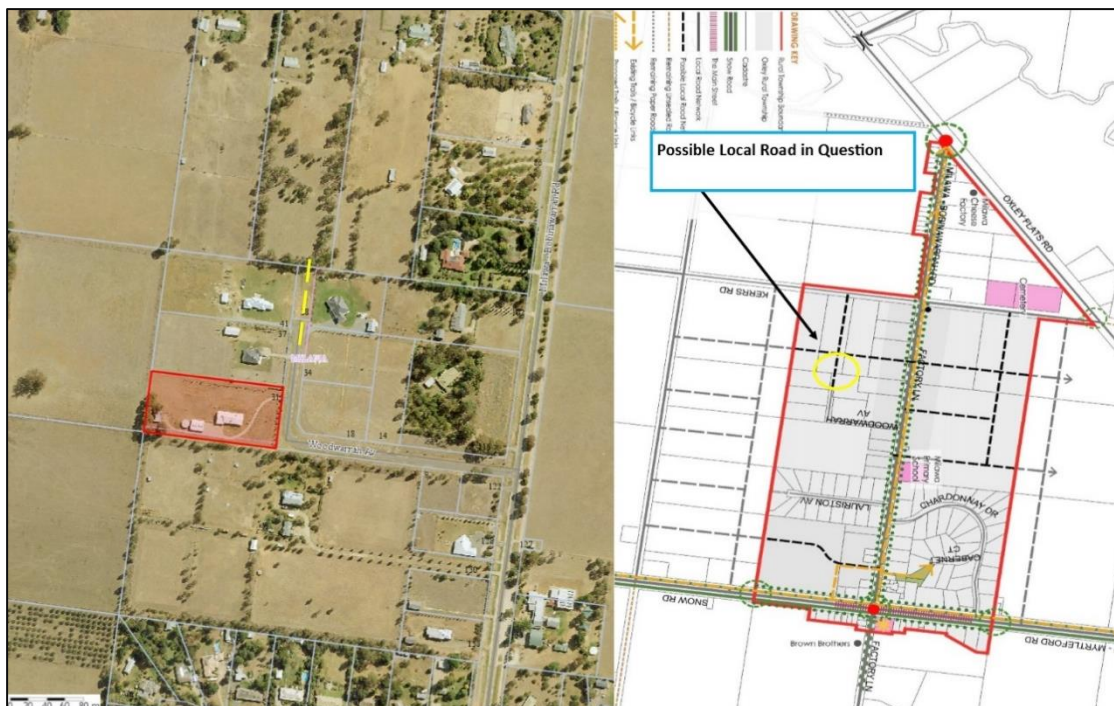


Figure 6 Woodwarrah Avenue  
(Council submission)

R, J and G Whitehead submitted that the “*commercial requirements*” of their apiary business (Walkabout Apiaries) on Snow Road should be taken into account as part of the future planning of Precinct G. They advised that the business is a mixture of “*primary production, food packaging, retail, wholesale distribution and tourism attraction*” and requires the movement of large trucks and other vehicles associated with retail trade and tourism.

Council noted that Area G is nominated as “*future residential*” and, at this time, no investigations have been undertaken to determine the form of any future residential development:

*These investigations are still to be undertaken and will have to consider issues of township character, compatibility with adjoining agricultural uses, service availability and also drainage related issues.*

Council also noted that any rezoning *“will be the subject to a future planning scheme amendment, in which public exhibition will form part of the process and local policy and the TDP will guide Councils decision making under this process”*.

In relation to Woodwarrah Avenue, Council advised that the extension exists as an access easement rather than as a public road. Council also advised that while it supported the downgrading of the extension to Woodwarrah Avenue in the Amendment *“it is important to retain a level of connectivity between Woodwarrah Avenue and any future development to the north”*. For this reason, Council proposed that the link be downgraded in the Amendment to *“pedestrian/cycle and emergency vehicle access only”* and submitted that this designation *“will still achieve the TDP’s principle of north south connectivity whilst encouraging the use of alternative transport methods to that of motor vehicles”*.

In relation to the Whitehead submission, Council agreed that the potential for conflict between commercial uses and future residential development was a legitimate concern and proposed that the following additional ‘Precinct G’ policy be included in Clause 22.11:

*Policy 7.2 All development (including subdivision) within this precinct must be designed to consider established business and land uses located along the Snow Road.*

Council submitted that this will provide a degree of protection to the existing business.

### **(iii) Discussion and conclusions**

#### **Future zoning**

The current zoning of Precinct G (Farming Zone) is not proposed to be changed by the Amendment, which simply identifies it as an investigation area for long term future growth. Any future rezoning of this area will need to be strategically justified and go through a public rezoning process.

#### **Woodwarrah Avenue**

Figure 1 in Clause 21.07 identifies *“Future Extension(s) to Road Network”* and *“Potential Long-term Extension to Road Network”* consistent with the MTDP, including the Woodwarrah Avenue extension referred to in submissions. The Panel interprets these references as indicative rather than fixed, and expects that they will be reviewed and finalised during more detailed planning for these areas.

Council advised that the Woodwarrah Avenue extension exists as an access easement rather than as a public road, although it will be accessible by emergency vehicles. Council supported modifying Figure 1 in Clause 21.07 and Figure 3 in Clause 22.09 to reflect this. The Panel supports this modification.

#### **Existing land uses**

The future investigation of this precinct and the analysis of potential planning controls should take account of land uses in the area, including commercial land uses such as Walkabout Apiaries, that might be operating at the time. In this context, Council’s response to the Whitehead submission and the proposed additional policy are appropriate and are supported by the Panel.

**(iv) Recommendations**

The Panel recommends:

3. **Modify Figure 1: Milawa Township in Clause 21.07 Townships and Rural Townships to describe the potential road link at the end of Woodwarrah Avenue as a “pedestrian, cycle and emergency vehicle access”.**
4. **Modify Figure 3 – Milawa Access, Movement and Open Space Plan in Clause 22.09 Public Open Space Contributions to describe the potential road link at the end of Woodwarrah Avenue as a “pedestrian, cycle and emergency vehicle access”.**
5. **Include the following ‘policy’ in Clause 22.11 under Objective 7:**

*Policy 7.2 All development (including subdivision) within this precinct must be designed to consider established business and land uses located along the Snow Road.*

**4.4 Drainage issue**

**(i) The issue**

The issue is whether the Amendment will exacerbate existing drainage problems.

**(ii) Submissions**

Ilona Goswell submitted that her property on Chardonnay Drive is subject to storm water drainage problems that should be addressed by Council before new development proceeds.

Council acknowledged that the Chardonnay Drive area (and Milawa generally) has drainage issues because of its flat topography. However, Council noted that the Amendment does not propose any intensification of subdivision or development in the Chardonnay Drive area and that new development must be adequately drained and meet current engineering and drainage standards.

Council concluded that issues about the existing drainage network are beyond the scope of the Amendment and advised that its Technical Services Department has contacted the submitter and is undertaking further investigations.

**(iii) Discussion and conclusions**

The Panel agrees with Council that the Amendment is not likely to exacerbate any existing drainage problems in the Chardonnay Drive area and that drainage issues are not a reason to abandon or delay the Amendment.

**4.5 1637 Snow Road, Milawa**

**(i) The issue**

The issue is whether this property should be rezoned from FZ to TZ.

The property is in the south-east of Milawa, on the north side of Snow Road (refer to Figure 7). It is outside, but abuts, the boundary of the MTDP. Land to the west is zoned LDRZ, land to the south west is zoned TZ and land to the north, south and east is zoned FZ.

The property consists of two lots:

- Lot 1 is 1,012 sqm and is vacant
- Lot 2 is a 1,010 sqm battle axe lot that has a dwelling.



Figure 7 1637 Snow Road, Milawa  
(Council submission)

## (ii) Submissions

Frank Darke (on behalf of the owners, R and W Ferguson) lodged a submission seeking the rezoning of this property. Mr Darke was scheduled to appear at the Hearing but was not sent a timetable. The Panel was made aware of this after the Hearing and invited Mr Darke to lodge a further written submission that was received on 14 August 2017. The further submission was also provided to Council which subsequently advised the Panel that Mr Darke's submission was consistent with Council's position presented at the Hearing.

Mr Darke's initial written submission sought the rezoning of this property from FZ to TZ, however he subsequently proposed that it be zoned LDRZ following discussions with Council officers. In support of rezoning the property, Mr Darke submitted that:

- the FZ is inappropriate given the small size and residential use of the two lots
- the property is adjacent to and effectively forms part of the Milawa urban area
- the property is able to be connected to all services, including town water and sewerage
- the property is proximate to various community and commercial facilities within Milawa.

Council supported the rezoning of the property, noting that:

*... the property is clearly identified within the sewer boundary and Council has formally noted the need to correctly rezone this property in the past.*

*However, this has been omitted under the current Township Development Plan and this amendment presents an opportune time to rectify this.*

However, Council submitted that the LDRZ was more suitable than the TZ “based on the adjoining land immediately to the west being the same zone and this further continues through the Chardonnay Drive subdivision”.

Council also submitted that the purpose and provisions of the LDRZ, compared to the TZ, would provide a more suitable transition to the adjoining FZ. The LDRZ would also acknowledge the existing dwelling on the site, but restrict the inappropriate non-residential uses allowed under the TZ.

For these reasons, Council concluded that the LDRZ was the most appropriate zone for the site, and that the addition of a second dwelling was appropriate in the circumstances.

Council acknowledged that the rezoning “has not been exhibited and could be considered to be a transformation. However, Council considers that the degree of change is considered to be acceptable”.

### **(iii) Discussion and conclusions**

The Panel agrees that the current FZ is not ideal given the residential use and location of the property adjacent to the Milawa urban area. The Panel also agrees with Council and Mr Darke that the LDRZ would be more suitable than the TZ, because it will legitimise the residential use of the property without providing broader opportunities for commercial and other uses that would be better located in the existing TZ areas. For these reasons, the Panel is satisfied that at a strategic level, the LDRZ is a suitable zone for this property.

During the Hearing, the Panel raised issues about the ‘workability’ of a future dwelling on the vacant Lot 1 and whether there should be some form of notification to adjoining landowners given that the rezoning had not been exhibited as part of the Amendment. Mr Darke was also invited to address these issues in his further submission.

In relation to the second dwelling, Council advised that officers had inspected the site and although they had not done a detailed analysis, there were no apparent reasons why a dwelling could not be built on the vacant lot. Mr Darke advised that:

- Lot 1 is sewerred and not encumbered by effluent disposal areas
- the existing dwelling on Lot 2 is contained entirely within the lot boundaries and has sufficient open space at the rear
- vehicular access arrangements would need to be reconfigured, subject to VicRoads approval.

The issue of notification was discussed at the Hearing and the Panel sought Council’s views on the proposition that adjoining landowners be invited to comment on the property being rezoned LDRZ as part of Amendment C68 Part 1. If any objected then the rezoning would need to be processed as part of a future amendment. Council did not believe that any notification was necessary, but did not oppose this approach. Council also noted that if there were objections to the rezoning, it could be included as part of a future amendment that deals with the zoning of Precinct E. In his further submission lodged after the Hearing,



Mr Darke did not oppose this approach, and noted that he did not expect there would be any opposition to the rezoning.

Amendment C68 provides an opportunity to address the zoning anomaly that affects this property and the Panel is satisfied that the LDRZ, rather than the TZ, is a suitable zone. For the rezoning to be included as part of Amendment C68, the Panel believes that adjoining landowners should be advised of the proposal and be invited to comment. If there are any objections, the rezoning should not be included in the Amendment. The Panel believes that this process adequately responds to 'natural justice' issues associated with the rezoning not being included in the exhibited amendment.

In terms of notification, the Panel believes that Council should seek the views of the owners/occupiers of 8 and 14 Chardonnay Drive and the adjoining rural property to the east and north. Council should also seek the views of VicRoads.

If the rezoning proceeds, there will need to be consequential changes to other elements of the Amendment, including:

- applying the LDRZ designation to the property in Clause 21.07
- including the property in the town boundary in Clauses 21.07, 22.09 and 22.11
- including the property in Precinct D in Clause 22.11.

**(iv) Recommendation**

- 6. Seek the views of adjoining landowners and VicRoads on the rezoning of 1637 Snow Road, Milawa (Lots 1 and 2) from Farming Zone to Low Density Residential Zone and include the rezoning in the Amendment (together with any appropriate consequential changes) if there are no objections.**

## **4.6 Growth to the east**

**(i) The issue**

The issue is whether the Amendment should make provision for longer term growth to the east of the town.

**(ii) Submissions**

Michelle Van Der Byl and Adam Crole submitted that the area to the east of Precincts C and D, and extending to the recreation reserve should be considered for the future growth of the town. They submitted that this area was suitable for development because of access to sealed roads, limited agricultural value and the ability to link with the recreation reserve.

Council agreed that the future use of this area might warrant further investigation, but that it would need to take into account a range of factors including *"township character, compatibility with adjoining agricultural uses, service availability and also drainage related issues"*. Council also noted that it would also be appropriate to consult with the community.

In relation to drainage, Council advised that preliminary advice from its Technical Services Department *"suggests that reliable drainage opportunities are limited in this area"* and that:

*Any drainage solution needs to be carefully considered and take into account the modifications to natural (pre-settlement) flows and the impacts of development within the township.*

Council concluded that changes to the Amendment or MTDP were not warranted in response to this submission.

**(iii) Discussion and conclusions**

The MTDP identified the area to the west of the town as the preferred direction for long term growth and this is reflected in the Amendment. Whether or not growth should occur to the east is not something that the Panel can usefully comment on, although it notes Council's advice that various issues, including drainage, would need to be considered before growth could be directed to this area.

This submission does not warrant any changes to the Amendment, although it is open to Council to investigate the development potential of this area in the future.

## **4.7 Groundwater**

**(i) The issue**

The issue is whether possible impacts on groundwater supply should preclude the Amendment from proceeding.

**(ii) Submissions**

Gordon and Michele Campbell raised concerns about the impacts of future development on groundwater supplies. They hold a groundwater licence for primary production purposes and submitted that new dwelling development has been accompanied by new bores and a *"concurrent decrease in the water table"*. They submitted that because the Amendment will facilitate additional development, the groundwater supply capacity should be further investigated before the Amendment proceeds.

Goulburn-Murray Water (G-MW) lodged a written submission in which it described its roles and responsibilities, including the management of groundwater quality, use and disposal. The submission noted that *"Applicants must ensure that any required water supplies are available from an approved source"*. G-MW did not raise water supply as an issue.

Council submitted that the Amendment does not alter the current zoning regime and that the proposed changes to the LDRZ schedule will reduce the capacity for subdivision in Milawa rather than increase development potential. Council also noted that:

*Any future subdivision will have to demonstrate the ability to connect to a potable water supply, and it is noted that Goulburn-Murray Water (licencing Authority) have not objected to the Milawa TDP or C68 on issues around the availability of water supply.*

Council advised that it has not undertaken an assessment of water supply in Milawa, but has sought information about this from G-MW.

**(iii) Discussion and conclusions**

Although the Panel notes the Campbell's submission, it was not presented with any evidence that there is a water supply problem. Neither the MTDP nor the Background Report identify water supply as an issue in Milawa, although the Background Report notes that Milawa "*Does not have water reticulation*".

The Panel agrees with Council that the Amendment will not facilitate any additional development beyond what can already occur under the current zoning and that G-MW (the licencing authority) did not raise groundwater supply as an issue in its submission.

Nevertheless, water supply issues will be relevant to the future zoning and development of Precinct E and the longer-term development areas, such as Precinct G. Council should continue to consult with G-MW about these issues.

**4.8 Low Density Residential Zone schedule****(i) The issue**

The issue is whether the LDRZ schedule should require that the minimum lot size for unserviced lots be determined by land capability assessment.

The current schedule applies:

- a minimum subdivision area of "*1 hectare for any land that is not supplied with reticulated sewerage*"
- 0.4 and 1 ha minimum lot sizes in two precincts in Waldara

The default subdivision minima in the LDRZ are:

- *0.4 hectare for each lot where reticulated sewerage is not connected. If no area is specified each lot must be at least 0.4 hectare.*
- *0.2 hectare for each lot with connected reticulated sewerage. If no area is specified each lot must be at least 0.2 hectare.*

The Amendment retains the key elements of the existing schedule, but applies a 0.4 ha minimum lot size to part of the sewered LDRZ areas in Milawa, replacing the default 0.2 ha minimum.

**(ii) Submissions**

Goulburn-Murray Water (G-MW) lodged a written submission in which it did not object to the Amendment "*subject to the following condition*:"

1. *The minimum lot size for unserviced lots in the LDRZ is based on Land Capability Assessment."*

G-MW also referred to previous land capability report for small towns in the area and the benefits of preparing a drainage plan for Milawa.

Council advised that it has prepared a draft domestic wastewater plan that is currently with the water authorities for comment.

Council did not support changing the schedule as sought by G-MW and noted that:

*The amendment only proposes changes to the minimum lot size for LDRZ lots serviced by reticulated sewerage within the Milawa Township, varying between .2ha and .4ha. The amendment is not proposing to change the minimum lot size for un-serviced lots, which currently is 1.0ha across the entire Municipality.*

The purpose of the change is to “achieve a transition between the core of the township and the surrounding farm land” and to protect the “rural character” of the town.

Council advised that Milawa is within a Declared Special Water Supply Catchment (Ovens River – Wangaratta) and that:

*Any subdivision of land within the Special Water Supply Catchment is required to be referred pursuant to Clause 66.02-5 to Goulburn-Murray Water (Sec 55 Referral – Determining Authority).*

Council expressed concern that “... if any land capability assessment finds that lots can be created less than 1.0ha, it will provide added development pressure and wider impacts on the future neighbourhood character of townships and urban areas of Wangaratta.”

Council concluded that:

*Accommodation of the requested change would have wider implications than those limited to just Milawa alone.*

*It is Council's opinion that any change to this provision should be considered as part of a Municipal wide review, rather than a targeted change under this isolated Amendment, noting that a change of this nature has not been exhibited to the wider community.*

### **(iii) Discussion and conclusions**

The Amendment does not propose to change the existing minimum lot size for unserviced LDRZ areas. As Council noted, it is confined to a relatively minor change to the subdivision minimum for some seweraged LDRZ land in Milawa.

The Panel agrees with Council's observation that the change sought by G-MW goes beyond the scope of implementing the MTDP and Amendment C68, and that it would need to follow a broader review and be pursued through a separate process.

Although the Panel does not believe that this submission warrants any changes to the Amendment, it raises issues that are relevant to the further work that Council proposes to undertake in relation to the zoning of Precinct E. Council should consult with G-MW during this process and also in relation to the broader issues raised in the G-MW submission.

As discussed at the Hearing, the drafting of the schedule does not appear to be consistent with the LDRZ schedule template that applies under the Ministerial Direction on the Form and Content of Planning Schemes. Council advised that it is aware of this issue and will discuss it with DELWP before adopting the Amendment.

**(iv) Recommendation**

The Panel recommends:

- 7. Review the formatting of the Low Density Residential Zone schedule in association with the Department of Environment, Land, Water and Planning.**

**4.9 North East Water submission**

**(i) The issue**

The issue is whether the Amendment should include various corrections and updates sought by North East Water (NEW).

**(ii) Submissions**

NEW sought various changes to the Explanatory Report, Clause 19.03, Clause 21.07 Townships and Rural Townships and Clause 21.12 Reference Documents.

Council agreed to a number of these changes, including updates to the Explanatory Report, minor policy changes, correction of administrative errors and updates to reference documents

**(iii) Discussion and conclusions**

Most of the agreed changes are relatively minor, but relate to existing material in the MSS, rather than the new material or revisions relating to the MTDP or the Amendment. NEW also sought changes to Clause 19.03-2 which is a State provision that cannot be modified as part of this process.

The appropriate corrections and changes can be addressed in proposed Amendment C75 that will implement the Planning Scheme review and presumably include the types of changes sought by NEW.

The Panel has no objection to Council updating the Explanatory Report.

## Appendix A Submitters to the Amendment

No.	Submitter
1	Stewart and Margaret Montgomery
2	Ilona Goswell
3	Lorraine Smith
4	Rodney, Jennifer and Greg Whitehead
5	Frank Darke (North East Planning Plus) on behalf of R and W Ferguson
6	Michelle Van Der Byl and Adam Crole
7	Gordon and Michele Campbell
8	John Granahan et al
9	Environment Protection Authority
10	North East Water
11	Goulburn-Murray Water
12	Country Fire Authority
13	Belinda Kemp (lodged at the Hearing)

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