

From: [REDACTED]
To: [REDACTED]; [EPA Strategic Planning](#)
Cc: [REDACTED]
Subject: RE: Referral Exhibition Notice - Amendment Ballarat Planning Scheme C235ball Miners Rest Township Plan
Date: Friday, 18 November 2022 2:26:06 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image007.png](#)
[We sent you safe versions of your files.msg](#)
[Final EPA Referral Response_ 5008713 Miners Rest Township Plan.pdf](#)
[Approved EPA Response_ 13-91 Victoria Street Miners Rest_ 20221013.pdf](#)

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Hi [REDACTED],

Thank you for your email and clarification. We have since located a previous response, that was incorrectly filed, and that EPA prepared when the Plan was on public exhibition back in 2018, and which I have attached to this email.

In addition, I have also attached a recent response we provided to DELWP's Development Facilitation Program, regarding the proposed rezoning of the former quarry site – 13-91 Victoria Street Miners Rest, and Council may consider this advice as they progress this plan. Apart from this advice, there is nothing of particular concern or interest to the EPA regarding reference to the quarry in the Plan.

As a general note, it is important that Council is aware of its obligations to satisfy itself that the land proposed to be used for a sensitive use are, or will be, suitable for that use, in accordance with MD1. It is important to note here, that MD1 does not take into consideration the existing zoning of land, but rather what is being proposed.

Specifically, MD1 requires that in preparing a planning scheme amendment that would have the effect of allowing "potentially contaminated land" to be used for a sensitive use, children's playground or secondary school, a planning authority must satisfy itself that the land is, or will be, suitable for that use. Given this, MD 1 establishes two tests that must be met to trigger the requirements of MD 1, being that the:

- the zoning of the land proposed by the amendment allows a sensitive use, children's playground or secondary school to be established, whether or not subject to a permit; and,
- land is potentially contaminated land.

Kind regards,

[REDACTED]
[REDACTED]
[Senior Planning Advisor](#)
[Development Advisory](#)



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Support Officer
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From: ██████████@ballarat.vic.gov.au>
Sent: Monday, 14 November 2022 10:05 AM
To: Statutory Planning <StatutoryPlan@epa.vic.gov.au>
Subject: Referral Exhibition Notice - Amendment Ballarat Planning Scheme C236ball Miners Rest Township Plan

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Dear Sir/Madam,

Ballarat City Council has prepared a Planning Scheme Amendment C235ball Miners Rest Township Plan.

Amendment C235ball proposes to implement the key land use planning directions of the Miners Rest Township Plan (November 2019) (MRTP) into the Ballarat Planning Scheme. The Miner Rest Township Plan aims to protect the rural township character of Miners Rest through a variety of strategies and actions including the rezoning of the residential area in the old township to the north, from General Residential Zone - Schedule 1 to Neighbourhood Residential Zone - Schedule 3.

For your review and comment, the exhibited material is provided in the links within the attached letter.

We seek your organisation's comments on the amendment.

Please do not hesitate to contact me if you any questions.

Kind regards,

██████████ Strategic Planner

City of Ballarat | PO Box 655, Ballarat VIC 3353



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The City of Ballarat acknowledges the Traditional Custodians of the land we live and work on, the Wadawurrung and Dja Dja Wurrung People, and recognises their continuing connection to the land and waterways. We pay our respects to their Elders past, present and emerging and extend this to all Aboriginal and Torres Strait Islander People

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21 August 2018

EPA Reference: 5008713

Strategic Planning
City of Ballarat
PO Box 655 Ballarat, Vic 3353

ATTN: DRAFT MINERS REST TOWNSHIP PLAN

We refer to the current public exhibition of the above proposed planning scheme amendment. EPA has reviewed this planning scheme amendment and is supportive of the amendment.

1. Context

EPA is currently undergoing reform and has recently launched a five-year organisational strategy to help realise its vision of *a healthy environment that supports a liveable and prosperous Victoria now and always*. The following five strategic goals provide a focus for achieving this vision, these are:

- Prevent harm
- Equip the community and business
- Be an influential authority
- Respond to harm
- Organisational excellence.

Furthermore, EPA has identified that a significant risk for Victoria is encroachment of residential development onto commercial and industrial land uses and the need to protect residents from offsite impacts such as odour, dust and noise. EPA collects data regarding pollution reports in order to determine any patterns or potential amenity impacts, and utilises this data to determine future strategy work and action plans to combat environmental impacts.

It is in this context that EPA has drafted this letter.

2. Proposed Miners Rest Township Plan

Referring to Council's 'My Say' webpageⁱ, it is noted that the draft Miners Rest Township plan aims to:

- *Establish a long-term community vision for Miners Rest*
- *Develop a prioritised action plan and responsibilities for implementation*
- *Guide the City of Ballarat and other authorities to prioritise investment in the town*
- *Provide a sound basis for the community and the City of Ballarat to apply for grants or lobby for funding*
- *Identify potential changes to the Ballarat Planning Scheme to implement land use planning actions to achieve the vision.*

In short, EPA interprets the Plan to be a visionary document which sets out strategic goals and aspirations for the Miners Rest township. Of relevance to EPA is a discrete component of that overall project which relates to the inclusion of a new Local Policy and Framework Plan which is proposed to be included in the Planning Scheme by way of a separate Planning Scheme Amendment. The proposed Local Policy and Framework Plan

ⁱ <https://mysay.ballarat.vic.gov.au/ballarat-miners-rest-plan>



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sets out potential changes to the Ballarat Planning Scheme to implement land use planning actions to achieve the draft plan's vision.

EPA supports the intent and purpose of the Miners Rest Township Plan. Furthermore, EPA is available to support and provide expert guidance in the development of local policy which seeks to address specific matters relating to pollution from industry and risk to human health in Miners Rest such as, but not limited to:

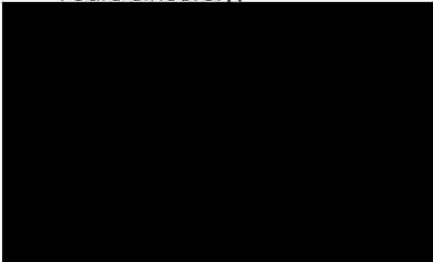
- Rezoning of commercial, industrial or farming zone land for sensitive use;
- Application or removal of the Environmental Audit Overlay (EAO);
- Encroachment of sensitive use on existing industry and potential for industrial residual air emissions;
- Use of land within a landfill buffer; and
- Existing and/or proposed intensive animal farming.

This may include specific guidance in relation to the proposals outlined in the Local Policy:

- *Encourage medium and higher density residential and commercial development on land zoned for Mixed Use;*
- *Designate appropriate locations for education, community and recreation facilities;*
- *Encourage rural activities on farming land around the township; and*
- *Investigate potential for the development of the quarry site subject to feasibility, including a noise study.*

If you need additional information or would like to discuss this matter, please contact Senior Strategic Planner, [REDACTED] [@epa.vic.gov.au](mailto:[REDACTED]@epa.vic.gov.au) or on 1300 EPA VIC (1300 372 842).

Yours sincerely,



13 October 2022



[REDACTED]
Manager, Development Facilitation Program
Department of Environment, Land, Water and Planning
8 Nicholson Street
EAST MELBOURNE VIC 3002

Our Ref: REQ002623

Dear [REDACTED]

**RE: DEVELOPMENT FACILITATION PROGRAM DFP-225 – SECTION 96A APPLICATION
13-91 VICTORIA STREET, MINERS REST**

Thank you for the opportunity to provide advice in relation to the proposed Section 96A application for the above-mentioned site, referred to the Environment Protection Authority (EPA) via email dated 29 September 2022.

EPA has reviewed the following documents of relevance:

- Referral letter to EPA dated 29 September 2022;
- Detailed Contamination Assessment dated 26 July 2022, prepared by Beveridge Williams;
- Planning Scheme Amendment and Multi Lot Subdivision Report dated 31 August 2022, prepared by Beveridge Williams;
- Draft Explanatory Report;
- Aircraft Noise Assessment dated 10 June 2022, prepared by To70 Aviation;
- Traffic Impact Assessment dated August 2022, prepared by Beveridge Williams; and
- Proposed Zones Map.

Development Facilitation Program

The Development Facilitation Program (DFP) has been established by the Minister for Planning to accelerate the assessment and determination of identified priority projects.

We understand that at this stage of referral to EPA, DFP is assessing whether the application should be part of the accelerated program. If this proposal is deemed acceptable for accelerated assessment by DELWP, the planning authority will need to address the requirements of MD19 separate to this advice.

Our Understanding of the Proposal

The proposed Section 96A application (the Application) applies to 13-91 Victoria Street, Miners Rest (the Site). EPA understands the proponent is seeking to:

- rezone the Site from Farming Zone (FZ) to the General Residential Zone – Schedule 1 (GZ1); and
- subdivide the land into 416 lots.

The Site is approximately 61.5 hectares in area and is partially affected by the following overlays:

- Environmental Significance Overlay – Schedule 2,
- Land Subject to Inundation Overlay, Environmental Management Overlay, and
- Floodway Overlay.

epa.vic.gov.au

Environment Protection Authority Victoria
GPO Box 4395, Melbourne VIC 3001
1300 372 842



The Site

The Site includes a former basalt quarry, which is currently undergoing rehabilitation as part of the Boral Construction Materials' Rehabilitation Plan (dated 2016). The eastern section of the site contains vacant pastureland with some linear vegetation on the Site's south, east, and north boundaries.

The Site has mostly been used for grazing animals and small-scale farming operations. During the 1980s to 1990s the site was intensively mined for its stone reserves.

Detailed Contamination Assessment

EPA understand that a detailed Contamination Assessment (the Assessment) has been prepared to support the Application. EPA has not undertaken a detailed technical review of the Assessment; however, we highlight the following information and key findings

Principles to follow

- Where there is a 'high' risk for contamination, and a sensitive land use may be established on the land, PPN30 recommends proceeding directly to an environmental audit.
- Where there is a 'medium' risk for contamination, and a sensitive land use may be established on the land, PPN30 recommends a Preliminary Risk Screen Assessment, or the environmental audit option applies.
- PPN30 identifies 'stockpiles of imported fill' as having a 'medium' potential for contamination, however the Assessment suggests that these are associated with soils excavated from the Site.
- PPN30 also identifies that consideration should also be given to the potential for specific contaminating activities occurring over time for agricultural land, including commercial use of pesticides (including herbicides, fungicides etc), biosolids application to land and farm waste disposal. These activities also carry a 'medium' potential for contamination.

Key findings and conclusions

- The Assessment included a desktop site history evaluation and site inspection.
- Site history is provided from 1945 onwards.
- The Assessment identified the following land uses and activities as having occurred/occurring at the Site:
 - agriculture (grazing),
 - quarrying and associated operations,
 - stockpiles of fill,
 - machinery and chemical storage; and
 - maintenance.
- The Assessment concludes that the portion of the Site where quarrying operations were carried out, has a 'high' potential for contamination, based on machinery storage and maintenance and chemical storage occurring at the Site, but not the quarry operations.
- The Assessment concludes that:
 - a *"Detailed geotechnical investigation of the site is considered warranted"* and that *"Council may require a Statutory Environmental Audit of the quarried land, in particular the higher risk machinery storage yard area."*
 - the eastern portion of the Site has a 'low' potential for contamination, and *"an environmental audit of the low-risk portions of the site is not considered warranted."*

Observations

- It is noted that the completion of this type of assessment where land is proposed to be used for sensitive land uses is not the recommended level of assessment consistent with the updated Planning Practice Note 30 – *Potentially Contaminated Land* (DELWP, 2021) (PPN30).
- However, the Assessment has provided relevant information in the form of a site history review and has considered the potential for contamination to exist on the subject Site.
- 'Mining and extractive industries', 'chemical storage', and 'engine works', are included in PPN30 as land uses/activities that carry a 'high' potential for contamination. It appears that all these land uses/activities have been identified in the quarry area of the site, as outlined in the Assessment.
- However, the Assessment considers that quarrying has a 'low' potential for contamination, on the basis that as part of the rehabilitation of the quarry it has been filled with clean fill. This risk categorisation appears inconsistent with policy and guidance and verification may be needed to ensure that filling of the quarry was carried out in accordance with the relevant ERR Work Plan and EPA regulatory requirements to confirm that a low risk categorisation is appropriate.
- Prior to 1945, there may have been potentially contaminating activities occurring on the Site, however site history before this date is not provided.

Advice and Recommendations

- To meet the requirements of Ministerial Direction 1 (MD1), the planning authority must satisfy itself that the land is either potentially contaminated or not. If the land is potentially contaminated, PPN30 sets out the recommended level of assessment for land which has been determined to have a 'medium' or 'high' potential for contamination.
- Consistent with PPN30, audit system requirements must be met at the time of amendment unless the planning authority determines that compliance with this requirement is difficult or inappropriate, noting that assessment time and costs are not in themselves sufficient reasons to defer assessment.
- MD1 also supports the deferral of meeting PRSA or audit requirements via application of the Environmental Audit Overlay (EAO) where it is considered difficult or inappropriate to meet those requirements prior to amendment. PPN30 provides further advice on what is considered difficult or inappropriate.
- It is therefore recommended that the planning authority should either:
 - Consider the completion of an environmental audit at the time of amendment; or
 - Determine that it is difficult or inappropriate to complete an environmental audit at the amendment stage and defer this requirement via the application of the Environmental Audit Overlay.
- Include a requirement in the Application documents, to ensure that any recommendations of an audit are complied with, and EPA directs the planning authority to the example conditions in PPN30 in 'Requirements where an environmental audit is a condition of permit'.

Noise and vibration

It is noted that the Site is nearby the following noise sources:

- Sunraysia Highway and Western Freeway (zoned Transport Zone 2, TRZ2) located approximately 300m west of the Site and
- Ballarat Airport located approximately 1600m south of the Site.

Under the new *Environment Protection Act 2017* (EP Act 2017), the General Environmental Duty (GED) requires all Victorians to understand and minimise their risk of harm to human health and the environment from pollution and waste, including noise. The definition of noise includes sound and

vibration. Developing land that will include noise sensitive uses near existing sources of noise may be regarded as an activity that may give rise to risks of harm to human health from pollution.

As a person engaging in that activity, a developer may be required, under the GED, to minimise those risk of harm so far as reasonably practicable.

In addition, EPA highlights the following policy in the updated Victoria Planning Provisions, relevant to noise:

13.05-1S Noise abatement

- Aims to control the effects of noise on sensitive land uses using building design, urban design and land use separation.
- Requires consideration as to whether proposals to use or develop land address the potential impacts of land use and development on the acoustic environment in accordance with the noise requirements of the Environment Protection Regulations.
- Requires consideration as to whether proposals for use and/or development will contribute to achieving or maintaining the environmental values, indicators and objectives of the acoustic environment (e.g., Sleep, child learning and development).

The planning authority should take steps to understand how the existing noise environment may impact on future noise sensitive uses. However, there may already be sufficient separation from the existing noise sources to the Site. EPA can provide further feedback once the above is determined.

With regard to the Ballarat Airport, EPA note that Clause 21.08-2 Ballarat Airfield specifically seeks to discourage the establishment of residential and other sensitive uses on land under airfield flight paths. The planning authority should be aware that EPA do not generally regulate aircraft noise. The EP Act 2017 has limited application to airports and airfields as responsibility primarily sits with the Commonwealth Government.

However, both the GED (s25 of the EP Act 2017) and unreasonable noise (s.166 of the EP Act 2017), including unreasonable noise prescribed in the Environment Protection Regulations 2021, apply to aircraft maintenance activities at non-Commonwealth airports.

Other matters

EPA notes that the draft Explanatory Report includes references to MD1 and MD19. With regard to MD1, the Explanatory Report should be updated to address the requirements set out at Clause 5. As referred to earlier in this letter, the planning authority will need to address MD19 and include comments in the Explanatory Report at the appropriate time.

Summary and recommendations

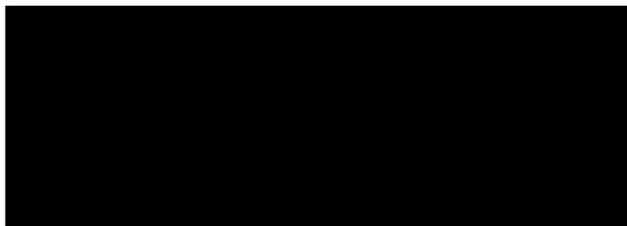
The recommendations outlined in this letter can be summarised as follows:

1. Whilst the completion of a Detailed Contamination Assessment in this situation is not considered consistent with guidance and policy, the assessment has identified areas within the Site that are potentially contaminated, and the recommendation for further assessment in the form of an audit is consistent with guidance and policy.
2. EPA recommends further consideration should also be given to whether the historical use of the Site also constitutes 'agriculture and animal production', and therefore whether assessment of the eastern portion of the Site is also required.

3. The planning authority should turn their mind to the completion of the audit, including consideration to defer the audit requirements via the EAO, should it be determined that is difficult or inappropriate to complete the audit at the amendment stage.
4. In addition, the planning authority should determine whether existing noise sources may impact on future sensitive land uses.

Closing

We would be happy to engage in further discussions regarding the above comments to ensure that EPA supports this planning process effectively. If our assessment is not aligned with your view of the environmental risk, please contact Ana Mitrov on 1300 EPA VIC (1300 372 842), or at stratplan@epa.vic.gov.au.



Development Advisory
Environment Protection Authority Victoria