

Planning and Environment Act 1987

Panel Report

South Gippsland Planning Scheme Amendment C115

Mirboo North Structure Plan Refresh

20 November 2019

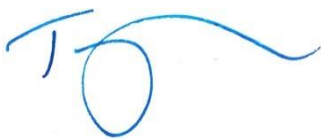
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Panel Report pursuant to section 25 of the Act

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Trevor McCullough, Chair

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Abbreviations

CFA	Country Fire Authority
Council	South Gippsland Shire Council
DDO2	Design and Development Overlay Schedule 2
DDO13	Design and Development Overlay Schedule 13
PPF	Planning Policy Framework
the Plan	<i>Mirboo North Structure Plan Refresh (2017)</i>

Overview

Amendment summary

The Amendment	South Gippsland Planning Scheme Amendment C115
Brief description	<p>Update strategies in local policy to implement the Mirboo North Structure Plan Refresh</p> <p>Add the Mirboo North Structure Plan Refresh as a reference document in the Planning Scheme</p> <p>Rezone 4-6 Peters Street and 39-41 Giles Street, Mirboo North from Mixed Use Zone to Commercial 1 Zone</p> <p>Insert a new Schedule 13 to the Design and Development Overlay</p> <p>Amend Schedule 2 to the Design and Development Overlay</p>
Subject land	The Amendment applies to the area in and immediately adjacent to the Mirboo North town centre
The Proponent	South Gippsland Shire Council
Planning Authority	South Gippsland Shire Council
Authorisation	12 April 2019 (Authorisation was conditional on updating the Explanatory Report and Instruction Sheet)
Exhibition	9 May to 11 June 2019
Submissions	<p>Number of Submissions: 8</p> <p>See Appendix A</p>

Panel process

The Panel	Trevor McCullough (Chair)
Directions Hearing	Council Offices Leongatha on 23 September 2019
Panel Hearing	Council Offices Leongatha on 29 October 2019
Site inspections	Unaccompanied on 23 September 2019
Appearances	<p>Chantal Lenthall for South Gippsland Shire Council</p> <p>Mr Phil Walton of XWB representing Mr B Koolstra</p>
Citation	South Gippsland PSA C115 [2019] PPV
Date of this Report	20 November 2019

Executive summary

South Gippsland Planning Scheme Amendment C115 (the Amendment) seeks to implement the recommendations of the *Mirboo North Structure Plan Refresh (2017)* as follows:

- Update the objectives and strategies in Clause 21.15-3 (Mirboo North)
- Update Clauses 21.15-3 and 21.16 to make reference to the *Mirboo North Structure Plan Refresh (2017)* as a reference document and remove reference to the *Mirboo North Structure Plan 2004*
- Rezone 4-6 Peters Street and 39-41 Giles Street, Mirboo North from the Mixed Use Zone to the Commercial 1 Zone
- Insert a new Schedule 13 to Clause 43.02 Design and Development Overlay (DDO13) to apply to the Mirboo North town centre
- Amend the Design and Development Overlay Schedule 2 (DDO2) to improve its usability and implement the town centre recommendations.

The *Mirboo North Structure Plan Refresh (2017)* (the Plan) was adopted by Council on 24 May 2017. The strategic justification for the Plan relied on an economic analysis *Mirboo North Structure Plan Economic Inputs (2016)* prepared by Tim Nott which proposed rezoning of additional commercially zoned land.

The overall need for an updated Structure Plan for Mirboo North and the proposed DDO changes were not challenged by submitters. Council has conducted an extensive consultation program with the community and the fact that no submissions have been received about issues other than the rezoning of 4-6 Peters Street and 39-41 Giles Street indicates a high level of acceptance of the revised Mirboo North Structure Plan.

In particular, the Panel notes that there were no submissions in relation to the proposed changes to residential areas within the Framework Plan contained within the Structure Plan.

In submissions to the Panel Council noted that submissions from public authorities were largely resolved, subject to the minor changes proposed in response to the CFA and Department of Transport submissions.

Three submitters opposed the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone for a variety of reasons, including:

- Commercial development should be confined to the main street
- Rezoning is unfair to existing landowners as the land will become 'sterilised'
- There is not sufficient justification for additional commercial land
- Development of the land proposed to be rezoned would commercially impact on existing businesses in the main street.

The Panel has some difficulties with a number of aspects of the strategic work that has been relied upon by Council in relation to the proposed rezoning. The Panel concluded:

- The suitability of the site for its intended purpose and the ability for it to be properly connected to the existing town centre have not been adequately assessed.
- The demand analysis in the *Mirboo North Structure Plan – Economic Inputs (2016)* report over-estimates future demand for retail floorspace. Retail floorspace and car parking supply opportunities have been significantly underestimated in the same

report, resulting in a flawed conclusion that additional commercially zoned land is required.

- Rezoning of the land would effectively sterilise the use of the land in the medium to long term, and that this is not a fair nor equitable outcome for the current owner.

The Panel recommends that the component of the Amendment involving the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone be abandoned.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that South Gippsland Planning Scheme Amendment C115 be adopted as exhibited, subject to the following changes:

- 1. Amend Schedule 13 to Clause 43.02 Design and Development Overlay, dot point 4 under Item 2.0 Buildings and Works to refer to the 'relevant road authority' rather than 'public land manager' when referencing works over a road.**
- 2. Add the following in Clause 21.15-3 to note the town's bushfire risk:**
 - *It is also important that growth ensures adequate protection from and management of bushfire hazards.*
- 3. Review the presentation of the Mirboo North Framework Plan to improve its legibility.**
- 4. Abandon the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone.**
- 5. Delete any references to the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North in:**
 - Clause 21.15-3 (Mirboo North);
 - the reference document *Mirboo North Structure Plan Refresh (2017)*; and
 - the proposed Schedule 13 to the Design and Development Overlay.

1 Introduction

1.1 The Amendment

(i) Proposed changes

The Amendment proposes to implement town centre recommendations of the *Mirboo North Structure Plan Refresh (2017)* as follows:

- Update the objectives and strategies in Clause 21.15-3 (Mirboo North)
- Update Clause 21.15-3 (Mirboo North) to make reference to the *Mirboo North Structure Plan Refresh (2017)* as a reference document and removing reference to the *Mirboo North Structure Plan 2004*
- Update Clause 21.16 Reference Documents to include the *Mirboo North Structure Plan Refresh (2017)* as a reference document in the scheme and removing reference to the *Mirboo North Structure Plan 2004*
- Rezone 4-6 Peters Street and 39-41 Giles Street, Mirboo North from the Mixed Use Zone to the Commercial 1 Zone
- Insert a new Schedule 13 to Clause 43.02 Design and Development Overlay (DDO13) to apply to the Mirboo North town centre
- Amend the Design and Development Overlay Schedule 2 (DDO2) to improve its usability and implement the town centre recommendations.

(ii) The subject land

The Amendment affects the town of Mirboo North and in particular its town centre, specifically:

- 4-6 Peters Street and 39-41 Giles Street, Mirboo North are proposed to be rezoned from Mixed Use Zone to the Commercial 1 Zone. Refer to Figure 1.
- Commercial 1 Zone, Public Use Zone and General Residential Zone properties in the town centre are to be affected by the new DDO13. This includes 4-6 Peters Street and 39-41 Giles Street. Refer to Figure 2.
- Industrial 3 Zone land is affected by proposed changes to the DDO2. Refer to Figure 2.
- The Mirboo North Structure Plan applies to all land in Mirboo North.

Figure 1 Proposed re-zoning 4-6 Peters Street and 39-41 Giles Street, Mirboo North

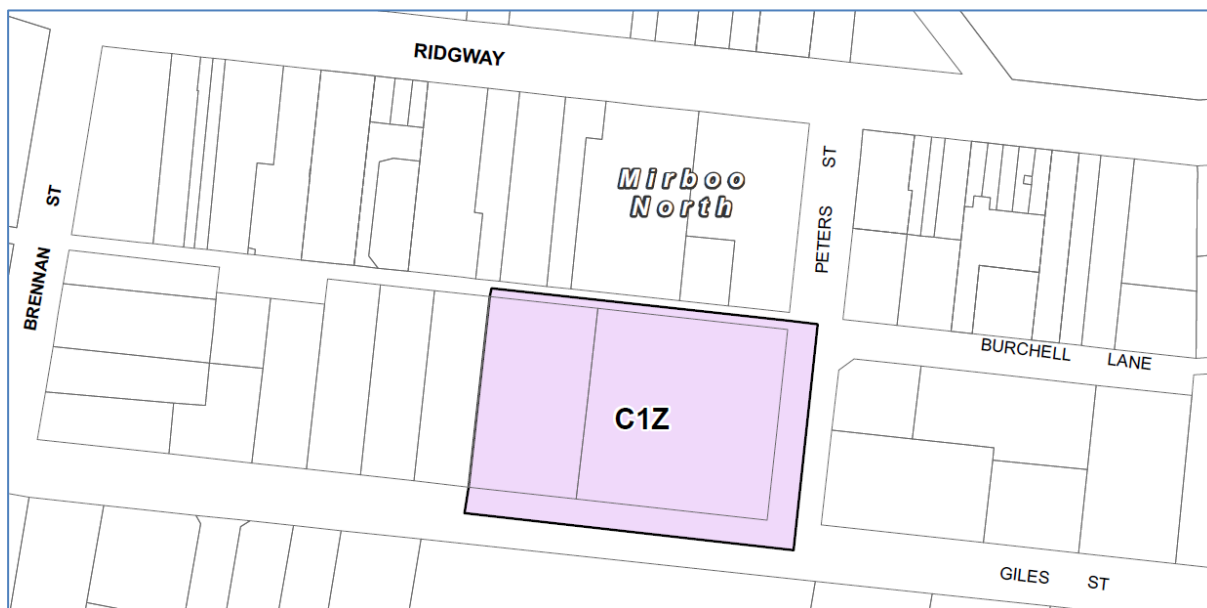


Figure 2 Map showing the extent of DDO2 and proposed DDO13



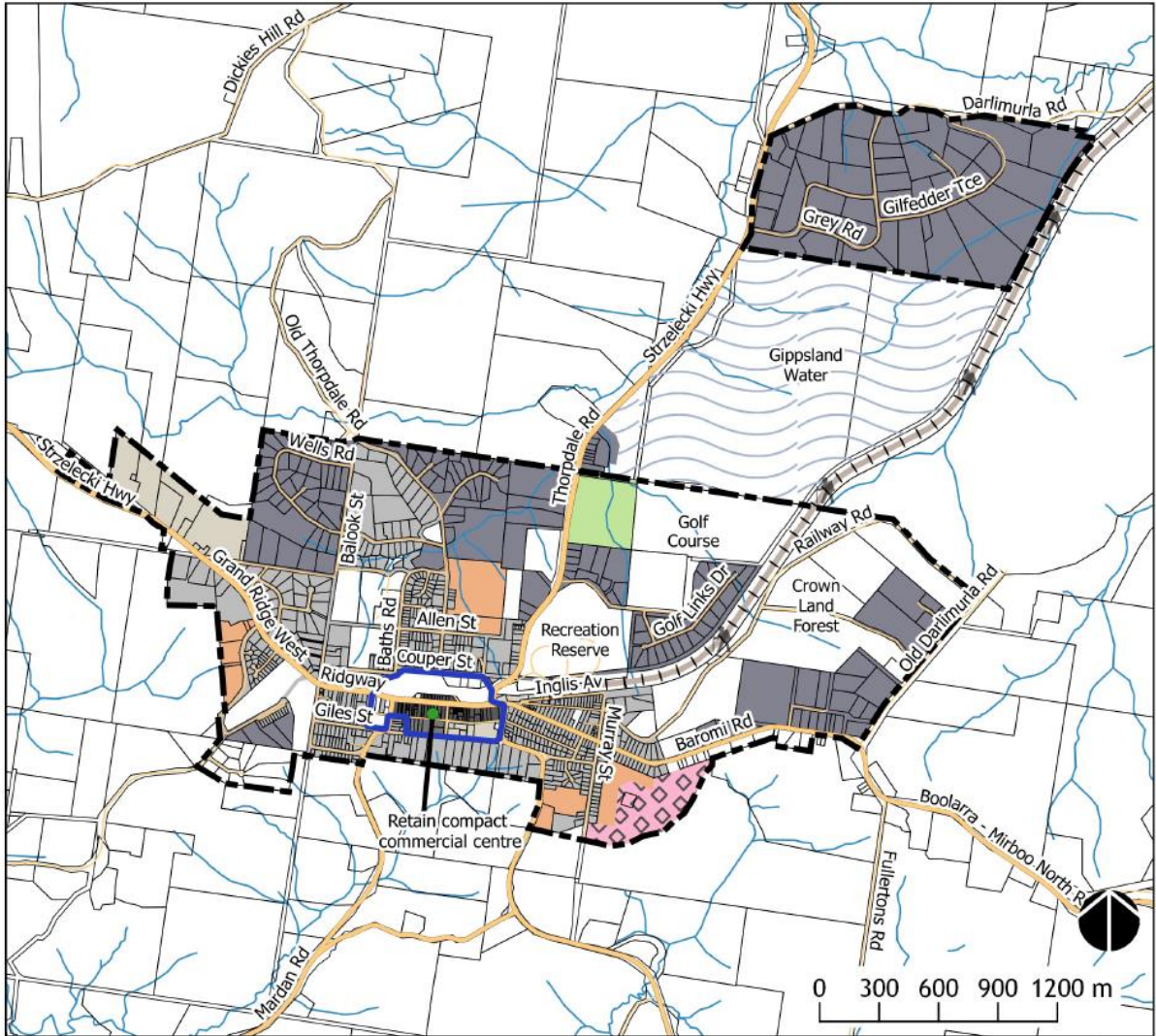
1.2 Background

Council commenced a review of the current 2004 *Mirboo North Structure Plan* in late 2015. Council consulted with relevant authorities in preparing the draft plan and carried out community consultation on the draft plan in 2016. The *Mirboo North Structure Plan Refresh (2017)* (the Plan) was adopted by Council on 24 May 2017.













The preparation of the Plan included an economic analysis *Mirboo North Structure Plan Economic Inputs (2016)* prepared by Tim Nott which Council submitted provides a strategic basis for the proposed rezoning of additional commercially zoned land. The Plan identifies the need to encourage land uses and development that focus pedestrian activity within the town and protect the design of the town centre to support local tourism.

Council submitted that the Amendment is required to implement the Plan and specifically to deliver the town centre recommendations. The proposed updated Mirboo North Framework Plan is shown in Figure 3. The Framework Plan is contained in the Structure Plan and graphically shows the proposed land use changes.

Figure 3 Mirboo North proposed revised Framework Plan



Legend

 Settlement Boundary	Proposed Changes:	Existing:
 Town Centre Area	 Urban Residential Expansion Investigation Area	 Existing Commercial Land
 Rail Trail	 Rural Living Expansion Investigation Area	 Existing Industrial Land
 Waterways	 Infill Residential Development Area	 Existing Urban Residential Land
		 Existing Mixed Use Land
		 Existing Rural Living Land

1.3 Summary of issues raised in submissions

(i) Country Fire Authority (CFA)

The key issues raised in the CFA submission were:

- It is likely that development at the rezoned properties can be adequately set back from a bushfire hazard though no bushfire hazard site assessment has been provided.
- The proposed changes to Clause 21.15 Local Areas should be amended to provide greater emphasis on bushfire risk and reconsider the directions that seek to reinforce the role of vegetation in the town.
- Schedule 2 to DDO2 should be modified to require landscaping plans to not simply 'reference' the CFA document Landscaping for Bushfire but to give effect to it.

In response to the CFA submission, Council included additional words in Clause 21.15-3 to note the town's bushfire risk:

- It is also important that growth ensures adequate protection from and management of bushfire hazards.

It is not clear to the Panel whether the issues raised by the CFA are now resolved. Given that bushfire requirements in bushfire prone areas are well covered elsewhere in the planning scheme (particularly at Clause 13.02-1S), the Panel does not, in this case, support the need for further secondary references in local policy. The additional words proposed by Council are reasonable, but further reference to bushfire requirement in DDO2 is not supported.

(ii) Other authorities

The Department of Transport, West Gippsland Catchment Management Authority, Environment Protection Authority and Telstra all made submissions advising that they had no substantive concerns.

The Department of Transport suggested a minor change to DDO13, to amend dot point 4 under Item 2.0 Buildings and Works to refer to the 'relevant road authority' rather than 'public land manager' when referencing works over a road. This minor change is supported.

(iii) Other submitters

Three submitters opposed the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone for a variety of reasons, including:

- Commercial development should be confined to the main street
- Rezoning is unfair to existing landowners as the land will become 'sterilised'
- There is not sufficient justification for additional commercial land
- Development of the land proposed to be rezoned would commercially impact on existing businesses in the main street.

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

In submissions to the Panel Council noted that submissions from public authorities were largely resolved, subject to the minor changes proposed in response to the CFA and Department of Transport submissions as noted above.

The substantive unresolved issue is the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone.

This Report deals with the issues under the following headings:

- Planning context
- Proposed rezoning.

1.5 Recommendation

The Panel makes the following recommendations in relation to changes requested by public authorities:

- 1. Amend Schedule 13 to Clause 43.02 Design and Development Overlay, dot point 4 under Item 2.0 Buildings and Works to refer to the 'relevant road authority' rather than 'public land manager' when referencing works over a road.**
- 2. Add the following in Clause 21.15-3 to note the town's bushfire risk:**
 - *It is also important that growth ensures adequate protection from and management of bushfire hazards.*

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by relevant clauses in the Planning Policy Framework, which the Panel has summarised below.

(i) Victorian planning objectives

Council submitted that the Amendment will assist in implementing State policy objectives set out in section 4 of the Act in the following ways:

- by rezoning land to ensure adequate commercial land is available for future growth in Mirboo North. This will ensure orderly development of the town and balances the present interests of the landowners (who may wish to develop the land for residential purposes) with the future need of the town's residents and visitors for an adequate supply of commercially zoned land.
- by implementing a new Design and Development Overlay to improve pedestrian safety and streetscape design in Mirboo North, and by updating Design and Development Overlay 2 to improve urban design outcomes.
- positive environmental effect as the policies have taken environmental constraints such as erosion, bushfire risks, sensitive water catchments and areas of environmental and landscape significance into consideration.
- positive social effects for the municipality by providing space for commercial services growth in Mirboo North and maintaining the valued characteristics of the township.

(ii) Planning Policy Framework (PPF)

Clause 11.01-1S 'Settlement' contains the strategies:

Providing for appropriately located supplies of residential, commercial, and industrial land across a region, sufficient to meet community needs in accordance with the relevant regional growth plan.

Ensure retail, office-based employment, community facilities and services are concentrated in central locations.

Ensure land that may be required for future urban expansion is not compromised.

Clause 11.02-1S 'Supply of urban land' contains the strategies:

Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.

Ensure that sufficient land is available to meet forecast demand.

Clause 11.03-1S 'Activity centres' contains the strategies:

Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.

Support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies.

Clause 11.01-1R ‘Settlement – Gippsland’ contains the strategies:

Create vibrant and prosperous town centres that are clearly defined and provide commercial and service activities that respond to changing population and market conditions.

Support the continuing role of towns and small settlements in providing services to their districts, recognising their relationships and dependencies with larger towns.

Clause 17.02-1S ‘Business’ aims *“To encourage development that meets the community’s needs for retail, entertainment, office and other commercial services”* and contains the strategies:

Plan for an adequate supply of commercial land in appropriate locations.

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Locate commercial facilities in existing or planned activity centres.

Provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations.

Council submitted that the Amendment is consistent with Clauses 11.01-1R, 11.01S, 11.02S, 11.03-1S and 17.02-1S as it proposes to rezone land from Mixed Use Zone to Commercial 1 Zone to ensure an adequate supply of commercial land for the future of Mirboo North.

Council submitted:

- The proposed rezoning concentrates commercial activity in the town centre.
- It ensures that future urban expansion of the commercial is not compromised by residential subdivision.
- It seeks to provide for the future expansion of the supermarket, a critical retail service in a regional town.

Council submitted that the Amendment supports Clause 11.01R and 11.03-1S by applying a Design and Development Overlay to the Mirboo North town centre to improve urban design, increase pedestrian safety and increase pedestrian amenity.

Clause 13.02-1S ‘Bushfire Planning’ has a strategy:

Ensuring that strategic planning documents, planning scheme amendments, planning permit applications and development plan approvals properly assess bushfire risk and include appropriate bushfire protection measures.

Council submitted that while the township of Mirboo North is prone to bushfire, the Amendment does not increase this risk and seeks to better recognise and respond to the risks by making reference to the *CFA Landscaping for Bushfire (2011)* guidelines. Council considered that the rezoning from Mixed Use Zone to Commercial 1 Zone will reduce the potential for additional residential development in the town centre thus reducing the risk to life from bushfire.

Council submitted that the Amendment supports **Clause 15.01-1S ‘Urban Design’** and **15.01-6S ‘Design for Rural Areas’** by introducing a desired future Character Statement for the town and applying and amending design controls in Mirboo North. The Amendment proposes to apply a DDO13 to the commercial centre and amend Schedule 2 to DDO2 to make it consistent with DDO13, as well as easier to interpret and implement. These policy changes and proposed controls seek to recognise, protect and enhance the town’s scenic qualities

and rural character as well as support an attractive, safe and pedestrian-friendly town centre.

(iii) Local Planning Policy Framework

Council submitted that the Amendment seeks to achieve the vision for South Gippsland set out at **Clause 21.04-2 'Vision'**, specifically:

- The environment, landscape, built form and heritage of the Shire is retained, managed and promoted in a way that adds to, rather than diminishes, its significance
- The urban environment of the Shire's towns is of a high quality
- Population growth and employment are facilitated through investment and development
- A range of community services are provided in an efficient and equitable manner.

Clause 21.05 'Settlement' identifies Mirboo North as *"Principal township in the north of the Shire, servicing the surrounding agricultural activities and rural population. Tourism is an increasingly important economic contributor"*. Council submitted that, as such, the provision of adequate commercial land, as proposed by the Amendment rezoning, is important for the town's prosperity.

Clause 21.11-3 'Office and commercial uses' seeks *"To encourage businesses which generate employment opportunities and provide goods and services to meet the needs of the community"* as well as *"strengthen the commercial capacity of existing town centres"*.

Council submitted that the Amendment encourages retail activities and new investment in the Mirboo North commercial centre and encourages the visual improvement of the business precinct through the application of DDO13.

Clause 21.15-3 'Mirboo North' states *"Encourage new commercial and economic development opportunities that support the needs of the local community."* Council submitted that rezoning two large properties in the town centre to allow for future commercial expansion aligns with this strategy.

2.2 Other relevant policy

The ***Gippsland Regional Growth Plan 2014*** identifies Mirboo North as a town where sustainable change (small-scale residential, commercial and industrial development and change) should be supported.

Council submitted that the Amendment seeks to ensure adequate commercial land supply is available to support sustainable change and design controls are in place to encourage good design outcomes as change occurs.

2.3 Ministerial Directions and Practice Notes

Ministerial Directions

The Amendment is consistent with the following Ministerial Directions:

- The form and content of planning schemes
- Ministerial Direction No. 11 Strategic Assessment of Amendments

- Ministerial Direction No. 15 The Planning Scheme Amendment Process.

Planning Practice Note 58 - *Structure Planning for Activity Centres (2018)*

The Practice Note advises that structure planning should provide opportunities for further retail, entertainment, office and other commercial and business services in accordance with activity centre policy in the Victoria Planning Provisions. It refers to consideration of sufficient commercial land over a 15 to 20-year time frame and then into the 30-year horizon.

2.4 Discussion

The overall need for an updated Structure Plan for Mirboo North and the proposed DDO changes were not challenged by submitters and those aspects of the Amendment seem well justified and should proceed. Council has conducted an extensive consultation program with the community and the fact that no submissions have been received about issues other than those listed above indicates a high level of acceptance of the revised Mirboo North Structure Plan.

In particular, the Panel notes that there were no submissions in relation to the proposed changes to residential areas within the Framework Plan contained within the Structure Plan. The Panel has therefore not reviewed the proposed changes.

One small comment that the Panel would like to take the opportunity to comment on is the legibility of the Framework Plan itself. The Panel found it hard to read. In particular, the use of five different shades of grey to show existing land use was hard to read. The plan may not reproduce well in black and white. The Panel recommends that the presentation of the plan be reviewed prior to adoption of the Amendment.

The question of whether the proposed rezoning component of the Amendment is justified was a key issue raised in submissions. The need to adequately provide for sufficient commercially zoned land as required in state and local planning policy (as set out above) was not questioned. Whether the work done by Council adequately demonstrates the need to rezone land to achieve this outcome was, however, challenged and this is discussed in the following Chapter.

2.5 Recommendation

The Panel recommends:

- 3. Review the presentation of the Mirboo North Framework Plan to improve its legibility.**

3 Proposed rezoning

3.1 The issues

Issues raised in submissions relating to proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone included:

- Commercial development should be confined to the main street
- Rezoning is unfair to existing landowners as the land will become ‘sterilised’
- The *Mirboo North Structure Plan Economic Inputs (2016)* Report does not sufficient justification for additional commercial land
- Development of the land proposed to be rezoned would commercially impact on existing businesses in the main street.

3.2 Submissions

(i) Council

Council submitted that the justification for the proposed rezoning is provided in the *Mirboo North Structure Plan Economic Inputs (2016)* Report prepared by Tim Nott.

Council noted that the report (at pages 20 to 21) recommends that in order to preserve growth options for commercial activities in Mirboo North for the medium and long term to:

Rezone at least the most easterly two lots of the Mixed Use Zone on Burchell Lane to Commercial 1 or 2 in order to enable future expansion of the town centre. This zoning will prevent further residential development that would stymie expansion (particularly if a larger supermarket becomes viable).

Council did not call Mr Nott to give evidence at the Hearing but did rely heavily on his report to provide support for the rezoning. In its Hearing submission, Council stepped through the method used by Mr Nott’s to calculate retail demand and supply in Mirboo North.

In summary, Mr Nott’s demand analysis determined that *“if current trends continue, Mirboo North will require an additional 750 square metres of retail floor space over the next 20 years”*¹. He added that this included an additional 200 square metres of food, groceries and liquor and that *“the additional food and grocery space could be provided as an extension to the existing supermarket”*².

Mr Nott noted potential variables in this forecast including the impact of on-line shopping and the unknown impact of increased tourism activity. He concluded that: *“Nevertheless, I expect the forecast is of the right order of magnitude given the relatively modest population growth forecast in the trade area.”*³

¹ *Mirboo North Structure Plan Economic Inputs Report 2016 – p17*

² *Ibid – p18*

³ *Ibid – p18*

Mr Nott then stated⁴:

In order to provide a margin for error, in the remaining calculations I have assumed that the retail space will grow by 1,500 square metres (or twice the amount anticipated in the forecast) over the period to 2036.

In response to the Panel's request, Council provided some clarification for this at the Hearing, advising the Panel that Mr Nott had explained that smaller areas require a larger margin of error.

The report reviews the need to other non-residential floorspace that might be required in the town centre, concluding that 2,400 square metres of 'traditional town centre activities' would be required in the 20-year timeframe. This excluded manufacturing and industrial activities, which he assumed would be located on industrial land.

Mr Nott noted that there was currently around 900 square metres of vacant shop space and taking this into account there is a demand for 1500 square metres for town centre activities. He notes that: *"In addition to the building area, space will be required for the resulting car-parking."*⁵ Allowing for this, he concluded that a total of 3,100 square metres is needed in the town centre.

Mr Nott's report then reviewed the following options for accommodating growth:

- Occupation of existing vacant space
- Development of vacant land or existing housing in the centre
- Redevelopment of existing commercial buildings to generate a net increase in floorspace
- Displacement of activities that do not require a shopfront in the commercial centre
- Reducing the requirement for additional car-parking for new developments
- Encouraging double storey development to provide room for non-retail activities to locate above shops.

Mr Nott identified two sites totalling 2,764 square metres in the existing town centre (on the Ridgway) and in addition noted opportunities to extend the supermarket on the existing site and to intensify development on existing under-utilised blocks. He concluded: *"This land, along with the vacant shop spaces may well be enough to accommodate demand over the forecast period."*

He then added:

However, in order preserve growth options for the medium and long term, the following actions are recommended:

1. Rezone at least the most easterly two lots of the Mixed Use Zone on Burchell Lane to Commercial 1 or 2 in order to enable future expansion of the town centre. This zoning will prevent further residential development that would stymie expansion (particularly if a larger supermarket becomes viable).
2. Consider reducing the car-parking requirement for most new developments.

⁴ Ibid – p18

⁵ Ibid – p19

Council submitted that the two larger sites identified by Mr Nott are not expected to be able to accommodate the expansion of the existing supermarket (with car parking) or provide additional space for a larger replacement supermarket to be constructed.

Council agreed with Mr Notts recommendation that to preserve growth options in the medium and long term, 4-6 Peters Street and 39-41 Giles Street should be rezoned to Commercial 1. Council noted that 4-6 Peters Street is 4,958 square metres and 39-41 Giles Street is 2,833 square metres, providing at total of 7,791 square metres.

Council noted that the *Mirboo North Structure Plan Economic Inputs (2016)* report focused on a 20-year time period from 2016 to 2036. Council submitted that the report's recommendations could be considered understated when considering a 20-year or 30-year time period from 2019.

Council further submitted:

- Rezoning this land provides large vacant land for commercial development adjacent to the main street, Ridgway.
- It is noted that some of the land (the southern lot of 4-6 Peters Street) is constrained by vegetation and an existing dwelling.
- It is considered prudent to include more than one large property in the proposed rezoning to ensure that commercial expansion, particularly of the supermarket site, is not restricted by a single landowner.
- The entire extent of 4-6 Peters Street and 39-41 Giles Street have been included for rezoning, including the lot with the dwelling and vegetation, to provide a logical unit and avoid the need for subdivision.

(ii) Submissions opposing the rezoning

Three submissions opposed the rezoning of 4-6 Peters Street and 39-41 Giles Street.

The owner of 4-6 Peters Street (Submission 1) objected on the basis that she plans to build a dependent persons unit on the site. Council advised the Panel that following discussions with the landowner, she is now satisfied that her plans will not be affected by the Amendment.

The owner of 72-74 Ridgway (Submission 3) objected on the basis that it would create the opportunity for a second supermarket in the town, in direct competition to the existing supermarket. He submitted that the need for additional supermarket space was not justified.

Phil Walton represented Mr Koolstra, owner of 39-41 Giles Street (Submission 2) at the Hearing. Mr Walton explained that Mr Koolstra has lodged a planning application to subdivide his land for residential development.

Mr Walton's submission is summarised as follows:

- The site has a slope of approximately 15.5 percent, making it unsuitable for commercial use or car parking.
- The character of the site and the area surrounding it is residential.
- The site is outside the township boundary and its use for commercial purposes would be contrary to the Mirboo North Framework Plan (Clause 21.15-3) which

includes a note to “*retain compact commercial centre*”. Planning should be directed towards consolidating development along the Ridgway to strengthen the town centre. There are vacant and underutilised sites which could be developed to meet demand and consolidate the town centre.

- The *Mirboo North Structure Plan Refresh 2017* refers to ‘further investigation’ of the proposed rezoning, and there is no evidence of any further investigation. No investigation has been done on either in terms of its suitability nor its ability to be effectively connected into the town centre along the Ridgway. The slope of the land (15.5%) poses a significant constraint to commercial development, particularly a building with a large footprint such as a supermarket.
- Rezoning of the land would effectively sterilise the use of the land in the medium to long term, preventing residential development and requiring it to be held until commercial development become viable. This is not a fair nor equitable outcome.
- The report of Mr Nott does not provide justification for the rezoning. Mr Walton’s submissions in relation to Mr Nott’s report are detailed below.

Mr Walton raised the following key points in relation to Mr Nott’s report:

- The forecast additional 750 square metres of retail floorspace (including 200 square metres of food, groceries and liquor) can, by Mr Nott’s own assessment, readily be accommodated within the existing Commercial 1 Zone in Mirboo North, including expansion of the existing supermarket. It does not justify the rezoning of 7,791 square metres of land.
- Even with the assumption of doubling the forecast retail floorspace demand, the growth can be readily accommodated within the existing Commercial 1 Zone.
- Table 12 sets out the demand for floorspace, carparking and the total land requirement. It concludes that there is demand for 3,100 square metres of land in the town centre. The rezoning of 7,791 square metres of land is well in excess of this requirement, particularly given this requirement can be accommodated within the existing Town Centre.
- The options developed by Mr Nott for accommodating future growth were agreed, and Figure 9 in Mr Nott’s report shows potential locations for growth. Figure 9 shows there is capacity within the existing Commercial 1 Zone to accommodate the growth forecast, particularly vacant sites, room to expand on the existing supermarket site and underutilised sites.
- Figure 9 is flawed in that there is no analysis of the potential for growth in the Commercial 1 Zone east of Peters Street. There are also vacant or underutilised sites east of Peters Street which could accommodate growth.
- Mr Nott’s conclusion that “*For the most part, the town centre appears to have clear options for expansion, including two vacant sites in good positions on the main street (Ridgway) totalling 2,764 square metres. This land, along with the vacant shop spaces may well be enough to accommodate demand over the forecast period*” indicates no urgent need to find more space at present or over the forecast period.
- Given this conclusions, Mr Nott’s recommendation to rezone 7,791 square metres is a “*quantum leap*” that is not justified.

Mr Walton submitted that the proposed rezoning is not justified, and planning should be directed towards consolidating development along the Ridgway to strengthen the town centre.

3.3 Discussion

The need to provide for sufficient commercially zoned land is well documented in the planning scheme. Chapter 2 of this report sets out a number of references to clear policy directions in the state and local section of the PPF that compel planning authorities to ensure the longer-term viability of commercial centres by planning for future growth. The need to do that planning is not at issue and has not been challenged by any submitters.

What is at issue is whether the work that has been done to support this particular rezoning is sufficient to justify what is proposed.

The Panel has some difficulties with a number of aspects of the strategic work that has been relied upon by Council.

Firstly, there is a lack of clarity about what was intended in the *Mirboo North Structure Plan Refresh 2017* by 'further investigation' of the subject land for rezoning. Given that the Plan post-dated Mr Nott's report it seems to suggest a further investigation would be done beyond that. The Panel agrees with Mr Walton that there is no evidence that this has been done. This is a shortcoming in that, as Mr Walton submitted, the suitability of the site for its intended purpose and the ability for it to be properly connected to the existing town centre have not been assessed. This is particularly concerning in view of the steep slope (15.5%) of the site and the challenges that this would likely create for its development as either a carpark or a supermarket. When questioned on this Council suggested that the note in the Plan referring to 'investigate' referred only to the residential land. The Panel does not accept this explanation and, in any case does not accept that sufficient assessment has been done on the suitability of the subject site for its intended use. Mr Nott, although according to Council being aware of the slope of the site, does not address the sites suitability or how it might be effectively connected to the existing town centre.

The Panel agrees with Mr Walton that use for commercial purposes could be argued to be contrary to the *Mirboo North Framework Plan* (Clause 21.15-3) which includes the note to "*retain compact commercial centre*", although this is not a strong point as the site is immediately adjacent to the existing town centre.

The Panel has a number of concerns about the analysis and conclusions reached in the *Mirboo North Structure Plan – Economic Inputs (2016)* report and makes the following comments:

- The analysis of retail floorspace demand seems sound and has been estimated using a methodology frequently used in other similar scenarios. The conclusion that an additional 750 square metres of retail space will be required over the next 20 years is accepted.
- The very conservative doubling of the demand estimate to 1,500 square metres has not been adequately explained. Mr Nott noted the uncertainty relating to other factors such as the impact of online shopping or increased tourism yet still concluded that his forecast of 750 square metres was "*of the right order of*

magnitude given the relatively modest population growth forecast in the trade area". No explanation for the doubling of the demand forecast is provided apart from the advice that Mr Nott gave to Council that *"smaller areas require a larger margin of error"*. The Panel is not convinced that the forecast of 1,500 square metres is justified nor an appropriate basis for the rest of the analysis.

- Mr Nott concludes (at page 18) that the 200 square metres of forecast additional food, groceries and liquor floorspace could be provided as an extension to the existing supermarket. The Panel's own site inspection confirmed that the site is currently underutilised, with unused space to the rear of the site that could likely be used for future extension. Given this, it is not clear to the Panel why Mr Nott refers the need to rezone additional commercial land *"particularly if a larger supermarket becomes viable"*. There is no discussion in Mr Nott's report about the possibility of a larger supermarket. Council referred several times in submissions to requiring the subject site for a future second or larger supermarket. Given that Mr Nott did not look at this option or suggest it might be required, the Panel believes that there is no justification for such a conclusion.
- Mr Nott has properly identified several options for accommodating growth in retail space and other town centre activities, including car parking. He identified two substantial sites for future growth that, despite potential contamination issues appear suitable. He also identifies existing vacant shops suitable for taking up some future demand.
- Mr Nott's analysis identifies that there is scope for redevelopment of existing underutilised lots but does not quantify what contribution these sites could bring. The Panel believes that these sites could potentially add significant floorspace and parking supply. From the Panel's observations, the rear of many of the lots could easily be utilised for car parking in a similar manner to numerous strip shopping centres in suburban centres and rural towns.
- The Panel notes that no assessment of car parking has been done to justify whether there is a need to provide on-site parking for future commercial development. The contribution of on-street and public off-street parking has not been assessed. Given that one of the potential uses for the subject site is car parking, the lack of a car parking assessment is an oversight.
- As noted by Mr Walton, Mr Nott's analysis does not consider opportunities to redevelop sites in Ridgway to the east of Peters Street. This also contributes to an underestimation of potential supply.
- Even if Mr Nott's higher demand forecast is accepted, it still seems highly likely that the demand can be met within the existing commercially zoned town centre. Mr Nott makes the comment on page 20 of his report that *"... (the available land) ... may well be enough to accommodate demand over the forecast period"*. The Panel believes that if the potential floorspace and car parking supply from existing underutilised lots, including those east of Peters Street, is considered it is likely that future demand will be easily met within the existing town centre well beyond 20 years.

In summary, the Panel is of the view that the demand analysis is over-estimated, and the supply opportunities have been significantly underestimated, resulting in a flawed conclusion that additional commercially zoned land is required.

One submitter raised an issue about the potential for any new supermarket on the subject site to create competition for existing businesses. Council responded that this is not a valid planning consideration. While Council is correct, the impact of any development outside the town centre on the viability of the existing centre is an issue that should be considered. Any more detailed consideration of the subject site for commercial use should consider the nature of that use, how it might connect to the existing town centre and whether it would complement the overall viability of the centre.

Finally, the Panel agrees that rezoning of the subject land would effectively sterilise the use of the land in the medium to long term, preventing residential development and requiring it to be held until commercial development becomes viable. The Panel agrees that this is not a fair nor equitable outcome for the current owner.

3.4 Conclusions

The Panel makes the following conclusions in relation to the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone:

- The suitability of the site for its intended purpose and the ability for it to be properly connected to the existing town centre have not been adequately assessed.
- The demand analysis in the *Mirboo North Structure Plan – Economic Inputs (2016)* report over-estimates future demand for retail floorspace. Retail floorspace and car parking supply opportunities have been significantly underestimated in the same report, resulting in a flawed conclusion that additional commercially zoned land is required.
- Rezoning of the land would effectively sterilise the use of the land in the medium to long term, and that this is not a fair nor equitable outcome for the current owner.

3.5 Recommendations

The Panel makes the following recommendations in relation to the proposed rezoning:

- 4. Abandon the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North to the Commercial 1 Zone.**
- 5. Delete any references to the proposed rezoning of 4-6 Peters Street and 39-41 Giles Street, Mirboo North in:**
 - **Clause 21.15-3 (Mirboo North);**
 - **the reference document Mirboo North Structure Plan Refresh (2017);**
and
 - **the proposed Schedule 13 to the Design and Development Overlay.**

Appendix A Submitters to the Amendment

No.	Submitter
1	Kristen Vallay
2	Philip Walton on behalf of B Koolstra
3	Jak Borensztajn
4	Department of Transport
5	West Gippsland Catchment Management Authority
6	Environment Protection Authority Victoria
7	Telstra
8	Country Fire Authority
