



Planning and Environment Act 1987

Panel Report

Ballarat Planning Scheme

Amendment C151

'Ballarat Activity Centres Strategy'

21 November 2012

Planning and Environment Act 1987

Panel Report pursuant to Sections 153 and 155

Amendment C151 to the Ballarat Planning Scheme

'Ballarat Activity Centres Strategy'



Margaret Baird, Chair



William O'Neil, Member



Contents

	Page
1 Overview	1
2 Planning Context.....	2
2.1 Amendment C151.....	2
2.2 Existing Planning Scheme Context	2
2.3 Ministerial Directions and Practice Notes.....	3
2.4 Key Planning Issues for Consideration	3
3 Activity Centre Planning.....	4
3.1 Existing Activity Centre Hierarchy	4
3.2 Other Strategic Work	6
3.3 Proposed Activity Centre Hierarchy	6
3.4 Relationship to Proposed Amendment C159.....	9
3.5 Post-Exhibition Changes to Amendment C151	9
4 Strategic Matters	10
4.1 Activity Centre Strategy Vision, Principles and Approach.....	10
4.2 Activity Centre Definitions and Classifications.....	12
4.3 Retail Floorspace Stocktake	15
4.4 Floorspace Forecasts	21
4.5 Conclusion and Recommendations.....	28
5 Centre Specific Matters.....	29
5.1 Ballarat CBD.....	29
5.2 Wendouree Major Activity Centre	30
5.3 Lucas Town Centre	34
5.4 Buninyong.....	37
5.5 Midvale.....	38
5.6 Physical Modifications to Existing Centres.....	39
5.7 Conclusion	39
6 Requests to Nominate Additional Activity Centres.....	40
6.1 The Ryan Group Sites	40
6.2 Howitt Street between Creswick Road and Doveton Street North	42
6.3 Conclusion	43
7 Statutory Drafting.....	44
7.1 Role of the Ballarat Activity Centre Strategy as a Reference Document.....	44
7.2 Recommended Changes to Proposed Clause 21.04-4	46
7.3 Recommended Changes to the Ballarat Activity Centres Strategy.....	49
8 Recommendations	51



Appendices

Appendix A	List of Submitters
Appendix B	Document List

Abbreviations

BACS/Strategy Council	Ballarat Activity Centres Strategy (Final September 2012) Ballarat City Council
DoT	Department of Transport
EIA	Economic Impact Assessment
LAC	Local Activity Centre
LNAC	Large Neighbourhood Activity Centre
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MSS	Municipal Strategic Statement
NAC	Neighbourhood Activity Centre
PAC	Principal Activity Centre
PSP	Precinct Structure Plan
PTV	Public Transport Victoria
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions

Amendment Summary

Amendment	Amendment C151 to the Ballarat Planning Scheme.
Purpose of Amendment	<p>To implement the <i>Ballarat Activity Centres Strategy</i> (2011) by making changes to Clause 21 of the Ballarat Planning Scheme. Specifically, the Amendment proposes to:</p> <ul style="list-style-type: none">• Modify Clause 21.04-1 to include an additional strategy (Strategy 1.7) under Objective 1;• Remove the existing Clause 21.04-4 “Retail/Commercial” and replace it with Clause 21.04-4 “Activity Centres and Commercial Uses”;• Modify Clause 21.04-6¹ to include an additional strategy (Strategy 1.7) under Objective 1; and• Modify Clause 21.10 to include the <i>Ballarat Activity Centres Strategy</i> (2011) in the list of reference documents.
Proponent	Ballarat City Council.
Planning Authority	Ballarat City Council.
Exhibition	17 February to 26 March 2012.
Submissions	The Council received 11 submissions in response to the Amendment. Submitters are listed in Appendix A.

Panel Process

The Panel	Ms Margaret Baird (Chair) & Mr William O’Neil (Member).
Directions Hearing	5 September 2012 at the Robert Clark Centre, Ballarat Botanic Gardens.
Panel Hearing	15, 16, 17 and 19 October 2012 at the offices of Planning Panels Victoria.
Site Inspections	The Panel inspected all of the activity centres referred to in the proposed activity centre hierarchy prior to the Hearing. It revisited several centres after the Hearing.
Close of Hearing	19 October 2012.
Date of Report	20 November 2012.

¹ The Explanatory Report incorrectly refers to Clause 21.04-5 rather than Clause 21.04-6.

Appearances

The following persons appeared at the Panel Hearing:

Submitter	Represented by:
Ballarat City Council	Mr T Montebello, solicitor, Maddocks lawyers, with Ms R Blackwell, Senior Strategic Planner. Expert evidence was called from Ms S Hill, planner, Hill PDA.
Lascorp Development Australia Pty Ltd	Mr C Wren SC instructed by Mr J Turnbull, corporate solicitor, Lascorp Development Australia Pty Ltd. Expert evidence was called from: <ul style="list-style-type: none">• Mr A Dimasi, economist, MacroPlanDimasi.• Ms D Butcher, town planner, ERM Australia.
Stockland Pty Ltd	Mr A Finazio of counsel instructed by Ms T Brezzi, solicitor, Norton Rose Australia. Expert evidence was called from: <ul style="list-style-type: none">• Mr J Ganly, economist, Deep End Services.• Mr A Biacsi, town planner, Contour Consultants.
The Ryan Group	Mr J Iles, iPlanning Services Pty Ltd. Expert evidence was called from Mr T Nott, economist.
Buninyong Foodworks	Mr M Marsden, PS Planning.
Selkirk Group of Companies	Mr M Kaufmann, Kaufmann Property Consultants.
Integra (Vic) Pty Ltd	Mr J Cicero, solicitor, Best Hooper. Expert evidence was called from Mr S Stephens, economist, Essential Economics.

1 Overview

Amendment C151 to the Ballarat Planning Scheme is proposed by the Ballarat City Council (Council) to implement the *Ballarat Activity Centres Strategy* (2011). It introduces some of the main findings of that Strategy, which has been revised to a 2012 final version, into the Municipal Strategic Statement. The Amendment proposes a refined vision; an updated activity centre hierarchy including new definitions, reclassification of activity centres and some revised activity centre boundaries; revised objectives and strategies; and further work to be undertaken in relation to activity centres. Definitions have been developed in line with the objectives and definitions of *Melbourne 2030*, as well as prior retail studies undertaken for the Council. They are Principal, Major, Large Neighbourhood and Neighbourhood Activity Centres. Local Activity Centres are defined and to be the subject of further strategic work. Centres planned within the major growth corridors of Ballarat are recognised.

Generally, the outcomes of the Amendment and its underpinning Strategy are supported by submitters. However, specific issues have been raised in relation to the Strategy and/or the proposed text in Clause 21.04-4. The submissions focus on the following key matters:

- Strategy:
 - The volume of existing floorspace in Ballarat.
 - The timing of additional floorspace and the inclusion of floorspace targets.
 - Activity centre definitions, such as the nomination of population catchments.
 - Classification of, and floorspace allocations to, some centres such as Lucas.
- Centre-specific matters:
 - Proposed boundaries for the Ballarat Central Business District and Wendouree Major Activity Centre with respect to infrastructure such as railway stations and, for Wendouree, also the relationship with the bulky goods retail centre.
 - Requests to consider expanded business and/or commercial zones including along parts of Howitt Street, in Buninyong, and reviewing Lucas' boundary to add more land for employment purposes.
 - Requests to nominate additional Local/Neighbourhood Activity Centres.
- Statutory drafting - amendments sought to the wording of Clause 21.04 and/or BACS.

A number of related matters were raised by the Panel at the Hearing including with respect to the drafting of Clause 21.04 and the role of the Strategy as a reference document.

Having considered all of the submissions, the Panel finds that there is strategic support for Amendment C151. Inclusion of the proposed activity centre hierarchy into the Ballarat Planning Scheme, with some refinements, will guide decisions about the development of activity centres into the long term. The definitions and structure seek to articulate the role and function of centres based on research and strategic investigations that have been undertaken over the past 10 years. Underpinning the approach is protecting the primacy of the Ballarat Central Business District. Rezoning is not part the Amendment. Structure planning for key Activity Centres will inform rezoning through subsequent Amendments.

The Panel recommends that:

- **Amendment C151 to the Ballarat Planning Scheme should be adopted as exhibited subject to the modifications summarised in section 7.2 of this report.**
- **The *Ballarat Activity Centres Strategy* (2012) should be corrected for clarification as summarised in section 7.3 of this report.**

2 Planning Context

2.1 Amendment C151

Amendment C151 proposes to introduce a new activity centre hierarchy into the Ballarat Planning Scheme (Scheme) by:

- Modifying Clause 21.04-1 to include an additional strategy (Strategy 1.7) under Objective 1;
- Removing the existing Clause 21.04-4 “Retail/Commercial” and replacing it with Clause 21.04-4 “Activity Centres and Commercial Uses” within which the following are set out:
 - Vision for activity centres and commercial development.
 - Updated activity centres hierarchy with definitions of Principal, Major, Large Neighbourhood, Neighbourhood and Local Activity Centres.
 - A table classifying existing activity centres into one of the hierarchy definitions as well as centres that have been planned in the Ballarat West Growth Area structure planning processes.
 - A plan showing the location of the activity centres and maps identifying some centres in greater detail.
 - Three objectives and multiple strategies for activity centres and commercial development that build on the principles included in the *Ballarat Activity Centres Strategy (2011)*² and incorporate the recently adopted amendments relating to the Ballarat CBD³;
- Modifying Clause 21.04-6 to include an additional strategy (Strategy 1.7) under Objective 1; and
- Modifying Clause 21.10 to include the *Ballarat Activity Centres Strategy (2011)* in the list of reference documents.

2.2 Existing Planning Scheme Context

State Planning Policy Framework

Various parts of the State Planning Policy Framework (SPPF) are relevant to the Panel’s consideration of submissions in relation to Amendment C151. Of particular note are:

- Clause 10.04 – Integrated decision making.
- Clause 11 – Settlement including activity centre planning and urban growth at Clauses 11.01 and 11.02, the activity centre hierarchy for metropolitan Melbourne at Clause 11.04-2, and Clause 11.05 (regional development).
- Clause 17 – Economic development particularly Clause 17.02 (commercial).

² To be updated to refer to 2012 to reflect the revised document. This updated version is referred to as “BACS” or “Strategy” in this Panel report.

³ Amendment C152 May 2012.

Local Planning Policy Framework

The Local Planning Policy Framework (LPPF), through the Municipal Strategic Statement (MSS), builds on these themes in a local context. The main policies relevant to the matters before the Panel are in Clause 21.04 particularly Clause 21.04-4 addressing retail and commercial uses. These are discussed in section 3 of this report. There are no Local Planning Policies at Clause 22 that are directly relevant to the matters before the Panel.

Zones and Overlays

Most of Ballarat's existing activity centres are within a Business 1 Zone with some land in other business zones such as the Business 2 and 4 Zones, the Mixed Use Zone and the Township Zone. Land in other zones is associated with some activity centres. Overlays apply throughout the municipality over activity centres.

Proposed activity centres within the Ballarat West and Alfredton West Growth Areas are within the Urban Growth Zone as a consequence of the preparation and approval of Precinct Structure Plans (PSPs). The Alfredton West PSP was introduced into the Scheme through Amendment C150 in 2011. This PSP includes the Lucas Town Centre. At the time of the Panel Hearing, the Ballarat West PSP had been finalised and approved by the Minister. Subsequent to the Hearing, on 1 November 2012, Amendment C158 was gazetted. It nominates a new Major Activity Centre on the Glenelg Highway with significant core and bulky goods retail provision. It also includes a Neighbourhood Activity Centre on Carngham Road and Local Activity Centres on Greenhalghs and Ross Creek Roads.

2.3 Ministerial Directions and Practice Notes

The following Ministerial Directions and Practice Notes are particularly relevant to the Panel's consideration of the Amendments:

- *Ministerial Direction No 7* in relation to the form and content of Planning Schemes and Schedules.
- *Ministerial Direction No 11*, in relation to the Strategic Assessment Guidelines (including assessment against the State and Local Planning Policy Frameworks).
- *Practice Note 46 – Strategic Assessment Guidelines*.
- *Practice Note 58 – Structure Planning for Activity Centres*.
- *Practice Note – Incorporated and Reference Documents*.

2.4 Key Planning Issues for Consideration

Issues raised in submissions are addressed by the Panel in the following sections of this report. In reaching its conclusions and recommendations, the Panel has read and considered all submissions (including all written material, statements of evidence, and verbal presentations) as well as a range of documents referred to it during the course of the Hearing even though it does not recite all of that material in this report. A list of documents tendered at the Panel Hearing is in Appendix B.

The Panel thanks all parties for their submissions and co-operation.

3 Activity Centre Planning

3.1 Existing Activity Centre Hierarchy

Clause 21.02-1 of the Scheme identifies key planning issues with respect to retail and commercial use and development in Ballarat. They include facilitating new opportunities within the commercial hierarchy; maintaining retail/commercial land supplies; encouraging development and redevelopment in appropriate locations; facilitating the provision of peripheral retailing; and the importance of low intensity offices.

Clause 21.03 outlines “*Ballarat’s Strategic Framework*”. It identifies focus areas of “*growth and development*”, “*people and communities*” and “*destination and connections*”. The “*Overall Framework Plan*” shows existing residential and industrial areas as well as growth areas. Clause 21.04 provides for the implementation of the “*Overall Framework Plan*” with objectives and strategies relating to land use including co-ordinating urban expansion to the west of Ballarat in accordance with the *Ballarat West Growth Area Plan 2009*.⁴ Clause 21.04-4 identifies the following hierarchy of commercial floorspace:

Regional shopping centre: providing for the regional shopping needs of residents in a wide catchment; supported by department store and discount department store provision; also has a strong role in the provision of a wider range of non-retail functions including entertainment, office, civic and community, and potential for residential development. The Ballarat Central Business District (Ballarat CBD) is the regional shopping centre.

Sub-regional shopping centre: providing for shopping facilities which serve a subregional market; usually supported by discount department store and supermarket facilities; can have some non-retail functions such as a limited range of office, medical, community activities,

Primary neighbourhood centre: providing weekly grocery shopping facilities based around a supermarket tenant; in some cases has a small specialty retail or non-retail component (small office, medical, etc).

Other neighbourhood centre or township centre: providing a smaller range of shopping, usually only with a small supermarket tenant, and with a main role in providing for the daily or top-up shopping.

Local convenience centre: serving local walk-in catchment, and typically providing for the daily convenience needs of local residents or passing motorists.

Bulky goods: representing major homemaker and other bulky goods store types; have particular site requirements in terms of exposure and access to a large catchment; can seek locations away from established centres, but should be directed to preferred nominated locations in order to generate co-location benefits. The category also includes some building supplies and trade supplies stores that serve a non-retail trade customer base.

⁴ Strategy 1.4.

The Clause names activity centres in each category as follows:

Regional shopping centre	Ballarat Central Business District (Ballarat CBD).
Sub-regional shopping centre	Stockland Wendouree (formerly Wendouree Village).
Primary neighbourhood centre, Other neighbourhood centre or township centre	Include Sebastopol North; Sebastopol; Howitt Street; Ballarat Marketplace (formerly Creswick Plaza); Midvale Shopping Centre; Northway Shopping Centre; Buninyong Town Centre; Pleasant Park; Delacombe and Alfredton West.
Local convenience centre	Include Sturt Street (between Lyons and Pleasant Streets); Miners Rest; Learmonth; corner of Sturt and Gillies Streets, Alfredton; Cuthberts Road, Alfredton; Sturt Street, Alfredton; Violet Avenue, Wendouree West; Carpenter Street, Wendouree; Harold Street, Wendouree; Grandview Grove, Wendouree; College Street, Wendouree; corner of Macarthur and Doveton Streets, Ballarat; corner of Landsborough and Lydiard Streets, Ballarat North; Humffray Street, Brown Hill; corner of Kline Street and Wesley Court, Ballarat East; corner of Walker and Simpsons Streets, Ballarat North; corner of Geelong Road and Clayton Streets, Golden Point; corner of Grant and Humffray Streets, Golden Point; corner of Barkly and Cobden Streets, Mount Pleasant; Boak Avenue, Mount Helen; and corner of Rubicon and Albert Streets, Sebastopol.
Bulky goods	Wendouree Peripheral Retailing Precinct and Sebastopol North.

Some of these are shown on the plan in Figure 1 which is extracted from the *Ballarat Activity Centres Strategy* (2011).



Figure 1 – Existing Activity Centres Hierarchy in the City of Ballarat.

Three objectives and multiple strategies are listed in Clause 21.04-4 including:

Objective 1 *To facilitate access to commercial services through the development of regional, sub-regional, neighbourhood and local convenience centres.*

Strategy 1.1 *Require new commercial floorspace to be appropriately located within the commercial hierarchy.*

Strategy 1.2 *Locate new commercial floorspace within existing commercial centres and within new neighbourhood centres serving designated urban growth areas.*

Strategy 1.3 *Encourage development within the designated activity centres in a manner that improves the overall amenity and environment of the centre.*

Strategy 1.7 *Acknowledge the potential need to provide new local convenience centres within the Ballarat West Growth Area to supplement the proposed neighbourhood centres at Alfredton and Delacombe.*

Strategy 1.8 *Support the role of Howitt Street as a neighbourhood centre providing for supermarket based shopping and as an alternative location for bulky goods retailing and service industries.*

A series of maps in Clause 21.04-4 defines (inter alia) the Ballarat Central Business District (CBD), the Wendouree Peripheral Retailing Precinct and Howitt Street Neighbourhood Centre.

Reference documents at Clause 21.10 include the *Ballarat West Growth Area Plan*, March 2009, Tract Consultants Pty Ltd, and the *City of Ballarat Retail Development Strategy*, 2003.

3.2 Other Strategic Work

Existing Scheme policies are based on the *Interim Activity Centres Strategy* (2009) adopted by the Council in 2010. Other strategic studies and documents that underpin activity centre planning in Ballarat include:

- *City of Ballarat Retail Development Strategy* 2003.
- *Ballarat Commercial Development Strategy – Issues and Directions Paper* 2009.
- *Council Plan* 2009 – 2013.
- *Making Ballarat Central – The CBD Strategy* 2010.
- *Retail Capability and Gap Review* 2010.

The Panel was provided with copies of each of these documents but does not need to elaborate on their contents.

3.3 Proposed Activity Centre Hierarchy

The *Ballarat Activity Centres Strategy* (Final, 2012) (BACS/Strategy) states that it provides clear and transparent policy recommendations to facilitate the short (2011 – 2016), medium (2017 – 2021) and longer term (2022 – 2030) planning of Ballarat's activity centres to meet stakeholders' needs. The Strategy focuses on Ballarat's 13 existing and three planned activity centres.

The objectives are to:

- Provide a robust policy environment to support the long term planning and viability of retail, commercial and social activities in addition to residential development within each activity centre;
- Protect the primacy of Ballarat CBD as the Principal Activity Centre for retail, commerce, entertainment and development in the City whilst supporting the growth and development of other activity centres;
- Identify the existing and potential future hierarchy of activity centres in light of State planning policy, forecast retail expenditure and centre performance;
- Identify land use and infrastructure requirements for each centre;
- Identify opportunities for further investment to support the growth of Ballarat through the creation of new business and employment opportunities in addition to enhancing the diversity of retail, commercial and social activities; and
- Provide a long term vision for the City to become the most significant retail destination in regional Victoria.

The Strategy is founded on 24 principles and sets a vision for the development of activity centres to 2030. It states that it has:

deliberately moved away from a purely retail and commercial approach to Activity Centre planning, towards a more holistic vision of the role and function of the City's Activity Centres and diverse focal points for the community.

The vision and principles are not challenged in submissions and expert evidence before the Panel.

Principal, Major, Large Neighbourhood and Neighbourhood Activity Centres are defined and nominated in the BACS. The Panel abbreviates these as PAC, MAC, LNAC and NAC for the balance of this report. The Strategy refers to local centres (LACs) in its glossary and in the body of the report but does not address these centres in any detail, a matter discussed in section 6.1 of this Panel report.

The Strategy only identifies and includes activity centres from the *Interim Activity Centres Strategy* (2009) or included in Clause 21.04-4 of the Scheme. It acknowledges that there are other smaller activity centres throughout the City and recommends that the Council undertakes further work to address the remaining smaller centres that have not been identified in the Strategy.⁵

Key changes from the existing hierarchy are described in the Strategy notably relating to Wendouree and Howitt Street, and the Ballarat Marketplace. These are discussed in later in this report.

The Strategy renames several centres as follows:

- Sebastopol – previously known as Sebastopol North;
- Sebastopol South – previously known as Sebastopol;
- Alfredton East – previously known as Alfredton Aldi; and
- Redan – previously Maxi Foods.

⁵ Page 16 of BACS.

It adds new centres in growth areas, notably the Ballarat West Growth Area:

- Delacombe – now Glenelg Highway – Proposed NAC (to develop into a MAC over time, staged in line with demand growth in the Ballarat West Growth Area catchment);
- Alfredton West – now Lucas – as a Proposed NAC (to develop into a LMAC over time); and
- Carngham Road NAC.

Two areas are proposed to be removed from the Strategy:

- Along part of Howitt Street; and
- Ballarat Marketplace along the Creswick Road.

No submission opposed the deletion of these centres.

Figure 2 shows the proposed (post-exhibition of Amendment C151 version) of the hierarchy.

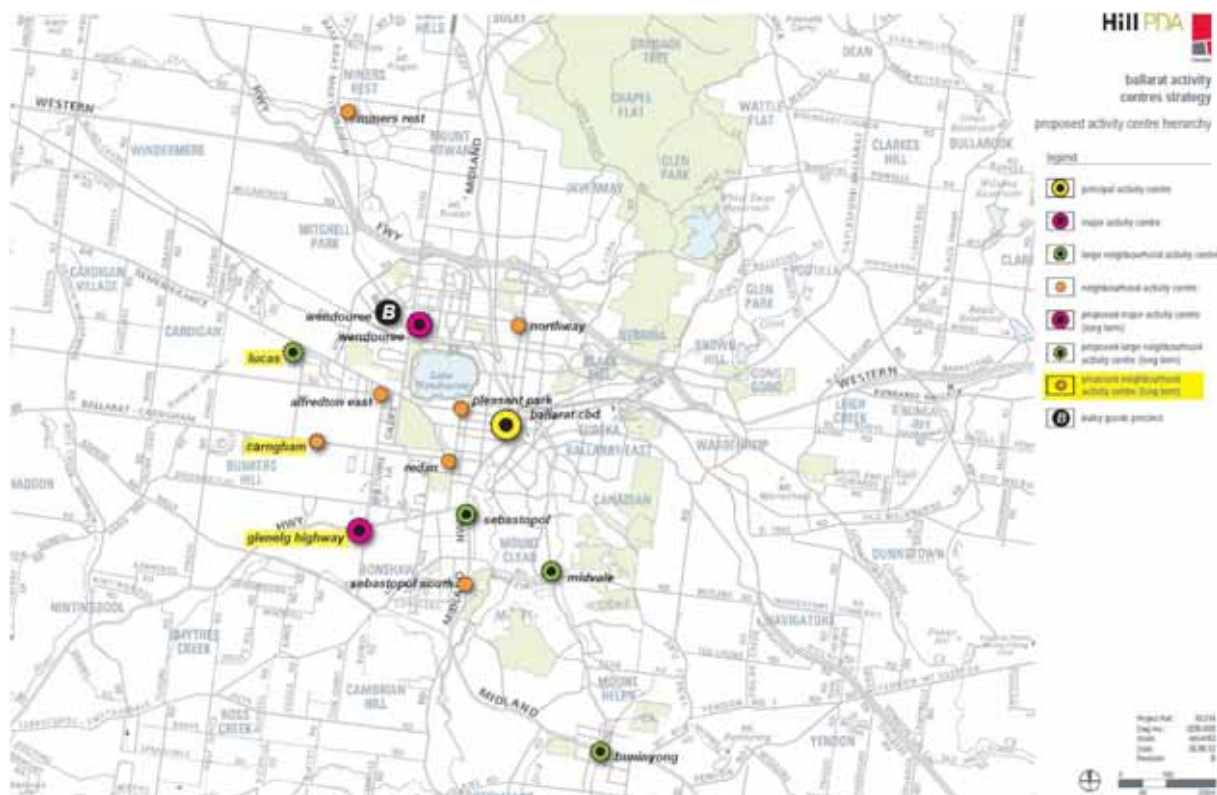


Figure 2 – Future Activity Centres Hierarchy in the City of Ballarat.
(Yellow highlights changes from exhibited and post-exhibition version).

The designation of activity centres is summarised the table below (extracted from the exhibited Amendment⁶):

⁶ Note the Table does not refer to Carngham Road which is a Proposed NAC.

Activity Centre	Designation
Ballarat CBD	Principal Activity Centre
Wendouree	Major Activity Centre
Delacombe	<i>Proposed</i> Large Neighbourhood Activity Centre (to develop into Major Activity Centre over time)
Sebastopol (formerly Sebastopol North)	Large Neighbourhood Activity Centre
Midvale	Large Neighbourhood Activity Centre
Alfredton West	<i>Proposed</i> Neighbourhood Activity Centre (to develop into Large Neighbourhood Activity Centre over time)
Buninyong	Large Neighbourhood Activity Centre
Sebastopol South (formerly Sebastopol)	Neighbourhood Activity Centre
Redan (formerly Maxi Foods)	Neighbourhood Activity Centre
Alfredton East	Neighbourhood Activity Centre
Northway	Neighbourhood Activity Centre
Miners Rest	Neighbourhood Activity Centre
Pleasant Park	Neighbourhood Activity Centre
Wendouree Bulky Goods Centre	Bulky Goods Retail Centre

The hierarchy relies on extensive planning for the Ballarat West Growth Area, including the Ballarat West PSP and the Alfredton West PSP.

3.4 Relationship to Proposed Amendment C159

Proposed Amendment C159 to the Ballarat Planning Scheme seeks to facilitate the upgrade and expansion of the Stockland Wendouree Shopping Centre including rezoning some land to Business 1 and a Road Closure Overlay at the northern end of Park Street.

A planning permit application and draft permit were exhibited with Amendment C159. The application seeks approval for the proposed redevelopment and expansion of the Shopping Centre to accommodate a new Discount Department Store (Big W), relocation of a supermarket, new specialty shops, a new community library, and associated works. The Amendment and permit application would facilitate the upgrade and expansion of the SWSC by 16,203m² of floorspace (to a total of 41,514m²).

Submissions in response to the Amendment are being considered by a Panel comprising the same Members as the Panel considering submissions with respect to Amendment C151. The relationship between the Amendments is referred to in section 5.2 of this report. Amendment C159 and the permit application are supported by the Council.

3.5 Post-Exhibition Changes to Amendment C151

Before the Hearing, the Council circulated a revised version of the BACS and a tracked changes version of amendments to Clauses 21.04 and 21.10. A further version of Clause 21.04 taking into account additional proposed changes was discussed at the Hearing.⁷

⁷ Document no 21.

4 Strategic Matters

4.1 Activity Centre Strategy Vision, Principles and Approach

(i) Issues

- **Are the vision, principles and approach contained within the *Ballarat Activity Centre Strategy (Final, 2012)* and proposed to be included in Clause 21.04 acceptable?**

(ii) Submissions and Evidence

Mr Montebello, for the Council, submitted the Amendment is required to provide updated and clear guidance for the development of activity centres, with the benefit of certainty for the community and developers. He submitted the Amendment would establish a framework for the centres in a way that ensures the widest range of goods and services is available for the population of Ballarat and the region. Mr Montebello explained how the Amendment fits with the SPPF and is consistent with the LPPF with respect to liveability, the range of products offered by businesses, access to services and facilities, and in terms of strengthening retailing. Ms Hill's evidence for the Council explained the methodology and process undertaken for the preparation of the BACS.

No submitters, nor any expert witness, appearing before the Panel, challenged the vision, principles or fundamental approach to activity centre planning.

A number of submissions commented favourably on the overall direction including aligning the definitions with the approach included in Clause 11.04-2 relating to metropolitan activity centres and the strategies and objectives proposed for Clause 21.04 (Stockland in submission no 3, The Ryan Group in submission no 5, the Selkirk Group in submission no 7 and Lascorp Development Australia in submission no 8). These points were reiterated at the Hearing including through the expert economic evidence of Mr Ganly (for Stockland), Mr Stephens (for Integra), Mr Dimasi (for Lascorp) and Mr Nott (for The Ryan Group).

Mr Biacsi, giving expert planning evidence for Lascorp, similarly recognised that the current Scheme provisions require updating with respect to the reliance on the 2003 *Ballarat Retail Development Strategy*, the nomenclature of activity centres, and the need to better reflect the status and future direction of nominated activity centres.

Submission no 11 (Department of Transport, DoT) identified two strategic issues with respect to integrated land use and transport planning and the importance of encouraging development that accords with the *Public Transport Guidelines for Land Use and Development* to facilitate effective new bus services.

However, Mr Iles, for The Ryan Group, was critical of the lack of consideration given to local activity centres in the BACS. This was in the context of his client's written submission that sought recognition for three proposed LACs and, at the Hearing, the submission that the three centres should be future NACs (as discussed in section 6). Mr Iles submitted that there are existing gaps in the urban areas of Ballarat where communities are not conveniently served by a supermarket such as in Ballarat East. He submitted the Strategy has failed to address such gaps as it focused on existing activity centres in the established areas of Ballarat and the new centres in the Ballarat West Growth Area.

The written submission by Mr G Stephens (submission no 1) raised multiple concerns about the BACS focussing on matters such as the completeness of the document, as well as the currency of the document and information within the Strategy. The submitter stated that rezoning is not the answer to the rising number of vacant shops that are not noted in the Strategy.

(iii) Discussion and Findings

Given the general level of agreement with respect to the overall vision, methodology and approach, the Panel does not find any need to recite these elements of the BACS. It appreciates that the final version of BACS is supported by earlier studies as recorded in section 3.2 above.

The vision that is proposed to be articulated in Clause 21.04 is drawn directly from the Strategy:

A strong and diverse network of Activity Centres that provide vibrant, sustainable and accessible shopping, employment, entertainment, social and community focal points throughout the City, which meet the needs of the existing and future population of the City of Ballarat, the broader region and visitors to Ballarat.

A network of centres that reinforce the primacy of the Ballarat Central Business District and which have the potential to accommodate future growth in retail, employment, entertainment, social and community services and facilities as a consequence of future population growth, changing socio-economic characteristics, and changing retail and economic trends.

Flexibility for centres to change over time to accommodate the changing needs of their communities, with the opportunity for local communities and business groups to be involved in determining the distinctive identity which evolves for each centre.

The Panel finds that the vision, and the proposed objectives and strategies, are consistent with the principles developed in the Strategy that focus on several key themes:

- Primacy of the CBD;
- Activity centres with a broad range of uses and activities, consolidated into existing and planned locations, with orderly development and planned growth opportunities;
- Design that focuses on a range of uses; environmental sustainability including multi-purpose trips and alternative travel options than private vehicles; and safe and convenient movement for pedestrians and cyclists.

The Panel has some issues with respect to the drafting of the proposed objectives and strategies in the new Clause 21.04-4 that it addresses in section 7.

In the Panel's view, there is some basis to Mr Iles' submission that gaps in the activity centre network serving established areas do not appear to have been assessed. The absence of such an assessment for LACs results from the focus of the Strategy on higher order centres. In the context of the revised position from The Ryan Group asking for recognition for three new NACs (see section 6.1, a submission the Panel does not support), the point is fairly made. An inference of the Strategy is that the nominated LNACs and NACs will meet the identified needs of the existing and future community to 2030 and smaller centres will be the subject of further planning.

In the Panel's view, any proposal for a new NAC that is not currently identified in the hierarchy would need to be fully assessed to ensure, among a range of considerations, that it will not undermine the role and function of the centres identified in the hierarchy. That is contemplated by the proposed strategies in Clause 21.04-4 (see Strategy 1.10).

The Panel agrees with future structure planning for the MAC, LNACs and Sebastopol South. This work should provide the basis for any future rezonings. In Chapter 10.3, the BACS includes recommended rezonings for Sebastopol, Wendouree (Howitt Street), Sebastopol South and several locations that are removed from the hierarchy. The Panel suggests that rezoning should not be specified in advance of structure planning and must be mindful of the current Ministerial zone reform process (This is referred to in section 7.3 of this report).

The matters raised by the DoT are noted. They are generally consistent with BACS' principles and can be addressed more specifically through structure planning for individual centres.

Concerns identified in by Mr G Stephens in submission no 1 are noted but there is insufficient information for the Panel to address them further. Retail vacancies are addressed in the economic evidence to which the Panel refers in section 4.3 of this report.

(iv) Conclusion

For the above reasons, the Panel concludes that the overall vision, methodology and approach to Ballarat's activity centre hierarchy development in the BACS are acceptable and provide a sound basis for the proposed amendments to Clause 21.04 in principle.

4.2 Activity Centre Definitions and Classifications

(i) Issues

- **Are the activity centre definitions acceptable and are activity centres appropriately classified in the hierarchy?**

(ii) Submissions and Evidence

Clause 21.04-4.1 of the Amendment defines the "*Activity Centre Hierarchy*" for Ballarat. The definition of each centre within the hierarchy has been derived primarily from Chapter 9 of the BACS, supplemented with text from Chapter 10.5 and further from the "*Definition of Terms*" at page 8 of BACS.

The various levels within the hierarchy were largely uncontested in submissions and evidence before the Panel. The four expert witnesses providing retail/economic evidence (Mr Dimasi, Mr Nott, Mr Ganly and Mr Stephens) all accepted that the levels defined in the hierarchy generally accord with those currently used in activity centre planning, with the proviso that the population catchments included in the centre definitions should be removed.

The only submission to question the appropriateness of the hierarchy was that by Mr Wren SC on behalf of Lascorp. Mr Wren submitted that the distinction between NAC and LNAC is unnecessary when one has regard to the underlying premises supporting the Strategy. His primary submission was "*just leave them as they are*" rather than use the amended definitions.

Mr Wren further stated that if the existing designations are retained, the Lucas centre (formerly Alfredton West) should only be defined as a LNAC. That is, the word “*Proposed*” and the reference to the evolution of the centre from a NAC to a LNAC should be removed from the Table 1 to Clause 21.04-4 (refer to the Table on page 9 of this Panel report).

A number of submissions raised concerns about elements of the definitions, both within the Strategy and as translated into the Amendment. These concerns related to:

- The name of some centres being inconsistent with other Scheme references.
- The Carngham Road proposed NAC, which has been identified in the Ballarat West PSP, being omitted from the hierarchy.
- As noted above, inclusion of population thresholds or catchment for each category of activity centre (for example, over 200,000 people for a PAC, up to 120,000 people for a MAC, over 30,000 people for a LNAC, and up to 30,000 people for a NAC).
- Inconsistency in the LAC definition included in the Amendment within various chapters of the BACS. (The *Definition of Terms* at page 8 and the definition provided on page 44 in Chapter 3.1 indicate that a LAC should serve a catchment of between 3,000 and 5,000 persons, be under 4,000m² in floorspace, and may include a small supermarket. Later in the document, at Chapter 10.5, and in the reference contained within the proposed Clause 21.04, the definition does not include supermarket in the range of uses within a LAC, and states that floorspace provision should be below 3,000m²).
- The listing of floorspace figures for each level in the hierarchy and their consistency or otherwise with already approved floorspace provision in a centre.

In relation to the role of the hierarchy, as exhibited, the opening paragraph of Clause 21.04-4.1 states that the “*hierarchy establishes the order (with respect to scale and importance) of one centre compared to the other*” (Panel emphasis). Mr Montebello submitted that the word “*importance*” should be replaced with “*function*” to be consistent with the wording utilised in the SPPF.⁸ Also in relation to this opening paragraph, Mr Wren submitted that the last two sentences should be deleted. That text is:

These definitions are intended to provide a clear framework for the hierarchy of centres to allow the Ballarat Activity Centre Strategy (2012) to be easily applied within both an economic and a planning context. As such, wherever possible the definitions reflect those utilised in State Planning Policy.

Mr Wren’s prime concern was that the text could be considered as elevating the status and role of the BACS in future decision-making.

(iii) Discussion and Findings

The activity centre classifications (which identify the levels within the activity centre hierarchy) were largely uncontested. The Panel accepts the evidence of all economic/retail planning witnesses that the levels within the hierarchy are appropriate. The Panel does not support Mr Wren’s primary submission to retain the existing Clause 21.04-4 definitions (*Regional shopping centre, Sub-regional shopping centre, Primary neighbourhood centre, Other neighbourhood centre or township centre, Local convenience centre, and Bulky goods*).

⁸ Clause 11.01 encourages the development of a range of centres that differ in size and function.

The Panel finds that the classifications with the BACS hierarchy more accurately reflect the structure envisaged in current State planning policy. Deviation from the levels proposed in the BACS is not considered warranted on the submissions advanced by Mr Wren.

The Panel accepts Mr Wren's submission that the word "*Proposed*" should be removed from the descriptor/designation of Lucas. A permit has been issued for Stage 1 Lucas Town Centre which will provide for 6,800m² of shop floorspace. Importantly, the construction of the activity centre has commenced. Retention of the word "*Proposed*" in this context is considered to be inappropriate.

However, the Panel does not support Mr Wren's associated submission that Lucas should be designated as a LNAC in Clause 21.04-4. The Panel considers it important for the hierarchy to retain reference that the centre will develop "*over time*" to a LNAC. This position was accepted by Ms Butcher in her evidence where she stated:

Thus to my mind the designation of the Lucas Town Centre in the Activity Centre Strategy as a 'Large Neighbourhood Activity Centre over time – commences as a 'NAC' is reasonable

The Panel considers the reference to the evolving growth of the centre and its maturity of role and function to be highly appropriate. The Panel was advised that a further permit application has been made by Lascorp for Stage 2 but that has not been processed and, based on the expert evidence, involves floorspace that is not required for considerable time. Such an application does not justify Lucas being identified as a LNAC only in Clause 21.04-4.

Other matters relating to Lucas are addressed in section 5.3 of this report.

In response to submissions expressing concern with elements of the activity centre definitions, the Council proposed a number of post exhibition changes to Clause 21.04 and the BACS. Mr Montebello said a number of changes are necessary to achieve consistency with the Ballarat West PSP and the Alfredton West PSP and to resolve a number of existing definitional inconsistencies, to rectify drafting errors, and to improve clarity.

By the conclusion of the Hearing, changes to the activity centre definitions contained within Clause 21.04-4.1 and included in the BACS were agreed to by all parties (except with respect to Lucas as discussed above). These are as follows:

- Rename "*Delacombe*" to "*Glenelg Highway*" and amend the designation of the Centre as a "*Proposed Large Neighbourhood Centre (to develop into Major Activity Centre over time, staged in line with demand growth in the Ballarat West Growth Area catchment)*";
- Rename "*Alfredton West*" to "*Lucas*";
- Rename "*Wendouree Bulky Goods Centre*" to "*Wendouree Bulky Goods Retail Centre*";
- Include "*Carngham Road*" as a "*Proposed Neighbourhood Activity Centre*";
- Remove the population specifications for each level in the hierarchy;
- Remove examples of the type of centre from the definitions (that is, delete the bracketed words "*i.e. Ballarat CBD*" from the PAC definition and "*eg. Wendouree*" from the MAC definition and continue that modification for other levels in the hierarchy);
- Include the words "*One or more supermarkets*" in the description of a LNAC;
- Include of the words "*which may include a small supermarket*" to the description of a LAC and specify 3,000m² as the quantum of floorspace within such a centre;
- Include an additional paragraph which describes the role of the bulky goods retail precinct within the Glenelg Highway MAC.

The Panel endorses the above specified changes to the exhibited Clause 21.04-4.1 as they remove inconsistencies. Moreover, the changes will avoid potential areas of dispute which are unlikely to be critical or of strategic significance in considering a centre's overarching role or function within the hierarchy.

In reaching this conclusion, the Panel has given weight to Mr Montebello's closing submission that Ms Hill, as a key contributing author of the BACS, accepts the merits of the proposed changes. These changes are shown in Document no 21 tendered on the last day of the Hearing. The Panel also considers it appropriate to amend/update the BACS to align with the amended Clause 2.104-4.1 definitions and classifications for clarification.

The Panel supports the Council's proposed replacement of the word "*importance*" with "*function*" in the first paragraph of Clause 21.04-4.1 to align the role of the hierarchy with the wording of the activity centre strategy listed at Clause 11.01 within the SPPF.

Further, the Panel accepts Mr Wren's submission that the last two sentences of the opening paragraph of Clause 21.04-4.1 should be removed as they could be interpreted as implicitly seeking to elevate the status BACS in further decision-making. The Panel considers it important to avoid such an outcome. There is also the issue that the definitions do not directly align with those for metropolitan areas which could provide a basis for confusion and dispute. These changes are reflected in the Panel's recommendations that are summarised with respect to strategic matters in section 4.5. The Panel's recommendations are consolidated with respect to modifications to the Amendment in section 7.2 and with respect to BACS in section 7.3.

4.3 Retail Floorspace Stocktake

(i) Issues

- **Does competing evidence about the estimate of existing shop floorspace in the *Ballarat Activity Centres Strategy* significantly compromise the *Strategy*?**
- **Should the *Ballarat Activity Centres Strategy* be amended to identify concerns about the existing floorspace estimate?**

(ii) Submissions and Evidence

Chapter 3.2 of the BACS presents the results of a December 2010 floorspace survey of Ballarat's existing activity centres. The survey was undertaken by staff of Hill PDA. The stated purpose of the survey was "*to inform the Strategy*". The survey grouped floorspace by retail store types, commercial premises, and by special uses.

While there were no submissions regarding the estimate of commercial floorspace (170,589m²) or special use floorspace (169,709m²), a number of submissions alleged the quantum of existing retail floorspace (348,583m²) is a substantial over-estimate of existing supply.

The floorspace estimates are documented in *Table 9 – City of Ballarat Floorspace by Land Use (m²)* of the BACS. The following is an extract of that Table, highlighting the breakdown of retail floorspace by land use category.

Land Use Category	Floorspace (m ²)	Proportion of Total
Department Store	10,433	1.5%
Discount Department Store	27,293	4.0%
Supermarket	41,442	6.0%
Speciality Food	17,878	2.6%
Speciality Non Food	99,304	14.4%
Convenience Store	2,916	0.4%
Cafes & Restaurants	26,492	3.8%
Take Away Food	5,141	0.7%
Clothing	22,462	3.3%
Bulky Goods	74,699	10.8%
Personal Services	20,523	3.0%
Total Retail Floorspace	348,583	50.6%

Table 10 of the BACS distributes the floorspace by centre. The retail floorspace estimate of the various activity centres is as follows:

Centre	Retail Floorspace (m ²)
Alfredton Aldi	3,698
Ballarat CBD	194,749
Ballarat City Peripheral	23,635
Ballarat Marketplace	14,767
Buninyong	2,470
Maxi Food	2,658
Midvale	4,199
Miners Rest IGA	1,779
Northway	1,708
Pleasant Park	1,990
Sebastopol	4,668
Sebastopol North	14,718
Howitt Street, Wendouree	35,305
Wendouree	42,239
Total Floorspace	348,583

Mr Montebello acknowledged that there “were queries” in relation to the Strategy’s estimate of existing retail floorspace provision. He acknowledged that the February 2012 Economic Impact Assessment (EIA) prepared by Deep End Services in support of the Stockland Wendouree proposed expansion estimated existing retail supply was 256,050m², 92,553m² less than that estimated in the BACS.

In relation to magnitude of the difference, Mr Montebello submitted:

Council acknowledges the discrepancy between the figures is significant and notes that it has found the discrepancy somewhat frustrating. However, Council retains confidence in the assessment carried out by Hill PDA and the accuracy of the figures in the Strategy. Council relies on the evidence of Ms Hill with regard to the methodology undertaken to produce the floorspace assessments, which Council considers to be comprehensive. Council further notes that the discrepancy does not have a significant impact on the recommendations of the Strategy and that the key issue of an anticipated increase of 117,000 (sqm) to the period 2030 seems to be agreed between the relevant experts.

Mr Montebello also noted that Integra, as well as ERM Australia on behalf of Lascorp, raised concerns regarding the retail floorspace figures within the Strategy, specifically with regard to the Lucas and Glenelg Highway activity centres.

In her evidence on this matter, Ms Hill listed a number of other surveys of retail floorspace within the City of Ballarat:

1. *2003 Essential Economics Analysis – which calculated total retail floorspace in the City as 207,807 sqm;*
2. *2008 The Ballarat Commercial Development Strategy – which calculated the total retail floorspace as 301,770 sqm;*
3. *2012 Deep End Services – which calculated total retail floorspace in the City as 255,000 sqm; and*
4. *Macroplan Dimasi 2012 – which calculated total retail floorspace in the City as 379,159 [sic].*

She observed that the results of the surveys vary notably, and that the Hill PDA's estimate of 348,583m² is towards the higher end of the spectrum. Ms Hill also stated that the variations were discussed with Council and the survey data was peer-reviewed by Hill PDA. She offered a number of reasons that could account for the variation as identified by Hill PDA under the following headings:

1. *The inclusion of upper floors;*
2. *Centre Boundaries;*
3. *Additional Retailers;*
4. *Centres Surveyed;*
5. *Methods of Calculating floorspace; and*
6. *The exclusion of vacant floorspace from the summary figures.*

Ms Hill commented that the planning evidence for Stockland noted that *“the effect of such a discrepancy can be significant in terms of forecasting additional floorspace requirements, and the timing for the supply/development of new floorspace”* (Mr Biacsi, Contour Consultants). In response, Ms Hill observed that Stockland's evidence does not query the methodology or results of the survey but rather highlights supply implications that are largely not in dispute. Ms Hill concluded:

It can be clarified for the sake of the Contour 2012 submission that any differences between the surveys of existing retail floorspace supply discussed above will not affect the forecasting of demand for additional floorspace and the targets for growth set out in the relevant tables/Action Plans of the Strategy.

Mr Finanzio, for Stockland, accepted Ms Hill's evidence on this issue. In acknowledging that Stockland was initially concerned that the BACS had grossly over-estimated the existing supply of floorspace he stated, that following further examination, Stockland:

- (a) accepts the evidence of Ms Hill, that ultimately the discrepancy, such as it is, will not affect the outcome of the strategy;*
- (b) agrees that there are a number of plausible explanations for the discrepancy;*
- (c) prefers the view of Mr Ganly that, on balance, the discrepancy involves over-estimation of floor areas on the basis that the consequences of the kind of figures postulated by Ms Hill are not evident on the ground; and*
- (d) agrees with all of the economics experts in this case that the most important figure is the number attributed to future demand for retail space – in respect of which there is broad agreement notwithstanding that different methodologies have been used to arrive at the figure.*

The Panel notes that Mr Ganly, for Stockland, observed that his company's estimate of retail floorspace in the Ballarat CBD and the peripheral area of the CBD was approximately 88,380m² lower than that defined in the BACS, which is almost the same as the difference in the overall estimate for all of Ballarat. He concluded therefore that the difference lies in that estimate for the Ballarat CBD and periphery. Having drawn this conclusion, Mr Ganly documented rates of CBD floorspace per person for a range of centres throughout regional Victoria. The results included Warrnambool (0.79m²/person), Mildura (0.70m²/person), Bendigo (0.68m²/person), Shepparton (0.46m²/person) and Geelong (0.42m²/person). In comparison, adopting the BACS figure for the Ballarat CBD of 194,749m² the rate of provision equates to 1.25m²/person compared with 0.76m²/person utilising the Stockland Wendouree May 2012 EIA figure of 118,089m².⁹ Mr Ganly concluded that the derived per person estimate of retail floorspace provision from figures within the BACS "*is well in advance of the top end of the range*".

Mr Ganly also reviewed the floorspace estimate using three other methods which included:

- Comparison with the last Retail Census (carried out by the ABS in 1991/92);
- 2003 *City of Ballarat Retail Development Strategy*; and
- Application of national floorspace provision rate.

Mr Ganly concluded that he disagreed with the BACS estimate of existing retail floorspace provision, and reiterated his belief that the actual figure to be 256,050m² as contained in his EIA. He said that is more or less confirmed by BACS Table 38 that shows demand for such retail floorspace is assessed to be 246,255m². He also stated that:

⁹ The Panel notes that if Hill PDA estimate of Ballarat CBD Peripheral was added to the Ballarat CBD figure, the rate of provision per person increases to 1.40 m².

if one was to accept the Strategy's 2010 retail floorspace demand and supply data as presented, the only reasonable conclusion that could be made is that the City was drastically oversupplied with retail floorspace (i.e. 102,28 sqm or 42% oversupplied).

I would expect this to manifest itself in masses of extremely poor quality tenancies and in subsequent high vacancy rates.

Mr Wren noted that the witness statements of Mr Stephens (for Integra) and Mr Ganly (for Stockland) both called into question the reliability of the BACS estimate of current floorspace supply. He did not take the matter further. The key focus of Mr Wren's submission concerned the distribution of future floorspace rather than the audit of existing supply. Neither the economic evidence statement of Mr Dimasi, nor the planning evidence of Ms Butcher commented on the existing retail supply projection within the BACS.

Mr Cicero, for Integra, relied on the economic evidence of Mr Stephens. Mr Stephens stated that the BACS estimate of existing floorspace appears high. He noted that his firm estimated the total floorspace in Ballarat to be approximately 210,000m² in 2003 and he could not identify new development which would increase provision to 348,600m² over the period 2003 to present. Mr Stephens also noted that the figure appeared high in comparison with the estimate provided by Deep End Services in May 2012 for Stockland.

In relation to the BACS estimate that there is an oversupply of 102,300m² of retail floorspace¹⁰, Mr Stephens stated that he has never identified an "oversupply of retail floorspace of this magnitude" for any of the strategic land use assessments he has undertaken in his professional career. Mr Stephens proffered two possible influences:

- The estimate of the current retail floorspace in the City of Ballarat is too high; or
- The estimate of current retail demand in Ballarat is too low.

As discussed, Mr Stephens accepted the first scenario – the existing supply estimate is too high. In relation to the significance or otherwise of a high estimate and an inflated oversupply projection, Mr Stephens stated:

If considered in isolation, it may be used to justify restricting retail development in the short and medium term on the basis of the current perceived 'oversupply' of retail floorspace. This is because although the Strategy forecast growth in retail demand of 117,480m² of retail floorspace in the period to 2030, the estimated oversupply of 102,300m² implies that just 15,200m² of additional retail floorspace is required to meet this demand over the next 20 years.

Mr Iles relied on the economic evidence of Mr Nott. The three statements by Mr Nott did not focus on the existing floorspace projections contained in the BACS. However, in response to questions put to him, Mr Nott stated that he considered the estimate in the BACS to be high. The Panel notes that in preparing his three economic impact assessments, Mr Nott utilised the February 2012 floorspace calculations documented in Mr Ganly's EIA for Stockland Wendouree¹¹ in preference to those contained in the Strategy.

¹⁰ BACS Table 48 – Demand versus Supply for Retail Floorspace to 2030 (sqm NLA), page 136.

¹¹ Stockland Wendouree EIA – 15 May, Table 9 – Local activity centres, floorspace distribution (Feb 2012), page 28.

(iii) Discussion and Findings

The Panel accepts that consensus about the estimate of existing retail floorspace within Ballarat could not be reached between the Council, retail economists and town planners providing expert evidence, and submitters/advocates. This is despite a meeting being held prior to the Hearing where Ms Hill and Mr Ganly sought to identify the bases for the discrepancies. The Panel was informed that this meeting discussed methodologies adopted in the two witnesses' respective surveys as well as an examination of centre by centre estimates. The Panel considers it unfortunate, but not fatal to the Amendment, that agreement could not be reached.

Based on the evidence before it, the Panel is not able to make a finding as to a specific figure that it considers represents the current supply of retail floorspace in Ballarat. Rather, it is drawn to the submission of Mr Finanzio that the discrepancy between Mr Ganly's estimate and Ms Hill's estimate does not affect the outcome of the Strategy and that there are a number of plausible explanations for it. All witnesses and advocates agreed with this submission, including Ms Hill. Having noted this, based on the material before it, the Panel considers there is merit in the evidence of Mr Ganly and Mr Stephens (agreed by Mr Dimasi and Mr Nott) that if the BACS estimate of supply was close to the mark, the consequential analysis of supply and demand would indicate that City is currently significantly oversupplied with retail floorspace. If this was the case this would be expected to manifest itself in very high vacancy rates and a significant number of poor quality tenancies. While there are some vacancies, very high vacancies were not evident in the Panel's inspection of Ballarat's activity centres or in the economic evidence and reports. In these circumstances, and having regard to the expert advice of four economic witnesses who appeared at the Hearing, the Panel considers that BACS assessment of existing floorspace may be significantly over-estimated and it is likely that the over-estimation is attributable to the figure allocated to the Ballarat CBD and periphery.

Despite that, there is agreement between all of the experts that the BACS projection of demand for approximately 117,000m² of additional retail floorspace to the period 2030. This matter is further discussed in section 4.4.

The Panel accepts the evidence of Mr Stephens and Mr Ganly that a possible consequence of the BACS containing an over-estimate of existing retail floorspace is that subsequent readers may seek to utilise this element of the Strategy as justification to restrict more retail development in the short and medium terms. The Panel notes that evidence of Ms Hill sought to alleviate this concern where she confirmed that the different existing retail floorspace supply estimates *"will not affect the forecasting of demand for additional floorspace and the targets for growth set out in the relevant tables/Action Plans of the Strategy"*. The Panel accepts with this position and considers that there is merit in BACS being annotated to acknowledge there are differences in expert opinion regarding the estimate of existing floorspace within Ballarat and that the estimate contained within the document should not be relied upon as a basis for influencing the timing, staging or location of new retail floorspace within the municipality. This finding is reflected in the Panel's recommendations that are summarised in section 4.5 of this report and detailed in section 7.3.

4.4 Floorspace Forecasts

(i) Issues

- Is the *Ballarat Activity Centres Strategy's* estimate of total projected floorspace demand to 2030 acceptable?
- Is the *Ballarat Activity Centres Strategy's* distribution of projected new retail floorspace among individual centres acceptable?
- Is it appropriate for the *Ballarat Activity Centres Strategy* to reflect future floorspace allocations as “*targets*”?

(ii) Submissions and Evidence

Section 9.2 of the Hearing version of the BACS lists indicative floorspace target totals for social, retail and commercial floorspace and distributes this floorspace within each centre in the hierarchy to 2030. It states that the floorspace targets provided are based on the economic modelling presented in Part B of the Strategy. The modelling suggests a need for a net increase in floorspace in activity centres throughout the municipality as follows:

- +327,000m² of social floorspace;
- +117,000m² of retail floorspace; and
- +133,000m² of commercial floorspace.

No submitter or witness contested the quantum of demand and distribution assumptions for the +327,000m² of identified additional social floorspace. There was one issue raised in regard to the proposed distribution of commercial floorspace as it relates to the Lucas Town Centre (this submission is addressed in section 5.3 of this report).

In relation to the estimate of need for additional retail floorspace, as previously identified in section 4.3 of this report, there was general agreement among the retail economists that the estimate of future retail floorspace demand of approximately 117,000m² is reasonable and a valid reflection of anticipated need. Each witness noted and agreed with the accompanying footnote in the Strategy that states “*It is important to note that targets are aspirational and do not represent a cap.*”

While no submitter or expert witness objected to the BACS estimate of total future retail floorspace demand to 2030, concerns were expressed with how the BACS reflected the future distribution of floorspace throughout the various activity centres in the hierarchy.

The assumptions contained in the BACS that are intended to guide the distribution of the retail floorspace are listed as follows:

- 3.5% of all future retail demand will be located outside the centres defined in the hierarchy (representing approximately 4,000m²);
- Close to 20% of retail floorspace has been allocated to the Ballarat CBD in recognition that it will continue to be the focal point for a range of higher order uses and activities in the municipality and wider region;
- The proposed Glenelg Highway MAC will aim to accommodate 20% of retail floorspace by 2030; and
- The Wendouree MAC will aim to accommodate 15% of anticipated retail floorspace.

Having outlined the assumptions the following qualification is made:

It is highlighted that the identified floorspace targets are indicative only, and span the period from 2010 to 2030. Implementation of the targets and their phasing should remain subject to appropriate assessment and review at the detailed structure planning and planning permit application stages, so that net community benefit can be identified and addressed (please refer to Chapter 11 for further details of NCBT).¹²

Table 57 (which is reproduced in the BACS Summary as Table 2) is then presented. It provides a summary of the existing and prospective Activity Centre Hierarchy for the City of Ballarat. The Table includes the nomination of “Net Additional Floorspace Targets to 2030 (sqm)” for identified centres. An extract is reproduced below highlighting the retail floorspace “targets” to 2030.

Extract of Table 57 – Proposed Future Centre hierarchy and Growth Targets for the City of Ballarat to 2030

Centre	Net Additional Retail Floorspace Targets to 2030 (sqm)
Ballarat CBD	20,000
Wendouree	17,000
Glenelg Highway	23,000
Sebastopol (formerly Sebastopol North)	2,000
Midvale	1,000
Lucas	3,000
Buninyong	1,000
Sebastopol South (formerly Sebastopol)	1,000
Redan (formerly Maxi Food)	700
Alfredton East (formerly Alfredton Aldi)	500
Northway	200
Miners Rest	200
Pleasant Park	400
Carngham Road	3000
Wendouree Bulky Goods Cluster	40000
Total	113,000

Neither the 117,000m² total net additional retail floorspace target¹³ nor any of the individual centre “targets” are proposed to be inserted into the new Clause 21.04-4.

¹² NCBT is a Net Community Benefit Test described in the Strategy.

¹³ 117,000m² comprises 113,000m² listed in the table and an additional 4,000m² allowed for outside the centres.

The nomination of floorspace growth “Targets” in Table 57 (and Table 2) within the BACS and associated distribution assumptions, attracted a number of submissions and expert opinion. All submitters presenting at the Hearing, and their witnesses, agreed that it would be inappropriate for such figures to be included in the Scheme.

Ms Hill stated that it is common for planning strategies and documents to use “targets” as a means of quantifying an aspiration or objective for an area or activity centre. In support of this statement, Ms Hill quoted extracts from the Australian Government’s Productivity Commission’s review of planning and also *Practice Note 58* relating to structure planning for activity centres. The latter reference identifies the need to “include targets and indicators to measure progress in meeting the performance criteria in Melbourne 2030 and M@5m”. Ms Hill stated:

In this regard and with respect to Activity Centre Strategy’s, the use of ‘targets’ can create greater clarity by directing stakeholders to the main centres identified with capacity or opportunity for growth within the activity centre hierarchy. Importantly however, there must be flexibility in targets whereby they are aspirational as opposed to rigid numbers that must be adhered to.

It is important however, consistent with the advice given by the Productivity Commission’s review to acknowledge that for the purposes of Strategy a ‘target’ has been described as “aspirational” and “indicative only”. Perhaps, in light of recent zone reforms discussed in Victoria as discussed above, the nomenclature “target” is somewhat misleading and gives the wrong impression. A softer term such as “Guide” may now be considered preferable (Panel Emphasis).

Ms Hill explained that the forecast additional demand in retail floorspace (117,000m²):

has been distributed across the larger activity centres according to their place in the hierarchy. For example a higher slice of the available floorspace was allocated to Ballarat CBD across all land uses in light of the Strategy’s objective to promote and protect the Centre’s primacy in the hierarchy.

Ms Hill noted that there were exceptions to this “top down approach” with the Glenelg Highway MAC, Lucas and Carngham Road centres being cases in point. She said that the allocation to these centres was based on the work undertaken by Council:

in relation to the Ballarat West Growth Area and for consistency were carried over to the Strategy. Furthermore, as these are new centres, as opposed to those targeted for additional growth, they were allocated additional retail floorspace to assist them in achieving their place in the hierarchy.

Specifically in relation to the allocation to Lucas, Ms Hill’s evidence was:

I am aware that there is some discussion about the Lucas Activity Centre growth with the establishment of a second retail anchor. The hierarchy established for the Strategy would suggest that it is important that this centre does not take on the form and role of a centre which is associated with a higher designation. In this part of Ballarat, that is the role of Wendouree and the future Glenelg Highway Major Activity Centre.

Ms Hill also acknowledged that the final (Hearing) version of the BACS adjusted the target for Lucas “to accord with its 2030 milestone” and that the original 5,000m² figure has been reduced to 3,000m². Ms Hill’s opinion was:

This outcome seems to be incongruent with where the centre is at in terms of its current approvals. This highlights the somewhat theoretical approach of setting floorspace targets and why they should not be regarded as anything more than a guide. It is possible to adjust the figures and allocate more floorspace to this centre however, given the overall anticipated supportable floorspace target, that would result in taking floorspace from one or more other centres in the overall hierarchy. The key issue for this centre is to ensure that its size and function is consistent with a neighbourhood activity centre and potentially a large activity centre rather than, for example, a major activity centre and again, I refer the Panel to the indicative range set out in the definition of the hierarchy and the anticipated type of shops and uses within the centres.

Mr Finanzio stated that Stockland agrees with Ms Hill that “floorspace allocation ‘targets’ and timing can only ever be a guide”. He also submitted that Stockland agreed that the most important thing to bear in mind is the role and function of any particular centre relative to other centres within the same hierarchy. On this issue, Mr Finanzio concluded:

If nothing else flows from this process, the role and function of centres must be established even if the floorspace allocations are regarded as ‘flexible’.

Mr Ganly’s evidence, for Stockland, was that the BACS should allocate to the Wendouree MAC a range of 15% to 20% of all additional retail floorspace for Ballarat as a whole (instead of the 15% currently applied). Accordingly, he recommended that the 17,000m² figure within Table 57 should be modified to 24,000m². The basis of this suggestion was that such a range would allow for appropriate flexibility in what will be Ballarat’s only MAC for many years to come.

The primary submission of Lascorp was that the BACS “should be brought up to date and that Tables 2 and 57 should be altered to provide for a retail floor area for Lucas in the order of 12,700m²”. The premise of this submission by Mr Wren was that Lascorp and its expert witnesses assumed that the “target” figure specified in Table 57 reflected a total retail floorspace figure for the centre to the year 2030 and did not acknowledge what had already been approved for the centre via its the existing Stage 1 permit. Lascorp was very concerned that that BACS advocated the target total floorspace for the Lucas Centre up to and including 2030 as initially 5,000m² and then reduced that figure to 3,000m² which would be in direct conflict and “fly in face” of its existing 7,200m² current approval. On this assumption, Mr Wren submitted “the so-called guidance that the Strategy is supposed to provide for future planning within the City of Ballarat of growth targets for activity centres is rendered obsolete before it begins.”

In response to Lascorp’s submission, on Day 2 of the Hearing, Mr Montebello stated that Lascorp’s interpretation of the BACS does not reflect the intention of the Strategy. Mr Montebello clarified and emphasised that the revised 3,000m² target for Lucas is for net additional floorspace over the approximate 7,200m² of retail floorspace that is currently approved in the Stage 1 permit (PLP/2011/769).

At this juncture, the Panel provided the opportunity for the Council’s representatives to meet outside the Hearing with representatives of Lascorp and other parties to clarify the intent of the BACS in relation to the proposed allocation to Lucas and determine if an agreed position could be reached regarding a revised number and/or wording in Tables 2 and 57.

Following this adjournment, Mr Wren advised that Lascorp had reached an in-principle agreement with the Council to amend Table 57 (and Table 2) as follows:

- For Lucas, in replace “3000” with “5000” in the retail column; and
- Insert an appropriately worded footnote to the Table that makes it clear that the floorspace target in relation to Lucas does not include floorspace already approved as part of Stage 1 of the Lucas Town Centre.

Mr Montebello agreed with Mr Wren’s account of the position that had been agreed.

At this stage of the Hearing, Mr Montebello advised that the additional 2,000m² of retail floorspace that would be allocated to Lucas would be most likely be “drawn down from allocations across all centres in the hierarchy”.

While Mr Wren confirmed agreement had been reached with Council in relation to the modifications to Table 57, he submitted that the BACS should be more discriminating in its analysis of retail needs, particularly for weekly shopping demand for those new centres that are going to accommodate the 31,000 future inhabitants of Ballarat. Mr Wren expressed the view that the BACS proposed distribution of floorspace to centres skewed disproportionately in favour of the Ballarat CBD and higher order centres and was “top heavy”.

Despite its agreement with Council regarding the modified Table 57, Mr Wren maintained that Lascorp considered the BACS:

does not provide any assistance in terms of its numerical analysis. That is not to say, however, that the principles discussed in Section 8 are not supported or indeed that the proposed amendment to clause 21.04-4 should be wasted. The difficulty that has been highlighted comes from the “top down” approach referred to by Ms Hill in the last paragraph of her Section 2.7 on page 11¹⁴. It is relevant to observe the various qualifications Ms Hill makes to this approach by reference to the word “guide” which she describes as a softer term than target.

...

If the activity centre is there to serve the catchment population by the provision of retail services that are convenient, accessible, vibrant and attractive etc., surely it is those requirements that should drive the relevant function of the centre, not some preconceived notion of what is supposed to go into an “intended place in the hierarchy”. How is this flexible, how is it a guide if it is to be prescriptive rather than responsive to the particular area’s demographic requirements.

¹⁴ “It is important to ensure that these centres develop having regard to their intended place in the hierarchy”.

The primary submission of Mr Cicero for Integra was that:

there should be no floorspace targets for the Lucas Centre, given that it has been through a detailed structure planning process which has resulted in a schedule to the Zone and a PSP without floor limits / targets / guides.

Having stated this position, Mr Cicero said:

If contrary to this submission, the Panel believes that it is appropriate for the BACS to include floor area targets as guides for the LAC, then the changes proposed by Council and agreed to by Lascorp are accepted by Integra.

Mr Montebello’s closing submission noted that a revised Table 57 (and Table 2) had been prepared by Ms Hill as a possible way of redistributing floorspace (Document no 20). Mr Montebello stated that unlike what was contemplated when the methodology was discussed during Day 2, the revised table distributes floorspace by taking it from the CBD to Lucas (and Wendouree) rather than from across the board. In this regard, Mr Montebello said:

The distribution is mindful of some of the commentary that was held on day 2 – notwithstanding this was not raised with Ms Hill. Nevertheless, the direction of the commentary was noted.

The Panel understands that the above statement responds to Mr Wren’s criticism of the perceived arbitrary and “top down” approach to floorspace distribution rather than distribution being guided by future weekly and other shopping requirements being met across Ballarat’s growth areas.

Mr Montebello concluded on this matter by stating that the extensive floorspace allocation that has been directed to the City Centre is “consistent with the uncontroversial goal of the Strategy and MSS (existing and proposed) that the primacy of the CBD is to be maintained and protected.”

The table below, prepared by the Panel, highlights the three changes proposed by Ms Hill to the allocation of floorspace within the retail hierarchy based on changes included in Document no 20. It confirms the submission of Mr Montebello that all of the redistributed floorspace has been drawn from the CBD. The last column highlights the magnitude of change.

Centre	Hearing VERSION Net Additional Retail Floorspace Targets to 2030 (sqm)	Ms Hill revised VERSION – DOC. 20 Net Additional Retail Floorspace Targets to 2030 (sqm)	Hearing Version Total Floorspace	Ms Hill revised VERSION – DOC. 20 Total Floorspace	Change (sqm)
Ballarat CBD	20,000	16,500	141,000	137,500	-3,500
Wendouree	17,000	18,500	62,000	63,500	+1,500
Lucas	3,000	5,000	7,500	9,500	+2,000

The wording of the additional footnote agreed between Lascorp and the Council relating the Lucas Centre is as follows:

Note: Floorspace target in relation to Lucas does not include that approved as part of Stage 1 of the Lucas Town Centre (PLP/20011/769).

(iii) Discussion and Findings

The Panel acknowledges that no party challenged the BACS modelling that identified a notional need for net increase of approximately 117,000m² of retail floorspace in the municipality by 2030.

The Panel accepts submissions and evidence that the proposed Clause 21.04 appropriately does not include any reference to the floorspace targets contained in the BACS. The Panel agrees that inclusion of floorspace targets into the MSS would elevate their intended function which is as stated in the evidence of Ms Hill is to provide a “*guide*” and that they are “*aspirational*”, “*indicative only*”. Further, as noted, her view was that “*implementation of the targets and their phasing should remain subject to appropriate assessment and review at the detailed structure planning and planning permit stages, so that net community benefit can be identified and addressed*”.

The Panel does not accept Integra’s primary submission that advocated for the removal of floorspace targets for Lucas, nor does it accept Lascorp’s submission that the numerical analysis “*does not provide any assistance*”. That is because all economic witnesses agreed that the BACS forecast of a total demand estimate for net additional retail floorspace to 2030 for the City was robust and in the right ballpark. In addition, the Panel considers it highly appropriate for the BACS, as a higher or strategic planning document, to provide guidance on where such floorspace could be distributed in order to advance the principles and outcomes sought by the Strategy and so as to provide a net community benefit for existing and future residents. The Panel considers that it would have been an opportunity lost if the BACS did not provide such guidance. The Panel suggests that the authors of the document and Council may also have been criticised for not taking the Strategy far enough if the preferred distribution of such floorspace was missing.

Consequently, the Panel agrees with Ms Hill that the word “*target*” within Table 57 “*is somewhat misleading and gives the wrong impression*”. The Panel does not accept Ms Hill’s evidence however that the work “*guide*” is preferable. The Panel considers the heading above columns 6 to 9 in the Table should be redrafted to read: “*Indicative net additional floorspace to 2030*”. The words “*target*” and “*guide*” are considered ambiguous whereas “*Indicative*” better reflects the intended status of the figures contained in the Table.

In relation to the proposed revisions to Table 57 (and Table 2) the Panel accepts the proposed numerical changes and the footnote contained in Document no 20. No party to the Hearing opposed these changes. Importantly, the Panel notes its particular support for the redistribution of the 3,500m² of floorspace entirely from the CBD.

The Panel considers that Mr Wren’s submission and Mr Stephen’s evidence have merit regarding their views that the 20% allocation of floorspace to the CBD was somewhat arbitrary and top heavy, particularly having regard for the need to adequately accommodate the weekly shopping needs of future residents in Ballarat’s growth areas.

Ms Hill's acceptance of this revised approach to the distribution of floorspace is also acknowledged by the Panel.

The Panel is very confident that a 3,500m² reduction in the indicative CBD floorspace allocation to the year 2030 (20,000m² to 16,500m²), if this outcome eventuates on the ground, will not put at risk the primacy of the Ballarat CBD. In forming this view, the Panel is mindful that the CBD currently contains in excess of 118,000m² of retail floorspace on Mr Ganly's estimate, or closer to 195,000m² on Ms Hill's estimate. Regardless of which estimate is closer to the actual mark, both figures indicate that the Ballarat CBD currently contains more than 50% of the total retail floorspace in the municipality. The Panel is confident that the additional indicative retail floorspace distribution advanced by the BACS will not materially or functionally result in the growth of a centre such that it would challenge the primacy of the CBD.

The Panel also notes that it accepts the evidence of Ms Hill that the most recent Victoria In Future population projections for Ballarat indicate that the population of Ballarat as reflected in the BACS may be under-estimated by approximately 2,500 persons. This under-estimation equates to a demand for approximately 5,500m² of additional retail floorspace within the wider region by 2026. The Panel accepts that the increase in demand is marginal and has little effect on the BACS recommendations.

For the reasons outlined above, the Panel concludes that it is appropriate to update Table 57 (and Table 2) of the BACS consistent with the changes reflected in Document no 20 and further modified to delete the word "*target*" from the title of the table, and reword the heading above columns 6 to 9 to read "*Indicative net additional floorspace to 2030*". These changes assist to clarify inconsistencies and provide wording to accord with the intent of the Table as described in Ms Hill's evidence. Further, in reaching this conclusion the Panel considers that the indicative allocations provided to centres within the hierarchy, as reflected in Document no 20, represent an acceptable distribution among existing and proposed activity centres. The above findings are reflected in the Panel's recommendation contained within section 4.5 of this report and detailed in section 7.3.

4.5 Conclusion and Recommendations

For the reasons outlined above, the Panel considers changes are required to the proposed Clause 21.04-4, and some matters of clarification are required in the BACS, in order to:

- Achieve consistency with the Ballarat West PSP and the Alfredton West PSP, resolve a number of existing definitional inconsistencies, rectify drafting errors and improve clarity (refer to discussion and findings in section 4.2);
- Acknowledge that there are differences in expert opinion regarding the existing floorspace within Ballarat (refer to discussion and findings in section 4.3); and
- Reflect the positions agreed between the Council and parties represented at the Hearing (accepted by the Panel) in regard to BACS' identification of indicative future floorspace estimates for individual centres within the hierarchy (refer to discussion and findings in section 4.4).

Precise changes to Clause 21.04-4 and BACS are summarised and consolidated with other recommendations in sections 7.2 and 7.3 of this report.

5 Centre Specific Matters

5.1 Ballarat CBD

(i) Issues

- **Should the boundary of the Ballarat CBD be amended to include the railway station precinct?**

(ii) Submissions and Evidence

Submission no 11 by DoT described the station precinct as the primary transport interchange for Ballarat “*playing a key role in the structure of the central city landscape*”. Inclusion of the station would, the submission stated:

allow for a more uniform, consistent understanding of the CBD area, demonstrating the City of Ballarat’s interest to enable the future integration of the Railway Station Precinct and for coordinated and positive improvements to the role and function of the surrounding area.

In reply, the Council submitted there is a discrepancy between the boundary in the BACS and the boundary in *Making Ballarat Central – The CBD Strategy 2010* as a consequence of the timing of each document. At the time that BACS was commissioned, the CBD boundary was at a draft stage and excluded the railway precinct.

The Council submitted that realigning the boundary in BACS and Clause 21.04 would be appropriate and would have no consequence in terms of floorspace as the land does not comprise retail floorspace today.¹⁵

(iii) Discussion and Findings

Amendment C152 introduced detailed policies into the Scheme to reflect the recommendations of *Making Ballarat Central - The CBD Strategy* and to include reference to the strategy in Clause 21. As far as the Panel is aware, Amendment C152 was not the subject of a Panel review and the suggestion to correct the discrepancy does not, therefore, conflict with findings made in another forum.

The Panel accepts the Council’s submission that it is appropriate to show the boundary of the Ballarat CBD Principal Activity Centre in proposed Clause 21.04-4 consistent with that in *Making Ballarat Central - The CBD Strategy*.

¹⁵ The Panel is aware of facilities at the Station but there is limited retail use.

5.2 Wendouree Major Activity Centre

(i) Issues

- **Should the boundary of the Wendouree Major Activity Centre be enlarged to include the bulky goods and railway station precincts?**

(ii) Submissions and Evidence

Two submissions questioned the boundary of the Wendouree MAC (submission no 3 for Stockland and submission no 11 for DoT). They submitted the MAC should be expanded to include the bulky goods precinct opposite and the railway station.

Stockland's submission was that proper and orderly planning dictates that the MAC boundary should include these important elements with respect to a broad land use mix, improved public transport and integration of transport and land use planning. Mr Biacsi elaborated upon these matters in his planning evidence. He observed the proposed MAC encompasses land to the east of the Stockland site but does not include the bulky goods retail precinct, railway and other uses such as government offices. He stated that a "*more sophisticated approach should be employed to define the boundary of the Wendouree MAC*". He considered that activity centres should include a range of uses and cited criteria in *Practice Note 56* in relation to the Activity Centre Zone in support of his opinion. Mr Biacsi's evidence was that it is important for any structure planning process to include the whole area of influence and not just the boundary identified in BACS.

DoT submitted that to ensure long term desired land use and integrated transport outcomes for the Wendouree Train Station Precinct, and to further improve pedestrian connectivity to and from the precinct and the Activity Centre, these issues could be addressed via the development of a precinct structure plan.

In response, Mr Montebello opposed the expansion of the MAC for several key reasons:

- The separation of the bulky goods precinct to the west of Gillies Street from the Wendouree MAC is appropriate given the different land uses and the clear distinction in design treatments and interaction with the public realm.
- The Strategy supports bulky goods precinct being further developed to become a major bulky goods retailing destination in the City of Ballarat and wider region. It is important to ensure that it does not detrimentally impact on the role and function of the Ballarat CBD.
- Bulky goods retailing requires a different built form to traditional retail, particularly in relation to the emphasis placed on vehicular access associated with larger products that may be purchased in these stores. The Strategy seeks to recognise the different urban form that this is likely to entail.
- It is acknowledged that in order to address the above outlined issues and further improve pedestrian connectivity to and from the Wendouree station and the MAC, development of a structure plan may be necessary. BACS recommends the preparation of a structure plan to guide future development. This process will determine whether or not the station precinct is included in the Wendouree MAC.

-
- The railway station serves a commuter role rather than services the shopping centre and pedestrian connectivity between the station and shopping centre is poor. The possible inclusion of the station as part of the MAC should be considered through structure planning.

Mr Montebello also referred to the very large land area involved. If combining the MAC with the bulky goods precinct, some 100 hectares would result, which would “*more than challenge the CBD*”. To include the much wider area now, as part of the MAC, and then potentially contract the boundaries later, is more problematic than a process that might broaden the physical extent of the MAC through structure planning, the Council submitted.

Mr Montebello further noted that the map in the proposed Clause 21.04 includes the Stockland Wendouree Shopping Centre within the area mapped as the “*Bulky Peripheral Retailing Precinct*” whereas the text distinguishes between the MAC and the bulky goods precinct.

Ms Hill addressed these matters in her evidence. She noted that the Wendouree MAC, as defined in the Strategy represents an amalgamation of the existing Wendouree centre, with part of the Howitt Street Activity Centre and the land between. She considered that this will assist in consolidating the focus of the Wendouree MAC closer to the intersection of Gilles Street north and Howitt Street. It will also assist in retaining the eastern part of this area for lower intensity industrial and business uses, and other uses that do not generate high levels of pedestrian movement. She stated that this new centre will have two anchors being the Stockland Shopping Centre and the existing strip of retail premises accessed via the service lane off Howitt Street. Ms Hill contrasted the role of the MAC with the specialised role for the peripheral sales area which would serve a broader and different role.

Ms Hill added to Mr Montebello’s submission that the Strategy recognises the need for improved pedestrian connections and to work with Stockland in this regard.

(iii) Discussion and Findings

Wendouree is the only sub-regional centre identified in Clause 21.04 today and is proposed to be the only MAC until the Glenelg Highway centre develops from a LNAC.

Wendouree’s role in the hierarchy is unchallenged and is accepted by the Panel. The role was also not challenged in the Amendment C159 process, as discussed by the Panel in its report with respect to that Amendment.

The Panel appreciates the point made by the submitter. There is merit in the future planning for the MAC and bulky goods area to be coordinated, whether that occurs in one or more processes. The two centres will influence one another. Functional and physical connections between them, and maximising the role of significant infrastructure such as the railway, are further considerations. Neither map in the Scheme acknowledges the government offices adjacent to the homemaker centre. Those offices are another consideration among many to which structure planning will need to have regard consistent with the *Practice Note 58 – Structure Planning for Activity Centres*.

That Note includes activity centre boundary criteria, inter alia:

a) *Consider the following issues in determining the potential location of an activity centre boundary:*

- *the location of existing commercial areas and land uses*
- *the location of existing government and institutional areas and land uses*
- *the location of existing areas of public open space*
- *commercial and residential needs*
- *environmental and flooding constraints*
- *heritage constraints*
- *availability of strategic redevelopment sites, both existing and potential*
- *the location of residential areas, including whether they provide significant redevelopment opportunities or constraints for the centre*
- *consideration of physical barriers and opportunities for their improvement*
- *proximity to public transport, especially fixed rail (train or tram)*
- *the location of existing and potential transport infrastructure including fixed rail, buses, bicycle paths, car parking areas and modal interchanges*
- *walkability – opportunities to provide for and improve walkability within 400 to 800 metres from the core of the centre (depending on topography and connectivity)*
- *consistency with State policy*
- *consistency with local policy and Municipal Strategic Statement (MSS)*
- *impacts of the boundary on other activity centre boundaries.*

b) *In setting a boundary for an activity centre, include:*

- *sufficient land to provide for the commercial (retailing, office, fringe retailing and support activities such as entertainment) activities needed over a 15 to 20 year time frame and then into the 30-year horizon*
- *residential areas that are integrated into the activity centre or surrounded by other uses that have a strong functional inter-relationship with the activity centre even where limited development opportunities exist*
- *key public land uses that have or are intended to have a strong functional inter-relationship with the activity centre even where there are no or limited redevelopment opportunities*
- *public open space areas that have or are intended to have a strong functional inter-relationship with the activity centre.*

The change being suggested to the boundaries is not a minor matter despite the valid logic in ensuring a holistic planning approach consistent to new planned centres such as the Glenelg Highway MAC.

Importantly:

- The suggestion to expand the MAC has not been put more broadly to the community and land owners; and
- Has not been considered in terms of the scale of the MAC that, in land area alone, could potentially challenge the CBD's primacy and undermine a fundamental element of the activity centre hierarchy and vision.

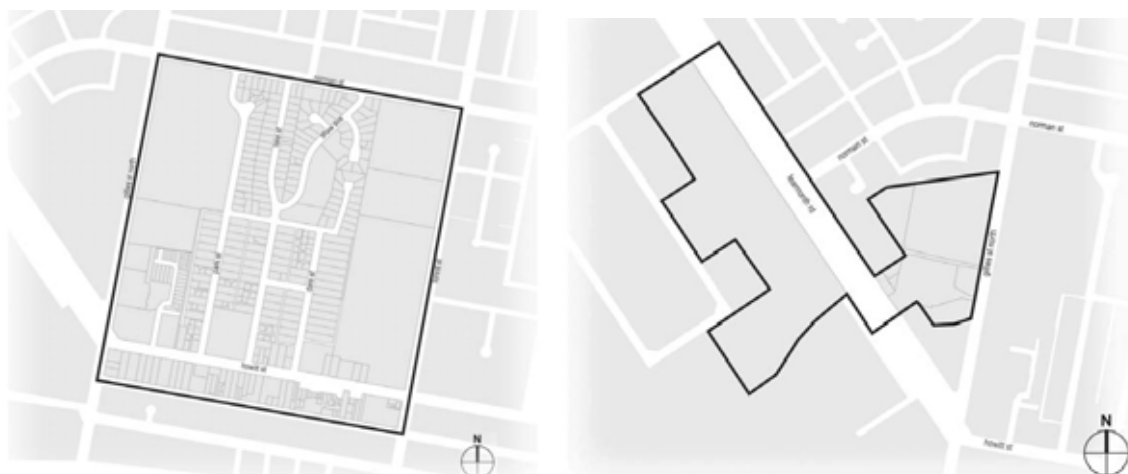
The Panel finds that the boundaries must be resolved in structure planning. Consequently, it does not recommend the maps to Clause 21.04 (or the Strategy) be changed through Amendment C151. Structure planning should consider *Practice Note 58 – Structure Planning for Activity Centres* and other relevant strategic guidance that will ensure assets such as the railway and non-retail land uses are taken into account. There would be scope to refer to the *Practice Note* more broadly in the BACS document.

The Panel is less certain about the suggested discrepancy between maps and text in the Amendment. There is a discrepancy in the existing Scheme plan relating to the “*Wendouree Peripheral Retailing Precinct*” at Clause 21.04-4 (Map 2) because the precinct includes the Shopping Centre as shown in Figure 3.



Figure 3 – Map 2 to Clause 21.04-4 of the existing Scheme.

However, appropriately, the exhibited maps have the areas separated as shown in Figures 4 and 5:



Figures 4 and 5 – Wendouree MAC (left image) and Wendouree Bulky Goods Retail Centre (right image) proposed in Amendment C151.

These boundaries appear to accord with BACS and the text also distinguishes between them. The names/descriptions given to activity centres (such as the bulky goods retail precinct) has not been consistent in the Amendment documentation but this has been substantially (but not fully) resolved in Document no 20 as further discussed in section 7.2 of this report.

5.3 Lucas Town Centre

(i) Issues

- Should the *Ballarat Activity Centre Strategy* be modified as a result of the existing statutory planning framework and approvals that apply to the Lucas Town Centre?
- Should the boundary of the Neighbourhood Activity Centre be modified to earmark additional land for employment purposes?

(ii) Submissions and Evidence

Mr Cicero submitted that references to the Lucas NAC within the BACS should be modified to reflect the potential for a higher level of commercial activity at the activity centre.

While no specific modifications to the Amendment or the BACS were requested in his written submission on behalf of Integra, Mr Cicero verbally suggested that if the Panel was supportive of Integra's position on this matter, then the Lucas entry in Table 57 (and Table 2) of the BACS could be amended by replacing the figure "2,500" with "9,000" in the column headed Commercial and the definition of the Lucas NAC with the BACS could be amended to acknowledge an expanded commercial role for the centre.

Mr Cicero submitted that these outcomes were worthy of support for a number of reasons including:

- The indicative distribution of commercial floorspace to activity centres with the identified BACS hierarchy, as outlined in Table 57, is somewhat arbitrary.
- Lucas is the only significant employment node in the PSP area and already one third of the employment land has been taken up by a single use.
- There is significant demand and developer interest in the centre, particularly for "land hungry uses".

Mr Cicero explained that the recent detailed planning and design of the Centre has determined that the "NAC Primary Road Access" (to become Eleanor Drive) that is located to the west of the town centre is required to be realigned to protect the existing vegetation that forms part of the Avenue of Honour along Sturt Street. As a result of the realignment of this key internal road, and the identified demand for additional commercial land in the centre, Integra sought to reallocate the land designated for "Medium Density Housing". The amount of land in this location has reduced from 2.07ha to 0.87ha as a consequence of the road realignment based on the plan tendered by Mr Cicero at the Hearing (Document no 25).

In relation to the suggested modification to the Lucas entry in Table 57 (and Table 2) of the BACS, Mr Cicero submitted that:

There does not appear to be any opposition from any of the submitters or from the Council to the addition of the area immediately to the west of the employment land.



Figure 6 – Indicative Concept of Neighbourhood Activity Centre (Figure 3 of Alfredton West PSP).

Mr Cicero relied on the evidence of Mr Stephens in support of Integra’s submission. Mr Stephens stated that in the BACS, the provision of commercial and special use floorspace has been determined on the basis of *“arbitrary shares of development across the activity centre hierarchy”*. Having noted that, he stated that the distribution of commercial and special use floorspace is *“generally sensible and responds to current expectations of future outcomes across the City of Ballarat”*.

Mr Stephens emphasised that he considered that the floorspace targets provided for commercial and special use floorspace in the Lucas Town Centre should be considered very broadly in the application of strategic planning for the centre, noting that the future demand for non-retail commercial and community land uses is generally very difficult to forecast accurately, particularly at the individual centre level.

In relation to the 2,500m² figure specified in Table 57 of the BACS as net additional commercial floorspace, Mr Stephens said the *“already confirmed land uses are expected to exceed the floorspace ‘target’ of 2,500m²”* and as a consequence, *“Integra are now proposing to include in the employment land area the site located immediately to the west previously identified for medium density housing.”* Mr Stephens stated that he understood that it is proposed to apply the Business 2 Zone to the proposed employment area.

Mr Stephens’ evidence was that Integra’s proposed expansion of the employment land in this location *“represents an appropriate use of the land which maximises the commercial opportunities to the centre associated with the prominent frontage to Remembrance Drive”*. His evidence identified the merits of the site as a commercial development destination. His statement expressed his opinion that opportunities exist to support higher residential densities to the west and south of the Centre that can accommodate residential density lost by an expansion of the employment land.

Mr Stephens estimated that a development ratio of 3:1 is likely to be achieved on the site, and accordingly approximately 10,820m² of floorspace could be supported (one third of the identified land). Mr Stephens observed that if this outcome eventuated, combined with all other retail and commercial floorspace, the total floorspace of the centre would be between 25,300m² and 30,700m². That exceeds the indicative floorspace guidelines in the BACS.

Mr Cicero cross-examined both Mr Biacsi and Mr Ganly in relation to the merits or otherwise of expanding the area set aside for commercial development within the centre. Mr Biacsi had not made an assessment of the appropriateness or otherwise of the inclusion of the area as employment land. In relation to Mr Ganly’s evidence, Mr Cicero submitted that while Mr Ganly expressed some caution, he also conceded that he had made no assessment of possible economic impact.

In response, the Council’s position was that the Alfredton West PSP is unambiguous regarding the boundary of the NAC – that being that the Lucas NAC is the land shown as dark purple in the AWPSP Plan contained within Schedule 1 to the UGZ (Figure 7 below).



Figure 7 – Alfredton West Precinct Structure Plan (UGZ1).

Further, the Council submitted that the 2,500m² of commercial floorspace provided in Table 57 is a reasonable reflection of the extent of floorspace likely to develop within the areas provided within the NAC (notably the mixed use areas in Figure 6 which are all contained within the dark purple areas in Figure 7).

Mr Montebello submitted that the “employment land” shown in the lighter shade of purple is clearly outside the Lucas NAC.

Accordingly, Mr Montebello considered that it would be inappropriate to support Integra's submission to modify Table 57 of the BACS to increase the commercial floorspace entry attributable to the Lucas NAC as the area where Integra seeks to expand its employment node is outside the NAC's boundary.

(iii) Discussion and Findings

The Panel accepts the Council's submission. The recently approved Lucas Urban Design Framework is titled "*Lucas NAC & Employment Areas*" (Panel emphasis) which implies two distinct geographic areas. Further, the plan within Section 5 of the UDF, clearly annotates the proposed employment area and medium density housing areas with the preface "AWPSP" (Alfredton West PSP) as opposed to using the preface "NAC" which is applied to all land use designations south of the employment and medium density housing areas which accords with the dark purple NAC areas within the AWPSP.

The Panel also notes that the description of the Lucas Centre in Chapter 9.5 of the BACS acknowledges that the centre will also include a range of uses other than retail, among them being land for "*employment opportunities*". This composition is in keeping with Activity Centre principles. The description also notes that "*a Precinct Structure Plan*" has been adopted which includes the Lucas Activity Centre which is now part of the Scheme.

The Panel concludes that no change is required to the BACS. In reaching this conclusion, the Panel records that it has not undertaken a merits assessment of whether the PSP should be amended to facilitate additional employment land uses within the broader Lucas Town Centre. The Panel considers the appropriate forum for such an assessment would be via a formal amendment process involving exhibition.

5.4 Buninyong

(i) Issues

- **Should the boundary of the Buninyong Large Neighbourhood Activity Centre be modified?**

(ii) Submissions and Evidence

Submission no 4 submitted that instead of additional car parking on Learmonth Street, Buninyong, the Business 1 Zone should be amended to include the south side of Forest Street to allow for more parking.

At the Hearing, Mr Marsden explained the background to the submitter's request. He said the submitter welcomes the Amendment and supports the need for structure planning. Mr Marsden described some options for the expansion of the Buninyong Foodworks store, his client's property. He submitted the activity centre along the north side of Learmonth Street could be contracted westwards to allow three houses to be within the Residential 1 Zone and the Business 1 Zone could be expanded along Forest Street to accommodate the proposal for consolidated car parking behind shops on the north-west side of Learmonth and Warrenheip Streets. Mr Marsden noted a dwelling within the Heritage Overlay that would need to be considered in development of additional car parking in this location.

Mr Marsden sought the Panel's recommendation to Council that a future structure plan for Buninyong include a review of boundaries in light of the proposal to expand the Buninyong Foodworks.

In response, Mr Montebello submitted there may be strategic merit to the submission although the Strategy did not consider that expansion to the south side of Forest Street was warranted. The Council is concerned, however, that a zoning change could impact on residential amenity. The Council submitted that structure planning is proposed as a short term action in the Strategy and that would provide an opportunity to refine the activity centre boundary.

(iii) Discussion and Findings

The parties agreed that the submitter's request would be appropriately considered in the context of structure planning for the Buninyong LNAC.

The Panel agrees that this process provides an opportunity to review and refine boundaries if warranted. Importantly, it is a process that should involve the community and other property owners who may have an interest in the matter raised by the submitter.

The Panel concludes that no change is required to Amendment C151 or to the BACS.

5.5 Midvale

(i) Issues

- **Should the boundary of the Midvale Neighbourhood Activity Centre be modified?**

(ii) Submissions and Evidence

The Ryan Group submitted that the commercial zoning associated with the Midvale NAC should be extended to the north side of Cartledge Avenue and west side of Geelong Road to the southern boundary of No 1148 Geelong Road, Mt Clear.

At the Hearing, Mr Iles referred to the Canadian Valley Outline Development Plan which underpins Clause 21.08-4 Canadian Valley of the Scheme. He cited part of the Plan with respect to retail and commercial development which is to be focussed in areas zoned for such development at the rear of the Midvale Shopping Centre at Mt Clear and infill development at the Buninyong township.

Mr Iles requested the Panel to reaffirm that the Midvale Shopping Centre and the Buninyong Shopping Centre *"are the only activity centres to be designated in this part of the municipality"*.

In reply, Mr Montebello noted that the Strategy identifies the land referred to by the submitter for inclusion into the NAC to allow for growth but that a change to the NAC boundary should be the result of structure planning. The Council would, Mr Montebello stated, be willing to consider a change to the boundary and associated rezoning.

(iii) Discussion and Findings

The land to which the submitter refers is zoned Public Park and Recreation. The future planning of the NAC should occur through more detailed planning and exploration of growth opportunities within the scope of the identified role and function of Midvale.

The Panel does not support the submission that the Midvale NAC and Buninyong LNAC be recognised to the exclusion of any other centre, whether at NAC or LAC level. This position has not been justified with any supporting evidence and contradicts the submission made by the same submitter (refer section 6.1) that a case can be advanced for new centres in some locations (albeit that argument is advanced for other urban areas not Mt Clear/Canadian Valley). The Scheme foreshadows additional planning for this corridor and that is another key reason why the request is not supported by the Panel.

The Panel concludes that no change is required to Amendment C151 or to the BACS.

5.6 Physical Modifications to Existing Centres

In submission no 5, The Ryan Group made a number of specific requests for modifications to shopping centres it operates at Pleasant Park, Northway and Midvale with respect traffic management, parking, landscaping and/or other centre improvements.

Mr Iles did not raise these matters in his submission at the Hearing.

The Panel agrees with the Council's response to the submission that these matters are not within the scope of the Amendment.

5.7 Conclusion

For the above reasons, the Panel concludes that modifications to Amendment C151 are required with respect to the Ballarat CBD to ensure that the boundaries accord with the adopted CBD Strategy but not with respect to any of the other existing activity centres that were the subject of submissions. The Panel's recommended changes are detailed in section 7.2 of this report.

6 Requests to Nominate Additional Activity Centres

6.1 The Ryan Group Sites

(i) Issues

- **Should additional Neighbourhood or Local Activity Centres be identified in the Ballarat Activity Centre Strategy and/or Clause 21.04?**

(ii) Submissions and Evidence

As alluded to in section 4.1, the written submission for The Ryan Group (no 5) sought recognition and identification of three additional sites as LACs:

- Nos 31-45 Learmonth Street, Alfredton – an existing golf driving range.
- No 200 Victoria Street, Ballarat East – former Damascus Junior School land.
- No 109 Hertford Street, Delacombe – meat processing site used by The Ryan Group.

At the Hearing, Mr Iles submitted these three locations should be identified as future NACs (rather than LACs). This submission was based on contentions that the sites are logical inclusions, would fill gaps in the market, and would provide an important community focal point for residents.

Mr Iles explained the specific circumstances of each site in support of recognition of the three centres in BACS. He submitted that each would meet the definition of a NAC because of the proposed inclusion of a supermarket notwithstanding the total floor area would be less than 3,000m² in each case.¹⁶ He stated that one has been the subject of authorisation for an Amendment¹⁷, one is the subject of an Amendment C164 for which the Council has resolved to seek authorisation, and one is the subject of a planning permit application.

Mr Iles submitted that the Council had said that the BACS needs to mention the sites to gain support for their development as activity centres. Mr Montebello did not agree with that representation noting that the Council is advancing Amendment C164 while Amendment C109 lapsed because of further information that was required from the proponent. Mr Iles explained the further information being obtained by his client.

Mr Nott gave evidence supporting Mr Iles' submissions with respect to economic impacts of each of the three proposed activity centres, through three separate witness statements. He said there is no impediment to acknowledging all three centres in the Strategy. His evidence concluded:

- The proposed centre at Ballarat East would be unlikely to have a significant adverse impact on existing activity centres in Ballarat. His opinion was that the centre is supportable in retail trading terms and will produce positive economic outcomes for the Ballarat East area.

¹⁶ Learmonth Street, Alfredton – 1,500m² supermarket with 230m² specialty shops; Victoria Street – 2,100m² retail with 860m² non-retail shops as part of a larger development with gym, medical centre and 90 lot subdivision, and Hertford Street - 1,300m² supermarket with 500m² specialty shops.

¹⁷ Amendment C109 has lapsed.

-
- The proposal to develop a new activity centre on Learmonth Street is supportable in retail trading terms, and will produce positive economic and social outcomes for the Alfredton area, without negatively affecting the planned development of future activity centres.
 - The proposal to develop a new activity centre on Hertford Street is supportable in retail trading terms, and will produce positive economic outcomes for the Sebastopol/Delacombe area, without negatively affecting the planned development of future activity centres.

For the Council, Mr Montebello submitted the scope of the BACS was to examine existing and (then) planned centres in the Ballarat West Growth Area although the Strategy also highlights the need to consider whether new centres are required. He submitted that the Council sees some merit to including the three sites as “*possible future sites*” within BACS but not Clause 21. However, at the end of the Hearing, Mr Montebello retreated from that position having regard to the fact that the Council had not analysed the sites for the purpose of the Hearing and, if they progress, the centres are likely to be LACs.

(iii) Discussion and Findings

The Panel has addressed activity centre definitions in section 4.2 of this report and referred to the Council’s proposed inclusion of reference to a small supermarket in the LAC definition. In the Panel’s view, that appears to resolve the inconsistency evident in this submission – requesting the sites be recognised as NACs rather than LACs even though they would not meet various criteria for NACs including in terms of size and some other components.

The Panel has not addressed the merits of the three proposals. Being proposed LACs, it is beyond the scope of BACS and this Panel report. In this context, while the Council agreed to foreshadow these sites in BACS in a highly qualified way, that is at odds with the fact that the BACS does not address LACs in any detail. It would not be appropriate to single these three sites out in this way given BACS’ brief and the scope of the Amendment. Rather, it is the role of the future strategic work, referenced in the proposed Clause 21.04-4.3, to review the LAC network.

If one or more of the three sites is instead being argued as a potential NAC, the Panel is also not persuaded that it is appropriate to modify this Amendment or BACS to accommodate the proposal(s). The Amendment was not advertised on the basis of offering opportunities for others with proposed centres to come forward. The Amendment would need to be re-exhibited to acknowledge these as future centres in Clause 21.04 should that be contemplated. That course is not supported by the Panel. There is scope for individual proposals to be advanced should the circumstances so justify. The strategies within the Amendment would allow for that, as noted by the Panel in section 4.1 of this report.

The Panel concludes that no change is required to Amendment C151 or to the BACS in response to this submission.

6.2 Howitt Street between Creswick Road and Doveton Street North

(i) Issues

- **Should land on Howitt Street, between Creswick Road and Doveton Street North, be nominated as an activity centre and/or rezoned for mixed use development?**

(ii) Submissions and Evidence

The written submission on behalf of the Selkirk Group stated that Howitt Street east of the Midland Highway (Creswick Road) provides a logical extension to the existing commercial/retail activities on the south side of Howitt Street because of the existing non-residential uses and truck traffic associated with the brickworks. It requested further investigations as a matter of priority.

At the Hearing, for Selkirk, Mr Kaufmann explained the use and context of the land including the purchase of properties by Selkirk opposite and near the entrance to the brickworks. He acknowledged that BACS identifies the land as “*Future Investigation Area 2*” but said that the Strategy does not go far enough in supporting development as a logical extension to the existing commercial/retail activities on the south side of Howitt Street. He requested the Panel to recommend that BACS be “*revised to reinforce the potential for land in the study area¹⁸ to be rezoned subject to further investigation*”.

In response, the Council did not support the requested changes to the Strategy as the Amendment would need to be re-exhibited and the matters raised in the submission should be addressed as part of the future investigation.

(iii) Discussion and Findings

The Panel appreciates the importance of the brickworks and, based on information provided at the Hearing, the quarry site has many years of production and an ongoing long term capacity for processing.

The Strategy identified existing uses on Howitt Street, east of Creswick Road (the Midland Highway) through to Doveton Street North, as having the potential to transition in use over time to support current uses in the locality. The area has not been identified in either this Strategy or in the *Interim Activity Centre Strategy* as part of an activity centre.

The Panel agrees with the Council that the future uses in this area will need careful consideration to ensure that development supports rather than compromises the function and long term sustainability of commercial activity within the existing activity centres. The further detailed work recommended by BACS is required to determine the best long term use for the land in this area.

¹⁸ Howitt Street between Creswick Road and Doveton Street North.

The Panel does not consider the wording proposed by the submitter, referring to the land as a logical extension to the existing commercial/retail area to the west, is appropriate as it pre-empted the outcome of strategic planning and alludes to an extension of the activity centre eastwards for which there is no strategic justification at this time.

It is not the role of the Amendment to rezone land. Moreover, the Panel addresses its concern about potential premature references to future rezoning in BACS in the next section of this report.

6.3 Conclusion

For the above reasons, the Panel recommends no change to Amendment C151 or BACS in response to the requests to nominate additional activity centres and/or rezone land.

7 Statutory Drafting

7.1 Role of the Ballarat Activity Centre Strategy as a Reference Document

(i) Issues

- What is the role of the *Ballarat Activity Centres Strategy* as a reference document?
- Should changes be made to the *Ballarat Activity Centres Strategy*?

(ii) Submissions and Evidence

At the Directions Hearing, the Panel invited submitters to address the role of the BACS as a reference document. It did so in light of the various submissions before the Council asking for specific changes to the Strategy. Those appearing at the Hearing addressing this question, including Mr Biacsi and Ms Butcher, generally agreed that the role of the reference document is set out in the *Practice Note – Incorporated and Reference Documents*. That is as a background document. Several referred to the commentary on reference documents provided by the Panel reviewing Amendment C55 to the Colac Otway Planning Scheme, and its recommendation that the Scheme be qualified to make clear the role of the documents. Mr Wren tendered a copy of Clause 21.07 of the Colac Otway Planning Scheme that states:

The following strategic studies have informed the preparation of this planning scheme. All relevant material has been included in the Scheme and decision makers should use these documents for background research only. Material in these documents that potentially provides guidance on decision making but is not specifically referenced by the Scheme should not be given any weight.

Mr Montebello was one of the advocates to express caution about adopting similar wording in the current proceeding given the function of a responsible authority to assign weight to the relevant provisions and policies as appropriate to the circumstances and having regard to section 60 of the *Planning and Environment Act 1987*.

Mr Montebello also submitted that, as a reference document, the BACS would carry weight in Council's deliberations as a planning authority.

Mr Montebello and Mr Wren agreed that it would be desirable for the BACS to be as up to date as possible and for consistency between it and Clause 21.04 such as with respect to definitions, classification of Activity Centres, and the contents of Tables 2 and 57.

(iii) Discussion and Findings

The *Practice Note – Incorporated and Reference Documents* states:

When should a document be mentioned as a reference document?

Many documents, while useful, may be too long or complex or cover too wide a subject matter to be suitable for inclusion as an incorporated document in the scheme. If they provide useful background information or general advice to applicants, or will assist in understanding the scheme, they may be suitable as reference documents.

A reference document may explain why particular requirements are in the scheme, substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. For example, a flora and fauna study that provides the reason for an Environmental Significance Overlay may be usefully referenced as the basis for the statement of environmental significance.

The Panel is satisfied that the BACS is appropriately included as a reference document as it assists to explain why the new policy at Clause 21.04 is in the Scheme, assuming Amendment C151 is adopted.

The issue for the Panel is whether the Strategy should be updated and corrected to accord with the Panel's findings. In this context, the circumstances are not dissimilar to the observation made by the Colac Otway C55 Panel when it said:

While it was entirely appropriate to test the veracity of the background work, it seemed to us that Council and many submitters have an unwarranted expectation about the statutory role that these documents have.

The Panel is concerned that changes were sought by submitters to the BACS for a similar reason in relation to Amendment C151. Having regard to Mr Montebello's submission with respect to the planning authority's approach, they are perhaps correct. However, BACS has a different and limited role for a responsible authority considering permit applications. Moreover, it must also be understood that the Panel has considered submissions referred to it and has not reviewed the BACS in its entirety.

In the current proceeding, advocates at the Hearing agreed that consistency between the Scheme and BACS is beneficial and, consequently, the Strategy should be corrected for clarity, but not to make more fundamental changes to the findings such as adding in NACs or identifying some LACs. The position that correction is appropriate for clarity is arguably a different approach to that adopted by Colac Otway C55 Panel when it said:

Given our view about the role of Reference Documents, we do not believe that it is necessary or appropriate to recommend that they be modified so that they are consistent with the planning scheme provisions.

Further, that Panel also referred to the position of the Geelong C129 Panel which stated:

We also believe that revising Reference Documents to reflect the final content of the Amendment ignores the practical difficulties associated with the precedent that this would set. It is not sensible to require that these documents be revised every time a planning scheme amendment renders them inconsistent.

However, the Colac Otway C55 Panel observed potential complications where there are inconsistencies and added:

Where a Reference Document contains numerous and/or significant errors or inconsistencies that might confuse the interpretation of the relevant planning scheme provisions, an option is to delete the Reference Document rather than selectively edit or correct it.

This Panel has carefully considered the benefits and issues that emerge with editing or not editing BACS. Mindful that the Strategy has been updated by Ms Hill to September 2012 and the Panel is being asked to list BACS as a reference document based on the 2012 “final” version, the Panel concludes that the report should be corrected for clarity as discussed in section 4 with respect to the clarification of definitions and the understanding of Tables 2 and 57.

However, the Panel does not support substantive changes to the findings of the Strategy that have been pursued through the Amendment C151 process where submitters have advocated for changes to the zoning/proposed use of land at Lucas (discussed in section 5.3 of this report), Buninyong (discussed in section 5.4), and Midvale (discussed in section 5.5); have sought the nomination of additional NACs or LACs (discussed in section 6.1 of this report); and alluded to future commercial/retail outcomes (discussed in section 6.2).

Further, the Panel does not propose any clause similar to Clause 21.07 of the Colac Otway Planning Scheme that refers to the role of reference documents for several reasons including:

- The Panel has only considered one new reference document whereas there is a long list of reference documents currently included in Clause 21.10 that would be captured by the preamble proposed;
- Guidance about the weight of reference documents is given in the Practice Note;
- As adopted Council and/or State Government policies¹⁹, it is a matter for a decision maker to consider whether documents are relevant under the provisions of section 60 of the *Planning and Environment Act 1987* and the applicable circumstances at the time of a permit application. Section 60 includes:

(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider-

...

(g) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council;

...

(j) any other relevant matter.

While the text to Clause 21.07 of the Colac Otway Planning Scheme does not purport to suggest that section 60 is rendered inoperative, the Panel is not persuaded in the circumstances to adopt a similar approach with respect to the Ballarat Planning Scheme.

7.2 Recommended Changes to Proposed Clause 21.04-4

- **What changes are required to Clause 21.04 to address the Panel’s findings in response to submissions?**
- **What additional modifications are recommended by the Panel to the Amendment?**

¹⁹ For example, Victoria’s Biodiversity Strategy, The Victorian Greenhouse Strategy and Safer Design Guidelines and references to Catchment and Floodplain Management Strategies that are generally listed without author, titles and/or dates.

(i) Submissions and Evidence

Mr Montebello identified a number of changes recommended by the Council to Clause 21.04 including modifications accepted by the Council with respect to DoT's submission. These were generally agreed, or not opposed, by other submitters represented at the Hearing. The focus of those submissions was the set of definitions and the table designating activity centres, as discussed in earlier sections of this report.

In addition to the mapping questions relating to the Ballarat CBD and Wendouree, at the Hearing, the Panel pointed out other boundary discrepancies. The latest version of the Clause 21 tendered at the Hearing²⁰ included maps that are quite different to those in the exhibited version. This was explained to be a consequence of checking for other discrepancies between the BACS and the proposed Clause. The maps also had no reference point in the text and the revised Clause sought to address this as well. The Panel questioned the inclusion of maps, in principle, to which Mr Montebello responded that the maps are essential to give some definition to the locations referred to in the table to the Clause.

In addition, the Panel drew attention to the proposed inclusion of a "*Net Community Benefit Test*" having regard to the obligations of Clause 10 of the Scheme and noting Ms Hill's evidence in response to the Panel's questions that the test is drawn from BACS and focuses on economic considerations. Mr Montebello submitted the reference to the Test in BACS is appropriate but the policy in Clause "*is arguably unnecessary in the Victorian context where Clause 11 of the Scheme already requires all decisions to be made having regard to net community benefit*". He suggested that Strategy 1.21 refer to a net community benefit analysis instead and that would more consistently relate to Clause 11.²¹

Further, the Panel observed the extent of strategies and duplication and lack of order that potentially would make them difficult to use. Mr Montebello acknowledged this observation and said that the Council agrees with the need to "*revisit the drafting and collation of these principles having regard to duplication, ease of reference and grouping together like issues in a more coherent manner*". He suggested that the Council be given some time after the Hearing to undertake this task or it could be a recommendation that the Panel makes to the planning authority.

(ii) Discussion and Findings

The Panel's recommended modifications to Amendment C151 are set out below. They:

- Comment on some changes shown in Document No 21, a document with which the Panel agrees (except where varied below).
- Include the Panel's findings and recommendations from section 4 of this report.
- Address some other matters having regard to the role of BACS as a reference document.
- Address some minor drafting matters.

²⁰ Document no 21.

²¹ The correct references are Clauses 10.02 and 10.04.

Proposed Clause 21.04-4	Panel Recommendation
<p>Preamble to vision:</p> <ul style="list-style-type: none"> Clause 21.04-4 – starts <i>“The Ballarat Activity Centre Strategy (2011) establishes a vision for the planning and development of activity centres within the City of Ballarat. The vision which underpins this strategy is as follows:”</i> 	<p>Delete this preamble to the vision. There is no need to recite the source of this vision. The vision should stand-alone. Instead commence this Clause as: The vision for activity centres and commercial development is:</p>
Proposed Clause 21.04-4.1	Panel Recommendation
<p>Preamble to definitions:</p> <ul style="list-style-type: none"> The two sentences before the definitions in Clause 21.04-4.1 state that the <i>“definitions are intended to provide a clear framework for the hierarchy of centres to allow the Ballarat Activity Centre Strategy (2011) to be easily applied within both an economic and a planning context. As such, wherever possible the definitions reflect those utilised in State Planning Policy”</i>. 	<p>Delete the two sentences as set out in Document no 21. The policy itself is to be applied not the Strategy as discussed in section 4.2 of this report. Moreover, the definitions are not identical to the SPPF and thus the wording gives rise to potential confusion and interpretation difficulties.</p>
<p>Definitions :</p> <ul style="list-style-type: none"> Modify the definitions used in Activity Centre Hierarchy at Clause 21.04-4.1 agreed at the Hearing and set out in Document no 21. 	<p>Adopt modified definitions as set out in Document no 21.</p>
<p>Classifications in Table :</p> <ul style="list-style-type: none"> Designation of Lucas remains in dispute as discussed in section 4.2. 	<p>Adopt centre designations in Table 1 as set out in Document no 21 except delete the word <i>“Proposed”</i> for Lucas. Use consistent references to <i>“square metres”</i> or <i>“sqm”</i> in definitions rather than both.</p>
<p>Maps:</p> <ul style="list-style-type: none"> Clause includes maps for some but not all centres listed in Table in the Clause although the text suggests all are mapped. This needs to be clarified. Descriptions of centres on the Activity Centres Framework Plan are inconsistent with the Table. For example, <i>“Bulky Goods Precinct”</i> vs <i>“Bulky Goods Retail Centre”</i> and references to <i>“long term”</i> on the map are different to the revised Table text. 	<p>Amend text to make clear that only some centres are mapped. Include maps for CBD, Wendouree MAC, LNACs and Sebastopol South because they are the priority and make reference to that in the Clause text.</p> <p>Amend text as required including the legend in the Activity Centres Framework Plan to ensure consistency with the balance of the text in Clause 21.</p>

Proposed Clause 21.04-4.2	Panel Recommendation
<p>Objectives and Strategies:</p> <ul style="list-style-type: none"> Streamline the 26 strategies under Objective 1.²² “<i>Net Community Benefit Test</i>” referred to in Strategy 1.21: This term is used in BACS but does not address all matters relevant to a net community benefit assessment and gives rise to confusion and inconsistency with Clauses 10.02 and 10.04. Delete references such as “etc” as these are unhelpful. 	<p>Amend text as required.</p> <p>Amend reference to read “<i>net community benefit assessment</i>”.</p> <p>Amend text as required.</p>
<p>Maps:</p> <ul style="list-style-type: none"> Should centres within the Growth Areas be added in the maps after Clause 21.04-4.3? Which boundaries should apply to the mapped activity centres mindful of Council’s review of the maps in Clause 21.04-4 as exhibited that did not accord with BACS. 	<p>Do not include maps for centres covered by PSPs/UGZ schedules as this would result in unnecessary duplication.</p> <p>Correct maps to accord with BACS based on existing zoning and <i>Making Ballarat Central – The CBD Strategy 2010</i> and other corrections as shown in Document no 21.</p>

The Panel has formed the view that no further exhibition of text changes is likely to be required mindful that the strategies and the principles that underpin them were not contested in submissions responding to the Amendment.

The Panel supports the inclusion of the *Ballarat Activity Centre Strategy (Final, September 2012)* as a reference document in Clause 21.10.

The Panel makes no recommendation for modifications to Clauses 21.04-1 and 21.04-6 which are part of the Amendment but were not the subject of submissions. However, the Explanatory Report should be corrected to identify Clause 21.04-6 rather than Clause 21.04-5.

7.3 Recommended Changes to the Ballarat Activity Centres Strategy

Having regard to the discussion above about modifying reference documents, the Panel makes several suggestions about BACS which it encourages the planning authority to address when adopting the final version of BACS:

- Annotate the Strategy to expressly acknowledge that there are differences in expert opinion regarding the estimate of existing floorspace within Ballarat and that the estimate contained within the Strategy should not be relied upon as a basis for influencing the timing, staging or location of new retail floorspace within the municipality.

²² The Panel’s comments relate to the 26 strategies under Objective 1 rather Objective 2 that derives from Amendment C152 that was gazetted in May 2012 or Objective 3 that relates to the bulky goods retail centre.

- Amend Tables 2 and 57:
 - To be consistent with the changes reflected in Document no 21 as follows:

<i>Centre</i>	<i>Indicative net additional retail floorspace to 2030 (sqm)</i>	<i>Total Floorspace</i>
<i>Ballarat CBD</i>	<i>16,500</i>	<i>137,500</i>
<i>Wendouree</i>	<i>18,500</i>	<i>63,500</i>
<i>Lucas*</i>	<i>5,000</i>	<i>9,500</i>

*Note: Floorspace target in relation to Lucas does not include that approved as part of Stage 1 of the Lucas Town Centre (PLP/20011/769).

- To delete the word “*target*” from the title of the table, and reword the heading above columns 6 to 9 to read “*Indicative net additional floorspace to 2030*”.
- Review the wording of Chapter 10.3 of the Strategy with regard to “*rezoning*”. This section of BACS notes that structure planning will consider any rezoning required in specific centres but, nonetheless, sets out rezoning to be considered in the short term. This appears inconsistent and gives rise to expectations that should instead be informed by the foreshadowed structure planning, particularly given the current zone reform process that will influence suitable rezoning outcomes.
- Potentially refer to guiding documents in structure planning such as *Practice Note 56 – Activity Centre Zone* and *Practice Note 58 – Structure Planning for Activity Centres*.

8 Recommendations

Amendment C151 Recommendation

For the reasons given in this report, the Panel recommends:

- **Amendment C151 should be adopted as exhibited subject to modifications to accord with the recommendations in section 7.2 of this report.**

Other Recommendation

For the reasons given in this report, the Panel also recommends:

- **The *Ballarat Activity Centres Strategy (2012)* be corrected for clarification as described in section 7.3 of this report.**

Appendix A List of Submitters

Submission No.	Name
1	Mr G Stephens
2	Mr S Dekker, Senior Statutory Planner, Department of Sustainability and Environment
3	Mr V Connor of Contour Consultants for Stockland
4	Mr T Rickard
5	Mr J Iles, Senior Town Planner, TGM Group Pty Ltd, for The Ryan Group
6	Mr J Iles, TGM Group Pty Ltd, for Mr Paul Thomson
7	Messrs J & R Selkirk for the Selkirk Group of Companies
8	Ms D Butcher, Principal, Environmental Resources Management Australia Pty Ltd for Lascorp Development Group Australia Pty Ltd (initial submission followed by a more detailed submission)
9	The Hon. L Asher MP, Minister for Innovation, Services and Small Business and Minister for Tourism and Major Events
10	Mr N Grylewicz, Manager Land Development, Integra Land Pty Ltd
11	Mr E Crossland, Senior Transport Planner, Grampians Region, Department of Transport

Appendix B Document List

No.	Document Title	Tendered By
1	Submission on behalf of the Ballarat City Council	Mr Montebello
2	Plan showing location of submitters	Mr Montebello
3	Booklet of zoning plans	Mr Montebello
4	Booklet of Actions Plans extracted from the <i>Ballarat Activity Centres Strategy</i> (2011)	Mr Montebello
5	Table 2 Extracted from BACS (2012)	Mr Montebello
6	Implementation Plan extracted from BACS (2012)	Mr Montebello
7	Current Clause 21.04 of the Ballarat Planning Scheme	Mr Montebello
8	Urban Design Framework for the Lucas NAC	Mr Montebello
9	Submission on behalf of Lascorp	Mr Wren
10	Extract from Panel Report for Colac Otway Amendment C55	Mr Wren
11	Submission on behalf of The Ryan Group	Mr Iles
12	Mr Nott's expert evidence notes	Mr Iles
13	Submission on behalf of Buninyong Foodworks	Mr Marsden
14	Aerial photograph of Buninyong	Mr Marsden
15	Submission on behalf of the Selkirk Group	Mr Kaufmann
16	Aerial photograph of Selkirk site	Mr Kaufmann
17	Clause 21.07 of the Colac Otway Planning Scheme	Mr Wren
18	Schedule to Clause 81.01 of the Colac Otway Planning Scheme	Mr Wren
19	Submission on behalf of Stockland Development Pty Ltd	Mr Finanzio
20	Revised Table 2 from BACS	Mr Montebello
21	Revised Clause 21.04	Mr Montebello
22	Submission on behalf of Integra Land Pty Ltd	Mr Cicero
23	Lucas marketing brochure	Mr Cicero
24	Lucas Town Centre Plan	Mr Cicero
25	Plan of Lucas NAC comparing land areas	Mr Cicero
26	Aerial photograph showing Ballarat Western Link Stage 1	Mr Cicero
27	Closing submission on behalf of the Ballarat City Council	Mr Montebello