

Planning and Environment Act 1987

Panel Report

South Gippsland Planning Scheme

Amendment C99

Environmental Significance Overlay – Milk Processing Plant

18 December 2014

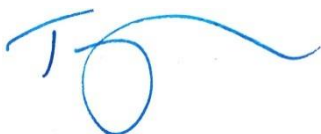


Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

South Gippsland Planning Scheme Amendment C99

Environmental Significance Overlay – Milk Processing Plant

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Trevor McCullough, Chair

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List of Abbreviations

AEO	Airport Environs Overlay
APS	Annual Performance Statement
BOD	Biochemical Oxygen Demand
DAF	Dissolved Air Flotation
db	Decibel
DDO	Design and Development Overlay
DTPLI	Department of Transport, Planning and Local Infrastructure
EPA	Environment Protection Authority
ESO	Environmental Significance Overlay
GRZ	General Residential Zone
IN1Z	Industrial 1 Zone
LDRZ	Low Density Residential Zone
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions
WWTP	Waste Water Treatment Plant

Executive Summary

(i) Summary

South Gippsland Planning Scheme Amendment C99 (the Amendment) was prepared by the South Gippsland Shire Council as Planning Authority at the request of Burra Foods Pty Ltd (the proponent).

As exhibited, the Amendment proposes to introduce an Environmental Significance Overlay Schedule 8 (ESO8) 'Manufacture of Milk Products Amenity Buffer' around the Burra Foods factory site and to identify the buffer in the Korumburra Framework Plan map at Clause 21.15-2 of the South Gippsland Planning Scheme. Minor changes are also proposed to the written provisions of Clause 21.15-2 explaining what the provisions intend to achieve.

The extent of the proposed ESO was based on the GHD report *Korumburra Milk Processing Plant Buffer Assessment December 2013*. The ESO boundary was set at the greater of 345m from the Waste Water Treatment Plant (WWTP) (adjusted for the dispersive effects of prevailing weather patterns) or 300m from the main noise sources. The revised post-exhibition ESO proposed by Council is based on an updated November 2014 version of the GHD report and has a notional radius of 300m from the main noise sources, modified to allow for the directional impacts of prevailing weather patterns. Council proposed to further adjust the ESO boundaries to correspond with property boundaries.

Council and Burra Foods submitted that despite the EPA Licence requirement to contain impact within the boundaries of the premises, the nature of milk product manufacturing is such that there will be occasional off site amenity impacts relating to odour, airborne dust and noise under upset or malfunction scenarios. Burra Foods submitted that, despite their efforts to manage off site impacts it is prudent to plan for occasional upsets.

The Amendment was placed on public exhibition for one month concluding on 1 August 2014, and a total of 93 submissions were received. At its meeting of 24 September 2014, Council resolved to refer the submissions to a Panel. A Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 6 October 2014 and comprised Trevor McCullough. A Panel Hearing was then held on 3 and 4 December 2014 to hear submissions in respect of the Amendment.

The key issues for Council and Burra Foods were:

- Strategic justification for the Amendment;
- Addressing current odour, dust and noise issues;
- The Korumburra Structure Plan changes;
- The definition of the ESO boundaries;
- The form and content of the ESO; and
- Response to concerns raised by submitters.

The key issues for objecting submitters were:

- Addressing existing odour, dust and noise issues;
- Burra Foods should be made to 'clean up its act';
- The ESO is not needed;
- The ESO will affect property values and insurance premiums;
- The GHD report on which the ESO is based is flawed; and

- The cost of sound proofing and other measures required in the ESO schedule are unreasonable.

The main thrust of objecting submissions was that Burra Foods should be made to 'clean up their act' and operate within the terms of their licence. They argued that if they did, there would be no need for an overlay. Burra Foods provided the Panel with details of works being carried out to comply with their licence conditions, and the Panel accepts that the work completed and planned will go a long way towards achieving this ideal.

The Panel believes, however, that it is highly likely that mishaps and malfunctions will continue to occur despite the best efforts to avoid them. Plant expansion will not help this as the installation of new plant or systems will likely have teething problems resulting in a higher likelihood of mishap.

Based on the submissions and presentations made to the Panel the panel concluded that there is a problem that needs to be managed through planning controls. The most substantial off site impact of Burra Foods plant relates to odour from the Waste Water Treatment Plant, and it is therefore reasonable to draw parallels with other planning schemes that have implemented ESOs around sewerage treatment plants. The Panel concluded that an ESO is the most appropriate form of planning control.

The Panel acknowledges the concerns raised by some submitters that the application of an ESO will necessarily result in compliance costs for some landowners. The Panel believes that these impacts have been overstated by some submitters, mainly due to some misunderstandings about the exact nature and application of the proposed ESO. The Panel concludes that the costs of compliance are not so unreasonable as to outweigh the benefits of applying the overlay.

Council confirmed that all zone controls will continue to apply and are unchanged. It was misunderstood by a number of submitters that Amendment C99 would remove or reduce the controls on Burra Foods on their site. Council clarified that this is simply incorrect. Planning permits are required, and will continue to be required, for substantial expansion on the site and EPA licence modifications would also be required for new industrial processes that discharge waste. Council also confirmed that if a planning permit is required, the normal notification and third party appeal rights to VCAT would apply.

The Panel supports the methodology used by GHD to calculate appropriate separation distance for dust and odour, but does not support adding a noise separation distance to any ESO extent. The EPA supported this view.

The Panel concluded that the ESO should be based solely on the GHD calculated odour separation distance of 227m, adjusted to take account of the effects of prevailing winds on dispersion as shown in Figure 8 of this report. The Panel also makes recommendations for the ESO boundary to be adjusted to align with property boundaries in some circumstances. The resulting recommended ESO will apply to approximately 25 properties, significantly less than the 65 properties affected by the exhibited ESO.

In response to submissions that the proposed ESO schedule 8 imposes unreasonable permit requirements on some development, the Panel has recommended a number of changes to reduce those requirements and add further flexibility for landowners.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that South Gippsland Planning Scheme Amendment C99 be adopted as exhibited subject to the following modifications:

- 1. Modify the extent of the Environmental Significance Overlay (map 14ESO8) as follows:**
 - a) Limit the overlay boundary to the odour separation distance of 227m, adjusted to take account of the effects of prevailing winds as shown in Figure 8 of this report.**
 - b) Adjust the overlay boundary only where required to correspond to property boundaries for smaller General Residential Zone lots unlikely to be further subdivided.**
 - c) Adjust the overlay boundary to exclude publicly owned land.**
- 2. Modify Schedule 8 to the Environmental Significance Overlay to include the changes as shown in Appendix C of this report.**
- 3. Alter Clause 66.04 to show the Environment Protection Authority as the only recommending referral authority in relation to Schedule 8 to Clause 42.01 (ESO8).**

1 Introduction

Exhibition

South Gippsland Planning Scheme Amendment C99 (the Amendment) was prepared by the South Gippsland Shire Council as Planning Authority at the request of Burra Foods Pty Ltd (the proponent).

As exhibited, the Amendment proposes to introduce an Environmental Significance Overlay Schedule 8 (ESO8) 'Manufacture of Milk Products Amenity Buffer' around the Burra Foods factory site and to identify the buffer in the Korumburra Framework Plan map at Clause 21.15-2 of the South Gippsland Planning Scheme. Minor changes are also proposed to the written provisions of Clause 21.15-2 explaining what the provisions intend to achieve.

The Amendment was authorised by the Department of Transport, Planning and Local Infrastructure (DTPLI) on 2 June 2014 (Authorisation no AO2804).

The Amendment was placed on public exhibition between 26 June and 1 August 2014. Council conducted a community information session in addition to the normal statutory notification process.

A total of 93 submissions were received, including multiple submissions from some parties. There were 17 supporting submissions, with the balance opposing the Amendment. A list of the 72 separate submitters is attached as Appendix A to this report.

The Panel Process

At its meeting of 24 September 2014, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 6 October 2014 and comprised Trevor McCullough (Chair) and Mandy Elliott. Ms Elliott subsequently was unable to attend the Hearing and the Panel was reconstituted comprising Trevor McCullough as the only member.

A Directions Hearing was held in relation to the Amendment on 28 October 2014 in Korumburra. Following the Directions Hearing, the Panel undertook an informal inspection of the subject area. A site inspection of the Burra Foods site was conducted by the Panel, with Burra Foods, Council and submitter representatives on 4 December 2014.

A Panel Hearing was then held on 3 and 4 December 2014 to hear submissions in respect of the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
South Gippsland Shire Council	Mr Ken Griffiths
Burra Foods Pty Ltd	Ms Amanda Johns of Thomson Geer Lawyers who called expert environmental evidence from Mr Tim Pollock of GHD
Mr Paul Rotthier	
Mr Neil Olsen	
Mr David Amor	
Ms Christine McKenzie	
EPA	Ms Emily Sanders and Ms Karen Taylor
Mr Viv Pepper , Ms Elizabeth Jones and Mr Les Guilfoyle	
Mr Ross Harris	
Mr Ron Hutton	
Ms Gloria Cooke	
Ms Thea Dent	
Mr Glenn and Mrs Samantha Brown	
Mr Mark Olsen	

Further Directions

At the conclusion of the Hearing the Panel directed that Council provide information on all complaints received by Council departments in relation to Burra Foods in the past three years. This was supplied on 10 December 2014.

The Panel also directed that Burra Foods provide any information it holds in relation to noise monitoring on or near the Burra Foods site. This was supplied on 10 December 2014.

A list of all documents tabled at and after the Hearing is attached as Appendix B to this report.

2 The Proposal

2.1 The Amendment

The Amendment (as exhibited):

- Inserts a new Planning Scheme Map (14ESO8) into the South Gippsland Planning Scheme.
- Amends Clause 21.15-2 'Korumburra' (township policy) to change the wording of the 'Settlement' Objective dot point 7, delete 'Further strategic work' dot point 4, and replace the 'Korumburra Framework Plan' (map) with a new Plan identifying the Burra Foods amenity buffer.
- Amends Clause 21.16 'Reference documents' to acknowledge the updating of the Korumburra Structure Plan and introduction of the report 'Korumburra Milk Processing Plant Buffer Assessment (Burra Foods) December 2013'.
- Inserts a new Schedule (Schedule 8) to Clause 42.01 Environmental Significance Overlay.
- Amends the Schedule to Clause 61.03 to include a new planning scheme map (14ESO8) in the South Gippsland Planning Scheme.
- Amends Clause 66.04 to include the Environment Protection Authority (EPA) and Burra Foods as 'Recommending referral authorities' for planning permits triggered by the provisions of Clause 42.01 schedule 8 (ESO8).

Council exhibited corresponding changes to the *Korumburra Structure Plan - July 2010* (Structure Plan) alongside Amendment C99. The Structure Plan is a reference document in the Planning Scheme. The Structure Plan is proposed to be amended to identify the overlay in the Structure Plan map and to note that land near the factory should not be rezoned to allow more intensive forms of sensitive land uses near the factory. The changes to the Structure Plan are not part of the Amendment. Council advised, however, that any changes the Panel or Council recommends in relation to the Amendment C99 Planning Scheme provisions will be reflected in changes to the Structure Plan provisions to be presented to Council for adoption.

2.2 The subject site and surrounds

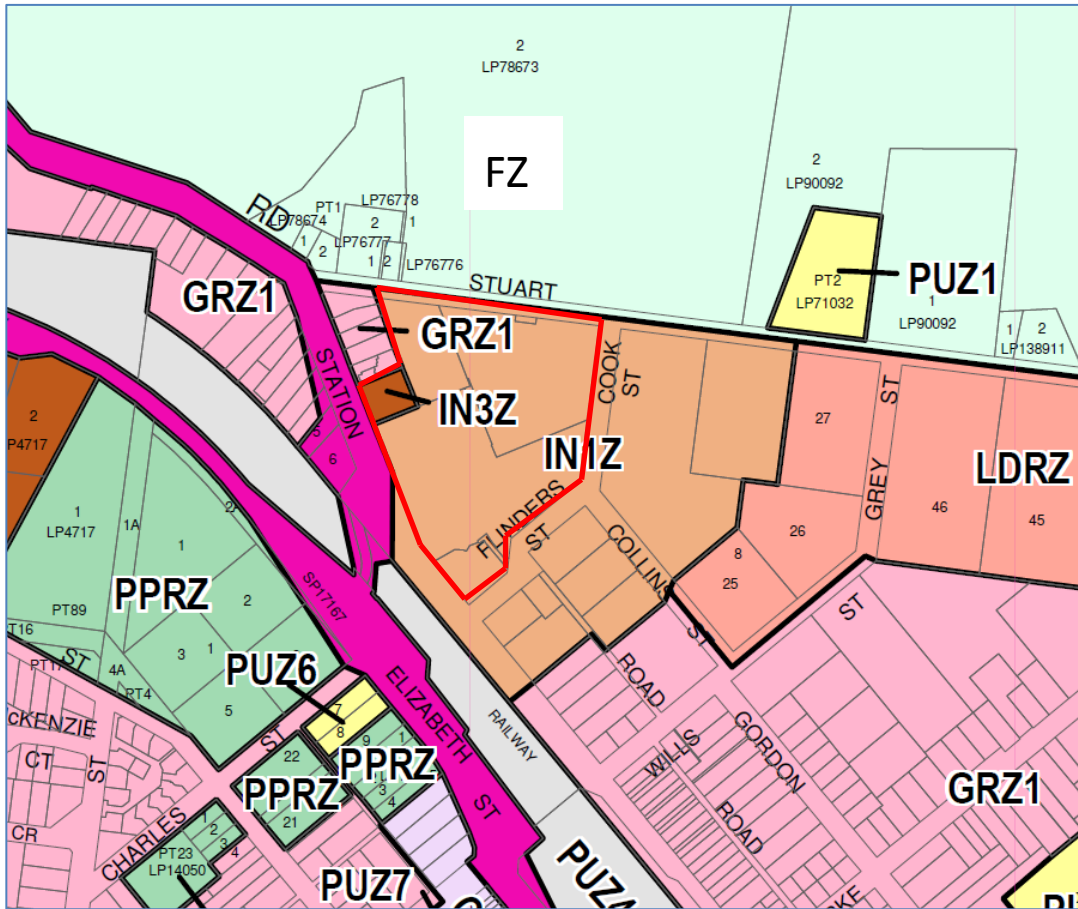
Burra Foods is located at 40-47 Station Street, Korumburra as shown in Figure 1. The site is comprised of 6 separate lots which have a combined total area of 4.45ha. The land on which manufacturing is occurring is zoned Industrial 1 Zone (IN1Z). A small parcel of land containing a car park (adjoining Warragul Road) is zoned Industrial 3 Zone (IN3Z). The site adjoins the General Residential Zone (GRZ) to the south and west, the Low Density Residential Zone (LDRZ) to the east and the Farming Zone (FZ) to the north. The zoning map is shown in Figure 2.

The factory occupies a prominent location sited above the township and is within the township boundary.

Figure 1 Burra Foods site location



Figure 2 Zoning map



The Burra Foods factory is located close to established residential areas. There are 18 existing dwellings situated within 100m of the outer boundary of the subject land. Two dwellings are situated with 100m of the factory waste water treatment plant.

Dairy operations have occurred at the subject site for most of the 20th Century. The site was initially established as the Korumburra Butter Factory in 1900 and later became part of the Murray Goulburn Company. In the 1950's the factory was considered the largest dairy manufacturing operation in Australia. The factory ceased all operations in 1973, having a significant impact on the local economy.

No manufacturing operations occurred at the subject site for 18 years. In 1991 Burra Foods acquired the site and commenced small scale operations which have grown steadily since, now employing approximately 140 people (not including truck drivers). The factory is one of the town's largest employers and a cornerstone of the local dairy industry.

2.3 The Proposed ESO boundary

The extent of the proposed ESO, as exhibited, is shown below in Figure 3. The extent of the ESO was based on the GHD report *Korumburra Milk Processing Plant Buffer Assessment December 2013*. The ESO boundary was set at the greater of 345m from the Waste Water Treatment Plant (WWTP) (adjusted for the dispersive effects of prevailing weather patterns) or 300m from the main noise sources. Council advised that approximately 65 properties are affected by the exhibited version of the ESO.

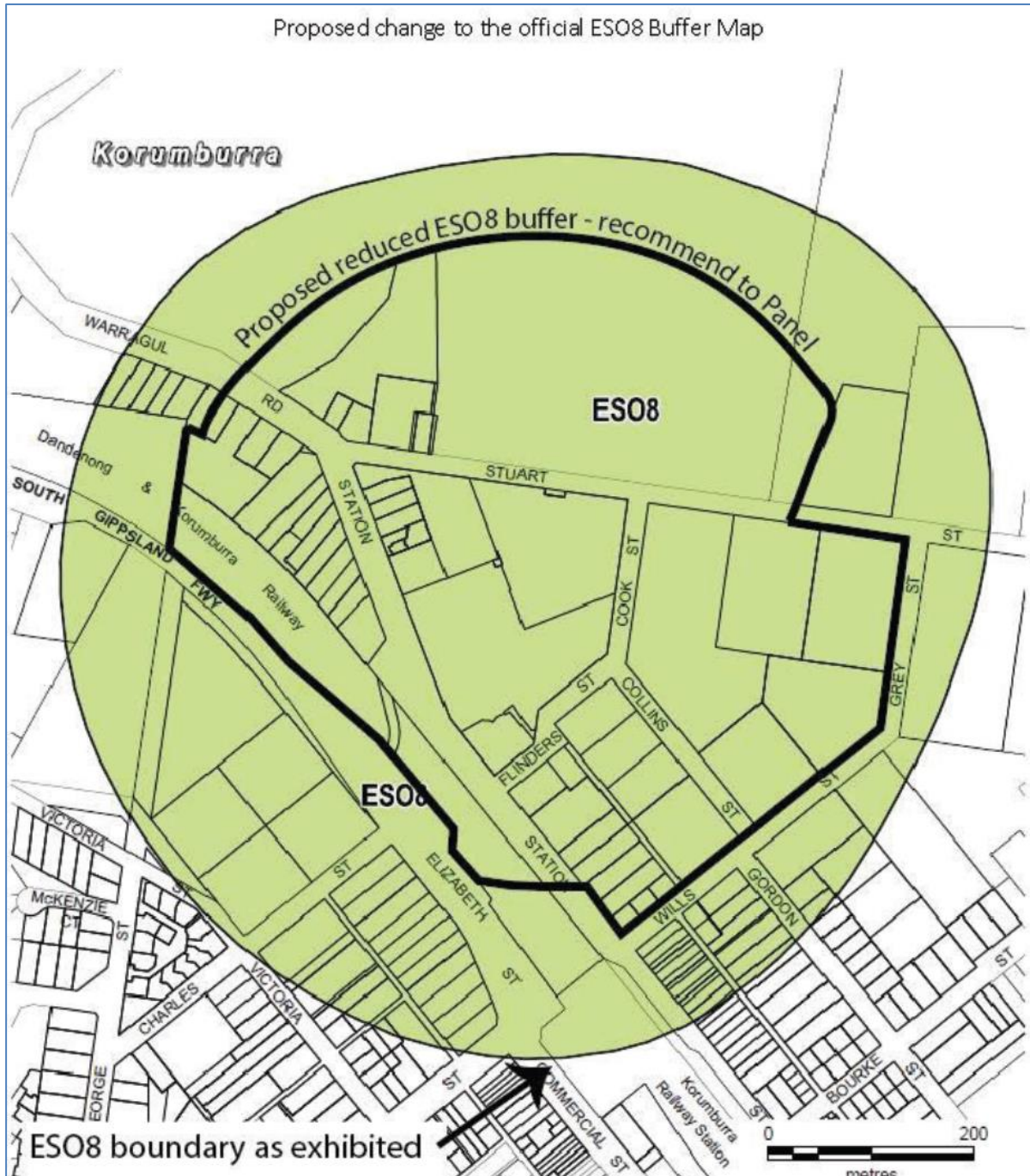
Figure 3 Proposed ESO boundary as exhibited



This extent was subsequently proposed by Council to be reduced as discussed in Chapter 5 of this report. The revised post-exhibition ESO extent proposed by Council is as shown in Figure 4. The revised ESO has a notional radius of 300m from the main noise sources,

modified to allow for the directional impacts of prevailing weather patterns. Council proposed to further adjust the ESO boundaries to correspond with property boundaries as shown in Figure 4. There is a substantial reduction in the number of properties affected by the post-exhibition version.

Figure 4 Post-exhibition proposed ESO boundary¹



¹ Source – Council report 24 September 2014

2.4 Background to the proposal

Burra Foods is subject to existing environmental obligations imposed by EPA licence 46572 issued on 28 February 2006 (last amended 07/03/2013). The licence includes amenity conditions.

Despite the EPA Licence requirement to contain amenity impact within the boundaries of the premises, the nature of milk product manufacturing is such that there will be occasional off site amenity impacts relating to odour, airborne dust and noise under upset or malfunction scenarios. Burra Foods submitted that, despite their efforts to manage off site impacts it is prudent to plan for occasional upsets.

Burra submitted that:²

The Burra plant necessarily creates waste. It includes a waste water treatment plant and there is at times transport of waste from tanks to local pig farms. There is the potential for odour issues to arise with respect to this waste particularly if it is not disposed of quickly. Possible scenarios causing increased odour include anaerobic conditions, failure of aerators or overloading of the plant. The plant also creates waste in the form of milk powder dust due to milk drying. The primary source of dust is the milk dryer. It is ducted to a baghouse, where the air is filtered to remove the dust. Burra has gone to considerable lengths and considerable cost to implement preventative measures to alleviate issues of odour and dust arising for the surrounding area.

The overlay is sought in addition to the works voluntarily undertaken by Burra to seek to avoid future odour and dust issues and in addition to its existing legal obligations (EPA licence, laws of nuisance etc).

In summary, Burra submitted that the Amendment is required for the following reasons³:

- (a) to deal with potential land use conflicts between an existing industrial use and residential/sensitive uses;*
- (b) to protect residents from potential off-site amenity impacts caused by the existing industrial use;*
- (c) to alert potential purchasers of the potential adverse amenity impacts from an existing industrial use;*
- (d) to provide a mechanism by which these potential conflicts can be considered and dealt with as the ESO triggers a planning permit process by which management of potential land use conflicts can be considered and dealt with;*
- (e) to allow the continued operation and future upgrading of an industry which is vital to the social and economic wellbeing of Korumburra, and to the dairy industry of South Gippsland.*

² From Burra Foods submission to the Hearing paras 2.8 and 2.9

³ From Burra Foods submission to the Hearing para 18.4

The *Korumburra Structure Plan* was adopted by Council in July 2010. The Structure Plan identifies the potential for the adjoining Low Density Residential Zoned land (east of the factory) to be rezoned for general residential use. The key elements of the Structure Plan were implemented into the Planning Scheme by Amendment C70. Burra Foods made a submission to the Amendment expressing concern that allowing more intensive residential development near the factory could result in more conflict between landowners and the factory.

The Amendment C70 Panel heard arguments in relation to this matter and recommended changes to the Clause 21 'Korumburra' provisions to include the following strategy and action:

- *Consider the potential adverse amenity impacts of the milk manufacturing operations in the Station Street Industrial Area on rezoning proposals that allow, or intensify, the establishment of sensitive land uses in the immediate area surrounding the manufacturing operations.*
- *Investigate the implementation of a planning policy to assist long term management of the amenity interface issues between the Station Street milk manufacturing operations and surrounding residential areas.*

Amendment C99 has arisen from Council and Burra Foods actioning this Clause.

2.5 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

(i) Planning Authority

The key issues for the Council were:

- Strategic justification for the Amendment;
- The Korumburra Structure Plan changes;
- The definition of the ESO boundaries;
- The form and content of the ESO; and
- Response to concerns raised by submitters.

(ii) Proponent

The key issues for Burra Foods were:

- Addressing current odour, dust and noise issues;
- Strategic justification for the ESO;
- The most appropriate ESO boundaries; and
- Responding to submitters concerns.

(iii) Environment Protection Authority (EPA)

The key issues for the EPA were:

- Designation of referral authorities;
- Support for an ESO;
- Definition of the ESO boundaries; and

- Addressing complaints and enforcing the existing licence.

(iv) Individual Submitters

The key issues by objecting submitters were:

- Addressing existing odour, dust and noise issues;
- Burra Foods should be made to 'clean up its act';
- The ESO is not needed;
- The ESO will affect property values and insurance premiums;
- The GHD report on which the ESO is based is flawed; and
- The cost of sound proofing and other measures required in the ESO schedule are unreasonable.

Supporting submitters cited the importance of Burra Foods to the town, particularly as a major source of employment.

2.6 Issues dealt with in this Report

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

This report deals with the issues under the following headings:

- Strategic Planning Context;
- Is a Planning Control justified?;
- The most appropriate boundaries for an ESO;
- The ESO schedule;
- Local Planning Policy Framework Changes; and
- The Korumburra Structure Plan.

3 Strategic Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. Council and Burra Foods provided further strategic context in their presentations to the Hearing.

The Panel has reviewed the strategic context of the Amendment and made a brief appraisal of the relevant planning provisions, zone and overlay controls, other relevant planning policies and EPA guidelines relevant to the Amendment.

3.1 Policy framework

Council submitted that the Amendment implements the 'Objectives of Planning in Victoria' in that it provides for the orderly development of land immediately surrounding a key economic asset in Korumburra which is a cornerstone of the local economy:⁴

Burra Foods is the largest employer in Korumburra and is one of the main players in the Shire's State significant dairy milk production (farming) and manufacturing sector. The Amendment seeks to find a balance between facilitating development in areas surrounding the factory while at the same time ensuring that new development does not incrementally (over time) place pressure on the factory, affecting its ability to continue to operate.

3.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 13.04-2 *Air quality* has the objective 'To assist the protection and improvement of air quality'. The Strategy relevant to this Amendment is 'Ensure, wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses.'

Clause 17.02 *Industry* has the objective 'To ensure availability of land for industry'. The Strategies relevant to this Amendment are:

- *Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development.*
- *Protect industrial activity in industrial zones from the encroachment of unplanned commercial, residential and other sensitive uses which would adversely affect industry viability (Council emphasis).*
- *Avoid approving non-industrial land uses, which will prejudice the availability of land for future industrial requirements, in identified industrial areas.*

Clause 17.02-2 *Design of industrial development* has the objective 'To facilitate the sustainable development and operation of industrial and research and development activity'. The Strategy relevant to this Amendment is:

- *Provide adequate separation and buffer areas between sensitive uses and offensive or dangerous industries and quarries to ensure that residents are*

⁴ Council submission to the Hearing

not affected by adverse environmental effects, nuisance or exposure to hazards.

Burra Foods submitted that the following additional references in the SPPF were also relevant:

Clause 11 *Settlement 'Planning is to prevent environmental problems caused by siting incompatible land uses close together'.*

Clause 13.04 1 *Noise* – The objective is to assist the control of noise effects on sensitive land uses. The strategy is to ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

Clause 13.04 2 *Air* – Ensure, wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses. A policy guideline is the EPA *Recommended Buffer Distances for Industrial Residual Air Emissions 2013* in assessing the separation between land uses that reduce amenity and sensitive land uses.

3.1.2 Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

Clause 21.11-1 *Processing and manufacturing* provides the overview statement '*Value adding manufacturing and processing plays an important part in the future economic growth opportunities in the Shire. The lower operational costs for businesses and the unique lifestyle that the Shire offers should be promoted to attract new employment opportunities and population growth*'. The Objectives and Strategies relevant to this Amendment are:

- *To attract and develop value adding opportunities to diversify the industry base and maximise employment opportunities*
- *Encourage opportunities for the expansion of industry and the provision of related infrastructure*
- *Ensure new development is designed and constructed to be responsive to environmental standards, is safe and functional in its layout, and improves the appearance and amenity of industrial areas.*

Council submitted that value adding to farm production is a critical element of the local economy and should be encouraged. The Amendment assists in providing for the long term protection of the dairy factory.

3.2 Planning scheme provisions

(i) Zones

The zoning of land in the vicinity of Burra Foods is as shown in Figure 2. No changes to the application of any of the zones are proposed by the Amendment.

Burra Foods is primarily in the Industrial 1 Zone (IN1Z). The purpose of the IN1Z includes:

To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.

Council advised that some minor buildings and works would be exempt in the IN1Z but, importantly, no exemption exists where a proposal adversely affects the amenity of the neighbourhood, including through the⁵:

- *Transport of materials, goods or commodities to or from the land.*
- *Appearance of any stored goods or materials.*
- *Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.*

Council confirmed that all zone controls will continue to apply and are unchanged. It was misunderstood by a number of submitters that Amendment C99 would remove or reduce the controls on Burra Foods on their site. Council clarified that this is simply incorrect. Planning permits are required, and will continue to be required, for substantial expansion on the site and EPA licence modifications would also be required for new industrial processes that discharge waste. Council also confirmed that if a planning permit is required, the normal notification and third party appeal rights to VCAT would apply.

(ii) Overlay

An Environmental Significance Overlay (ESO) is proposed to be applied as part of this Amendment. The purpose of an ESO includes:

To identify areas where the development of land may be affected by environmental constraints.

To ensure that development is compatible with identified environmental values.

The Amendment proposes to add a new schedule 8 to the ESO 'Manufacture of Milk Products Amenity Buffer' which sets out environmental objectives, permit requirements, application requirements, referral arrangements and decisions guidelines for the ESO area.

It was a misconception in some submissions that the permit requirements in the ESO schedule meant that there could be no changes to existing dwellings, no subdivision and no new dwellings able to be built in the ESO area. Council confirmed that these interpretations are incorrect. Council submitted that the overlay schedule simply triggers a permit requirement for certain types of works. The proposed overlay schedule provides an exemption for non-habitable buildings and external alterations to a building that do not increase the internal floor area. Extensions to buildings, subdivision and new dwellings are all still permitted provided the requirements of the overlay can be met. Typically this will mean siting and constructing buildings so as to minimise potential amenity impacts (odour, dust, noise and light) of the Burra Foods factory. In effect, the overlay is proposed to ensure the amenity of residents is protected.

⁵ South Gippsland Planning Scheme – Industrial 1 Zone.

The main issues for the Panel to consider are, firstly whether an ESO is justified and, if so, what is the most appropriate extent of the ESO? These issues are discussed in Chapters 4 and 5. The wording of the ESO schedule is discussed in Chapter 6.

(iii) Clause 52.10

Clause 52.10 of the VPP *Uses with adverse amenity potential* stipulates recommended threshold distances for different types of use and development to minimise impacts on sensitive uses such as residential, hospital or educational uses. It includes a recommended buffer for 'Manufacture of milk products' facilities of 300m between a factory and a sensitive land use.

The Clause 52.10 provisions are requirements considered in the assessment of planning permit applications involving the establishment of new uses with adverse amenity potential and are not specifically designed to be used for the reverse, i.e. to stop sensitive land uses encroaching towards an established industrial use.

The relevance (or otherwise) of Clause 52.10 to this Amendment is discussed in Chapter 5 of this report.

3.3 EPA Controls

Airborne emissions (dust and odour)

The EPA publication *Recommended separation distances for industrial residual air emissions (Publication number 1518) 1990, updated March 2013* is the appropriate guide for amenity interface and buffer issues relating to dust and odour emissions. It is referenced in the Planning Scheme at Clause 17.02 *Industrial Land Development* as a policy guideline that must be considered in planning.

The application of these Guidelines to determining the most appropriate ESO boundary is discussed in Chapter 5 of this report.

Noise

Noise is considered under EPA Guidelines (Publication 1411 October 2011) *Noise from Industry in Regional Victoria*. The Guidelines are 'non-statutory guidelines, the recommended levels are only legally binding when applied through statutory regulations, such as a planning permit or notice'⁶. The Guidelines identify preferred noise levels based on emitting and receiving zones and do not provide a performance measure based on industry type.

Council submitted that the table on page 9 of the Guidelines provides recommendations for the Burra Foods scenario (Township IN1Z emitting and GRZ1 & LDRZ receiving) of decibel noise readings of Day 50db, Evening 48db, Night 43db.

The Noise Guidelines do not provide guidance on separation distances to sensitive uses in the same way that the airborne emissions guidelines do.

⁶ EPA Publication 1411, page 2

Other relevant EPA documents

The EPA have also published *Environmental Guidelines for the Dairy Processing Industry 1997* which set out guidelines for plant design and provide best practice environmental management guidelines. Whilst not particularly relevant to determining separation distances for off site sensitive uses, the guidelines provide a useful reference for the standards that ought to be achieved for the design and operation of the Burra Foods plant.

The Burra Foods Pty Ltd EPA Licence no 46572 allows for discharges of treated process water and condensate to the Coalition Creek via wetlands. Amongst other things, the Licence sets out amenity conditions as follows:

- (a) *offensive odours must not be discharged beyond the boundaries of the premises;*
- (b) *unacceptable noise (including vibration) must not be emitted beyond the boundaries of the premises; and*
- (c) *nuisance airborne particles must not be discharged beyond the boundaries of the premises.*

This is relevant to the operating conditions that Burra Foods should be aspiring to.

Compliance

The EPA advised that it has responsibility to monitor Burra Foods' compliance with its legal requirements under the *Environment Protection Act 1970*. The EPA can take action to enforce the Act and the licence conditions. The EPA has received complaints regarding Burra Foods over the past three years:

- 9 in 2012
- 10 in 2013 and
- 39 so far in 2014.

The EPA's approach to complaints is in accordance with the *EPA Victoria Compliance and Enforcement Policy*. The EPA advised that three pollution abatement notices were issued in November 2014 in relation to incidents involving the WWTP, dust fallout and wastewater discharge.

3.4 Planning Scheme Amendments

South Gippsland C70

The key elements of the Korumburra Structure Plan were implemented into the Planning Scheme by Amendment C70. The Structure Plan map identifies the Station Street industrial area and surrounding residential land. The Structure Plan also identifies the potential for the adjoining Low Density Residential Zoned land (east of the factory) to be rezoned for general residential use. If this occurs, a greater number of residents would potentially be affected by any mishaps at the Burra Foods plant.

South Gippsland C93

Amendment C93 was gazetted on 23 October 2014 and includes a redrafting of Clause 21.15 *Local Areas* contained within the Local Planning Policy Framework (LPPF).

The revisions incorporate the strategic directions and key recommendations established within the *Korumburra Town Centre Framework Plan: Framework Report October 2013* and updates the Korumburra Town Centre Framework Plan.

The Amendment made no changes that are material to the issues addressed in Amendment C99.

Warrnambool C90

The panel report for Warrnambool Amendment C90 was quoted by Burra Foods, Council and the EPA in submissions. That panel considered the concept of a buffer around the Fonterra milk manufacturing plant, dealing with issues of odour and emissions from the plant. The panel's findings are discussed in Chapter 5 in relation to the appropriate approach to determining the ESO boundaries.

3.5 Ministerial Directions and Practice Notes

The Amendment has been prepared having regard to Ministerial Direction No 11 – *Strategic Assessment of Amendments* and Planning Practice Note 46 – *Strategic Assessment Guidelines*. The Amendment process accords with the requirements of Ministerial Direction No 15 – *The Planning Scheme Amendment Process*.

4 Is a Planning Control Justified?

4.1 The Issue

This Chapter of the report examines the overall question of whether a planning control is justified by addressing three questions:

- Is there a problem that requires attention?
- Is a planning control (of any sort) needed to address the problem? and
- Is the ESO the most appropriate form of control?

The Panel then addresses the further question:

- What are the impacts of applying an ESO on property owners inside the ESO boundary?

4.2 Is there a problem?

(i) Evidence and Submissions

Submissions

The majority of submitters presenting to the Hearing detailed incidents of dust, odour or noise emissions from the site over a long period of time.

Several submitters, including Mr and Mrs Brown (Submission 1), Mr Mark Olsen (Submission 2) and Mr Rotthier (Submission 7) who lives approximately 900m from the Burra Foods site, gave accounts of milk dust emissions from the site. They submitted that in recent incidents the milk powder released from the plant caused damage to cars, tainted water supplies and caused respiratory discomfort requiring medical treatment. Accounts of dust emissions were of particular concern to submitters, heightened by a particularly bad incident in November 2014 caused by bag filters failing in the Burra Foods baghouse. Several submitters raised concerns about the unknown health impacts of exposure to milk powder dust. They called on the EPA and Burra Foods to test the emissions to determine what long term health impacts there may be.

Submitters including Mr Guilfoyle and Ms Jones (Submission 39) reported odour from the WWTP on a regular basis. Mr Guilfoyle also provided information on one occasion of wastewater discharge pollution. There was general agreement from submitters that odour from the plant had been better managed in recent times.

Ms Dent (Submission 8), Mr Neil Olsen (Submission 16) and Ms McKenzie (Submission 51) reported noise emissions from the site, although Ms Dent, whose property adjoins the Burra Foods site, agreed that Burra Foods had acted to successfully resolve her concerns after numerous complaints. Most other submitters stated that noise was not a concern for them.

There were several submitters who lived close to the Burra Foods plant, including Mr Hutton (Submission 36), who submitted that they *'can't see hear or smell Burra Foods'* and the only impact they had observed was the dust emissions. They submitted that this related to the topography of the area which shields some properties from odour and noise.

The main thrust of submissions from residents was that Burra Foods should be made to 'clean up their act' and operate within the terms of their licence. They argued that if they did, there would be no need for an overlay. Some submitters believed that enforcement of licence and planning permit conditions have been inadequate and that Council and EPA needed to 'lift their game'.

Complaints

Information was provided by Burra Foods, Council and the EPA on complaints received in relation to incidents at Burra Foods. The complaints histories are summarised as follows.

Burra Foods provided the Panel with copies of its EPA Annual Performance Statements (APS) for the 2012/13 and 2013/14 financial years. The following summary was provided⁷:

In its Annual Performance Statement (APS) for the year ending 30 June 2013 Burra indicated that it complied with six of the conditions but there had been non-compliance with five of the conditions. One non-compliance was not immediately advising EPA of a minor non-compliance. There was a reference to three days in 2013 when the emission of an odour was detected and reported to it. The APS sets out the cause of the non-compliance and the action taken. There was one day when there was a milk powder emission reported by a neighbour caused by a small tear in a bag house filter. There were 13 occasions where there was a discharge of water to surface waters which was not in accordance with the table in the licence. Details of the non-compliance and its cause and action taken to mitigate it are set out in the statement.

In its statement for the year ending 30 June 2014 Burra has stated that nine of the conditions were complied with and two were not complied with. The two non-compliances were one day when an offensive odour was noticed. Burra found that a digester had been filled too quickly with inadequate aeration. The APS sets out what was taken to deal with that non-compliance. The second non-compliance related to discharge of waste to surface water in accordance with the table on 11 occasions. The action taken to remedy this is set out in the APS.

Ms Johns, appearing for Burra Foods, submitted that these statements show that in terms of the offside amenity impacts, the occurrences are rare, that Burra takes them seriously and takes immediate action to seek to resolve them as soon as possible.

She further submitted that the APSs are evidence that despite its best efforts, incidents will occur and therefore the proposed buffer is an appropriate tool to deal with such rare incidents.

After the Hearing, Burra Foods provided an environmental noise assessment carried out by Mr Porter of Engineered Acoustics in June 2014. The report was provided at the request of the Panel. It was not presented as an expert witness report and the author was therefore not available for questioning. The Panel is nevertheless able to make a number of observations on the report:

⁷ Burra Foods Hearing submission para 11.5 and 11.6

- The relevant noise standards that apply to the site are derived from the EPAs *Noise from Industry in Regional Victoria* Publication 1411 October 2011.
- Night noise readings were taken at nine locations on or near the site.
- Noise levels at the corner of Wills Street and Station Street were below the recommended noise levels for residential areas.
- Noise readings were highest on the boundary at the Flinders Street gate and at the gate on the east boundary.
- The report identified three blowers as the main source of tonal noise at the gate on the east boundary and recommended that they be treated.
- The report drew no other conclusions nor made any other recommendations.

It is difficult to draw any conclusions from the noise report provided as it was a limited sample (one night only) and, apart from readings at the corner of Wills Street and Station Street, did not measure noise at off site locations that may be affected by noise.

Council advised that the only recorded complaints were made to its environmental health department, one odour complaint in October 2011 and five complaints in November 2014 in relation to the milk dust emission incident.

Ms Sanders, appearing for the EPA, provided EPA complaints logs for 2012, 2013 and 2014 for incidents involving Burra Foods. She provided the following summary:⁸

EPA has received complaints from the community of odour emanating from the Burra Foods site, fallout of milk powder from the drier stacks and concerns regarding wastewater discharge. Only one complaint over the past year was received regarding noise.

A total of 39 complaints to date have been received during 2014. The majority were due to odour, with 26 complaints from 7 different residents. Fallout was the next issue with 9 complaints from 5 different residents. Wastewater discharge was a concern for 3 complaints for 2 residents, with only 1 regarding noise.

Complaints in 2013 and 2012 were significantly lower, with 10 and 9 complaints received respectively. Again, the majority being due to odour. This is not necessarily an indication that residents were not being impacted.

The EPA advised of three recent pollution abatement notices:

With regards to odour issues, EPA has identified the wastewater treatment plant as the primary source of odour. A Minor Works Pollution Abatement Notice was issued in November 2014, with a final compliance date of 6 February 2015 requiring Burra Foods to 'immediately maintain any plant, equipment or structure used in the treatment and storage of wastewater so that odorous untreated air does not vent directly to the atmosphere'. The notice also requires that by 30 January 2015, Burra Foods must 'modify or install controls to capture and treat odour produced in the wastewater treatment system so that odorous untreated air does not vent directly to the atmosphere'.

⁸ EPA Hearing submission paras 27-29

Further issues regarding fallout were identified as being to a failure of bag house filter sock seals. Burra Foods undertook immediate corrective actions in relation to this failure. EPA issued a Minor Works Pollution Abatement Notice in November 2014 requiring full sock replacement. The notice was revoked in November 2014 following completion of required works.

Wastewater discharge was also investigated by EPA. A Pollution Abatement Notice was issued in November 2014 and required installation of additional wastewater treatment infrastructure to treat all wastewater streams at Burra Foods. Full compliance is due by 9 January 2015. A Minor Works Pollution Abatement Notice was also served in November 2014 requiring 'Cleaning in Place' investigations, monitoring and reporting, with final compliance due date of 19 December 2014.

The EPA submitted that it was confident that the works already completed and underway would resolve the current issues and substantially improve future compliance.

Proposed expansion

Mr Pollock provided some information regarding future expansion of the Burra Foods site in his expert evidence statement. He gave evidence that Burra intended to expand with the objective of supplying infant formula for the growing market in China. Future expansion would likely include new twin evaporators and a dryer, and potentially a new canning line. Expansion is dependent on financing and hence the timing is unclear. For the purposes of his work, Mr Pollock has adopted a predicted Biochemical Oxygen Demand (BOD) loading relating to wastewater treatment of 585kg per day, which equates to an equivalent population of 11,700. This represents an increase in BOD loading of around 50% over existing levels.

Ms Johns was not able to provide any details in relation to the timing of future expansion plans but did confirm that the projections made by Mr Pollock were relied upon by her client. She submitted that Burra Foods would design and commission any new processes in accordance with best practice standards with the aim of containing all emissions within the site in accordance with the EPA licence. She submitted, however, that the commissioning of new plant is the most likely time for mishaps and some 'teething problems could be expected.

Actions being taken by Burra Foods

On the site visit undertaken by the Panel, it was evident that Burra Foods has a number of projects underway to both comply with EPA abatement notices and reduce the likelihood of future mishaps and malfunctions. Works recently completed, underway or planned include:

Dust emissions

- Replacement of dust socks in the bag house in response to EPA pollution abatement notice.
- Proposed to install a wet scrubber (water curtain) activated if sensor detects dust in the bag house. This will effectively eliminate dust emission in the event of sock failure.
- Operating procedures modified for the spray drier.

WWTP odour emissions

- \$1.48m upgrade of the WWTP including the installation of Dissolved Air Flotation (DAF) and microfiltration equipment. Currently being commissioned.
- Deodorising agent added to DAF sludge.
- Air sprayers installed in DAF sludge holding tanks to aerate sludge.
- Site biofilter to be recommissioned.

Noise

- WWTP blowers restricted to 80% capacity to reduce tonal noise.
- Proposed to replace WWTP blowers.

(ii) Discussion

Odour and dust

There is clear agreement in the submissions of local residents and the record of complaints provided by Burra Foods, EPA and Council that there has been, and continues to be, regular mishaps at the Burra Foods plant causing odour and dust emissions. The Panel is impressed by the genuine efforts of Burra Foods to invest in proper solutions to these problems. The recent investment in the WWTP to address odour and outfall problems is particularly impressive and, based on the information provided to the Panel, can be expected to ensure compliance with licence requirements under normal plant operations.

The Panel agrees with submitters that regulators (the EPA and Council) must ensure that Burra Foods complies with their licence conditions, and believes that the work completed and planned will go some way towards achieving this ideal.

The Panel believes that the EPA could play more of an active role in ensuring compliance. Recent events, and possibly the current panel process as well, have heightened awareness of the amenity impacts of the Burra Foods plant, resulting in a community that is probably more sensitive to any non-compliance. The Panel notes that the EPA advised at the Hearing that they would convene a meeting with local residents to discuss issues arising and how they may be managed. The Panel applauds this initiative.

The Panel cannot, however, be assured that future mishaps will not occur. As explained on the site visit of the plant, mishaps with off site impact occur as a result of a combination of human error, mechanical failure or weather conditions. The Panel believes that it is highly likely that mishaps and malfunctions will continue to occur despite the best efforts to avoid them. Plant expansion will likely have teething problems resulting in a higher likelihood of mishap in the period after installation.

Noise

With regard to noise, the Panel is not convinced that there is a significant existing problem. There have been very few recorded noise complaints and the Panel understands those have now been largely addressed.

The Panel observed background plant noise at the site and believes more could be done to mitigate this. In particular, the chilled water unit and ammonia compressor shed seems to emanate much higher noise levels than other plant items such as the boilers and driers. Mr Pollock also identified the ammonia pumps as a noise source in his expert report. The Panel

does not have the benefit of any expert advice on this, but believes that noise levels could be substantially reduced with modest investment. Other sources of noise include truck freezer compressors, pumps in the WWTP and traffic noise from trucks accessing the plant. Of these, the WWTP pumps have presented a problem in the past, causing complaints. The Panel was advised that the pumps have now been regulated to reduce noise, and new pumps are planned that operate at lower noise levels.

(iii) Conclusions

The Panel concludes that:

- There has been, and continues to be, a record of odour and dust causing mishaps and malfunctions at the Burra Foods plant.
- Burra Foods are making a genuine effort to eliminate odour and dust emissions.
- Despite best efforts, mishaps and malfunctions involving off site dust and odour emissions are highly likely to occur again in the future.
- There is not a clearly identified existing noise problem arising from the Burra Foods operation.
- There is capacity to further reduce noise levels to ensure future compliance with noise standards.
- The EPA could play a more active role in ensuring licence compliance.

4.3 Is a planning control needed and if so what form should it take?

(i) Evidence and Submissions

As mentioned in the preceding section, many submitters contended that Burra Foods should 'clean up their act', and if they do so effectively there would be no need for an ESO. Some submitters submitted that it is self evident that the Burra Foods plant is there and so any house or land buyers should be aware of this when they buy. Conversely, other submitters said that they were not aware of the full impact of the Burra Foods plant when they purchased, and if they had been they may not have bought in that area.

Submitters, including Mr Pepper, Ms Jones and Mr Guilfoyle submitted that it is unnecessary to use an ESO when there are many examples of dairy industry plants in or close to towns without restrictive overlays. Examples include the Murray Goulburn factory in Leongatha which has no overlay; the Poowong dairy factory which has a policy buffer but no overlay and the Fonterra factory near Warrnambool which has a buffer on the structure plan but no overlay. They submitted that an ESO places excessive red tape on existing and new home and landowners. Some submitters submitted that a policy reference is sufficient and that this would provide guidance without the need for a more prescriptive and costly overlay.

Burra Foods submitted that there were many similar precedents in other planning schemes including: ESOs in the Mildura, Frankston, Greater Dandenong, Greater Shepparton, Benalla and Mitchell planning schemes around sewerage treatment plants, and an ESO in the Campaspe planning scheme around the saleyards and waste transfer facility.

Ms Johns quoted the explanatory report for the Benalla Amendment C31 which implemented an ESO around the Benalla WWTP and submitted that the same applied for this Amendment: *'the ESO will assist councils with future land use planning and the*

*processing of planning permit applications, provide more certainty for communities and surrounding land owners regarding development consideration, allow the plant to remain in its current location where it can be upgraded when required to accommodate future demand and growth, which will eliminate the significant financial environmental burden if they have to relocate and minimise the potential impact for the community of living in an uncomfortable environment due to waste odours should inappropriate development be approved.*⁹

The EPA supported the introduction of an ESO, *'having regard to the statutory planning tools currently available to protect the amenity of areas surrounding industrial sites and noting ESO's are used in many planning schemes for this purpose'*.

Council made the following submissions in support of the ESO¹⁰:

Buffers around sewerage treatment plants (ESOs), along highways (DDOs), along airplane flight paths (AEO's), around hospital helipads (DDOs) are common in the Victorian Planning System. Music venue noise controls are a new planning frontier emerging.

The use of an ESO for factory impacts is supported by DTPLI's document 'Using Victoria's Planning System' which includes the comment "Environmental significance is intended to be interpreted widely and may include issues such as effects from noise or industrial buffer areas, as well as issues related to the natural environment". On this basis the ESO is confirmed as the appropriate planning tool.

Existing buffers in other planning schemes with some comparative relevance to Amendment C99 include:

- *City of Melbourne DDO27 'City Link Exhaust Stack Environs'. This overlay has a 500m radius around the exhaust stack. Interestingly the ESO schedule excludes the requirement for all planning permits. The ESO serves the sole purpose of informing people moving into the area that the exhaust stack exists and they should be aware of it.*
- *Port Phillip Planning Scheme ESO4 'Port of Melbourne Environs'. The 'Statement of environmental significance' says "The overlay manages potential conflicts between land in the port environs and the adjoining Port of Melbourne. Land within this overlay should not be developed for any purpose that might compromise the long term protection and expansion of port operations, infrastructure and associated storage facilities.*
- *Warrnambool Amendment C90 North Dennington Structure Plan. The C90 Panel Report provides informative commentary on how to deal with dairy factory impacts. The Panel Report is a public document and can be referred to separately, however it is noted that the Panel (after detailed consideration of odour modelling) concluded that "The Panel has considered the issue of the odour buffer at length and acknowledge the fact that there is indeed*

⁹ Burra Foods Hearing submission para 17.1

¹⁰ Council submission to the Hearing para 91-93

strategic justification for an appropriate area around the Fonterra Milk Processing Plant and WWTP to be quarantined from residential development. In this regard it has concluded, based on the EPA's recommendation that the buffer should be 300 metres" (C90 Panel Report - Page 64). The Panel also recommended customising the buffer boundary (implemented via a DPO) to the cadastre where practical. Amendment C99 has sought to do likewise in its amended form. All amendments are different and C90 is dealing with a buffer over a greenfield site however the C90 Panel supported the need for buffer planning in support of a private company.

Council submitted that the application of the Burra Foods ESO8 is beneficial because it:

- Informs landowners looking to purchase in the area that the factory exists and can at times have adverse amenity impacts on the surrounding area.
- It provides a planning permit trigger that allows development to continue to occur with appropriate consideration to how best to address likely amenity impacts from the factory.
- Guards against the encroachment of sensitive land uses that could in time endanger the expansion or ongoing viability of Burra Foods.

Council further submitted¹¹:

The ESO8 will inform people looking to move into the area, or develop in the area, that the factory exists and it can impact the surrounding area. This is a critical concern for most submitters because of the fear that it will impact land values and make it harder to sell land. The argument against the ESO8 is that it is obvious that the factory exists and people looking to buy or develop in the area should be smart enough to factor this into their decision-making process. In other words, you don't need the ESO8 because it is common sense that should guide people. There is some merit in this argument however the impacts of the factory vary considerably depending on the day and time and it is easy to imagine a scenario where someone inspects a property during the daytime, they are unaware of the history of the area (a non-local) and they have no working knowledge of the suite of impacts dairy factory operations can have on surrounding areas. Ambient daytime noise typically masks factory noise and it is only night-time when the factory drone can be heard in many (but not all) of the immediate surrounding areas. For these reasons it is quite plausible that people could move into the area without a proper understanding of factory impacts and the ESO8 will guard against this.

The ESO8 provisions also make the comment that "The ESO8 identifies areas subject to pre-existing factory impacts that will continue, and could intensify, over time". The words "intensify over time" are important because again this flags to purchasers that the factory may grow and they need to be aware of this. Burra Foods is the largest employer in town and good arguments exist to support the growth of your largest employer when it is so critical to your local economy.

¹¹ Council submission to the Hearing paras 96-101

Burra Foods must comply with all of its statutory and environmental requirements with any future expansions, but residents in the surrounding area need to be aware that the factory may grow.

The first two legs of the Amendment (Structure Plan and Policy) are hidden from people buying land. It is only the most astute purchaser of land who checks a Structure Plan or the LPPF before buying property. For the majority of people buying land, the list of planning controls in the Section 32 vendor's statement (Sale of Land Act) is the only exposure they have to the planning restrictions on land. A key benefit of the ESO8 is that its existence will be made clearly evident on the vendor's statement informing potential purchasers of the issues they need to consider in the purchasing of land. In this regard, application of the ESO8 is no different to the application of any other overlay (flood, fire, slope instability) in that it flags in the land use planning system, and land sales system, that a land use and development issue exists that must be responded to appropriately and may impact the development potential of land.

Relying on 'common sense' alone to control the long term management of the interface issues presents the risk that over time incremental unplanned development growth occurs and eventually you have enough people living in the area who did not properly consider the impacts and this endangers the viability or expansion of the factory. This has been the experience with airports in metropolitan Melbourne. New residents move near an airport knowing that it is there, however they either fail to properly consider the impacts it will have on them, or they fail to consider the potential impacts of the intensification of this use over time on them. For example, the airport changes its hours of operation, its flight paths, or the type and number of aircraft that use the airport. This leads to a resident backlash and the airport realises that the incremental change in land uses around its boundaries is now impacting its ability to operate and plan for the future. It was in response to these issues that the Airport Environs Overlay came into existence so it could be applied as a clear marker that when buying land near an airport you need to consider the airport, its impacts, how you build in response to the issues (noise attenuation construction) and recognise the fact that the use may intensify over time (the AEO includes a Decision guideline requiring consideration of future operations of an airport).

The City of Kingston's AEO and local policy for Moorabbin Airport is a good example of how amenity controls can be applied. Council considers that the application of the ESO8 shares a similar justification as the application of the AEO only on a smaller scale and with much less impact (fewer planning restrictions) on the development potential of the surrounding area. Like the AEO Council is aware that amenity impacts occur and may continue to occur in the future. Where such impacts occur it is appropriate and responsible for a Council to flag these issues in the Planning Scheme in a clear and transparent manner.

In summary, the ESO8 informs people of an issue they need to fully consider, it will facilitate the continuing use and development of land in the surrounding area

in a manner that is compatible with the long term operation of the factory, and it achieves these outcomes with no impact on existing developments.

(ii) Discussion

The Panel believes that, given the conclusions reached in the previous section that mishaps and malfunctions will continue to occur, Council has a responsibility to identify potential amenity impacts in the planning scheme in some way. The Panel does not accept that potential new land or home buyers 'should know the plant is there', as suggested by some submitters. It is the role of planning provisions to a) protect sensitive land uses including residential from amenity impacts and b) protect the viability of industry operating within an industrial zone. The Panel is satisfied that some form of protection is warranted; the question for the Panel is what the most appropriate form of that control is.

The most substantial off site impact of Burra Foods plant relates to odour from the WWTP, and it is therefore reasonable to draw parallels with other planning schemes that have implemented ESOs around sewerage treatment plants. It is not clear to the Panel why the dairy factories referred to by submitters do not have ESOs, but the Panel does not find that particularly relevant as each case will need to be treated on its merits. It may be that overlays will be considered in those locations in the future if there are amenity issues that need to be addressed.

The Panel does not believe that a policy statement alone is sufficient to guide planning decisions and agrees with Council's submission that policy should be supported by the transparency of a planning control that is required to be disclosed in a Section 32 vendor's statement. At least two submitters indicated that had this control been in place at the time they purchased it may have affected their decision. The Panel believes future purchasers should have the benefit of a transparent control. In saying this, the Panel is aware that this may cause some short term impacts for existing property owners. These impacts are discussed in the following section. The extent of impact and the number of properties affected will obviously depend on the extent and content of the ESO, and this is discussed in Chapters 5 and 6.

The Panel is satisfied that there is considerable precedent for the use of ESOs where WWTPs are the main source of potential pollution. If noise were the primary consideration, a Design and Development Overlay may be more appropriate as noise issues generally require more specific building design response such as double glazing. In this case the Panel agrees with Council's assessment that the ESO is most appropriate with the combination of odour, dust and noise issues.

(iii) Conclusions

The Panel concludes that:

- Planning controls are justified to manage the amenity impacts arising from plant mishaps and malfunctions at the Burra Foods plant.
- The most appropriate form of control is an ESO.

4.4 What are the impacts of an ESO on surrounding property owners?

(i) Evidence and Submissions

A large number of the submitters were concerned about the impact that an overlay may have on their property values. Two submitters told the Panel that prospective sales had already fallen through as potential buyers became aware of the Amendment. Submitters claimed that real estate agents had informed them that property values may drop by as much as 30%, although no evidence was presented to support this.

Several submitters contended that their insurance premiums would increase as the cost of replacing buildings would be increased by the overlay. No evidence was provided to support this claim.

Some submitters were concerned about the cost of compliance with the requirements of the proposed overlay. They submitted that the requirement for a section 173 agreement, the cost of preparing permit applications and the cost of additional noise attenuation and mitigation of odour and dust would all add to the cost of building and maintaining a house in the area covered by the overlay.

Council submitted that the planning system does not require Council to specifically consider impact on land values when assessing a planning scheme amendment. However, if an amendment is likely to have a direct impact on land values and land sales, it is incumbent on Council to ensure that the new control or restriction is justified.

Council advised that it has sought to determine the likely impact of the ESO8 on land values however a clear and consistent answer does not exist.

The ESO8 responds to an existing issue and therefore any impact on land values resulting from factory operations would to a large extent already be factored into land value. Prospective land purchasers could have reservations about purchasing land with an overlay control especially if they intend to buy land for a multi-dwelling development or some form of sensitive land use of a type that Council may consider inappropriate in the buffer area. This could affect land value. Some submissions comment that land values may be affected by 30% or more. These claims are unsubstantiated and the only method to assess the impact is after the ESO8 has been applied. Council's Rates & Valuations Department advise that when new restrictions come into force it is not uncommon for land values to be affected in the short term however the detrimental impacts reduce over time as it become clearer to the market how the new control works.

Critical to the land valuation issue is the fact that the ESO8 does not affect the dwelling rights of an existing residential lot. Developing more than one dwelling on a lot can also be approved. The intensity of proposed development (number of new lots or dwellings) may be a concern in some locations however some detrimental impacts can be reduced by appropriate building design and site layout. The proposed ESO8 provisions have been designed to allow decision making discretion based on where the land is and what use and development is proposed. It is intended that existing uses within the ESO8 area will continue to

be used in their current form into the future with as little impact on landowners as possible. Allowing the existing use and development pattern to continue will lessen any potential adverse impact on land values.¹²

In response to the question of insurance premiums Council submitted:

Flood and fire overlays can affect insurance premiums because they provide a clear indication of risk to a building and its contents. If land is flood prone it is reasonable that insurance premiums will respond to this risk. This is not the case with the ESO8 where there is no direct link between normal factory operations and risk to a building or contents. The impact of the ESO8 on replacement value is likely to be minimal. Few buildings in the ESO8 are likely to require noise attenuation construction or other design mitigation responses.

Burra Foods submitted that there is no evidence that the overlay will devalue the homes within the area. They submitted: *'The presence of the industry is probably already factored into land values. In any case the impact of planning controls on property values is an irrelevant consideration. There will be little extra cost to the community as the number of applications will be low and the extent of attenuation works will be minimal as they will only be required in rare instances.'*

Ms Johns further submitted that: *'the submitters' concerns set out in their written submissions are overstated. Existing residential uses can continue and will not be affected. The purpose of the buffer is to protect about 40 properties in relation to future residential interests and to discourage inappropriate new sensitive uses. It will only be applicable in very rare circumstances. It will only be when a new sensitive use is proposed or an extension and the Council believes that the permit requirements need to be addressed in terms of building design. Not all properties will require extra works. Whether they are required will demand on issues such as distance from the plant, topography and surrounding built form. The requirement for noise measurements for subdivisions may be reduced or set aside if the council or EPA think it is unnecessary. It is submitted that the instances in which actions will be needed to be taken and requirements imposed will be very rare.'*

(ii) Discussion

The Panel notes the genuine concern of the nearby residents about potential impacts of the proposed overlay on their future development plans and ability to sell their properties. The Panel agrees with Ms Johns that some submitters concerns may be a little overstated, but the Panel considers that this may have been due to some genuine misunderstandings about the extent and purpose of the overlay. The Panel has commented on some of the common misunderstandings already in this report.

The Council submission is correct in pointing out that property values are not generally a planning consideration. The Panel nevertheless accepts Council's advice that any impact on property values is likely to be minor and short term.

¹² Council Hearing submission para 119

The Panel does not accept that insurance costs will increase. No evidence was provided to support this claim.

The Panel agrees with Council and Burra Foods that only a small number of properties will be required to seek a permit under the overlay, and for those the costs of additional works are not expected to be high. The Panel believes, however, that any imposition of compliance costs must be justified and makes comment on this in relation to the proposed section 173 agreement and the requirement for noise measurement later in this report. The overlay should also not be applied where it is not justified and the extent of the overlay is discussed in Chapter 5.

There will inevitably be some costs to landowners within the overlay area if they wish to subdivide or extend their properties. Costs will include: the cost of applying for a planning permit (in the case of extending a single dwelling this may not have been required in the absence of the overlay); the cost of further work to convince Council that the proposal considers the requirements set out in the overlay schedule; and the cost of any additional work required to meet planning permit conditions imposed by Council in order to comply with the requirements of the overlay schedule.

Costs incurred by the application of an overlay need to be balanced against the benefits of overlay. The Panel considers that the costs of compliance are not so unreasonable as to outweigh the benefits of applying the overlay.

The biggest impact will be in relation to subdivision. There are a number of property owners in the General Residential Zone (GRZ) that will have additional requirements in the event that they wish to develop their lots. Owners of land in the LDRZ will be more affected. The affect of the overlay and the proposed changes to the policy will be to limit subdivision in these areas. This would impact on three properties, two fronting Wills Street and one fronting Stuart Street. Depending on the boundary of the overlay, however, it may be possible to partially subdivide the properties. This issue is discussed in the next Chapter.

(iii) Conclusions

The Panel concludes that:

- There will be some compliance costs for landowners wishing to develop land in the ESO area where a permit is triggered.
- The costs of compliance are not so unreasonable as to outweigh the benefits of applying the overlay.
- Any impact on property values and insurance costs are not relevant planning considerations, but in any case no evidence has been presented that property values or insurance cost will necessarily be affected.
- There will be an impact on property owners wishing to subdivide land within the ESO boundary. The extent of this impact will depend on the extent of the overlay and the requirements in the overlay schedule.

5 The Most Appropriate Boundaries for an ESO

5.1 The Issues

Having concluded in the previous Chapter that:

- There is problem to be managed;
- An ESO is justified; and
- The impacts on land owners within an ESO area do not outweigh the benefits of applying the overlay.

the Panel will now examine the most appropriate boundaries for an ESO.

5.2 The Exhibited Version of the ESO

(i) Evidence and Submissions

Council and Burra Foods have relied on the work of GHD in determining the boundaries of the ESO. The exhibited ESO was based on *Korumburra Milk Processing Plant Buffer Assessment December 2013* prepared by Mr Pollock of GHD. The methodology for defining the boundary is summarised as follows:

- The main sources of air emissions were identified as the milk dryers (including a possible future dryer) and odour from the WWTP.
- The main sources of noise were identified as the blowers and pumps in the WWTP area and the ammonia compressor plant.
- The emission sources adopted included allowance for the stage 2 expansion plans as proposed by Burra Foods.
- Based on the *EPA Recommended Separation Distances for Industrial Residual Air Emissions*, a 100m buffer distance is recommended for 'milk processing' and this has been applied to the spray driers.
- Using the same Guidelines, a separation distance of 345m buffer distance was calculated to apply to the WWTP based on projected future plant BOD loading of 2038kg per day and the equivalent population corresponding to that output of 40,755 people.
- In the absence of any specific guidelines for a noise related buffer, Mr Pollock applied the recommended buffer distance from Clause 52.10 of the VPP for 'milk processing' of 300m.
- The resultant buffer arcs were then adjusted to take into account the dispersive effects of prevailing winds derived from meteorological records.

This methodology resulted in the exhibited buffer area as shown in Figure 5. The proposed ESO adopted the outer arc which to the east, north and west was 345m from the WWTP (odour source) and to the south 300m from the ammonia compressor (noise source).

Figure 5 Definition of the exhibited ESO boundary¹³

A number of submitters challenged the basis of the GHD report. Concerns were raised about the future expansion plans relied on by GHD. Submitters commented that the basis of the expansion plans is not clear. Other criticisms of the GHD report included that it did not take into account the topography of the area and that it relied on a theoretical model rather than actual measurements of odour, dust or noise.

Mr Pollock, under cross examination, accepted that it would be better if actual measurements were available of the extent of emissions, but commented that odour is particularly difficult to measure and the EPA guidelines provide an appropriate 'proxy'.

The EPA supported the ESO of 345m as determined by the GHD odour modelling, based on the Burra Foods stage 2 expansion plans. They confirmed that the EPA guidelines had been appropriately and correctly applied based on the information available. The EPA did not support the application of the 300m buffer for noise based on Clause 52.10 of the VPP. This is discussed further in the next section in relation to the post-exhibition proposed ESO.

Council submitted that the EPA Guidelines¹⁴ *aim to support effective decision making regarding land uses to:*

¹³ GHD Korumburra Milk Processing Plan Buffer Assessment December 2013 Figure 8

¹⁴ Council submission to the Hearing para 60

- *Protect human health and wellbeing, local amenity and aesthetic enjoyment.*
- *Protect existing industry from encroachment by sensitive uses.*
- *Prevent land adjacent to industry from being underutilised.*

Council further submitted that the Guidelines¹⁵ *provide recommended minimum separation distances between odour or dust emitting industrial land uses and sensitive land uses. Accordingly, the guidelines aim to:*

- *Provide clear direction on which land uses required separation.*
- *Inform and support strategic land use planning decision and the consideration of planning permit applications.*
- *Prevent new sensitive land uses from impacting on existing industrial land uses.*
- *Prevent new or expanded industrial land uses from impacting on existing sensitive land uses.*
- *Identify compatible land uses that can be established within a separation distance area.*

Council submitted that Amendment C99 is clearly within the intent of the purpose of the EPA Guidelines. Council submitted that, under the heading '*Scope of this guideline*', the publication states: '*Planning authorities should be consistent with this guideline when making strategic land use decisions. It is important that responsible authorities address the separation of land uses at the strategic planning stage to minimise potential conflicts during the subsequent planning permit approvals*'.

(ii) Discussion

The Panel accepts the expert evidence, supported by EPA and Council, that the use of the EPA Guidelines and the methodology for calculating appropriate separation distance for dust and odour is appropriate and correctly applied.

The Panel agrees with submitters that it would be better to have actual measurements to support the theoretical model, but notes that based on submitter accounts of the extent of impact, this would most likely support a larger rather than smaller buffer, an outcome that residents do not want.

The application of the noise related buffer is not supported and this is discussed further in the next section.

¹⁵ Council submission to the Hearing para 61

5.3 The Post-exhibition Version of the ESO

5.3.1 The Issue

The post-exhibition version of the ESO is different to the exhibited version in two respects:

- The extent of impact of odour emissions has been recalculated and reduced based on revised information provided by Burra Foods in relation to the expected BOD loading in a future expanded plant. The revised output is estimated at 585kg per day, with a corresponding equivalent population of 11,700 people.
- The extent of the resultant recommended buffer has been further reduced by Council to correspond (where possible) to property boundaries and generally exclude publicly owned land.

In this section the Panel examines the basis of the proposed post-exhibition version of the ESO in more detail.

5.3.2 Odour and dust separation distance

(i) Evidence and Submissions

Based on the revised BOD loading and equivalent population of 11,700, GHD have calculated the revised odour separation distance at 227m from the WWTP. The recommended buffer from the spray driers is unchanged at 100m, and they fit within the radius of the 227m WWTP buffer. The revised recommended odour buffer, again adjusted to allow for prevailing wind dispersion, is as shown in Figure 6.

The EPA submitted that they support the revised ESO based on this revised buffer.

(ii) Discussion

No specific submissions were received in relation to the application of the revised odour buffer, apart from the supporting submission of EPA. The Panel accepts this revised calculation of the odour buffer as a basis for the ESO.

Figure 6 Revised post-exhibition odour buffer



5.3.3 Noise

(i) Evidence and Submissions

Mr Pollock gave the following evidence in relation to the application of a noise buffer¹⁶:

There are no specific buffer guidelines for noise. The most relevant guideline would be Clause 52.10 which is to protect existing residents from adverse amenity when a new industry is proposed to be located nearby. As discussed earlier a milk processing facility in Clause 52.10 has a recommended buffer distance of 300 m. Thus 300 m should be used in the absence of any other specific guideline to protect the existing residents from any off-site noise impact. The 300 m distance would apply to any of the identified noise sources in Section 3.4. Figure 7 also shows the default 300m when applied to the envelope of potential noise sources. The 300m buffer encompasses a number of existing

¹⁶ Expert Witness statement para 5.3 p10, 11

residents and portion of land under question to be rezoned from low density to future urban residential.

Figure 7 (also Figure 7 in Mr Pollock's expert report) shows the proposed noise related buffer based on Clause 52.10 i.e. 300m from the noise sources.

In disagreeing with this approach to setting a buffer for noise, the EPA submitted¹⁷:

EPA's complaints data strongly suggests that odour impacts are the most significant amenity concern for residents surrounding the Burra Foods plant, with dust fallout being the community's second highest concern. Only one of 39 complaints to the EPA this year regarding Burra Foods related to noise. EPA therefore queries the logic of extending the extent of the ESO by approximately 25 percent for the purposes of noise protection only.

The table to Clause 52.10 sets out threshold distances for uses with adverse amenity potential. Planning permit applications for new industrial uses that do not meet the threshold distances are referred to EPA as a determining referral authority under Clause 66.02-7. When EPA receives these referrals, it analyses the particular proposal's environmental and amenity risks, including by having regard to expert reports on air quality and noise submitted with applications. For the purposes of this Amendment, EPA has reviewed the GHD Report and Mr Pollock's expert evidence with respect to air quality and is satisfied that their recommendations are well substantiated. There has been no equivalent acoustic report to suggest that a larger buffer is required to protect the community from noise impacts than the buffer required in respect to air quality impacts. EPA therefore submits it is more appropriate to rely on site-specific analysis on the primary amenity (odour), than reverting to a generic threshold distance for at most a secondary amenity concern (noise).

Council relied on the expert evidence of Mr Pollock in supporting the 300m noise buffer based on Clause 52.10. At the Hearing, however, Council acknowledged that it may not be an appropriate application of Clause 52.10, and sought the Panel's direction.

¹⁷ EPA submission to the Hearing para 19

Figure 7 300m noise related buffer proposed by Mr Pollock¹⁸

(ii) Discussion

As previously stated, the Panel is not convinced that there is a significant existing noise issue in relation to the Burra Foods site. The number of complaints to EPA is very low and what recent issues there have been have been addressed. There has not been any conclusive noise data presented to the Panel in support of adding a noise separation distance to any ESO extent.

The EPA's submission supports this view, and concludes that the 300m noise related buffer should not be added to the ESO.

The Panel is, in any case, not convinced that the Clause 52.10 separation distances should be applied in the absence of guidelines on noise separation distances. The Panel believes that no persuasive argument has been put as to why this should be the case, and the Panel has not been made aware of any precedent for this. The Panel accepts the general concept of reverse amenity impacts but has not been presented with any reason why the Clause 52.10

¹⁸ GHD Korumburra Milk Processing Plan Buffer Assessment November 2014 Figure 7

separation distances should be applied as a default, particularly, as in this case, without evidence that there is either an existing or likely future problem.

The Panel believes that the onus to address any future noise emission issues falls on the agent of change, in this case Burra Foods, if their future development of the site creates additional noise. Noise attenuation should be part of any future planning permit and/or EPA licence approval, and Council may wish to consider a Development Plan Overlay (DPO) to set more definitive requirements for future development of the Burra Foods site. A DPO would have a number of advantages, including providing certainty for surrounding residents that development will be done in a planned and regulated manner.

If Council wishes to pursue a noise related control on surrounding properties, the Panel is of the view that substantial further work is required to measure existing noise levels and explore on-site solutions before considering imposing planning controls on the surrounding area. If there is evidence of the need for such a control a Design and Development Overlay (DDO) may be the most appropriate planning tool.

5.3.4 Should the ESO follow property boundaries

(i) Submissions

Post-exhibition, Council proposed that the ESO boundary be further modified from the revised boundary recommended by GHD (as shown in Figure 7) to align the boundary with property boundaries and remove publicly owned land. The resultant proposed ESO boundary is as shown in Figure 4 of this report.

Council advised that it based this on the findings of the recent Warrnambool C90 panel report, which concluded that¹⁹, *‘where logical, the buffer should be mapped to lot (title) boundaries to avoid the situation of landowners being half in or half out of the buffer area’*.

(ii) Discussion

The Panel has reviewed the Warrnambool C90 panel report and notes that the circumstances are somewhat different to the situation in this Amendment. In Warrnambool C90, the discussion was around defining a buffer boundary on a structure plan. The intent was that, in the future, land would be rezoned to align with the buffer boundary. In that case if the buffer boundary did not follow property boundaries it would result in two zones applying to one lot, which is a very undesirable planning outcome. In the case of South Gippsland C99, the issue is an overlay boundary, not a zone boundary, and is therefore less of an issue. It is, nevertheless, appropriate to make minor adjustments to match property boundaries where this does not affect the intent of the overlay.

For the reasons discussed above, the Panel recommends that the ESO boundary is based on the odour buffer, adjusted for prevailing wind conditions as shown in Figure 6 and reproduced at a larger scale as Figure 8. Adjustment to any ESO boundary to property boundaries should, therefore, be considered in relation to the outer yellow (227m) boundary shown in Figure 8. The following points are noted about the preferred ESO boundary:

¹⁹ Council submission to the Hearing para 171

- The GRZ properties in Korumburra Warragul Road north-west of number 21 are outside the ESO. The logical boundary would seem to be the boundary of 21 and 23 Warragul Road.
- The GRZ properties in Warragul Road south east of (and including) number 21 are within the ESO. The Panel believes this is appropriate.
- Four GRZ properties at 28, 29, 30 and 31 Station Street are outside the ESO. The Panel believes that this is appropriate given the submissions made to the Hearing that these properties are effectively shielded from the plant activities.
- Number 32 Station Street (in the GRZ) is partly affected by the proposed ESO. Given that only a small part of the lot is within the odour separation distance, the land is zoned GRZ and submissions to the Hearing indicated that this property is shielded from the plant, the Panel believes this could be outside the ESO boundary.
- Numbers 33 and 34 Station Street are in the IN1Z and are within the ESO. As these properties are in the IN1Z, they are unaffected by the requirements of the overlay.
- Number 5-9 Wills Street is in the GRZ and is partly affected by the proposed ESO. The Panel believes the boundary should not be adjusted for this property. If the site is to be redeveloped in the future it will require subdivision. At that time it is appropriate to consider the ESO on the north western part of the land in determining a subdivision plan and future development approvals.
- Numbers 11-15 and 17-23 Wills Street and number 54 Stuart Street are partly affected by the proposed ESO. Each of these properties is in the LDRZ, and has been identified in the Korumburra Structure Plan as having potential for future higher density residential development. Any future development of these sites will require rezoning and subdivision. The Panel is of the view that the ESO should be considered in conjunction with any redevelopment proposal. It may well be that the portion of these sites within the ESO will remain in the LDRZ and, if so, can be subdivided off from the balance of the land. This would still leave the majority of the area of each of these lots as candidates for GRZ and smaller lot subdivision. For these reasons the Panel believes that the ESO should follow the odour separation distance boundary over these sites and not be adjusted to property boundaries.
- The South Gippsland Water site north of Stuart Street is publicly owned and should be excluded from the ESO.
- All other land north of Stuart Street and Warragul Road is zoned Farming Zone and the Panel believes that the ESO boundary should not be adjusted in this area. Any future redevelopment proposals for this land will necessarily involve rezoning, and the impact of the ESO should be a factor in these considerations.

The Panel recommends that the ESO boundary follow the alignment proposed in these points. In summary, the principles followed in the recommended adjustments are as follows:

- Smaller lots of GRZ land unlikely to be further subdivided - adjust to property boundaries.
- Larger GRZ or LDRZ zoned land likely to be further subdivided - retain odour separation distance boundary as proposed in the GHD November 2014 report.
- Publicly owned land to be excluded from the ESO.

- Farming Zone land - retain odour separation distance boundary as proposed in the GHD November 2014 report.

Figure 8 Odour buffer proposed as the basis for the Panel preferred ESO (outer yellow line)



5.4 Conclusions

The Panel makes the following conclusions:

- The ESO should be based on the odour separation distance of 227m, adjusted to take account of the effects of prevailing winds on dispersion as shown in Figure 8.
- No allowance should be made for a noise related buffer.
- The Clause 52.10 separation distance for 'manufacture of milk products' (300m) is not a relevant default buffer to apply to setting the ESO boundary.
- The ESO boundary should be adjusted based on the following principles:

- Smaller lots of GRZ land unlikely to be further subdivided - adjust to property boundaries.
- Larger GRZ or LDRZ zoned land likely to be further subdivided - retain odour separation distance boundary as proposed in the GHD November 2014 report.
- Publicly owned land to be excluded from the ESO.
- Farming Zone land - retain odour separation distance boundary as proposed in the GHD November 2014 report.

5.5 Recommendations

The Panel makes the following recommendations in relation to the extent of the ESO:

- 1. Modify the extent of the Environmental Significance Overlay (map 14ESO8) as follows:**
 - a) Limit the overlay boundary to the odour separation distance of 227m, adjusted to take account of the effects of prevailing winds as shown in Figure 8 of this report,**
 - b) Adjust the overlay boundary only where required to correspond to property boundaries for smaller General Residential Zone lots unlikely to be further subdivided.**
 - c) Adjust the overlay boundary to exclude publicly owned land.**

6 The ESO Schedule

6.1 The Issues

The Panel has examined the form and content of the proposed ESO Schedule 8 (ESO8).

6.2 Permit Requirement

(i) Submissions

ESO8 provides permit exemptions for the following buildings and works in relation to these uses:

- *Non-habitable outbuildings.*
- *External alterations to a building that do not increase in the internal floor area of a building.*
- *Fencing, advertising signage and domestic services normal to a dwelling.*
- *Earthworks, landscaping, gardening.*

Council submitted that the ESO8 provisions have been drafted to have as minimal effect on landowners as possible while still achieving the required outcome. The permit triggers have been refined to sensitive land uses only in a similar manner to the South Gippsland ESO4 'Sewage Treatment Plant and Environs' buffer control. Exemptions have been provided for non-habitable outbuildings and for external alterations that do not increase the internal floor area of a building. Fencing, earthworks and various other minor works have also been exempted from permit requirements.

Council further submitted that *'it is important to note that the ESO8 does not seek to stop the use and development of a single dwelling on any vacant lot in the ESO8 area. The principal right (to construct a dwelling) on residential zoned land will remain. The ESO8 seeks to facilitate this outcome with consideration to how it can be achieved with consideration to amenity issues. Likewise, if an existing dwelling burns down, it is inconceivable that a planning permit would not be issued to allow the development of a replacement dwelling.'*

A number of submitters submitted that the permit requirements are still too onerous, with even a modest extension triggering a permit.

(ii) Discussion

Given the Council's intent *'not seek to stop the use and development of a single dwelling on any vacant lot in the ESO8 area'*, the Panel believes that there could be some further flexibility in the permit exemptions, particularly for minor extensions. The Panel notes that other ESOs typically refer to *'increase in floor area of no more than x%'*. The Panel believes this is appropriate in this case and has included a suggested modification in its Panel Preferred ESO8 in Appendix C of this report. The Panel has chosen 25% increase in internal floor space as the trigger as this represents a modest extension that is unlikely to substantially change the nature of the use. Council may wish to give this some further thought and insert its own preferred figure.

(iii) Conclusion

The Panel's preferred version of the ESO8 is as shown in Appendix C.

6.3 Referral Authorities

(i) Submissions

The exhibited form of Clause 66.04 listed both the EPA and Burra Foods as recommending referral authorities.

Council submitted that this was done for transparency. Subsequent to exhibition, Burra Foods and Council have agreed to remove Burra Foods as a referral authority.

The EPA requested they be listed as a determining referral authority and be amended (upgraded) to 'Determining referral authority' status. In their submission to the Hearing, however, EPA indicated that, whilst it was their preference to be a determining referral authority, it would also be satisfactory to be listed as a recommending referral authority.

(ii) Discussion

Given that the EPA has other regulatory measures, notably through the EPA licence that it can rely on, it is more appropriate that EPA be a recommending referral authority for planning matters in relation to this ESO.

The Panel agrees that Burra Foods should not be a referral authority.

(iii) Conclusions

The Panel concludes that Clause 66.04 should be altered to show EPA as the only recommending referral authority.

6.4 Section 173 agreement

(i) Submissions

The exhibited ESO8 has a mandatory permit requirement for subdivision permits for a section 173²⁰ Agreement to be placed on all new titles advising of the ongoing manufacture of milk products operations that may have amenity impacts on the land. Council sought the Panel's views on the benefit of this provision, noting that an argument exists that the application of the ESO8 itself is sufficient to inform landowners of the issue and accordingly, the Agreement is not essential.

(ii) Discussion

The Panel does not support the inclusion of a section 173 agreement requirement in the ESO8 as it is merely adding the same notation on property titles that would already be contained within the schedule. Section 32 vendor's statements are required to identify overlays applying to properties and the Panel believes this is sufficient to alert prospective purchasers to the existence of an overlay. Recent panel reports, including Greater Geelong

²⁰ Of the *Planning and Environment Act 1987*

C285, have been critical of requiring section 173 agreements as a means of consumer awareness.

The Panel agrees and believes that it would be an unnecessary cost imposition on landowners wishing to subdivide land within the overlay.

(iii) Conclusions

The Panel concludes that the mandatory permit requirement on subdivision for a section 173 agreement should be removed from the ESO8.

6.5 Application requirements

(i) Submissions

The proposed ESO8 includes the following application requirements:

An application must include building design, layout and landscaping details demonstrating how the building will minimise the impact of noise, odour and light pollution on the proposed sensitive land use.

Applications to subdivide land must include noise measurements, at various times across the 24 hour period, and reported by a suitably qualified acoustic engineer.

The application requirements can be reduced or set-aside if in the opinion of the responsible authority and referral agencies the requirements are unnecessary to appropriately consider the application.

Council submitted that the 'Application requirements' are not excessive and only require consideration of noise measurements if subdividing land. These requirements can be set aside at the discretion of the Responsible Authority.

Submitters argued that these requirements are unreasonable and create unnecessary barriers to development of land.

(ii) Discussion

The Panel accepts that the matters listed in the requirements ought to be considered in an application triggered by the ESO, noting that not all works trigger a permit. The close proximity of Burra Foods to properties in the ESO area means that amenity impacts of noise, odour and light are all possible, although, as has been discussed in this report, there is not clear proof of an existing substantial noise problem. The Panel nevertheless agrees with Council that by considering these issues in building design, siting and landscape design; future amenity issues can be minimised. Attention to these matters at the design stage will not necessarily result in higher costs of construction.

The Panel has given some thought to the requirement for noise measurements, but has concluded that, provided it is limited to subdivision applications (as proposed), it is reasonable. The third paragraph also provides flexibility for this requirement to be set aside at the discretion of the responsible authority. The Panel believes that if other noise measurements have already been carried out, including by Burra Foods or EPA, they should suffice to determine whether attention needs to be paid to noise as a design issue.

The Panel does not agree that this discretion should also be open to the referral authorities as indicated in the exhibition version of the ESO8. Council and EPA both indicated that they were happy for this to be removed.

(iii) Conclusions

The Panel's preferred version of the ESO8 is as shown in Appendix C.

6.6 Decision guidelines

(i) Submissions

The proposed ESO8 includes the following Decision Guidelines:

Before deciding on an application, the responsible authority must consider:

- *The objectives of the overlay.*
- *The views of the Environment Protection Authority of Victoria and the manufacture of milk products company.*
- *Whether the proposal is compatible with the current operations, or an approved development plan / master plan, for the manufacture of milk products facility.*
- *Whether the design of the building incorporates appropriate noise, odour, dust and light pollution attenuation measures.*
- *The distance of the application site from the manufacture of milk products facility and corresponding impact of the facility on the sensitive land use.*

The key 'Decision guideline' of interest to submitters was '*Whether the design of the buildings incorporates appropriate noise, odour, dust and light pollution attenuation measures*'. This has been broadly misinterpreted to mean that these requirements will be necessary for all new buildings in the ESO8. Some submitters are concerned that existing buildings will have to be retrofitted, which Council advised is not correct.

Council submitted that the practical impact of the ESO8 on landowners is anticipated to be minimal. Council submitted:

The affected area is small and almost all lots are already developed. The extensive range of exemptions means it is unlikely that more than one or two permits will be triggered by the ESO8 a year. The attenuation measures in the Decision guidelines will be considered on a case by case basis and not universally applied. Factory noise is highly dependent on the location of a proposed development site to the factory. If noise is reduced by the presence of existing buildings or because of natural landform, Council is likely to set aside noise attenuation requirements. Odour proofing dwellings is difficult to achieve. Some sewer buffer ESO's in other schemes require odour attenuation construction but how this is achieved for detached dwellings is not clear. The key benefit of the Decision guideline is to have permit applicants think about how they may want to layout the development of their land so they can reduce the potential impact of the factory on their enjoyment of their dwelling.

A number of submitters raised concerns about the meaning of ‘*or an approved development plan/master plan*’ in the decision guidelines. There was some further discussion about this at the Hearing and Council proposed the following revised wording:

- *Whether the proposal is compatible with the current operations, or an approved planning permit, approved development plan / master plan, for the manufacture of milk products facility.*

(ii) Discussion

The Panel prefers the wording as set out in the Panel Preferred version of the ESO8 in Appendix C. The preferred wording removes reference to ‘master plan’ and adds reference to approved planning permit.

The Panel believes that the decisions guidelines could be clarified to better reflect Council’s intent in relation to the design responding to known or anticipated amenity issues. The Panel Preferred version proposes modified wording that is more performance based, and avoids the perhaps confusing reference to attenuation measures.

(iii) Conclusions

The Panel preferred version of ESO8 is as shown in Appendix C.

6.7 Recommendations

The Panel recommends:

- 2. Modify Schedule 8 to the Environmental Significance Overlay to include the changes as shown in Appendix C of this report.**
- 3. Alter Clause 66.04 to show the Environment Protection Authority as the only recommending referral authority in relation to Schedule 8 to Clause 42.01 (ESO8).**

7 Local Planning Policy Framework changes

7.1 The Issues

The Panel has reviewed the proposed changes to Local Planning Policy Framework at Clause 21.15-2.

7.2 Submissions

Council submitted that the changes to Clause 21.15-2 'Korumburra' are required to achieve consistency with the provisions of the ESO8 and to strengthen the policy basis on which a planning permit will be assessed. The proposed change is to alter the last dot point under 'Settlement' to read:

Consider the potential adverse amenity impacts of the ~~milk manufacturing operations~~ 'manufacture of milk products' operations in the Station Street Industrial Area on rezoning proposals and sensitive land uses, development & subdivision applications that allow, or intensify, the establishment of sensitive land uses in the ~~immediate~~ area surrounding the manufacturing operations.

Council submitted that the introduction of the term 'manufacture of milk products' makes the provision consistent with the VPP land use term. The addition of the words '...and sensitive land uses, development & subdivision applications...' adds policy weight that can be used in the assessment of planning permit applications. Deletion of the word 'immediate' removes an area of possible confusion given that some people may interpret 'immediate' being adjoining.

7.3 Discussion and conclusion

The proposed changes to the Local Planning Policy Framework are minor and assist in supporting the implementation of the ESO. The Panel supports the changes as exhibited.

8 Korumburra Structure Plan

8.1 The Issues

Changes to the Korumburra Structure Plan were exhibited along side the Amendment. Although not forming part of the Amendment, Council has invited comment from the Panel on the proposed changes.

8.2 Evidence and Submissions

The changes proposed to the *Korumburra Structure Plan July 2010* are to amend the descriptive words for Area K (page 11) 'Low Density Residential land to the north of existing residential areas' from 'Rezone to facilitate urban residential development' to 'Discourage the rezoning of land that could facilitate the establishment of more intensive forms of sensitive land use near the manufacture of milk products facility.'

It is also proposed to delete the Strategy (page 16) 'Investigate the suitability of land currently zoned for industrial purposes to the east of the Burra Foods complex, north of the South Gippsland Highway.' Changes are also proposed to the Structure Plan maps to identify the outer boundary of the buffer.

Council submitted:

'The Korumburra Structure Plan is a Council adopted document and a reference document in the Planning Scheme. Amendment C99 introduces a significant 'new key element' into the planning mix for Korumburra and it is important that the provisions of the Structure Plan be amended to correspond to the other legs of the Amendment. The Structure Plan changes were exhibited as part of the Amendment exhibition process and it is anticipated that Council adopt the changes to the Structure Plan should the Amendment be approved.'

Submitters, including Mr and Mrs Brown, submitted that it the proposed change in the policy would effectively mean that they would no longer be able to subdivide their LDRZ land, significantly reducing its value.

8.3 Discussion

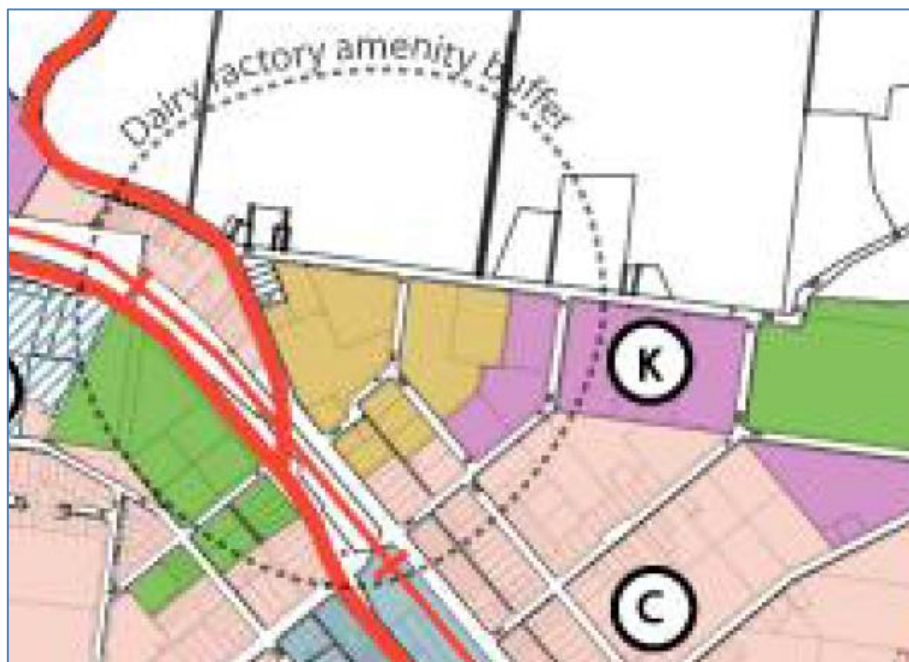
The Panel notes that the ESO covers part of Area K. The proposed change to the reference to Area K in the Korumburra Structure Plan was drafted when the ESO was proposed to cover a substantial portion of Area K as shown in Figure 9. If the Panel's recommended ESO boundary is adopted, only a very small portion of Area K will be affected by the ESO.

The Impact of the proposed change to the reference to Area K could be interpreted as a strategic direction not to subdivide or develop any land in Area K, despite the fact that the ESO applies to only part of the Area. At the Hearing the idea of clarifying that the discouragement of rezoning applies only to the area inside the ESO was canvassed. The Panel supports this clarification as it is believed that Council did not intend to prevent development of the whole of Area K.

The Panel suggests that the wording in the Structure Plan referring to Area K be altered to read:

- Rezone to facilitate urban residential development on land outside the ESO.
- For land within the ESO, discourage the rezoning of land that could facilitate the establishment of more intensive forms of sensitive land use near the manufacture of milk products facility.

Figure 9 Korumburra Structure Plan extract



8.4 Conclusions

The Panel agrees that it is helpful to update the Korumburra Structure Plan in the manner proposed by Council but recommends that the reference to Area K be modified as discussed above. The included map showing the location of the ESO should be modified to shown the final form of the overlay.

No formal recommendations are made in this section as the Structure Plan does not form part of the Amendment. The Panel leaves it to Council to make the changes as it sees fit.

Appendix A List of Submitters

No	Submitter
1	G C and S R Brown
2	Mr M W Olsen
3	J G Gleeson
4	Mr Joe Rossi
5	Ms Krystal Condoluci
6	C A McKenzie and F L Skierski
7	Mr Paul Rotthier
8	T J Dent
9	Ms Gloria M Cooke
10	L J Guilfoyle
11	Ms Elisabeth Jones
12	Ms L J Jeavons-Fellows
13	A D and M J Rodger
14	P J Dale and J T Harris
15	Mr David Amor
16	N G Olsen
17	Ms Gloria Walters
18	Mr Alan Ball
19	Ms Christine Ball
20	A & C Ball
21	Ms Jessica Cooke
22	Ms Annalise Wilo
23	Ms Pauline Keogh
24	Giovanna and Ralph Motton
25	D J Cameron
26	Ms Helena Kearns
27	Mr Tom Rowe
28	Mr Douglas Appleton
29	Mr Bruce Roberts
30	Ms Anita Roberts
31	R P and R M Harris

No	Submitter
32	R R and D E King
33	Mr Vince Syarioto
34	V Pepper
35	K M and K J Twite
36	S E and R G Hutton
37	Lois M Tonkin
38	Mr Terry Waycott
39	Elisabeth Jones and Leslie Guilfoyle
40	Mr Martin Tankard
41	Mr Barry Edwards
42	C E and M A Hams
43	T A Walker
44	M A Pepperell
45	A A Kovacs
46	N Dixon
47	S M O'Neill
48	A P Surman and J Elliot
49	M E Hams
50	S D and B J Rose
51	C A McKenzie
52	J Lomas
53	D L Marten
54	C Green and L G Condoluci-Green
55	David & Barbara Lumby
56	EPA Gippsland
57	West Gippsland Catchment Management Authority
58	Mr Mario Arestia
59	Daryl & Jenny Smethurst
60	Ms Sharyn Allott
61	Burra Foods c/o Thomson Geer Lawyers
62	T Wyhoon
63	PJ and ME Russell

No	Submitter
64	Mr Ian Swain
65	Ms Tahli Swain
66	Wilma and Raymond Walls
67	Jim and Jenny Watson
68	Mr Bryan Briney
69	Ms Helen Arestia
70	South Gippsland Water
71	Anon
72	Anon

Appendix B List of Documents tabled at the Hearing

No	Document title	Tabled by
1	Hearing Presentation	Council
2	Revised ESO map	Council
3	Hearing Presentation	Burra Foods
4	Burra Foods EPA Licence	Burra Foods
5	EPA Burra Foods Annual Performance Statement 2013-14	Burra Foods
6	EPA Burra Foods Annual Performance Statement 2012-13	Burra Foods
7	EPA Minor Works pollution abatement notice	Burra Foods
8	EPA Guidelines Noise from Industry in Regional Victoria	Burra Foods
9	EPA Recommended separation distances for industrial residual air emissions	Burra Foods
10	EPA Environmental Guidelines for the Dairy Processing Industry 1997	Burra Foods
11	Planning permit for construction of facilities at Burra Foods	Burra Foods
12	Hearing Presentation	Mr Rothier
13	Hearing Presentation	Mr Neil Olsen
14	Hearing Presentation	Mr Amor
15	Hearing Presentation	Ms McKenzie
16	Hearing Presentation	Ms Sanders - EPA
17	EPA complaints log for Burra Foods	Ms Sanders - EPA
18	EPA Compliance and Enforcement Policy	Ms Sanders - EPA
19	Burra Foods EPA licence	Ms Sanders - EPA
20	Hearing Presentation	Mr Pepper, Ms Jones and Mr Guilfoyle
21	Hearing Presentation	Mr Harris
22	Hearing Presentation	Mr Hutton
23	Hearing Presentation	Ms Cooke
24	Hearing Presentation	Ms Dent
25	Hearing Presentation	Mr and Mrs Brown
26	Hearing Presentation	Mr Mark Olsen
27	Technical information on powder emission wet scrubber	Burra Foods
28	Council complaints information on Burra Foods	Council
29	Noise reading information	Burra Foods

Appendix C Panel Preferred ESO Schedule

SOUTH GIPPSLAND PLANNING SCHEME

MM/YYYY
Proposed C99**SCHEDULE 8 TO THE ENVIRONMENTAL SIGNIFICANCE OVERLAY**Shown on the planning scheme map as **ESO8****MANUFACTURE OF MILK PRODUCTS AMENITY BUFFER****1.0 Statement of environmental significance**DD/MM/YYYY
Proposed C99

South Gippsland Shire contains some of the most productive dairy farming land in the nation. Milk processed in the Shire is exported globally and is a major contributor to the Victorian economy. Global demand for milk protein means that demand for milk products is expected to grow, underpinning the viability and expansion of local 'manufacture of milk products' facilities (milk factories) into the future.

A legacy of past practice means that milk factories are typically located in close proximity to residential areas and other sensitive land uses. This can create amenity conflicts from factory generated noise, odour, dust (particulates) and light impacts on surrounding land.

The ESO amenity buffer identifies the area most likely to be affected by factory operations. The control ensures that planning permit applications for sensitive land uses are assessed with consideration to potential factory impacts on surrounding lands and potential impacts on the factory from encroachment / intensification of sensitive uses near the factory. The ESO identifies areas subject to pre-existing factory impacts that will continue, and could intensify, over time.

The ESO does not affect a landowner's right to apply to use and develop a single dwelling on an existing lot in a residential zone in the buffer. The presence of the buffer does not reduce the responsibility on a factory to comply with relevant environmental standards and licensing requirements.

2.0 Environmental objective to be achievedDD/MM/YYYY
Proposed C99

To inform landowners and land purchasers that the areas surrounding a manufacture of milk products facility may be exposed to amenity impacts resulting from existing and ongoing factory operations.

To protect a manufacture of milk products facility from the incremental encroachments of sensitive land uses that may endanger the commercial operations of the facility.

To discourage the subdivision of land for sensitive land uses that will result in an increase in the number of people likely to be exposed to amenity impacts from the operation of a manufacture of milk products facility.

To assist in shielding people from the impact of noise, odour, dust and light by requiring appropriate attenuation measures in new dwellings and other sensitive use buildings.

3.0 Permit requirementDD/MM/YYYY
Proposed C99

A permit is not required to construct a building or construct or carry out works except in relation to the use of land for accommodation¹, childcare, education, hospital, office, place of assembly and retail purpose. This does not apply (no permit required) to the following buildings and works in relation to these uses:

- Non-habitable outbuildings.
- External alterations to a building that do not increase in the internal floor area of a building by more than 25%.

SOUTH GIPPSLAND PLANNING SCHEME

- Fencing, advertising signage and domestic services normal to a dwelling.
- Earthworks, landscaping, gardening.

A permit is not required under this overlay to remove, destroy or lop vegetation.

Mandatory permit requirements for subdivision

~~A planning permit for the subdivision of land which creates an additional lot must include a condition requiring the landowner register a section 173 Agreement on all new titles in the subdivision identifying that the land is located in an area potentially affected by existing and ongoing manufacture of milk products operations that may have amenity impacts on the land.~~

~~This requirement does not apply to the subdivision of land by a public land manager or utility service provider, providing the subdivision is not to facilitate the establishment of a sensitive use on the land.~~

Permit requirement explanatory note

Accommodation¹. Accommodation is 'Land used to accommodate persons' and includes Camping and caravan park, Corrective institution, Dependent person's unit, **Dwelling**, Group accommodation, Host farm, Residential building, Residential village and Retirement village.

4.0 Application requirements

DD/MM/YYYY
Proposed C99

An application must include building design, layout and landscaping details demonstrating how the building will minimise the impact of noise, odour and light pollution on the proposed sensitive land use.

Applications to subdivide land must include noise measurements, at various times across the 24 hour period, and reported by a suitably qualified acoustic engineer.

The application requirements can be reduced or set-aside if in the opinion of the responsible authority ~~and referral agencies~~ the requirements are unnecessary to appropriately consider the application.

5.0 Referral of applications

DD/MM/YYYY
Proposed C99

An application must be referred in accordance with Section 55 of the Act to the referral authority specified in Clause 66.04 or a schedule to that clause unless in the opinion of the responsible authority the proposal satisfies requirements or conditions previously agreed in writing between the responsible authority and the referral authority.

6.0 Decision guidelines

DD/MM/YYYY
Proposed C99

Before deciding on an application, the responsible authority must consider:

- The objectives of the overlay.
- The views of the Environment Protection Authority of Victoria and the manufacture of milk products company.

SOUTH GIPPSLAND PLANNING SCHEME

- Whether the proposal is compatible with the current permitted operations, approved planning permit or an approved development plan ~~/master plan~~, for the manufacture of milk products facility.
- Whether the design of the building ~~incorporates appropriate~~ appropriately responds to identified or anticipated noise, odour, dust and light pollution amenity issues ~~attenuation measures~~.
- The distance of the application site from the manufacture of milk products facility and corresponding impact of the facility on the sensitive land use.

7.0 Reference documents

DD/MM/YYYY
Proposed C99

GHD Burra Foods Pty Ltd Buffer Assessment ~~December 2013~~ November 2014