



WELLINGTON SHIRE

Residential Stocktake & Facilitation Strategy

mesh



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Acknowledgement of Country

We acknowledge and celebrate the Gunaikurnai People as the Traditional Custodians of the land and waters that is now called the Wellington Shire. We pay our respects to Elders past and present and emerging, and extend that respect to all First Nations people from all nations of this land. We recognise their continuing connection to the land and waters, and whose culture is among the oldest continuous cultures in human history.



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1. Introduction

Like many other regional municipalities within Gippsland and beyond, the Shire of Wellington is experiencing pressure to grow. The likelihood of growth pressure being felt within the Shire and the broader Gippsland Region¹ has been foreshadowed for many years.

The *Gippsland Regional Growth Plan*² defines a network of towns that are spread throughout the region and identifies that:

‘Gippsland’s economy is predominantly based around natural resources and commodities, with key industry sectors including agriculture, forestry, dairy and pastoral industries fishing and coal mining, oil and gas extraction’.³

The vibrant employment base of the region is complimented by a network of livable towns within Wellington that offer choice, affordability, convenience and a strong sense of community.

Despite these strategic advantages, Council has been frustrated by the inability to accommodate the interest that is being shown in the Shire.

Questions have been raised about lack of land supply in some locations as a possible constraint but there also appear to be other underlying issues such as infrastructure co-ordination, funding and delivery problems and understanding of the ‘market’ and project feasibility that are part of the bigger picture. Council’s experience is that these issues, that are often overcome in metropolitan growth areas by the strength of the market without the need for direct intervention, are magnified and are not so easily overcome in regional locations such as within the Wellington Shire.

Council recognizes that there is a need to adopt a proactive approach and where necessary to actively participate in the land development process. Where past approaches have focused on planning responses in the form of proactive rezoning of land and/or preparation of Development Plans and Structure Plans, feedback suggests that blockages around infrastructure funding and delivery may be a significant constraint that is undermining the effectiveness of such approaches.

This project, involving direct consultation with a broad range of participants in the land development process, was commissioned by Council in order to serve three broad purposes.

1 To understand the key issues that are impacting on Council’s ability to accommodate growth within the Shire.

2 To determine what proactive role/s Council may adopt to facilitate growth.

3 If Council is to offer financial assistance as a proactive response how should the allocation of financial assistance be determined where resources are likely to be limited.

¹ Bass Coast, Baw Baw, South Gippsland, Latrobe, Wellington and East Gippsland

² *Gippsland Regional Growth Plan, State Government of Victoria 2014*

³ *Gippsland Regional Growth Plan 2014, pg7*



2. Regional Context

2.1 Gippsland Regional Growth Plan

The State Government recognized the need to plan for the future of the regions in a more consistent and proactive way in 2017-2019 when 8 regional growth plans were prepared. The Gippsland Regional Growth Plan (GRGP) includes the Wellington Shire.

According to the GRGP:

Eight regional growth plans have been developed to provide broad direction for land use and development across regional Victoria. They also provide more detailed planning frameworks for key regional cities and centres.

Increasing the growth of regional Victoria will help improve the state's competitiveness by strengthening regional labour markets, expanding markets for local goods and services and providing a greater diversity of affordable housing and employment opportunities.

Regional growth plans, together with the new metropolitan planning strategy, Plan Melbourne, have been aligned in a way that builds on the interdependence of our urban settlements and facilitates their development as a networked 'state of cities'.

Unlocking the growth potential of these cities – so they can accommodate a greater proportion of the state's future growth with good transport connections between them and Melbourne – will create a state of cities where there are greater choices for people about where to live, work or start a business. It is likely that demand for housing in regional cities and centres would be accelerated in the future with the imposition of a permanent growth boundary around Melbourne.

The regional growth plans respond to the directions that were established in the regional strategic plans that were prepared across regional Victoria between 2007 and 2010.

Regional growth plans are the next stage in planning for growth and change in regional Victoria. They have been developed in a partnership between local government and state agencies and authorities. Regional growth plans reflect state and local government objectives.

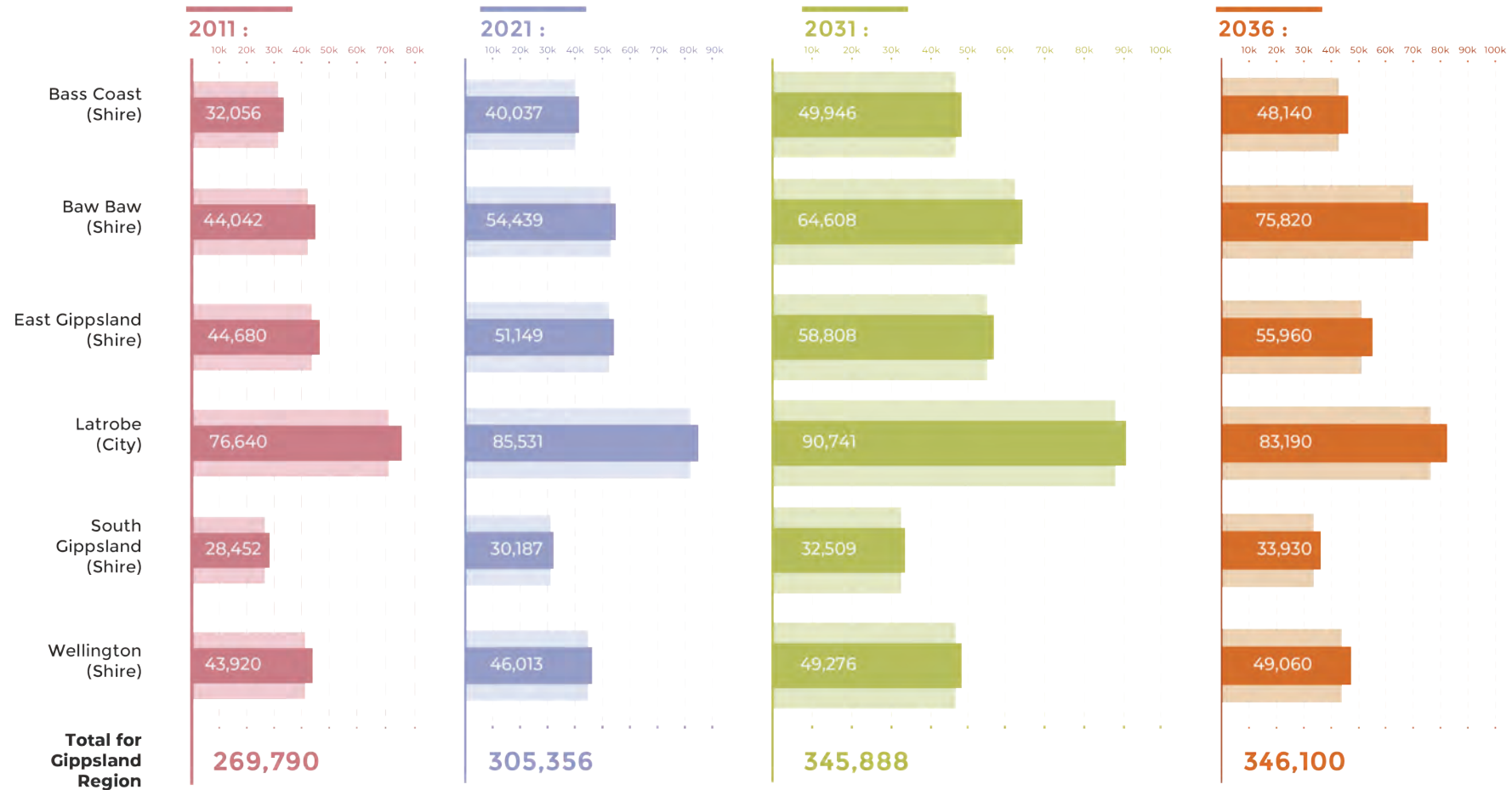
This plan provides a long-term view of the region to 2041 and beyond, allowing for some short-term actions, and providing long-term strategic land use direction.⁴

The reference to '**unlocking the growth potential of these cities**' is significant within the context of this report as it is apparent that the prediction of accelerated demand for housing in regional cities is being felt but that problems associated with the release of land is creating a blockage.

The updated Gippsland summary population forecasts (including the 2019 VIF forecasts) reflect this constraint to development with limited growth and/or some decline predicted between 2031 and 2036 – see table 1.

Table 1 – Gippsland Local government areas projected population 2011-2036

Local Government Projected Population :



Source: Victoria in Future 2012 & 2019

2.2 Vision for the Region

The vision for the Gippsland Region as expressed in the GRGP is that:

By 2041 Gippsland is recognized as having attracted remarkable levels of investment in economic and urban growth through implementation of regional strategies and projects, inspired by the region's assets and its potential.

Growth has been planned for, and attracted to, six urban centres: Latrobe City as the regional city, Bairnsdale, Leongatha, Sale, Warragul/Drouin and Wonthaggi. This approach has attracted and retained higher than projected population and employment levels as the centres have gained the critical mass to provide higher order services.

Economic growth has been sustained by the region's traditional strengths in natural resources, energy, agriculture and forestry, manufacturing and tourism. Investment in research and development in these and other industries has spurred on the development of new industries and higher employment rates and resulted in Gippsland having a reputation for innovative technology.

Promotion of the region's nature-based and cultural heritage tourism assets has also attracted new investment in world-class facilities and significant increases in visitor numbers.

Careful planning of both urban and rural areas has added to the region's valued rural and regional character and protected and replenished its environment. Ecologically sustainable development practices and the facilitation of a healthy lifestyle are now entrenched in planning practices and community values.

The region's private and public transport connections between towns, ports, markets, Melbourne and interstate operate efficiently to accommodate new demand.⁵

The vision is supporting by a set of guiding principles that are consistent with the ***Gippsland Regional Plan 2010***.

The guiding principles include:



Principle 1:

Strengthen economic resilience by growing a more diverse economy, that is supported by new investment, innovation, and value-adding in traditional strengths.



Principle 2:

Promote a healthy environment by valuing Gippsland's environmental and heritage assets and by minimizing the region's exposure to natural hazards and risks.



Principle 3:

Develop sustainable communities through a settlement framework comprising major urban centres, that ensure residents have convenient access to jobs, services, infrastructure and community facilities.



Principle 4:

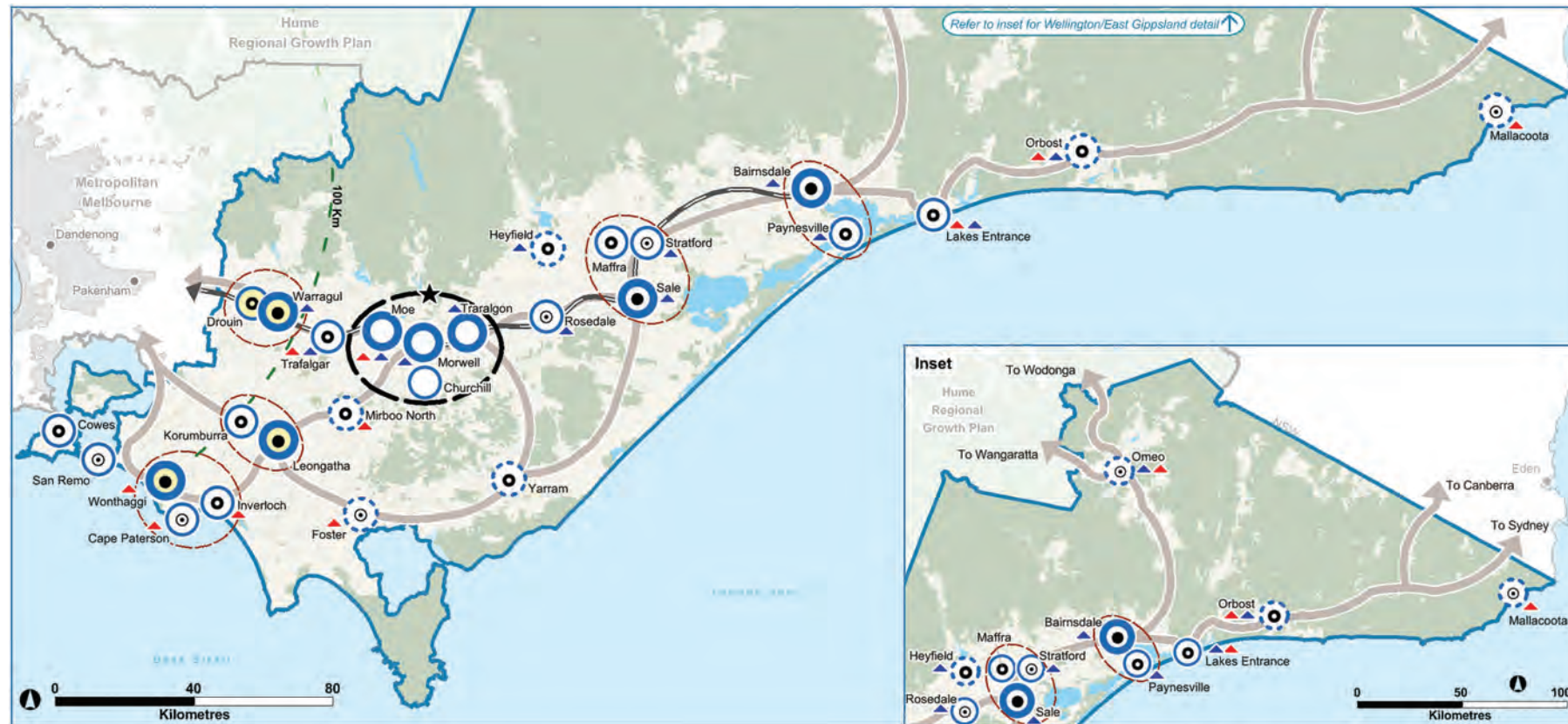
Deliver timely and accessible infrastructure to meet regional needs for transport, utilities and community facilities.⁶

⁶ *Gippsland Regional Growth Plan, pg 17*

Principle 3 makes direct reference to development of sustainable communities through a 'settlement framework'.

The settlement framework that is defined in the GRGP comprises a series of sub-regions of related cities and towns. In Wellington, the sub-region comprises Sale, Maffra and Stratford where the objective is to 'strengthen sub-region networks of cities and towns through integrated planning and service delivery' – see Figure 1.

Figure 1 - Future directions for settlement (Source: GRGP P. 46)



Growth descriptor

- Promote growth** Proactively encourage and facilitate opportunities for major-scale development in areas identified for significant growth.
- Support growth** Support proposals for medium-scale growth consistent with local plans.
- Sustainable change** Support small-scale residential, commercial and industrial development and change.

Designated identified growth centre in Plan Melbourne Plan Melbourne (Chapter 6 – State of Cities) identifies Warragul/Drouin, Wonthaggi and Leongatha as peri-urban towns with potential to attract housing and population growth out of Melbourne.

Settlements

- Regional city⁽¹⁾**
- Regional centre**
- Town**
- Small town**
- Strengthen sub-region networks of cities and towns through integrated planning and service delivery**
- Urban flood considerations⁽²⁾**
- Urban fire considerations⁽³⁾**

- Key road corridor**
- Key rail corridor**
- Public land**
- Lakes, rivers and water storage**
- Areas within 100 km of central Melbourne**
- Melbourne's urban area**

- (1) The regional city is Latrobe City, the grouping of Traralgon, Morwell, Moe and Churchill
 (2) Urban flood considerations are based on existing overlays
 (3) Bushfire considerations may be based on one or more of the following: existing overlays, advice from CFA or Regional Bushfire Planning Assessments. Does not include Bushfire Prone Areas.



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Continued investment in 6 growth nodes (one of which is Sale) is supported in the GRGP as

‘these locations are serviced by existing utilities, education, health, and community infrastructure. Continued growth and investment in these locations will help generate a critical mass of population, which in turn will drive demand for business and employment.’⁷

Whilst Sale, Maffra and Stratford are recognized as being part of the ‘sub-region’ it is important to also acknowledge that each of the towns (including Hayfield and Rosedale) are recognized as performing distinct roles in relation to growth – see Figure 1.

The specific roles that are recognized for each of the towns are set out in Table 2 and Figure 2.

In addition to identifying the desire to support the role and importance of the sub-region and defining the specific roles for the towns within and beyond the sub-region, the GRGP also identifies the presence of ‘urban flood considerations’ in proximity to Sale, Stratford, Heyfield and Rosedale.

Table 2 – Wellington Settlement Hierarchy

Town :	Growth Descriptor :	Settlement Type :
Sale	Promote growth Proactively encourage and facilitate opportunities for major-scale developments in areas identified for significant growth	Regional centre
Maffra	Support growth Support proposals for medium-scale growth consistent with local plans	Town
Stratford	Support growth Support proposals for medium-scale growth consistent with local plans	Town
Yarram	Sustainable change Support small-scale residential, commercial and industrial development and change.	Town
Heyfield	Sustainable change Support small-scale residential, commercial and industrial development and change	Town
Rosedale	Support growth Support small-scale residential, commercial and industrial development and change	Small Town

Figure 2 Settlement Hierarchy





2.3 Sale Framework Plan

In recognition of the strategic importance of the regional centres, the GRGP includes a framework plan specifically for Sale.

The Sale Framework Plan (see Figure 3) graphically depicts the influence of the Thomson River, the Flooding Creek and the associated Macalister Irrigation District in defining the westerly extent of the urban part of Sale and its separation from Wurruk.

The GRGP defines an indicative additional household capacity of approximately:

1,500
dwellings by **2041**.

In keeping with the sub-regional network of towns approach the role of Maffra and Stratford as secondary centres is also recognized and supported.

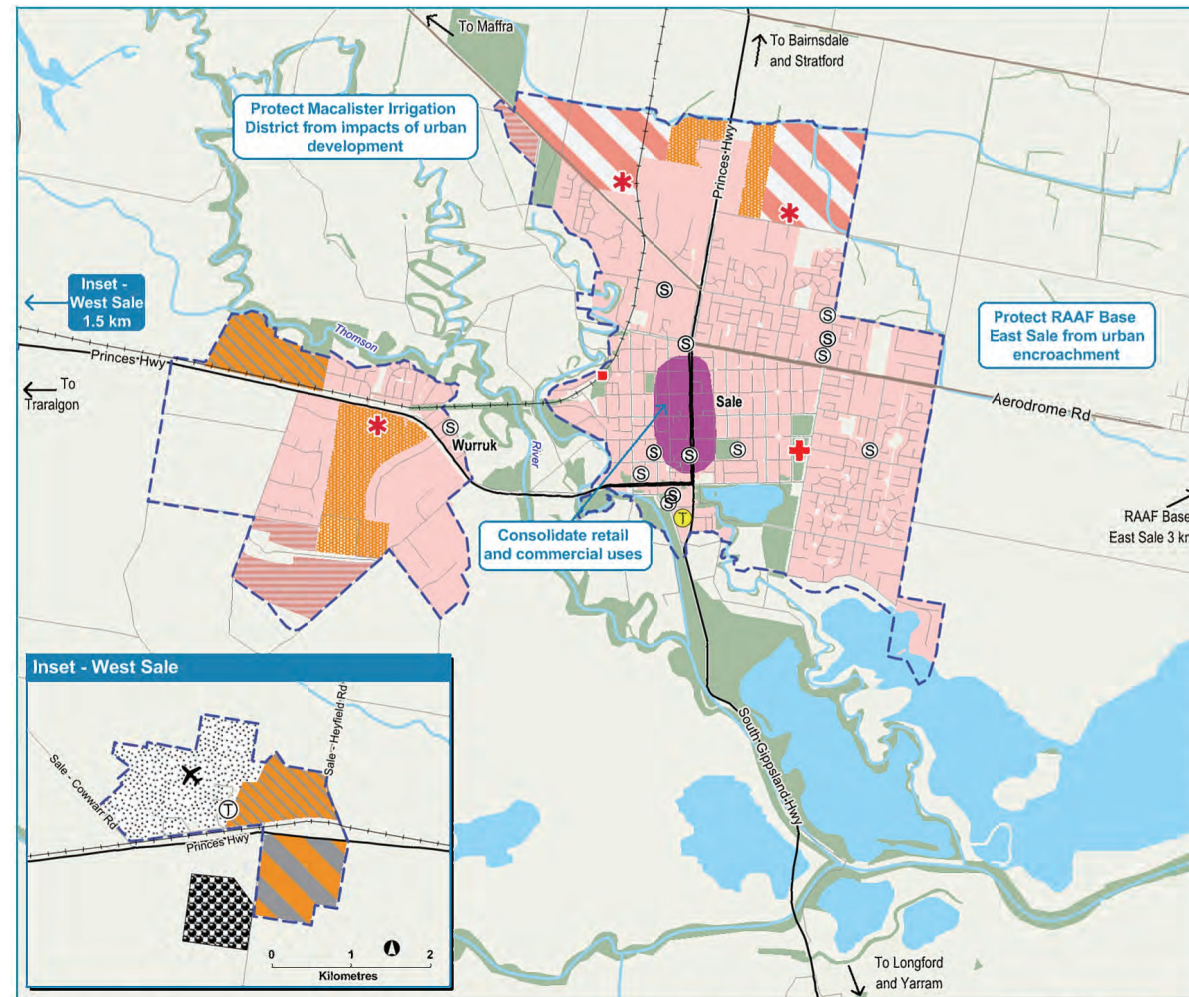
In terms of strategies for future land use, the key strategies that are most relevant to this paper include:

- *Support the development of sub-region network strategies that attract, facilitate and consolidate future growth within the regional centres and secondary centres by:*
 - *better co-ordinating investment and distribution of facilities;*
 - *building on complementary town roles;*
 - *fostering economic growth;*
 - *enhancing access to higher order services from across the region; and*
 - *improving connectivity and applying development contributions.*
- *Support the continuing role of towns and small settlements in providing services to their districts, recognizing their relationships and dependencies with larger towns.*
- *Plan for increased demand on services and infrastructure in towns with high holiday home ownership as these become the primary place of residence.⁸*

The importance of regional infrastructure, including sewer, water and drainage is recognized within the GRGP however specific strategies for future land use are limited to:

- *Work with water, drainage, energy and telecommunications agencies to prepare strategic infrastructure plans to provide utility servicing infrastructure to growth areas across the region.*
- *Support ongoing investment in water infrastructure and management of water resources to enhance security and efficiency of water supply to industry and urban areas.*
- *Support the provision of adequate facilities to manage the region's solid waste.*
- *Give priority to development proposals that maximise the use of existing infrastructure and minimize the need for new infrastructure.⁹*

Figure 3 - Sale framework plan



Sale will consolidate its role as a regional centre and provide increasingly diverse housing and employment opportunities for central Gippsland. It will continue as a key service centre for the off-shore oil and gas industries, agriculture and forestry, and build on opportunities in defence, aviation, food processing and packaging. Sale will also provide a hub for healthcare, education and cultural facilities for surrounding towns and communities.

Planning for urban growth

The Sale, Wurruk and Longford Structure Plan provides for future urban growth. The plan identifies future land supply for residential, business, and industrial use, as well as community areas and neighbourhood centres. Sensitive areas for flight paths and approaches to the RAAF Base East Sale have also been identified. Future industrial areas are identified in West Sale to leverage opportunities associated with the West Sale Aerodrome and future planning of a freight and logistics precinct. The Sale CBD Precinct Plan aims to strengthen the role of the centre as the main retail and commercial hub for the area.

Growth opportunities in business, manufacturing and services

Sale provides a focal point for agricultural trade, processing and transport that supports related businesses and services. The nearby Macalister Irrigation District is a key economic asset and will be protected from urban encroachment. The RAAF Base East Sale and flight training facility supports related maintenance and technical services, and provides an opportunity for further specialisation and growth in the aviation sector. Specialised technical services will continue to be needed to support off-shore energy sectors.

Transport networks

There are good transport connections to other parts of the region via the Princes Highway and South Gippsland Highway. Work is being completed in stages on the Princes Highway duplication between Sale and Traralgon, which will reduce travel times and assist efficiency for road freight. The rail connection to Bairnsdale, the Latrobe Valley and Melbourne will continue to be an important asset and attractor for future urban and economic growth.

Integrated planning across the sub-region network

Sale, Stratford and Maffra are located within close proximity with good transport links. Future urban growth and investment in Sale will provide more diverse and specialised employment opportunities and services that will be accessible from surrounding communities. Growth will also be supported in Stratford and Maffra, and these towns will contribute to the housing choice within this sub-region network.

Note:
Further detailed investigation and planning for growth should consider natural hazards (including bushfire, flooding and erosion), environmental assets (including water and assets identified in regional catchment strategies), cultural heritage assets (including Aboriginal and historic heritage) and natural resources (including Extractive Industry Interests, Areas, other mapped earth resources and timber plantations).



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2.4 Summary of Key Implications

The GRGP has established a logical role of Sale as the regional centre and the supporting ‘secondary centre’ role of Maffra and Stratford. The role of the smaller centres including Heyfield, Rosedale and Yarram is also recognized where each of the towns are identified as forming part of a complementary ‘network of towns’.

The network or sub-region of towns concept is important as the relatively close distance between each of the towns is such that there is an interdependency between the towns and a shared reliance on Sale for various services and facilities.

In this context, it is important to acknowledge that the towns compliment rather than compete with each other and that each of the towns offer housing and lifestyle-based choices including low density and rural living opportunities that may not be available elsewhere.

Beyond recognizing the network of towns concept and the complementary nature of each of the towns, the key points that arise from the GRGP as it relates to this project are:

- *The predicted increase in demand for regional living and working opportunities following introduction of the Urban Growth Boundary around Melbourne has been further increased following the impact of Covid;*
- *The various transport related infrastructure projects have generally improved the relative accessibility of the regions including Gippsland;*
- *Continued growth within Wellington and the hierarchy of towns therein is supported with the priority being directed toward the continuing role of Sale as the regional centre along with Maffra and Stratford as complementary, secondary centres;*

- *The need to work with servicing authorities on preparation of ‘strategic infrastructure plans to provide utility servicing infrastructure to growth areas, linked to development contribution plans’ has been recognized and recommended; and*
- *The need to plan for delivery of sustainable communities through a settlement framework is recognized.*

Notwithstanding the logic and continued relevance of the Settlement Hierarchy that is identified in the GRGP and the support that is offered for growth within the Wellington Shire generally, the GRGP does not address the specific planning, infrastructure and other constraints that are impacting on the ability to accommodate the additional growth.

The next section of this report will set out a summary of the current land supply in each of the towns and thereafter the key findings of the consultation in relation to constraints to land supply will be explained.



3. Local Context

3.1 Introduction

An overview analysis of the land use and transport network of the Wellington Shire reveals that there is a direct relationship between the location of each of the towns and the alignment and intersections between key transport routes such as the Princes Highway, the South Gippsland Highway, the Stratford – Maffra Road and the Maffra – Sale Road (see Figure 4).

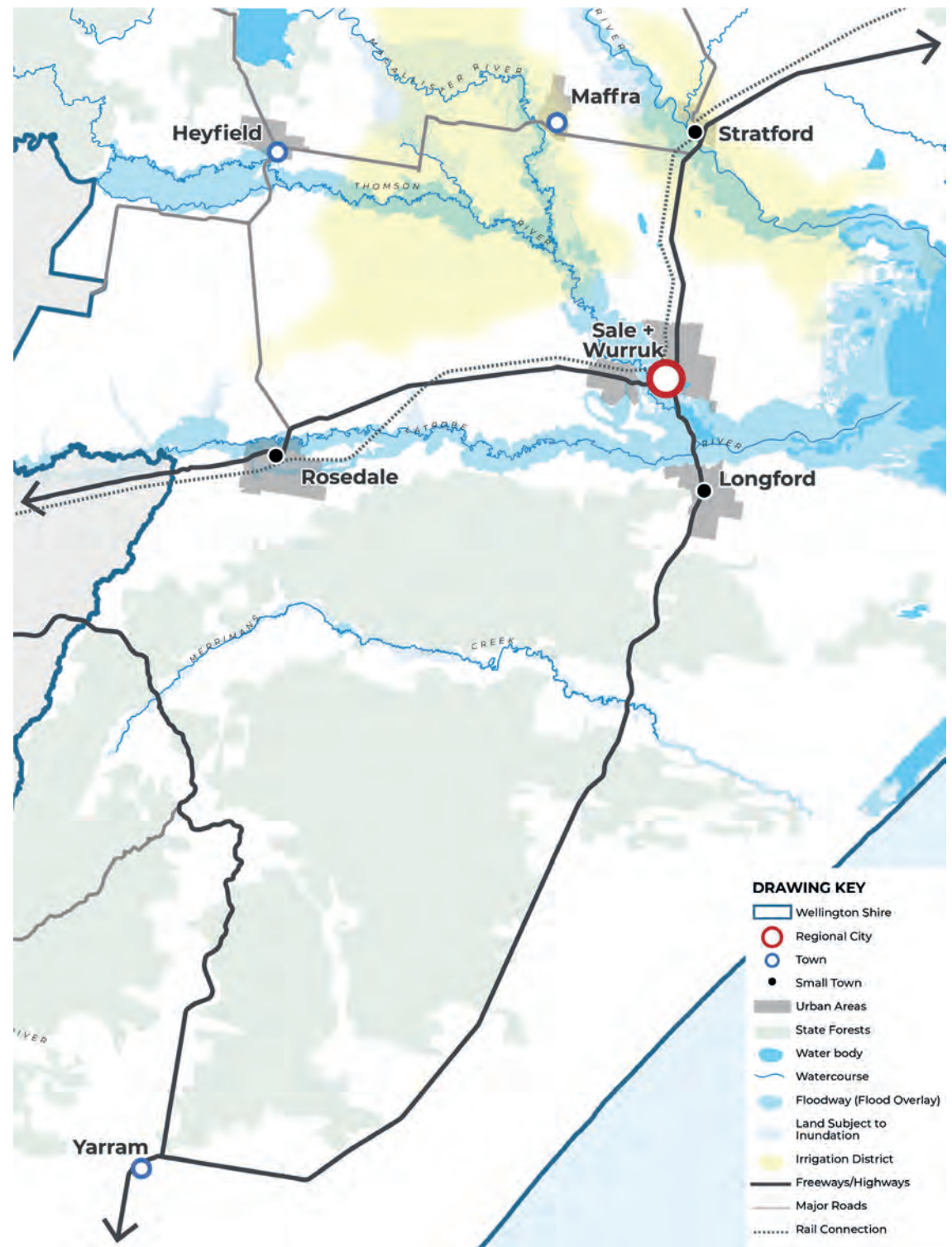
Whilst each of the towns have become established on major transport routes and have benefitted from the ‘movement economy’ and the presence of important industries as well as proximity to external places of interest, it is important to also acknowledge the physical conditions that have directly influenced the geographic or physical extent of the towns.

Clearly, the alignment of the main watercourses and their floodplains and the irrigation districts have shaped the alignment of the key transport routes and they have also contained and defined the boundaries of some of the towns including Sale. The major waterways and the irrigation districts, in combination with other constraints such as the West Sale Airport and RAAF Base East Sale have had a direct impact on the physical extent of each of the towns and the preferred growth directions.

The generally flat land that surrounds each of the towns has been suitable in the past for a range of agricultural uses, however flat land can present some challenges with regard to delivery of urban standard drainage infrastructure.

Figure 4 – Wellington Town Local Context

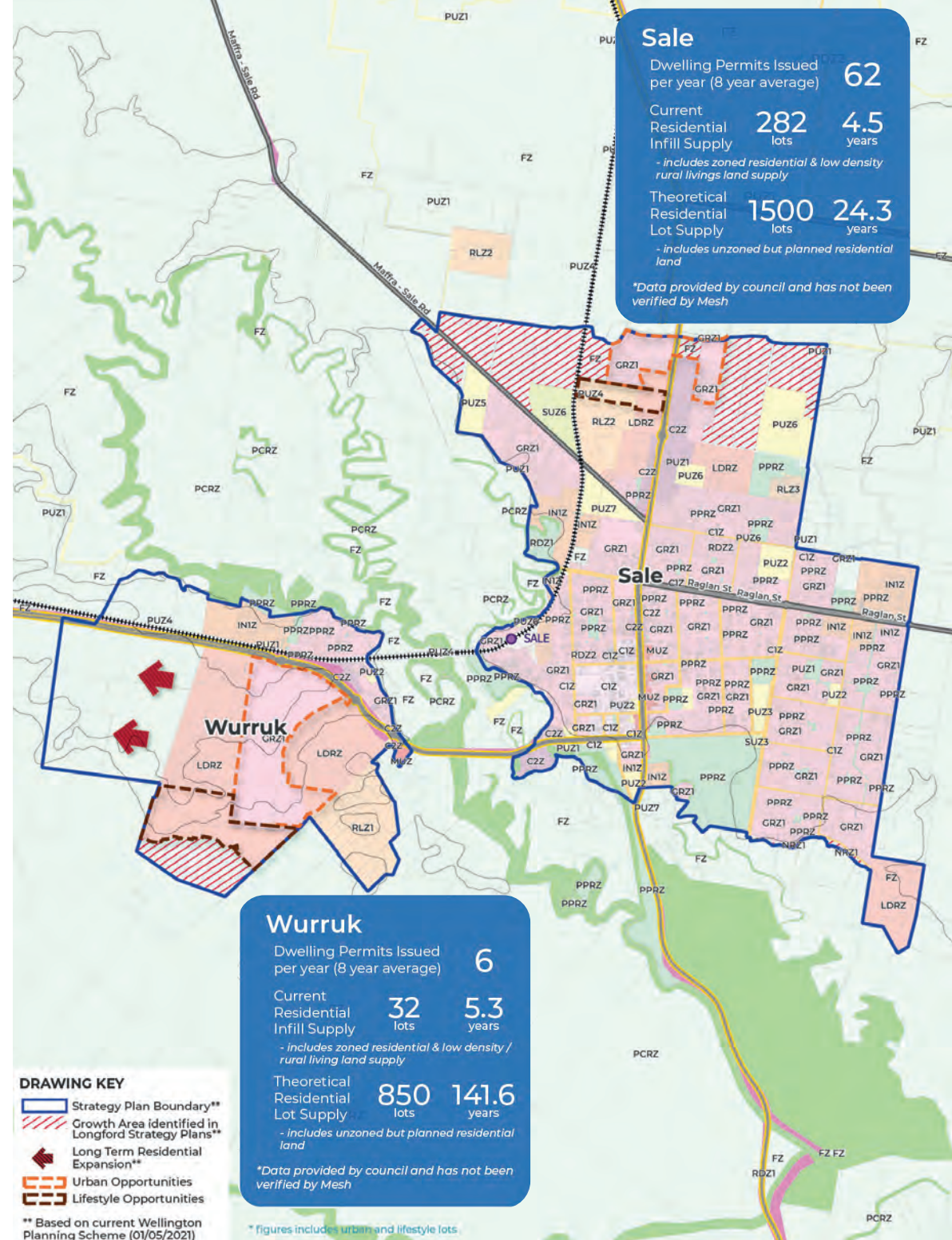
Before addressing the findings of the consultation in relation to the barriers to growth such as drainage constraints, it is necessary to establish the current and projected land supply for each of the towns and for Wellington as a whole.



In an attempt to better understand the current land supply situation the Wellington Shire undertook town by town analysis. The analysis is reproduced allowing for each of the towns. Importantly, the analysis deliberately distinguishes between current zoned 'infill' land supply and unzoned 'theoretical' land supply. Figures are indicative only and current to December 2020.

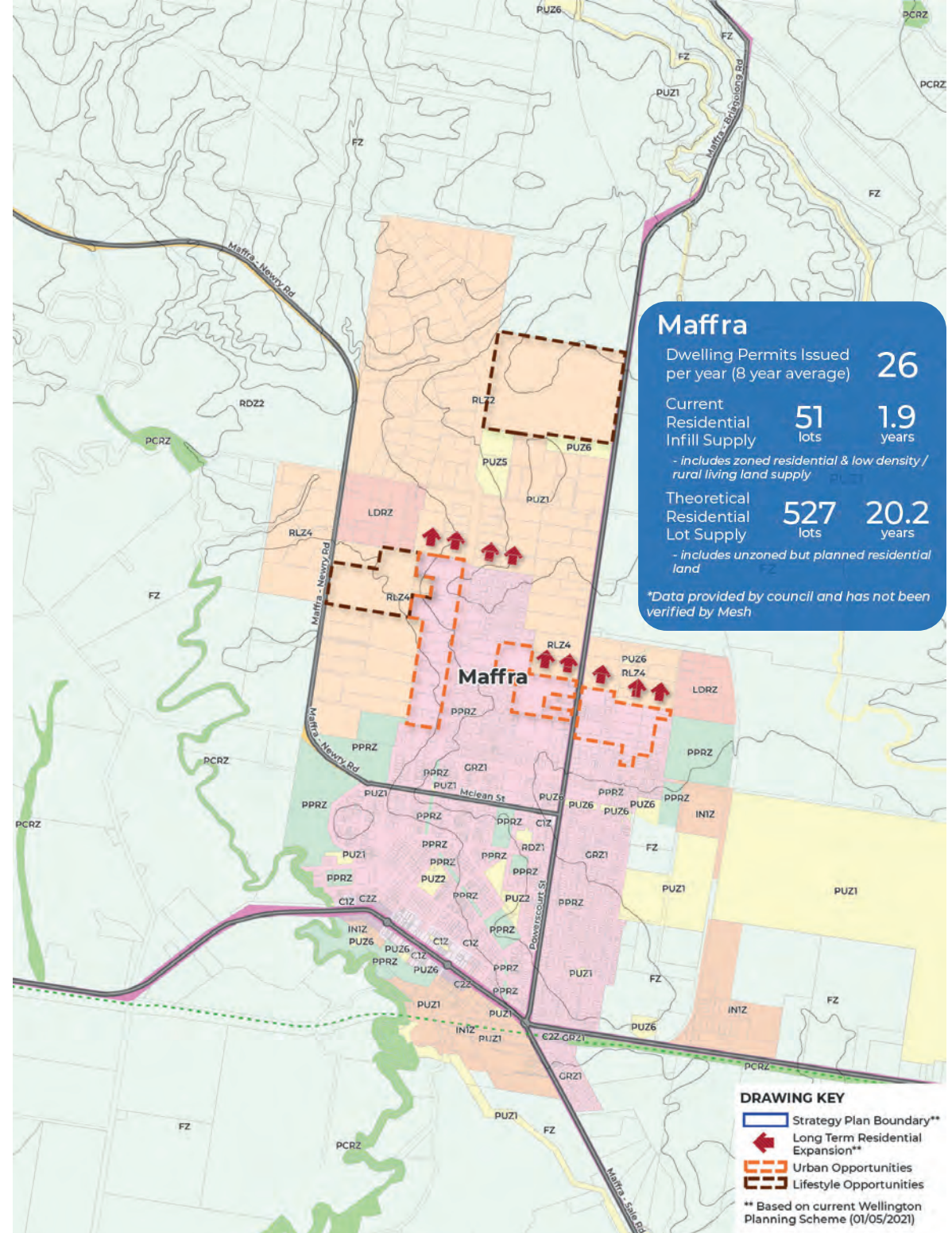
3.2 Land Supply - Sale

Figure 5 – Sale land supply



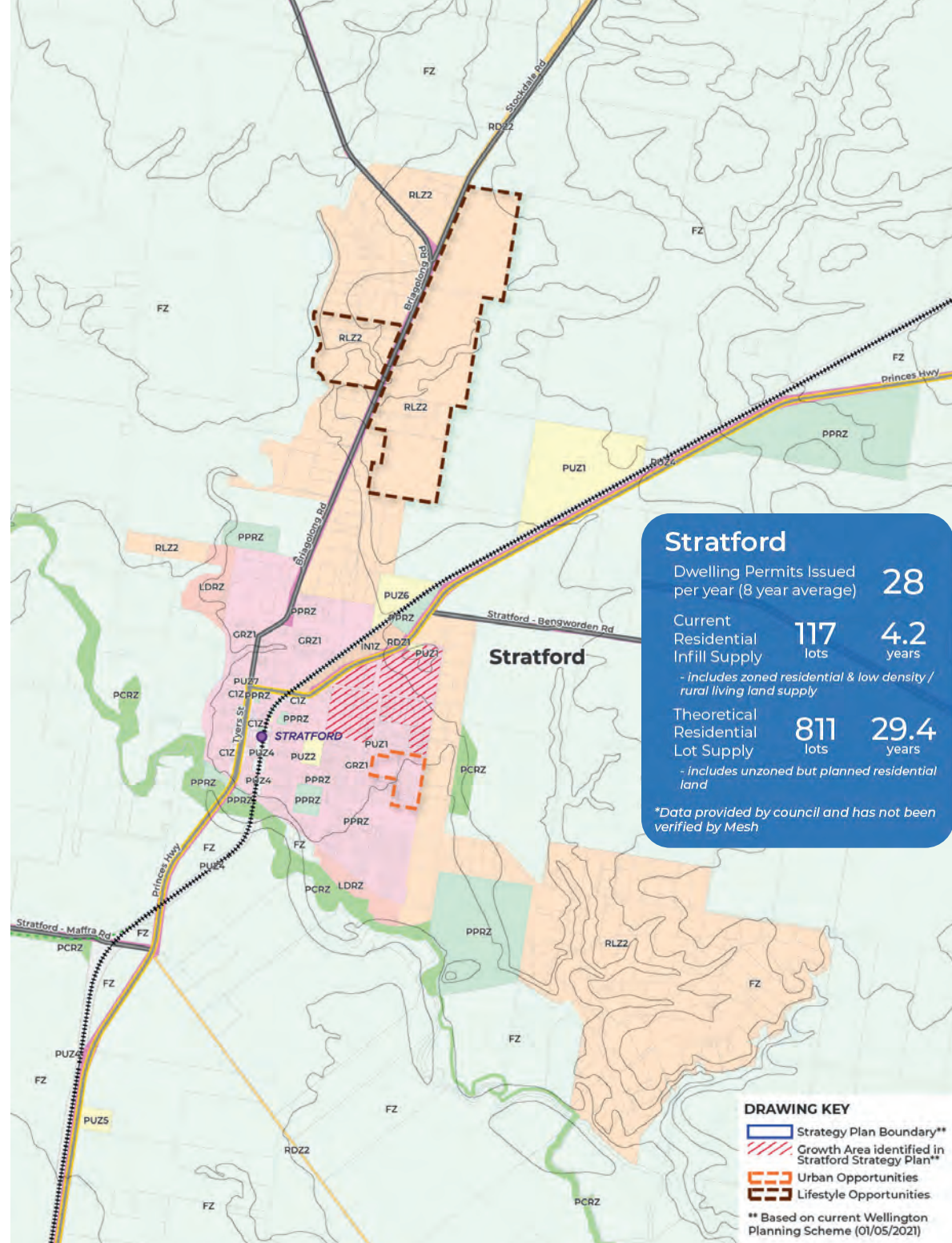
3.3 Land Supply - Maffra

Figure 6 – Maffra land supply



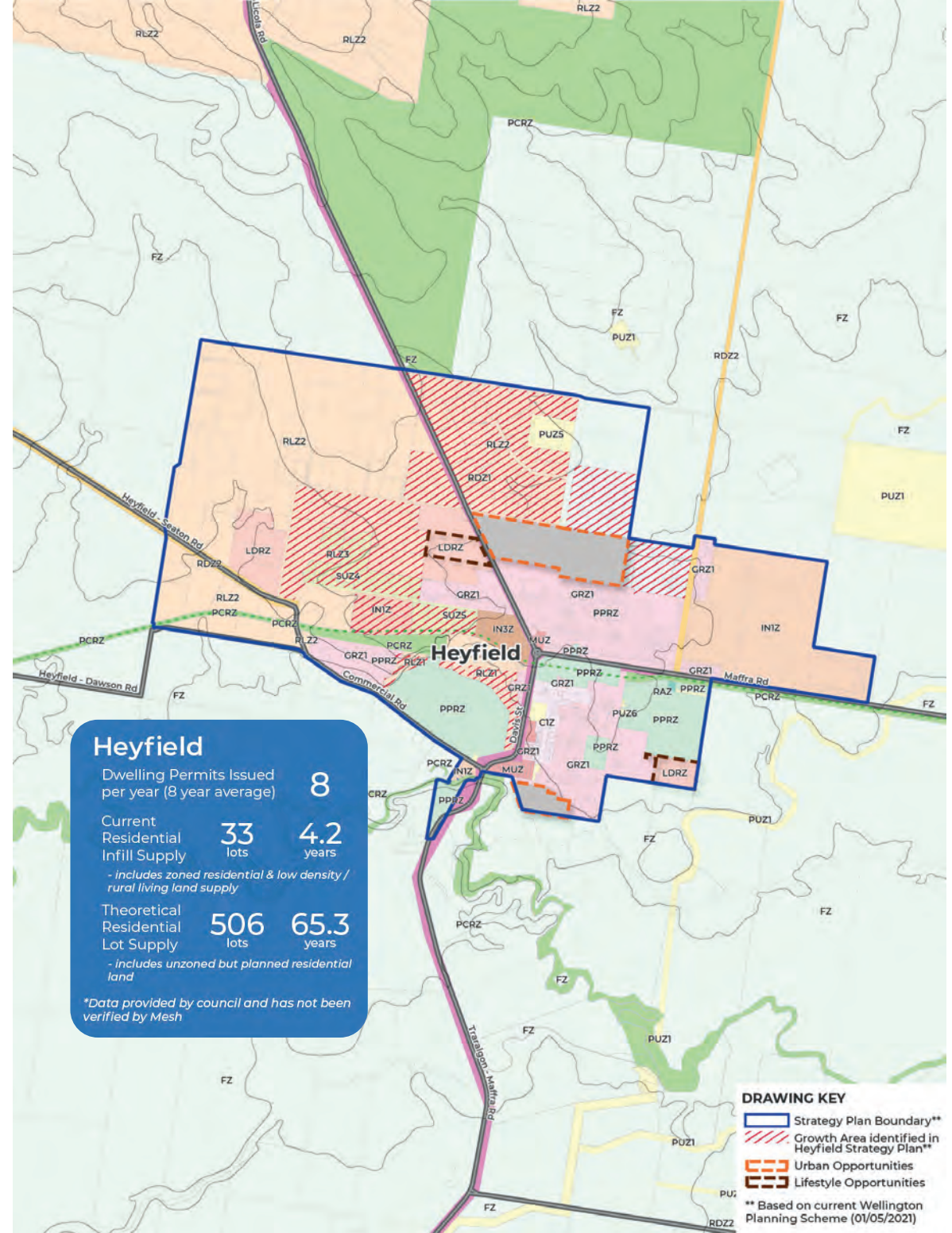
3.4 Land Supply - Stratford

Figure 7 – Stratford land supply



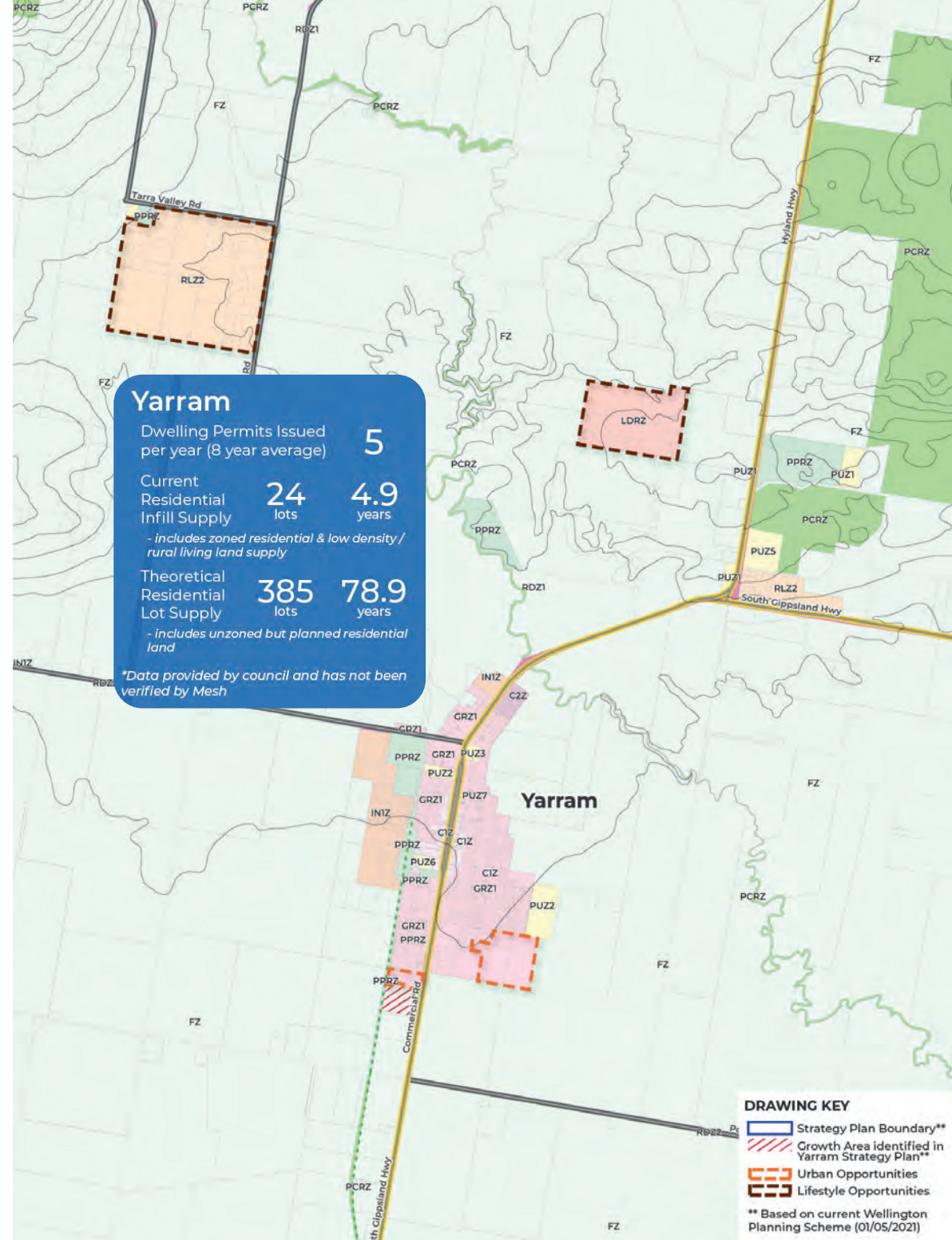
3.5 Land Supply - Heyfield

Figure 8 – Heyfield land supply



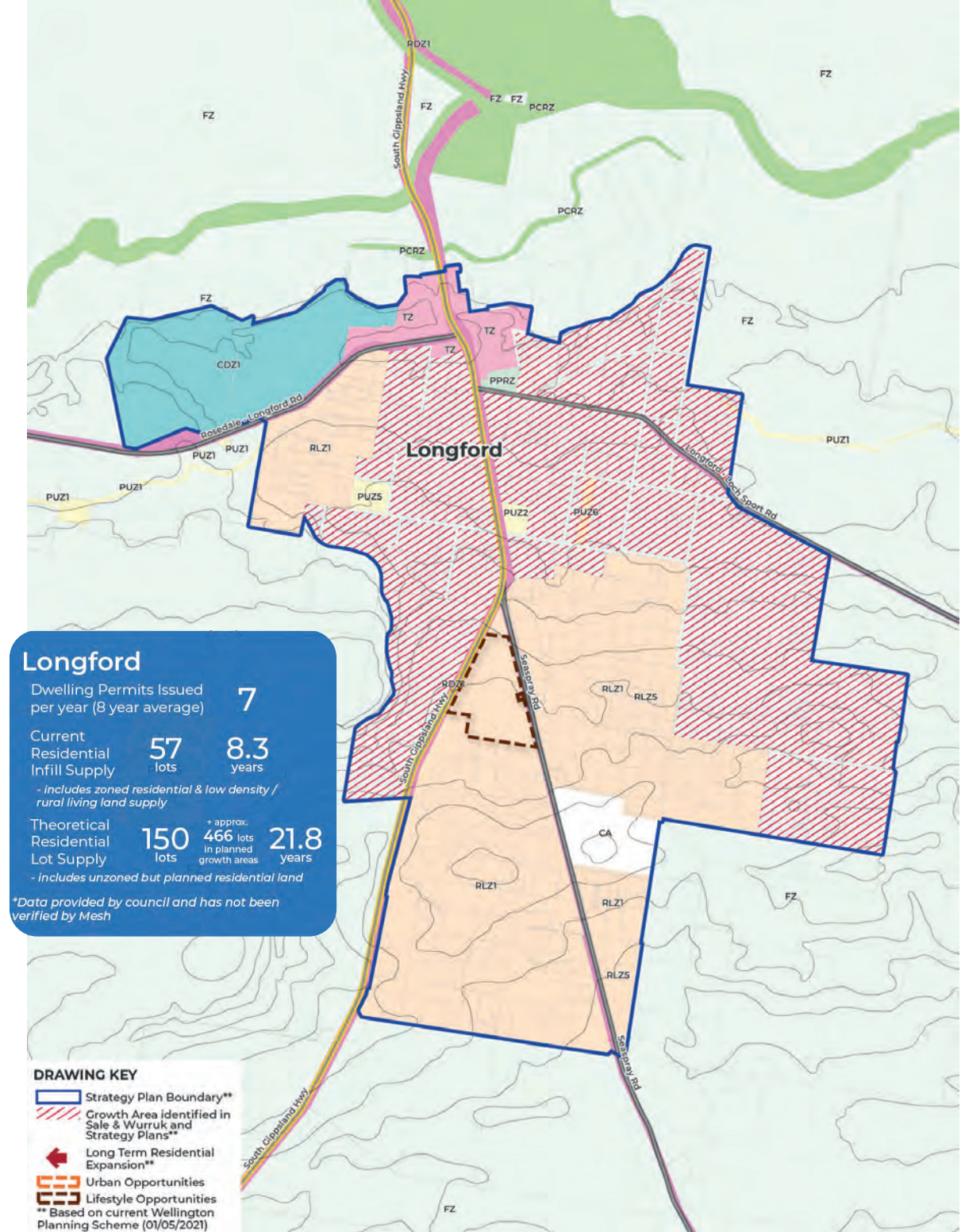
3.6 Land Supply - Yarram

Figure 9 – Yarram land supply



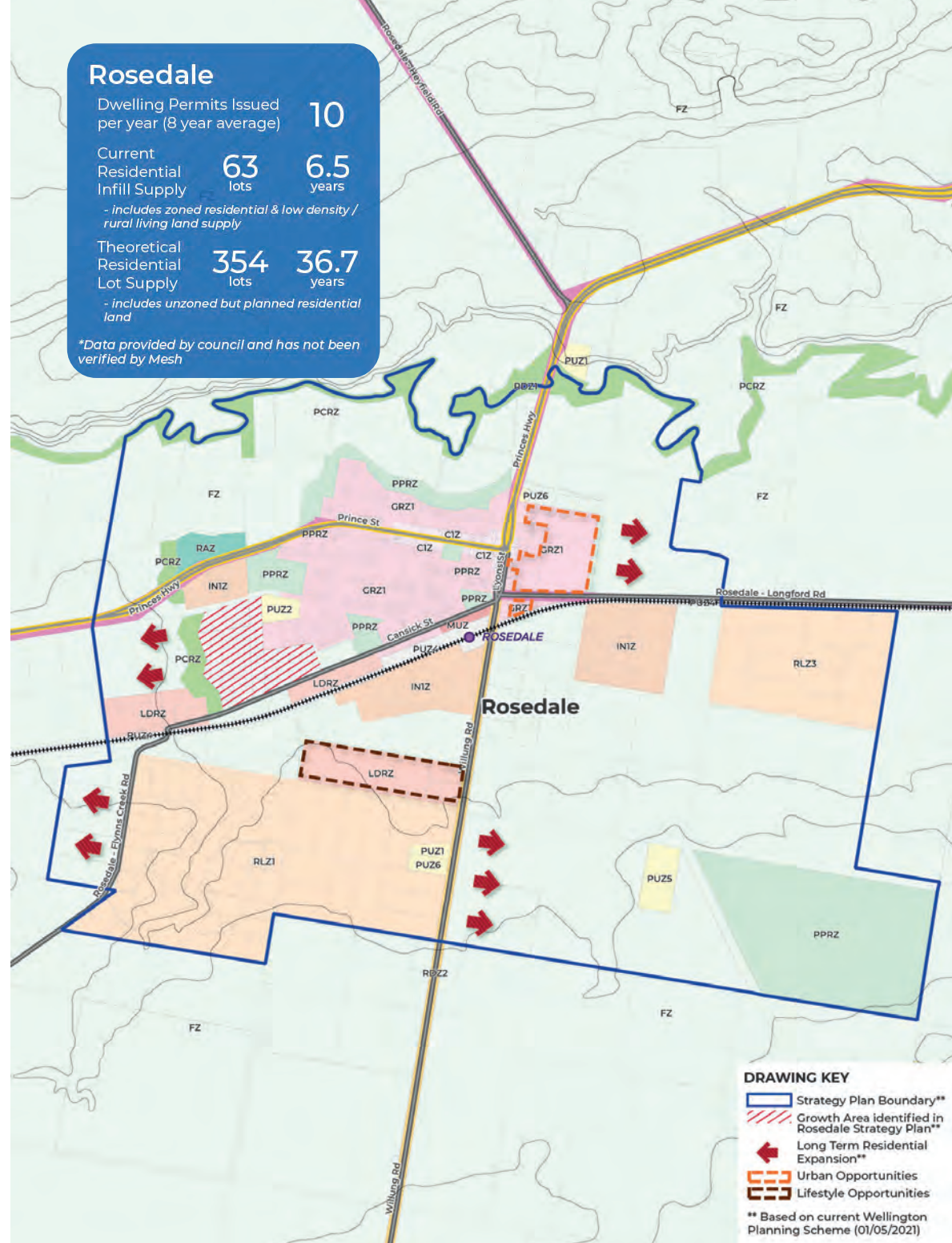
3.7 Land Supply - Longford

Figure 10 – Longford land supply



3.8 Land Supply - Rosedale

Figure 11 - Rosedale land supply



3.9 Land Supply - Key Findings

The land supply data that has been provided by Council reveals that the combined 'infill' lot supply is in the order of 39 years. Whilst 39 years lot supply might sound reasonable or even slightly excessive against the general indicator of 15 years land supply caution must be exercised when assessing whether the land supply is adequate.

Caution must be exercised to recognise that the existing infill lot supply total is comprised of an assumption that all zoned (residential and low density/rural living land) will be subdivided and brought to market. As was indicated during the workshops and as is the case in most regional and metropolitan locations, not all land is brought to market at the same time or in a precisely predictable way.

The ability to bring subdivided land to market is affected by a range of influences including (but not limited to):

- Landowner preference and motivation;
- Whether the land can be serviced;
- Whether there is a market for the land;
- Whether the subdivision is feasible; and
- The impact of fees and charges.

The reality is that when these influences are taken into account it is more likely that only approximately half of the potential infill lot supply is actually available at any one time. When the potential for increased lot demand is added to an estimate of reduced actual lot supply, the concern of the Shire about shortage of land supply is supported. This concern is magnified when each of the towns are viewed in isolation (see Figure 12). The summary of Wellington infill residential supply graph on the following page reveals that supply levels range from 1.8 years (Maffra) to 7.5 years (Longford).

Whilst the 'theoretical residential lot supply' could significantly improve the lot supply over time caution is also expressed about whether this lot supply can be realized for the reasons that are set out in the following sections of this report.

The important central finding from the analysis of infill lot supply and theoretical lot supply is that the metropolitan benchmark of 15 years land supply bears little to no relevance in regional locations such as the Wellington Shire. This is primarily due to the combined impact of all of the factors which influence whether and when lot supply is brought to market.

Whilst the ‘theoretical residential lot supply’ could significantly improve the lot supply over time caution is also expressed about whether this lot supply can be realized for the reasons that are set out in the following sections of this report.

The important central finding from the analysis of infill lot supply and theoretical lot supply is that the metropolitan benchmark of 15 years land supply bears little to no relevance in regional locations such as the Wellington Shire. This is primarily due to the combined impact of all of the factors which influence whether and when lot supply is brought to market.

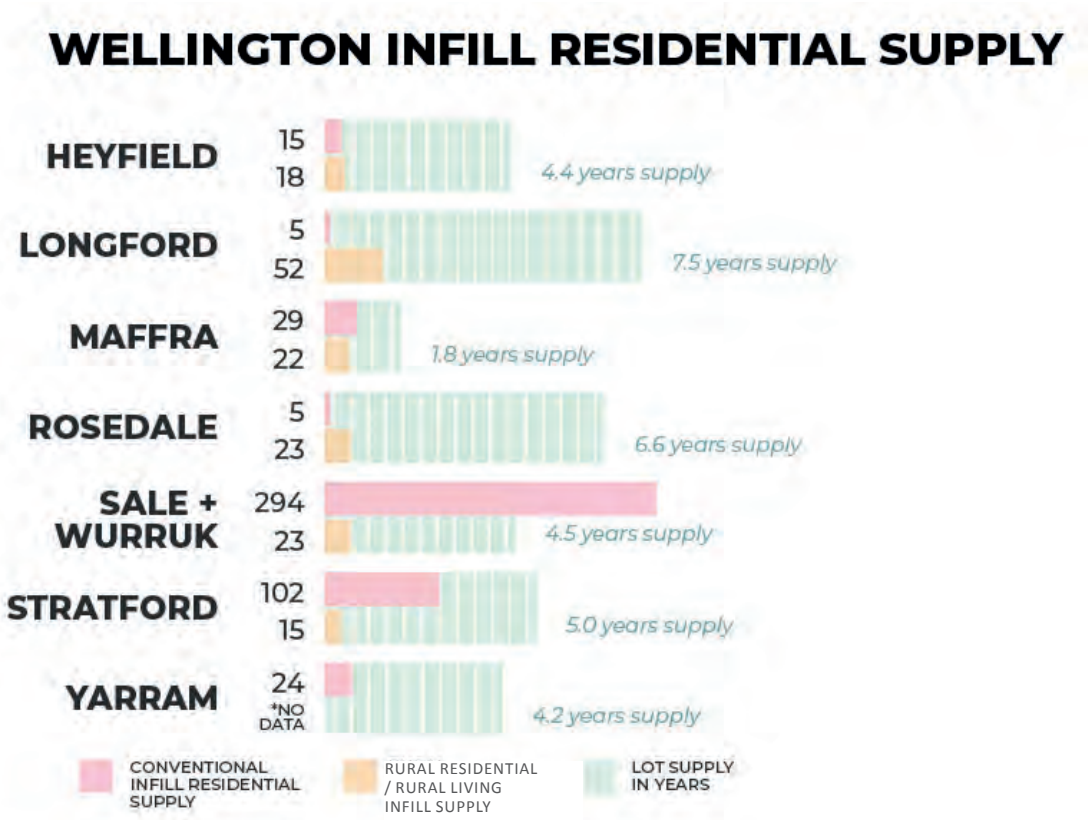
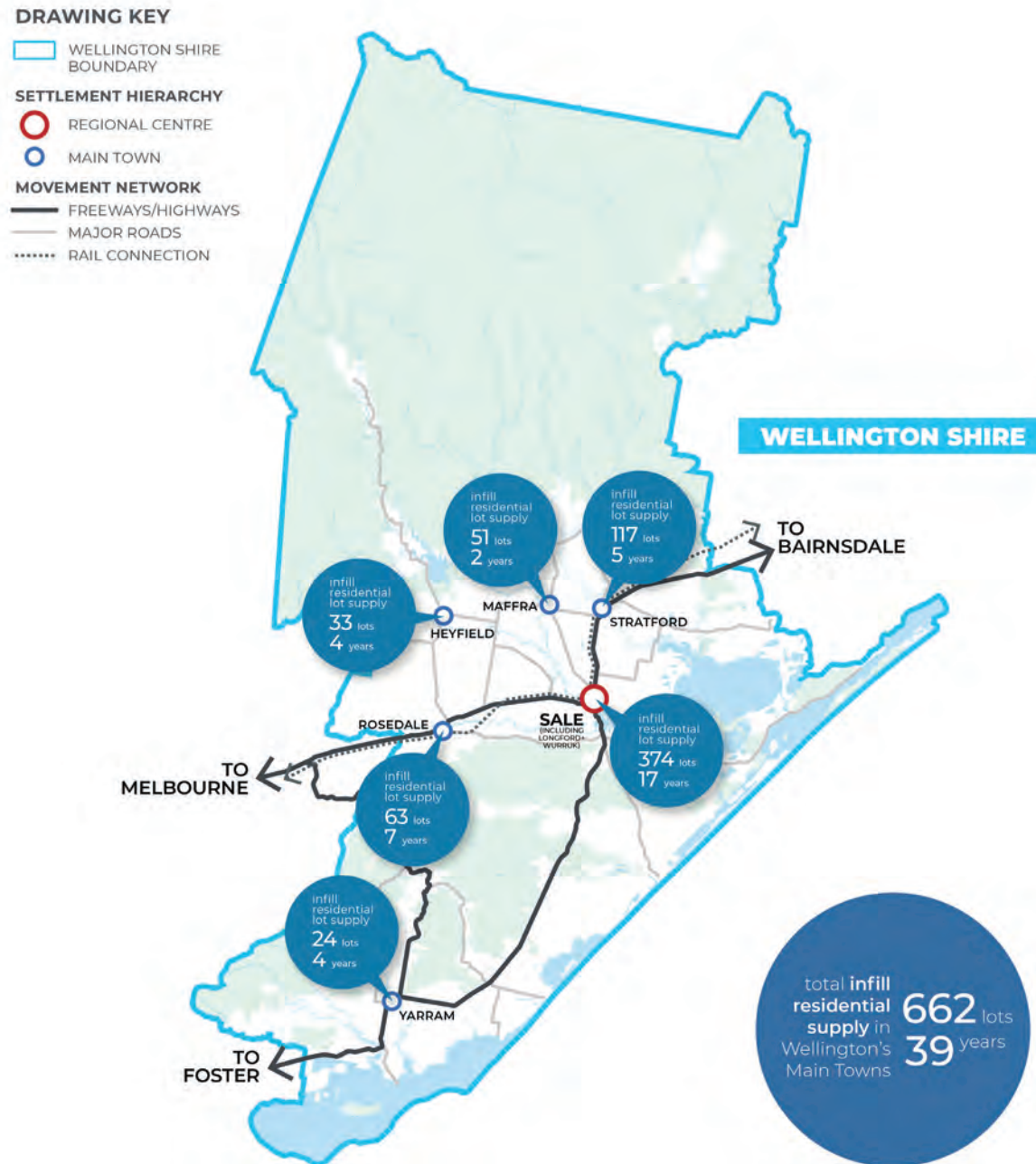


Figure 12 - Land supply key findings



4. Consultation Findings

4.1 Introduction

In order to properly inform preparation of this report, two intensive facilitated workshops were conducted.

The workshops involved a broad range of participants in the land development process within the Wellington Shire including real estate agents, developers, servicing authorities, Council officers and Shire of Wellington Councillors.

A detailed summary of the comments that were made during workshops 1 and 2 is attached (see Appendix 1).

Workshop One focused on:

- The factors that influence where people want to live in Wellington;
- What type of housing is in demand;
- Whether supply matches demand;
- What are the barriers to delivery of increased land supply;
- How do land supply issues/barriers vary across Wellington; and
- What are some of the consequences of the land supply barriers of contained land supply.

Workshop Two focused on:

- Whether Council should assist with funding of infrastructure;
- The role of servicing authorities and the State Government;
- Where should infrastructure investment occur and what criteria should be used to make investment decisions; and
- Whether there are alternative approaches to preparation of Development Contributions Plans.

4.2 Key Findings from Workshops

The key findings from the workshops are summarised in figure 13, 14 and 15 following.

The diagrams confirm five key findings:

1. That CONSTRAINED LAND SUPPLY is undermining the State and Local planning strategy and policy objectives in relation to growth and is also undermining the competitiveness and attractiveness of the Shire as a housing and employment destination.

2. That the factors that cause constrained land supply are complex and interrelated.

3. That the infrastructure capacity that supported previous small scale, incremental subdivision has been exhausted and that delivery of additional land supply will require adoption of broad scale integrated land use and infrastructure planning approaches.

4. Whilst broadscale planning is required, that rezoning of land and issue of approvals alone will not guarantee increased land supply.

5. That the industry requires direct financial and other support in order to overcome infrastructure capacity problems in order to deliver increased land supply.

Figure 13. Summary Municipal Implications of Constrained Land Supply

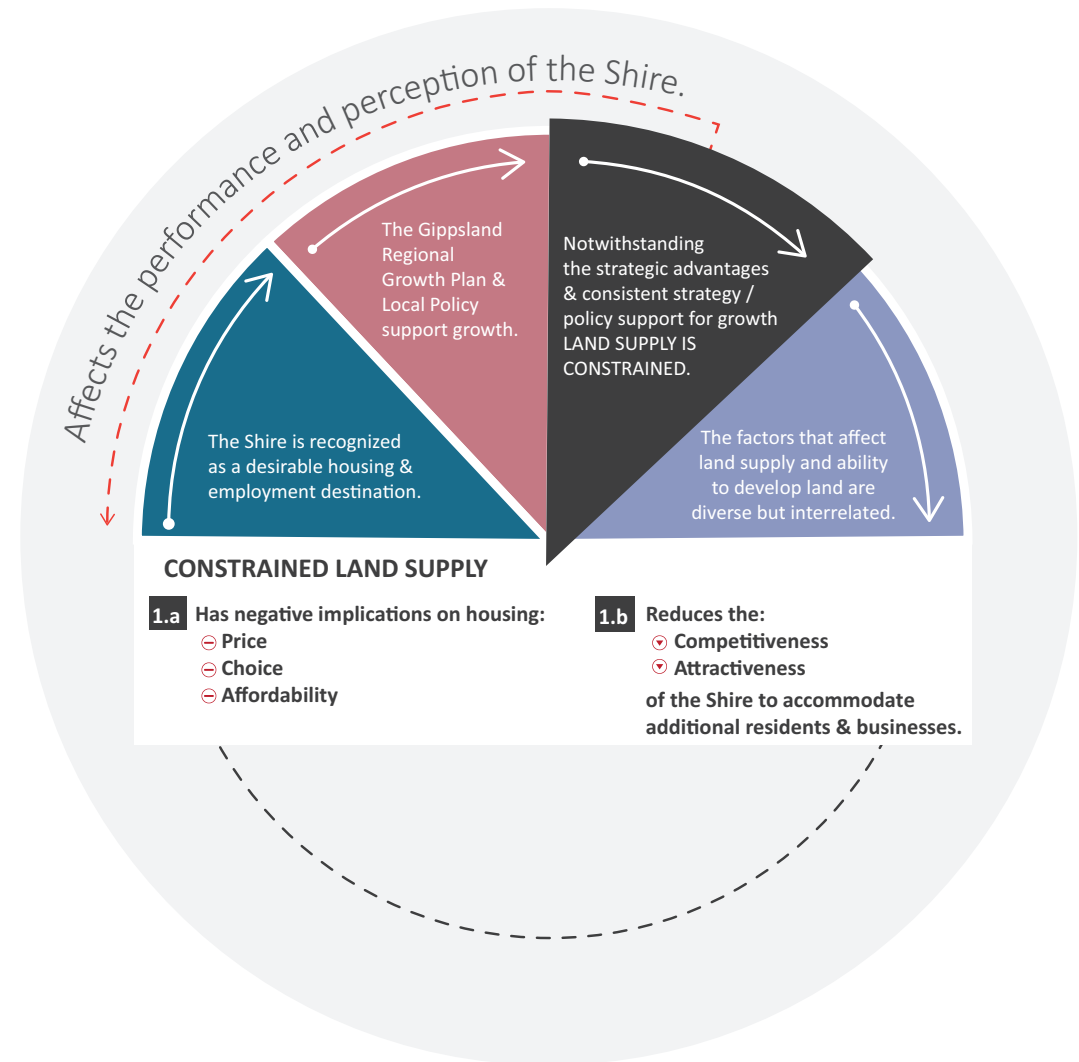


Figure 14. Land Supply Factors

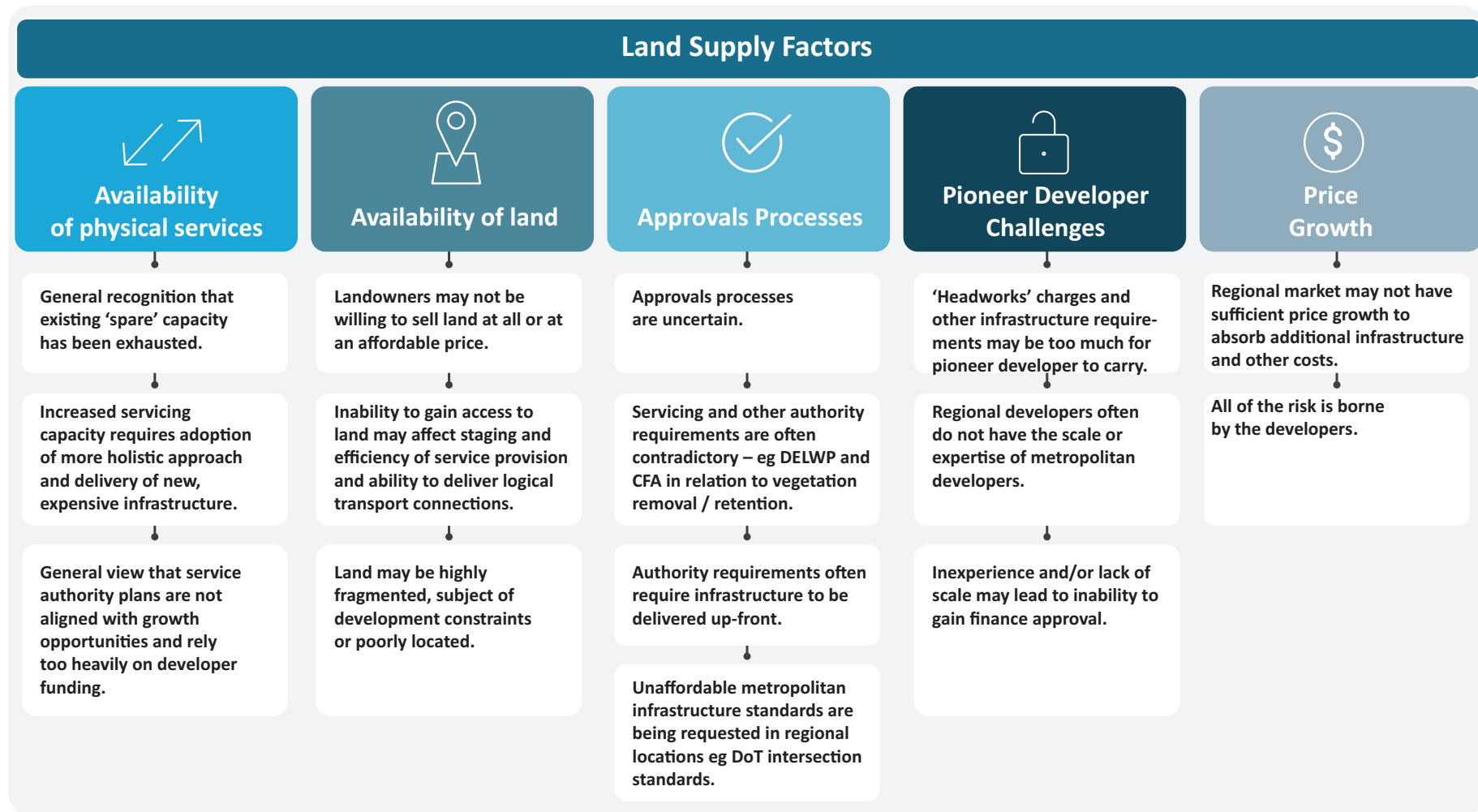
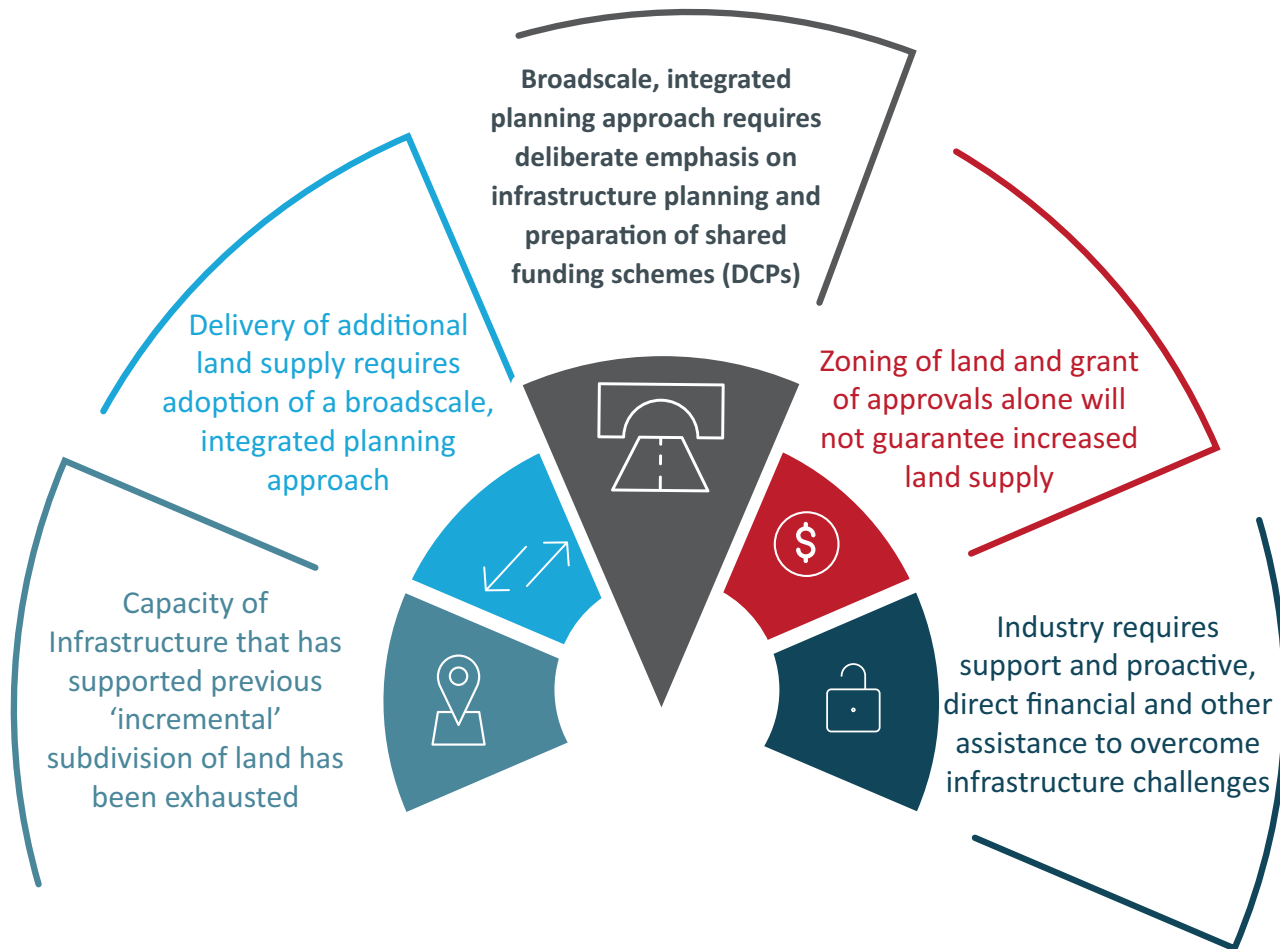


Figure 15. Land Supply and Infrastructure relationship & key implications



5. Recommendations

The key findings of the workshops served to clearly identify that delivery of increased land supply to support growth is a particularly complex challenge. Participants of the workshops recognized the infrastructure capacity limitations across the Shire and generally supported the need for Council to continue to provide leadership in preparation and implementation of growth area plans such as Precinct Structure Plans and/or Development Plans and to continue to rezone land.

There was however a consistent recognition that drainage is the key infrastructure constraint that is common to most growth areas. There was also a recognition that developers cannot undertake drainage infrastructure planning at the requisite scale and that assistance is required to overcome the 'pioneer' developer problems associated with getting development underway.

When asked about the means by which this could be achieved, the participants were unable to offer an alternative to preparation of development contributions plans (DCPs) as an appropriate tool that can be used to identify the necessary infrastructure and apportion its costs across the benefitting area.

Rather than suggesting alternatives to preparation of DCPs, most participants supported the need for Council to extend its role beyond the planning phase by forward funding delivery of drainage infrastructure (to the standard that is specified in the DCP) to enable development to commence. Under this type of arrangement, the Council would forward fund the infrastructure and then gather contributions from developers as development proceeds in accordance with the charges that are specified within the DCP.

The fundamental issue that is being raised however is a limitation associated with the shift toward larger scale, greenfield growth areas that require substantial new or significantly augmented infrastructure to enable development to occur and that pioneer developers do not have the scale or capacity to deliver such infrastructure to get development underway.

5.1 Recommended Approach

Adoption of a proactive approach that is comprised of a series of elements is recommended within a progressively established culture of partnership and co-operation between Council, servicing and other authorities and developers within the land development process.

Adoption of the recommended proactive approach includes the following elements:

- 1.** *Continue to undertake broadscale growth area planning and rezoning of land in accordance with an adopted Precinct Structure Plan and/or Development Plans.*
- 2.** *Place increased importance on servicing capacity and drainage catchments as a key input into identification of Precinct Structure Plan boundaries and preparation of land use plans in co-operation with the Catchment Management Authority.*
- 3.** *Undertake regular municipal and growth area specific servicing forums with the key servicing authorities.*
- 4.** *Adopt a 'case management' approach toward planning and engineering approvals for subdivision to avoid unnecessary uncertainty and costs including actively engaging with DELWP, the CFA and the Catchment Management Authority.*
- 5.** *Offer assistance to and regularly engage with developers regarding problems associated with delivery of land supply.*
- 6.** *Restrict DCP projects and associated costs to essential 'enabling' infrastructure to assist with project viability.*
- 7.** *Establish a program to facilitate Council forward funding of essential public infrastructure.*
- 8.** *Consider inclusion of the cost of finance to bring forward delivery of essential public infrastructure within current and future DCPs.*

5.2 Program to facilitate Council forward funding of essential public infrastructure

In terms of the means by which a program to facilitate Council forward funding of essential public infrastructure may be established, it is recommended that a transparent process be established to enable candidate projects to be identified and assessed and to enable resources to be properly directed in order to achieve the most benefit.

For reasons that are very similar to the Wellington Shire, the City of Greater Shepparton has established such a program in the form of a 'Procurement of Public Infrastructure Works Policy'.

The Procurement of Public Infrastructure Works policy was initially adopted in December 2019 and was developed to

*'guide the construction of public infrastructure works (such as drainage and roads) that are required under a Developer Contributions Plan (DCP) or section 173 agreement (S.173) or a planning permit condition.'*¹¹

Importantly, the policy was formulated to enable delivery of public infrastructure works that are required pursuant to an approved DCP, S173 Agreement or planning permit but are works that the developer cannot be compelled to deliver. In this context, 'public infrastructure works' are works which the Council has assumed the obligation to provide, usually infrastructure that has a broader benefit that is funded via a DCP.

According to the Greater Shepparton City Council, the policy (which was revised in July 2021 to address changes to the Local Government Act) helps to ensure:

- A consistent, transparent and orderly methodology for officers and developers;
- Officers are acting in compliance with Council policy and the Local Government Act 2020; and
- Council is receiving good value in relation to works in kind from developers.¹²

The revised policy effectively enables developers to deliver works in kind and to have those works in kind (for agreed projects such as DCP projects) to be funded by the Council.

According to the Council report:

'The policy provides for approvals of total net payments for Public Infrastructure Works and/or acquisition of Public Infrastructure Land with the following thresholds:

- Director Sustainable Development, a total payment of not more than \$200,000;
- Chief Executive Officer a total payment of over \$200,000 and not more than \$5,000,000; and
- A Council resolution is required to approve a total payment of over \$5,000,000

¹¹ Greater Shepparton City Council, Council meeting agenda 20 July 2021, pg 40 of 67

¹² Greater Shepparton City Council, Council meeting agenda 20 July 2021, pg 40 of 67

The administration of the contract for the construction of the Public Infrastructure Works and/or acquisition of Public Infrastructure Land is based on the following thresholds in the revised policy:

- *The Building, Planning and Compliance Department in consultation with Projects Department supervise the contract for the construction where the total net payment is not more than \$5,000,000; and*
- *The Project Management Office supervise the contract for the construction where the total net payment is more than \$5,000,000.’¹³*

The emphasis on ‘procurement’ of public infrastructure works in the Shepparton Policy is particularly important as the policy effectively enables developers to apply for funding to deliver public works with Council funding which is subsequently recouped via the DCP payments.

A copy of the revised Procurement of Public Infrastructure Works Policy is attached (see Attachment 2).

The revised policy provides a comprehensive explanation of purpose, objective, scope and relevant definitions and includes a detailed explanation of the thresholds described above. The policy (see Appendix 2) is also accompanied by a delegate report template and a standard Works Implementation Agreement template (S.173 Agreement).¹⁴

It is understood that Council is preparing a municipal growth strategy Growth Management and Economic Development Strategy that will provide direction in relation to preferred growth areas amongst other matters. Whilst this important strategy is being developed it is recommended that the Shire of Wellington adopt an ‘Interim Procurement of Public Infrastructure Works Policy’. The interim policy could be based on the Shepparton policy and serve as the policy basis upon which Council may seek to assist to the development process and support delivery of increased land supply by offering financial assistance. In the absence of completion of the Growth Management and Economic Development Strategy it is recommended that the interim policy be accompanied by a decision-making tool that will enable potential projects to be identified and assessed as set out following.

¹³ Greater Shepparton City Council, Council meeting agenda 20 July 2021, pg 42 of 67

¹⁴ Template prepared by Russell Kennedy Lawyers

5.3 Decision Making Tool

It is important to remember that the City of Greater Shepparton approach seeks to facilitate delivery of public infrastructure that Council has already assumed responsibility to deliver by offering developers funding to deliver the project on Council's behalf.
















This is a form of works in kind agreement where the developer delivers the infrastructure to Council's expectations but is assisted in doing so by Council providing the funding 'up front' as opposed to the developer having to finance the infrastructure. According to this model, the Council then recoups the funds via the DCP payments that are received as development proceeds.

The Planning and Environment Act (1987) enables the cost of finance that may be required to fund infrastructure to be included within a DCP. It is recommended that Council consider inclusion of the cost of finance in any future DCPs where use of finance may be required rather than Council reserves.

Given the need to ensure that any funds are made available achieve the greatest benefit and to ensure that Council's risk is appropriately assessed and managed, it is recommended that Council use a decision making tree or checklist to assess potential infrastructure projects as set out on the following page.

It should also be noted that whilst the emphasis throughout this report has been on residential land supply, the recommendations and procurement policy could equally apply to employment land.

Figure 16 Infrastructure Project Assessment Checklist

 Is the infrastructure located in a designated growth area?	▶  Are there broader community benefits (outside the development catchment) which may result?
 Is the infrastructure included within an approved or draft DCP?	▶  Has the cost of the infrastructure been properly scoped / costed?
 Is the infrastructure considered to be 'essential' infrastructure?	
 Are there broader community / development benefits (outside the development catchment) which may result?	
 Does the developer have a demonstrated track record in successful delivery of infrastructure projects of the same or similar type?	▶  Will delivery of the infrastructure assist in creation of a significant lot yield (e.g. greater than 100 lots in stages)? Is the value of the infrastructure within acceptable limits?
 Has the developer submitted a project feasibility which demonstrates the viability of the project?	▶  Has evidence of this been submitted?
 Will delivery of the infrastructure enable delivery of other infrastructure (e.g related infrastructure)?	▶  Has the viability of the project been assessed and confirmed by an external consultant?
 Has the developer submitted an undertaking to pay the relevant DCP charges on a stage by stage basis?	▶  Has a draft agreement been submitted?
 Will delivery of the infrastructure meet Council's policy objectives?	

6. Appendices

Appendix 1

Workshop One

Why people want to live in Wellington



Presence of important services and facilities

Lifestyle opportunities

Affordable

Housing choices

Larger lots and sense of space/place

Presence of major employers

Desire to live closer to work

Connection to the area

What type of housing is in demand



Diversity of housing types are in demand

Housing for single person households and the ageing population

Retirement living

Lifestyle blocks at Wurruk

Rental housing

Does supply match demand



General view is that there is a mismatch

Housing supply is separated from employment

Lack of housing options is affecting choice of location

Investors are searching for low-risk options

Existing retirement living is not well located

Charges affect the ability to deliver diversity of lot sizes

Workshop One

What are the barriers to land supply?

- Lack of clarity regarding global warming implications including sea level rise
- Some planning and other controls are over restrictive and have significant financial implications – eg bushfire risk
- Lack of definitive information about potential risk – eg absence of Rosedale flood study
- Some flood affected land may be able to be used for other purposes – eg Rural Living
- CFA and DELWP controls and requirements often conflict with one another – eg retention or removal of native vegetation
- Department of Transport do not engage with developers early enough in the process – detailed requirements and costs aren't specified until the permit approval stage
- Referrals are delaying the process
- Drainage capacity in all townships
- Existing drainage systems cannot cater for growth
- Cost of infrastructure has increased in cost over time
- New infrastructure is required to service growth
- Cost of DCPs and other charges
- Towns don't have access to natural gas
- No steady/predictable increase in property prices
- Demand has increased in Drouin since impact of Covid
- Land tax costs are significant
- Gippsland Water's sequencing strategy is 30 years out of date and is based on out-of-date figures
- No real forward planning for infrastructure
- Lack of Structure Plans or other plans in place for Sale and Maffra

Workshop One

How do land supply issues / barriers vary across Wellington

The presence of the river is moving development away from the Sale CBD

RAAF base is restricting expansion of Sale

Infrastructure capacity including drainage is a constraint in all towns

Conditions of all planning permits are often too open ended

There are different expectations between Council and other authorities

Increased engagement and alignment is required
between Council and all of the service authorities

Lack of drainage solution is a key issue for Rosedale

East Stratford is an example of drainage capacity/
solution attracting demand

Railway line is a key constraint to development in Sale

Maffra is difficult to service

What are some of the consequences of the land supply barriers

Decrease in desire to relocate

Increases in price of rental accommodation

Decline in housing affordability

Changes to rental laws causing decline in availability

Decline in choice of housing options

Negative impact on industry

Increased holding costs

Workshop Two

Should Council assist with funding of infrastructure



- General view that Council should assist with funding of infrastructure – adoption of funding role will aid both the process and cost of delivering infrastructure
- Council should consider acting as a ‘fund collector’ so authorities aren’t required to demand payment from the first developer
- Essential Services Commission Model recommended by some participants whereby investment in infrastructure is derived from customer payments and directed to priority locations where capacity is available
- Need to define what is considered to be priority infrastructure – drainage is a key constraint
- A proactive approach toward forward funding of key or priority infrastructure is recommended - Council could adopt proactive role via use of DCP or other means
- NSW approach viewed as positive where Councils take out loans to forward fund and then recoup the cost of infrastructure
- Land fragmentation supports the need for master plan/Development Plan or Precinct Structure Plan approach to be adopted
- Any approach that is adopted by Council needs to be fair and equitable – developers familiar with DCP approach and are generally supportive of that approach however forward funding is required
- Council has supported delivery of other types of infrastructure eg intersections but is falling short on drainage – drainage is recognized as having a broader benefit
- Developers can’t prepare drainage strategies/drainage schemes – requires leadership from Council
- Gippsland Water need to be part of the process as soon as is possible
- Sequencing plans are out of sync
- Gippsland Water are best placed to look after sewer but drainage solutions need to be provided by Council

Workshop Two

What is the role of servicing authorities and the State Government

- Central role to provide developers with crucial information to unlock land supply
- The way servicing authorities are funded is a major issue as there is no funding to support future growth
- The servicing authorities have a commercial interest in development
- There are inconsistencies in how responsive and accountable authorities are – fixed timeframes are required
- Council needs to adopt a more direct relationship with the CFA and CMA to keep them accountable
- CMA needs to be involved as early as is possible
- Perception that DoT is using developer funding to deliver infrastructure that they should be responsible for – eg North Sale roundabout
- VPA and RDV assist development by way of grants
- Need updated version of Gippsland Regional Growth Plan to ensure State Government responsibility to fund infrastructure
- DoT attempting to be more co-operative but inconsistencies in approach in regional areas
- Council could adopt more proactive approach through delivery of projects that will serve broader regional needs
- State Government can't provide certainty – developers rely on ad-hoc advice

Workshop Two

Where should infrastructure investment occur and what criteria should be used to make investment decisions

- Very difficult to obtain finance when there are unknowns and variables and high up-front costs
- Forward funding is needed in order to get development started
- Lower order growth fronts have need for infrastructure but seldom receive attention
- Gateway review process provides good advice on likelihood of success of projects
- Potential assessment criteria could include:
 - > yield;
 - > community perception;
 - > commitment to funding;
 - > developer ability to deliver outcome; and
 - > timeline.
- Outcomes can differ between developments when infrastructure is funded and delivered by Council or developers
- DCPs apportion the cost of infrastructure but they don't guarantee delivery of infrastructure unless Council delivers the infrastructure
- Council is ultimately accountable to ratepayers
- Business case approach may be required

Workshop Two

Are there alternative approaches to preparation of Development Contributions Plans

- DCP projects are not always properly costed
- DCPs are not well understood by local developers
- Special rates and special charges may be alternatives
- Voluntary agreements
- Development Plans and Structure Plans are required to provide clarity

From Shepparton Council Agenda – 20 July 2021

Appendix 2

[Draft 7 June 2021]

GREATER SHEPPARTON CITY COUNCIL

Policy Number X.X

Procurement of Public Infrastructure Works

Version 2.X

(First number changes for a major rewrite, second number changes for a minor amendment)

Adopted by Council Day Month Year

Business Unit:	
Responsible Officer:	
Approved By:	Chief Executive Officer
Next Review:	

DOCUMENT REVISIONS

Version #	Summary of Changes	Date Adopted
2.X	Revision following repeal of s.186 of the <i>Local Government Act 1989</i> and commencement of the <i>Local Government Act 2020</i>	

PURPOSE

The original version of this policy was to facilitate the procurement of *Public Infrastructure Works*¹ and the purchase or acquisition of *Public Infrastructure Works Land* by Council in conjunction with developments that are subject to planning approval under the *Planning Scheme*, in compliance with the *LG Act 2020* and to comply with the *Procurement Guidelines* where applicable.

Since the adoption of the original version of this policy the *LG Act 2020* has become operative and *LG Act 1989* has been amended, amongst other things, removing section 186.

Under the *LG Act 2020* the onus is on Councils to develop internal policies in relation to procurement matters.

This policy responds to the changes to the local government legislation.

This policy is also intended to reduce risks associated with procurement identified in the *IBAC Report*.

OBJECTIVE

To provide a consistent and orderly methodology for Council and developers for the procurement of *Public Infrastructure Works* and the purchase or acquisition of *Public Infrastructure Works Land*.

To facilitate compliance with the *LG Act 2020* with regard to expenditure on *Public Infrastructure Works* and facilitate good governance in relation to procurement.

To ensure Council receives best value in relation to *Works-in-Kind*.

SCOPE

This policy applies in circumstances where *Public Infrastructure Works* are required by Council as a result of, or in association with, a new use and/or development approved by way of a planning permit or otherwise under the *Planning Scheme*.

The policy applies to public infrastructure and any associated contributions that may arise by way of an approved development contribution plan, an approved development plan, an incorporated plan, a section 173 agreement or the like.

This policy also applies to the purchase or acquisition of *Public Infrastructure Works Land*, including where that land may be used as an offset for a *Development Contribution*.

¹ Terms in italics are defined in the "Definitions" section of this policy

This policy applies to *Subdivision Permit Works* where those works are done in conjunction with *Public Infrastructure Works* and/or in conjunction with the acquisition or purchase of *Public Infrastructure Works Land*.

In this policy approval of a total net payment for *Public Infrastructure Works* and/or *Public Infrastructure Works Land* has the following thresholds:

- Director Sustainable Development, a total payment of not more than \$200,000;
- Chief Executive Officer a total payment of over \$200,000 and not more than \$5,000,000; and
- a Council resolution is required to approve a total payment of over \$5,000,000.

Administration of the implementation of the *Public Infrastructure Works* has the following thresholds with regard to who supervises the implementation of the *Public Infrastructure Works*:

- the Building, Planning and Compliance Department in consultation with Projects Department supervise the implementation where the total cash payment associated with the *Public Infrastructure Works* was not more than \$5,000,000; and
- the Project Management Office supervise the implementation where the total cash payment associated with the *Public Infrastructure Works* was more than \$5,000,000.

This policy does not apply to infrastructure works that are *Subdivision Permit Works* alone.

Compliance with this policy is deemed to be in compliance with Council's *Procurement Guidelines*.

Where it is deemed by the Director Sustainable Development that due to the unique facts or circumstances of a particular matter the application of this policy is not practical, the *Procurement Guidelines* must apply.

DEFINITIONS

Reference term	Definition
<i>Blended Works</i>	Means civil works where <i>Subdivision Permit Works</i> and <i>Public Infrastructure Works</i> are integrated as the one project for practical reasons as determined by Council. An example of <i>Blended Works</i> is where the <i>Subdivision Permit Works</i> are the construction of a subdivisional road and the <i>Public Infrastructure Works</i> are the widening of that road as part of a development contribution plan project.
<i>Developer</i>	Means the developer of land acting in reliance on a planning permit for the use

	and/or development of land where that developer is the registered proprietor of the Subject Land or is purchasing the Subject Land under a contract of sale of land
Development Contribution	Means a development contribution payable under an approved development contribution plan under the <i>Planning Scheme</i> for which the <i>Developer</i> has a liability. It also includes contributions required by way of an approved development plan, an incorporated plan, a section 173 agreement or the like.
IBAC Report	Means the <i>Special report on corruption risks associated with procurement in local government</i> , Independent Broad-based Anti-corruption Commission, September 2019
Independent Civil Contractor	Means a civil contractor that has been engaged by Council to undertake <i>Public Infrastructure Works</i> following a tender process, but is not the <i>Developer</i> or an agent or associate of the <i>Developer</i>
LG Act 1989	Means the <i>Local Government Act 1989</i>
LG Act 2020	Means the <i>Local Government Act 2020</i>
PE Act	Means the <i>Planning and Environment Act 1987</i>
Planning Scheme	Means the Greater Shepparton Planning Scheme.
Procurement Guidelines	Means any Council policy, procedure or guideline, other than this policy, including the Council's Procurement Corporate Procedure, that relates to the procurement of services.
Public Infrastructure Works	Means public infrastructure that is required pursuant to an approved development contributions plan under the <i>Planning Scheme</i> or other public infrastructure that is required by Council, but is not infrastructure for which the <i>Developer</i> can be compelled to provide under a planning permit. <i>Public Infrastructure Works</i> is infrastructure for which Council has assumed the obligation to provide.
Public Infrastructure Works Land	Means land or a legal property right that is acquired or purchased by Council for the purpose of facilitating <i>Public Infrastructure Works</i> .
Subdivision Permit Works	Means public civil works directly relating to a subdivision and specifically required as part of the planning approval for a subdivision for

	which the <i>Developer</i> is responsible to provide.
Subject Land	The land to which the planning approval applies and which is associated with the <i>Public Infrastructure Works</i> and/or the <i>Public Infrastructure Works Land</i>
Works Implementation Agreement	Means a Works Implementation Agreement as described in Section 2 of this policy. The <i>Works Implementation Agreement</i> is separate to the detailed contract for the carrying out of specific works.
Works-in-Kind	Means <i>Public Infrastructure Works</i> required by Council carried out by a <i>Developer</i> to offset an obligation to pay a <i>Development Contribution</i> .

Note: All monetary amounts specified in this policy are inclusive of GST.

POLICY

1. Procurement

- a. Procurement that falls within this policy must be undertaken having regard to the following broad principles:
 - i value for money;
 - ii open and fair competition;
 - iii accountability;
 - iv risk management;
 - v probity and transparency; and
 - vi ethical behaviour.
- b. No single Council Officer should have end-to-end control over a particular procurement.
- c. All Council Officers involved in the procurement process must be subject to appropriate supervision in accordance with Council's organisational structure and policies.
- d. Information held by Council of commercial value to potential suppliers to Council must be managed such that no single supplier is given an advantage over another and no one Council Officer has sole knowledge and control of valuable commercial information.

- e. Comprehensive and accurate records for a particular procurement must be kept on the relevant Council file.
- f. All procurement under this policy is subject to Council's *Procurement Guidelines*, except where explicitly stated in this policy.
- g. If a potential conflict of interest becomes apparent during a procurement of *Public Infrastructure Works* or the acquisition of *Public Infrastructure Works Land* this must be reported to the relevant supervising Council Officer.
- h. It is policy that an Officer's Report for a procurement that is not yet complete be kept on the relevant Council file in relation to each procurement which, amongst other things, includes:
 - i the basic facts of the procurement;
 - ii the Council Officers who are responsible for the procurement;
 - iii the amount of the Council spend;
 - iv the process followed;
 - v confirming compliance with this policy, as relevant, throughout the procurement process;
 - vi identifying any matters for which compliance with this policy was not achieved and reasons for such non-compliance; and
 - vii any other matters relevant to compliance with this policy.
- i. A suggested template for the Officer's Report is provided as Attachment 2 to this policy.

2. Offsets

- a. *Public Infrastructure Works* that are part of *Blended Works* should be given priority for *Works-in-Kind* as an offset for a *Development Contribution* liability over *Public Infrastructure Works* that are not *Blended Works*.
- b. *Public Infrastructure Works* and the acquisition of *Public Infrastructure Works Land* may be used as an offset for a *Development Contribution* liability.
- c. Where the *Public Infrastructure Works* comprise a combination of *Blended Works* and *Public Infrastructure Works* that can be implemented as one or more separate projects, the relevant decision-making Council Officers may agree in their absolute discretion to implement the *Public Infrastructure Works* that are not part of the *Blended Works* as one or more separate projects. In

other words, Council Officers have discretion to group certain projects together and to manage the sequencing of projects to achieve the optimal overall outcome for Council and the community.

3. Procurement of *Public Infrastructure Works* and *Public Infrastructure Works Land* where the total net payment is not more than \$5,000,000

- a. Where the net payment by Council for *Public Infrastructure Works* and the acquisition of *Public Infrastructure Works Land* is not more than \$5,000,000, the procurement process should be administered by the Building and Planning Department and the Projects Department in consultation.
- b. The procurement process must be administered in a manner that reasonably optimises the value to Council and the community and ensures that the works are conducted to an acceptable and reasonable engineering standard, as may be appropriate given the facts and circumstances of each project.
- c. Council will seek to prepare a detailed design for the *Public Infrastructure Works* as early in the overall infrastructure works process as is reasonably practicable, having regard to the facts and circumstances, in consultation with the *Developer* for the purpose of scoping and costing the *Public Infrastructure Works*.
- d. More than one price is not required in relation to specific works where a service authority requires design and/or works to be carried out to its infrastructure as a result of implementing *Public Infrastructure Works*, in the circumstance where the public authority controls who may carry out design and works on its infrastructure and where there is no practical ability to get multiple quotes for that design or works.
- e. The approval of a contract for the implementation of *Public Infrastructure Works* and/or the acquisition of *Public Infrastructure Works Land* that involves a cash payment of not more than \$200,000 may be by the Director Sustainable Development, the Chief Executive Officer or by way of a resolution of the Council.
- f. The approval of a contract for the implementation of *Public Infrastructure Works* and/or the acquisition of *Public Infrastructure Works Land* that involves a cash payment of more than \$200,000 but not more than \$5,000,000 may be by the Chief Executive Officer or by way of a resolution of the Council.
- g. The supervision and management of the construction and implementation of the *Public Infrastructure Works* and/or the acquisition of *Public Infrastructure*

Works Land that involves a net payment of not more than \$5,000,000 shall be by Building and Planning Department and the Projects Department in consultation

- h. Where practicable, the timing, administration and any other requirements relating to the implementation of *Public Infrastructure Works*, purchase or acquisition of any associated *Public Infrastructure Works Land* or associated *Subdivision Permit Works* should be controlled by a *Works Implementation Agreement*.
- d. The timing of the implementation of *Subdivision Permit Works* may be after the issue of a statement of compliance if the implementation of those works is pursuant to a *Works Implementation Agreement*.

4. Procurement of *Public Infrastructure Works* where the total net payment is more than \$5,000,000

- a. In circumstances where the net payment by Council for *Public Infrastructure Works* and/or the acquisition of *Public Infrastructure Works Land* is more than \$5,000,000 (including GST), the procurement should be in accordance with the procurement process under the *Procurement Guidelines* and undertaken by Council's Project Management Office.
- b. Council will seek to prepare a detailed design for the *Public Infrastructure Works* as early as is reasonably practicable in the overall infrastructure works process, having regard to the particular facts and circumstances, in consultation with the *Developer*, for the purpose of scoping and costing the *Public Infrastructure Works*.
- c. More than one price is not required in relation to specific works where a service authority requires design and/or works to be carried out to its infrastructure as a result of implementing *Public Infrastructure Works*, in the circumstance where the public authority controls who may carry out design and works on its infrastructure and where there is no practical ability to get multiple quotes for that design or works.
- d. The approval of a contract for the implementation of public Infrastructure works that involves a cash payment of more than \$5,000,000 must be by way of a resolution of the Council.
- e. The supervision and management of the construction and implementation of the *Public Infrastructure Works* and/or the acquisition of *Public Infrastructure*

Works Land that involves a net payment of more than \$5,000,000 shall be by Council's Project Management Office

- f. Where practicable, the timing, administration and any other requirements relating to the implementation of *Public Infrastructure Works*, purchase or acquisition of *any associated Public Infrastructure Works Land or Subdivision Permit Works* should be controlled by a *Works Implementation Agreement*.
- g. The timing of the implementation of *Subdivision Permit Works* may be after the issue of a statement of compliance if the implementation of those works is pursuant to a *Works Implementation Agreement*.

5. *Works Implementation Agreement*

- a. A *Works Implementation Agreement* should be used, where this is considered to be practicable by Council Officers, to manage matters including:
 - i the orderly sequencing of the implementation of *Public Infrastructure Works* and *Subdivision Permit Works*;
 - ii the tender process for the provision of *Public Infrastructure Works*;
 - iii the purchase or acquisition of *Public Infrastructure Works Land*;
 - iv the agreed valuation for *Public Infrastructure Works Land*;
 - v the *Development Contribution* offsets for *Public Infrastructure Works*;
 - vi the completion of *Subdivision Permit Works* after the issue of a Statement of Compliance under the *Subdivision Act 1988*;
 - vii any necessary payments by Council in relation to *Public Infrastructure Works*; and
 - viii any other matters relating to the implementation, timing, administration, payment for, and management of, *Public Infrastructure Works*, *Subdivision Permit Works*, *Public Infrastructure Works Land* or associated matters.
- b. A sample *Works Implementation Agreement* is provided as Attachment 1 to this policy. The sample agreement is provided as a guide only as an agreement will need to be drafted to address the relevant facts and circumstances of each particular matter.

6. Compliance

- a. In any circumstance in which the relevant Council Officer responsible for the procurement of *Public Infrastructure Works* and/or the purchase or acquisition of *Public Infrastructure Works Land* is concerned regarding compliance with any legislation, this policy or another Council policy relevant to the matter, legal advice should be obtained as reasonably considered appropriate.
- b. Compliance with this policy is deemed to be compliance with the *Procurement Guidelines*.

7. Summary - Application of Policy

- a. This policy applies when *Public Infrastructure Works* or *Public Infrastructure Works Land* are required by Council.
- b. Can the cost of the *Public Infrastructure Works* and/or *Public Infrastructure Works Land* be fully or partially offset by a development contribution obligation?
 - i Yes – where it is possible a DCP liability may be offset by the cost of works as works-in-kind or by land required by Council.
 - ii No – If there is no or insufficient DCP liability Council must pay for the works or land that cannot be offset.
- c. Is a net payment required by Council to the *Developer* of more than \$5,000,000?
 - i Yes –the procurement process is undertaken by Council's Project Management Office and the contract is subject to the approval by way of a Council resolution.
 - ii No – the procurement process may be undertaken by the Building and Planning Department and Projects Department in consultation and approval of the contract is subject approval of the Director Sustainable Development (not more than \$200,000), the Chief Executive Officer (not more than \$5,000,000) or by way of a resolution of the Council.
- d. A *Works Implementation Agreement* should be used, where reasonably practicable, to manage the implementation and sequencing of the works, offsets and payments.

RELATED POLICIES AND DIRECTIVES

- Council *Procurement Guidelines*

- *Victorian Local Government Best Practice Procurement Guidelines 2013* (part 3.6.10 *Developer Contribution Plans*)
- *Special report on corruption risks associated with procurement in local government*, Independent Broad-based Anti-corruption Commission, September 2019

RELATED LEGISLATION

- *Local Government Act 2020*
- Part 3B of the *PE Act* (*Development contributions*)
- Division 2 Part 9 of the *PE Act* (Section 173 agreements)

REVIEW

Define who is to review the Policy and when this review is to occur. Generally, policies should be reviewed every four years to ensure that they remain relevant. If the Policy replaces any previously adopted Council document/s, list any documents which have been replaced.

Peter Harriott
Chief Executive Officer

Date

ATTACHMENTS

Attachment 1: Sample Template *Works Implementation Agreement*

ATTACHMENTS

Attachment 2: Sample Template for Officer's Report

Delegates Report – Procurement of Public Infrastructure Works

Application Details:

Responsible Officer:	
Planning Application Number:	
Applicant Name:	
Land/Address:	
Description of PIW	

Proposal

What is being procured?

Set out the basis facts of the procurement

Assessment

What is the amount of Council spend?

What process was followed

Confirm compliance with the Procurement of Public Infrastructure Works policy

Identify any matters for which compliance with the policy was not achieved and reasons for such non-compliance

Any other matters relevant to compliance with this policy

Conclusion

Recommendation

Responsible Officer:	_____	Team Leader	_____
Signature:	_____	Signature:	_____
Date:	_____	Date:	_____
Should this file be checked by the Manager?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>



Russell Kennedy
Lawyers

[SAMPLE TEMPLATE AGREEMENT]

GREATER SHEPPARTON CITY COUNCIL

and

[OWNER – WHERE DIFFERENT TO DEVELOPER]

and

[DEVELOPER – WHERE PURCHASER]

Works Implementation Agreement

**AGREEMENT MADE PURSUANT TO
SECTION 173 OF THE PLANNING AND
ENVIRONMENT ACT 1987**

[PROPERTY ADDRESS]

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185
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rk.com.au



THIS AGREEMENT is made on

2021

PARTIES

- 1 **GREATER SHEPPARTON CITY COUNCIL**
of 90 Welsford Street, Shepparton Vic 3630
("Council")
- 2 **[OWNER – WHERE DIFFERENT TO DEVELOPER]**
ACN
of [ADDRESS]
("Owner")
- 3 **[DEVELOPER – WHERE PURCHASER]**
ACN
of [ADDRESS]
("Developer")

[Note - Where the Developer is not the Owner or purchasing the Land the Developer can be a party to the Agreement but the Owner (rather than the Developer) must be bound by the Agreement]

RECITALS

- A The Council is the responsible authority under the Act for the Scheme.
- B The Land is within the [Zone] of the Scheme and is subject to the [Overlay].
- C The Developer intends to use and develop the Land for the purpose of the Proposal.
- D The Parties agree that the Subdivision Permit Works are necessarily required as part of the planning approval of the Proposal and are to be completed at the Developer's cost.
- E The Parties further agree that the Public Infrastructure Works are necessary and appropriate as a consequence of the Proposal.
- F The Developer agrees that the Public Infrastructure Works will be completed by the Developer or another entity, in accordance with the Council Procurement Requirements, at Council's expense, less any Agreed Offset, in accordance with this Agreement.
- G The Parties agree that, amongst other things, in order for the Proposal to proceed it is necessary to make provision for the Subdivision Permit Works and the Public Infrastructure Works in accordance with this Agreement.
- H This Agreement has been entered into in order to:
 - provide for the timing and sequencing of the Subdivision Permit Works;
 - provide for the timely implementation of the Public Infrastructure Works;
 - comply with relevant Council policy;
 - make provision for payments and offsets;
 - facilitate the Proposal;
 - prohibit, restrict or regulate the use or development of the Land; and

- achieve and advance the objectives of planning in Victoria or the objectives of the Scheme in relation to the Land.

I This Agreement is made under Division 2 of Part 9 of the Act.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this Agreement:

- 1.1 **"Act"** means the *Planning and Environment Act 1987*.
- 1.2 **"Agreed Offset"** means a credit given to the Developer in relation to a DCP Contribution that is offset against the cost of Public Infrastructure Works carried out by the Developer at the request of Council, in accordance with this Agreement.
- 1.3 **"Agreement"** means this Agreement, including the recitals and any annexures to this Agreement.
- 1.4 **"Business Day"** means Monday to Friday excluding public holidays in Victoria.
- 1.5 **"Completion of Works Certificate"** means written advice from Council to the Owner that the construction of the Subdivision Permit Works and/or the Public Infrastructure Works have been completed to the satisfaction of Council, as may be applicable.
- 1.6 **"Council Procurement Requirements"** means the requirements pursuant to Council's Procurement Policy and the Procurement of Public Infrastructure Works Policy.
- 1.7 **"Defects Liability Notice"** means a written notice issued during the Defects Liability Period that identifies defects that the Council reasonably considers to be related to the construction of the Subdivision Permit Works and/or the Public Infrastructure Works as may be applicable.
- 1.8 **"Defects Liability Period"** means a period of 12 months commencing from the date of the issue of the Completion of Works Certificate.
- 1.9 **"Developer"** means the entity that proposes to use and develop the Land for the purpose of the Proposal and must be the Owner or alternatively must be the person purchasing the Land under a contract of sale of land from the Owner.
- 1.10 **"Development Contribution"** means a development contribution liability relating to the Land or Other Land for which the Developer is liable to pay to the Council.
- 1.11 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).
- 1.12 **"GST"** means the goods and services tax as defined in the *GST Act*.
- 1.13 **"Input Tax Credit"** in relation to a supply, means a credit under the GST Act for the GST payable by the recipient in respect of the supply.
- 1.14 **"Land"** means the land within the Scheme being the land known as [address] and being the land more particularly described as [title details].

- 1.15 **“Mortgagee”** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as mortgagee of the Land or any part of it.
- 1.16 **“Other Land”** means land other than the Land being the land known as [address] and being the land more particularly described as [title details].
- 1.17 **“Owner”** means the registered proprietor of the Land at the date of this Agreement.
- 1.18 **“Proposal”** means the proposal to use and/or develop the Land for the purpose of [specify the proposal].
- 1.19 **“Public Infrastructure Works”** means the civil works required by Council that are not Subdivision Permit Works and which Council considers are reasonably needed as a consequence of the Proposal. The Public Infrastructure Works are specified in Schedule 1 to this Agreement.
- 1.20 **“Public Infrastructure Works Land”** means the land that is required by Council for the purpose of carrying out the Public Infrastructure Works that is described as [address and/or title details and/or description as applicable].
- 1.21 **“Scheme”** means the Greater Shepparton Planning Scheme or any other planning scheme which applies to the Land from time to time.
- 1.22 **“Subdivision Permit Works”** means the civil works that must be implemented by the Developer as part of the planning approval for the Proposal. The Subdivision Permit Works are specified in Schedule 2 to this Agreement.
- 1.23 **“Tax Invoice”** in relation to a supply, means an invoice for the supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the supply.
- 1.24 **“Tender Process”** means the process to be followed by the Developer in accordance with relevant Council procurement policy and s186 exemption approval requirements and by which the Developer must carry out the Public Infrastructure Works and select sub-contractors as required by Council.

2 COMMENCEMENT

This Agreement comes into force on the date it was made as set out above.

3 TERMINATION OF AGREEMENT

3.1 Termination

This Agreement ends when the Developer has complied with its obligations under this Agreement or earlier by mutual agreement between the Parties evidenced in writing.

3.2 Cancellation of recording of Agreement

As soon as reasonably practicable after this Agreement has ended, the Council must, at the request and at the cost of the Developer, apply to the Registrar of Titles under section 183(2) of the Act to cancel the recording of this Agreement on the Register.

4 DEVELOPER'S COVENANTS

4.1 Subdivision Permit Works

The Developer covenants and agrees that:

- 4.1.1 before [specify item, etc], the following specified matters must be completed to the satisfaction of the Council as set out below:
 - (a) [specify item of Subdivision Permit Works infrastructure and timing, sequence, etc];
 - (b) [...]
- 4.1.2 it is solely responsible for undertaking the Subdivision Permit Works at its risk and expense;
- 4.1.3 that Council must approve the construction plans and specifications for the Subdivision Permit Works prior to the commencement of the works [depending on whether Council or the Developer does the detailed design];
- 4.1.4 Council will undertake inspections as specified in the approved construction drawings and specifications;
- 4.1.5 it must not allow the Subdivision Permit Works to be carried beyond Council inspection hold points specified in the approved construction plans and specifications;
- 4.1.6 the Subdivision Permit Works must be carried out in accordance with any plans and specifications approved by Council to the satisfaction of the Council;
- 4.1.7 it must obtain the prior written approval of the Council prior to undertaking any works on Council land or other public land not shown in the approved construction drawings and specifications;
- 4.1.8 it must obtain all necessary approvals and comply with all necessary requirements of Council and other authorities in respect of the Subdivision Permit Works;
- 4.1.9 it must advise Council in writing when in its reasonable opinion the Subdivision Permit Works have been practically completed in accordance with the approved construction drawings and specifications; and
- 4.1.10 it is responsible for the cost of the design and construction of the Subdivision Permit Works.

4.2 Public Infrastructure Works

The Developer covenants and agrees that:

- 4.2.1 before [date, SOC, etc], the following specified matters must be completed to the satisfaction of the Council as set out below:
 - (a) [specify item of Public Infrastructure Works infrastructure and timing, sequence, etc];
 - (b) [...]

- 4.2.2 it is solely responsible for undertaking the Public Works at its risk and expense in accordance with the Tender Process;
- 4.2.3 that Council will provide the construction plans and specifications for the Public Infrastructure Works, if it has not already done so at the date of this Agreement [confirm if this is applicable];
- 4.2.4 any costs associated with participating in the Tender Process for the Public Infrastructure Works is at its own expense;
- 4.2.5 prior to the commencement of the Public Infrastructure Works the Council must approve the engagement of the Developer in writing for the carrying out of the Public Infrastructure Works;
- 4.2.6 Council will undertake inspections as specified in the approved construction drawings and specifications;
- 4.2.7 it must not allow the Public Infrastructure Works to be carried beyond Council inspection hold points specified in the approved construction plans and specifications;
- 4.2.8 the Public Infrastructure Works must be carried out in accordance with any plans and specifications approved by Council and the quotation approved by Council to the satisfaction of the Council;
- 4.2.9 any civil works undertaken outside the scope of the approved plans and specifications and/or outside the scope of the tendered works are not eligible for reimbursement from Council or for use as an Approved Offset;
- 4.2.10 it must obtain the prior written approval of the Council prior to undertaking any works on Council land or other public land not shown in the approved construction drawings and specifications;
- 4.2.11 it must ensure that it (including any subcontractors) maintains a minimum of \$20 million in public liability insurance in respect of the Public Infrastructure Works;
- 4.2.12 it must obtain all necessary approvals and comply with all necessary requirements of Council and other authorities in respect of the Public Infrastructure Works;
- 4.2.13 it must advise Council in writing when in its reasonable opinion the Public Infrastructure Works have been practically completed in accordance with the approved construction drawings and specifications;
- 4.2.14 Council will reimburse the Developer for the part of the agreed cost of the Public Infrastructure Works less any Agreed Offset in accordance with this Agreement;
- 4.2.15 the reimbursement of the Developer is subject to the Developer providing a Tax Invoice to the Council for the part of the cost of the Public Infrastructure Works as approved by Council under this Agreement;

- 4.2.16 if GST is payable in relation to the Public Infrastructure Works for which a payment is required under this clause, the payment must include any additional amount for GST(if applicable);
- 4.2.17 subject to compliance with this Agreement by the Developer, the payment under this clause to the Developer must be made within 28 days of a Tax Invoice being provided to the Council;
- 4.2.18 the completion of the Public Infrastructure Works in accordance with this Agreement satisfies the Development Contribution liability in accordance with this agreement;
- 4.2.19 it is responsible for the design and construction of Public Infrastructure Works and other civil works within the Land [confirm this is applicable]; and
- 4.2.20 prior to the commencement of Public Infrastructure Works within the Land or on Other Land, the design and plans for the works and construction methodology must be approved in writing by the Council.

4.3 Defects Liability Period

The Developer covenants and agrees that it must remedy a defect identified in a Defect Liability Notice within the period as set out in the Defect Liability Notice to the satisfaction of the Council.

4.4 Provision of Public Infrastructure Works Land

The Developer covenants and agrees that:

- 4.4.1 the land identified as the Public Infrastructure Works Land described as [address and title description as may be applicable] must be transferred to Council on or before [specify date or works as applicable];
- 4.4.2 the agreed value of the Public Infrastructure Works Land is [specify \$];
- 4.4.3 Council will undertake the legal processes necessary for it to become the registered of the Public Infrastructure Works Land; and
- 4.4.4 [any other matters that may be applicable].

4.5 Agreed Offset

The Developer covenants and agrees that:

- 4.5.1 as at the date of this Agreement it has a liability to pay a DCP Contribution in relation to the Land [and/or Other Land if applicable] of \$[amount];
- 4.5.2 it has a contract with Council for the provision of the Public Infrastructure Works (reference Council Purchase Order No. [reference]), where the total cost of the works is valued at \$[amount]; and
[use only one of the following clauses as applicable]

4.5.3 Council and the Developer agree that the net amount payable by Council to the Developer for the Public Infrastructure Works is \$[amount], being the total cost of the work less the DCP Contribution liability.

4.5.4 Council and the Developer agree that the net amount payable by the Developer to Council is \$[amount], being the DCP Contribution liability less total cost of the work.

4.6 **Further assurance**

The Developer must do all things necessary (including signing any further agreement, acknowledgment or document) to enable the Council to record this Agreement on the folio of the Register which relates to the Land.

4.7 **Developer's costs**

The Developer agrees to pay its costs and expenses of and incidental to the preparation, execution, recording of and compliance with this Agreement.

4.8 **Mortgagee to be bound**

The Developer covenants to obtain the consent of any Mortgagee to be bound by the covenants in this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

4.9 **Indemnity**

The Owner and the Developer covenant to indemnify and keep the Council, its officers, employees, agents, workmen and contractors indemnified from and against all costs, expenses, losses or damages which they or any of them may sustain incur or suffer or be or become liable for or in respect of any suit action proceeding judgement or claim brought by any person arising from or referable to this Agreement or any non-compliance with this Agreement.

4.10 **Non-compliance**

If the Developer has not complied with this Agreement within 14 days after the date of service on the Developer by Council of a notice which specifies the Developer's failure to comply with any provision of this Agreement, the Developer covenants:

4.10.1 to allow Council its officers, employees, contractors or agents to enter the Land and rectify the non-compliance;

4.10.2 to pay to Council on demand, Council's reasonable costs and expenses ("**Costs**") incurred as a result of the Developer's non-compliance;

4.10.3 to pay interest at the rate of 2% above the rate prescribed under section 2 of the *Penalty Interest Rates Act 1983* on all moneys which are due and payable but remain owing under this Agreement until they are paid in full;

and the Developer agrees:

4.10.4 to accept a certificate signed by the Chief Executive Officer of the Council (or any nominee of the Chief Executive Officer) as prima facie

proof of the Costs incurred by the Council in rectifying the Developer's non-compliance with this Agreement;

4.10.5 that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid Costs of the Council and then applied in repayment of the principal sum; and

4.10.6 that all Costs or other monies which are due and payable under this Agreement but which remain owing shall be a charge on the Land until they are paid in full.

4.11 **Council access**

The Developer covenants to allow the Council and its officers, employees, contractors or agents or any of them, to enter the Land (at any reasonable time) to assess compliance with this Agreement.

4.12 **Covenants run with the Land**

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and its successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

4.13 **Developer's warranty**

The Developer warrants and covenants that:

4.13.1 the Developer is the registered proprietor (or is entitled to become the registered proprietor) of the Land and is also the beneficial owner of the Land;

4.13.2 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Developer affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;

4.13.3 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in section 42 of the *Transfer of Land Act 1958*; and

4.13.4 until this Agreement is recorded on the folio of the Register which relates to the Land, the Developer will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first disclosing to any intended purchaser, transferee, assignee or mortgagee the existence and nature of this Agreement.

5 **COUNCIL OBLIGATIONS**

5.1 **Council's costs**

Council agrees to pay its own costs and expenses of and incidental to the preparation, execution and recording of this Agreement.

5.2 Reimbursement of Developer

Council agrees that:

- 5.2.1 that it must provide the construction plans and specifications for the Public Infrastructure Works to the Developer as may be appropriate [confirm whether Council or developer is doing detailed design];
- 5.2.2 it must undertake inspections as specified in the approved construction drawings and specifications;
- 5.2.3 upon written notice from the Developer that in its reasonable opinion the Subdivision Permit Works and/or Public Infrastructure Works are practically completed, the Council must within 14 days either issue a Completion of Works Certificate or provide specific details in writing of any incomplete works;
- 5.2.4 subject to compliance with clause 4.2 by the Developer, where applicable, it must reimburse the Developer for the cost of the Public Infrastructure Works (excluding GST) that exceed the Development Contribution liability of the Developer in accordance with this Agreement;
- 5.2.5 payment to the Developer is subject to the Developer providing a Tax Invoice to Council for the part of the cost of the Public Infrastructure Works excluding GST as approved by Council under this clause that exceed the DCP Contribution;
- 5.2.6 if GST is payable in relation to the part of Public Infrastructure Works for which a reimbursement is required under this clause, the reimbursement payment pursuant must include any additional amount for GST for that part of the Public Infrastructure Works;
- 5.2.7 subject to compliance with this Agreement by the Developer, the reimbursement under this clause to the Developer must be made within 21 days of a Tax Invoice being provided to Council under this clause; and
- 5.2.8 compliance with this Agreement satisfies the Development Contribution obligations to the extent specified in this Agreement of the Developer under the Scheme in respect of the Land or the Other Land.

6 GENERAL

6.1 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion in respect of any of the Council's decision making powers.

6.2 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

6.3 Enforcement and severability

- 6.3.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a Court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an agreement pursuant to Division 2 of Part 9 of the Act.
- 6.3.2 If a Court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void, then it shall be severed and the other provisions of this Agreement shall remain operative.

7 GOODS AND SERVICES TAX

7.1 Definitions and expressions

Expressions used in this Agreement that are defined in the *GST Act* have the same meaning as given to them in the *GST Act*, unless expressed to the contrary.

7.2 Amounts payable do not include GST

Each amount, of whatever description, specified as payable by one party to the other party under this Agreement is expressed as a GST exclusive amount unless specified to the contrary.

7.3 Liability to pay any GST

Subject to clause 7.4, in addition to any amount payable by one party to the other party under this Agreement in respect of a taxable supply, the party liable to pay the amount ("**Recipient**") must pay to the other party ("**Supplier**") a sum equivalent to the GST payable, if any, by the Supplier in respect of the taxable supply on the date on which the Supplier makes a taxable supply to the Recipient irrespective of when the Supplier is liable to remit any GST under this Agreement in respect of a taxable supply to any governmental authority.

7.4 Tax Invoice

A party's right to payment under clause 7.3 is subject to a Tax Invoice being delivered to the Recipient.

8 NOTICES

8.1 Service of notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 8.1.1 personally on the person;
- 8.1.2 by leaving it at the person's address set out in this Agreement;
- 8.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 8.1.4 by email to the person's current number notified to the other party; or
- 8.1.5 by facsimile to the person's current number notified to the other party.

8.2 Time of service

A notice or other communication is deemed served:

- 8.2.1 if served personally or left at the person's address, upon service;
- 8.2.2 if posted within Australia to an Australian address, five Business Days after posting;
- 8.2.3 if served by email or facsimile, subject to the next clause, at the time indicated on the transmission report produced by the sender's email service or facsimile machine indicating that the communication was sent in its entirety to the addressee's facsimile; and
- 8.2.4 if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

9 INTERPRETATION

In this Agreement, unless the contrary intention appears:

- 9.1 the singular includes the plural and vice versa;
- 9.2 a reference to a document or instrument, including this Agreement, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 9.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 9.4 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 9.5 words importing one gender include other genders;
- 9.6 other grammatical forms of defined words or expressions have corresponding meanings;
- 9.7 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - 9.7.1 two or more parties; or
 - 9.7.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 9.8 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 9.9 a recital, schedule, annexure or description of the parties forms part of this Agreement;
- 9.10 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;

- 9.11 if an act required to be done under this Agreement on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 9.12 a party that is a trustee is bound both personally and in its capacity as trustee;
- 9.13 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity;
- 9.14 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Agreement.

EXECUTED as an agreement under Division 2 of Part 9 of the Act.

THE COMMON SEAL of the **GREATER**)
SHEPPARTON CITY COUNCIL was affixed)
on this day of 2016)
in the presence of the Chief Executive Officer)
being a delegated officer pursuant to Local)
Law No. 2 of the Council:)

CHIEF EXECUTIVE OFFICER

EXECUTED by **[OWNER – IF DIFFERENT**)
TO THE DEVELOPER] in accordance with)
section 127(1) of the *Corporations Act 2001*)
(Cth) by being signed by authorised persons:)

Director

*Director/company secretary

*Delete whichever is inapplicable

Full Name

Full Name

Usual Address

Usual Address

EXECUTED by **[DEVELOPER]** in)
 accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by being signed)
 by authorised persons:)

Director

*Director/company secretary

*Delete whichever is inapplicable

Full Name

Full Name

Usual Address

Usual Address

SCHEDULE 1

PUBLIC INFRASTRUCTURE WORKS

SCHEDULE 2

SUBDIVISION PERMIT WORKS



WELLINGTON SHIRE

Residential Stocktake & Facilitation Strategy

