

**Greater Bendigo Planning Scheme Amendment C274gben
Heathcote Township Plan**

Panel Report

Planning and Environment Act 1987

15 July 2024

How will this report be used?

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

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

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

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

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

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

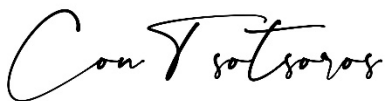
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Greater Bendigo Planning Scheme Amendment C274gben

Heathcote Township Plan

15 July 2024



Con Tsotsoros, Chair

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Glossary and abbreviations

Council	Greater Bendigo City Council
Heathcote Township Plan	Heathcote Township Plan (City of Greater Bendigo, July 2019)
PCRZ	Public Conservation and Resource Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Greater Bendigo Planning Scheme
PPRZ	Public Park and Recreation Zone
SUZ	Special Use Zone
Town centre	Heathcote Town Centre

Overview

Amendment summary

The Amendment	Greater Bendigo Planning Scheme Amendment C274gben
Common name	Heathcote Township Plan
Brief description	Seeks to implement the Heathcote Township Plan (City of Greater Bendigo, July 2019)
Subject land	All land in the Heathcote township
Planning Authority	Greater Bendigo City Council
Authorisation	27 October 2023, with conditions shown in Chapter 1.1(ii)
Exhibition	15 February to 18 March 2024
Submissions	<ol style="list-style-type: none"> 1. Owner of 2-24 Back Kyneton Road, Heathcote 2. North Central Catchment Management Authority (support) 3. Owner of 31 Ayres Street, Argyle 4. Middleton Motors Pty Ltd 5. Owner of 208 High Street, Heathcote 6. Department of Energy, Environment and Climate Action (support) 7. Environment Protection Authority (Victoria) (support)

Panel process

The Panel	Con Tsotsoros
Directions Hearing	By online video, 21 May 2024
Panel Hearing	By online video, 26 June 2024
Site inspections	The Panel did not inspect any property
Parties to the Hearing	<p>Greater Bendigo City Council represented by Andrew Cockerall, Senior Strategic Planner</p> <p>Middleton Motors Pty Ltd represented by Raph Krelle of Centrum Town Planning</p>
Citation	Greater Bendigo PSA C274gben [2024] PPV
Date of this report	15 July 2024

Executive summary

Greater Bendigo Planning Scheme Amendment C274gben (the Amendment) affects land in Heathcote and seeks to implement the Heathcote Township Plan (City of Greater Bendigo, July 2019). It does this by revising the Greater Bendigo Planning Scheme to:

- introduce new local strategies into the Planning Policy Framework
- rezone land in the Heathcote township, delete a redundant overlay, apply a new overlay, or amend the extent of an existing overlay.

The Amendment was exhibited from 15 February to 18 March 2024 and received seven submissions, three of which supported the Amendment. Key issues raised in submissions included content the Heathcote Township Plan, zoning for 9-11 High Street, the Heritage Overlay at 208 High Street, and environmental issues. The Panel considered all submissions and information provided at the Hearing before reaching its conclusions.

Heathcote Township Plan

The Heathcote Township Plan should not define out-of-centre retail uses, and any future permit application to use the Commercial 2 Zone land should be considered on its own merit. The Panel has no issue with the Heathcote Township Plan being revised to:

- include a statement on page 40 to the effect:
There may be a need to allow for the rezoning of land to a commercial zone to facilitate the expansion of existing businesses, subject to consideration of access, interfaces, urban design and presentation.
- include a new item 16 in the action table on page 60 as follows:
Consider the rezoning of 13 High Street, Heathcote to a commercial zone to facilitate the redevelopment of adjoining land, subject to consideration of access, interfaces, urban design and presentation.
Lead responsibility: Planning Scheme Amendment led by the City of Greater Bendigo or Landowner.

The Panel does not make a recommendation regarding the Heathcote Township Plan because its content does not form part of the Amendment.

Other issues

Heritage Overlay (HO723) should remain on 208 High Street because there is no strategic reason to remove it. It is appropriate and justified to:

- rezone 9-11 High Street, Heathcote from the Commercial 1 Zone to the Commercial 2 Zone
- apply the Environmental Audit Overlay to 2-24 Back Kyneton Road.

The Amendment has appropriately considered environmental issues.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Bendigo Planning Scheme Amendment C274gben be adopted as exhibited.

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment seeks to implement the Heathcote Township Plan (City of Greater Bendigo, July 2019) by revising the Greater Bendigo Planning Scheme (Planning Scheme) to:

- introduce new local strategies into the Planning Policy Framework
- rezone land in the Heathcote township and delete an overlay no longer required
- apply a new overlay or to amend the extent of an existing overlay.

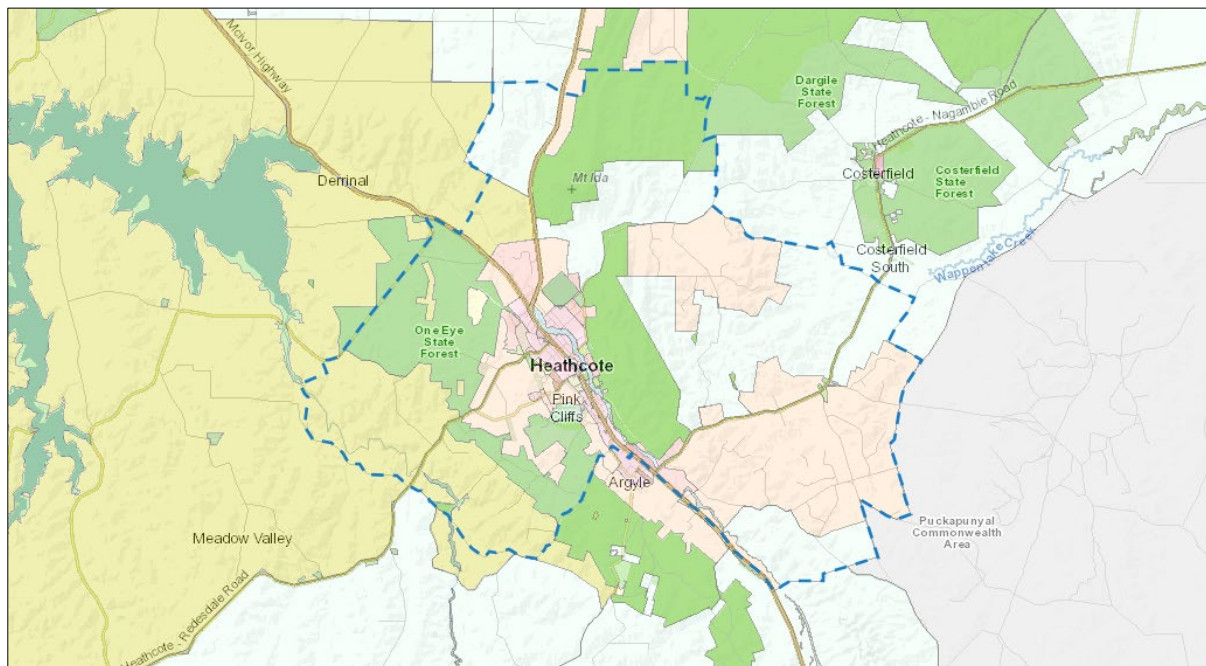
Specifically the Amendment proposes changes shown in Table 1.

Table 1 Amendment proposal details

What is affected?	What is proposed?	
Land	Rezone from	Rezone to
3 Barrack Street and part of the Barrack Street road reserve	Special Use Zone Schedule 8	Special Use Zone Schedule 6
Crown Allotment 9B, Section 44, Township of Heathcote, Buglers Lane	General Residential Zone	Public Park and Recreation Zone (PPRZ)
40 Caldwell Street	Public Use Zone	Special Use Zone Schedule 8
Crown Allotment 2E and 2G, Section 4B, Township of Heathcote, Golden Gully Road	PPRZ	Public Conservation and Resource Zone (PCRZ)
Crown Allotment 8B, Section 7A, Township of Heathcote, Hanson Street	Rural Living Zone	PCRZ
Crown Allotment 7A, Section 42A, Township of Heathcote, Hassells Lane	General Residential Zone	PPRZ
Crown Allotment 8E, Section 4B, Township of Heathcote, Hay Street	Rural Living Zone	PPRZ
Crown Allotment 5A Section 4B, Township of Heathcote, Hassells Lane	part Rural Living Zone, part PPRZ	PCRZ
Crown Allotment 28B and 28C, Section 38, Township of Heathcote, Heathcote-North Costerfield Road	Low Density Residential Zone and PPRZ	PCRZ
32 Heathcote-North Costerfield Road	General Residential Zone	PCRZ
- 1/7, 2/7 and 35-39 and part of 5-7 High Street - part of the Last Street and Hospital Street road reserves	Commercial 1 Zone	Neighbourhood Residential Zone Schedule 3
9-11 and 33 High Street and part of the road reserves of Fassio Street and Hospital Street	Commercial 1 Zone	Commercial 2 Zone
51A and 53 High Street, Heathcote and 54 and 56 Hospital Street, Heathcote and part of the Hospital Street road reserve 21, 23, 25, 27 and 29 Wright Street and part of the Wright Street road reserve and the unmade government road reserve	Commercial 1 Zone	Neighbourhood Residential Zone Schedule 2

What is affected?		What is proposed?	
21 Hunter Place and part of the road reserves of Baynton Street, Boomerang Place, Hunter Street and McIvor Street		Commercial 2 Zone	Neighbourhood Residential Zone Schedule 2
Crown Allotment 47J, Township of Heathcote, Jacksons Lane, Argyle; Crown Allotment 18, Section 49, Township of Heathcote, Matthews Road, Argyle; and 3 Spring Flat Road		General Residential Zone	PPRZ
21 Pink Cliffs Road		Commercial 2 Zone	PCRZ
41 Pink Cliffs Road		PPRZ	PCRZ
Crown Allotment 8C and 8F, Section 4B, Township of Heathcote, Pink Cliffs Road; and Crown Allotment 8A, Section 28, Scotts Crescent		Rural Living Zone	PPRZ
18 Pohlman Street		General Residential Zone	Special Use Zone Schedule 1
Land		Apply	
2-24 Back Kyneton Road		Environmental Audit Overlay	
Many identified properties throughout Heathcote		Design and Development Overlay Schedule 6	
Land		Delete	
part of 18 Pohlman Street		Heritage Overlay (HO778)	
Many identified properties throughout Heathcote		Neighbourhood Character Overlay Schedule 1	
Planning policy	Insert		
Clause 11.01-1L-01	Encourage new development in Heathcote to locate in accordance with the Heathcote strategic framework plan at Clause 11.01-1L-01.		
Clause 12.01-1L	Encourage the environmental restoration of the McIvor Creek		
Clause 17.03-1L	Support the longer-term industrial development of land at 2-24 Back Kyneton Road, Heathcote subject to an environmental audit being undertaken		
Clause 17.04-1L	Encourage tourism uses associated with the Heathcote Golf Course		
Clause 19.02-6L-01	Create high quality and well connected public spaces and improve connections to paths along waterways and connecting to the O'Keefe Trail		

The Amendment applies to land in the Heathcote township shown in Figure 1.

Figure 1 Subject land

Source: mapshare.vic.gov.au/vicplan

(ii) Authorisation

The Department of Transport and Planning, under delegation from the Minister for Planning, authorised the Amendment subject to the following conditions:

1. That the land be rezoned to Neighbourhood Residential Zone instead of the General Residential Zone consistent with Planning Practice Note 91 Using the residential zones.
2. That the proposed local planning policy at Clause 11.03-6L-04 for Heathcote is redistributed to the relevant clauses of the PPF including Clauses 11.01-1L-01, 11.03-1L, 12.03-1S, 16.01-5S, 17.03-1L, 17.04-1L, 18.02-4S and 19.02-6L-01.
3. That the proposed Heathcote local area plan is updated to a strategic framework plan and included in Clause 11.01-1L-01 of the PPF.
4. That the strategy relating to a zero setback for new buildings in the town centre be deleted.
5. That the Schedule 8 to Clause 37.01 (SUZ8-Showgrounds) is updated to insert the Heathcote Showgrounds.
6. That the draft explanatory report be amended to:
 - a) Be consistent with the department's revised explanatory report template.
 - b) Revise the land descriptions and zoning changes to ensure that each one is accurate under 'What the amendment does.' Please see the tracked changes in the draft explanatory report.
 - c) Delete references to the introduction of a local places clause for Heathcote and a local area plan.
 - d) Include the Heathcote Strategic Framework Plan and an explanation of its purpose.
 - e) Explain that the proposed local planning policies for Heathcote will be included in the PPF at Clauses 11, 12, 16, 17, 18 and 19 of the Greater Bendigo Planning Scheme.
 - f) Replace the term 'transitional residential' with 'incremental residential', and 'conventional residential' with 'minimal change residential.'
 - g) Explain that the purpose of the Design and Development Overlay, Schedule 6 is to protect the urban-forest interface and not to apply a bushfire management buffer.

- h) Acknowledge that Heathcote is in a high bushfire risk location given the town is surrounded by forested public land and is susceptible to bushfire risk from multiple directions and clarify whether the reference to low-risk rating equates to a low-risk location as per Clause 13.02-1S (Bushfire planning).
 - i) Clarify whether there is safe access to the Heathcote Neighbourhood Safer Place (Place of Last Resort) from the areas that are proposed to be rezoned to residential.
 - j) Acknowledge the CFA's advice on limiting increased vegetation in the township and explain how the proposed local policy to revegetate waterways including McIvor Creek responds to the bushfire risk of Heathcote.
 - k) Update 'How does the amendment support or implement the PPF and any adopted state policy' to include the clauses which will nest the proposed local planning policies for Heathcote.
7. That the zoning maps be reviewed to:
- Delete any proposed PCRZ rezoning of land within government road reservations and that this land be rezoned to a zone consistent with the surrounding land.
 - Insert SUZ1 to half of the road reservations of Ebden, Pohlman and Playne Streets adjoining 18 Pohland Street.
 - Consider whether part of the Wright Street road reservation and land adjoining 21-29 Wright Street to the south-west should also be rezoned to the residential zone.
8. That notice of the amendment be given to the traditional owners of the land affected by the proposed amendment, the Taungurung Land and Waters Council Aboriginal Corporation.

1.2 Background

Background summary

2010	Heritage Overlay (HO723) was applied to land in the Heathcote Precinct through Amendment C139gben
15 Mar 2017	Council endorsed a brief to start the Heathcote Township Plan project
17 Jun 2019	Council resolved to adopt the Heathcote Township Plan and request the Minister for Planning authorise an amendment to implement the Plan
Apr 2022	Council engaged a consultant to peer review the Heathcote Township Plan and Amendment documents
27 Mar 2023	Council resolved to revise the Amendment and request the Minister for Planning authorise the revised Amendment
27 Oct 2023	Minister for Planning authorised the Amendment

1.3 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, and submissions, evidence and other material presented to it during the Hearing. It has reviewed all referred and shared 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.

All land referred to in this report is in Heathcote.

This Report deals with the issues under the following headings:

- Strategic issues
- Issues
 - Heathcote Township Plan
 - 9-11 High Street
 - 208 High Street
 - 2-24 Back Kyneton Road
 - Other environmental issues.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clauses 02.03-1 (Settlement), 02.03-3 (Environmental risks and amenity), 02.03-5 (Built environment and heritage), 02.03-6 (Housing), 02.03-7 (Economic development) and 02.03-8 (Transport)
Planning Policy Framework	<ul style="list-style-type: none"> - Clause 11.01-1L-01 (Settlement - Greater Bendigo) - Clause 12.01-1L (Protection of biodiversity – Greater Bendigo) - Clause 13.02-1S (Bushfire planning) - Clause 13.04-1S (Contaminated and potentially contaminated land) - Clause 15.03-1S (Heritage conservation) - Clauses 17.03-1S (Industrial Land Supply), 17.03-1L (Industrial land supply – Greater Bendigo) and Clause 17.04-1L (Tourism – Greater Bendigo) - Clause 18.02-1S (Walking) - Clauses 19.02-1S (Health facilities) and 19.02-6L-01 (Open space and public land – Greater Bendigo)
Planning scheme provisions	<ul style="list-style-type: none"> - Commercial 1 Zone - Commercial 2 Zone - Neighbourhood Residential Zone - Public Conservation and Resource Zone - Public Park and Recreation Zone - Special Use Zone - Environmental Audit Overlay - Design and Development Overlay
Ministerial directions	<ul style="list-style-type: none"> - Direction 1 (potentially contaminated land) - Direction 11 (strategic assessment of amendments) - Direction 15 (the planning scheme process) - Direction 19 (the preparation and content of amendments that may significantly impact the environment, amenity and human health) - Direction (the form and content of planning schemes) – referred to in this report as Ministerial Direction 7(5)
Planning practice notes	<ul style="list-style-type: none"> - Planning Practice Note 1 (Applying the Heritage Overlay) - Planning Practice Note 46 (Strategic Assessment Guidelines) - Planning Practice Note 91 (Using the residential zones)

Relevant references	
Relevant amendments	Amendment: <ul style="list-style-type: none"> - C243gben – Heathcote Flood Study 2016 - C247gben – Greater Bendigo Planning Scheme Review 2019 - C285gben – zone and overlay anomaly corrections

2.2 Strategic justification

Consistent with the Explanatory Report, Council submitted the Amendment was strategically justified because, among other reasons, it met and implemented key planning policy objectives (see Table 2).

No submission requested the Amendment should be abandoned because it had insufficient strategic justification.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified, particularly by the Heathcote Township Plan and associated work
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Issues

3.1 Heathcote Township Plan

(i) The issue

The issue is whether it is appropriate for the Heathcote Township Plan to consider 13 High Street for a future commercial zone and define 'out-of-centre' uses.

(ii) Submissions

Middleton Motors Pty Ltd owns 9-11 and 13 High Street and submitted it sought *"support for the rezoning of 13 High Street to facilitate the future redevelopment"*. A further section in the submission acknowledges the rezoning could not be done through the Amendment but sought changes to the Heathcote Township Plan.

It also requested the Heathcote Township Plan be revised to define 'out-of-centre' uses that would support redevelopment at 9-11 and 13 High Street.

At the Hearing, Middleton Motors reaffirmed that 13 High Street could not be rezoned through the Amendment but sought Council's support to revise the Heathcote Township Plan to recognise redevelopment of the amalgamated site (9-11 and 13 High Street). It referred to its letter to Council which confirmed its willingness to withdraw this part of its submission if the Heathcote Township Plan¹:

- included a statement on page 40 to the effect:
There may be a need to allow for the rezoning of land to a commercial zone to facilitate the expansion of existing businesses, subject to consideration of access, interfaces, urban design and presentation.
- insert in the action table on page 60 and new item 16:
Consider the rezoning of land at 13 High Street, Heathcote, to a Commercial zone to facilitate the redevelopment of adjoining land, subject to consideration of access, interfaces, urban design and presentation.
Lead responsibility: Planning Scheme Amendment led by the City of Greater Bendigo or landowner.

Council officers supported these changes in principle.

Council did not support the Heathcote Township Plan defining 'out-of-centre' uses. It explained:

- the core retail uses enabled by the Commercial 1 Zone without a permit are precisely what should be located in the town centre
- the Commercial 2 Zone allows a range of retail uses subject to planning approval so discretion can be exercised whether the use is appropriate
- it is premature and difficult to forecast what future uses may be appropriate for 13 High Street.

Council considered Clause 17.02-2S (out-of-centre development) provides useful direction in its first strategy:

¹ Document 5 d)

Discourage proposals for expansion of single use retail, commercial and recreational facilities outside activities centres.

(iii) Discussion

The Panel agrees with Council that the Heathcote Township Plan should not define out-of-centre retail uses. State policy at Clause 17.02-1S discourages proposals to expand single use retail and commercial uses outside an activity centre. The Commercial 2 Zone, as proposed on land outside the town centre, includes planning provisions which will help to consider each permit application proposing retail and commercial uses on their merit.

The Heathcote Township Plan is not proposed to be incorporated into the Planning Scheme so any definition would have no statutory force.

The Panel has placed notable weight on Council officer support (in principle) for acknowledging in the Heathcote Township Plan that 13 High Street may be considered to be rezoned to a commercial zone. The Panel has no issue with the changes proposed to the Heathcote Township Plan and makes no further comment or recommendation because:

- any view regarding the future zone of 13 High Street is outside the scope of the Amendment
- the Heathcote Township Plan is not proposed to be incorporated into the Planning Scheme, so it does not form part of the Amendment.

(iv) Conclusion

The Panel concludes:

- The Heathcote Township Plan should not define out-of-centre retail uses, and any future permit application to use the Commercial 2 Zone land should be considered on its own merit.
- There is no issue with the Heathcote Township Plan being revised to:
 - include a statement on page 40 to the effect:

There may be a need to allow for the rezoning of land to a commercial zone to facilitate the expansion of existing businesses, subject to consideration of access, interfaces, urban design and presentation.

- include a new item 16 in the action table on page 60 as follows:

Consider the rezoning of 13 High Street, Heathcote to a commercial zone to facilitate the redevelopment of adjoining land, subject to consideration of access, interfaces, urban design and presentation.

Lead responsibility: Planning Scheme Amendment led by the City of Greater Bendigo or Landowner.

3.2 9-11 High Street

(i) The issue

The issue is whether it is appropriate and justified to rezone 9-11 High Street from Commercial 1 Zone to Commercial 2.

(ii) Submissions

Middleton Motors objected to 9-11 High Street being rezoned from Commercial 1 to Commercial 2.

Middleton Motors explained its car dealership:

- is the only one in Heathcote and within about 50 kilometres of the town centre
- is successful because of its location near the township's entrance
- would need to demolish the existing dwelling at 13 High Street to expand and redevelop because the business is growing
- intends to prepare redevelopment plans and submit a planning permit application as soon as possible.

Middleton Motors considered the rezoning of 9-11 High Street was not appropriately justified because:

- commercial development in the town has always relied on exposure to High Street, outside the town centre
- the local economy supports many larger format, highway-focused businesses, that require land outside the town centre
- there are few, if any, sites suitable for larger format retail uses in the Town Centre, due to heritage, property size and other constraints
- Council has not properly analysed the needs of larger format uses or whether these could be accommodated in the town centre
- reasonable flexibility is likely to be important for existing large commercial sites to capture future opportunities for retaining businesses and jobs.

Middleton Motors requested that 9-11 High Street remain in the Commercial 1 Zone because the zone:

- enables Middleton Motors to use the land for car sales without a permit, unlike the Commercial 2 Zone
- provides a more appropriate land use framework, given the land's strategic location
- offers a more flexible planning framework, given the need to attract a broad range of business opportunities in small town economies.

At the Hearing, Middleton Motors provided an attachment to its submission that compared land uses between the Commercial 1 and 2 Zones. It showed that car sales and motor vehicle, boat or caravan sales, among many other retail premises including certain shops and a supermarket up to 1,800 square metres would be permitted in the Commercial 2 Zone.

In response to questions from the Panel, Middleton Motors:

- acknowledged the Commercial 2 Zone would permit it to redevelop and expand its existing operations
- advised it sought the Commercial 1 Zone to achieve the greatest extent of flexibility
- submitted the Commercial 1 Zone would allow residential development in case it decided to stop operating its car sales business.

Council submitted that it had sufficient Commercial 1 Zone land in the existing town centre to accommodate future commercial growth. It explained its methodology for reaching this conclusion was based on:

- the *Australia in the Global Shopping Centre Industry* (Baker Consulting, 2018) report refers to a figure of 2.3 square metres for each person, noting the Heathcote Town Plan refers to the 'rule of thumb' of 2.2 square metres for each person
- the Heathcote and district population forecast to increase from 4,242 in 2021 to 4,372 by 2036, representing 130 more people over 15 years

- requiring 300 square metres of retail floorspace when multiplying 130 people by 2.3 square metres.

Council submitted there were 5,500 square metres of vacant or underdeveloped sites in the town centre to satisfy demand for 300 square metres. There was no demand for more supply in the foreseeable future.

Middleton Motors attached an analysis of vacant sites to its Hearing submission that identifies five vacant sites in the town centre with a total area of 8,531 square metres:²

- 94-96 High Street: 5,936 square metres
- 172 High Street: 1,048 square metres
- 150 High Street: 803 square metres
- 153A High Street: 440 square metres
- 160 High Street: 304 square metres.

It noted its analysis excluded Commercial 1 Zone land proposed to be rezoned to Neighbourhood Residential.

Council supported 9-11 High Street being rezoned to Commercial 2 and submitted:

- the Heathcote Township Plan seeks to locate core retail types in the town centre and *"discourage out of centre development"*
- the Planning Scheme includes strong strategic support for consolidating commercial activities in activity centres and discouraging out of centre development, including Clause 02.03-7 which seeks to *"Direct commercial growth to Activity Centres"*.
- Clause 17.02-1L includes strategies which seek to:
 - Avoid the encroachment of small scale commercial developments into adjoining residential areas.
 - Avoid the development of supermarkets outside of designated activity centres and in industrial areas.
- retaining the Commercial 1 Zone would allow core retail uses to establish without a permit outside the town centre
- the Heathcote Township Plan recognises the importance of providing for the operation of businesses such as Middleton Motors so recommends the land be rezoned to Commercial 2
- other Commercial 1 Zone land outside the town centre which are vacant or with dwellings are proposed to be rezoned to Neighbourhood Residential.

Council added the combined area of 3,000 square metres (9-11 and 13 High Street) may make it an attractive redevelopment site that would compromise the town centre if it was rezoned to Commercial 1.

Council referred to the Practitioner's Guide which states:

- Commercial 1 Zone – *"This zone is applied in mixed use commercial centres for retail, office, business, residential, entertainment and community uses. It allows a wide range of commercial and accommodation activities without a permit, including a supermarket or shop"*.

² Document 5

- Commercial 2 Zone – *“This zone encourages offices and associated business and commercial services together with appropriate industry and retailing”*.

Council acknowledged the Commercial 2 Zone would require a permit for ‘Car sales’ but considered it appropriate given it is in a largely residential area.

(iii) Discussion

Council provided sound strategic reasons to rezone the subject land to Commercial 2. This includes ensuring that certain specialty retail and other uses are retained in the town centre so it can retain its primacy as Heathcote’s main centre. Allowing the extent of Commercial 1 Zone land sought by Middleton Motors would allow supermarkets and other shops to establish without a permit and without floorspace restrictions within 500 metres (just over 5 minute walk) of the Township.

The Panel is satisfied that Heathcote has enough Commercial 1 Zone land to meet existing and future demand. Council applied a simple yet robust logical methodology to quantify future demand for commercial floorspace.

Council’s figures for existing vacant and underdeveloped commercial floorspace represents:

- over 18 times more floorspace than needed in the next 15 years
- about 275 years of commercial floorspace based on Council’s population growth and floorspace demand forecast.

There would continue to be commercial floorspace oversupply even if a more nuanced economic analysis applied ambitious population and demand figures.

Nonetheless, should there have been a need for more Commercial 1 Zone land in the next 15 years, there is considerable policy support to direct this within an expanded town centre rather than a non-contiguous site outside the centre such as 9-11 High Street.

The Panel does not agree with Middleton Motors that Council should have analysed the needs of larger format uses and whether these could be accommodated in the town centre. Such analysis:

- is not needed to justify rezoning land outside the town centre to Commercial 2
- assumes its intent is to redirect larger format retail uses to these sites.

The purpose of the Commercial 2 Zone is beyond ‘bulky goods retailing’. It also seeks to encourage commercial areas for offices, appropriate manufacturing and industries, retailing, other retail uses, and associated business and commercial services. Rather, the rezoning:

- seeks to ensure that core retail services which support the town centre’s do not concentrate on larger sites outside the centre
- will enable shops including a supermarket of up to 1,800 square metres.

Middleton Motors has operated for more than 15 years on the subject land and has existing use rights to continue operating its business irrespective of the zone. Even so, the Commercial 2 Zone is flexible enough to redevelop and expand the existing car sales business, as sought through Middleton Motors’ original submission. Retaining the Commercial 1 Zone to achieve maximum flexibility cannot be supported because it has no strategic basis. The information presented at the Hearing by Middleton Motors did not provide this basis. Rather, the land use definitions, land use comparison between the Commercial 1 and 2 Zones and the land use nesting diagram reaffirmed the appropriateness of applying the Commercial 2 Zone to 9-11 High Street.

(iv) Conclusion

The Panel concludes it is appropriate and justified to rezone 9-11 High Street, Heathcote from the Commercial 1 Zone to the Commercial 2 Zone.

3.3 208 High Street**(i) The issue**

The issue is whether it is appropriate and justified to remove the Heritage Overlay (HO723) from 208 High Street.

(ii) Submissions

Council advised the Heritage Overlay was applied to 208 High Street through Greater Bendigo Amendment C139 in 2010. There was no public Panel Hearing.

The owner of 208 High Street requested the Heritage Overlay be removed from the property because the house was built after 1960, is categorised 'non-contributory', and therefore had no heritage elements to justify the overlay. The owner sought to concurrently remove Neighbourhood Character Overlay Schedule 1 from his property.

(iii) Discussion

A heritage study has previously found that 208 High Street forms part of a large heritage precinct about 1.75 kilometres wide. The Heritage Overlay recognises all properties in this precinct as pieces of one heritage place. A property either contributes to the precinct because it has elements which contribute to its heritage significance or do not contribute because they have been significantly altered or built during a different era such as the house at 208 High Street. The property at 208 High Street abuts 12 Pohlman Street which has a contributory heritage house and presents its façade to High Street. Any future development on 208 High Street needs to sensitively respond to this abutting heritage fabric.

The Amendment proposes to delete Neighbourhood Character Overlay Schedule 1 from 208 High Street so this is not an unresolved issue for the Panel to consider.

(iv) Conclusion

The Panel concludes the Heritage Overlay (HO723) should remain on 208 High Street because there is no strategic reason to remove it.

3.4 2-24 Back Kyneton Road**(i) The issue**

The issue is whether it is appropriate and justified to apply the Environmental Audit Overlay to 2-24 Back Kyneton Road.

(ii) Submissions

In its submission, Council explained:

- the Amendment proposes to apply the Environmental Audit Overlay to 2-24 Back Kyneton Road which is currently zoned Rural Living

- part of the land was the former Shire of Mclvor landfill until 1987 and owned by the Victorian Government until it was sold in 1999
- the Heathcote Township Plan:
 - identifies the land as being potentially suitable for expanding the Depot Road industrial area
 - recommends the Environmental Audit Overlay be applied to all the land.

The Environment Protection Authority submitted:

- the Environmental Audit Overlay will only trigger the requirements of the audit system, where a sensitive land use is proposed
- Council should consider what provisions are required where an 'other land use' is proposed on potentially contaminated land.

The Authority referred to the Amendment's proposal to include in Clause 17.03-1L (Industrial Land Supply – Greater Bendigo):

Support the longer-term industrial development of land at 2-24 Back Kyneton Road, Heathcote subject to an environmental audit being undertaken.

It stated its views would apply even where land is rezoned to support industrial land uses.

The owner of 2-24 Back Kyneton Road appreciated Council's commitment to environmental safety and requested "*the proposed contamination test be cancelled*" until there were specific plans for the property.

Council did not propose any change to the Amendment in response to the submission. It explained:

- the current planning provisions enable residential use without planning approval so applying the Environmental Audit Overlay would ensure any risks associated with potential contamination are addressed
- it is not aware of an assessment that has demonstrated the land is suitable for sensitive uses
- applying the Environmental Audit Overlay to 2-24 Back Kyneton Road is consistent with Planning Practice Note 30 and Ministerial Direction 1
- the Environment Protection Authority supports the Environmental Audit Overlay being applied to the property.

(iii) Discussion

Strategically, the Heathcote Township Plan identifies 2-24 Back Kyneton Road as a potential industrial site next to the Depot Road precinct. The Plan also recommends the Environmental Audit Overlay be applied to this land. If an industrial zone existed on the land, sensitive land uses would be prohibited so the overlay would not be needed.

However, the land is currently zoned Rural Living which:

- enables permanent sensitive land uses including dwellings
- prohibits industry other than rural industry and an automated collection point.

The assessment matrix in Planning Practice Note 30 advises that the Environmental Audit Overlay should be applied if there is a high potential for contamination. Land previously used as a landfill has this potential.

(iv) Conclusion

The Panel concludes it is appropriate and justified to apply the Environmental Audit Overlay to 2-24 Back Kyneton Road, Heathcote.

3.5 Other environmental issues**(i) The issue**

The issue is whether the Amendment has appropriately considered environmental issues.

(ii) Submissions

The Environment Protection Authority submitted:

- it previously determined that 1/7 and 2/7, 35-39, 51A, 53 High Street; 54 and 56 Hospital Street; 21 and 25 Wright Street; 18 Pohlman Street; 21 Hunter Place; and 3 Barrack Street are not potentially contaminated
- since then, the Amendment has proposed to rezone more properties which:
 - the Environment Protection Authority has not considered
 - Council appears to have not addressed their potential for contamination.
- the Amendment should not progress until this has been addressed.

The Environment Protection Authority explained that Ministerial Direction 1 Clause 7 states that where land being rezoned may be used for agriculture or public open space, the planning authority must:

- a) satisfy itself whether or not the land, or parts of the land, are potentially contaminated;
- b) where it has determined that the land is not potentially contaminated, state the determination in the amendment Explanatory Report; and
- c) where it has determined the land, or parts of the land, are potentially contaminated, must state the determination in the amendment Explanatory Report and satisfy itself that the land is or will be suitable for that use.

In response, Council submitted:

- the properties referred to by the Environment Protection Authority as not being assessed are Crown land, incorrectly zoned, and the Amendment proposes to correct their zone
- an example is 32 Heathcote-North Costerfield Road which is proposed to be rezoned from General Residential to Public Conservation and Resource Zone
- these properties should have been assessed by strict interpretation of Ministerial Direction 1 and Planning Practice Note 30
- the properties were assessed after the Amendment was exhibited and found not to be potentially contaminated
- the Explanatory Report has been revised to reflect the assessment findings.

(iii) Discussion

The Public Conservation and Resource Zone does not require a permit to use the land for office, informal recreation, open sports ground or other sensitive land uses. This would have been of concern if the land was potentially contaminated. However, the Panel is satisfied with Council's further assessment that found the identified properties were not potentially contaminated. The assessment matrix in Planning Practice Note 30 advises that the Environmental Audit Overlay does not have to be applied in such a circumstance.

(iv) Conclusion

The Panel concludes the Amendment has appropriately considered environmental issues.

Appendix A Document list

No.	Date	Description	Provided by
2024			
1	27 May	Panel Directions and Hearing Timetable (version 1)	Planning Panels Victoria (PPV)
2	17 Jun	Council Part A submission	Greater Bendigo City Council (Council)
3	21 Jun	Neighbourhood Residential Zone Schedule 3 (Version 1)	Council
4	21 Jun	Amendment explanatory report and instruction sheet (Version 1)	Council
5	21 Jun	Hearing submission and attachments: <ul style="list-style-type: none"> a) Map – Heathcote urban area b) Map – town centre vacant sites c) Zone analysis d) Letter – Middleton Motors to Council requesting changes to Heathcote Township Plan 	Middleton Motors
6	25 Jun	Council Part B submission	Council
7	26 Jun	Council Part C submission	Council