

*Planning and Environment Act 1987*

**Panel Report**

**Horsham Planning Scheme Amendment C77**

**Artist in Residence at Lot 2 Pearsons Road, Horsham**

**20 December 2016**

*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Horsham Planning Scheme Amendment C77

Artist in Residence, Lot 2 Pearsons Road Horsham

20 December 2016

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David Merrett, Chair

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## List of Abbreviations

AIR	Artist in Residence
BGLC	Barengi Gadjin Land Council
DELWP	Department of Environment, Land, Water and Planning
DPO8	Schedule 8 to the Development Plan Overlay
EPA	Environment Protection Authority
SUZ8	Schedule 8 to the Special Use Zone

## Overview

### Amendment Summary

<b>The Amendment</b>	Horsham Planning Scheme Amendment C77
<b>Common Name</b>	Artist in Residence, Pearsons Road, Horsham
<b>Subject Site</b>	Lot 2 Pearsons Road, Horsham
<b>The Proponent</b>	Chempaka Pty Ltd
<b>Planning Authority</b>	Horsham Rural City Council
<b>Authorisation</b>	23 October 2015
<b>Exhibition</b>	25 August to 26 September 2016
<b>Submissions</b>	Number of Submissions: 18 Opposed: 3 Refer to Appendix B for a list of submitters

### Panel Process

<b>The Panel</b>	David Merrett
<b>Directions Hearing</b>	Horsham Rural City Council offices, 15 November 2016
<b>Panel Hearing</b>	Horsham Rural City Council offices, 5 December 2016
<b>Site Inspections</b>	Unaccompanied, 15 November and 5 December 2016
<b>Appearances</b>	<ul style="list-style-type: none"> <li>• Horsham Rural City Council represented by Mr Edwin Irvine and Mr Nick Carey</li> <li>• Chempaka Pty Ltd represented by Ms Angela Hijas</li> <li>• Mr Don Perry</li> <li>• Grampian Arts represented by Ms Marion Matthews</li> <li>• Wimmera Development Association represented by Mr Ralph Kenyon</li> <li>• Horsham Regional Art Gallery Committee of Management represented by Ms Alison Eggleton and Mr Adam Harding</li> <li>• Ms Kath Dumesny</li> <li>• Barengi Gadjin Land Council represented by Mr Michael Stewart</li> </ul>
<b>Date of this Report</b>	20 December 2016

## Executive Summary

### (i) Summary

Amendment C77 seeks to rezone land (119 hectares) at Lot 2 Pearsons Road, Horsham from the Farming Zone to the Special Use Zone (Schedule 8) and apply Schedule 8 to the Development Plan Overlay. As exhibited, this will facilitate the use and development of the land for an Artist in Residence concept. Chempaka Pty Ltd is the proponent and also operates a similar facility near Kuala Lumpur in Malaysia.

The renowned Australian architect, Glenn Murcutt, has been commissioned to design the building for the land. A business plan is due to be completed by March 2017.

Only a small portion of the 119 hectares will be used for the Artist in Residence with the balance retained for crop raising and extensive animal husbandry. There is an extensive area of Aboriginal cultural sensitivity at the eastern end of the Amendment land that is proposed to be handed back to local Aboriginal ownership and management which is an excellent outcome.

18 submissions were received (including two late submissions) with three objecting. The key issues raised were:

- whether the location for the Artist in Residence was appropriate
- whether the Artist in Residence should be developed under the Special Use Zone provisions or the existing Farming Zone provisions
- the form and content of Schedule 8 to the Special Use Zone
- the form and content of Schedule 8 to the Development Plan Overlay.

The Panel accepts Council's submission that the Artist in Residence is an interesting and exciting concept that should be facilitated by the Horsham Planning Scheme. The location, on the periphery of Horsham, offers both seclusion and privacy for artists to contemplate their work and access to other arts and cultural facilities within Horsham. The Panel has found that the Municipal Strategic Statement should not be required to provide specific support to every land use that could be contemplated; particularly one which is site specific and relatively unique.

The Panel has corrected a number of drafting errors with Schedule 8 to the Special Use Zone and how some uses should be referred in the table of uses, particularly a Place of Assembly which, as exhibited, did not require a planning permit for a music festival or concert. These uses could have off site impacts and it is appropriate for Council to have some control over this use, if it was proposed. The Panel has inserted the minimum subdivision area that currently applies to the land with an exception for the excision of the land with Aboriginal cultural sensitivity.

The Panel has identified the need for a concept plan (similar to the site layout plan exhibited with the Amendment) to be drafted and attached to Schedule 8 to the Development Plan Overlay. The changes made to the site layout plan to address submitters concerns should be translated to the concept plan. The Panel has generally supported other post exhibition

changes to the schedule proposed by Council and added the need for a management plan as part of the development plan process.

**(ii) Recommendation**

Based on the reasons set out in this Report, the Panel recommends:

**Horsham Planning Scheme Amendment C77 be adopted as exhibited, subject to the following changes:**

- 1. Amend Schedule 8 to the Special Use Zone as contained in Appendix C.**
- 2. Amend Schedule 8 to the Development Plan Overlay as contained in Appendix D.**

# 1 Introduction

## 1.1 Panel process

Horsham Planning Scheme Amendment C77 (the Amendment) was prepared by the Horsham Rural City Council as Planning Authority. As exhibited, the Amendment proposes to:

- rezone Lot 2 Pearsons Road Horsham from Farming Zone to Schedule 8 to the Special Use Zone (SUZ8)
- apply Schedule 8 to the Development Plan Overlay (DPO8).

Council advised the Panel at the Directions Hearing that it had not formally considered the submissions or resolved to refer the submissions to a panel as it intended to continue negotiations with the submitters. The Panel issued Direction 5(f) that required Council to *clarify whether Council has formally considered the submissions to the Amendment. If not, a position on each submission is to be provided at the Hearing.* At its meeting of 21 November 2016, Council endorsed the changes to the Amendment in response to submissions.

During the exhibition of the Amendment, 16 submissions were received. A further two submissions were received after the closure of exhibition. Four of these submissions objected to or raised concern with some elements of the proposal. Council resolved the concerns expressed by Submitter 5 (Country Fire Authority) and Submitter 7 (Buwalda).

A Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 24 October 2016 and comprised David Merrett.

## 1.2 The Amendment land

The Amendment applies to land shown in Figures 1 and 2. The land has an area of 119 hectares and is located on the south west periphery of Horsham. The land has a long frontage to the Wimmera River to the north and contains a significant area of Aboriginal cultural heritage at its eastern end. The majority of the land is used for cropping.

A public pedestrian path extends from Horsham west along the Wimmera River and along the full extent of the Amendment lands' frontage with the river.

The Horsham Golf Course is located to the south and the Horsham Waste Water Treatment Facility is located west of the golf course.

Kenny Road provides the most direct vehicle access from Horsham to the Amendment land. It is to be sealed to the eastern boundary of the golf course as a result of the adjacent low density residential development. West of this point, Kenny Road is constructed to an all-weather standard with a 15 tonne load limit. Pearsons Road is an unconstructed road north of Kenny Road.



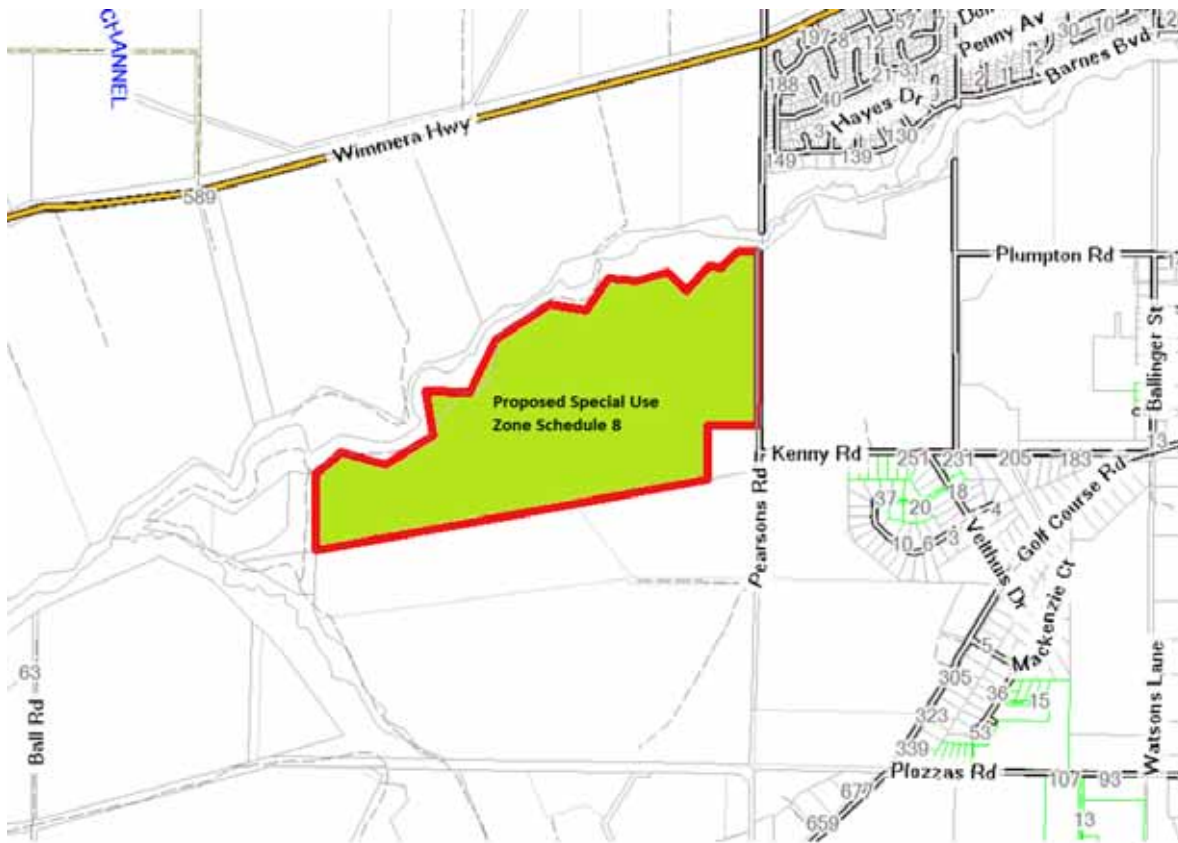


Figure 1 Amendment land location

### 1.3 Purpose of the Amendment

The purpose of the Amendment is to facilitate the use and development of the Amendment land for the Horsham Artist in Residence (AIR). The proponent (Chempaka) operates an AIR program at its Kuala Lumpur base in Malaysia and has a background of residential development (at Southbank) in Horsham. The AIR concept has been described by the proponent as:

*We started a residency at our home in Malaysia in 1994, and invited each year a Malaysian and an Australian artist to stay with us for a year to concentrate on their work. We provided accommodation, a studio, a living allowance and a joint exhibition at the end. It has been a very successful programme, it has seen the establishment of many young Malaysian artists who were then able to support themselves and their families from their practice, and the development of long term connections between the Australian artists and Southeast Asia. We then began an association with Asialink at the University of Melbourne to host more artists, and subsequently began inviting more regional artists from the ASEAN region to provide some support where none was available. The Horsham residency is the next step, to give Asian artists an opportunity to live and work in Australia alongside Australian artists, in a setting of great beauty and possible inspiration.*

.....

*The idea to have architectural camps has been well received by academic friends in architecture, but it will obviously have ramifications for the development plan, so suitable facilities will be included in the building for a larger number of guests, possibly up to 20, but it is the prerogative of the residency's management to limit the numbers when appropriate. I imagine these student camping visits would be rare, probably no more than a few times a year. Mr Murcutt is aware of this objective and supports it, and he will factor in whatever is required by the approving authority.*

*These additional facilities will enable the venue to attract events such as weddings and other private celebrations, following the lead of the foremost Australian residency, also designed by Mr Murcutt, at Bundanon in New South Wales, where a calendar of events provides substantial financial support to the arts programme.*

*Mr Murcutt has made a study over his entire professional career of such issues, and in particular how buildings fit into their landscape. I have no doubt that this building will be a new asset not just for Horsham and Victoria, but also for Australia, maybe not on the scale of MONA in Hobart, but certainly in the same class.*

.....

*Normally, there will be no more than three people in residence, two with a studio and the other most likely a writer who doesn't need a dedicated work space. From my experience in Malaysia, artists are hard working and focussed when they have a chance to develop their practices, so I think in normal times there would be absolutely no issue with disrupting the neighbourhood, but the value they inject into their work benefits everyone, in unexpected ways. We need their vision and interpretation to see the world or landscape in a way that we ourselves cannot visualise.<sup>1</sup>*

As discussed above Glen Murcutt, the Australian Pritzker awarded architect, has been commissioned to complete the plans for the building. The draft plans were available at the Hearing and can be summarised as:

- The building is setback 100 metres from the Wimmera River in the north-east corner close to an area of Aboriginal cultural sensitivity.
- A long (approximately 100 metres) and narrow single storey building that provides two indoor artist studios, one outdoor undercover studio, foyer, lounge room, kitchen and dining room for 20.
- An area for camping in conjunction with the AIR adjacent to the building that will be defined by an approved Development Plan.
- Car parking to the east of the building.
- Large areas of landscaping along the vehicle access and around the building.
- Vehicle access point 60 metres north of Submitter 7 (Buwalda) property boundary.

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<sup>1</sup> Chempaka submission, pages 1 and 2

There have been discussions with the Barengi Gadjin Land Council (BGLC) on the tenure of the land that is culturally sensitive. It is expected, and this was confirmed by the proponent at the Hearing, that this land will be handed over to the Barengi Gadjin Land Council to own and manage.

Figure 2 contains a site layout plan that the Department of Environment, Land, Water and Planning (DELWP) requested to be exhibited with the Amendment. This was amended in response to Submitter 7 with the relocation of the access off Pearsons Road further north away from the submitter’s boundary.

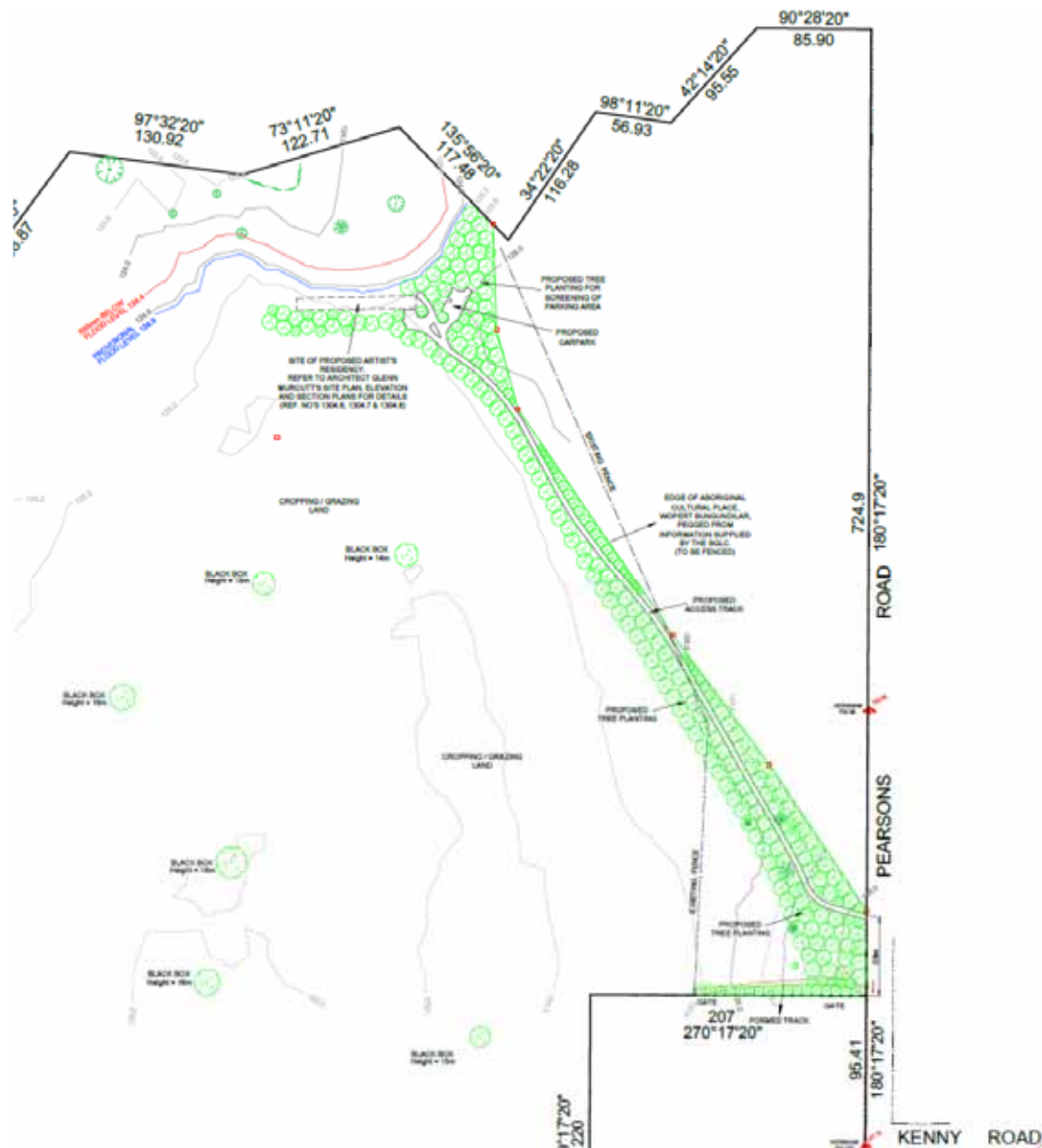


Figure 2 Excerpt from the amended site layout plan

## 1.4 Amendment detail

### 1.4.1 Schedule 8 to the Special Use Zone

The SUZ8, as exhibited, seeks to:

- facilitate the development of the Horsham Artist in Residence
- recognise the Horsham Artist in Residence as a major resource for arts practice and education in the Wimmera Southern Mallee region
- provide for the use of the Horsham Artist in Residence for a range of artistic, educational, entertainment, commercial and community activities
- ensure that the multiple usage of land and buildings facilitates usage of the facility throughout the year
- provide the physical facilities for the Horsham Artist in Residence to achieve its mission and objectives
- ensure that the combination of uses, their operation, and the scale and character of any development do not prejudice the amenity of surrounding areas
- allow for the ongoing use of the balance of the land for extensive animal husbandry and crop raising
- ensure that the future use and development of the Horsham Artist in Residence contributes to a diverse artistic environment for the municipality, and occurs in a planned and orderly manner.

Section 1 (no permit required) uses includes:

- an Art and Craft Centre
- Dwelling (must be the only dwelling on the lot and consistent with approved development plan)
- Market (used in association with an event held at the Horsham Artist in Residence)
- Place of Assembly.

A Camping and Caravan Park is a Section 2 use with the condition:

*Must not occupy land for a period greater than 10 consecutive days and not more frequently than 12 times in any 12 month period. Must be developed in accordance with any relevant endorsed Development Plan.*

Many uses are proposed to be prohibited. A Market and Office are prohibited if the Section 1 condition is not met; as are other forms of accommodation.

The SUZ8 does not provide a permit exemption for buildings and works. A permit is required to subdivide the land, however there is no minimum subdivision area.

Appendix C contains the SUZ8 that is supported by the Panel.

#### **1.4.2 Schedule 8 to the Development Plan Overlay**

The DPO8, as exhibited, requires an approved development plan for all of the 119 hectares and does not allow for any approvals prior to the completion of the development plan.

The development plan must include:

- an overall development plan for the Horsham Artist in Residence land
- staging of future development
- car parking arrangements
- connectivity to existing road network via internal vehicle access ways constructed to an all-weather standard

- internal vehicle and pedestrian circulation
- provision of appropriate arrangements for necessary physical infrastructure, including waste water management, drainage works, retention and management of storm water, power and telecommunications
- provision of an overall landscaping plan
- identification of proposed water supplies, storages and systems required for fire-fighting purposes
- identification of how environmental risks relevant to the land (fire and flooding) are to be addressed and managed
- identification of how cultural heritage matters are to be managed
- identification of how the development responds to other land uses in the area.

Council confirmed at the Hearing that it does not expect there will be a need for technical assessments for issues such as traffic, land capability and native vegetation.

It is likely that a Cultural Heritage Management Plan would be required as the development would be within an area of sensitivity and involve significant ground disturbance. Both Council and the BGLC considered there was no need to duplicate this requirement in DPO8 as it is effectively addressed under the *Aboriginal Heritage Act 2006*.

Council circulated an updated DPO8 prior to the Hearing.

Appendix D contains the DPO8 that is supported by the Panel.

## **1.5 Ministerial authorisation**

The Minister's letter of authorisation contained three conditions; one of which was:

*Council must provide supporting documents as part of the amendment to provide people with an understanding of the project. If council has an 'agreement' in place with the landowner to participate in the future development, that should be made more explicit as part of the amendment. This is important given that the use of the Development Plan Overlay removes third party appeal rights.*

The Panel understands the site layout plan was drafted in response to this condition and exhibited with the Amendment. In relation to Council's role in the proposal, Mr Irvine submitted it was likely Council would have a role in the management of the facility but not in the construction or funding of the facility. A business plan was due to be completed in February/March 2017 that would confirm Council's role, amongst other issues.

## **1.6 Amendment C75**

Council and Submitter 13 (Dumesny) referred to Amendment C75 that seeks to introduce a new Local Planning Policy Framework. Amendment C75 has been exhibited and considered by a Panel. Amendment C75, as exhibited at Clause 21.10-2 (Community and cultural facilities) contained Strategy 1.6, as follows:

*Support the establishment of an artist in residence facility to the south of the Wimmera River near Horsham.*

The Amendment C75 Panel Report stated:

*Ms Dumesny submitted that facilities should be accessible to all members of the community and argued that the specific location proposed in the MSS is too remote and would not be easily accessible. She submitted that it should be located with other community facilities in a more central location, but that, in any case, the MSS is not the appropriate place to deal with such a proposal. She submitted the proposal is not supported by any Council policy or strategy work.*

The Panel responded with:

*Council, quite reasonably, is considering an opportunity to be involved in a facility that has come about as a result of an offer by a specific developer.*

*The Panel is not convinced, however, that it is appropriate to use that as a strategic justification to include it in the planning scheme, and is certainly not convinced that it should refer to a specific location without any demonstrated need.*

*The Panel concludes that Strategy 1.6 should be reviewed in its entirety, or at the very least remove the reference to location.*

The Panel recommended that Strategy 1.6 be deleted. Council supported this and Amendment C75 is awaiting approval by the Minister for Planning.

## **1.7 Issues dealt with in this report**

The Panel has considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of the Amendment land and its surrounds.

This report deals with the issues under the following headings:

- Planning context
- Is the proposal in an appropriate location?
- Schedule 8 to the Special Use Zone
- Schedule 8 to the Development Plan Overlay.

Two submitters raised concern over the extent of notification and consultation of the Amendment. Council advised it had followed the requirements of the *Planning and Environment Act 1987* (the Act) and also notified directly adjacent landowners, landowners north of the Wimmera River and the Horsham Golf Club along Kenny Road. No other landowners were notified further east along Kenny Road. The Panel considers that Council has met the requirements of the Act however it may have been prudent to extend this further along Kenny Road.

Some submitters objected to Council playing any role in the operation or management of the AIR facility. This is a matter for Council to consider.

These matters are not considered further in this report.

## 2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

### 2.1 Policy framework

#### 2.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

- Clause 11.05-4 (Regional planning strategies and principles) that includes the principle of avoiding development impacts on land that contains cultural heritage.
- Clause 11.13-5 (Wimmera Southern Mallee regional growth – a diversified economy) seeks to support *a diverse range of tourism development on private land, particularly in designated locations where it will:*
  - *have access to settlements, transport infrastructure and other services.*
  - *be compatible with environmental and cultural assets and values.*
  - *link with nearby environmental assets.*
  - *not be exposed to unacceptable bushfire hazards.*
  - *operate in conjunction with agricultural activities and be located away from intensive agriculture and mining.*
- Clause 11.13-7 (Liveable communities)
- Clause 19.02-3 (Cultural facilities) by increasing access to arts, recreation and other cultural facilities and by reinforcing Horsham’s role as the major centre for arts in the Wimmera Southern Mallee region.

#### 2.1.2 Local Planning Policy Framework

The current Local Planning Policy Framework is silent on the role of the arts to Horsham and the regional community. The revised Municipal Strategic Statement (not yet approved) contains Clause 21.10-2 that refers to community and cultural facilities. Arts infrastructure is considered under the umbrella term ‘cultural facilities’. It states:

*Provision of community and cultural infrastructure is important to support community connections and the health, wellbeing and vitality of our communities and to enhance the municipality as a place to live. Within Horsham, community facilities should be located in places that are easily accessible to members of the community.*

#### 2.1.3 Other planning strategies or policies used in formulating the Amendment

The Council Plan 2016-2020, under Goal 1 Community and cultural development, Outcome 1.3.1 states:

*Investigate the establishment of an artist in residence program in Horsham.*

The Arts and Cultural Plan 2014-2018 has an objective to “*support the development of an Artist in Residence Initiative in partnership with landholders and other stakeholders*”. Specific strategies are to:

- 2.1.3 - *Facilitate Artist in Residency opportunities for artists and organisations in new and/or existing spaces.*
- 3.3.1 - *Investigate the viability of an Artist in Residence space in the Southbank development area.*

## **2.2 Planning scheme provisions**

### **2.2.1 Zones**

The Amendment proposes to rezone the land to the SUZ8.

### **2.2.2 Overlays**

The Amendment proposes to apply the DPO8.

## **2.3 Ministerial Directions and Practice Notes**

### **(i) Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

- Ministerial Direction No 11 - Strategic Assessment of Amendments
- The Form and Content of Planning Schemes (s7(5)).

The Panel has identified some minor drafting issues with the SUZ8 and DPO8.

### **(ii) Practice notes**

Council submitted that the Amendment is consistent with the following practice notes:

- Planning Practice Note 03 *Applying the Special Use Zone* (PPN03)
- Planning Practice Note 23 *Applying the Incorporated Plan and Development Plan Overlays* (PPN23).

## **2.4 Discussion**

Submitter 13 (Dumesny) considered there was no strategic justification for its use and challenged the use of the Special Use Zone. These matters are considered further in Chapters 3 and 4.



## 3 Is the proposal in an appropriate location?

### 3.1 The issue

The issue is whether the proposed Artist in Residence is in an appropriate location outside the urban area of Horsham and considering the proximity of the Horsham waste water treatment plant.

### 3.2 Submissions

Submitter 13 (Dumesny) and Submitter 18 (O'Connell) considered the proposed location of the AIR was inappropriate, was difficult to access and should be located in conjunction with other arts and cultural infrastructure in Horsham such as the Horsham Regional Art Gallery or the Horsham Town Hall. Reference was also made to the Panel recommendation to delete reference to the facility from the Municipal Strategic Statement in Amendment C75.

Submitter 7 (Buwalda) raised concerns over the location and suggested that it be located on the north side the Wimmera River on land the proponents owns as this would give more direct access to the AIR than the current land. The submitter, after negotiations with Council, reached agreement with Council based on a number of changes to the DPO8 and the site layout plan.

The Environment Protection Authority (Submitter 10 - EPA) noted the Horsham Waste Water Treatment Plant was located to the south of the land and the need to observe the separation distances contained in the EPA Publication 1518 *Recommended separation distances for industrial residual air emissions*. The plant treats effluent from a population of approximately 16,000 people which would require separation distance of 1,265 metres. The EPA stated:

*Council need to strongly consider the suitability of this site for residential purposes due to the potential for odour impacts to residents and the restriction it may place on any change and/or expansion to the treatment plant servicing the Horsham community.*

Council advised that there had been discussions with the EPA on the relocation of the treatment plant in response to the western growth of Horsham. Council submitted that the land is not affected by the plant buffer overlay administered by Schedule 6 to the Environment Significance Overlay (ESO6) and the 1,265 metre separation distance has been met (refer to Figures 3 and 4). Ms Dumesny referred to the lack of compliance with the separation distance.

### 3.3 Discussion

The Panel is not directly considering the use and development of the land. However, the AIR concept does inform how the zone and overlay controls have been formatted and therefore locational issues are relevant to the Panel.

As the AIR concept has been explained to the Panel, it seems that it is reliant on a secluded, quiet and relaxed atmosphere where artists can collaborate and contemplate their work. The AIR the proponent operates in Malaysia is located outside of Kuala Lumpur in a secluded

rainforest setting in landscaped surrounds. The Panel agrees with Ms Dumesny's submission that uses should be accessible; however, this is not true for all land uses. In this instance, the Panel consider the AIR concept is quite unique and would rely heavily on its context.

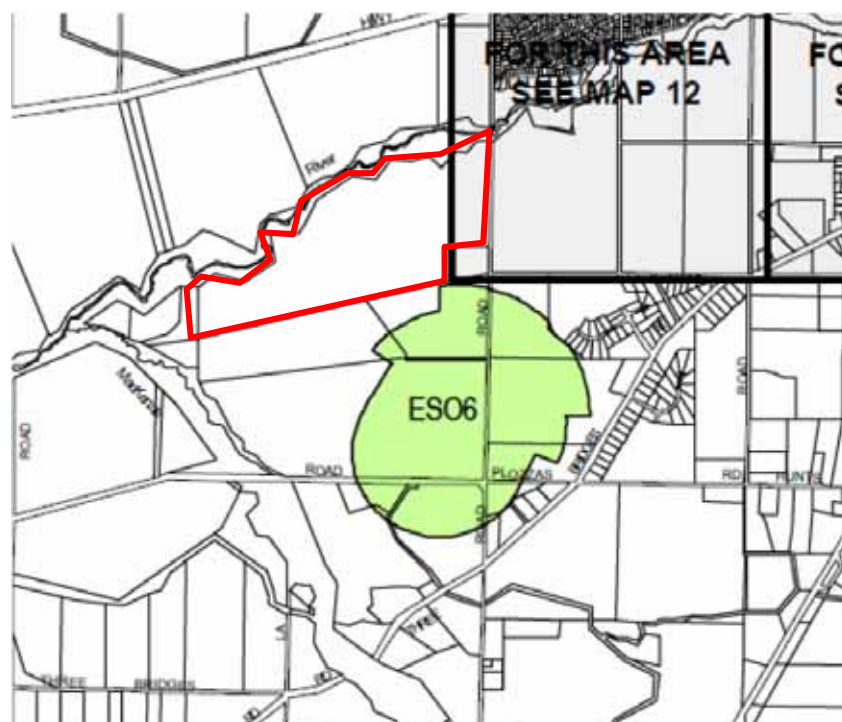


Figure 3 Application of ESO6

The Panel makes the following comments in support of the proposed location:

- The AIR facility will not generally be open to the public so this reduces the need for a facility to be operated more centrally within Horsham.
- When there are publicly accessible functions, it cannot be said that this is an isolated position. It is located approximately 5 kilometres from the Horsham CBD or at the immediate periphery of where urban growth is expected to extend to in the long term.
- There will be a 'cross fertilization' with existing facilities within Horsham. For instance, it is expected that the Horsham Regional Art Gallery will exhibit works completed at the AIR and that public exhibitions would not occur at the AIR.
- The Panel accepts that the refurbished Town Hall is not designed for a live-in AIR concept.
- The Panel does not agree with Ms Dumesny that there is a need for the Municipal Strategic Statement to specifically support this use in this location. In essence, this is consistent with the recommendation of the Amendment C75 Panel where it deleted a strategy that specifically supported the AIR in this location. If this was the case, then planning schemes would become significantly more complex and unwieldy.
- The Panel does have some concern with the proposed treatment of Kenny Road (from the eastern boundary of the golf club), Pearsons Road and the access track on the property. On the odd occasion the Amendment land will be heavily used (such as school visits or artist camps operated in conjunction with the AIR) and both roads are only proposed to be upgraded to an unsealed all weather road. There is housing in the locality and raised dust from increased traffic should be addressed by Council either

considering the need for a light asphalt seal or the use of dust suppressant as an item that is included in the management plan for the property and its use.

In regard to the EPA separation distance, Council has demonstrated that this requirement has been met. The building is located outside the 1,265 metre separation distance. The Panel notes that the ESO6 is not applied to the Amendment land and while there is a residential component to the use, it is significantly less intense than what a residential subdivision would be. It also seems that it is likely the long term future of the waste water treatment facility may be at another location.



Figure 4 Site context with the Horsham Waste Water Treatment Plant

### 3.4 Conclusion

The Panel concludes the location is appropriate for the use that is envisaged by the Amendment.

## 4 Schedule 8 to the Special Use Zone

### 4.1 The issue

The issues are:

- whether the use of the Special Use Zone is appropriate?
- the form and content of the SUZ8.

### 4.2 Is the use of the Special Use Zone appropriate?

#### 4.2.1 Submissions

Submitter 13 (Dumesny) referred to PPN03 which states:

*When considering the application of the Special Use Zone, the following principles need to be understood:*

- *The complexity of planning requirements is reduced by keeping the number of zones used to a minimum.*
- *Planning scheme maps identify the statutory requirements which apply to land, not the particular land uses which happen to exist there.*
- *Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making on planning matters.*
- *The planning permit should be the principal method for land use or development approval.*

.....

*Application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.<sup>2</sup>*

Ms Dumesny considered that in this case a combination of the available zones, overlays and policies are able to accommodate the AIR concept.

Council acknowledged that the use, principally as a Place of Assembly, is not a prohibited use in the Farming Zone. However, Mr Irvine submitted that the use of the SUZ was a superior outcome as it:

*provides a much greater level of control over site layout and land uses than is currently the case, and as such, introduce a heightened ability to require development to respond to the opportunities available on the land.<sup>3</sup>*

Council considered that one key difference is the ability to vary from the minimum subdivision area contained in the Farming Zone (60 hectares) in order to excise the culturally sensitive land. The Barengi Gadjin Land Council supported the Amendment and the ability to excise land that can be returned to local Aboriginal ownership and management.

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<sup>2</sup> PPN03, page 1

<sup>3</sup> Council submission, page 7

#### 4.2.2 Discussion

Ms Dumesny is technically correct that the use could be considered under the Farming Zone provisions. However, there are benefits in the use of the SUZ8 that indicate this is a superior approach. These are:

- The AIR is a reasonably complex concept that would benefit from site specific provisions to guide its future use and development.
- The Special Use Zone allows for purposes to be tailored to the use that the Farming Zone does not allow.
- The schedule to the Farming Zone prohibits the creation of a lot less than 60 hectares in area. This would not allow for the excision of the culturally sensitive area and its ownership by the local Aboriginal community, unless there was a site-specific variation to the Farming Zone schedule to allow for smaller lots to be created. The SUZ8 does not contain a minimum subdivision area therefore the excision of land can be considered on its merits. The Panel does, however, consider there needs to be a balance to avoid any ability to subdivide that would be inconsistent with the purpose of the zone, be inconsistent with surrounding land in the Farming Zone or be tantamount to residential development. The Panel supports the retention of the current minimum subdivision area (60 hectares) with an exception for culturally sensitive land that may be excised.
- The SUZ provides the ability to prohibit a wider range of uses than the Farming Zone that would not be considered appropriate on the land. Council has proposed to prohibit the following Farming Zone land uses that otherwise would be able to apply for a permit:
  - more intensive forms of agriculture
  - cemetery
  - funeral parlour
  - hospital
  - industry
  - saleyards
  - veterinary centre.

The Panel notes that this list of prohibited uses should also include child care centre which is prohibited in the Farming Zone. As one component of the use, as it has been explained by Council and the proponent, may be education for artists the Panel considers this should be listed as a Section 1 use with a condition that it must be operated in conjunction with the Horsham Artist in Residence and be consistent with an approved Development Plan.

On balance, the Panel concludes there are benefits in using the Special Use Zone and not retaining the Farming Zone for the land.

### 4.3 The form and content of Schedule 8 to the Special Use Zone

#### 4.3.1 Discussion

During the Hearing, the Panel raised some issues with the drafting of the SUZ8. These included:

- The fifth zone purpose states:

*To provide the physical facilities for the Horsham Artist in Residence to achieve its mission and objectives.*

The mission and objectives are undefined and not appropriate for a zone purpose. In response, Council proposed the following text:

*To provide a living and working environment for practising artists in a natural and agricultural landscape.*

- Submitter 18 (O'Connell) referred to the possibility of music concerts and festivals being held at the Amendment land. This use would likely to be defined as a Place of Assembly. The SUZ8 lists a Place of Assembly as a Section 1 use with no conditions. Therefore, there would not be the ability for Council to control a use that may have significant off site impacts and other considerations. In response to this, Council proposed to add the following condition:

*Must occur within the Artist in Residence building or its immediate curtilage, and be in accordance with any relevant endorsed Development Plan.*

The Panel considers this assists in providing parameters however a music festival or concert should also be added to the land use exemption. This, in conjunction with the proposed condition, will assist in defining an appropriate Place of Assembly land use. What is meant by 'immediate curtilage' is currently undefined however this will be considered further in the development plan process. The Panel therefore supports the insertion of a Section 1 exemption for a Place of Assembly that states;

*Must not include a music festival or concert*

This would have the effect of requiring a planning permit (Section 2) if the one was proposed and the ability for Council to manage the use.

The Panel notes there is a drafting error in Section 3 for Market and Office where it contains the condition 'where the Section 1 condition is not met'. The Victoria Planning Provisions Practice Note No 10- *Writing Schedules May 2000* requires this to be located next to the land use, not as a condition.

The Panel also supports the need to protect areas of Aboriginal cultural sensitivity in the zone purpose. The exhibited version of SUZ8 is silent on this issue.

#### **4.3.2 Conclusion**

The Panel concludes that:

- the use of the SUZ is appropriate
- the SUZ8 should be updated to correct some drafting errors and to better control some land uses.

#### **4.4 Recommendations**

The Panel recommends:

- 1. Amend Schedule 8 to the Special Use Zone as contained in Appendix C.**

## **5 Schedule 8 to the Development Plan Overlay**

### **5.1 The issues**

The issues are:

- are the proposed changes to Schedule 8 to the Development Plan Overlay appropriate?
- the form and content of the Schedule 8 to the Development Plan Overlay.

### **5.2 Are the proposed changes to Schedule 8 to the Development Plan Overlay appropriate?**

#### **(i) Submissions**

Submitter 7 (Buwalda) initially raised concerns over the accessway and parking.

Council proposed a number of changes to the DPO8 in response to the concerns expressed by the submitter. These included providing more detail on the requirements for carparking, the location of the accessway and landscaping. The submitter then emailed Council on 24 November 2016 to advise that these changes had addressed their concerns. The submitter did not appear at the Hearing.

#### **(ii) Discussion**

The DPO8 requires a development plan to be prepared for the entire Amendment land, that is the 119 hectares, but with the obvious focus in the east adjacent to the culturally sensitive areas as detailed in the site layout plan.

There are two important considerations.

Firstly, the site layout plan was exhibited with the Amendment but only as a supporting document, not as part of an Amendment provision or control. That is, it has no statutory weight, even with the post exhibition changes proposed by Council. The Panel raised this issue at the Hearing and suggested that a concept plan be drafted that contains some of the direction provided by the site layout plan, be attached to the DPO8 and referred to in the Clause 3.0. The concept plan for the whole Amendment land should show (but not be limited to):

- the use and development area
- the access point off Pearsons Road and the general alignment of access road
- the location and extent of culturally sensitive land and the provision of setback and landscape buffers from it
- general setbacks from the Wimmera River
- integration with the walking track
- the continued use of the balance of the land for crop raising and extensive animal husbandry and identification of it as a 'no development area unless for farming structures'.

Secondly, the exhibited DPO8 does not require the preparation of any technical reports; however it does require that issues of parking, access, landscaping, Aboriginal culture, infrastructure and fire and flooding are addressed. As there is no business plan or

management plan in place at this stage, the Panel supports the preparation of a use and site management plan that includes (but is not limited to) the following issues:

- The detail and extent of uses that could operate from the Amendment land.
- The operational hours for the uses.
- How the uses such as artist camps and school visits are managed, including carparking.
- How dust control on the unsealed roads (if that is the level of seal) is to be managed in times of high use.
- Maximum patron numbers for the uses.
- Emergency management procedures in place.

Once the business plan has been finalised there should be further operational matters identified that could be included in the management plan. Provision should also be made for this management plan to evolve over time as the use matures.

Appendix D contains the DPO8 supported by the Panel.

### **5.3 Recommendations**

The Panel recommends:

- 2. Amend Schedule 8 to the Development Plan Overlay as contained in Appendix D.**



## Appendix A Document list

No.	Date	Description	Presented by
1	5/12/16	Council submission	E Irvine
2	5/12/16	Rimbun Dahan brochure	A Hijas
3	5/12/16	Updated Schedule 8 to the Special Use Zone	E Irvine
4	5/12/16	Amendment C75 Clause 21.10 (exhibited)	E Irvine
5	5/12/16	Grampian Arts submission	M Matthews
6	5/12/16	Horsham Regional Art Gallery Committee of Management	M Stewart
7	5/12/16	Submission	K Dumesny
8	5/12/16	Draft plans by Glenn Murcutt	E Irvine

## Appendix B Submitters to the Amendment

No.	Submitter
1	Chempaka Pty Ltd
2	Mr Anthony Pelchen
3	Barengi Gadjin Land Council
4	Ms Carolyn Rundell
5	Country Fire Authority
6	Ms Cheryl and Mr Don Perry
7	Mr Christopher and Ms Mary Buwalda
8	Dr Phillip Hunter
9	Dr Sheridan Palmer
10	Environment Protection Authority
11	Grampian Arts
12	Horsham Regional Art Gallery Trust Fund
13	Ms Kath Dumesny
14	Horsham Regional Art Gallery Committee of Management
15	Ms Tracey Skinner
16	Wimmera Development Association
17	Department of Environment, Land, Water and Planning
18	Mr Leigh and Ms Christine O'Connell

## **Appendix C Schedule 8 to the Special Use Zone supported by the Panel**

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Proposed C77

## SCHEDULE 8 TO THE SPECIAL USE ZONE

Shown on the planning scheme map as **SUZ8**.

### Horsham Artist in Residence

#### Purpose

To facilitate the development of the Horsham Artist in Residence.

To recognise that the Horsham Artist in Residence as a major resource for arts practice and education in the Wimmera Southern Mallee region.

To provide for the use of the Horsham Artist in Residence for a range of artistic, educational, entertainment, commercial and community activities.

To ensure that the multiple usage of land and buildings within the site facilitates usage of the facility throughout the year.

To provide a living and working environment for practising artists in a natural and agricultural landscape. ~~To provide the physical facilities for the Horsham Artist in Residence to achieve its mission and objectives.~~

To ensure that the combination of uses, their operation, and the scale and character of any development do not prejudice the amenity of surrounding areas.

To allow for the ongoing use of the balance of the site for extensive animal husbandry and crop raising and the protection of areas of Aboriginal cultural sensitivity.

To ensure that the future use and development of the Horsham Artist in Residence contributes to a diverse artistic environment for the municipality, and occurs in a planned and orderly manner.

## 1.0

### Table of uses

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Proposed C77

#### Section 1 - Permit not required

Use	Condition
<b>Art and Craft Centre</b>	
<b>Crop raising</b>	
<b>Dwelling</b> ( <del>except other than</del> <u>Bed and Breakfast</u> )	Must be the only dwelling on the lot, and must be developed in accordance with any <del>relevant</del> <u>endorsed approved</u> Development Plan.
<b><u>Education centre</u></b>	<u>Must be operated in conjunction with the Horsham Artist in Residence and be consistent with an approved Development Plan.</u>
<b>Extensive animal husbandry</b>	
<b>Informal outdoor recreation</b>	
<b>Market Office</b>	Must be used in conjunction with an event held at the Horsham Artist in Residence.
<b>Place of assembly</b> ( <del>except other than</del> <u>Amusement Parlour, Cinema, Drive-in Theatre, <u>music festival or concert</u></u> )	<u>Must occur within the Artist in Residence building to its immediate curtilage as defined by an approved Development Plan.</u>
<b>Any use listed in Clause 62.01</b>	Must meet the requirements of Clause 62.01

## Section 2 - Permit required

Use	Condition
Bed and Breakfast	
Camping and Caravan Park	Must not occupy land for a period greater than 10 consecutive days and not more frequently than 12 times in any 12 month period. Must be developed in accordance with any <del>relevant-endorsed</del> <u>approved</u> Development Plan.
Host <del>f</del> Farm	
<u>Place of Assembly – if the Section 1 condition is not met</u>	
Any other use not in section 1 or 3	Must be used in conjunction with an event held at the Horsham Artist in Residence.

## Section 3 - Prohibited

Use	
Accommodation ( <del>Except other than</del> Dwelling, Camping and Caravan Park, Host Farm and Bed and breakfast)	
Agriculture ( <del>except other than</del> extensive <del>A</del> animal husbandry and <del>e</del> Crop raising)	
Amusement parlour	
Brothel	
Cemetery	
<u>Child care centre</u>	
Cinema	
Cinema based entertainment facility	
Crematorium	
Display home	
Drive-in theatre	
Freeway service centre	
Funeral parlour	
Hospital	
Industry	
Major sports and recreation facility	
Market <u>– if the section 1 condition is not met</u>	<del>Where the section 1 condition is not met.</del>
Motor racing track	
Motor repairs	
Office <u>– if the section 1 condition is not met</u>	<del>Where the section 1 condition is not met.</del>

Pleasure ~~B~~boat ~~f~~facility  
Refuse disposal  
Retail premises (~~except~~ [other than](#)  
Market)  
Saleyard  
Service station  
Tramway  
Transport terminal  
Veterinary centre  
Warehouse

## 2.0 Use of land

~~1/20~~  
Proposed C77

A use must not detrimentally affect the amenity of the neighbourhood, including through the:

- transport of materials, goods or commodities to or from the land.
- appearance of any building, works or materials.
- emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

## 3.0 Subdivision

~~1/20~~  
Proposed C77

A permit is required to subdivide land.

[The minimum subdivision area is 60 hectares unless it is for the purpose of excising land that has Aboriginal cultural sensitivity.](#)

Any application must state the intended outcome of the proposed subdivision and its strategic impact on the overall operation of the Horsham Artist in Residence. Any proposed subdivision must be generally in accordance with any ~~relevant-endorsed~~ [approved](#) Development Plan for the site.

## 4.0 Buildings and works

~~1/20~~  
Proposed C77

Buildings and works must be generally in accordance with any ~~relevant-endorsed~~ [approved](#) Development Plan for the site.

## **Appendix D Schedule 8 to the Development Plan Overlay supported by the Panel**

## SCHEDULE 8 TO THE DEVELOPMENT PLAN OVERLAY

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Proposed C77

Shown on the planning scheme map as **DPO8**.

### HORSHAM ARTISTS IN RESIDENCE

#### 1.0 Requirement before a permit is granted

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Proposed C77

An overall development plan must be prepared for the entire area affected by DPO8 to ensure a co-ordinated and comprehensive approach to the development of the land.

#### 2.0 Conditions and requirements for permits

--/20--  
Proposed C77

All roads which provide direct access and the on-site access road for the Horsham Artist in Residence site must be sealed or otherwise treated to the satisfaction of the Responsible Authority.

#### 3.0 Requirements for development plan

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Proposed C77

The Development Plan must include:

- [General consistency with the concept plan attached to this schedule.](#)
- An overall development plan for the Horsham Artist in Residence site, [showing how the facility and its immediate curtilage are to be developed.](#)
- [A Site Management Plan that addresses:](#)
  - [each use proposed to operate from the site](#)
  - [operating hours for each use](#)
  - [carparking requirements for each use](#)
  - [an emergency management response](#)
  - [the ongoing management and maintenance of any unsealed road or accessway.](#)
- Staging of future development.
- [Identify areas of Aboriginal cultural sensitivity and how they will be managed.](#)
- [All car parking areas to be located in the vicinity of Artist in Residence building arrangements.](#)
- Connectivity to existing road network via internal vehicle access ways constructed to an all weather standard. [The access roads and internal accessways are to be constructed to a minimum load limit of 15 tonne with a trafficable width of 4 metres, and to be provided with 20 metre long by 6 metre wide passing bays every 200 metres.](#)
- Internal vehicle and pedestrian circulation.
- [Vehicle entry point to be located at least 60 metres north of the shared boundary with Lot 1 on Plan of Subdivision 308873 on Pearsons Road.](#)
- Provision of appropriate arrangements for necessary physical infrastructure, including waste water management, drainage works, retention and management of storm water, power and telecommunications.
- Provision of an overall landscaping plan, [including screen planting of vehicle entry points, and screen planting of the common boundary with Lot 1 on PS308873W.](#)
- Identification of proposed water supplies, storages and systems required for fire fighting purposes.
- Identification of how environmental risks relevant to the land (fire and flooding) are to be addressed and managed.
- ~~Identification of how cultural heritage matters are to be managed.~~
- Identification of how the development responds to other land uses in the area.



[ATTACH THE CONCEPT PLAN](#)